



**Supplement to the Sixth Report to Court of
KSV Restructuring Inc.
as Receiver and Manager of
Go-To Developments Holdings Inc. and those
parties listed on Appendix “B”**

January 11, 2023

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

**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**

**SUPPLEMENT TO THE SIXTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER**

JANUARY 11, 2023

1.0 Introduction

1. This report (the “Supplemental Report”) supplements the Receiver’s Sixth Report to Court dated November 14, 2022 (the “Sixth Report”). A copy of the Sixth Report is provided as Appendix “A”, without attachments.
2. Unless otherwise stated, capitalized terms used in this Supplemental Report have the meaning provided to them in the Sixth Report.

1.1 Purposes of this Supplemental Report

1. The purposes of this Supplemental Report are to:
 - a) summarize a proposed sale (the “Aurora Transaction”) by the Receiver to 1000086921 Ontario Inc. (the “Aurora Purchaser”) of the real property¹ located at 4951 Aurora Road, Stouffville (the “Aurora Real Property”), the registered owner of which is 2506039 Ontario Limited (“Go-To Aurora Co.” and, together with Aurora Limited Partnership, “Go-To Aurora”), pursuant to an Agreement of Purchase and Sale dated December 8, 2022 (the “Aurora APS”);
 - b) provide an update on the Receiver’s review of the construction lien claims filed by HK United Construction Ltd. (“HK United”), Soil-Mat Engineers & Consultants Ltd. (“Soil-Mat”) and HC Matcon Inc. (“HC Matcon” and collectively, with HK United and Soil-Mat, the “Lien Claimants”) against the real property formerly owned by Go-To Eagle Valley, including the Receiver’s correspondence with counsel representing the lien claimants and a mortgagee, Imperio;
 - c) summarize the Receiver’s correspondence with Murray Maltz of Murray Maltz Professional Corporation (“Maltz PC”), who received and then distributed \$1.15 million from Concorde Law related to Go-To Adelaide’s acquisition of the Adelaide Real Property;
 - d) provide an update with respect to certain insurance-related matters; and
 - e) recommend that this Court issue the following Orders:
 - i. an Approval and Vesting Order consisting of the following relief (the “Aurora AVO”):
 - approving the Aurora APS and authorizing the Receiver to complete the Aurora Transaction; and
 - vesting the Purchased Assets (as defined in the Aurora AVO) in the Aurora Purchaser,² free and clear of encumbrances other than the Permitted Encumbrances (as defined in the Aurora AVO), upon execution and delivery of a certificate by the Receiver confirming completion of the Aurora Transaction;

¹ Together with certain ancillary personal property of Go-To Aurora.

² Or in the name of another person, entity, joint venture, partnership or corporation, subject to the terms and conditions of section 14.10 of the Aurora APS.

- ii. an Ancillary Order (the “Ancillary Order”):
 - authorizing and directing the Receiver to distribute monies from Go-To Eagle Valley to Imperio, HK United, Soil-Mat and HC Matcon on the basis set out in Section 3.0 below;
 - directing Mr. Maltz to produce the Unredacted Trust Ledgers (as defined below) to the Receiver; and
 - approving this Supplemental Report and the Receiver’s activities as set out in this Supplemental Report.

1.2 Restrictions

1. This Supplemental Report is subject to the restrictions in the Sixth Report.
2. All currency references in this Supplemental Report are in Canadian funds.

2.0 The Aurora Transaction

2.1 Background

1. The Sale Process that was approved by the Court pursuant to the Sale Process Order issued on February 9, 2022 is discussed in the Second Report to Court dated February 3, 2022 (the [“Second Report”](#)).
2. In Section 7 of the Sixth Report, the Receiver advised that it was continuing to market for sale the Aurora Real Property. The Receiver negotiated and executed the Aurora APS following the date of the Sixth Report.
3. As referenced in the Sixth Report, the Aurora Real Property and the adjacent properties form an assembly (the “Aurora Assembly”).
4. Go-To Aurora planned to develop the Aurora Real Property in coordination with the owners of the adjacent properties (the “Other Parcels”). The owners of the Other Parcels are 341868 Ontario Ltd., Kesbro Inc. and Mr. Brouwer personally (collectively, the “Other Parcel Owners”). The Receiver understands that Mr. Brouwer is the authorized signing authority for the Other Parcel Owners.
5. The Aurora Real Property totals 3.1 acres and contains a frontage of 237 feet along Aurora Road. A map reflecting the Aurora Real Property (in blue) and the Other Parcels (in yellow) is provided below:



6. At the commencement of the receivership proceedings, Hillmount Capital Mortgage Holdings Inc. (“Hillmount”) held a first mortgage (the “Aurora Mortgage”) over the Aurora Assembly.
7. As discussed in the Second Report, Hillmount assigned its interest in the Aurora Mortgage to the Aurora Purchaser, a company that the Receiver understands is owned or controlled by Mr. Brouwer. As a result, one of Mr. Brouwer’s companies (i.e., the Aurora Purchaser) became the mortgagee over real property owned by: (i) Mr. Brouwer and two of his other companies (i.e., the Other Parcel Owners), in the case of the Other Parcels; and (ii) Go-To Aurora Co., in the case of the Aurora Real Property. Based on a real property title search dated December 29, 2022, the Aurora Mortgage is the only mortgage registered against the Aurora Real Property.
8. The Aurora Mortgage was originally registered by Hillmount Capital Inc. (“Hillmount Capital”) against each of the real properties comprising the Aurora Assembly in the principal amount of \$1.9 million on January 15, 2019. The registration was subsequently transferred from Hillmount Capital to Hillmount and amended to the principal amount of \$2.125 million on February 9, 2021, before being transferred from Hillmount to the Aurora Purchaser on January 25, 2022, when it acquired the Aurora Mortgage for approximately \$2.2 million.
9. Pursuant to an agreement between Go-To Aurora, Mr. Furtado and the Other Parcel Owners (collectively, the “Parties”) dated January 15, 2019 (the “Aurora Mortgage Agreement”), the proceeds of the Aurora Mortgage were to be applied as follows:
 - a) \$1.3 million to pay out and discharge the mortgage registered on title to the Aurora Real Property at the time (which mortgage had a principal amount of \$1.3 million outstanding) (the “VTB Amount”);

- b) an interest reserve in the amount of \$205,400 to pay interest on the corresponding \$1.3 million portion of the Aurora Mortgage over the initial two-year term (the “Furtado Interest Amount” and, together with the VTB Amount, the “Furtado Portion”); and
 - c) the balance to be “*applied to the obligations and liabilities of the Joint Venture [between Go-To Aurora and the Other Parcel Owners]*” (the “JV Portion”).
- 10. The Aurora Mortgage Agreement states that repayment of the Furtado Portion (including, without limitation, “*any interest that may be due, from and after the maturity date of the [Aurora] Mortgage, on that portion of the principal amount of the mortgage equal to the VTB Amount and the Furtado Interest Amount*”) is the sole responsibility of Go-To Aurora Co. and Mr. Furtado. Pursuant to the Aurora Mortgage Agreement, each of Go-To Aurora Co., Mr. Furtado and Go-To Developments Holdings Inc. also provided a guarantee and indemnity to the Other Parcel Owners with respect to the Furtado Portion.
- 11. The Aurora Mortgage Agreement also states that repayment of the JV Portion “*shall be the liability and responsibility of the **Parties** hereto and shall be allocated among the Parties in accordance with the terms as set out in the Joint Venture Agreement.*” [Emphasis added.]
- 12. Since the commencement of the receivership proceedings, the Receiver and Mr. Brouwer discussed the sale of the Aurora Assembly and the benefits of collaborating to sell the Aurora Assembly, which the Receiver believed provided the opportunity to maximize the value of the Aurora Real Property and the Other Parcels.
- 13. As discussed in the Receiver’s Third Report to Court dated March 29, 2022 (the “[Third Report](#)”), the Receiver and Mr. Brouwer agreed to enter into a cooperation agreement (the “Cooperation Agreement”) such that offers would be solicited for the Aurora Real Property on both a stand-alone basis and as part of the Aurora Assembly. The Cooperation Agreement set out, *inter alia*, the following terms:
 - a) Mr. Brouwer agreed to retain CBRE to market the Other Parcels jointly with the Aurora Real Property so that they could be offered for sale as an assembly;
 - b) Mr. Brouwer agreed to sell the Aurora Assembly if a minimum offer price were achieved (the “Minimum Price”); however, the Receiver would retain the option to sell the Aurora Real Property on its own if that maximized the value of the Aurora Real Property;
 - c) Mr. Brouwer can make a bid for the Aurora Real Property. Accordingly, Mr. Brouwer would not be entitled to any information concerning the level of interest in, or offers received for, the Aurora Real Property on its own; and
 - d) Any sale of the Aurora Assembly is subject to an agreement between the Receiver and Mr. Brouwer as to the allocation of the sale proceeds between the Aurora Real Property and the Other Parcels.
- 14. The marketing materials for the Aurora Real Property invited potential purchasers to submit offers on the Aurora Assembly or the Aurora Real Property on a standalone basis.

2.2 Registered Charges

1. The charges registered against title to the Aurora Real Property (excluding the super-priority Court-ordered charges granted by the Receivership Order) are summarized below:

Party	Date of Registration	Type	Principal Registered Amount (\$000)
Aurora Purchaser (assigned from Hillmount, assigned from Hillmount Capital)	January 15, 2019 ³	Mortgage	1,900 (and then subsequently amended to 2,125)
Capital Build	January 28, 2022	Construction Lien	117

2.3 Sale Process Overview

1. As noted, the Aurora Real Property was marketed for sale in accordance with the Court-approved Sale Process, which was summarized in the Second Report.
2. CBRE prepared an offering summary (the “Aurora Offering Summary”), a copy of which is provided as Appendix “B”. CBRE distributed the Aurora Offering Summary on March 3, 2022 to an extensive list of prospective purchasers, including local, national and international builders, developers and investors. The acquisition opportunity was also published in trade journals and on social media platforms, including LinkedIn. CBRE also directly contacted parties that it believed would be interested in the opportunity.
3. CBRE marketed the Aurora Real Property as both a commercial property and residential property on the Multiple Listing Service to attract both developers and residential buyers.
4. Attached to the Aurora Offering Summary was the form of confidentiality agreement (“CA”) that interested parties were required to sign to access a virtual data room (the “VDR”). The VDR included information provided to the Receiver by representatives of the Receivership Respondents. The VDR also included a form of asset purchase agreement (“APS”). The Receiver recommended that prospective purchasers submit offers in the form of the APS, together with a blacklined version of their offer against the form of template offer.

2.4 Sale Process Results

1. As summarized in the Third Report, prior to the commencement of the Sale Process, Georgian Country Trails Inc. (“Georgian”) submitted a conditional offer for the Aurora Assembly pursuant to an agreement of purchase and sale dated February 4, 2022. The offer did not allocate the purchase price among the properties in the Aurora Assembly and contained a 21-business day due diligence period. Georgian advised that it was unable to waive its due diligence condition by the February 18, 2022 deadline for doing so, which was set out in the Court’s endorsement dated February 9, 2022 (the “February 9th Endorsement”). A copy of the February 9th Endorsement is provided in Appendix “C”.

³ Which was also registered against the Other Parcels.

2. For reasons discussed in the Third Report, including the conditionality of the offer and the limited diligence that had been performed by Georgian at the time it submitted its offer, the Receiver did not accept Georgian's offer and encouraged Georgian to participate in the Sale Process. No further offers were submitted by Georgian.
3. CBRE advised interested parties that the bid deadline was April 20, 2022 to submit offers in the form of the APS.
4. A marketing report prepared by CBRE regarding the Aurora Real Property is provided in Appendix "D" (the "CBRE Aurora Report").
5. As discussed in the CBRE Aurora Report, CBRE widely canvassed the market and received 20 signed CAs.
6. Only one offer was submitted at the bid deadline (April 20, 2022), which was from a party related to the Aurora Purchaser for a purchase price of \$2.1 million. After consulting with CBRE, the Receiver decided to continue to market the property for sale as: a) the offer would not have resulted in recoveries to Go-To Aurora's unsecured creditors or investors⁴; b) the Receiver considered the strategic value of the Aurora Real Property to the Other Parcel Owners and believed that they should attribute significant value to the Aurora Real Property as a sale to a third party could affect the opportunity to develop the Aurora Assembly; and c) the Receiver wanted the opportunity to continue to canvass the market for a better offer.
7. Following the bid deadline, the Aurora Real Property continued to be listed for sale with CBRE on an unpriced basis and the Receiver continued to engage with Mr. Brouwer regarding his interest in the Aurora Real Property.
8. In August 2022, a significant investor (the "Investor") in Go-To Aurora advised the Receiver that he was working with a undisclosed developer on an acquisition of the Aurora Real Property.
9. The Investor advised the Receiver that he was working with a developer who requested that Mr. Furtado assist to structure a transaction for the Aurora Real Property based on Mr. Furtado's knowledge of the contemplated development for that property.

⁴ Assuming the transaction based on the offer submitted on April 20, 2022 closed on July 1, 2022, Go-To Aurora Co.'s allocated liability to the Aurora Purchaser for the Furtado Portion alone would have been at least \$1.735 million (before costs and expenses) in respect of the Aurora Mortgage calculated as follows:

	(\$000s)
VTB	1,300
Furtado Interest Amount	205
Additional interest accrued to July 1, 2022	145
Hillmount's actual fees related to the receivership and assignment of the Aurora Mortgage	85
Go-To Aurora Co.'s liability under the Furtado Portion of the Aurora Mortgage	1,735

The above amount does not include any allocation of the JV Portion of the Aurora Mortgage to Go-To Aurora Co., the mortgage enforcement costs of the Aurora Purchaser, and the fees and costs of the Receiver and its counsel to that date. The Receiver estimates the Priority Payables in such transaction would have been at least \$400,000, which combined with the \$1.735 million, would have exceeded the purchase price of \$2.1 million, and therefore there would not have been any money available for other stakeholders.

10. The February 9th Endorsement prohibits Mr. Furtado from engaging in any further sales or marketing efforts of the Real Property and requires him to direct any potential purchasers to the Receiver (and/or to CBRE). As a result, Mr. Furtado's counsel requested that the Receiver consent to Mr. Furtado providing assistance to try to facilitate a sale of the Aurora Real Property. The Receiver advised Mr. Furtado that it did not object to his participation in the Sale Process, subject to it being for the limited purpose of this transaction and that he disclose any financial interest he may have in a transaction. Mr. Furtado's counsel advised that Mr. Furtado did not intend to have a financial interest in the contemplated transaction.
11. The Receiver understands that the Investor was also engaging with Mr. Brouwer regarding its potential acquisition of the Aurora Real Property; however, by November 2022, Mr. Brouwer's counsel advised that it did not expect to receive an acceptable offer from the Investor and/or the developer with which he was working. In addition, the Receiver did not receive offers from any other third parties through CBRE's marketing efforts.
12. As no offer had been received from the investor by late November, the Receiver advised the Aurora Purchaser that it was prepared to consider an offer from it. The discussions between the Receiver and Mr. Brouwer (through his counsel) resulted in the Receiver accepting the Aurora APS.

2.5 The Aurora Transaction

1. A summary of the Aurora APS is as follows⁵:
 - a) Purchaser: The Aurora Purchaser, which is arm's length to the Receivership Respondents.
 - b) Purchased Assets: All of the Receiver's and Go-To Aurora Co.'s right, title and interest in the Aurora Real Property and certain permits (if any exist) as specified in the Aurora APS.
 - c) Purchase Price: The Purchase Price is \$1.8 million. The Purchase Price is to be adjusted on closing for adjustments standard for a real estate transaction, including property taxes. The Aurora APS provides that the Priority Payables⁶, which the Receiver estimated to be approximately \$508,000, shall be satisfied by wire transfer to the Receiver on closing and that the remainder of the purchase price shall be credit bid by the Aurora Purchaser in satisfaction of part of the Aurora Mortgage.
 - d) Deposit: As the Aurora Purchaser is the first mortgagee, a deposit is not required under the Aurora APS.

⁵ Capitalized terms not otherwise defined are defined in the Aurora APS.

⁶ This is defined as "all amounts owing (including all amounts accrued but not yet payable by Go-To Aurora Co. as of the Closing Date) which rank *pari passu* or in priority to the Mortgage Indebtedness including, without limitation the amounts secured by, or to be secured by, the Receivership Charge and which are allocable to the Specified Real Property".

- e) Closing Date: The later of: (i) the first Business Day following the date that is ten days following the granting of the Aurora AVO; and (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Aurora AVO have been finally determined, or such other date as the Receiver and the Aurora Purchaser agree in writing.
- f) Material Conditions:
 - i. there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
 - ii. the Court shall have issued the Aurora AVO.

2. The Aurora APS is attached as Appendix “E”.

2.6 Recommendation

- 1. The Receiver recommends that the Court approve the Aurora Transaction for the following reasons:
 - a) in the Receiver’s view, the sale process undertaken by the Receiver was commercially reasonable, and conducted in accordance with the terms of the Sale Process set out in the Second Report and approved pursuant to the Sale Process Order;
 - b) the Sale Process for the Aurora Real Property commenced in March 2022 and accordingly, the Aurora Real Property has been exposed to the market for a significant period of time during which there has been minimal interest in the property;
 - c) the Court has previously approved transactions for the Eagle Valley Real Property, the Beard Real Property, the Adelaide Real Property, the Chippawa Real Property, the Stoney Creek Real Property and the Major Mackenzie Real Property based on the conduct of, and results of, the Sale Process;
 - d) CBRE has extensive experience selling development properties in and around the GTA and widely canvassed the market for prospective purchasers. CBRE is of the view the Aurora Transaction is the best available in the circumstances;
 - e) the Receiver understands that the Investor and Mr. Brouwer were not able to agree on an acceptable transaction over a several month period. The Receiver then negotiated with Mr. Brouwer/the Aurora Purchaser, which submitted the Aurora APS;
 - f) the Aurora APS maximizes recoveries for this property in the circumstances;

- g) the Receiver is of the view that the purchase price is fair and reasonable based on:
 - the conduct of the Sale Process, which was carried out consistent with the terms approved by the Court;
 - the lack of offers received; and
 - estimates of value that were provided to the Receiver by four realtors that participated in its broker solicitation process, as detailed in the Second Report. A schedule comparing the purchase price of the Aurora Transaction to the four estimates of value provided by the realtors is provided in Appendix “F”;
- h) the Receiver does not believe that further time marketing the property will result in a superior transaction;
- i) the transaction is scheduled to close by January 31, 2023, assuming there are no appeals related to this relief; and
- j) the transaction is unconditional except for Court approval.

2.7 Distributions on the Aurora Project

1. A&B has provided an opinion that, subject to the standard assumptions and qualifications contained therein, the real property security granted by Go-To Aurora Co. to the Aurora Purchaser, as registered on title to the Aurora Real Property, is valid and enforceable⁷.
2. The Receiver is not aware of any other secured creditors or any other claims that rank, or may rank, in priority to the secured claim of the Aurora Purchaser (being the Aurora Mortgage), other than:
 - a) property taxes, which will be satisfied on closing of the Aurora Transaction; and
 - b) the Receiver’s Charge. In this regard, the Receiver will retain a reserve for its present and future fees and expenses, and those of its counsel. This amount is being funded under the Aurora APS as part of the Priority Payables amount.
3. The listing agreement with CBRE for the Aurora Property expired on October 4, 2022 and was not extended or renewed. No commission is payable to CBRE as a result of this transaction. CBRE is aware that no commission will be paid to it.
4. As the Aurora APS is structured as a credit bid (except for the Priority Payables amount), there will be no recoveries for Go-To Aurora’s registered construction lien claimant (being Capital Build) or to Go-To Aurora’s creditors or investors.

⁷ A copy of this opinion can be provided to the Court on request.

5. Capital Build's construction lien was registered on title to the Aurora Real Property on January 28, 2022. At the time of the registration, no construction activity had occurred on the Aurora Real Property, and, in any event, the Receiver did not authorize any construction or development activity to occur. Accordingly, given that the Receiver was appointed on December 10, 2021 (and that the only invoice provided in support of the lien is dated November 1, 2021, which invoice is for the totality of the lien amount), the lien is statutorily out of time.⁸

3.0 Go-To Eagle Valley

1. As discussed in the Fifth Report of the Receiver dated August 12, 2022 (the "[Fifth Report](#)"), the Receiver retained \$916,196 (the "Eagle Valley Construction Lien Holdback"), which represents the maximum amount (inclusive of the statutory maximum for costs) of the construction liens that could rank in priority to Imperio.
2. Imperio was the first mortgagee formerly registered against the Eagle Valley Real Property, after the vendor take-back mortgage in favour of Queen Properties was repaid. The Eagle Valley Construction Lien Holdback was retained by the Receiver to enable it to make Court-approved distributions to Queen Properties and Imperio, while reserving an amount to address a potential priority dispute as between Imperio, on the one hand, and the Lien Claimants,⁹ on the other hand.
3. The Eagle Valley Construction Lien Holdback is comprised of the following:

	Potential Priority Amount (\$000s)
HK United	432
HC Matcon	271
Soil-Mat	30
	<hr/> 733
Statutory maximum for costs (25%)	<hr/> 183
	<hr/> 916

4. The Eagle Valley Construction Lien Holdback represents the only remaining material source of funds from the sale proceeds of the Eagle Valley Transaction. As noted in the Sixth Report, the aggregate amount recovered to date by Imperio in these proceedings in respect of its mortgage (approximately \$2.139 million) is less than the indebtedness owing to Imperio (approximately \$3.4 million). Accordingly, regardless of how the Eagle Valley Construction Lien Holdback is distributed between Imperio and the Lien Claimants, Go-To Eagle Valley's subordinate stakeholders (whether creditors or investors) are not expected to receive any monetary recoveries from the Eagle Valley Transaction.

⁸ The date of the contract in respect of Capital Build's engagement (March 14, 2017) places this lien under the old *Construction Lien Act* (Ontario), pursuant to which Capital Build had 45 days after the last day it supplied services to register its lien. Accordingly, even if Capital Build continued to supply services until the day of the Receiver's appointment of December 10, 2021, Capital Build would have had to register its lien by January 24, 2022, which it failed to do.

⁹ As noted in the Fifth Report, construction liens were also registered by Capital Build (which guaranteed, and postponed to, the Imperio mortgage, such that the totality of any such lien ranks behind Imperio's mortgage) and Peter's Excavating Inc. (which lien was statutorily out of time, and which did not file a claim in the Claims Procedure and is therefore barred from asserting a claim).

5. The Receiver and its counsel reviewed the claims of the Lien Claimants and attempted to reach a consensus amongst the Lien Claimants and Imperio as to the distribution of the Eagle Valley Construction Lien Holdback based on the Receiver's understanding of their statutory priority entitlements. Pursuant to correspondence dated December 15, 2022 and December 19, 2022, the Receiver advised Imperio and the Lien Claimants, respectively, that the Receiver would recommend to Court the following distributions:
 - a) to HK United – \$43,194.07, representing the 10% statutory holdback associated with HK United's \$431,940.65 claim, as noted in the Fifth Report;
 - b) HC Matcon – \$25,901.58, representing the amounts claimed as outstanding for the statutory holdback by HC Matcon in its proof of claim (being slightly less than 10% of its lien claim of \$270,772.30, or \$27,077.23);
 - c) Soil-Mat – between \$3,024.43 and \$30,244.34, being the range of 10% to 100% of the lien filed by Soil-Mat;¹⁰ and
 - d) Imperio – the remaining balance of the Eagle Valley Construction Lien Holdback.
6. Copies of the applicable correspondence amongst counsel for the Receiver, the Lien Claimants and Imperio are provided in Appendix "G". As noted therein, Imperio has advised the Receiver that, in its view, its mortgage ranks in priority to the Lien Claimants; however, it would support the Receiver's recommended distribution if the Lien Claimants do not object to the recommendation. As of the date of this Supplemental Report, the Lien Claimants have not advised the Receiver of their formal position.
7. The Receiver recommends that the Eagle Valley Construction Lien Holdback be distributed in accordance with paragraph 5 above (or, if Imperio and the Lien Claimants agree to an alternative distribution, in accordance with such alternative distribution). If there is opposition to this element of the Receiver's motion by one or more of Imperio and/or the Lien Claimants, the Receiver recommends that a litigation timetable be established as between Imperio and the Lien Claimants to adjudicate the dispute between them.

¹⁰ The range for Soil-Mat depends on whether its contract was with the owner directly (Go-To Eagle Valley) or with the construction manager (Capital Build). Soil-Mat's statement of claim pleads that Go-To Eagle Valley "or" Capital Build hired Soil-Mat. If the agreement is with the construction manager, and because the value of the improvements provided by the construction manager exceeded \$302,443, the Receiver is of the view that this would entitle Soil-Mat to \$30,244.34. If the agreement is with the owner directly, the Receiver is of the view that this would entitle Soil-Mat to \$3,024.43. The Receiver requested that Soil-Mat provide any documentary support to the Receiver that Soil-Mat contracted with the construction manager instead of directly with the owner. As of the date of this Supplemental Report, no such documentary support has been provided, and the Receiver notes that the invoices appended to Soil-Mat's claim were all addressed to Go-To Eagle Valley and not to Capital Build. Accordingly, absent any new evidence coming to the Receiver's attention, the Receiver's recommendation is that Soil-Mat receive \$3,024.43.

4.0 Production Requests of Mr. Maltz

1. As referenced in Section 5.4 of the Sixth Report, the Receiver advised that it is reviewing the secured claim filed in the Claims Procedure by Adelaide Square Developments Inc. (“ASD”) in the amount of \$19.8 million. ASD’s role in the transactions that led to Go-To Adelaide acquiring the Adelaide Real Property (the “Adelaide Purchase”) is set out in detail in the [Collins Affidavit](#).
2. The Receiver requested that Mr. Raffaghello of Concorde Law, who acted as counsel for ASD in the Adelaide Purchase, provide the Receiver with information as part of the Receiver’s review of ASD’s claim. The information provided by Concorde Law includes:
 - a. a direction regarding the disbursement of funds dated April 15, 2019 in connection with Go-To Adelaide’s purchase of a portion of the Adelaide Real Property (the “First Direction”). Pursuant to the First Direction, the purchasers and their counsel were irrevocably authorized and directed to pay a \$20,950,000 “*Assignment Fee due to Adelaide Square Developments Inc.*” to “*Concorde Law Professional Corporation, In Trust*”; and
 - b. a second direction regarding funds dated April 2019 (the “Second Direction”) and corresponding trust statement whereby ASD irrevocably authorized and directed Concorde Law to pay \$22,100,000 to the parties listed on the Second Re-Direction. This represents an increase of \$1,150,000 from the First Direction, with the \$1,150,000 difference being paid to Maltz PC, in trust (the “Murray Maltz Trust Funds”). The other recipients and the amounts paid to them on the Second Direction are consistent with the First Direction.
3. Pursuant to a letter dated December 1, 2022 (the “December 1st Letter”) from A&B to Mr. Maltz, the Receiver required that Mr. Maltz provide the Receiver with all the non-privileged Records (as defined in the Receivership Order) by December 9, 2022, including, without limitation, all accounting Records, evidencing who ultimately received the Murray Maltz Trust Funds. The Receiver also requested that Mr. Maltz advise of the role that the recipient played in the Adelaide Purchase and the reason the recipient was entitled to receive the Murray Maltz Trust Funds. A copy of the December 1st Letter is included as Appendix “H”.
4. Mr. Maltz responded on December 1, 2022 (the “December 1st Response”) and provided its trust ledgers in connection with this matter (the “Trust Ledgers”) on which the identity of his client(s) was redacted. In the December 1st Response, Mr. Maltz also stated that “[he] was advised that [his] client was receiving funds associated with brokering a transaction associated with 46 Charlotte Street,” being one of the parcels included in the Adelaide Real Property. Mr. Maltz also provided certain additional limited information, as appears on the face of the December 1st Response.

5. Mr. Maltz also advised in the December 1st Response that, in his view, the name of his client is subject to solicitor-client privilege. Mr. Maltz advised that he would provide a non-redacted version of the Trust Ledgers containing the identity of his client(s) (the “Unredacted Trust Ledgers”) if he were provided with “*case law on the matter concerning the release of a client’s name that is not a party to the litigation*”. A copy of the December 1st Response is included as Appendix “I”.
6. On December 2, 2022, A&B sent a letter responding to Mr. Maltz (the “December 2nd Letter”) with case law on the matter of solicitor-client privilege. A&B also followed up on outstanding questions from the December 1st Letter and requested a response by close of business on December 9, 2022. A copy of the December 2nd Letter is included as Appendix “J”.
7. Gardiner Roberts LLP (“Gardiner Roberts”) then advised that it had been retained by Mr. Maltz personally, and A&B and Gardiner Roberts corresponded further on the privilege issue through December 8, 2022. Copies of these letters are included as Appendix “K”.
8. In its December 8, 2022 letter to Gardiner Roberts, A&B also requested that Mr. Maltz provide details regarding the services provided by his client in respect of the 46 Charlotte Street transaction. In the final responding letter received from Gardiner Roberts dated December 8, 2022, it advised the Receiver that:
 - a) apart from the identity of Mr. Maltz’s client, “*Mr. Maltz has no further information in connection with the transaction other than what he has previously advised and what was stated in [Gardiner Roberts]’ letter dated December 6, 2022;*” and
 - b) with respect to the identity of Mr. Maltz’s client, “*Mr. Maltz is prepared for the Receiver to obtain either the necessary court order or clarification of paragraph 7 of Justice Patillo’s order regarding your client’s request. Mr. Maltz would certainly comply with a clearly worded order and take no position on the issue. Mr. Maltz has no desire to obstruct the Court-appointed Receiver in carrying out the receivership. He simply requires 100 percent comfort from a clearly worded Court Order that he must disclose the identity of his client so that he is protected against an action for breach of solicitor-client privilege or breach of confidentiality and protected against a complaint that he breached the Rules of Professional Conduct*”.
9. The Receiver has not received any further information from Mr. Maltz or his counsel since the December 8, 2022 letter from Gardiner Roberts.
10. Based on the correspondence with Mr. Maltz and Gardiner Roberts, the Receiver requests that the Court make an order directing Mr. Maltz to provide the Unredacted Trust Ledgers to the Receiver.

5.0 Insurance

1. Pursuant to the Court's endorsement dated November 23, 2022, Her Honour declined at that time to schedule the lift stay motion requested by Lloyd's. Her Honour instructed the parties to attend a 30-minute case conference on January 10, 2023.¹¹ A copy of the Court's endorsement is attached as Appendix "L".
2. The Receiver has learned that Mr. Furtado commenced a notice of application on October 14, 2022, against Lloyd's, seeking, in substance, that he be "*relieved from forfeiture with respect to his imperfect compliance with the Investment Management Insurance policy no. B0621PGOTO000218 issued by [Lloyd's],*" and that Lloyd's indemnify him thereunder for his "*Defence costs*" and "*Loss*" in connection with both this receivership proceeding and the OSC's enforcement proceeding (collectively, the "Relief from Forfeiture Proceeding"). A copy of the notice of application is attached as Appendix "M".
3. The Receiver has also learned that Lloyd's filed a notice of appearance in the Relief from Forfeiture Proceeding on October 21, 2022. As noted in the Sixth Report, Lloyd's did not respond to the Receiver's August 25th Letter regarding insurance matters until October 27, 2022. Lloyd's response and purported urgency referenced in its response of October 27, 2022 did not reveal the existence of the Relief from Forfeiture Proceeding. A copy of Lloyd's notice of appearance in that proceeding is attached as Appendix "N".
4. After becoming aware of the Relief from Forfeiture Proceeding and Lloyd's notice of appearance therein, the Receiver's counsel requested to be: (i) added to the service list in the Relief from Forfeiture Proceeding; and (ii) provided with whatever pleadings may have already been exchanged in that proceeding. This request was not accepted. A copy of such request, and the ensuing correspondence amongst counsel, is attached as Appendix "O".
5. As of the date of this Supplemental Report, neither the Receiver nor its counsel has received any materials from Lloyd's, Mr. Furtado or their counsel in respect of the Relief from Forfeiture Proceeding or any further materials in respect of Lloyd's proposed motion in the receivership proceeding.

6.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(e) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
GO-TO DEVELOPMENTS HOLDINGS INC. AND THOSE PARTIES LISTED ON
APPENDIX "B" AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

¹¹ The time for which attendance has been increased to 60 minutes to accommodate the Receiver's motion.

APPENDIX “A”



**Sixth Report to Court of
KSV Restructuring Inc.
as Receiver and Manager of
Go-To Developments Holdings Inc. and those
parties listed on Appendix "B"**

November 14, 2022

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

**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**

**SIXTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER**

NOVEMBER 14, 2022

1.0 Introduction

1. Pursuant to an application by the Ontario Securities Commission (the "OSC") under sections 126 and 129 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Application"), the Ontario Superior Court of Justice (Commercial List) (the "Court") made an order on December 10, 2021 (the "Receivership Order¹") appointing KSV Restructuring Inc. ("KSV") as the receiver and manager (the "Receiver") of the real property listed in Appendix "A" (the "Real Property"), and all other assets, undertakings and properties of the parties (the "Receivership Respondents") listed in Appendix "B" (together with the Real Property, the "Property"). A copy of the Endorsement of Mr. Justice Pattillo is also available on the Receiver's website. This report "Report" is filed by KSV as Receiver.

¹ Throughout this Report, words in blue text and underlined are hyperlinked to the Receiver's website.

2. On December 24, 2021, the Ontario Court of Appeal (the “Court of Appeal”) heard a motion by the Receivership Respondents and Oscar Furtado (collectively, the “Respondents”) to stay the Receivership Order pending an appeal of that Order. On December 29, 2021, the Court of Appeal issued reasons dismissing the Respondents’ motion. The Respondents’ appeal of the Receivership Order was heard by the Court of Appeal on April 13, 2022. On April 28, 2022, the Court of Appeal issued reasons dismissing the Respondents’ appeal (the “Court of Appeal Decision”). On June 27, 2022, the Respondents filed a Notice of Application seeking leave to appeal the Court of Appeal Decision to the Supreme Court of Canada. As of the date of this Report, no decision has been released by the Supreme Court of Canada.
3. A principal purpose of these receivership proceedings is to allow the Receiver to take possession and control of the Property and to maximize recoveries for the Receivership Respondents’ stakeholders through the sale, refinancing and/or development of the Real Property.
4. On February 9, 2022, the Court made an order (the “**Sale Process Order**”), *inter alia*, approving a sale process for the Real Property and all of the right, title and interest of the Receivership Respondents in the Real Property (the “Sale Process”).
5. On April 7, 2022, the Court made:
 - a) an order (the “**Claims Procedure Order**”), *inter alia*, approving a procedure for the determination and resolution of claims filed against the Receivership Respondents (the “Claims Procedure”). Pursuant to the Claims Procedure Order, the Claims Bar Date (as defined in the Claims Procedure Order) was June 2, 2022 at 5:00 pm (EST); and
 - b) an order (the “**St. Catharines AVO**”), *inter alia*, approving the sale (the “St. Catharines Transaction”) by the Receiver to Midroc Holdings Group Inc. (the “St. Catharines Purchaser”), of the real property located at 75 Oliver Lane Street, St. Catharines (the “St. Catharines Real Property”) which was previously owned by Go-To Glendale Avenue Inc. and Go-To Glendale Avenue LP (jointly, “Go-To Glendale”), and authorizing and directing the Receiver to distribute proceeds from the sale to each of Meridian Credit Union Limited (“Meridian”) and Reciprocal Opportunities Incorporated (“ROI”), being the two mortgagees which were then registered on title to the St. Catharines Real Property.
6. On June 14, 2022, the Court made, *inter alia*:
 - a) an order (the “**Adelaide AVO**”²) approving the sale (the “Adelaide Transaction”) by the Receiver to Fengate Capital Management Ltd. or its nominee (the “Adelaide Purchaser”), of the real property³ located at 355 Adelaide Street West, 46 Charlotte Street and 16 Oxley Street, Toronto (the “Adelaide Real Property”) which was previously owned by Go-To Spadina Adelaide Square LP and Go-To Spadina Adelaide Square Inc. (jointly, “Go-To Adelaide”), and authorizing and directing the Receiver to distribute proceeds from the sale to each of Cameron Stephens Mortgage Capital Ltd. (“Cameron Stephens”) and Northridge Maroak Developments Inc. (“Northridge”), two mortgagees which were then registered on title to the Adelaide Real Property;

² The Court amended the Adelaide AVO on July 7, 2022 in order to specify the name of the purchaser acquiring the property.

³ Together with certain ancillary personal property of Go-To Adelaide.

- b) an order (the "**Eagle Valley AVO**") approving the sale (the "Eagle Valley Transaction") by the Receiver to Legion Heights Niagara Inc. (the "Eagle Valley Purchaser") of the real property⁴ located at 2334 St. Paul Avenue, Niagara Falls (the "Eagle Valley Real Property"), which was previously owned by Go-To Niagara Falls Eagle Valley LP and Go-To Niagara Falls Eagle Valley Inc. (jointly, "Go-To Eagle Valley");
- c) an order (the "**Chippawa AVO**") approving the sale (the "Chippawa Transaction") by the Receiver to 1000203133 Ontario Limited (the "Chippawa Purchaser") of the real property⁵ located at 4210 and 4248 Lyons Creek Road, Niagara Falls (the "Chippawa Real Property"), which was previously owned by Go-To Niagara Falls Chippawa LP and Go-To Niagara Falls Chippawa Inc. (jointly, "Go-To Chippawa"), and authorizing and directing the Receiver to distribute proceeds from the sale to Green Leaf Financial Limited ("Green Leaf"), the sole mortgagee which was then registered on title to the Chippawa Real Property; and
- d) an order (the "**Beard AVO**") approving the sale (the "Beard Transaction") by the Receiver to 5031691 Ontario Inc. (the "Beard Purchaser") of the real property⁶ located at 19 Beard Place, St. Catharines (the "Beard Real Property"), which was previously owned by Go-To St. Catharines Beard LP and Go-To St. Catharines Beard Inc. (jointly, "Go-To Beard"), and authorizing and directing the Receiver to distribute proceeds from the sale to Prudential Property Management Inc. ("Prudential"), the first mortgagee which was then registered on title to the Beard Real Property.

7. On August 22, 2022, the Court made:

- a) an order (the "**Stoney Creek AVO**") approving the sale (the "Stoney Creek Transaction") by the Receiver to Cedar City Homes Ltd. (the "Stoney Creek Purchaser") of the real property⁷ located at Highland Road and Upper Centennial Parkway, Hamilton (the "Stoney Creek Real Property"), which was previously owned by Go-To Stoney Creek Elfrida LP and Go-To Stoney Creek Elfrida Inc. (jointly, "Go-To Stoney Creek"), and authorizing and directing the Receiver to distribute proceeds from the sale to each of Podesta Group Inc. and L M I Management Inc. (jointly, "Podesta") and 2106622 Ontario Ltd. and Vlasta Bukovsky (jointly, "Bukovsky"), the two mortgagees which were then registered on title to the Stoney Creek Real Property; and
- b) an ancillary order (the "August 22nd Order"), *inter alia*:
 - authorizing and directing the Receiver to distribute monies from Go-To Eagle Valley to (i) Queen Properties Inc. ("Queen Properties") and (ii) Gabriele Fischer and Imperio SA Holdings Inc. (together, "Imperio"), the first and second mortgagees, respectively, that were registered on title to the Eagle Valley Real Property immediately prior to the closing of the Eagle Valley Transaction;

⁴ Together with certain ancillary personal property of Go-To Eagle Valley.

⁵ Together with certain ancillary personal property of Go-To Chippawa.

⁶ Together with certain ancillary personal property of Go-To Beard.

⁷ Together with certain ancillary personal property of Go-To Stoney Creek.

- authorizing and directing the Receiver to distribute monies from Go-To Beard to Imperio, the second mortgagee that was registered on title to the Beard Real Property immediately prior to the closing of the Beard Transaction;
 - approving, as a stalking horse bid (the “Stalking Horse Bid”), the agreement of purchase and sale dated August 8, 2022 (the “Major Mackenzie APS”) between the Receiver and 2357616 Ontario Inc. (the “Major Mackenzie Purchaser”) for the real property⁸ located at 185, 191, 197, 203, 209 and 215 Major Mackenzie Drive East, Richmond Hill (the “Major Mackenzie Real Property”), the registered owners of which are Go-To Major Mackenzie South Block Inc., Go-To Major Mackenzie South Block LP, Go-To Major Mackenzie South Block II Inc. and Go-To Major Mackenzie South Block II LP (collectively, “Go-To Major Mackenzie”), as well as the Expense Reimbursement and the Bidding Procedures (each as defined in Major Mackenzie APS); and
 - compelling 255 (as defined below), Concorde Law Professional Corporation (“Concorde Law”) and Louis Raffaghello to provide information requested by the Receiver regarding transactions for the Eagle Valley Real Property and the Chippawa Real Property that were completed on the same day that Go-To Eagle Valley and Go-To Chippawa, respectively, acquired them (each a “Flip Transaction” and jointly, the “Flip Transactions”).
8. The Court has also issued Orders approving: (i) all the Receiver’s Prior Reports (as defined below); and (ii) all the fees and disbursements of the Receiver and its counsel, Aird & Berlis LLP (“A&B”), from the commencement of this proceeding to June 30, 2022.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about this proceeding;
 - b) provide updates regarding the closing of the St. Catharines Transaction, the Adelaide Transaction, the Eagle Valley Transaction, the Chippawa Transaction, the Beard Transaction and the Stoney Creek Transaction (collectively, the “Completed Transactions”) and to recommend distributions to creditors and investors, where applicable;
 - c) summarize an agreement (the “Glendale Tarion Holdback Agreement”) dated November 4, 2022 among the Receiver, Tarion and Trisura (both as defined below) regarding a proposed holdback from the Go-To Glendale sale proceeds and the rationale for an Order (the “Glendale Tarion Holdback Agreement Order”) approving the Glendale Tarion Holdback Agreement;
 - d) summarize information obtained by the Receiver regarding the Flip Transactions;

⁸ Together with certain ancillary personal property of Go-To Major Mackenzie.

- e) provide an update on the status of production requests to, and productions from, 255, Concorde Law, Mr. Raffaghello and Montana Management Inc. ("Montana") (a company whose sole registered director and officer is Mr. Raffaghello), including, without limitation, that Concorde Law, Mr. Raffaghello and Montana be given one more opportunity to comply with their existing production obligations under the Receivership Order by no later than 5:00 pm (EST) on November 30, 2022, failing which the Receiver intends to bring a contempt motion against them;
- f) summarize the results of the stalking horse sale process (the "Stalking Horse Sale Process") for the sale of the Major Mackenzie Real Property;
- g) provide an update on the status of the Sale Process for the remaining Real Property;
- h) summarize a privilege protocol being discussed between the Receiver and Mr. Furtado regarding the Receiver's review of electronic records obtained from the Receivership Respondents and their representatives (the "Privilege Protocol");
- i) discuss the Receiver's communications with Clyde & Co. Canada LLP ("Clyde"), counsel to Beazley Syndicates 2623/623 at Lloyd's Underwriters ("Lloyd's"), the insurer under a policy (the "Investment Management Policy") that covers Go-To Developments Holdings Inc. ("GTDH"), Go-To Adelaide and their subsidiaries;
- j) discuss notices provided on October 31, 2022 and November 2, 2022 by the Receiver to Lloyd's and CFC Underwriting Limited (the "Excess Insurer", and together with Lloyd's, the "Insurers"), respectively, to advise them of the claims filed in the Claims Process prior to the termination of the policies on November 9, 2022;
- k) summarize the Receiver's activities since the date of the Fifth Report to Court dated August 11, 2022 (the "Fifth Report");
- l) summarize the fees of the Receiver from July 1, 2022 to September 30, 2022 and A&B from July 1, 2022 to October 31, 2022; and
- m) recommend that this Court issue the following Orders:
 - i. an Approval and Vesting Order consisting of the following substantive relief (the "Major Mackenzie AVO"):
 - approving the Major Mackenzie APS and authorizing the Receiver to complete the Major Mackenzie Transaction;
 - vesting the Purchased Assets (as defined in the Major Mackenzie AVO) in the Major Mackenzie Purchaser, free and clear of encumbrances other than the Permitted Encumbrances (as defined in the Major Mackenzie AVO), upon execution and delivery of a certificate by the Receiver confirming completion of the Major Mackenzie Transaction; and

- authorizing and directing the Receiver to make a distribution to Cameron Stephens, the first mortgagee, in respect of Go-To Major Mackenzie's secured indebtedness to it in respect of its mortgage registered on title to the Major Mackenzie Real Property;
- ii. the Glendale Tarion Holdback Agreement Order, which approves the Glendale Tarion Holdback Agreement and provides for certain ancillary relief in respect of same; and
- iii. an Ancillary Order (the "Ancillary Order"):
 - authorizing and directing the Receiver to make distributions to creditors and investors of Go-To Glendale, Go-To Chippawa and Go-To Stoney Creek;
 - authorizing and directing the Receiver to release a unit purchaser deposit in respect of Go-To Eagle Valley to a specific individual, without liability to a second individual, as more fully discussed in Section 5.2 below;
 - approving the fees and disbursements of the Receiver and A&B; and
 - approving this Report and the Receiver's activities, as set out in this Report.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon discussions with Oscar Furtado, the principal of the Receivership Respondents, and Shoaib Ghani, the Receivership Respondents' former Head of Accounting; the Receivership Respondents' unaudited financial information; discussions with the Receivership Respondents' former legal counsel and tax advisors; discussions with, and documents provided by, various stakeholders in these proceedings (including their legal representatives); and the Application materials (collectively, the "Information").
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards ("CAS") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.

2.0 Background

1. The Receivership Respondents were developers of nine residential real estate projects in Ontario, each of which was in the early stages of development at the commencement of these proceedings (each a "Project", and collectively the "Projects"). The names and municipal addresses of each of the Projects is provided in the table below.

Project Name	Address
Go-To Niagara Falls Chippawa	4210 Lyons Creek Road, Niagara Falls, ON 4248 Lyons Creek Road, Niagara Falls, ON (sold by the Receiver, with Court approval)
Go-To Niagara Falls Eagle Valley	2334 St. Paul Avenue, Niagara Falls, ON (sold by the Receiver, with Court approval)
Go-To Glendale Avenue	75 Oliver Lane Street, St. Catharines, ON ⁹ (sold by the Receiver, with Court approval)
Go-To Spadina Adelaide Square	355 Adelaide Street W. / 16 Oxley Street, Toronto, ON 46 Charlotte Street, Toronto, ON (sold by the Receiver, with Court approval)
Go-To St. Catharines Beard	19 Beard Place, St. Catharines, ON (sold by the Receiver, with Court approval)
Go-To Stoney Creek Elfrida	Highland Road, Hamilton, ON Upper Centennial Parkway, Hamilton, ON (sold by the Receiver, with Court approval)
Go-To Major Mackenzie	185 Major Mackenzie Drive East, Richmond Hill, ON 197 Major Mackenzie Drive East, Richmond Hill, ON 209 Major Mackenzie Drive East, Richmond Hill, ON 191 Major Mackenzie Drive East, Richmond Hill, ON 203 Major Mackenzie Drive East, Richmond Hill, ON 215 Major Mackenzie Drive East, Richmond Hill, ON
Go-To Vaughan Islington Avenue	7386 Islington Avenue, Vaughan, ON
Go-To Aurora Road	4951 Aurora Road, Stouffville, ON

2. The Receivership Respondents' head office was located at 1267 Cornwall Road, #201, Oakville (the "Premises"). The Receiver repudiated the lease for the Premises and vacated the Premises on March 31, 2022.
3. As of the date of the Receivership Order, Go-To Developments Holdings Inc. employed six individuals¹⁰. All six of the employees have been terminated since the commencement of these proceedings. Four of the six former employees are relatives of Mr. Furtado.

⁹ The Receiver notes that the municipal address of this location is also known as 527 Glendale Avenue. All references to this property otherwise defined within this Report as the St. Catharines Real Property refer to the legal description of PART LOT 8 CON 9 GRANTHAM PARTS 1 & 2, 30R15717 SUBJECT TO AN EASEMENT IN GROSS OVER PART 2, 30R15717 AS IN NR358008 CITY OF ST. CATHARINES in PIN 46415-0949 (LT). For clarity, any prior references to the Glendale Property in previous reports are also references to the updated term of the St. Catharines Real Property within this Report.

¹⁰ Mr. Furtado was not an employee or contractor of the Receivership Respondents. Mr. Furtado was not drawing a salary prior to the date of the Receivership Order and he has not been paid any remuneration during the receivership.

4. Background information regarding these proceedings and the reasons that the OSC sought the appointment of the Receiver are provided in the affidavit of Stephanie Collins, Senior Forensic Accountant in the Enforcement Branch of the OSC, sworn on December 6, 2021 (the "Collins Affidavit"). Additional information regarding these proceedings is also provided in the Receiver's prior five reports to Court (the "Prior Reports"). Copies of the Collins Affidavit, the Prior Reports and other Court materials filed to-date in these proceedings are available on the Receiver's website (the "Receiver's Website") at: <https://www.ksvadvisory.com/experience/case/go-to>.

3.0 The Claims Procedure

1. The Claims Procedure established processes for the determination and resolution of creditor and investor claims against the Receivership Respondents.
2. Pursuant to the Claims Procedure Order, the deadline for creditors and investors to file claims was June 2, 2022 at 5:00 pm (EST). A summary of all the claims filed against the Receivership Respondents pursuant to the Claims Procedure is provided as Appendix "C".
3. The Receiver has previously advised that it intends to recommend distributions to unsecured creditors and investors on an entity-by-entity basis, i.e., distributions will be recommended as the Claims Procedure is completed for a specific entity, assuming no other issues prevent the Receiver from recommending distributions at that time.
4. As discussed below,
 - a) the Receiver proposes to make distributions to creditors and investors of Go-To Glendale, Go-To Chippawa and potentially Go-To Stoney Creek at this time;
 - b) the proceeds of realization in respect of the following Receivership Respondents are not projected to be sufficient to make any distributions to their unsecured creditors or investors: Go-To Beard; Go-To Major Mackenzie; and Go-To Eagle Valley; and
 - c) it is not yet known whether the proceeds of realization in respect of the following Receivership Respondents will be sufficient to make any distributions to their unsecured creditors and/or investors: Go-To Aurora (as defined below, the property of which remains for sale), Go-To Vaughan (as defined below, the property of which remains for sale) and Go-To Adelaide (the property of which has been sold, but which is subject to two potential priority claims that have not been determined).

4.0 Sale Process

1. The Sale Process was approved pursuant to the Sale Process Order issued on February 9, 2022.
2. The Receiver retained Colliers Macaulay Nicolls Inc. ("Colliers") to market the Adelaide Real Property and CBRE Limited to market the balance of the Real Property ("CBRE" and together with Colliers, the "Realtors").

3. CBRE engaged Internet Commercial Realty Inc., a broker based near Niagara Falls, to assist with its marketing efforts for the properties located in the Niagara Falls and St. Catharines areas.
4. The Sale Process carried out by Colliers and CBRE is summarized in section 5 of the Fourth Report of the Receiver dated June 3, 2022 (the "Fourth Report").

5.0 The Completed Transactions

5.1 St. Catharines Real Property and Recommended Distributions

1. The Court issued the St. Catharines AVO on April 7, 2022 which, among other things, approved the St. Catharines Transaction and authorized the Receiver to make distributions to Meridian and ROI in full satisfaction of their respective mortgages registered on title to the St. Catharines Real Property (the "Glendale Distributions").
2. The St. Catharines Transaction closed on May 9, 2022 for total proceeds of \$7.25 million. The Glendale Distributions were made to Meridian and ROI shortly thereafter in the amounts of approximately \$1.193 million and \$2.396 million, respectively.
3. Based on Go-To Glendale's books and records and the results of the Claims Procedure, the purchase price of the St. Catharines Transaction is sufficient to: i) pay in full all valid unsecured creditor claims against Go-To Glendale once the claims filed by Trisura Guarantee Insurance Company ("Trisura") and Tarion Warranty Corporation ("Tarion") have been resolved¹¹; and ii) return in full the capital invested by Go-To Glendale's investors in Go-To Glendale Avenue LP, which is the entity through which they invested.
4. The Receiver recently resolved the claims filed by Trisura and Tarion (subject to the issuance of the proposed Glendale Tarion Holdback Agreement). Accordingly, the Receiver, as more fully detailed below, recommends that distributions be made to Go-To Glendale's creditors and investors.
5. As the Receiver previously reported: (i) the purchaser of the St. Catharines Real Property did not assume the 25 pre-construction condominium unit purchase agreements (the "Glendale Agreements") into which Go-To Glendale entered prior to the date of the Receivership Order; and (ii) each unit purchaser under the Glendale Agreements provided a written acknowledgement that limits its claims against Go-To Glendale to a return of the deposits.

¹¹ Trisura and Tarion filed claims in the amounts of approximately \$3.3 million and \$34.2 million, respectively.

6. On July 18, 2022, the Receiver advised the unit purchasers that it was terminating the Glendale Agreements and provided information to the unit purchasers on the process for them to receive a return of their deposits, including the form of mutual release to be completed, in accordance with a deposit return protocol that the Receiver negotiated with Trisura and Tarion. As part of this protocol, each of the Receiver, Trisura and Tarion agreed (among other things) that:
 - a) once all unit purchaser deposits have been returned to the unit purchasers, Tarion (which, *inter alia*, administers Ontario's new home warranty program) shall, within 30 calendar days, return for cancellation the bond provided by Trisura (which insured Tarion's obligations with respect to Go-To Glendale, and which held a secured charge on title to the St. Catharines Real Property immediately prior to the closing of the St. Catharines Transaction); and
 - b) upon the return of the bond to Trisura for cancellation, Trisura shall provide the Receiver with a final accounting of the amount of its validly incurred expenses, premiums, internal adjusting costs and interest, which amount shall be paid directly to Trisura by the Receiver from: (a) any interest that may have accrued in respect of the unit purchaser deposits, which interest the unit purchasers are not entitled to receive pursuant to the terms and provisions of the Glendale Agreements and the *Condominium Act, 1998* (Ontario); and (b) any proceeds of sale from the closing of the St. Catharines Transaction.
7. On September 13, 2022, the Receiver completed the return of purchaser deposits as contemplated by the deposit return protocol. Pursuant to the Glendale Tarion Holdback Agreement, the Receiver, Tarion and Trisura subsequently agreed to a process for, among other things: a) the bond to be cancelled; b) Tarion's claim in the Claims Procedure to be reduced to \$56,500; c) the Receiver to provide Tarion with \$80,000 as cash collateral (to be called upon in the event of a claim made against Tarion under the *Ontario New Home Warranties Plan Act* and/or its regulations); and d) Trisura's claim in the Claims Procedure to be withdrawn and for the Receiver to pay certain expenses incurred by Trisura totalling \$31,456. A copy of the Glendale Tarion Holdback Agreement, including the proposed form of Court Order that the Receiver agreed to seek in this regard, is provided as Appendix "D".
8. The only other secured claim filed against Go-To Glendale was from Capital Build Construction Management Corp. ("Capital Build") in respect of a purported construction lien in the amount of \$303,211. Capital Build also filed an unsecured claim in the amount of \$2,469.
9. On October 19, 2022, the Receiver issued a Notice of Revision or Disallowance to Capital Build, which disallowed the full amount of Capital Build's claims (the "CB Glendale Disallowance Notice"). Capital Build was deemed to have made an assignment in bankruptcy on October 4, 2022. Accordingly, the Receiver issued the CB Glendale Disallowance Notice to Goldhar & Associates Ltd. ("Goldhar"), the licensed insolvency trustee of Capital Build.

10. Pursuant to the Claims Procedure, a claimant has 14 days after delivery of a Notice of Revision or Disallowance to deliver a Notice of Dispute to the Receiver. On November 3, 2022, Goldhar filed a Notice of Dispute regarding the CB Glendale Notice (the "CB Glendale Dispute Notice") in respect of approximately \$250,000 of the amounts claimed by Capital Build. Copies of the CB Glendale Disallowance Notice and the CB Glendale Dispute Notice are attached collectively as Appendix "E". Given the filing of the CB Glendale Dispute Notice, the Receiver will need to hold back sufficient funds to address the disputed portion of the CB Glendale Disallowance Notice, plus an amount for the Receiver's estimated costs to deal with disputed claims.
11. The claims filed against Go-To Glendale (excluding the mortgagees), including the disputed portion of Capital Build's claims, are summarized below:

Unsecured Claimant	Amount (\$000s)
Capital Build claim, disputed portion	250
Oscar Furtado, under review	116
Royal Bank of Canada	60
Tarion	57
KNYMH Incorporated	23
Foxx Advertising & Design Inc.	11
Torkin Manes LLP	3
Crozier & Associates Inc.	3
IBI Group Professional Services (Canada) Inc.	1
	524

12. The Receiver has accepted the claims referenced above other than the Capital Build claims and Mr. Furtado's claim, which remains subject to further review due to the complexities arising from Mr. Furtado's relationship with the Receivership Respondents, disclosures made to investors, issues summarized in the Collins Affidavit and the substance of the claim itself. The Receiver is also continuing to review any claims against Go-To Glendale from other Receivership Respondents, including GTDH (which may have a claim of approximately \$34,000 and appears to have been incorrectly recorded in Go-To Glendale's general ledger as an amount owed to Mr. Furtado) and Furtado Holdings Inc. ("FHI") (which may have a claim of approximately \$6,000) and which claim was filed by Mr. Furtado. Pursuant to the Claims Procedure Order, the Receiver is exclusively authorized to file intercompany claims, including claims filed by FHI.¹²

¹² The relevant portion of paragraph 26 of the Claims Procedure Order states that "Claims on behalf of any of the Receivership Respondents against any of the other Receivership Respondents shall be filed (or deemed filed, as the case may be) by the Receiver in amounts determined by the Receiver on the basis of the Books and Records or as otherwise determined by the Receiver."

13. The table below summarizes the waterfall of potential distributions to Go-To Glendale's stakeholders.

	Amount (\$000s)
Sale price	7,250
CBRE commission	(57)
Net sale proceeds	7,193
Other proceeds ¹³	286
Receivership expenses ¹⁴	(120)
	7,359
Tarion cash collateral	(80)
Professional fees (including an estimate for future fees) ¹⁵	(600)
	6,679
Meridian and ROI payout	(3,589)
	3,090
Unsecured claims (as per above)	(524)
Reserve for potential claim by GTDH ¹⁶	(34)
Reserve for potential claim by FHI ¹⁷	(6)
Estimated distributions available for Go-To Glendale investors	2,526
Investor claims ¹⁸	(2,315)
Estimated balance after return of investor capital	211

14. Based on the table above, there are sufficient sale proceeds from the St. Catharines Transaction to pay all the remaining unsecured claims in full and to return in full the capital invested by Go-To Glendale's investors.
15. Accordingly, the Receiver recommends that it be authorized to make a distribution for the full amount of valid unsecured creditor claims and investor claims. The Receiver intends to hold back amounts for Mr. Furtado's claim, the disputed portions of the CB Glendale Disallowance Notice and the potential claims of the Receivership Respondents.
16. As it relates to the return of capital to investors in respect of their claims, the Receiver will be discussing the timing of such payment with Crowe Soberman LLP ("Crowe"), the Receivership Respondents' tax advisor, to consider a tax efficient way to make distributions to investors, which may include deferring investor distributions until 2023.

¹³ Comprised of cash in Go-To Glendale's bank account at the commencement of the receivership proceedings, HST refunds and the refund of a retainer paid to a law firm prior to these receivership proceedings. Excludes future HST refunds that may be collectible for the period subsequent to the Receivership Order.

¹⁴ Includes actual and estimated receivership expenses.

¹⁵ Fees for the Receiver and A&B totaled approximately \$402,000 (including HST) as at October 31, 2022. Includes a reserve for fees to determine the outstanding claims and to complete the administration of Go-To Glendale's receivership proceedings.

¹⁶ The reserves are for claims in respect of GTDH and FHI that are not included in the table in Section 5.1.11.

¹⁷ See footnote 16.

¹⁸ These amounts are based on Go-To Glendale's records, as accepted by each of the investors.

5.2 Eagle Valley Real Property and Recommended Relief

1. The Court approved the Eagle Valley Transaction pursuant to the Eagle Valley AVO. The purchase price was \$5.85 million. The transaction closed on June 30, 2022.
2. The Eagle Valley Transaction purchaser did not assume the 94 pre-construction condominium unit purchase agreements that Go-To Eagle Valley entered into prior to the date of the Receivership Order. As in the case of Go-To Glendale, the Receiver entered into a protocol with Trisura and Tarion so it could return to Go-To Eagle Valley unit purchasers the deposits they paid to purchase units in the Go-To Eagle Valley project. The protocol is identical in all material respects to the Go-To Glendale protocol.
3. On August 30, 2022, the Receiver sent a notice to unit purchasers regarding implementation of the protocol for Go-To Eagle Valley. As of the date of this Report, the Receiver has returned deposits to the purchasers of 93 of the 94 condominium units.
4. There is one unreturned deposit because:
 - a) the Receiver understands that the original unit purchaser (Kathy Hogeveen) transferred her interest in the condominium unit to another individual (Raymond Walker) and received from Mr. Walker a full reimbursement of the deposit of \$72,450; but
 - b) despite repeated requests from the Receiver, Ms. Hogeveen has refused to confirm that she has no interest in the deposit held by the Receiver. Communications between the Receiver and Ms. Hogeveen in this regard are provided as Appendix "F", in which Ms. Hogeveen confirms that she cashed the \$72,450 cheque from Mr. Walker and then forwarded a portion of the proceeds to another person. The Receiver does not believe that Ms. Hogeveen's use of the \$72,450 is relevant.
5. The Receiver requests that, as part of the proposed Ancillary Order, the Receiver be authorized and directed by the Court to release the last remaining deposit to Mr. Walker and that the Court declare that the Receiver has no liability to Ms. Hogeveen. Ms. Hogeveen has been served with a copy of these motion materials.

6. The Receiver summarized in the Fifth Report the charges and liens registered against title to the Eagle Valley Real Property (after accounting for the registered postponements on title, and excluding the super-priority Court-ordered charges granted by the Receivership Order), as set out below:

Party	Date of Registration	Type	Principal Registered Amount (\$000)
Queen Properties	June 22, 2017	Mortgage	2,500
Imperio	May 30, 2018	Mortgage	1,442 (and subsequently amended thereafter to 3,000)
Trisura	November 16, 2017	Mortgage	2,650
Peter Lesdow	December 3, 2020	Mortgage	200
HK United Construction Ltd. ("HK United")	December 10, 2021	Construction Lien	432
Capital Build	December 17, 2021	Construction Lien	1,184
Soil-Mat Engineers & Consultants Ltd. ("Soil-Mat")	January 25, 2022	Construction Lien	30
HC Matcon Inc. ("HC Matcon")	January 28, 2022	Construction Lien	626
Capital Build	March 16, 2022	Construction Lien	719
Peter's Excavating Inc. ("Peter's Excavating")	May 16, 2022	Construction Lien	384

7. The Receiver was authorized and directed by the Court to make, and has made, the following distributions from Go-To Eagle Valley:
- a distribution of approximately \$2.967 million from the sale proceeds arising from the Eagle Valley Transaction to Queen Properties, representing the secured indebtedness owing to Queen Properties in respect of the vendor takeback mortgage; and
 - a partial distribution of \$1 million from the sale proceeds arising from the Eagle Valley Transaction to Imperio.
8. As discussed and calculated in the Fifth Report, the Receiver has also held back \$916,196 (the "Eagle Valley Construction Lien Holdback"), which represents the maximum aggregate amount of the construction liens that could possibly rank in priority to Imperio, inclusive of the statutory maximum for costs. The Eagle Valley Construction Lien Holdback considers the guarantee provided by Capital Build in favour of Imperio, which is provided in Appendix "F" to the Fifth Report and results in the postponement of Capital Build's construction lien claims to Imperio, and the deficiencies noted in the Fifth Report with respect to the construction lien claims filed by Peter's Excavating and HC Matcon.
9. The Receiver continues to review the construction lien claims of HK United, Soil-Mat and HC Matcon. As noted in the Fifth Report, the Eagle Valley Construction Lien Holdback represents the only remaining material source of funds from the sale proceeds of the Eagle Valley Transaction, which holdback is expected to be divided entirely among HK United, Soil-Mat, HC Matcon and Imperio. Go-To Eagle Valley's subordinate stakeholders (whether creditors or investors) should therefore not expect any monetary recoveries from the Eagle Valley Transaction. The table below

summarizes the waterfall of potential distributions to Go-To Eagle Valley's stakeholders.

	Amount (\$000s)
Sale price	5,850
CBRE commission and property taxes	(198)
Net sale proceeds	5,652
Other proceeds ¹⁹	166
Receivership expenses ²⁰	(140)
Professional fees (including an estimate re future fees) ²¹	(650)
	5,028
Queen Properties payout	(2,967)
Imperio partial payment	(1,000)
	1,061
Eagle Valley Construction Lien Holdback	(916)
Potential additional payment to Imperio	145

5.3 Beard Real Property

1. Pursuant to the Beard AVO, the Court approved the Beard Transaction. The purchase price was \$2.45 million.
2. The Beard Transaction closed on July 4, 2022. As authorized and directed by the Court, the Receiver repaid the mortgage owing (approximately \$830,000) to Prudential on that date.
3. As set out in the Fifth Report, the only other financial encumbrance registered on title to the Beard Real Property was the charge by Imperio in the principal registered amount of \$3 million, which is a collateral charge for Imperio's mortgage on the Eagle Valley Real Property.
4. Pursuant to the August 22nd Order, the Receiver was authorized and directed to make a partial distribution from the sale proceeds arising from the Beard Transaction to Imperio. Accordingly, on September 21, 2022, the Receiver distributed \$1.139 million to Imperio, which is net of a holdback to satisfy the Receiver's estimated fees and disbursements, and those of its counsel, in connection with the Go-To Beard receivership proceedings.
5. This partial distribution to Imperio from Go-To Beard (\$1.139 million), together with the partial distribution to Imperio in respect of Go-To Eagle Valley (\$1 million), is less than the indebtedness owing to Imperio (approximately \$3.4 million) in respect of its mortgage on the Eagle Valley Real Property. As such, and as previously reported, Go-To Beard's unsecured creditors and investors should not expect any monetary recoveries from the Beard Transaction.

¹⁹ Comprised of cash in Go-To Eagle Valley's bank account at the commencement of the receivership proceedings, HST refunds and interest on the unit purchaser deposits. Excludes future HST refunds that may be collectible for the period subsequent to the Receivership Order.

²⁰ Includes actual and estimated receivership expenses.

²¹ Fees for the Receiver and A&B totaled approximately \$423,000 (including HST) as at October 31, 2022. Includes a reserve for fees to determine the outstanding claims and to complete the administration of this entities' receivership proceedings.

5.4 Adelaide Real Property

1. Pursuant to the Adelaide AVO, as amended on July 7, 2022, the Court approved the Adelaide Transaction. The purchase price was \$90 million, together with a potential density bonus of up to \$3 million payable based on \$283 per square foot of residential Gross Floor Area of any full floor which is permitted to be constructed on the Adelaide Real Property above the height of 152 metres above grade (the "Additional Height Density"), pursuant to the issuance to the Adelaide Purchaser of a Final and Binding building permit that allows the construction of the Additional Height Density (capitalized terms are as defined in the Adelaide Transaction sale documents).
2. Immediately following closing of the Adelaide Transaction, distributions were made to Cameron Stephens and Northridge to fully repay their mortgages on the Adelaide Real Property (being approximately \$55.6 million and \$18.0 million, respectively), as authorized and directed by the Court.
3. The Receiver and A&B have reviewed the secured claim filed in the Claims Procedure by FAAN Mortgage Administrators Inc. in its capacity as Court-appointed trustee of Building & Development Mortgages Canada Inc. (in such capacity, the "FAAN Trustee") in the principal registered amount of \$5.2 million.
4. On November 1, 2022, the Receiver issued a Notice of Revision or Disallowance to the FAAN Trustee, which disallowed the full amount of the FAAN Trustee's claim (the "FAAN Adelaide Disallowance Notice"). A copy of the FAAN Adelaide Disallowance Notice is attached as Appendix "G". Pursuant to the Claims Procedure, the FAAN Trustee has 14 days from the delivery of the FAAN Adelaide Disallowance Notice, being November 15, 2022, to deliver a Notice of Dispute to the Receiver. If a Notice of Dispute is not received by this date, the FAAN Trustee's claims against Go-To Adelaide will be extinguished.
5. The Receiver and A&B are also in the process of reviewing the secured claim filed in the Claims Procedure by Adelaide Square Developments Inc. ("ASD") in the principal registered amount of \$19.8 million. The Receiver expects to confirm its position on this claim in short order.
6. Once the final status of the claims filed by the FAAN Trustee and ASD has been determined, and as no other secured claims were filed against Go-To Adelaide, the Receiver would then review the unsecured claims filed against Go-To Adelaide should there be funds available for distribution to unsecured creditors. The unsecured claims, as filed, total approximately \$8.6 million, including claims filed by Hans Jain (approximately \$3.2 million), who was formerly involved in the development of the Adelaide Real Property, Mr. Furtado (approximately \$1.7 million) and Richmond and Mary Developments Inc. (approximately \$1 million), a company whose principal is Mr. Jain.

5.4.1 Louis Raffaghello and Recommended Relief

1. The Receiver understands that Mr. Raffaghello of Concorde Law acted as counsel for ASD in the transactions that led to Go-To Adelaide acquiring the Adelaide Real Property. ASD's role in that transaction is set out in detail in the Collins Affidavit.

2. As part of the Receiver's diligence associated with Go-To Adelaide and its historical transactions, the Receiver reviewed a direction regarding the disbursement of funds, issued on or about April 3, 2019, in connection with Go-To Adelaide's purchase of a portion of the Adelaide Real Property (the "Direction"). Pursuant to the Direction, the purchasers and their counsel were irrevocably authorized and directed to pay a \$20,950,000 "*Assignment Fee due to Adelaide Square Developments Inc.*" to "*Concorde Law Professional Corporation, In Trust*" (the "Purported Assignment Fee").
3. Pursuant to a letter dated October 12, 2022 (the "October 12th Letter") that was sent to Mr. Raffaghella of Concorde Law and Montana (a company whose sole director and officer is Mr. Raffaghella and which the Receiver understands was one of the ultimate beneficiaries of the Purported Assignment Fee), the Receiver required that Mr. Raffaghella provide it with all the non-privileged Records (as defined in the Receivership Order) by October 21, 2022, including, without limitation, all accounting Records, evidencing who ultimately received the monies paid to Concorde Law in trust. A copy of the October 12th Letter is included as Appendix "H".
4. As of the date of this Report, neither Mr. Raffaghella nor Montana has responded to the October 12th Letter. The Receiver believes that the requested Records are critical to its assessment of the events which gave rise to the Purported Assignment Fee and may assist the Receiver to assess whether Go-To Adelaide has any claims against any of the ultimate beneficiaries of the Purported Assignment Fee. The requested Records may also be of assistance when determining whether to accept the claim filed by ASD in the Claims Procedure.
5. The Receiver notes that this is not the first time that Mr. Raffaghella has delayed providing and/or has withheld, as applicable, Records from the Receiver. As noted in the Fifth Report:
 - a. on June 21, 2022, the Receiver's counsel wrote to Mr. Raffaghella, requiring that he provide certain non-privileged Records in respect of Go-To Eagle Valley and Go-To Chippawa in respect of the Flip Transactions. The letter specifically referenced the obligation in the Receivership Order of all Persons (as defined therein) to provide all non-privileged Records to the Receiver on request;
 - b. on June 28, 2022, Mr. Raffaghella advised that he had trust ledger statements in his files, which he would send to the Receiver's counsel "*tomorrow*";
 - c. on June 29, 2022, Mr. Raffaghella changed his position, and advised that he had "*been instructed at this time not to release any information [regarding the Flip Transactions]. As you know, the privilege is not mine but my client's so for the time being I have to comply with his instructions. I suggest that you obtain directions from the court to compel my firm to release the documents to you if you require them. I will take no position in the matter and will comply with any court order*";

- d. on July 5, 2022, the Receiver's counsel sent a follow-up letter to Mr. Raffaghello, which again set out the obligation in the Receivership Order to provide the requested information. Among other things, the letter reiterated that only non-privileged Records were being sought, that he had provided no basis to justify the accounting Records as privileged and that accounting Records are not privileged by definition;
 - e. on August 11, 2022, with no response having been received from Mr. Raffaghello, the Receiver served its Fifth Report in which it sought an Order compelling the productions from Mr. Raffaghello by no later than August 29, 2022; and
 - f. the relief was granted by the Court on August 22, 2022, and Mr. Raffaghello finally provided the productions to the Receiver at 5:12 pm on August 29, 2022.
6. Given that Mr. Raffaghello has been advised multiple times of his obligation to provide non-privileged Records to the Receiver but continues to ignore the Receiver's most recent production request set out in the October 12th letter, the Receiver recommends that he, Concorde Law and Montana be given one more opportunity to comply by no later than 5:00 pm (EST) on November 30, 2022 with their existing production obligations under the Receivership Order, failing which the Receiver intends to bring a contempt motion against them (and seek costs against them). The Receiver's concern is heightened given that the Receiver understands Montana (as noted, which is related to Mr. Raffaghello) to have been one of the ultimate beneficiaries of the Purported Assignment Fee that was paid to Concorde Law in trust.

5.5 Chippawa Real Property and Recommended Distributions

- 1. Pursuant to the Chippawa AVO, the Court approved the Chippawa Transaction. The purchase price was \$4.25 million. This transaction closed on July 27, 2022.
- 2. As authorized and directed by the Court, a distribution was made to Green Leaf immediately following closing in the amount of approximately \$2.1 million, representing Go-To Chippawa's secured indebtedness to Green Leaf in respect of its mortgage registered on title to the Chippawa Real Property.
- 3. As set out in the Fifth Report, the only other registered financial encumbrance on title to the Chippawa Real Property immediately prior to the closing of the Chippawa Transaction was a registered construction lien of approximately \$301,000 filed on January 20, 2022 by Capital Build. Capital Build also filed an unsecured claim of approximately \$23,000.
- 4. On October 31, 2022, the Receiver issued a Notice of Disallowance to Goldhar for the full amount of Capital Build's claim against Go-To Chippawa (the "CB Chippawa Disallowance Notice"), a copy of which is attached as Appendix "I". Pursuant to the Claims Procedure, Goldhar has 14 days from the delivery of the CB Chippawa Disallowance Notice, being November 14, 2022, to deliver a Notice of Dispute to the Receiver. If a Notice of Dispute is not received by this date, Capital Build's claims against Go-To Chippawa will be extinguished.

5. The claims filed against Go-To Chippawa are summarized below.

Unsecured Claimant	Amount (\$000s)
Capital Build (lien claim and unsecured claim), disputed	324
Royal Bank of Canada	60
Mr. Furtado, under review	34
S. Llewellyn and Associates Limited	16
Torkin Manes LLP	10
KNYMH Incorporated	7
IBI Group Professional Services (Canada) Inc.	5
Strik Baldinelli Moniz Ltd.	2
RAR Litigation Lawyers	1
	459

6. The Receiver has accepted the claims referenced above other than Capital Build's claims and Mr. Furtado's claim, which remains subject to further review due to the complexities arising from Mr. Furtado's relationship with the Receivership Respondents, disclosures made to investors, issues summarized in the Collins Affidavit and the substance of the claim itself. The Receiver is also continuing to review any claims against Go-To Chippawa from other Receivership Respondents, including GTDH (which may have a claim of approximately \$94,000) and FHI (which may have a claim of approximately \$69,000). As noted, pursuant to the Claims Procedure Order, the Receiver is exclusively authorized to file intercompany claims.
7. As noted in the Fifth Report, there will be sufficient proceeds from the Chippawa Transaction to pay all valid creditor claims. The table below summarizes the proposed distribution to investors and includes holdbacks for estimated ongoing professional fees and expenses, the claim by Capital Build and the GTDH and FHI claims.

	Amount (\$000s)
Sale price	4,250
CBRE commission and property taxes	(146)
Net sale proceeds	4,104
Other proceeds ²²	9
Receivership expenses ²³	(80)
Professional fees (including an estimate for future fees) ²⁴	(600)
	3,433
Green Leaf mortgage payout	(2,115)
	1,318
Unsecured claims (as per above)	(459)
Reserve for potential claim by GTDH ²⁵	(94)
Reserve for potential claim by FHI ²⁶	(69)
Estimated distributions available for Go-To Chippawa investors	696
Investor claims	2,336
Estimated distributions to Go-To Chippawa investors	30%

²² Comprised of cash in Go-To Chippawa's bank account at the commencement of the receivership proceedings and the HST refunds. Excludes future HST refunds that may be collectible for the period subsequent to the Receivership Order.

²³ Includes actual and estimated receivership expenses.

²⁴ Fees for the Receiver and A&B totaled approximately \$280,000 (including HST) as at October 31, 2022. Includes a reserve for fees to determine the outstanding claims and to complete the administration of Go-To Chippawa's receivership proceedings.

²⁵ The reserves are for claims in respect of GTDH and FHI that are not included in the table in Section 5.5.5.

²⁶ See footnote 25.

8. The Receiver recommends that it be authorized to make a distribution for the full amount of valid unsecured creditor claims and an interim distribution to investors. The Receiver intends to hold back amounts for Mr. Furtado's claim, Capital Build's claims and the potential claims of GTDH, FHI, the resolution of which may increase distributions to investors.
9. As noted above, the Receiver will be discussing the timing of distributions to investors with Crowe to consider a tax efficient manner in which to make distributions to investors.
10. The Receiver will seek the Court's authorization to make a final distribution to investors pending the substantial completion of the Receiver's activities and resolution of Capital Build's claims against Go-To Chippawa and any other creditor claims that may be disallowed or revised. The ultimate distributions to investors may increase depending, in part, on whether there are recoveries to Go-To Chippawa arising from the Receiver's investigation into the Flip Transactions, as discussed below in Section 8 of this Report.

5.6 Stoney Creek Real Property and Recommended Distributions

1. Pursuant to the Stoney Creek AVO, the Court approved the Stoney Creek Transaction. The purchase price was \$15.4 million. This transaction closed on September 21, 2022.
2. As authorized and directed by the Court, distributions were made to Podesta and Bukovsky immediately following closing in the amounts of approximately \$9.63 million and \$2.02 million, respectively, representing Go-To Stoney Creek's secured indebtedness to them in respect of their mortgages registered on title to the Stoney Creek Real Property.
3. The only remaining secured claim filed against Go-To Stoney Creek was from the FAAN Trustee in the amount of \$5.2 million²⁷. As discussed in Section 5.4 above, this claim was also filed against Go-To Adelaide and was disallowed by the Receiver as part of the FAAN Adelaide Disallowance Notice. Pursuant to the Claims Procedure, the FAAN Trustee has 14 days from the delivery of the FAAN Adelaide Disallowance Notice, being November 15, 2022, to deliver a Notice of Dispute to the Receiver. As with Go-To Adelaide, if a Notice of Dispute is not received by this date, the FAAN Trustee's claims against Go-To Stoney Creek will be extinguished.
4. The remaining claims filed against Go-To Stoney Creek, other than the secured claims that have now been resolved and the FAAN Trustee's claim referenced above, are summarized below.

Unsecured Claimant	Amount (\$000s)
Mr. Furtado, under review	868
Royal Bank of Canada	60
IBI Group Professional Services (Canada) Inc.	4
	932

²⁷ Pursuant to a Security Substitution Agreement and Release dated November 8, 2021, the FAAN Trustee discharged its mortgage against the Stoney Creek Real Property on or about November 9, 2021.

5. The Receiver has accepted the claims referenced above other than Mr. Furtado's claim, which remains subject to further review due to the complexities arising from Mr. Furtado's relationship with the Receivership Respondents, disclosures made to investors, issues summarized in the Collins Affidavit and the substance of the claim itself. The Receiver is also continuing to review any potential claims against Go-To Chippawa from GTDH (\$22,000) and FHI (\$92,000).
6. If the FAAN Adelaide Disallowance Notice is not disputed as against Go-To Stoney Creek, there will be sufficient proceeds from the Stoney Creek Transaction to pay all valid creditor claims. If it is successfully disputed by the FAAN Trustee, there will be no distributions to creditors or investors.
7. The table below summarizes the proposed distribution to Go-To Stoney Creek investors assuming the FAAN Adelaide Disallowance Notice is not successfully disputed as against Go-To Stoney Creek and the Receiver retains holdbacks for ongoing professional fees and expenses, and the claims in respect of GTDH and FHI.

	Amount (\$000s)
Sale price	15,400
CBRE commission and property taxes	(350)
Net sale proceeds	15,050
Other proceeds ²⁸	37
Receivership expenses ²⁹	(80)
Professional fees (including an estimate for future fees) ³⁰	(600)
	14,407
Podesta and Bukovsky mortgage payout	(11,656)
	2,751
Unsecured claims (as per above)	(932)
Reserve for potential claim by GTDH ³¹	(22)
Reserve for potential claim by FHI ³²	(92)
Estimated distributions available for Go-To Stoney Creek investors	1,705
Investor claims	8,455
Estimated distributions to Go-To Stoney Creek investors	20%

8. If the FAAN Trustee does not dispute the FAAN Adelaide Disallowance Notice as against Go-To Stoney Creek, or if the FAAN Trustee's claim against Go-To Stoney Creek is resolved, then the Receiver recommends that it be authorized to make a distribution up to the full amount of valid unsecured creditor claims and an interim distribution to investors. The Receiver intends to hold back amounts for Mr. Furtado's claim and the potential claims of GTDH and FHI, the resolution of which may increase distributions to investors.

²⁸ Comprised of cash in Go-To Stoney Creek's bank account at the commencement of the receivership proceedings and an HST refund. Excludes future HST refunds that may be collectible for the period subsequent to the Receivership Order.

²⁹ Includes actual and estimated receivership expenses.

³⁰ Fees for the Receiver and A&B totaled approximately \$282,000 (including HST) as at October 31, 2022. Includes a reserve for fees to determine the outstanding claims and to complete the administration of Go-To Stoney Creek's receivership proceedings.

³¹ The reserves are for claims in respect of GTDH and FHI that are not included in the table in Section 5.6.4.

³² See footnote 31.

9. As noted above, the Receiver will be discussing the timing of distributions to investors with Crowe to consider a tax efficient manner in which to make distributions to investors.
10. If the FAAN Trustee disputes the FAAN Adelaide Disallowance Notice, it will be necessary to holdback for this amount, as well as an estimate for related costs to have it determined.

6.0 Major Mackenzie Transaction

1. The Major Mackenzie Real Property is comprised of six vacant single detached houses with a total of 330 feet of frontage on Major Mackenzie Drive in Richmond Hill.

6.1 Registered Charges

1. The charges registered against title to the Major Mackenzie Real Property (after accounting for the registered postponements on title, and excluding the super-priority Court-ordered charges granted by the Receivership Order) are summarized below:

Party	Date of Registration	Type	Principal Registered Amount (\$000)
Cameron Stephens	November 6, 2017, as amended thereafter	Mortgage	6,500
Joanna Natasha Goh, Melissa Fung-Yee Loh and Yin Fun Ng Chik (the "Goh Parties")	December 13, 2018, as amended thereafter	Mortgage	1,750
Capital Build	December 22, 2021	Construction Lien	1,334

6.2 Sale Process – Recap and Results³³

1. The Sale Process for the Major Mackenzie Real Property is summarized in Section 7.3 of the Fifth Report.
2. As referenced in the Fifth Report, the Goh Parties submitted the Major Mackenzie APS, which was accepted by the Receiver, subject to completing a stalking horse sale process (the "Stalking Horse Sale Process").
3. Pursuant to the August 22nd Order, the Court approved the Major Mackenzie APS as the Stalking Horse Bid, the Expense Reimbursement and the Bidding Procedures, as set out in the Major Mackenzie APS.
4. The Bidding Procedures provided that:
 - a) Qualified Bidders were to submit, by no later than 5:00 pm on September 30, 2022 ("the Bid Deadline"): a) an APS with a purchase price equal to or greater than: (i) the Purchase Price of the Major Mackenzie APS; plus (ii) the Expense Reimbursement; (iii) CBRE's fee as described in the Fifth Report; and (iv) a \$100,000 bid increment. They were also required to pay a deposit of \$500,000.

³³ Capitalized terms not otherwise defined are defined in the Major Mackenzie APS.

- b) If no Qualified Bids were submitted by the Bid Deadline other than the Stalking Horse Bid, the Stalking Horse Bid is deemed to be the Successful Bidder.
- 5. Following the August 22nd Order, the Receiver instructed CBRE to contact all parties who had previously expressed an interest in the Major Mackenzie Real Property, which the Receiver understands CBRE did. CBRE summarized the terms of the Major Mackenzie APS and the Bidding Procedures and invited interested parties to reconsider the opportunity. CBRE also included a copy of the Major Mackenzie APS in the data room that it prepared.
- 6. In addition, the Receiver advised certain investors in Go-To Major Mackenzie of the Stalking Horse Sale Process, the Stalking Horse Bid and the Bidding Procedures. The Receiver encouraged those investors to refer any interested parties to CBRE.
- 7. Notwithstanding CBRE's further marketing efforts and the Receiver's communications with investors, no bids were submitted by the Bid Deadline. Accordingly, and pursuant to the Bidding Procedures, the Stalking Horse Bid is deemed to be the Successful Bidder.

6.3 The Major Mackenzie APS

- 1. The Major Mackenzie APS was summarized in the Fifth Report. For convenience, it is also summarized below³⁴:
 - a) Purchaser: 2357616 Ontario Inc., which is arm's length to the Receivership Respondents.
 - b) Purchased Assets: All of the Receiver's and Go-To Major Mackenzie's right, title and interest in the Major Mackenzie Real Property and certain permits specified in the Major Mackenzie APS.
 - c) Purchase Price: The Purchase Price is the greater of i) \$9.5 million; and ii) the amount required to satisfy the Priority Payables³⁵ plus the amounts required to satisfy the two registered mortgages on title³⁶. The Major Mackenzie APS also provides that the First Mortgage Indebtedness³⁷ shall be assumed by, or otherwise satisfied by, the Purchaser, and that the Second Mortgage Indebtedness shall be credit bid by the Purchaser.
 - d) Deposit: The Major Mackenzie Purchaser paid a deposit in the amount of \$500,000.

³⁴ Capitalized terms not otherwise defined are defined in the Major Mackenzie APS.

³⁵ Represents all amounts owing (including all amounts accrued but not yet payable) by the Specified Receivership Respondents as of the Closing Date which rank *pari passu* or in priority to the First Mortgage Indebtedness, including, without limitation: (i) the amounts secured by, or to be secured by, the Receivership Charge and which are allocable to the Specified Real Property.

³⁶ Represents the secured indebtedness owed to the Goh Parties which is estimated to be approximately \$1.9 million as of June 14, 2022, plus accruing interest and expenses.

³⁷ Represents the secured indebtedness owed to Cameron Stephens which is estimated to be approximately \$7.077 million as of November 25, 2022, the expected closing date.

- e) Closing Date: The latest of: (i) the first Business Day following the date that is ten days following the granting of the Major Mackenzie AVO; (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Major Mackenzie AVO have been finally determined; and (iii) November 25, 2022, or, such other date as the Receiver and the Major Mackenzie Purchaser agree in writing.
 - f) Material Conditions: As follows:
 - i. there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
 - ii. the Court shall have issued the Major Mackenzie AVO by no later than November 30, 2022.
 - g) Acceptance of Successful Bid: The sale of the Purchased Assets to any Successful Bidder by the Receiver is conditional upon the approval of the Successful Bid by the Court at the hearing of the Approval and Vesting Order Motion.
2. A copy of the Major Mackenzie APS is attached as Appendix "J".
 3. As the Stalking Horse Bid is the Successful Bidder, there will be no recoveries for Go-To Major Mackenzie's registered construction lien claimant (being Capital Build) or Go-To Major Mackenzie's unsecured creditors or investors.
 4. As set out in the Fifth Report, Capital Build guaranteed (and postponed to) the full amount of the Cameron Stephens and the Goh Parties' mortgages. Accordingly, regardless of the determination (as the case may be) of Capital Build's construction lien claim, Capital Build has no economic entitlement to the sale proceeds from the Major Mackenzie Real Property until and unless there are remaining sale proceeds after both mortgages are satisfied in full.

6.4 Recommendation

1. The Receiver recommends that the Court approve the Major Mackenzie Transaction for the following reasons:
 - a) in the Receiver's view, the sale process undertaken for Go-To Major Mackenzie by the Receiver was commercially reasonable, and conducted in accordance with the terms of the Sale Process set out in the Second Report to Court dated February 3, 2022 (the "Second Report") and approved pursuant to the Sale Process Order and the August 22nd Order;
 - b) CBRE has extensive experience selling development properties in and around the GTA and widely canvassed the market for prospective purchasers for several months, including during the Stalking Horse Sale Process;
 - c) the Receiver engaged with several bidders before accepting the Major Mackenzie APS; however, none of them was able to provide evidence of financing to complete a transaction or that they had funds to pay the required deposit;

- d) the Fifth Report details that several parties submitted unconditional offers for the Major Mackenzie Real Property and each of them failed to carry-through with these supposedly unconditional offers;
- e) the Major Mackenzie Real Property was first marketed without a listing price, then with a listing price and then again in the Stalking Horse Sale Process. Despite the different marketing approaches, no acceptable offers were submitted;
- f) the Stalking Horse Sale Process provided the Receiver an opportunity to continue to market the property to determine if a superior transaction could be completed;
- g) CBRE is of the view the Major Mackenzie Transaction is the best available in the circumstances;
- h) the Major Mackenzie APS maximizes recoveries for this property;
- i) the Receiver does not believe that further time spent marketing the property will result in a superior transaction;
- j) the Major Mackenzie Purchaser paid a deposit of \$500,000 and the transaction is unconditional except for Court approval; and
- k) the transaction will result in full satisfaction of the registered mortgages on title to the Major Mackenzie Real Property.

6.5 Closing

1. The Receiver understands that the Major Mackenzie Purchaser may want to close on November 25, 2022, a date prior to the expiration of the appeal period.
2. The Receiver is cognizant of the comments of the Ontario Court of Appeal in the Dianor decision³⁸, which cautions a Receiver about closing prior to the expiration of the appeal period. Assuming the Major Mackenzie Purchaser does want to close on November 25, 2022, the Receiver intends to agree to this request because: (i) costs are continuing to accrue, to the prejudice of the second mortgagee (an entity related to the Major Mackenzie Purchaser); and (ii) no stakeholder, other than the second mortgagee, would be adversely affected.

6.6 Proposed Distributions on the Major Mackenzie Project

1. Upon closing the Major Mackenzie Transaction, the Receiver recommends that it be authorized and directed to make a distribution from the Major Mackenzie Transaction sale proceeds to Cameron Stephens, the first mortgagee, in full satisfaction of its secured claims against Go-To Major Mackenzie. The balance owing to Cameron Stephens as of November 25, 2022, the anticipated closing date of the transaction is approximately \$7.077 million.

³⁸ Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc., 2019 ONCA 508

2. A&B has provided opinions that, subject to the standard assumptions and qualifications contained therein, the real property security granted by Go-To Major Mackenzie to each of Cameron Stephens and the Goh Parties is valid and enforceable³⁹.
3. The Receiver is not aware of any other secured creditors or any other claims that rank, or may rank, in priority to the claims of Cameron Stephens or the Goh Parties, other than:
 - a) property taxes, which will be satisfied on closing of the Major Mackenzie Transaction;
 - b) the commission payable to CBRE at the amount specified in the Major Mackenzie APS and as summarized in the Fifth Report, which will also be satisfied on closing of the Major Mackenzie Transaction; and
 - c) the Receiver's Charge. In this regard, the Receiver will retain a reserve for its present and future fees and expenses, and those of its counsel.

7.0 Remaining Unsold Properties

1. The Receiver is continuing to market for sale the real property owned by Go-To Vaughan Islington Avenue Inc. and Go-To Vaughan Islington Avenue LP ("Go-To Vaughan") and the real property owned by 2506039 Ontario Limited and Go-To Aurora Limited Partnership ("Go-To Aurora").

7.1 Vaughan Real Property

1. As previously reported, the Real Property owned by Go-To Vaughan (the "Vaughan Real Property") was initially listed for sale on an unpriced basis. It was re-listed for sale in June 2022 with CBRE for an asking price of \$9.45 million. There is a mortgage registered on title to this property in the principal amount of \$10 million, of which the Receiver understands that approximately \$6 million was outstanding as of May 1, 2022, with interest and costs continuing to accrue.
2. On September 20, 2022, with the consent of the first mortgagee on the Vaughan Real Property, the Receiver accepted an offer for the Vaughan Real Property, which was conditional on the purchaser's diligence for a 45-day period. The same purchaser also had an accepted offer for the adjacent property, the acquisition of which is helpful to a purchaser as it addresses complexities related to the development of the Vaughan Real Property.
3. On October 3, 2022, the purchaser advised CBRE that it would not be waiving its condition and the transaction with the Receiver was terminated.
4. Prior to the appointment of the Receiver, the Receiver understands that Go-To Developments Acquisitions Inc. prepaid land transfer tax of approximately \$115,000 in respect of a pre-receivership sale transaction for the Vaughan Real Property that did not close. The Receiver has now received a refund of the land transfer tax payment from the Minister of Finance.

³⁹ Copies of these opinions can be provided to the Court on request.

5. CBRE is continuing to market the Vaughan Real Property for sale. The Receiver regularly communicates with the mortgagee on this property and the Receiver is aware that the mortgagee has concerns regarding the lack of interest in the Vaughan Real Property. To-date, the mortgagee has been considering transaction opportunities cooperatively with the Receiver.

7.2 Aurora Real Property

1. The Real Property owned by Go-To Aurora (the "Aurora Real Property") continues to be listed for sale with CBRE on an unpriced basis. The Aurora Real Property and the adjacent properties form an assembly which may have greater value if all properties could be developed together.
2. The Receiver understands that until recently, a significant investor in Go-To Aurora had been working with an arm's length developer on a potential transaction for the Aurora Real Property. The investor was coordinating these efforts with the owner of the adjacent properties, who also has a mortgage on the Aurora Real Property (the "Aurora Owner").
3. At the request of Mr. Furtado, the Receiver has previously granted permission to Mr. Furtado to assist the investor to structure a transaction for Go-To Aurora, which permission was required pursuant to an endorsement of Justice Conway dated February 9, 2022.
4. The Receiver understands that the Aurora Owner has now expressed an interest in realizing on the property given the lack of progress on a transaction with the investor. Discussions with the Receiver are ongoing in this regard. If this transaction proceeds, it will be the subject of a future report to Court.

8.0 Flip Transactions

1. The Receiver's previous reports summarized the Flip Transactions involving the Eagle Valley Real Property and the Chippawa Real Property, as follows:
 - a) Go-To Eagle Valley: "(i) ... 2557815 Ontario Inc. ("255") ... purchased the Eagle Valley Real Property from Queen Properties on June 22, 2017 for \$3.7 million; and (ii) the Eagle Valley Real Property was then transferred again that same day, this time from 255 to Go-To Eagle Valley for a purchase price appearing on title of \$5.1 million". This represented a one-day "lift" in value of \$1.4 million; and
 - b) Go-To Chippawa: "255 purchased the Chippawa Real Property on April 21, 2017 for \$330,000 (in the case of the first parcel of land) and \$870,000 (in the case of the second parcel of land), and the Chippawa Real Property was then transferred for a second time on the same day, this time from 255 to Go-To Chippawa for an aggregate purchase price appearing on title of \$3 million". This represented a one-day "lift" in value of \$1.8 million.
2. Based on directions regarding funds and corresponding statements of adjustment obtained by the Receiver, the Receiver identified that the balance due to 255 on closing of the Flip Transactions was directed by 255 to be paid in trust to 255's counsel, Concorde Law.

3. On August 29, 2022, Concorde Law provided the Receiver with its non-privileged Records related to the Flip Transactions, including the Trust Ledger Statements (as defined in the Fifth Report) and certain closing documents. As it relates to Queen Properties, the vendor of the Eagle Valley Property, the Receiver was satisfied, based on information it received, that it had no knowledge and did not benefit from the Flip Transaction.
4. A summary of the principal beneficiaries of the Flip Transactions is provided in the table below.

	Amount (\$000s)
<u>Go-To Eagle Valley</u>	
Vendor (in first transaction): take-back mortgage (non-cash amount)	2,500
Vendor (in first transaction): cash	1,100
CC Consulting Company ⁴⁰	1,100
SMS Legacy Realty ⁴¹	185
Capital Build	150
Other (includes legal fees)	65
Total	5,100
<u>Go-To Chippawa</u>	
Vendors (in first transaction): take-back mortgage (non-cash)	800
AKM Holdings ⁴²	525
13 Construction Management Corp. ("13 Construction") ⁴³	439
Frame Tech Structures Ltd. ("Frame Tech") ⁴⁴	410
Christina, Venessa, Natalie and Michelle Racco	329
Vendors (in first transaction): cash	300
Capital Build	115
Scott Corbett	29
Other (includes legal fees)	53
Total	3,000

8.1 Capital Build

1. The Receiver's counsel sent a letter on July 12, 2022 (the "July 12th Letter") to Capital Build's counsel, requesting *"to the extent that you or any of your Clients has any information regarding any of the Flip Transactions, including, without limitation, who benefited economically from the Flip Transactions, the Receiver requires that you please provide such information to the Receiver forthwith, as described at paragraph 7 of the Receivership Order, and, in any event, by no later than the close of business on July 18, 2022"*. This request was made as the Receiver was advised that there is a relationship between Capital Build and 255. Neither Capital Build nor its counsel

⁴⁰ This is an Ontario Sole Proprietorship whose registration expired on June 21, 2020. The corporate profile report identifies the representative as Scott Corbett, the same person who signed the proof of claim against Go-To Adelaide on behalf of ASD.

⁴¹ The corporate profile report lists Mr. Corbett as the sole director and officer of this company, the same person who signed the proof of claim against Go-To Adelaide on behalf of ASD.

⁴² The corporate profile report lists Katarzyna Pikula, the spouse of Alfredo Malanca, as the sole director and officer of this company.

⁴³ The corporate profile report lists Frank Servello, a principal of Capital Build, as the sole director and officer of this company.

⁴⁴ The corporate profile report lists Michael Smith, a principal of Capital Build, as the sole director and officer of this company.

responded to the July 12th Letter. A copy of the July 12th Letter is provided as Appendix "K".

2. As the beneficiaries identified in both transactions include Capital Build and its principals (Frank Servello and Michael Smith through corporations where they are the sole registered directors, as discussed below), in the aggregate amount of \$1.1 million, the Receiver's counsel sent a further letter on September 7, 2022 (the "September 7th Letter") and requested that, among other things, Capital Build and Mr. Smith explain the rationale for the Flip Transactions, what information was disclosed to investors of Go-To Eagle Valley and Go-To Chippawa regarding the Flip Transactions, and the reasons that the identified parties received monies from the Flip Transactions. A copy of the "September 7th Letter is provided as Appendix "L".
3. On September 21, 2022, in a letter responding to the September 7th Letter, counsel for Capital Build advised that Capital Build and Mr. Smith denied, among other things, having any knowledge of 255 or any information related to 255 or its principals, or having knowledge of "*who received monies in connection with [the Flip Transactions]*". A copy of this response, without appendices, is provided as Appendix "M".
4. The denials are difficult to comprehend, given documents confirming that: (a) Capital Build was to have been the original purchaser of the applicable Real Property instead of 255, on similar terms as the transactions eventually consummated by 255; (b) Capital Build retained the same lawyer as 255 (i.e., Mr. Raffaghello at Concorde Law) to act for it in connection with its planned purchase of the applicable Real Property; and (c) the Bankrupt, Frame Tech, a company whose sole registered director and officer is Mr. Smith, and 13 Construction, a company whose sole registered director and officer is Mr. Servello, received proceeds from the Flip Transactions after 255 was substituted as purchaser and after Concorde Law was already representing 255 in connection with the Flip Transactions.
5. The Receiver learned on October 13, 2022 that, on October 4, 2022, Capital Build was deemed to have made an assignment in bankruptcy and Goldhar was appointed as the Licensed Insolvency Trustee. The Receiver filed proofs of claim against Capital Build on behalf of Go-To Eagle Valley and Go-To Chippawa in the amounts of \$1.4 million and \$1.8 million, respectively, copies of which are attached collectively as Appendix "N". The claims were filed on a joint and several basis against Capital Build and represent the damages suffered by Go-To Eagle Valley's and Go-To Chippawa's creditors and investors as a result of Capital Build having conspired with the other participants in the Flip Transactions.
6. On October 24, 2022, the Receiver and A&B attended the first meeting of creditors in the bankruptcy of Capital Build. A representative of the Receiver was appointed as the sole inspector in the bankruptcy proceeding.
7. The information provided by Goldhar concerning Capital Build's financial position suggests that it is unlikely there will be funds available for distribution to Capital Build's creditors, particularly if there are no recoveries to Capital Build from the Receivership Respondents.
8. To the extent that Capital Build has a provable claim against any of the Receivership Respondents, the Receiver intends to withhold any distributions to Capital Build until: a) it is satisfied as to the *bona fides* of various transactions concerning the Receivership Respondents in which it appears to have been involved, including the Flip Transactions; or b) further order of the Court.

8.2 Other Parties Involved in the Flip Transactions

1. As referenced above, the Receiver notes that Mr. Corbett received, directly or indirectly, approximately \$1.3 million from the Flip Transactions. Mr. Corbett also filed a proof of claim by ASD against Go-To Adelaide. As of the date of this Report, Mr. Corbett's role in the Flip Transactions and his relationship with ASD is unknown and is being reviewed by the Receiver.
2. The Receiver is considering its next steps regarding the Flip Transactions and may request information from the other beneficiaries, including from Mr. Corbett, AKM Holdings and the Racco family.

9.0 Privilege Protocol

1. Upon commencement of these receivership proceedings, the Receiver made copies of the Receivership Respondents' data (the "Information Collections"), including source material from the:
 - a) Google Drive, which includes email accounts of the Receivership Respondents' former employees;
 - b) Server at the head office;
 - c) laptops of seven former employees of the Receivership Respondents, including Mr. Furtado; and
 - d) cellphones of Messrs. Furtado and Ghani.
2. In January 2022, the Receiver and Mr. Furtado agreed, in substance, that: (a) the Receiver could immediately access any source documents relating to the development of the Receivership Respondents' real estate projects, including, without limitation, financial and planning information stored on the server; and (b) the Receiver would otherwise refrain, on a temporary basis, from accessing the Information Collections.
3. The Receiver developed the Privilege Protocol, which has not been executed as of the date of this Report. The Privilege Protocol sets out the process for the Receiver to now review the Information Collections and to segregate, to the extent possible, potentially privileged communications. The review of the Information Collections may assist the Receiver with its determination of claims pursuant to the Claims Procedure, to obtain more background on the Flip Transactions and, potentially, to identify any other sources of recovery and/or alleged wrongdoing. A copy of the unsigned Privilege Protocol is provided as Appendix "O".
4. The Receiver will report on its review of the Information Collections in a subsequent report assuming the Privilege Protocol is executed.

10.0 Insurance

1. GTDH and Go-To Spadina are named insureds under the Investment Management Policy that provides coverage for, among other things, wrongful acts committed by the directors and officers of those entities and for errors and omissions. The Investment Management Policy also covers the subsidiaries of the named insureds, which would include the remaining Receivership Respondents other than FHI.

2. The Investment Management Policy expired on November 9, 2022 and provided a limit of insurance of \$10 million. The Investment Management Policy is also subject to an excess policy with a limit of \$5 million (the "Excess Policy" and, together with the Investment Management Policy, the "Policies"). Copies of the Policies are attached collectively as Appendix "P".
3. The insurer (Lloyd's) first communicated with the Receiver through Lloyd's counsel (Clyde), by letter dated August 3, 2022 (the "August 3rd Letter"). In the August 3rd Letter, Clyde advised the Receiver that, among other things, Lloyd's became aware of the receivership proceeding in January 2022, had rescinded the Investment Management Policy as against Oscar Furtado personally and was now seeking the Receiver's consent to lift the stay of proceedings so that Lloyd's could rescind the Investment Management Policy against the other insureds due to alleged misrepresentations and incomplete disclosure made by Mr. Furtado when the policy was renewed on November 9, 2021. A copy of the August 3rd Letter is provided as Appendix "Q".
4. On August 25, 2022 (the "August 25th Letter"), the Receiver's counsel responded to the August 3rd Letter by explaining the test to lift the stay of proceedings and by requesting that *"To the extent you believe there is prejudice to your client sufficient to justify the lifting of the stay of proceedings, we would ask that you please identify same to us for consideration."* A copy of the August 25th Letter is provided as Appendix "R".
5. Clyde responded to the August 25th Letter on October 27, 2022 (the "October 27th Letter") in which it stated its views regarding supposedly *"clear prejudice to the extent the Receiver purports to seek the benefit of coverage under the Policy, either on its own behalf or on behalf of third parties"* and in which it advised that it would *"proceed to schedule a 9:30 appointment [before the Court]."* A copy of the October 27th Letter is provided as Appendix "S".
6. The Receiver responded on October 31, 2022 to Clyde (the "October 31st Letter") by: (a) providing notice of the claims made against the Receivership Respondents pursuant to the Claims Procedure Order, including copies of each claim, in order to satisfy the notification requirement pursuant to the Investment Management Policy, and therefore preserve any rights that creditors and investors may have thereunder; and (b) correcting certain statements in Clyde's October 27th Letter. A copy of the October 31st Letter is provided as Appendix "T". On November 2, 2022, the Receiver provided copies of its correspondence with Clyde to the Excess Insurer and the claims agent under the Excess Policy (the "November 2nd Letter"), and therefore preserved any rights that creditors and investors may have thereunder. A copy of the November 2nd Letter, without appendices, is included as Appendix "U".
7. Also on November 2, 2022, the Receiver provided an update to investors in the Projects managed by the Receivership Respondents ("Update #13"). The purpose of Update #13 was to: (a) make investors aware of the Policies; (b) notify them of the insurance-related developments since October 27, 2022 (including the imminent Court steps that Lloyd's had decided to take/explore, and that the Receiver had provided the claims to the Insurers to preserve any rights that creditors and investors may have under the Policies); (c) advise that the Receiver is not a "claimant" under the Policies, and therefore does not have the capacity to pursue claims on behalf of creditors and investors; and (d) alert creditors and investors that they will need to determine for themselves if they wish to pursue claims pursuant to the Policies and that they may wish to engage legal counsel to understand their rights. A copy of Update #13 is provided as Appendix "V".

8. Lloyd's went ahead with the 9:30 attendance on November 7, 2022. The attendance did not result in the Court scheduling Lloyd's' lift stay motion. The Court released a short endorsement, which is provided as Appendix "W". Among other things, the endorsement provides that counsel for the Receiver and Lloyd's would speak about the best way to proceed and report back to the Court as part of the upcoming November 23, 2022 attendance.
9. In substance, the Receiver's counsel has suggested to Clyde that Lloyd's not pursue its lift stay motion at this time, without prejudice to:
 - a. such a motion being brought on full notice to all impacted stakeholders once it becomes clear later in this receivership proceeding (i.e., after monetization of all the Real Property and determination of which claims remain unpaid) which stakeholders may have an economic interest in the Policies and in what amounts; and
 - b. Lloyd's being able to advance at such a motion, whatever arguments it could have advanced had the motion been heard earlier (i.e., had the upcoming November 23, 2022 attendance been used to schedule the motion).
10. The Receiver believes that such an approach would be beneficial to all the stakeholders, including the Insurers, by preserving the substantive rights of all stakeholders until such time as the scope of the issues has been narrowed and become more certain. With notice of all claims having already been provided to the Insurers, and with the Policies having now expired in the ordinary course, the Receiver sees no urgency or practical benefit in having the lift stay motion scheduled at this time (and, indeed, is of the view that scheduling the motion now would lead to further confusion amongst the stakeholder group at large).
11. As set out in the email exchange provided in Appendix "X": (a) the Receiver understands that Lloyd's wishes to pursue the motion; and (b) the Receiver's counsel has communicated to Clyde the importance that any such motion, if scheduled, be scheduled on full notice to all impacted stakeholders, who should be given a meaningful opportunity to respond.

11.0 Receiver's Activities

1. In addition to the activities described above, the Receiver's activities since the date of the Fifth Report have included, among other things, the following:
 - a) corresponding extensively with A&B regarding all matters in these proceedings;
 - b) corresponding with Mr. Furtado regarding claims filed in the Claims Procedure and other matters in these proceedings, including financial information related to the Receivership Respondents;
 - c) attending at Court on August 22, 2022 in respect of the motion to approve the Stoney Creek Transaction, the Major Mackenzie APS as the Stalking Horse Bid and other ancillary relief;
 - d) participating in frequent calls with CBRE regarding the Sale Process;
 - e) reviewing and commenting on all of the closing documents in regard to the Stoney Creek Transaction;

- f) corresponding with the Go-To Stoney Creek purchaser and the mortgagees regarding the Stoney Creek Transaction;
- g) reviewing the Podesta and Bukovsky mortgage payout statements with respect to Go-To Stoney Creek;
- h) reviewing the Cameron Stephens mortgage payout statement with respect to Go-To Major Mackenzie;
- i) dealing with post-closing matters related to the Completed Transactions;
- j) corresponding with the mortgagees of the Real Property and their counsel regarding the Sale Process and other matters;
- k) corresponding with the mortgagees and lien claimants regarding their security documents;
- l) reviewing claims filed in the Claims Procedure;
- m) preparing the Notices of Revision or Disallowance referenced in this Report;
- n) reviewing information related to the Flip Transactions;
- o) dealing with insurance matters regarding the Receivership Respondents, as set out above;
- p) dealing with Crowe regarding tax matters;
- q) drafting update notices to the Receivership Respondents' creditors, investors and Unit Purchasers and responding to their inquiries regarding this proceeding;
- r) dealing with upkeep, maintenance and security issues in respect of certain of the Real Property;
- s) responding to inquiries from purchasers of pre-construction condominiums in three of the Projects (the "Unit Purchasers");
- t) drafting notices to the Unit Purchasers and returning deposits upon receipt of the requisite approvals;
- u) corresponding with Tarion and Trisura regarding the Glendale Tarion Holdback Agreement;
- v) corresponding with Canada Revenue Agency ("CRA") regarding the Receivership Respondents' HST returns;
- w) responding to information requests from CRA related to HST returns for the period prior to the date of the Receivership Order; and
- x) drafting this Report.

12.0 Professional Fees

1. The fees of the Receiver from July 1, 2022 to September 30, 2022 and for A&B from July 1, 2022 to October 31, 2022 total \$333,723 and \$358,151, respectively, excluding disbursements and HST. Fee affidavits and accompanying invoices for the Receiver and A&B are attached as Appendices "Y" and "Z", respectively.
2. The activities of the Receiver and A&B are detailed in their respective invoices, in this Report and in the Receiver's Prior Reports.
3. The average hourly rate for the Receiver and A&B for the referenced billing period was \$418.71 and \$561.28, respectively.
4. The Receiver is of the view that A&B's hourly rates are consistent with the rates charged by other law firms practising in the area of restructuring and insolvency in the Toronto market, and that its fees are reasonable and appropriate in the circumstances.
5. The Receiver and A&B have continued to record their time on an entity-by-entity basis, as applicable. A significant portion of the professional time has also been allocated to GTDH for matters related to the receivership as a whole, such as, among other things, drafting reports to Court, attending at Court for several motions, drafting updates for investors and Unit Purchasers, carrying out the Claims Procedure and dealing with insurance matters.
6. There may be recoveries in GTDH that will offset the professional fees and costs allocated to GTDH. To the extent that there are professional costs that are not paid by these recoveries, the Receiver and its counsel intend, to the extent possible, to allocate their fees and costs across the remaining Receivership Respondents. That allocation, where possible and as applicable, will be performed at the conclusion of the proceeding.

13.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(m) of this Report.

* * *

All of which is respectfully submitted,

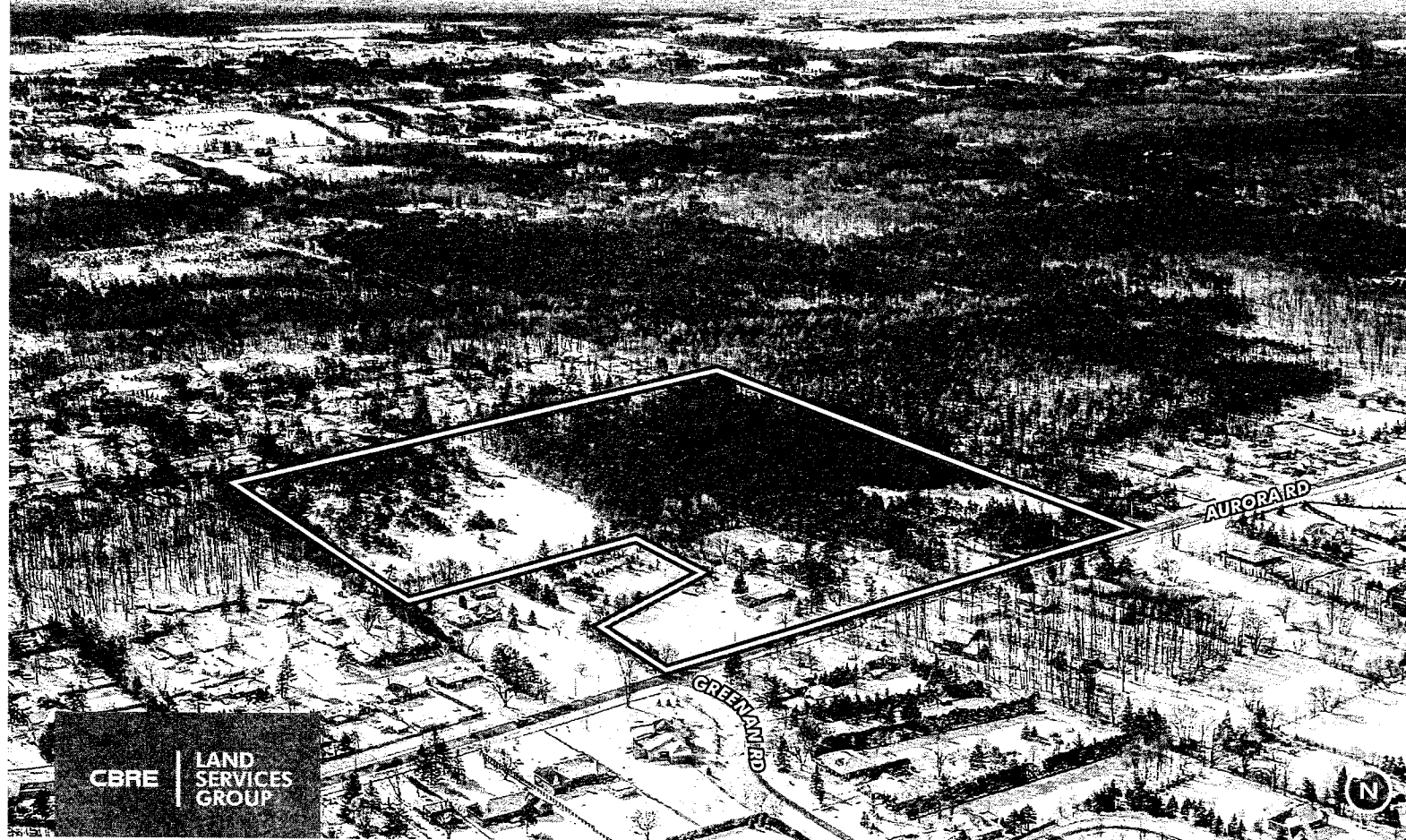
KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
GO-TO DEVELOPMENTS HOLDINGS INC. AND THOSE PARTIES LISTED ON
APPENDIX "B" AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

APPENDIX “B”

PRIME OPPORTUNITY FOR ASSEMBLY OF
35.8 ACRES OF RESIDENTIAL LAND

4897-4987 Aurora Road, Ballantrae, Whitchurch-Stouffville ●



ALLOWS FOR PREMIUM LOTS TO BE BUILT

About the Offering

CBRE's Land Services Group is pleased to offer for sale:

- on behalf of KSV Restructuring Inc., in its capacity as Receiver and Manager of Go To Development Holdings Inc. and related companies the "Receiver" 4951 Aurora Road in the Township of Whitby (Whitby/Stouffville). The site is 4.31 acres and is designated Future Residential Area. It is the intent of Ballantrae, providing an opportunity to acquire the property for either a single lot to build a new house or future development as part of an assembly as discussed below. The existing house on site is currently vacant.
- on behalf of separate owners, 4897, 4923, 4963, 4987 Aurora Road. Collectively, these parcels total 37.7 acres and are designated Future Residential Area and Natural Feature Conservation Area. Both 4923 and 4963 Aurora Road have houses on the site that are ten to 14 years old, and 4897 Aurora Road is a vacant lot. Similar to 4951 Aurora Road, these properties are well-suited to build a new house or for the existing houses to be sold for a future development opportunity; and
- the above properties are also being offered for sale as an assembly (the "Assembly"). The Assembly is being offered as an existing development opportunity, providing an opportunity for residential development. The Assembly presents an existing residential development opportunity with the Town that provides 36 single detached lots with private water and sewage services. The development concept is thoughtfully designed to enhance the natural features of the area.

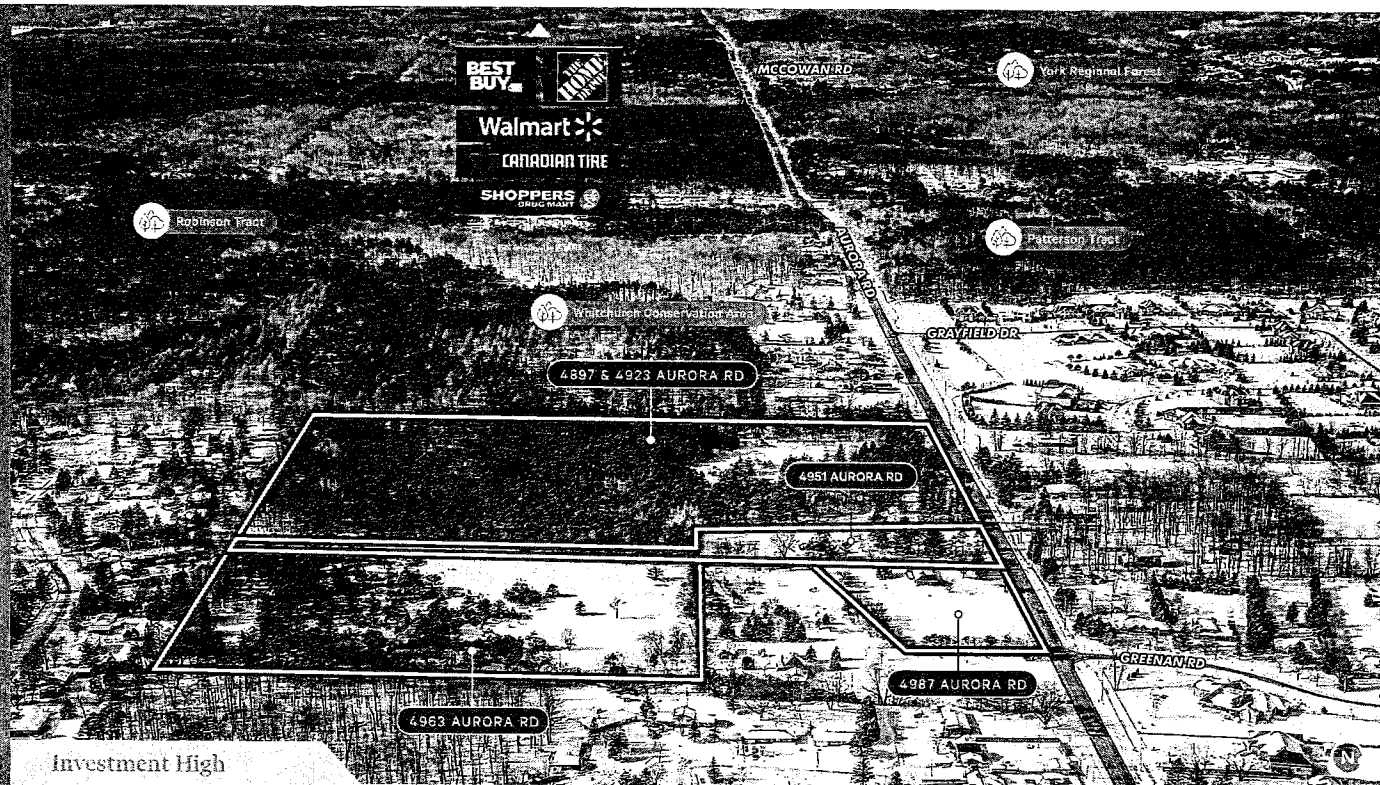
A purchaser has the opportunity to acquire 4951 Aurora Road separately, 4897, 4923, 4963, 4987 Aurora Road separately, or the entire Assembly.

The current plan for the Assembly recognizes future development areas for Ballantrae and permits development of these areas through a plan of subdivision that ensures there are no negative impacts on the existing natural heritage features of the area. Permitted uses within this designation include single detached dwellings as well as stormwater and erosion control facilities, and public and private utilities. As such, the Assembly provides an opportunity for residential land and an opportunity for future development.

Future residents will enjoy the rural setting with proximity to a variety of regional amenities and services, including Upper Canada Mall and the Stouffville Regional Health Centre. The properties are located in close proximity to several major roads and services, including Ballantrae Golf Club, Greenlane Golf Club and St. Andrew's Episcopal Country Club. The properties present an excellent opportunity for a residential development with the ability to build the dream lot within an area with existing natural heritage features for future residents to enjoy.

Offering Breakdown

PARCEL	4951 Aurora Road, 4897, 4923, 4963, 4987 Aurora Road, 4951 Aurora Road
Total Area	4.31 Acres
Frontage	162 ft. along Aurora Road
Official Plan	Ballantrae Future Residential Area or Natural Feature Conservation Area
Zoning	O - Development, Residential and RV - Residential Village
Existing Conditions	4951 and 4987 Aurora Road have houses that are currently tenanted. 4923 Aurora Road is a vacant lot. The site is currently vacant.
Environmental	An updated Phase 1 Environmental Assessment was completed in March 2020. A Phase 2 ESA for 4951 Aurora Road was completed in April 2020 and for the entire property in February 2020. Private water and sewage services are provided to the site. The site is currently vacant.
Access	Access is off Aurora Road.
Servicing	Regional and Municipal capacity is not currently provided. On-site private water and sewage services are provided.



Investment High



Premium Lots and
Access to Trails

Given the natural heritage features of each site, there is a significant opportunity to build premium lots. In addition, future residents will enjoy an interconnected open space network. A trailhead connection proposed on the site connects the subdivision to Felcher Parkette and the York Regional Forest.



Prime Area for
New Development

The properties are in the Ballantrae Future Residential Area which is slated for new development in the Ballantrae-Musselman Lake and Environs Secondary Plan Area.



Opportunity to Purchase
Sites Separately or Together

The offering provides purchasers with the option to purchase the Assembly, or to purchase 4951 Aurora Road separately or 4897, 4923, 4963 and 4987 Aurora Road separately.








Ideal Market
Fundamentals

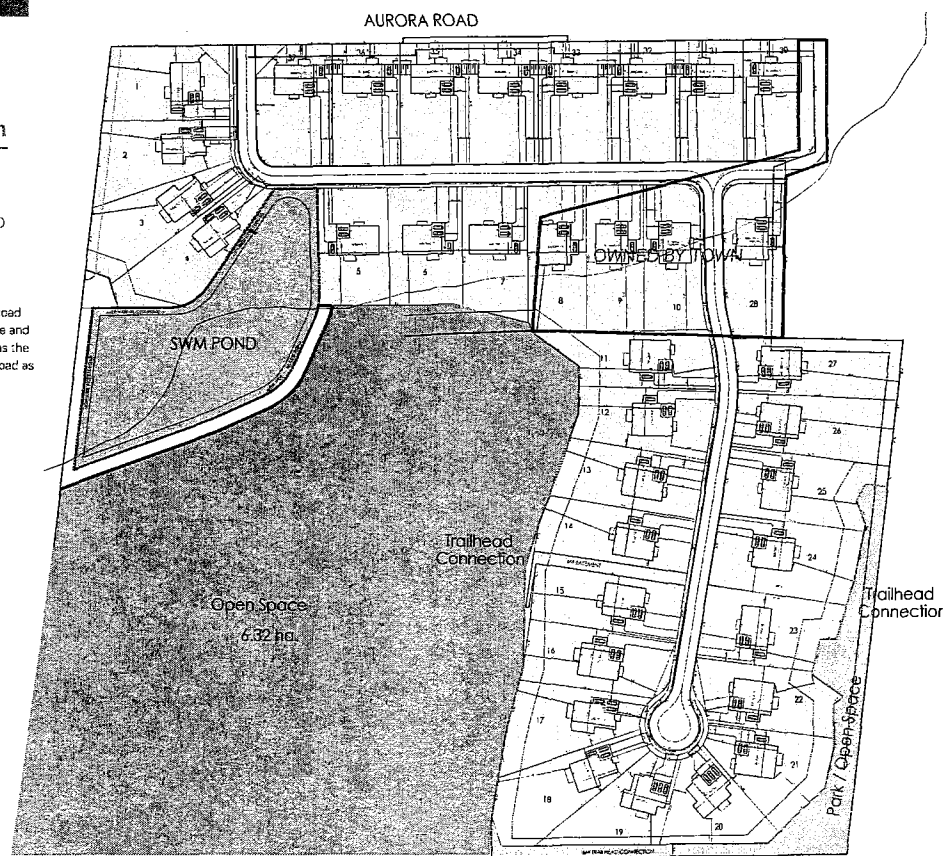
Comparable estate housing project achieving strong end unit pricing upwards of \$3,500,000 (Atlas, 2022).

Conceptual Site Plan (November 2021)

Development Breakdown

-  SWM Pond
-  Single Detached Lots
-  Open Space (to be conveyed to Town)
-  Park/Open Space
-  5011 Aurora Rd

Please note that the property at 5011 Aurora Road is owned by the Town of Wrentham-Stouffville and is included in the proposed development. It was the intent of the owner to purchase 5011 Aurora Road as part of the proposed development.



About the Development

Development Summary of the Assembly

The development proposal for the Assembly is comprised of 30 single detached units on lots with minimum lot areas of 0.9 acres (0.2 hectares) and individual private water and sewage treatment facilities. Each single detached home is proposed to have 3 parking spaces for a total of 90 parking spaces. There are 10 acres of existing wooded areas located at the southwest and southeast portions of the Assembly. These lands are proposed to remain as open space areas as development is not permitted. The Site Plan proposes a Stormwater Management (SWM) pond north of the western woodland as well as servicing infrastructure near the centre of the lands. Please note that a future off site compensation agreement is required for the proposed removal of woodland areas to build the SWM pond and servicing infrastructure at the centre of the Assembly and proposed development.

Access is proposed off Aurora Road via a full move vehicular entrance/exit along the northwestern portion of the subject lands leading to a private paved road network. There is also a proposed emergency access and easement located along the eastern property line and a trailhead connection through the entire site at the rear of the property connecting the development to the Richer's Parkette and the York Regional Forest.

Application Status

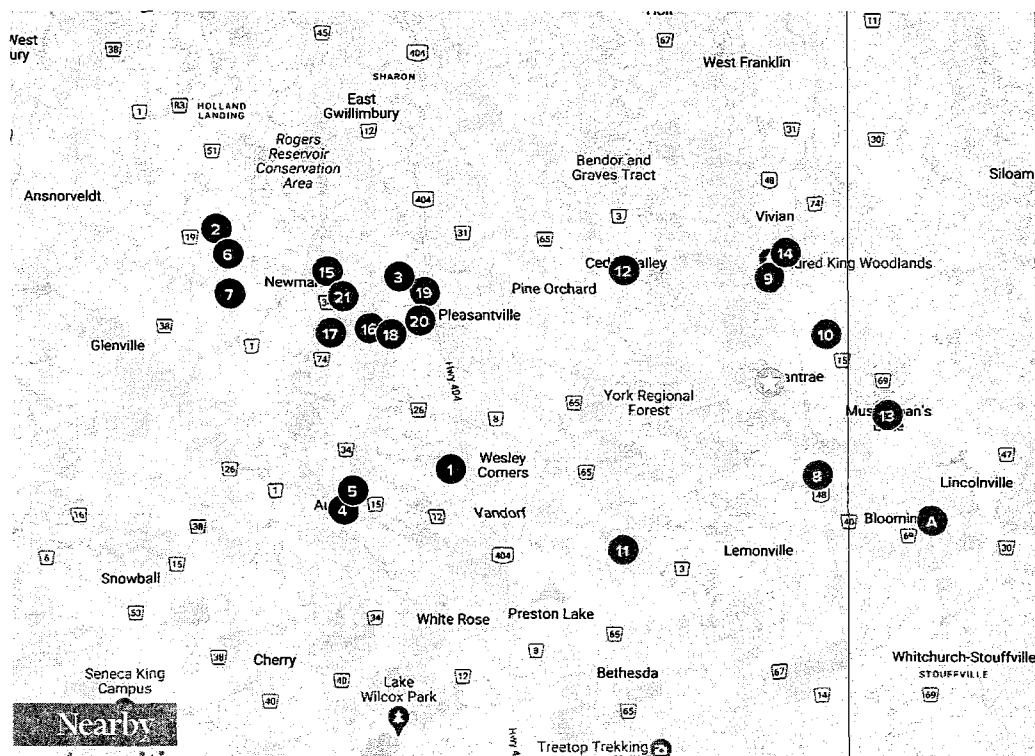
Applications for an Official Plan Amendment (OPA), Zoning By-law Amendment (ZBA), and Draft Plan of Subdivision were submitted in 2019 to facilitate the low density residential development or private services in accordance with the proposed draft plan. The applicants also submitted a preliminary Site Plan for review in support of the proposed OPA, ZBA and Draft Plan of Subdivision applications. A formal Site Plan approval application has not yet been made. The OPA, ZBA and Draft Plan of Subdivision applications are currently active and the Township and Region have provided comments. A final decision has the authority to continue or withdraw the existing proposed development applications as per the comments received back from the Region.

Other Considerations

Please note the proposed on lot private water wells are intended to be utilized for the proposed development in the interim until the municipality has capacity. Potential eventual connection to regional water is expected once regional water allocation is available.

As a designated Settlement Area in the Oak Ridges-Markham Area of the Greenbelt Plan, the development is permitted with natural restrictions to ecological functions and hydrological features.

The proposed location of the SWM pond currently takes only a small part of the existing woodland, as such there have been discussions with the municipality to provide compensation for the trees on site.



Nearby Amenities



Retail & Grocery

1. Walmart Supercentre
2. Costco Wholesale
3. Dickie's No Frills
4. The Home Depot
5. Canadian Tire
6. HomeSense
7. Upper Canada Mall



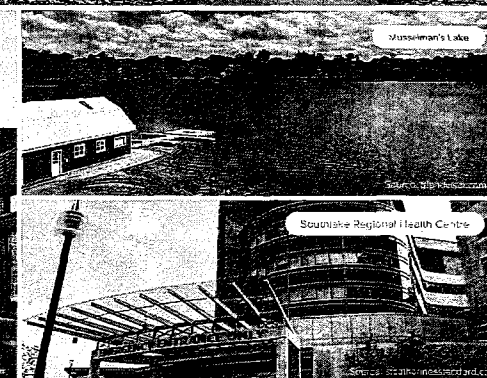
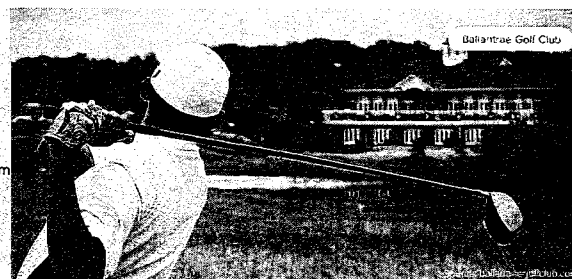
Recreation

8. Royal Stouffville Golf Course
9. Eldred King Woodlands
10. Ballantrae Golf Club
11. Emerald Hills Golf Club
12. Sunrise Cedar Valley Farms
13. Musselman's Lake
14. Hollidge Tract Accessible Trail



Institutional

15. Southlake Regional Health Centre
16. Bogart Public School
17. Pickering College
18. Newmarket High School
19. DriveTest
20. Veterinary Hospital
21. Prince Charles Public School



Nearby Developments

Development	Builder	Type	Units Sold in 2021	Purchase Price	Available Price (PSF)	Size Range (SF)	Units	Sold (%)
A Caslewoods Estates	First View Homes	Single Detached 150'	70	\$2,629,900 to \$3,549,900	\$794	2,705 - 6,154	36	70

Source: Atlas RealPac (Q3/21)

Attention: Evan Stewart
 Email: evan.stewart@cbre.com

RE: 4897, 4923, 4951, 4963 and 4987 Aurora Road, Whitchurch-Stouffville (the "Properties") owned by 2506039 ONTARIO LIMITED (4951 Aurora Road) and Gerald Brouwer, Kesbro Inc. & 341868 Ontario Ltd (4897, 4923, 4963 & 4987 Aurora Road) (the "Companies")

Located in the Province of Ontario, I/ We (hereinafter referred to as the "Interested Party") requests that CBRE Inc. (hereinafter referred to as "Broker") provide the Interested Party with confidential information relating to the Properties noted above.

For the purposes of this agreement (the "Agreement"), "Vendor" or "Seller" shall refer to KSV Restructuring Inc., solely in its capacity as Court appointed Receiver of 2506039 ONTARIO LIMITED and not in its personal capacity, and Gerald Brouwer, Kesbro Inc. & 341868 Ontario Ltd.

In consideration of the Broker agreeing to provide the Interested Party with such information, the Interested Party agrees with the Vendor and the Broker as follows:

- a. To treat confidentially, such information and any other information that the Broker or the Vendor or any of their advisors furnishes to the undersigned, whether furnished before or after the date of this Agreement, whether furnished orally or in writing or otherwise recorded or gathered by inspection, and regardless of whether specifically identified as "confidential" (collectively, the "Evaluation Material").
- b. Not to use any of the Evaluation Material for any purpose other than the exclusive purpose of evaluating the possibility of a purchase and sale or development transaction relating to the Properties. The Interested Party agrees that the Evaluation Material will not be used in any way detrimental to the Properties, the Vendor or the Broker and that such information will be kept confidential by the undersigned, its directors, officers, employees and representatives and these people shall be informed by the undersigned of the confidential nature of such information and shall be directed to treat such information confidentially. The undersigned shall be liable for any breach of the Agreement by any such people (it being understood that such liability shall be in addition to and not by way of limitation of any right or remedy any beneficiary of this Agreement may have against such people with respect to any such breach).
- c. That if at any time, the undersigned considers a transaction which would involve a third party either purchasing the Properties or any interest therein or evaluating the possibility of a purchase and sale transaction relating to the Properties, the Interested Party must receive the approval by the Broker or the Vendor of such third party as an Interested Party, which approval may be unreasonably withheld, furthermore the undersigned agrees to obtain from said third party a confidentiality agreement in a form satisfactory to the Broker or the Vendor prior to disclosure to such party of any Evaluation Material relevant to this transaction.

- d. The undersigned and its directors, officers, employees and representatives will not, without the prior written consent of the Broker or the Vendor, disclose to any persons either the fact that discussions or negotiations are taking place concerning a possible transaction between the Vendor and the undersigned, nor disclose any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.
- e. The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company, partnership or individual or any combination of one or more of the foregoing.
- f. That any time, at the request of the Broker or the Vendor, the undersigned agrees to promptly return all Evaluation Material without retaining any copies thereof or any notes relating thereto. If requested by the Broker or the Vendor, the undersigned will certify as to the return of all Evaluation Material and related notes. Notwithstanding the return or destruction of the Evaluation Material, the undersigned will continue to be bound by this Agreement.
- g. That in the event the undersigned is required by legal process to disclose any of the Evaluation Material, the undersigned will provide the Broker and the Vendor with prompt notice of such requirement so that the Broker or the Vendor may take appropriate actions, and in any event the undersigned will only disclose such Evaluation Material as is actually required and will take all reasonable steps to preserve the confidentiality of the Evaluation Materials.
- h. That the undersigned agrees that neither the Broker nor the Vendor make any representations or warranties as to the accuracy or completeness of the Evaluation Material. The undersigned further agrees that neither the Broker nor the Vendor nor any other author of or person providing Evaluation Material shall have any liability to the undersigned or any of its representatives arising from the use of the Evaluation Material by the undersigned or its representatives.
- i. The Interested Party represents and warrants that it shall be responsible for any costs associated with its review and possible purchase or development of the Properties, including any fees owed to consultants and/or real estate agents retained by, or acting on behalf of, the Interested Party. Any consultants, real estate agents/brokers, and/or advisors retained by the Interested Party shall be required to execute, and be bound by, this Confidentiality Agreement and Agency Disclosure Form.
- j. Except with the prior written consent of the Vendor or Broker, the undersigned and its directors, officers, employees and representatives shall not have discussions with, or negotiate with, any persons other than the Vendor or Broker to (a) in any manner acquire, agree to acquire or make any proposal to acquire, directly or indirectly, any Properties, (b) acquire any debt (including, without limitation, mortgage debt) of the Companies, or seek to control or influence any creditors of the Companies in their actions or relationships with respect to the Companies, or (c) advise, assist or encourage any other persons in connection with any of the foregoing. All contacts by the undersigned and its directors, officers, employees and representatives regarding the Evaluation Material, the Properties or otherwise shall be made through representatives of the Vendor or Broker, or such other person as you are permitted by the Vendor or Broker, in writing, to contact.

k. The Interested Party hereby agrees to observe all the requirements of any applicable privacy legislation including, without limitation, the Personal Information Protection and Electronic Documents Act (Canada) with respect to personal information which may be contained in the Evaluation Material.

l. That monetary damages would not be a sufficient remedy for any breach of this Agreement by the undersigned and that the Vendor and/or the Broker shall be entitled to, and the undersigned shall not oppose the granting of, equitable relief, including injunction and specific performance, in the event of any such breach, in addition to all other remedies available to the Vendor and/or the Broker at law or in equity or otherwise.

m. That no failure or delay by the Vendor and/or the Broker in exercising any right, power or privilege hereunder will operate as a waiver thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

n. This Agreement shall be governed by the laws of the Province of Ontario and those of Canada applicable therein.

o. This Agreement shall ensure to the benefit of the Broker and the Vendor, their respective successors and assigns and shall be binding upon the undersigned and its heirs, executors, administration, successors and assigns.

p. Representation and Customer Service: The Code of Ethics for the Real Estate Council of Ontario requires Commercial Realtors (e.g., Sales Representatives, Agents, Brokers) to disclose in writing the nature of their relationship and services they are providing. The Interested Party acknowledges that the Broker has provided the Interested Party with written information explaining agency relationships (attached hereto as Schedule "A" - Working with a Commercial Realtor"). The Interested Party acknowledges that the Broker will be providing Customer Service to the Interested Party, and possibly other potential Interested Parties, and will not be representing the interests of the Interested Party in this transaction. The Broker is the agent, and represents the interests of the Vendor and has a fiduciary and primary duty to protect and promote the interests of the Vendor-Client. The Broker's duties to the Interested Party include: to deal fairly, honestly and with integrity; to exercise due care in answering questions and providing information; and to avoid misrepresentation.

DATED at _____, this _____ day of _____ 2022 ("Interested Party").

Corporate or Individual Name (Please Print)

By (Individual Signature or Authorized Signing Officer's Signature)

(Officer's Name and Title, if applicable)

(Interested Party's Address)

(Telephone Number)

(Fax Number)

(Email Address)

SCHEDULE "A"

Working With a Commercial REALTOR®

The Agency Relationship

In real estate, there are different possible forms of agency relationship:

1. Seller Representation

- When a real estate brokerage represents a seller, it must do what is best for the seller of a property.
- A written contract, called a listing agreement, creates an agency relationship between the seller and the brokerage and establishes seller representation. It also explains services the brokerage will provide, establishes a fee arrangement for the Commercial REALTORS® services and specifies what obligations a seller may have.
- A seller's agent must tell the seller anything known about a buyer. For instance, if a seller's agent knows a buyer is willing to offer more for a property, that information must be shared with the seller.
- Confidences a seller shares with a seller's agent must be kept confidential from potential buyers and others.
- Although confidential information about the seller cannot be discussed, a buyer working with a seller's agent can expect fair and honest service from the seller's agent and disclosure of pertinent information about the property.

2. Buyer's Representation

- A real estate brokerage representing a buyer must do what is best for the Buyer.
- A written contract, called a buyer representation agreement, creates an agency relationship between the buyer and the brokerage, and establishes buyer representation. It also explains services the brokerage will provide, establishes a fee arrangement for the Commercial REALTOR®'s services and specifies what obligations a buyer may have.
- Typically, buyers will be obliged to work exclusively with that brokerage for a period of time.
- Confidences a buyer shares with the buyer's agent must be kept confidential.
- Although confidential information about the Interested Party cannot be disclosed, a seller working with a Interested Party's agent can expect to be treated fairly and honestly.

3. Multiple Representation

- Occasionally a real estate brokerage will represent both the buyer and the seller. The buyer and seller must consent to this arrangement in writing. Under this multiple representation arrangement, the brokerage must do what is best for both the buyer and the seller.
- Since the brokerage's loyalty is divided between the buyer and the seller who have conflicting interests, it is absolutely essential that a multiple representation relationship be properly documented. Representation agreements specifically describe the rights and duties of everyone involved and any limitations to those rights and duties.

4. Customer Service

- A real estate brokerage may provide services to buyers and sellers without creating buyer or seller representation. This is called "customer service."
- Under this arrangement, the brokerage can provide many valuable services in a fair and honest manner.

This relationship can be set out in a buyer or seller customer service agreement.

- Real estate negotiations are often complex and a brokerage may be providing representation and/or customer service to more than one seller or buyer. The brokerage will disclose these relationships to each buyer and seller.

Who's working for you?

- It is important that you understand who the Commercial REALTOR® is working for. For example, both the seller and the buyer may have their own agent which means they each have a Commercial REALTOR® who is working for them.
- Or, some buyers choose to contact the seller's agent directly. Under this arrangement the Commercial REALTOR® is working for the seller, and must do what is best for the seller, but may provide many valuable customer services to the buyer.
- A Commercial REALTOR® working with a buyer may even be a "sub-agent" of the seller. Under sub-agency, both the listing brokerage and the co-operating brokerage must do what is best for the seller even though the sub-agent may provide many valuable customer services to the buyer.
- If the brokerage represents both the seller and the buyer, this is multiple representation.

Code of Ethics

- Commercial REALTORS® believe it is important that the people they work with understand their agency relationship. That's why requirements and obligations for representation and customer service are included in a Code of Ethics which is administered by the Real Estate Council of Ontario.

- The Code requires Commercial REALTORS® to disclose in writing the nature of the services they are providing, and encourages Commercial REALTORS® to obtain written acknowledgement of that disclosure. The Code also requires Commercial REALTORS® to submit written representation agreements for any sellers or buyers they are representing.

Acknowledgement by Buyers

(Buyer Name)

I/we have read and understand the Working with a COMMERCIAL REALTOR® - The Agency Relationship form.

As Buyer(s), I/we understand that CBRE Inc. is not representing my interests, as outlined in clause (o) of the attached Confidentiality Agreement and Agency Disclosure Form, but will act in a fair, ethical and professional manner.

(Buyer Signature)

(Buyer Signature)

(Date)

Submit Confidentiality Agreement

APPENDIX “C”

COUNSEL SLIP

COURT FILE

NO.: CV-21-00673521-00CL

DATE: 09-FEB-2022

NO. ON LIST 3

TITLE OF
PROCEEDINGONTARIO SECURITIES COMMISSION v. GO-TO DEVELOPMENTS
HOLDINGS INC. et al.COUNSEL FOR:

- ☐ PLAINTIFF(S)
☐ APPLICANT(S)

PHONE _____
 FAX _____

Moving Party(ies)

- ☒ - I. Aversa; T. Dolny; S. Graff, for Court-
 appointed Receiver (iaversa@airdberlis.com;
tdolny@airdberlis.com;
sgraff@airdberlis.com)

EMAIL _____

COUNSEL FOR:

- ☐ DEFENDANT(S)

PHONE _____

Responding Party(ies) / Other

- ☐ - E. Hoult; B. Stapleton, for OSC
 (ehoult@osc.gov.on.ca;
bstapleton@osc.gov.on.ca)
- ☐ - G. Azeff; M. Faheim, for Appellants (
gazeff@millerthomson.com;
mfaheim@millerthomson.com)
- ☐ - K. Kraft; S. Wilson, for 341868 Ontario Limited
 and Kesbro Inc. (kenneth.kraft@dentons.com;
sara.wilson@dentons.com)
- ☒ - D. Touesnard, for Mortgage Holder
 (dtouesnard@waterousholden.com)
- ☐ - J. Naster, for Anthony Marek and Northridge
 Maroak Developments (jnaster@btlegal.ca)
- ☐ - B. Moldaver, for Richmond & Mary
 Development Inc., Hans Jain, 2768819 Ontario
 Ltd. And 2434547 Ontario Inc.
 (brett@moldaverbarristers.com)
- ☐ - D. Pollack; R. Varcoe, for Kingsett Capital Inc.
 (dpollack@kingsettcapital.com;
rvarcoe@kingsettcapital.com)
- ☐ - Etc.

FAX _____

EMAIL _____

JUDICIAL NOTES:Conway J. Endorsement

The Receiver's motion proceeded before me on an unopposed/consent basis. The Receiver seeks approval of a sale process for the subject properties. Yesterday, offers were presented by Mr. Furtado's counsel for the Glendale and Aurora properties, which he seeks to remove from the sale process. Counsel have negotiated a resolution that will permit the sale process to go forward while having the Receiver evaluate the two offers. They have agreed on the following terms, which I endorse:

The Receiver, the Receivership Respondents and Mr. Oscar Furtado ("**Furtado**", and with the Receivership Respondents, the "**Respondents**") agree that the Order sought by the Receiver at the hearing scheduled on February 9, 2022 shall be issued, on consent, pursuant to the following terms:

1. The Receiver agrees to use its best efforts to evaluate the agreement of purchase and sale for :

A. 527 Glendale Avenue, St. Catharines, ON, at PIN 46415-0949 (the "**Glendale Property**"), in the form appended as Confidential Exhibit "A" to the Respondents' motion record dated February 8, 2022 (the "**Glendale Offer**"), such that:

if the Receiver determines, after performing due diligence, that:

- I. the Glendale Offer is in the best interests of all relevant stakeholders; and
- II. the Receiver is advised in writing by all investors in the Glendale Property that the Receiver ought to accept the offer,

the Receiver will take steps to accept the Glendale Offer on the same economic terms as presented within Confidential Exhibit "A", as amended in consultation with the relevant parties, such that the Glendale Property will not form part of the Sale Process on a going forward basis.

The Receiver will communicate its intention to accept or reject the Glendale Offer by 5:00 PM EST on Friday, February 18, 2022 (the "**Acceptance Deadline**").

B. 4951 Aurora Road, Stouffville, ON at PIN 03491-0193 (the "**Aurora Property**") in the form appended as Confidential Exhibit "D" to the Respondents' motion record dated February 8, 2022 (the "**Aurora Offer**"), such that:

if the Receiver determines, after performing due diligence, that:

- I. the Aurora Offer is in the best interests of all relevant stakeholders;
- II. the Receiver is advised in writing by the owners of the other parcels subject to the Aurora Offer that the Aurora Offer is acceptable;
- III. the Receiver is advised in writing by all investors and stakeholders, as the Receiver deems appropriate, in the Aurora Property that the Receiver ought to accept the offer; and
- IV. the Receiver is satisfied that the proceeds from the Aurora Offer as allocated to the Aurora Property will be sufficient to pay, in full, all costs, expenses and stakeholder interests in respect of the Aurora Property,

the Receiver will take steps to accept the Aurora Offer on the same economic terms as presented within Confidential Exhibit "D", as amended in consultation with the relevant parties, such that the Aurora Property will not form part of the Sale Process on a going forward basis.

The Receiver will communicate its intention to accept or reject the Aurora Offer by the Acceptance Deadline.

2. Approval of the Sale Process, as defined in the Order, remains without prejudice to the Respondents' right to return to this Court in the event that the Receiver communicates its intention to reject the

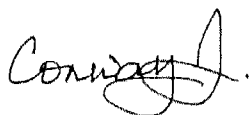
Glendale Offer and/or the Aurora Offer, and seek to have the Glendale Property and/or the Aurora Property excluded from the Sale Process.

3. If the Receiver accepts the Glendale Offer and/or the Aurora Offer by the Acceptance Deadline, an amount of \$50,000 in each of the Glendale Offer and the Aurora Offer shall be included as costs for CBRE Limited (“**CBRE**”) in consideration for its professional fees and expenses to market the Glendale Property and the Aurora Property in the Sale Process.
4. The Respondents are restrained from engaging in any further sales or marketing efforts of the Real Property, and shall direct any potential purchasers to the Receiver and/or the relevant Realtor.

The remaining relief on the motion is acceptable to me, including approval of the first and second reports.

I am granting a sealing order for Confidential Appendix “1” to the Second Report in light of the ongoing sale process and the commercially sensitive information contained therein. I am satisfied that it meets the *Sierra Club/Sherman Estate* test for sealing. In addition, I am sealing the Confidential Exhibit Brief of the Responding Motion Record, for the same reasons (and it contains private information about the investors).

Order to go as signed by me and attached to this endorsement. This order is effective from today's date and is enforceable without the need for entry and filing.



APPENDIX “D”

October 4th 2022

REPORTING LETTER

4951 Aurora Rd, Witchurch-Stouffville

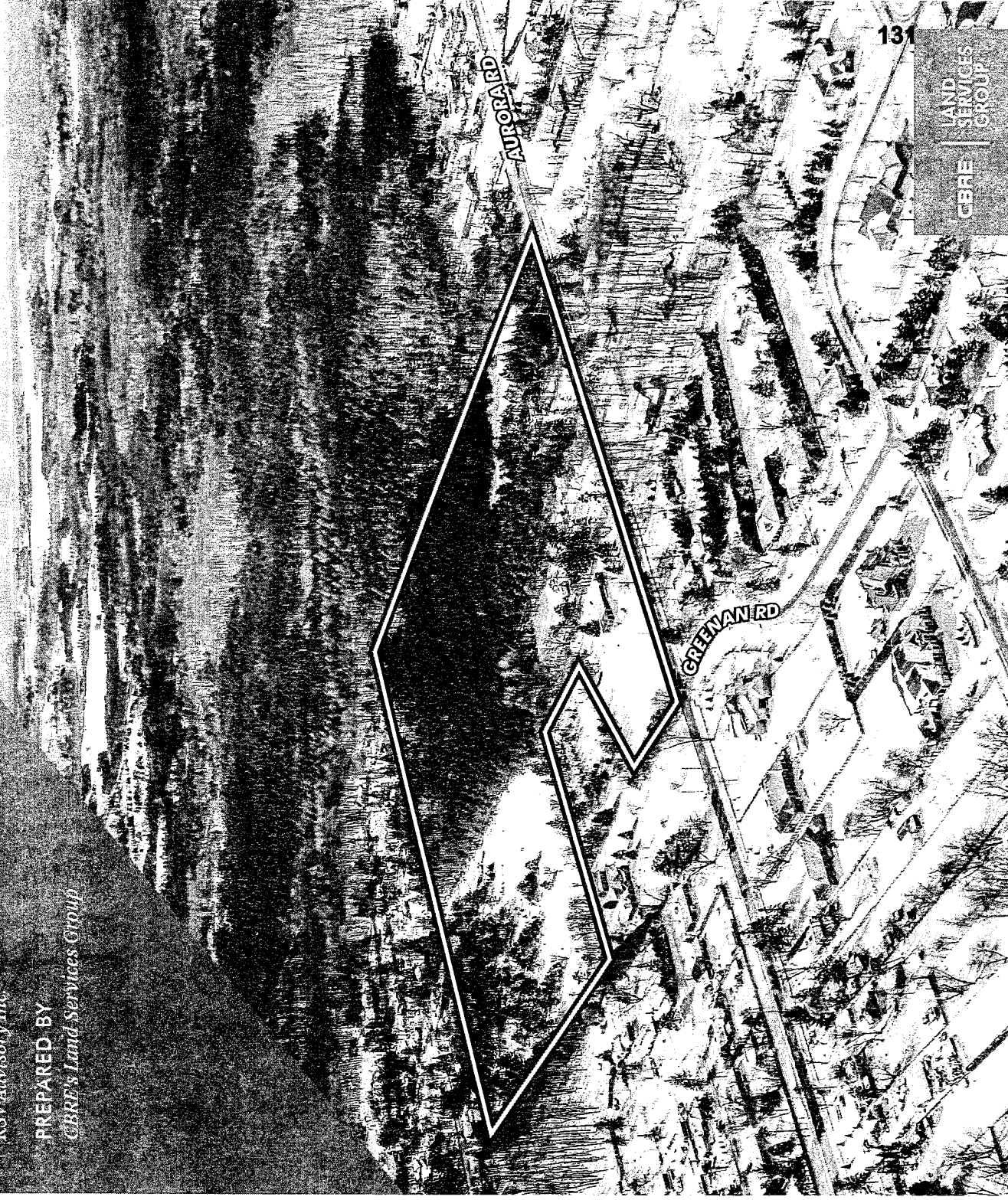
PREPARED FOR

*Mr. Bobby Kofman & Mr. Mitch Vinitsky
& Mr. Jordan Wong*

KSV Advisory Inc.

PREPARED BY

CBRE's Land Services Group



LISTING DETAILS

This reporting letter is current to October 4, 2022 and provides an overview of CBRE's marketing activity in the promotion of the site located at 4951 Aurora Road (referred to as the "Property" or "Site") in Stouffville, ON.

The Property was officially launched on **Thursday, March 3, 2022**. The Property expired and the listing was terminated on **Tuesday, October 4, 2022**.

MARKETING DETAILS

Marketing & Data Room	Land Services Group Email Blast	The property specific email campaign was sent to a list of 1,202 on the day it was launched. It was also included in the Tuesday Availability emailed to our complete list of 1,222 contacts weekly.
	Mailing	The site has been marketed together with other KSV listings in one email campaign and was sent to a list of 506 external brokers verified by LSG and internal CBRE offices including Toronto North, Downtown Toronto, Toronto West and Waterloo for maximum exposure.
	Novae Res Urbis	9in x 9in printed brochures were mailed out on Friday, March 25, 2022 with a personalized letter and a Confidentiality Agreement to a select group of top purchasers in our database.
	Signage	A half paged, coloured ad appeared on Friday, March 18, 2022 in the Toronto edition of Novae Res Urbis. A second NRU was posted on Friday, April 1, 2022 announcing the offer submission date. NRU is a planning and development journal, which is heavily subscribed to within the GTA and GGH development communities.
	LinkedIn	One 8ft x 8ft sign was installed on Tuesday, March 15, 2022 .
	MLS	The Property was posted and promoted on Mike Czystochowski's LinkedIn page with over 11,120 industry contacts, and on Lauren White's LinkedIn Page with over 1,465 industry contacts. We posted again on LinkedIn announcing the offer submission date.
	Data Room	The Property was uploaded to MLS as commercial listing on Friday, March 4, 2022 (#N5524393) as well as residential listing on Monday, March 21, 2022 (#N5544155).
	Website	The data room was approved and qualified purchasers that submit a Confidentiality Agreement were to be added.
		The Property was promoted in our Available Properties section on the Land Services Group website: https://www.cbre.ca/en/people-and-offices/toronto-north/teams/at-mc/available-properties/residential-land
		A website that showcases the Site was created: https://cbreland.ca/ksvportfolio/
Offer Submission Date	The offer submission date was Wednesday, April 20, 2022 by 3:00pm (EST) .	
Tours	Toured Anna Camposeo and Dwayne Kerrigan on September 13, 2022. Contemplated purchasing with intent to build a custom home.	
CA Count	20 Confidentiality Agreements were submitted. CA breakdown is on the following page.	
LOI Received	A Letter of Intent was received from Kesbro Inc. in Trust on April 20, 2022. Salient terms of the LOI included a purchase price of \$2,100,000 with a \$210,000 deposit and no due diligence period. No other offers were received.	

Please refer to the appendix portion at the end of this reporting letter to view the marketing materials

COMMUNICATIONS

4951 AURORA RD, WHITCHURCH-STOUFFVILLE - CONFIDENTIALITY AGREEMENTS RECEIVED

The following inquiries resulted from the marketing program. Each of these individuals requested further information.

#	Last Name	First Name	Company	PRINCIPAL/AGENT	CA	Date
1	Seider	Joel	State Building Group	PRIN	<input checked="" type="checkbox"/>	04-Mar-22
2	Tozzi	Chris	Greenpark	PRIN	<input checked="" type="checkbox"/>	08-Mar-22
3	Hofstedter	David	Lindvest Properties	PRIN	<input checked="" type="checkbox"/>	10-Mar-22
4	Beg	Absar	Karmina Developments	PRIN	<input checked="" type="checkbox"/>	10-Mar-22
5	Qi	Jason	JD Development	PRIN	<input checked="" type="checkbox"/>	10-Mar-22
6	Bardi	Sal	Versal Developments	PRIN	<input checked="" type="checkbox"/>	14-Mar-22
7	Wang	Xian	ONIT Development	PRIN	<input checked="" type="checkbox"/>	14-Mar-22
8	Sillano	Trina	Tercot Development Group	PRIN	<input checked="" type="checkbox"/>	22-Mar-22
9	Libfeld	Perry	International Homes	PRIN	<input checked="" type="checkbox"/>	24-Mar-22
10	Pong	Jack	City Core	PRIN	<input checked="" type="checkbox"/>	24-Mar-22
11	Divyangkumar	Modi	2488857 Ontario Limited	PRIN	<input checked="" type="checkbox"/>	25-Mar-22
12	Kraus	Art	AMT Mortgages Ontario	PRIN	<input checked="" type="checkbox"/>	28-Mar-22
13	Levy	Ralph	Liberty Music Trax	PRIN	<input checked="" type="checkbox"/>	04-Apr-22
14	Zhao	Ava	Ocean Breeze Home	PRIN	<input checked="" type="checkbox"/>	05-Apr-22
15	Mizzi	Peter	Kenco Construction Ltd.	PRIN	<input checked="" type="checkbox"/>	13-Apr-22
16	DelZotto	Robert	Treasure Hill	PRIN	<input checked="" type="checkbox"/>	14-Apr-22
17	Ursini	Jonathan	Fifth Avenue Homes	PRIN	<input checked="" type="checkbox"/>	18-Apr-22
18	Stillo	Nick	Urban One Developments	PRIN	<input checked="" type="checkbox"/>	18-Apr-22
19	Carmosino	Gino	Wynford Homes	PRIN	<input checked="" type="checkbox"/>	18-Apr-22
20	Kerrigan	Dwayne	D.K. Kerrigan Holdings	PRIN	<input checked="" type="checkbox"/>	15-Sep-22

DATA ROOM ACTIVITY

4951 AURORA RD, WHITCHURCH-STOUFFVILLE - DATA ROOM ACTIVITY

#	Company	Comments
1	City Core	Downloaded the property folder including the APS on March 29, 2022.
2	Fifth Avenue Homes	Downloaded the property folder including the APS on April 18, 2022.
3	International Homes	Downloaded the property folder including the APS on March 26, 2022.
4	JD Development	Downloaded the property folder including the APS on March 21, 2022.
5	Karmina Developments	Viewed "Draft Site Plan November 2022" on March 10, 2022.
6	Kenco Construction Ltd.	Downloaded the property folder including the APS on April 13, 2022.
7	Liberty Music Trax	Downloaded the property folder including the APS on April 4, 2022.
8	Ocean Breeze Home	Downloaded the property folder including the APS on April 5, 2022.
9	State Building Group	Downloaded the property folder on March 7, 2022.
10	Treasure Hill	Downloaded the property folder including the APS on April 14, 2022.
11	Urban One Developments	Downloaded the property folder including the APS on April 18, 2022.
12	Versal Developments	Downloaded the property folder including the APS on March 16, 2022.
13	Wynford Homes	Downloaded the property folder including the APS on April 18, 2022. Viewed Planning Justification Report on October 20, 2022.

CONCLUSION

If you have any questions or concerns, please do not hesitate to call.

Yours truly,



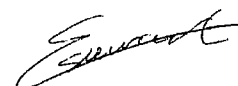
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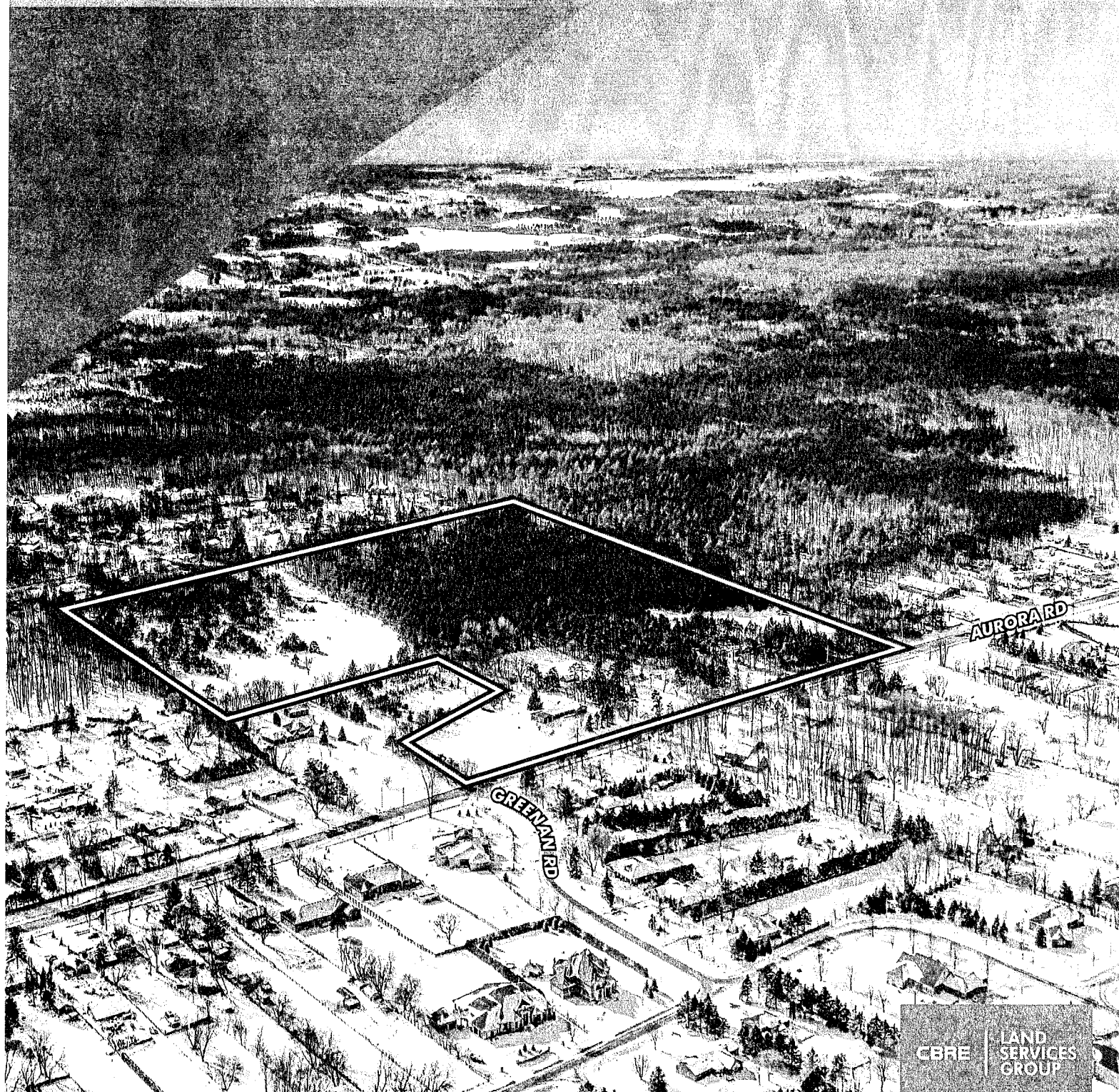


Evan Stewart
Sales Representative
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E: evan.stewart@cbre.com

*Sales Representative, **Broker

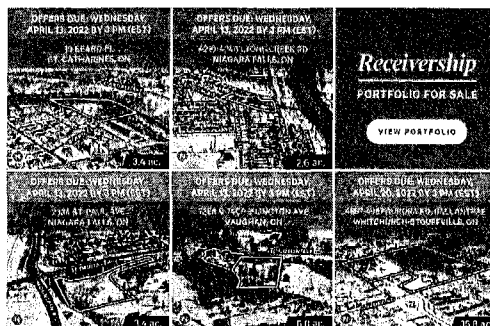
APPENDIX

Images of Marketing Materials



EMAIL CAMPAIGNS

BROKER AVAILABILITY 506 RECIPIENTS
560 VIEWS



Receivership

PORTFOLIO FOR SALE

[VIEW PORTFOLIO](#)

RESIDENTIAL

properties



Size: 81 Serviced Lots
MLS: N5537205
Offer Date: Tuesday, April 25, 2022
by 3 PM (EST)

[VIEW PROPERTY](#)

RECEIVERSHIP

Portfolio

[CLICK TO VIEW PORTFOLIO](#)



Size: 3.4 ac.
MLS: X5518004
Offer Date: Wednesday, April 13, 2022
by 3 PM (EST)

[VIEW PROPERTY](#)



Size: 3.4 ac.
MLS: X5518740
Offer Date: Wednesday, April 13, 2022
by 3 PM (EST)

[VIEW PROPERTY](#)



Size: 5.8 ac.
MLS: N5526521, N5628790
Offer Date: Wednesday, April 13, 2022
by 3 PM (EST)

[VIEW PROPERTY](#)



Size: 2.6 ac.
MLS: X5619042
Offer Date: Wednesday, April 13, 2022
by 3 PM (EST)

[VIEW PROPERTY](#)



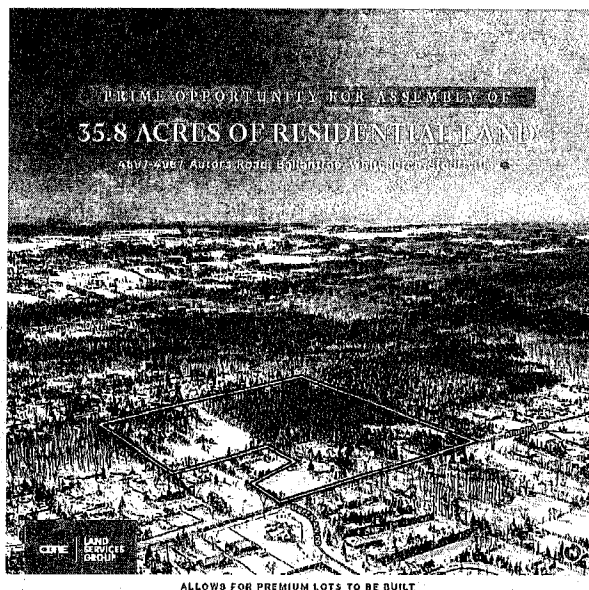
Size: 15.8 ac.
MLS: N5624902, N5644155, N5624314
Offer Date: Wednesday, April 20, 2022
by 3 PM (EST)

[VIEW PROPERTY](#)

MARKETING ITEMS

Brochure Mailings

Brochure Cover



Confidentiality Agreement

Attention: Evan Stewart
Email: evan.stewart@cbre.com

RE: 185, 191, 197, 205, 209 and 215 Major Mackenzie Drive, Richmond Hill (the "Property") owned by 60-TO MAJOR MACKENZIE SOUTH BLOCK INC. and 60-TO MAJOR MACKENZIE SOUTH BLOCK II INC. (the "Company")

Located in the Province of Ontario, I/We (hereinafter referred to as the "Interested Party") request that CBRE Inc. (hereinafter referred to as "Broker") provide the Interested Party with confidential information relating to the Property noted above.

For the purposes of this agreement (the "Agreement"), "Vendor" or "Seller" shall refer to KSV Restructuring Inc., solely in its capacity as Court appointed Receiver of 60-TO MAJOR MACKENZIE SOUTH BLOCK INC. and 60-TO MAJOR MACKENZIE SOUTH BLOCK II INC. and not in its personal capacity.

In consideration of the Broker agreeing to provide the Interested Party with such information, the Interested Party agrees with the Vendor and the Broker as follows:

- a. To treat confidentially, such information and any other information that the Broker or the Vendor or any of their advisors furnishes to the undersigned, whether furnished before or after the date of this Agreement, whether furnished orally or in writing or otherwise recorded or gathered by inspection, and regardless of whether specifically identified as "confidential" (collectively, the "Evaluation Material").
- b. Not to use any of the Evaluation Material for any purpose other than the exclusive purpose of evaluating the possibility of a purchase and sale or development transaction relating to the Property. The Interested Party agrees that the Evaluation Material will not be used in any way disclosed in the Property, the Vendor or the Broker and that such information will be kept confidential by the undersigned, its directors, officers, employees and representatives and those people shall be informed by the undersigned of the confidential nature of such information and shall be directed to treat such information confidentially. The undersigned shall be liable for any breach of the Agreement by any such people (it being understood that such liability shall be in addition to and not by way of limitation of any right or remedy any beneficiary of this Agreement may have against such people with respect to any such breach).
- c. That if at any time, the undersigned considers a transaction which would involve a third party either purchasing the Property or any interest therein or evaluating the possibility of a purchase and sale transaction relating to the Property, the Interested Party must receive the approval by the Broker or the Vendor of such third party as an Interested Party, which approval may be unreasonably withheld, furthermore the undersigned agrees to obtain from said third party a confidentiality agreement in a form satisfactory to the Broker or the Vendor prior to disclosure to such party of any Evaluation Material relevant to this transaction.

1

Signage

Sign

8ft x 8ft Single-Sided Sign



MARKETING ITEMS

LinkedIn

LinkedIn Post



Mike Czystochowski • 1st
Vice Chairman at CBRE Limited
20h •

Announcing the offer submission dates for the court-ordered portfolio that is comprised of 7 properties located across the Greater Toronto, Hamilton Area (GTHA) and Niagara Region. The portfolio includes a variety of development opportunities, ranging from approved high density sites to strategically located whitebelt land. The properties can be purchased together or separately.

To learn more about each site, please click here: <https://lnkd.in/dXTNauTx>

Please contact our team if you have any questions.

cc: Lauren White | Evan Stewart | Emelie Rowe

#landservicesgroup #developmentland

Receivership Portfolio - 8 pages

<p>185, 191, 197, 203, 209 & 215 MAJOR MACKENZIE DR E RICHMOND HILL, ON 11 ac</p>	<p>UPPER CENTENNIAL PKWY & HIGHLAND RD E HAMILTON, ON 31.6 ac</p>	<p>Receivership PORTFOLIO FOR SALE</p>
<p>OFFERS DUE WEDNESDAY, APRIL 13, 2022 BY 3 PM (EST) 19 BEARD PL ST. CATHARINES, ON 3.4 ac</p>	<p>OFFERS DUE WEDNESDAY, APRIL 13, 2022 BY 3 PM (EST) 4210-4248 LYONS CREEK RD NIAGARA FALLS, ON 2.0 ac</p>	
<p>OFFERS DUE WEDNESDAY, APRIL 13, 2022 BY 3 PM (EST) 2334 ST. PAUL AVE NIAGARA FALLS, ON 3.4 ac</p>	<p>OFFERS DUE WEDNESDAY, APRIL 13, 2022 BY 3 PM (EST) 7380 & 7400 ISLINGTON AVE VAUGHAN, ON 5.8 ac</p>	
<p>OFFERS DUE SUNDAY, APRIL 20, 2022 BY 3 PM (EST) 4897-4907 AURORA RD, BALLANTRAE WHITCHURCH-STOUFFVILLE, ON 35.8 ac</p>		



Lauren White • 1st
Executive Vice President, Land Services Group
2h •

Announcing the offer submission dates for the court-ordered portfolio that is comprised of 7 properties located across the Greater Toronto, Hamilton Area (GTHA) and Niagara Region. The portfolio includes a variety of development opportunities, ranging from approved high density sites to strategically located whitebelt land. The properties can be purchased together or separately.

To learn more about each site, please click here: <https://lnkd.in/dXTNauTx>

Please contact our team if you have any questions.

cc: Mike Czystochowski | Evan Stewart | Emelie Rowe

#landservicesgroup #developmentland

<p>OFFERS DUE THURSDAY, APRIL 7, 2022 BY 3 PM (EST) 185, 191, 197, 203, 209 & 215 MAJOR MACKENZIE DR E RICHMOND HILL, ON 11 ac</p>	<p>OFFERS DUE THURSDAY, APRIL 7, 2022 BY 3 PM (EST) UPPER CENTENNIAL PKWY & HIGHLAND RD E HAMILTON, ON 31.6 ac</p>	<p>Receivership PORTFOLIO FOR SALE</p>
<p>OFFERS DUE WEDNESDAY, APRIL 13, 2022 BY 3 PM (EST) 19 BEARD PL ST. CATHARINES, ON 3.4 ac</p>	<p>OFFERS DUE WEDNESDAY, APRIL 13, 2022 BY 3 PM (EST) 4210-4248 LYONS CREEK RD NIAGARA FALLS, ON 2.0 ac</p>	
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<p>OFFERS DUE SUNDAY, APRIL 20, 2022 BY 3 PM (EST) 4897-4907 AURORA RD, BALLANTRAE WHITCHURCH-STOUFFVILLE, ON 35.8 ac</p>		

MARKETING ITEMS

Ad Promotion

Novae Res Urbis

STANDING COMMITTEE AGENDAS

TORONTO PRESERVATION BOARD

Toronto Preservation Board will consider the following at its meeting Tuesday, April 5 at 9:30 a.m. via video conference.

50 Merton Street—Report
recommends that council state its intention to designate the property under Part IV of the *Ontario Heritage Act*. The property contains the GRI Guides of Canada headquarters, designed by architect Carmen Cornelli and completed in 1962, with a

later addition in 1970-2. The site is the subject of a rezoning application to demolish the existing building and to construct a 39-storey mixed-use development.

1702 Queen Street East—Report
recommends that council state its intention to designate the property under Part IV of the *Ontario Heritage Act*. The property contains a two-storey bank building constructed in 1911-12 for the Imperial Bank of Canada to the design of architects Sharp & Brown. The site is subject of a rezoning

application to permit a six-storey mixed-use development that would integrate the heritage building.

1390-1406 & 1420 Yonge Street—Report
recommends that council state its intention to designate the property under Part IV of the *Ontario Heritage Act*. The properties at 1390-1406 Yonge Street contain six three-storey commercial row buildings constructed in 1932 in the Spanish Colonial Revival style. The property at 1420 Yonge Street contains a block of four two-storey

main-street commercial row buildings constructed in 1932. A development application for the site proposes a 39-storey mixed-use building that would remove the northernmost building at 1390-1406 Yonge, as well as the entire row of buildings at 1420 Yonge.

Dundas-Carlton batch listing—Report
recommends that council include nine properties in the vicinity of Dundas Street East and Carlton Street on the city's heritage register. The properties have been identified

CONTINUED PAGE 7 ■

DEVELOPMENT LAND PORTFOLIO FOR SALE - YORK REGION
Properties can be Purchased Together or SeparatelyPRIME OPPORTUNITY FOR ASSEMBLY OF
35.8 ACRES OF
RESIDENTIAL LAND

OFFERS DUE: WED, APRIL 20, 2022 BY 3 PM (EST)

4897-4937 Aurora Rd. Ballantyne
Whitchurch-Stouffville



35.8 AC. | MLS: N6524314, N6524393, N6544156

OPPORTUNITY
FOR INFILL
DEVELOPMENT IN WOODBRIDGE

OFFERS DUE: WED, APRIL 20, 2022 BY 3 PM (EST)

7386 & 7400 Islington Ave
Vaughan



6.8 AC. | MLS: N6526521, N6526790

PRIME INFILL
TOWNHOUSE
DEVELOPMENT OPPORTUNITY

OFFERS DUE: THUR, APRIL 7, 2022 BY 3 PM (EST)

185, 191, 197, 203, 209 & 215 Major Mackenzie Dr E
Richmond Hill



1.1 AC. | MLS: N6520152

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Emilie Rowe
Sales Representative
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VIEW PORTFOLIO

#These sites, if purchased, are being sold as part of a larger portfolio across the GTA and Niagara region.

CBRE Limited, Real Estate Brokerage 2022 Land Services Group | www.cbre.ca | 1-800-TA-CBRE.COM

FRIDAY, APRIL 1, 2022

NOVAE RES URBIS TORONTO 6 ■

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*Sales Representative **Broker

CBRE

LAND
SERVICES
GROUP

APPENDIX “E”

AGREEMENT OF PURCHASE AND SALE**BETWEEN****KSV RESTRUCTURING INC.,**

solely in its capacity as the Court-appointed receiver and manager
of the real property listed on Schedule "A" and not in its personal
capacity or in any other capacity

- and -

1000086921 ONTARIO INC.

Dated: December 8, 2022

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AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 8th day of December, 2022.

BETWEEN:

KSV RESTRUCTURING INC.,
solely in its capacity as the Court-appointed receiver and manager
of the real property listed on Schedule “A” hereto and not in its
personal capacity or in any other capacity

(in such capacity, the “**Receiver**”)

- and -

1000086921 ONTARIO INC.

(the “**Purchaser**”)

WHEREAS pursuant to an order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on December 10, 2021 (the “**Receivership Order**”), KSV Restructuring Inc. (“**KSV**”) was appointed as the Receiver, without security, of the Property (as defined below).

AND WHEREAS the Property includes, amongst other things, the Specified Real Property (as defined below) and all the other assets, undertakings and properties of 2506039 Ontario Limited (“**2506039**”) including all the assets held in trust or required to be held in trust by or for 2506039 or by its lawyers, agents and/or any other person, and all proceeds thereof (together with the Specified Real Property, the “**Specified Property**”);

AND WHEREAS pursuant to the provisions of the Receivership Order, the Receiver has the power to sell the Specified Property, subject to Court approval;

AND WHEREAS the Purchaser wishes to purchase and the Receiver wishes to sell the Purchased Assets (as defined herein) upon the terms and subject to the conditions set out herein;

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement (as defined herein), and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined herein), the Parties agree as follows:

ARTICLE 1 DEFINED TERMS

1.1 Definitions.

In this Agreement:

“**2506039**” has the meaning set out in the recitals hereof;

“**Accounts Payable**” means all amounts relating to the Business owing to any Person in connection with the purchase of goods or services in the ordinary course of business;

“**Agreement**” means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to “**article**”, “**section**” or “**schedule**” mean the specified article, section of, or schedule to this Agreement and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

“**Applicable Law**” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

“**Approval and Vesting Order**” means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement and conveying to the Purchaser the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as **Schedule “B”** hereto;

“**Assignable Assets**” has the meaning given in section 3.1(3) herein;

“**Business**” means the business of 2506039;

“**Business Day**” means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Specified Real Property or the Specified Receivership Respondents, and “**Claim**” means any one of them;

“**Closing**” means the successful completion of the Transaction;

“**Closing Date**” means the date that is the later of: (i) the first Business Day following the date that is ten days following the date on which the Approval and Vesting Order is issued by the Court; and (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined, or, if the Parties agree, such other date as agreed in writing by the Parties;

“**Closing Time**” means 2:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

“Consents and Approvals” means the consents and approvals of all relevant third parties, if any;

“Contracts” means all of the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which 2506039 is a party;

“Court” has the meaning set out in the recitals hereof;

“Encumbrances” means all liens, charges, security interests, pledges, leases, offers to lease, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

“ETA” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

“Excluded Assets” means all assets, undertakings and properties other than the Purchased Assets, which Excluded Assets includes the following:

- (a) any of 2506039’s cash or cash equivalents;
- (b) any of 2506039’s accounts receivable;
- (c) any Contracts;
- (d) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of 2506039 or the Purchased Assets;
- (e) the benefit of any prepaid expenses or deposits with any Person (including, without limitation, the benefit of any prepaid rent), public utility or Governmental Authority; and
- (f) the benefit of any refundable Taxes payable or paid by 2506039 or paid by the Receiver in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of 2506039 or the Receiver to any refund, rebate, or credit of Taxes for the period prior to the Closing Date;

“Excluded Liabilities” has the meaning given in section 3.3 herein;

“Governmental Authority” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof, including, without limitation, any municipality in which the Specified Real Property is located; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative,

policy, regulatory or taxing authority or power, and “**Governmental Authority**” means any one of them;

“**HST**” means harmonized sales tax imposed under Part IX of the ETA;

“**Interim Period**” means the period from and including the date that this Agreement is executed by the Parties to and including the Closing Date;

“**ITA**” means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

“**KSV**” has the meaning set out in the recitals hereof;

“**Mortgage Indebtedness**” means the secured indebtedness owed by 2506039 to the Purchaser as of the Closing Date, which is in excess of \$2,300,000.00 as of October 31, 2022, plus accruing interest and expenses;

“**Notice**” has the meaning given in section 14.3 herein;

“**Parties**” means the Receiver and the Purchaser;

“**Permits**” means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required, if any, by any Governmental Authority in respect of the Purchased Assets;

“**Permitted Encumbrances**” means all those Encumbrances described in **Schedule “C”** hereto;

“**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

“**Priority Payables**” means all amounts owing (including all amounts accrued but not yet payable by 2506039 as of the Closing Date) which rank *pari passu* or in priority to the Mortgage Indebtedness including, without limitation the amounts secured by, or to be secured by, the Receivership Charge and which are allocable to the Specified Real Property;

“**Property**” has the meaning set out in the Receivership Order;

“**Purchase Price**” has the meaning set out in section 4.1 herein;

“**Purchased Assets**” means all the right, title and interest, if any, of the Specified Receivership Respondents in and to the following:

- (a) the Specified Real Property; and
- (b) the Permits, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees;

“**Purchaser**” means 1000086921 Ontario Inc., a corporation duly formed and validly subsisting under the laws of Province of Ontario, or an assignee hereof;

“**Receiver**” has the meaning set out in the recitals hereof;

“**Receivership Charge**” means the charge granted in favour of the Receiver pursuant to the terms of the Receivership Order;

“**Receivership Order**” has the meaning set out in the recitals hereof;

“**Specified Real Property**” means the real property listed on **Schedule “A”** hereto;

“**Specified Property**” has the meaning set out in the recitals hereof;

“**Taxes**” means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“**Third Party**” has the meaning given in section 3.1(3) herein; and

“**Transaction**” means the transaction of purchase and sale contemplated by this Agreement.

ARTICLE 2 SCHEDULES

2.1 Schedules.

The following schedules are incorporated in and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule A	Specified Real Property
Schedule B	Approval and Vesting Order
Schedule C	Permitted Encumbrances

ARTICLE 3 AGREEMENT TO PURCHASE

3.1 Purchase and Sale of Purchased Assets.

- (1) Relying on the representations and warranties herein, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, the Purchased Assets, free and clear of all Encumbrances other than the Permitted Encumbrances.

- (2) Subject to the Closing, the Receiver hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all of its rights, claims and demands whatsoever in the Purchased Assets.
- (3) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies under any Permits or Consents and Approvals (collectively, the “**Assignable Assets**”) that form part of the Purchased Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto or a Governmental Authority (collectively, the “**Third Party**”). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:
 - (a) the Receiver will, at the request, direction and sole cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and on a commercially reasonable best-efforts basis, in applying for and obtaining all consents or approvals required under the Assignable Assets in a form satisfactory to the Receiver and the Purchaser, acting reasonably, and take such actions and do such things as may be reasonably and lawfully designed to attempt to provide the benefits of the Assignable Assets to the Purchaser, including holding those Assignable Assets in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment; and
 - (b) in the event that the Receiver receives funds with respect to those Assignable Assets, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs provided in subsection (a) above.

3.2 Excluded Assets.

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

3.3 Excluded Liabilities.

With the sole exception of the Permitted Encumbrances, the Purchaser is not assuming, and shall not be deemed to have assumed, any liabilities, obligations or commitments of any of the Specified Receivership Respondents, the Receiver or any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Specified Real Property or the Specified Receivership Respondent’s ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the “**Excluded Liabilities**”). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by 2506039 prior to the Closing Date;

- (b) except as otherwise agreed in this Agreement, all Taxes relating to any matters or assets other than the Purchased Assets;
- (c) any liability, obligation or commitment associated with the Accounts Payable or any employees of 2506039;
- (d) except as otherwise agreed in this Agreement, any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (e) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (f) except as otherwise agreed in this Agreement, any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

ARTICLE 4

PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price.

The purchase price for the Purchased Assets shall be One Million Eight Hundred Thousand Dollars (\$1,800,000.00), exclusive of Taxes (the “**Purchase Price**”).

4.2 Satisfaction of Purchase Price.

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Priority Payables shall be satisfied by wire transfer of immediately available funds to the Receiver on Closing; and
- (b) the remainder of the Purchase Price shall be credit bid by the Purchaser on Closing in satisfaction of part of the Mortgage Indebtedness.

4.3 Allocation of Purchase Price.

The Parties, acting reasonably and in good faith, covenant to use best efforts to agree to allocate the Purchase Price amongst the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this section of the Agreement such that each Party shall be free to make its own reasonable allocation.

4.4 Adjustment of Purchase Price.

- (1) The Purchase Price shall be adjusted as of the Closing Time in a manner and amount to be agreed upon by the Parties, acting reasonably, for any property Taxes (including interest thereon), utilities and any other items which are usually adjusted in purchase

transactions involving assets similar to the Purchased Assets in the context of a receivership sale. For greater certainty, and notwithstanding any provision to the contrary in this Agreement, the Purchaser shall be solely responsible for any and all property Taxes that are added to the tax roll on or after the Closing Date, regardless of the period to which such property Taxes apply. The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval by no later than three Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined by three Business Days prior to the Closing Date, then, and only then: (i) an estimate shall be agreed upon by the Parties as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably; and (ii) the Parties shall enter into an agreement on or prior to the Closing Date to readjust the adjustments within 60 days after the Closing Date, which readjustment shall serve as a final determination.

- (2) Other than as provided for in this section 4.4, there shall be no adjustments to the Purchase Price.

ARTICLE 5 TAXES

5.1 Taxes.

The Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and other similar taxes and duties and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least five Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Receiver in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Closing and Closing Procedure.

Closing shall take place at the Closing Time on the Closing Date at the offices of the Receiver's lawyers, Aird & Berlis LLP, located in Toronto, Ontario, or at such other time or at such other place as the Parties may agree in writing.

6.2 Tender.

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party.

6.3 Receiver's Closing Deliverables.

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (1) a copy of the issued Approval and Vesting Order and the attached Receiver's Certificate;
- (2) a statement of adjustments prepared in accordance with section 4.4 hereof;
- (3) an undertaking by the Receiver to readjust the adjustments set out in section 4.4 hereof;
- (4) an assignment and assumption agreement for all Permits and Consents and Approvals pertaining to the Purchased Assets (to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement by the Receiver to hold same in trust for the Purchaser;
- (5) a certificate from the Receiver, dated as of the Closing Date, certifying:
 - (a) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction;
 - (b) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (c) the non-merger specified in section 14.2 and elsewhere herein; and
- (6) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.1 hereof has been fulfilled, performed or waived as of the Closing Time.

6.4 Purchaser's Closing Deliverables.

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (1) the indefeasible payment and satisfaction in full of the Purchase Price according to section 4.2 hereof;
- (2) an undertaking by the Purchaser to readjust the adjustments set out in section 4.4 hereof;
- (3) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.3 hereof has been fulfilled, performed or waived as of the Closing Time;
- (4) an assignment and assumption agreement for all Permits and Consents and Approvals pertaining to the Purchased Assets (to the extent assignable) relating to the period from

and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser;

- (5) a certificate from the Purchaser, dated as of the Closing Date, certifying:
 - (a) that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (b) the non-merger specified in section 14.2 and elsewhere herein;
- (6) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption and indemnification certificates to the Receiver's satisfaction, acting reasonably, with respect to HST in accordance with Article 5 hereof; and
- (7) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably, Applicable Law or any Government Authority.

6.5 Receiver's Certificate.

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in section 7.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all of the conditions contained in section 7.1, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate comprising Schedule "A" of the Approval and Vesting Order, and shall file same with the Court.

ARTICLE 7 CONDITIONS PRECEDENT TO CLOSING

7.1 Conditions in Favour of the Receiver.

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (1) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Purchaser contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (3) the Purchaser shall have complied with all the terms contained in this Agreement applicable to the Purchaser prior to the Closing Date;
- (4) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the

Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and

- (5) the Court shall have issued the Approval and Vesting Order.

7.2 Conditions in Favour of Receiver Not Fulfilled.

If any of the conditions contained in section 7.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion, and without limiting any rights or remedies available to it at law or in equity:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Receiver shall be released from its obligations under this Agreement to complete the Transaction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

7.3 Conditions in Favour of the Purchaser.

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (a) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (c) the Receiver shall have complied with all the terms contained in this Agreement applicable to the Receiver prior to the Closing Date;
- (d) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (e) the Court shall have issued the Approval and Vesting Order.

7.4 Conditions in Favour of Purchaser Not Fulfilled.

If any of the conditions contained in section 7.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion:

- (a) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

ARTICLE 8

REPRESENTATIONS & WARRANTIES OF THE RECEIVER

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (1) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver, subject to the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;
- (2) the Receiver has been duly appointed by the Court, with the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey the Purchased Assets; and
- (3) the Receiver is not a non-resident of Canada for the purposes of the ITA.

ARTICLE 9

REPRESENTATIONS & WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (1) the Purchaser is a corporation duly formed and validly subsisting under the laws of the Province of Ontario;
- (2) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Government Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;

- (3) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (4) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

ARTICLE 10 COVENANTS

10.1 Mutual Covenants.

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 7 hereof.

10.2 Receiver Covenants.

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall take all such reasonable actions as are necessary to provide to the Purchaser all necessary information in respect of the Purchased Assets reasonably required to complete, if necessary, the applicable tax elections in accordance with section 5.1 hereof and to execute all necessary forms related thereto.

10.3 Purchaser Covenants.

The Purchaser hereby covenants and agrees that, from the date hereof until the Closing Date, it shall take all such actions as are necessary to provide to the Receiver all necessary information in respect of the Purchaser reasonably required to complete, if necessary, the applicable tax elections in accordance with section 5.1 hereof and to execute all necessary forms related thereto.

ARTICLE 11 POSSESSION AND ACCESS PRIOR TO CLOSING

11.1 Possession of Purchased Assets.

At the Closing Time, the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in the Approval and Vesting Order have been satisfied or

waived and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in section 7.1 hereof.

11.2 Examination of Title and Access to the Purchased Assets.

- (1) The Purchaser acknowledges and agrees that it shall, at its own cost and expense (regardless of results), examine title to the Purchased Assets, and satisfy itself as to the state thereof, satisfy itself as to outstanding work orders affecting the Purchased Assets, satisfy itself as to the use of the Specified Real Property being in accordance with applicable zoning requirements and satisfy itself that any and all buildings and structures on the Specified Real Property, if any, may be insured to the satisfaction of the Purchaser. The Purchaser further acknowledges that, notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions in regard to any outstanding work orders, deficiency notices or orders to comply issued by any Government Authorities. The Purchaser further acknowledges and agrees that it shall not call upon the Receiver to produce any title deed, abstract of title, survey or other evidence of title that is not within the Receiver's possession or control.
- (2) The Purchaser and its agents and representatives may have reasonable access to the Specified Real Property during normal business hours in the Interim Period for the purpose of enabling the Purchaser, at its sole cost and expense (regardless of results), to conduct such non-destructive, non-invasive inspections of the Specified Real Property as it deems appropriate. The Purchaser agrees that such tests and inspections shall not include any tests or inspections by any Governmental Authority and specifically acknowledges and agrees that it shall not request or, through its actions, prompt or cause any tests or inspections to be made by any Governmental Authority. Such inspection may, if the Receiver so desires, be conducted in the presence of a representative of the Receiver.
- (3) The Purchaser covenants and agrees to repair or pay the costs to repair any damage occasioned during or resulting from the inspection of the Specified Real Property conducted by the Purchaser or its authorized representatives, as outlined above, and to return the Specified Real Property to substantially the condition same was in prior to such inspections. The Purchaser covenants and agrees to indemnify and save the Receiver harmless from and against all losses, costs, claims, third party claims, damages, expenses (including actual legal costs) which the Receiver may suffer as a result of the inspection of the Specified Real Property conducted by the Purchaser or its authorized representatives, as outlined above.

11.3 Risk.

- (1) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.
- (2) If, prior to Closing, the Purchased Assets are substantially physically damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within 15 calendar days

after notification to the Purchaser by the Receiver of the occurrence of such physical damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any physical damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such physical damage or destruction. For the purposes of this section, substantial physical damage or destruction shall be deemed to have occurred if the physical loss or damage to the Purchased Assets exceeds 15% of the total Purchase Price. For greater certainty, physical damage or destruction does not include a change in market value of the Purchased Assets caused by the Covid-19 pandemic or endemic ("**Covid-19**") (such that, for further greater certainty, the Purchaser is not entitled to terminate this Agreement on the grounds of any future developments, whether favourable or unfavourable, in respect of Covid-19).

- (3) If, prior to the Closing Date, all or a material part of the Specified Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Specified Real Property is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Receiver or the Specified Receivership Respondents to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate.

ARTICLE 12 AS IS, WHERE IS

12.1 Condition of the Purchased Assets.

The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an "*as is, where is*" and "*without recourse*" basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor any of the Receivership Respondents has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser has conducted such inspections of the condition and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose,

environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

ARTICLE 13 TERMINATION

13.1 Termination of this Agreement.

This Agreement may (or, in the case of section 13.1(6) below, shall) be validly terminated:

- (1) upon the mutual written agreement of the Parties;
- (2) pursuant to section 7.2 hereof by the Receiver;
- (3) pursuant to section 7.4 hereof by the Purchaser;
- (4) pursuant to section 11.3 hereof;
- (5) by either of the Parties, in writing to the other, if the Approval and Vesting Order is not issued by the Court on or before January 31, 2023; or
- (6) automatically, should Closing have not occurred prior to the discharge of KSV as the Receiver, unless the Receiver's interest in this Agreement has been assigned prior to (or as part of) the Receiver's discharge.

13.2 Termination If No Breach of Agreement.

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then:

- (1) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement; and
- (2) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief.

ARTICLE 14
GENERAL CONTRACT PROVISIONS

14.1 Further Assurances.

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof.

14.2 Survival Following Completion.

Notwithstanding any other provision of this Agreement, section 4.4, article 8, article 9, section 13.2 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of KSV as the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

14.3 Notice.

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a "Notice") shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

- (a) to the Receiver:

KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, ON M5H 1J9

Attention: Bobby Kofman, Mitch Vininsky and Jordan Wong
Email: bkofman@ksvadvisory.com, mvininsky@ksvadvisory.com
and jwong@ksvadvisory.com

and a copy to the Receiver's counsel to:

Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Attention: Ian Aversa, Jeremy Nemers and Tamie Dolny
Email: javersa@airdberlis.com, jnemers@airdberlis.com
and tdolny@airdberlis.com

(b) to the Purchaser:

1000086921 Ontario Inc.
23965 Warden Ave
Keswick, ON L4P 3E9

Attention: Gerald Brouwer
Email: gerrybrouwer@yahoo.ca

and a copy to the Purchaser's counsel to:

Dentons Canada LLP
77 King Street West
Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Attention: Kenneth Kraft
Email: kenneth.kraft@dentons.com

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

14.4 Waiver.

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

14.5 Consent.

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

14.6 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the Court. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes between them, regardless of whether or not such disputes arose under this Agreement.

14.7 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

14.8 Time of the Essence.

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

14.9 Time Periods.

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

14.10 Assignment.

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. Subject to the balance of this Section 14.10 the Purchaser may not assign this Agreement without the Receiver's prior written approval. Up until the granting of the Approval and Vesting Order, the Purchaser shall have the right to direct that title to the Purchased Assets be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) provided that the assignee shall, in writing, agree to assume and be bound by the terms and conditions of this Agreement (the "**Assumption Agreement**") and a copy of such Assumption Agreement is delivered to the Receiver forthwith after having been entered into, in which case the Purchaser shall nonetheless not be released from any and all further obligations and liabilities hereunder.

14.11 Expenses.

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

14.12 Severability.

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

14.13 No Strict Construction.

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

14.14 Cumulative Remedies.

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

14.15 Currency.

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

14.16 Receiver's Capacity.

It is acknowledged by the Purchaser that KSV is entering into this Agreement solely in its capacity as the Receiver and that KSV shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

14.17 Planning Act.

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

14.18 No Third Party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns, nothing in this Agreement shall be construed to create any rights or obligations except amongst the Parties and no other person or entity shall be regarded as a third party beneficiary of this Agreement.

14.19 Number and Gender.

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

14.20 Counterparts.

This Agreement may be executed in counterparts and by facsimile or PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF the Receiver has duly executed this Agreement as of the date first above written.

KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver and manager of the Specified Property, and not in its personal capacity or in any other capacity

Per:



Name: Mitch Vininsky

Title: Managing Director

ACCEPTED by the Purchaser this _____ day of December, 2022

1000086921 Ontario Inc.

Per:

Name: Gerald Brouwer

Authorized Signing Officer

IN WITNESS WHEREOF the Receiver has duly executed this Agreement as of the date first above written.

KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver and manager of the Specified Property, and not in its personal capacity or in any other capacity

Per: _____

Name: Bobby Kofman

Title: Licensed Insolvency Trustee

ACCEPTED by the Purchaser this 7th day of December, 2022

1000086921 Ontario Inc.

Per:  _____

Name: Gerald Brouwer

Authorized Signing Officer

SCHEDULE A
“Specified Real Property”

1. 4951 Aurora Road
Stouffville, ON
PIN: 03691-0193
PT LT 20 CON 7 WHITCHURCH PTS 1, 4, 5 & 6, 65R11071 S/T & T/W R452607 ;
WHITCHURCH-STOUFFVILLE

SCHEDULE B
“Approval and Vesting Order”

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE)	<*>DAY, THE <*>
)	
JUSTICE)	DAY OF JANUARY, 2023

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

- B-2 -

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property listed on Schedule “A” of the Sale Agreement (as defined below) (the “**Specified Real Property**”) and all the other assets, undertakings and properties of 2506039 Ontario Limited (the “**2506039**”), including all the assets held in trust or required to be held in trust by 2506039 or by its lawyers, agents and/or any other person, and all proceeds thereof (together with the Specified Real Property, the “**Specified Property**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and 1000086921 Ontario Inc. (the “**Purchaser**”), as purchaser, dated [REDACTED], 2022 (the “**Sale Agreement**”), a copy of which is attached as Confidential Appendix “[REDACTED]” to the Report of the Receiver dated [REDACTED], 2023 (the “**Report**”), and vesting in the Purchaser the Purchased Assets (as defined in the Sale Agreement), was heard this day by judicial videoconference via Zoom.

ON READING the Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [REDACTED] sworn [REDACTED], 2023, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be

- B-3 -

necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Purchased Assets described in the Sale Agreement, including, without limitation, all of the Specified Receivership Respondents' right, title and interest in and to the Specified Real Property listed on **Schedule "B"** hereto, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, leases, notice of leases, subleases, licences, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Mr. Justice Pattillo made on December 10, 2021; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

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3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Specified Real Property identified in **Schedule “B”** hereto in fee simple, and is hereby directed to delete and expunge from title to the Specified Real Property all of the Claims listed in **Schedule “C”** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of 2506039 and any bankruptcy order issued pursuant to any such applications; and

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- (c) any assignment in bankruptcy made in respect of any of the Receivership Respondents,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 2506039 and shall not be void or voidable by creditors of 2506039, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

8. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.

Schedule "A" – Form of Receiver's Certificate

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

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

RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to an Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on December 10, 2021, KSV Restructuring Inc. ("**KSV**") was appointed as receiver and manager (in such capacity, the "**Receiver**"), without

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security, of the real property listed on Schedule “A” of the Sale Agreement (as defined below) (the “**Specified Real Property**”) and all the other assets, undertakings and properties of 2506039 Ontario Limited (the “**2506039**”), including all the assets held in trust or required to be held in trust by or for any of 2506039, or by its lawyers, agents and/or any other person, and all proceeds thereof (together with the Specified Real Property, the “**Specified Property**”).

II. Pursuant to an Order of the Court dated <*>, 2023, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and 1000086921 Ontario Inc. (the “**Purchaser**”), as purchaser, dated <*>, 2022 (the “**Sale Agreement**”), and provided for the vesting in the Purchaser of the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

III. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;

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3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver and manager of the Specified Property, and not in its personal capacity or in any other capacity

Per: _____

Name: Bobby Kofman

Title: Licensed Insolvency Trustee

Schedule "B" – Legal Description of the Specified Real Property

PIN: 03691-0193 (LT)

PT LT 20 CON 7 WHITCHURCH PTS 1, 4, 5 & 6, 65R11071 S/T & T/W R452607 ;
WHITCHURCH-STOUFFVILLE

Schedule "C" – Instruments to Be Deleted from Title

PIN 03691-0193 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
YR2919563	2019/01/15	Charge	\$1,900,000	341868 Ontario Ltd. Kesbro Inc. 2506039 Ontario Limited Brouwer, Gerald	Hillmount Capital Inc.
YR3056307	2020/01/15	Transfer of Charge		Hillmount Capital Inc.	Hillmount Capital Mortgage Holdings Inc.
YR3205823	2021/02/09	Transfer of Charge		Hillmount Capital Inc.	Hillmount Capital Mortgage Holdings Inc.
YR3205843	2021/02/09	Notice	\$2,125,000	341868 Ontario Ltd. Kesbro Inc. 2506039 Ontario Limited Brouwer, Gerald	Hillmount Capital Mortgage Holdings Inc.
YR3355362	2021/12/14	Application Court Order		Ontario Superior Court of Justice	KSV Restructuring Inc.
YR3371859	2022/01/25	Transfer of Charge		Hillmount Capital Mortgage Holdings Inc.	1000086921 Ontario Inc.
YR3373629	2022/01/28	Construction Lien	\$116,729	Capital Build Construction Management Corp.	
YR3381608	2022/02/15	Certificate		Capital Build Construction Management Corp.	

Schedule “D” – Permitted Encumbrances, Easements and Restrictive Covenants

PIN 03691-0193 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
A35401A	1959/11/20	Bylaw			
65R11071	1987/09/29	Plan Reference			
YR693056	2005/08/30	Notice		Her Majesty the Queen in Right of Canada as represented by the Minister of Transport	
YR2448969	2016/03/29	Transfer	\$2,300,000	Della Mora, Santina	2506039 Ontario Limited

ONTARIO SECURITIES COMMISSION

-and-

GO-TO DEVELOPMENTS HOLDINGS INC., ET AL.

Applicant

Respondents

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

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

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Steven L. Graff (LSO # 31871V)
Tel: (416) 865-7726 / Fax: (416) 863-1515
Email: sgraff@airdberlis.com

Ian Aversa (LSO # 55449N)
Tel: (416) 865-3082 / Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Jeremy Nemers (LSO # 66410Q)
Tel: (416) 865-7724 / Fax: (416) 863-1515
Email: jnemers@airdberlis.com

Lawyers for the Receiver

SCHEDULE C
“Permitted Encumbrances”

PIN 03691-0193 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
A35401A	1959/11/20	Bylaw			
65R11071	1987/09/29	Plan Reference			
YR693056	2005/08/30	Notice		Her Majesty the Queen in Right of Canada as represented by the Minister of Transport	
YR2448969	2016/03/29	Transfer	\$2,300,000	Della Mora, Santana	2506039 Ontario Limited

51393691.2

APPENDIX “F”

Summary Comparing the Purchase Price of the Aurora Real Property to Realtor Estimates of Value
C\$'000s

Purchase Price	1,800
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Realtor Estimates of Value

CBRE Limited	1,750
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TD Securities Inc.	3,000
--------------------	-------

Jones Lang LaSalle Real Estate Services Inc.	3,140
--	-------

Colliers Macaulay Nicolls Inc.	1,419
--------------------------------	-------

Average of Realtor Estimates	2,327
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APPENDIX “G”

Jeremy Nemers

From: Jeremy Nemers
Sent: November 24, 2022 4:33 PM
To: aram.simovonian@scalzilaw.com; Ian Aversa
Cc: 'Gary Caplan'; cscalzi@scalzilaw.com
Subject: RE: Priority Issue re Eagle Valley / Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. - Court File No. CV-21-00673521-00CL

Hi Aram,

What was the intention of the mortgagee? How were the funds supposed to be utilized, and what support do you have for same?

Thanks,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724
 E jnemers@airdberlis.com

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: aram.simovonian@scalzilaw.com <aram.simovonian@scalzilaw.com>
Sent: November 24, 2022 4:31 PM
To: Jeremy Nemers <jnemers@airdberlis.com>; Ian Aversa <iaversa@airdberlis.com>
Cc: 'Gary Caplan' <GCaplan@mcr.law>
Subject: RE: Priority Issue re Eagle Valley / Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. - Court File No. CV-21-00673521-00CL

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Hello, Jeremy:

We have consulted with our client. The intention of the mortgagee was not to fund an improvement. Our client is not in the business of construction lending.

In our respectful view, the provision of the *Construction Act* that you cited does not apply. The funds were fully advanced to the debtor and there was no intention to fund an improvement.

We continue in our position that our client's mortgage has priority over any lien claimant and we should now address how this can be resolved, or litigated.

Thank you,

Aram Simovonian
 Lawyer



20 Caldari Road, Unit #2
 Vaughan, ON L4K 4N8
 E: aram.simovonian@scalzilaw.com
 P: 647.677.8009 (direct)
 F: 416.548.7969

Confidentiality Notice:

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying or storage of this message or its attachments is strictly prohibited.

From: Jeremy Nemers <jnemers@airdberlis.com>

Sent: November 21, 2022 6:06 PM

To: aram.simovonian@scalzilaw.com; Ian Aversa <iaversa@airdberlis.com>

Cc: 'Gary Caplan' <GCaplan@mcr.law>; cscalzi@scalzilaw.com

Subject: RE: Priority Issue re Eagle Valley / Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. - Court File No. CV-21-00673521-00CL

Thanks for your email Aram (and the attachment), which we will consider with our client.

In order for us to consider your email, can you please explain and provide the legal authority for your belief that your clients have priority over any claim for lien? It appears that you are basing your conclusion on the timing of the mortgage advances versus the liens, but section 78(2) of the *Construction Act* (Ontario) states that:

Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvement have priority over that mortgage, **and any mortgage taken out to repay that mortgage**, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, **irrespective of when that mortgage, or the mortgage taken out to repay it, is registered** [emphasis added].

We understand from your clients' term sheet that the purpose of their initial mortgage was to "provide funding for the refinance relating to the [Eagle Valley] Real Property secured by a second (2nd) mortgage," which second mortgage was then held in favour of Murray Maltz Professional Corporation. As both your clients' mortgage and Mr. Maltz's mortgage arose after the property had already been acquired, these mortgages appear to have been intended for improvement purposes and would therefore be caught by the statutory provision referenced above.

To the extent you have any authority explaining why the above-referenced provision would not apply, we would ask that you please provide us with same so that we can provide a meaningful response to your email below.

Thanks,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724

E jnemers@airdberlis.com

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: aram.simovonian@scalzilaw.com <aram.simovonian@scalzilaw.com>

Sent: November 21, 2022 11:29 AM

To: Jeremy Nemers <jnemers@airdberlis.com>; Ian Aversa <iaversa@airdberlis.com>

Cc: 'Gary Caplan' <GCaplan@mcr.law>

Subject: Priority Issue re Eagle Valley / Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. - Court File No. CV-21-00673521-00CL

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Hi, Jeremy:

This communication is further to our virtual meeting of October 19, 2022 and our communications between November 1 and 7, 2022.

We have gone to our client to secure confirmation of the dates of advances under the mortgages. The attached chart and Tabs sets out the information.

Summarizing, it our opinion that all funds advanced pursuant to the mortgages were made prior to any work or services performed by any of the "lien claimants". In our view, our client has priority over any claim for lien.

We now wish to have the issue of priority determined by the Receiver and the Court.

We would appreciate your thoughts on timetabling. On behalf of our clients, we now make demand for the payment of \$916,196.24 which represents the holdback of funds in respect of alleged lien claims.

May we hear from you?

Yours very truly,

Aram Simovonian

Lawyer



20 Caldari Road, Unit #2

Vaughan, ON L4K 4N8

E: aram.simovonian@scalzilaw.com

P: 647.677.8009 (direct)

F: 416.548.7969

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Jeremy Nemers

From: aram.simovonian@scalzilaw.com
Sent: November 28, 2022 2:10 PM
To: Jeremy Nemers; Ian Aversa
Cc: 'Gary Caplan'; cscalzi@scalzilaw.com
Subject: RE: Priority Issue re Eagle Valley / Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. - Court File No. CV-21-00673521-00CL

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Hi, Jeremy:

Apologies – the intention was not to fund any improvement as it is contrary to our client's policy. Even still, a building mortgage registered prior to the time the first lien arose has priority over the lien unless that lien was preserved or perfected at the time of a subsequent advance or unless the mortgagee had received written notice of the lien.

In this case, it is our client's position that the funds were not advanced to fund an improvement and in addition, and in light of the timing of advances, registration, and the time in which the liens arose, our client would still take priority over the lien holders as their mortgage was registered prior to the first lien arising.

Thank you,

Aram Simovonian
 Lawyer



20 Caldari Road, Unit #2
 Vaughan, ON L4K 4N8
 E: aram.simovonian@scalzilaw.com
 P: 647.677.8009 (direct)
 F: 416.548.7969

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From: Jeremy Nemers <jnemers@airdberlis.com>
Sent: November 28, 2022 1:58 PM
To: aram.simovonian@scalzilaw.com; Ian Aversa <iaversa@airdberlis.com>
Cc: 'Gary Caplan' <GCaplan@mcr.law>; cscalzi@scalzilaw.com
Subject: RE: Priority Issue re Eagle Valley / Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. - Court File No. CV-21-00673521-00CL

Hi Aram,

We replied to you, which is reattached for convenience.

We look forward to hearing back from you with your response.

Thanks,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724

E jnemers@airdberlis.com

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 If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: aram.simovonian@scalzilaw.com <aram.simovonian@scalzilaw.com>

Sent: November 28, 2022 1:53 PM

To: Jeremy Nemers <jnemers@airdberlis.com>; Ian Aversa <iaversa@airdberlis.com>

Cc: 'Gary Caplan' <GCaplan@mcr.law>

Subject: RE: Priority Issue re Eagle Valley / Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. - Court File No. CV-21-00673521-00CL

CAUTION -- EXTERNAL E-MAIL -- Do not click links or open attachments unless you recognize the sender.

Hi, Jeremy:

I'm following up on this matter.

May we please hear from you?

Thank you,

Aram Simovonian

Lawyer



20 Caldari Road, Unit #2

Vaughan, ON L4K 4N8

E: aram.simovonian@scalzilaw.com

P: 647.677.8009 (direct)

F: 416.548.7969

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From: aram.simovonian@scalzilaw.com <aram.simovonian@scalzilaw.com>

Sent: November 24, 2022 4:31 PM

To: 'Jeremy Nemers' <jnemers@airdberlis.com>; 'Ian Aversa' <iaversa@airdberlis.com>

Cc: 'Gary Caplan' <GCaplan@mcr.law>

Subject: RE: Priority Issue re Eagle Valley / Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. - Court File No. CV-21-00673521-00CL

Hello, Jeremy:

We have consulted with our client. The intention of the mortgagee was not to fund an improvement. Our client is not in the business of construction lending.

In our respectful view, the provision of the *Construction Act* that you cited does not apply. The funds were fully advanced to the debtor and there was no intention to fund an improvement.

We continue in our position that our client's mortgage has priority over any lien claimant and we should now address how this can be resolved, or litigated.

Thank you,

Aram Simovonian
Lawyer



20 Caldari Road, Unit #2

Vaughan, ON L4K 4N8

E: aram.simovonian@scalzilaw.com

P: 647.677.8009 (direct)

F: 416.548.7969

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From: Jeremy Nemers <jnemers@airdberlis.com>

Sent: November 21, 2022 6:06 PM

To: aram.simovonian@scalzilaw.com; Ian Aversa <iaversa@airdberlis.com>

Cc: 'Gary Caplan' <GCaplan@mcr.law>; cscalzi@scalzilaw.com

Subject: RE: Priority Issue re Eagle Valley / Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. - Court File No. CV-21-00673521-00CL

Thanks for your email Aram (and the attachment), which we will consider with our client.

In order for us to consider your email, can you please explain and provide the legal authority for your belief that your clients have priority over any claim for lien? It appears that you are basing your conclusion on the timing of the mortgage advances versus the liens, but section 78(2) of the *Construction Act* (Ontario) states that:

Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvement have priority over that mortgage, **and any mortgage taken out to repay that mortgage**, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, **irrespective of when that mortgage, or the mortgage taken out to repay it, is registered** [emphasis added].

We understand from your clients' term sheet that the purpose of their initial mortgage was to "provide funding for the refinance relating to the [Eagle Valley] Real Property secured by a second (2nd) mortgage," which second mortgage was then held in favour of Murray Maltz Professional Corporation. As both your clients' mortgage and Mr. Maltz's mortgage arose after

the property had already been acquired, these mortgages appear to have been intended for improvement purposes and would therefore be caught by the statutory provision referenced above.

To the extent you have any authority explaining why the above-referenced provision would not apply, we would ask that you please provide us with same so that we can provide a meaningful response to your email below.

Thanks,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724

E jnemers@airdberlis.com

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From: aram.simovonian@scalzilaw.com <aram.simovonian@scalzilaw.com>

Sent: November 21, 2022 11:29 AM

To: Jeremy Nemers <jnemers@airdberlis.com>; Ian Aversa <iaversa@airdberlis.com>

Cc: 'Gary Caplan' <GCaplan@mcr.law>

Subject: Priority Issue re Eagle Valley / Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. - Court File No. CV-21-00673521-00CL

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Hi, Jeremy:

This communication is further to our virtual meeting of October 19, 2022 and our communications between November 1 and 7, 2022.

We have gone to our client to secure confirmation of the dates of advances under the mortgages. The attached chart and Tabs sets out the information.

Summarizing, it is our opinion that all funds advanced pursuant to the mortgages were made prior to any work or services performed by any of the "lien claimants". In our view, our client has priority over any claim for lien.

We now wish to have the issue of priority determined by the Receiver and the Court.

We would appreciate your thoughts on timetabling. On behalf of our clients, we now make demand for the payment of \$916,196.24 which represents the holdback of funds in respect of alleged lien claims.

May we hear from you?

Yours very truly,

Aram Simovonian
Lawyer



20 Caldari Road, Unit #2

Vaughan, ON L4K 4N8

E: aram.simovonian@scalzilaw.com

P: 647.677.8009 (direct)

F: 416.548.7969

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Jeremy Nemers

From: aram.simovonian@scalzilaw.com
Sent: December 16, 2022 11:11 AM
To: Jeremy Nemers
Cc: GCaplan@mcr.law; Ian Aversa; Danielle Muise
Subject: RE: Eagle Valley Priority Recommendations

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Hi, Jeremy:

We had a difficult conversation with our client this morning.

In the end of it, we have instruction to accept the Receiver's below proposal on the condition that all lien claimant's agree.

Could I please ask you to provide us with the precise sums that will be distributed? Perhaps this may be forthcoming in the Receiver's report of January 2023.

Thank you kindly,

Aram Simovonian

Lawyer



20 Caldari Road, Unit #2

Vaughan, ON L4K 4N8

E: aram.simovonian@scalzilaw.com

P: 647.677.8009 (direct)

F: 416.548.7969

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From: Jeremy Nemers <jnemers@airdberlis.com>

Sent: December 15, 2022 8:00 AM

To: Aram Simovonian <aram.simovonian@scalzilaw.com>

Cc: cscalzi@scalzilaw.com; GCaplan@mcr.law; Ian Aversa <iaversa@airdberlis.com>; Danielle Muise <dmuise@airdberlis.com>

Subject: Eagle Valley Priority Recommendations

Hi Aram,

As you know, the Receiver is currently holding the Eagle Valley Construction Lien Holdback of \$916,196.24 pursuant to Her Honour's Order dated August 22, 2022.

We understand from your previous emails that your clients wish to have the priority entitlement to these funds determined by the Receiver or the Court, and that your clients believe they are entitled to the totality of the Eagle Valley Construction Lien Holdback on the basis of the timing of your clients' mortgage advances.

We have highlighted for you section 78(2) of the *Construction Act* (Ontario), which removes the timing of mortgage advances from the analysis when the mortgagee's intention was to secure the financing of an improvement (as understood broadly under the Act). You have advised us that your clients did not intend to fund an improvement, but have not advised how the funds were intended to be used.

Given that the property was vacant land that had already been purchased, and given that development of such land was the sole business of the applicable Receivership Respondents, it appears to the Receiver (absent additional information) that there was no other use of the funds other than for the purpose of funding improvements.

That being said, the Receiver also intends to recommend to the Court that, of the Eagle Valley Construction Lien Holdback of \$916,196.24, the construction lien claimants should only be entitled to a priority over your clients' mortgage in the approximate aggregate amount of between \$72,000 and \$100,000, broken down as follows:

- HC Matcon - \$25,901.58 (being slightly less than 10% of the \$270,772 associated with this stakeholder in the Receiver's Fifth Report);
- HK United - \$43,194.07 (being 10% of the \$431,940.65 associated with this stakeholder in the Receiver's Fifth Report); and
- Soil-Mat - between \$3,024.43 and \$30,244.34 (being the range of 10% to 100% of the \$30,244.34 associated with this stakeholder in the Receiver's Fifth Report).

(The range for Soil-Mat is because of an ambiguity in its materials regarding whether its agreement was with the owner directly or with the construction manager, which the Receiver is investigating, and if the latter, because the value of the improvements provided by the construction manager exceeded \$302,443, entitling Soil-Mat to the higher amount.)

Please let us know if you have any questions regarding the above and/or wish to discuss. Absent any new relevant information coming to the Receiver's attention in the next few days, the Receiver intends to advise the three lien claimants of the Receiver's above priority recommendations, and that it intends to recommend a distribution to your clients net of a holdback of \$99,339.99 (being the sum of the above priority amounts for HC Matcon, HK United and the high-end of Soil-Mat), which holdback amount would then either be distributed pursuant to a consensual resolution amongst the parties or pursuant to an Order of the Court.

Thanks,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724

E jnemers@airdberlis.com

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Jeremy Nemers

From: Jeremy Nemers
Sent: December 19, 2022 12:23 PM
To: Anthony J. Gabriele; Varoujan Arman; schmuckd@simpsonwiggles.com
Cc: Ian Aversa; cscalzi@scalzila.com; Aram Simovonian; gcaplan@mcr.law
Subject: Eagle Valley Construction Lien Holdback

Counsel,

We are writing to you in your respective capacities as counsel for HC Matcon, HK United and Soil-Mat, in the receivership proceedings of Go-To Developments Holdings Inc., et al. As you know, we are counsel to KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager in these proceedings (in such capacity, the "Receiver").

As you know, the Receiver is currently holding the Eagle Valley Construction Lien Holdback of \$916,196.24 pursuant to Her Honour's Order dated August 22, 2022.

We are writing to advise you that the Receiver has reviewed your respective clients' lien claims, and, based on the information presently available to the Receiver, intends to recommend to the Court that your clients receive the following funds from the Eagle Valley Construction Lien Holdback in priority to Imperio (being the second mortgagee that was registered on title to the Eagle Valley Real Property immediately prior to its Court-approved sale):

- HC Matcon - \$25,901.58 (being the totality of the priority amount claimed by this stakeholder);
- HK United - \$43,194.07 (being 10% of the \$431,940.65 associated with this stakeholder in the Receiver's Fifth Report); and
- Soil-Mat - between \$3,024.43 and \$30,244.34 (being the range of 10% to 100% of the \$30,244.34 associated with this stakeholder in the Receiver's Fifth Report). The range for Soil-Mat is because of an ambiguity at paragraph 7 of its statement of claim regarding whether its agreement was with the owner directly or with the construction manager. If the agreement were with the construction manager, and because the value of the improvements provided by the construction manager exceeded \$302,443, this would entitle Soil-Mat to \$30,244.34. Soil-Mat should provide any documentary support to the Receiver for the proposition that Soil-Mat contracted with the construction manager instead of directly with the owner. If the Receiver is satisfied with this support, the Receiver will accept Soil Mat's priority claim at the higher amount. If it is not, the Receiver will accept Soil Mat's priority claim at the lower amount.

The Receiver also intends to recommend to the Court that the balance of the Eagle Valley Construction Lien Holdback (i.e., after deducting the aforementioned amounts) be distributed to Imperio.

The Receiver understands that Imperio believes it is entitled to the totality of the Eagle Valley Construction Lien Holdback. Nonetheless, the Receiver also understands from Imperio's counsel that Imperio will accept the above recommendations of the Receiver, but only if HC Matcon, HK United and Soil-Mat also agree.

Please let us know if you have any questions regarding the above and/or wish to discuss. We would ask that Soil-Mat's counsel please provide any documentary support for the proposition that Soil-Mat contracted with the construction manager instead of directly with the owner. Absent any new relevant information coming to the Receiver's attention in the next few days, the Receiver intends to bring a motion to Court in the new year to recommend the aforementioned distributions (including the treatment of Soil-Mat's claim as stated above).

Thanks,

Jeremy Nemers

T 416.865.7724

F 416.863.1515
E jnemers@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com



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Jeremy Nemers

From: Jeremy Nemers
Sent: December 19, 2022 4:35 PM
To: schmuckd@simpsonwagle.com
Subject: RE: Eagle Valley Construction Lien Holdback
Attachments: Eagle Valley - Soil Mat(49264066.1).pdf

As discussed.

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724
 E jnemers@airdberlis.com

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From: Derek A. Schmuck <SchmuckD@simpsonwagle.com>
Sent: December 19, 2022 4:29 PM
To: Jeremy Nemers <jnemers@airdberlis.com>
Subject: RE: Eagle Valley Construction Lien Holdback

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Jeremy

I don't know where the alleged confusion comes from regarding Soil Mat's claim.
 Para 7 of the SOC states Capital hired Soil Mat. So did the claim for lien.
 So did Para 1(m) of the SOC.
 Please call to discuss.

Derek A. Schmuck
Partner



SimpsonWigle
 LAW

Phone: 905-528-8411 ext 353
 Fax: 905-528-9008
 Direct line: 905-777-2394
 E-mail: Schmuckd@simpsonwagle.com
 Website: <http://www.simpsonwagle.com>

From: Jeremy Nemers <jnemers@airdberlis.com>
Sent: December 19, 2022 12:23 PM
To: Anthony J. Gabriele <gabriele@paveylaw.com>; Varoujan Arman <varman@blaney.com>; Derek A. Schmuck <SchmuckD@simpsonwagle.com>

Cc: Ian Aversa <iaversa@airdberlis.com>; cscalzi@scalzilaw.com; Aram Simovonian <aram.simovonian@scalzilaw.com>; gcaplan@mcr.law

Subject: Eagle Valley Construction Lien Holdback

Counsel,

We are writing to you in your respective capacities as counsel for HC Matcon, HK United and Soil-Mat, in the receivership proceedings of Go-To Developments Holdings Inc., et al. As you know, we are counsel to KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager in these proceedings (in such capacity, the "Receiver").

As you know, the Receiver is currently holding the Eagle Valley Construction Lien Holdback of \$916,196.24 pursuant to Her Honour's Order dated August 22, 2022.

We are writing to advise you that the Receiver has reviewed your respective clients' lien claims, and, based on the information presently available to the Receiver, intends to recommend to the Court that your clients receive the following funds from the Eagle Valley Construction Lien Holdback in priority to Imperio (being the second mortgagee that was registered on title to the Eagle Valley Real Property immediately prior to its Court-approved sale):

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- HK United - \$43,194.07 (being 10% of the \$431,940.65 associated with this stakeholder in the Receiver's Fifth Report); and
- Soil-Mat - between \$3,024.43 and \$30,244.34 (being the range of 10% to 100% of the \$30,244.34 associated with this stakeholder in the Receiver's Fifth Report). The range for Soil-Mat is because of an ambiguity at paragraph 7 of its statement of claim regarding whether its agreement was with the owner directly or with the construction manager. If the agreement were with the construction manager, and because the value of the improvements provided by the construction manager exceeded \$302,443, this would entitle Soil-Mat to \$30,244.34. Soil-Mat should provide any documentary support to the Receiver for the proposition that Soil-Mat contracted with the construction manager instead of directly with the owner. If the Receiver is satisfied with this support, the Receiver will accept Soil Mat's priority claim at the higher amount. If it is not, the Receiver will accept Soil Mat's priority claim at the lower amount.

The Receiver also intends to recommend to the Court that the balance of the Eagle Valley Construction Lien Holdback (i.e., after deducting the aforementioned amounts) be distributed to Imperio.

The Receiver understands that Imperio believes it is entitled to the totality of the Eagle Valley Construction Lien Holdback. Nonetheless, the Receiver also understands from Imperio's counsel that Imperio will accept the above recommendations of the Receiver, but only if HC Matcon, HK United and Soil-Mat also agree.

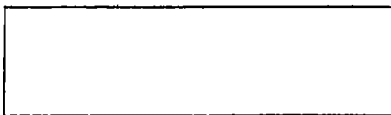
Please let us know if you have any questions regarding the above and/or wish to discuss. We would ask that Soil-Mat's counsel please provide any documentary support for the proposition that Soil-Mat contracted with the construction manager instead of directly with the owner. Absent any new relevant information coming to the Receiver's attention in the next few days, the Receiver intends to bring a motion to Court in the new year to recommend the aforementioned distributions (including the treatment of Soil-Mat's claim as stated above).

Thanks,

Jeremy Nemers

T 416.865.7724
F 416.863.1515
E jnemers@airdberlis.com

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Toronto, Canada M5J 2T9 | airdberlis.com



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SimpsonWigle
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Tel: 905-528-8411 Fax: 905-528-9008
www.simpsonwigle.com

D.A. Schmuck
Tel: 905-528-8411 Ext. 353
E-mail: schmuckd@simpsonwigle.com

May 4, 2022

SENT BY REGULAR MAIL & EMAIL TO (jwong@ksvadvisory.com)

KSV Restructuring Inc.
150 King Street West
Suite 2308
Toronto, ON M5H 1J9

Attention: Mr. Jordan Wong

Dear Mr. Wong:

Re: Soil-Mat Engineers & Consultants Ltd. and Go-To Niagara Falls

Please find enclosed the Proof of Claim of Soil-Mat Engineers & Consultants Ltd.

Yours very truly,

SimpsonWigle LAW LLP

Derek A. Schmuck

DAS/ss
Enclosures

P.D. MILNE (RETIRED)
J.M. WIGLE
R.A. FISHER*
E. SAVAS**
A.M. STONE
K.R. MITCHELL

L.W. MATTHEWS (RETIRED)
T. BULLOCK
P.A. RAMACIERI**
G. LIMBERIS*
C.L. DILTS
S.A. REGO

J.N. ROSENBLATT
D.A. SCHMUCK**
B.C. LANGLOTZ
C.D. NEIL
B.Z. MIRZA
D.T. HALL

J.C. BROWN
J.C. MONACO*
C.A. OLSIAK
G. NALSOK
D.R. LILKO
S. SALJOOKI

D.J.H. JACKSON
B.J. FOREMAN
S.R. LEE*
M. DURDAN
R.M. WALLIK
R. TAYLOR

H.J. CHARLEBOIS**
K.I. OSBORNE
H.A. HAMDANI*
B. SARSH*
E.J. HARRINGTON

*Professional Corporation ** Member of the Ontario and New York Bar * Certified Specialist in Construction law ** Counsel
Burlington Office: 1006 Skyview Drive, Suite 103, Burlington, Ontario L7P 0V1 Tel: 905-639-1052 Fax: 905-528-9008

**PROOF OF CLAIM, PURSUANT TO THE CLAIMS PROCEDURE ORDER MADE
APRIL 7, 2022, AGAINST:**

GO-TO DEVELOPMENTS HOLDINGS INC.
("GO-TO HOLDINGS CO.");

FURTADO HOLDINGS INC.
("FURTADO HOLDINGS CO.");

GO-TO DEVELOPMENTS ACQUISITIONS INC.
("GO-TO ACQUISITIONS CO.");

GO-TO GLENDALE AVENUE INC.
("GO-TO GLENDALE CO.");

GO-TO GLENDALE AVENUE LP
("GO-TO GLENDALE LP");

GO-TO MAJOR MACKENZIE SOUTH BLOCK INC.
("GO-TO MAJOR MACKENZIE I CO.");

GO-TO MAJOR MACKENZIE SOUTH BLOCK LP
("GO-TO MAJOR MACKENZIE I LP");

GO-TO MAJOR MACKENZIE SOUTH BLOCK II INC.
("GO-TO MAJOR MACKENZIE II CO.");

GO-TO MAJOR MACKENZIE SOUTH BLOCK II LP
("GO-TO MAJOR MACKENZIE II LP");

GO-TO NIAGARA FALLS CHIPPAWA INC.
("GO-TO CHIPPAWA CO.");

GO-TO NIAGARA FALLS CHIPPAWA LP
("GO-TO CHIPPAWA LP");

GO-TO NIAGARA FALLS EAGLE VALLEY INC.
("GO-TO EAGLE VALLEY CO.");

GO-TO NIAGARA FALLS EAGLE VALLEY LP
("GO-TO EAGLE VALLEY LP");

GO-TO SPADINA ADELAIDE SQUARE INC.
("GO-TO ADELAIDE CO.");

GO-TO SPADINA ADELAIDE SQUARE LP
 ("GO-TO ADELAIDE LP");

GO-TO STONEY CREEK ELFRIDA INC.
 ("GO-TO STONEY CREEK CO.");

GO-TO STONEY CREEK ELFRIDA LP
 ("GO-TO STONEY CREEK LP");

GO-TO ST. CATHARINES BEARD INC.
 ("GO-TO ST. CATHARINES CO.");

GO-TO ST. CATHARINES BEARD LP
 ("GO-TO ST. CATHARINES LP");

GO-TO VAUGHAN ISLINGTON AVENUE INC.
 ("GO-TO VAUGHAN CO.");

GO-TO VAUGHAN ISLINGTON AVENUE LP
 ("GO-TO VAUGHAN LP");

AURORA ROAD LIMITED PARTNERSHIP
 ("AURORA CO."); and

2506039 ONTARIO LIMITED
 ("250 CO.", and collectively, the "Receivership Respondents")

A. PARTICULARS OF CLAIMANT:

1. Full Legal Name of Claimant: Soil-Mat Engineers & Consultants Ltd.
2. Full Mailing Address of the Claimant (the original Claimant and not the Assignee):
130 Lancing Drive, Hamilton, ON L8W 3A1
3. Telephone number: 905-318-7440
4. E-mail address: ishaw@soil-mat.ca
5. Facsimile number: _____
6. Attention (Contact Person): Ian Shaw

7. Has the Claim been sold or assigned by the Claimant to another party [check (✓) one]?

Yes: _____ No: X

B. PARTICULARS OF ASSIGNEE(S) (IF ANSWER TO QUESTION 7 IS YES):

8. Full Legal Name of Assignee(s): _____

(If Claim has been assigned, insert full legal name of assignee(s) of Claim (if all or a portion of the Claim has been sold). If there is more than one assignee, please attach a separate sheet with the require information)

9. Full Mailing Address of Assignee(s):

10. Telephone number of Assignee(s): _____

11. E-mail address: _____

12. Facsimile number: _____

13. Attention (Contact Person): _____

C. PROOF OF CLAIM:

I, Derek A. Schmuck

 [name of Claimant or Representative of the Claimant],
 of City of Hamilton, Ontario do hereby certify that:

 [City and Province]

- (a) I [check (✓) one]

☐ am the Claimant; OR

☒ am the lawyer (state position or title) of the Claimant;

- (b) I have knowledge of all the circumstances connected with the Claim referred to below;

- (c) the Claimant has a Claim against one of the Receivership Respondents as follows
(please note that the Receiver is not appointed over, and the Claims Procedure
 therefore does not apply to claims against, Oscar Furtado):

- (i) TYPE OF CLAIM [check (✓) and complete one]

☒ Creditor Claim, in the amount of CDN\$ 30,244.34

(Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada noon spot rate as at December 10, 2021. The Canadian Dollar/U.S. Dollar rate of exchange on that date was CDN\$1.2714/US\$1.00).

☐ Investor Claim in respect of which an Acknowledgment of Investor Claim was not received by the Claimant, in the principal investment amount of CDN\$ _____

(Claims in a foreign currency are to be converted to Canadian Dollars at the Bank of Canada noon spot rate as at December 10, 2021. The Canadian Dollar/U.S. Dollar rate of exchange on that date was CDN\$1.2714/US\$1.00).

- (ii) CLAIM IS AGAINST THE FOLLOWING ENTITY [check (✓) one]

- ☐ Go-To Holdings Co.;
- ☐ Furtado Holdings Co.;
- ☐ Go-To Acquisitions Co.;
- ☐ Go-To Glendale Co.;
- ☐ Go-To Glendale LP;
- ☐ Go-To Major Mackenzie I Co.;
- ☐ Go-To Major Mackenzie I LP;
- ☐ Go-To Major Mackenzie II Co.;
- ☐ Go-To Major Mackenzie II LP;
- ☐ Go-To Chippawa Co.;
- ☐ Go-To Chippawa LP;
- ☒ Go-To Eagle Valley Co.;
- ☒ Go-To Eagle Valley LP;
- ☐ Go-To Adelaide Co.;
- ☐ Go-To Adelaide LP;
- ☐ Go-To Stoney Creek Co.;
- x Go-To Niagara Falls Eagle Valley Inc.;
- x Go-To Niagara Falls Eagle Valley LP;

- ☐ Go-To Stoney Creek LP;
- ☐ Go-To St. Catharines Co.;
- ☐ Go-To St. Catharines LP;
- ☐ Go-To Vaughan Co.;
- ☐ Go-To Vaughan LP;
- ☐ Aurora Co.; OR
- ☐ 250 Co.

(iii) IF THE CLAIM IS A **CREDITOR CLAIM ONLY**, ITS NATURE IS

[check (✓) one and complete appropriate category]

☒ A secured claim of \$ 30,244.34 (please state principal amount only – the Receiver will calculate any interest owing).

That in respect of this secured debt, I hold security valued at \$ 30,244.34 particulars of which are as follows: via a perfected Construction Lien.

(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security, and attach a copy of the security documents.)

☐ An unsecured claim of \$ _____ (please state principal amount only).

That in respect of this unsecured debt, I do not hold any security and [check (✓) appropriate description]

☐ Regarding the amount of \$ _____, I do not claim a right to a priority.

☐ Regarding the amount of \$ _____, I claim a right to a priority under section 136 of the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”) or would claim such a priority if this Proof of Claim were being filed in accordance with the BIA.

(Set out on an attached sheet details to support priority claim.)

D. PARTICULARS OF CLAIM:

Other than as already set out herein the particulars of the undersigned’s total Claim are attached.

(Provide all particulars of the Claim and supporting documentation, including amount, description of transaction(s) or agreement(s) giving rise to the Claim, name of any guarantor which has guaranteed the Claim, and amount of invoices, particulars of all credits, discounts, etc. claimed, description of the security, if any, granted by the Receivership Respondents to the Claimant and estimated value of such security, and particulars of any interim period claim.)

* See attached Statement of Claim

This Proof of Claim must be received by the Receiver by no later than 5:00 p.m. (Toronto time) on June 2, 2022 ("Claims Bar Date"), by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission at the following address:

KSV Restructuring Inc.
 in its capacity as the Court-appointed Receiver of the "Go-To" Receivership
 Respondents
 150 King Street West, Suite 2308
 Toronto, ON M5H 1J9

Attention: Jordan Wong
 E-mail: jwong@ksvadvisory.com

E. FILING OF CLAIM:

Failure to file your Proof of Claim as directed by the Claims Bar Date will result in your Claim being barred and in you being prevented from making or enforcing such Claim against the Receivership Respondents. In addition, you shall not be entitled to any further notice in, and shall not be entitled to participate in these proceedings, except to the extent that such notice or participation is based exclusively on Investor Information or an Excluded Claim (as both terms are defined in the Claims Procedure Order).

F. ACKNOWLEDGED CLAIM:

If your Claim has already been acknowledged by an Acknowledgment of Investor Claim delivered to you by the Receiver, you do not need to file a Proof of Claim. If you disagree with any information in that Acknowledgment of Investor Claim, then you should file a Request for Amendment.

G. EXCLUDED CLAIMS

Claims secured by the Receiver's Charge (as defined in the Appointment Order made in these proceedings on December 10, 2021 (the "**Appointment Order**")) and claims secured by the Receiver's Borrowings Charge (as defined in the Appointment Order) are all Excluded Claims and no person needs to file any claim in respect thereof at this time. **Please note that the Receiver is not appointed over, and the Claims Procedure therefore does not apply to claims against, Oscar Furtado.**

Dated at Hamilton this 2 day of May, 2022.

 Signature of Claimant



Electronically filed / Déposé par voie électronique : 01-Mar-2022
Welland Superior Court of Justice / Cour supérieure de Justice

Court File No./N° du dossier du greffe: CV-22-00013857-0000

Amended this 1st day of March, 2022

pursuant to rule 26.02(a)

SCHEDULE "A"

Aline Beaulieu

Digitally signed by Aline Beaulieu
DN: c=ca, st=on, o=Government of Ontario,
ou=People, serialNumber=DSAF373270,
cn=Aline Beaulieu
Date: 2022.03.01 14:11:28 -05'00'

Registrar

Court File No. CV-22-00013857-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the Construction Act, R.S.O. 1990, c. C.30

B E T W E E N:

(Court Seal)

SOIL-MAT ENGINEERS & CONSULTANTS LTD.

Plaintiff

and

**CAPITAL BUILD CONSTRUCTION MANAGEMENT CORP.,
GO-TO NIAGARA FALLS EAGLE VALLEY INC.
and GO-TO NIAGARA FALLS EAGLE VALLEY LP**

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

-2-

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,500.00 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

Date February 7, 2022 Issued by _____
Local Registrar

Address of 102 East Main Street
court office: Welland, Ontario
L3B 3W6

TO: **Capital Build Construction Management Corp.**
280 Applewood Crescent
Concord, Ontario
L4K 4B4

AND TO: **Go-To Niagara Falls Eagle Valley Inc.**
and Go-To Niagara Falls Eagle Valley LP
c/o Aird & Berlis
Attn: Tamie Dolny (tdolny@airdberlis.com)
Brookefield Place
181 Bay Street, Suite 1800
Toronto, Ontario
M5J 2T9

-3-

CLAIM

1. The Plaintiff claims:

- (a) payment of the sum of \$30,244.34;
 - (i) being the balance due under the contract, as damages for breach of contract or, in the alternative;
 - (ii) as restitution to the Plaintiff for the reasonable value of work and services supplied by the Plaintiff to the Defendants for which they have had the benefit, to the detriment of the Plaintiff, on the basis of *quantum meruit*, implied contract or restitution;
- (b) prejudgment interest on the sums awarded in accordance with the agreement between the Plaintiff and the Defendants, Go-To Niagara Falls Eagle Valley Inc and Go-To Niagara Falls Eagle Valley LP, at the rate of 24% per annum;
- (c) in the alternative, prejudgment interest on all sums awarded, pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, chapter C. 43, as amended;
- (d) post judgment interest on the said sum in accordance with the agreement between the Plaintiff and the Defendant, Go-To Niagara Falls Eagle Valley Inc and Go-To Niagara Falls Eagle Valley LP, at the rate of 24% per annum;

-4-

- (e) in the alternative, post judgment interest on all sums awarded pursuant to the provisions of the *Courts of Justice Act*;
- (f) a declaration that the Plaintiff is entitled to a lien upon the interest of the statutory owners for the price of the services and materials supplied by the Plaintiff;
- (g) a declaration that the Defendants were at all material times owners of the lands and premises hereinafter set out in accordance with Section 1 of the *Construction Act* insofar as they each had an interest in subject lands hereinafter described as registered owner and contractor respectively and upon whose credit, or upon whose behalf or with whose privity or consent, or for whose benefit the improvement to the subject premises was made with the Plaintiff's work and services at the expense of and to the detriment of the Plaintiff;
- (h) its costs of this action on a substantial indemnity basis, including H.S.T.;
- (i) in default of payment, an order that the estate and interest of the Defendants in the lands and premises referred to in **Schedule "A"** attached hereto (the "**lands**") be sold and that the proceeds be applied toward payment of the Plaintiff's claims in accordance with the provisions of the *Construction Act*;
- (j) an Order consolidating this action with all other actions brought to perfect a construction lien arising from the subject improvement;

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- (k) that all accounts be taken, all inquiries be made, all directions be given and all other things necessary to dispose of the action be done;
- (l) such further and other relief as this Honourable Court consider just and proper; and
- (m) by way of personal judgment against the Defendants, Go-To Niagara Falls Eagle Valley Inc and Go-To Niagara Falls Eagle Valley LP:
 - (i) payment of the sum of \$30,244.34;
 - (ii) prejudgment interest on the said sum in accordance with the agreement between the Plaintiff and the said Defendant;
 - (iii) in the alternative, prejudgment interest on the said sum pursuant to the provisions of the *Courts of Justice Act*;
 - (iv) post judgment interest on the said sum in accordance with the agreement between the Plaintiff and the said Defendant;
 - (v) in the alternative, post judgment interest on the said sum pursuant to the provisions of the *Courts of Justice Act*;
 - (vi) its costs of this action on a substantial indemnity basis including H.S.T.; and
 - (vii) such further and other relief as this Honourable Court considers just and proper.

-6-

2. The Plaintiff, Soil-Mat Engineers & Consultants Ltd. ("**Soil-Mat**") is a corporation incorporated pursuant to the laws of the Province of Ontario.

3. The Defendant, Capital Build Construction Management Corp. ("**Capital**") is a corporation incorporated pursuant to the laws of the Province of Ontario.

4. The Defendants, Go-To Niagara Falls Eagle Valley Inc. and Go-To Niagara Falls Eagle Valley LP (collectively "**Go-To Niagara**"), were, at all material times, the registered owners of the lands and an "owner" within the meaning of the *Act*. Pursuant to an Order dated December 10, 2021, KSV Restructuring Inc. ("**KSV**") was appointed as receiver and manager of, inter alia, the assets and properties of Go-To Niagara, including the subject lands.

5. The construction project at the lands was an improvement as defined by the *Construction Act* ("**Act**"). The project was known as the Claret Condominiums Project.

6. Go-To Niagara hired Capital to act as a general contractor for the improvement.

7. Go-To Niagara or Capital Build hired Soil-Mat to supply geotechnical investigations, testing and consultations as well as construction quality control, material testing for earthworks and foundation construction along with related services and materials to the lands.

8. The Plaintiff was hired to provide miscellaneous services as requested from time to time. The total value of the services provided to date is \$30,244.34, including H.S.T.

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9. A term of the agreement was that invoices would be rendered periodically and paid within 30 days, failing which interest would accrue at 24% per annum.

10. No Defendant has paid Soil-Mat for its services rendered and, therefore, \$30,244.34 is owing to Soil-Mat.

11. In the alternative, to the extent that Soil-Mat supplied its work and services for use on the property and to enhance the interest of the owners in the property, the reasonable value of its work and services is \$30,244.34 including H.S.T., which was supplied to enhance the interest of the owners in the subject property.

12. Soil-Mat claims in the alternative on the basis of *quantum meruit*, implied contract or unjust enrichment.

13. By reason of the supply of services and materials as aforesaid, Soil-Mat is entitled to a lien upon the interest of the Defendants in the lands for the balance owing together with interest and the costs of this action.

14. On or about the 25th day of January, 2022, Soil-Mat caused to be registered a Construction Lien, in the proper Land Registry Office as Instrument No. SN710239. A true copy of the Construction Lien is attached hereto as **Schedule "A"**.

15. By registering the aforesaid lien, Soil-Mat properly preserved the claim for lien.

16. The Defendants, Go-To Niagara, were at all material times:

(a) Registered or beneficial owners of the property as defined in the Act;

-8-

- (b) A person having interest in the property; and
- (c) At whose request and upon whose credit or on whose behalf or with whose privity or consent or for whose direct benefit, the improvement was made.

17. Soil-Mat alleges that the Defendants were each a "payer" within the meaning of the Act and, therefore, obligated to retain a holdback equal to the price of all services or materials as they were supplied to the improvement, until all liens that may be claimed against the holdback had expired or were satisfied, discharged or vacated.

18. The Defendants failed to do so. As a result, Soil-Mat has not been paid the amount owing to it.

19. The Defendants also failed to retain the finishing holdback and the notice holdback in amounts sufficient to satisfy the liens, as a result, Soil-Mat has suffered damages.

20. Soil-Mat further states that the statutory liability of the Defendants as owners and payers under the Act is equal to or exceeds the sum of \$30,244.34 together with interest thereon pursuant to the provisions of the Act and, in particular, sections 23 and 44 thereof.

February 7, 2022

SimpsonWigle LAW LLP
1 Hunter Street East, Suite 200
Hamilton, Ontario L8N 3W1

Derek A. Schmuck (LSO# 24551U)
Email: SchmuckD@simpsonwigle.com
Cameron D. Neil (LSO# 49383O)
Email: NeilC@simpsonwigle.com
Tel: 905-528-8411
Fax: 905-528-9008

Lawyers for the Plaintiff

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

yyyy mm dd Page 1 of 1

Properties

PIN 64289 - 0559 LT

Description PT TWP LT 16 STAMFORD; PT TWP LT 24 STAMFORD; PT TWP LT 25 STAMFORD; PT RDAL BTN TWP LT 24 & 25 STAMFORD; PT RDAL BTN TWP LT 16 & 25 STAMFORD; BEING PTS 2,3,4,5,7,8,9 & 10 59R14717; TOGETHER WITH AN EASEMENT AS IN R0756108; SUBJECT TO AN EASEMENT OVER PTS 7, 8, 9 & 10 59R14717 IN FAVOUR OF PT 1 59R14717 AS IN SN370529; SUBJECT TO AN EASEMENT OVER PTS 2, 7, 4 & 9 59R14717 IN FAVOUR OF PT 1 59R14717 AS IN SN370529; TOGETHER WITH AN EASEMENT OVER PT TWP LT 24 STAMFORD BEING PT 1 ON 59R15044 AS IN SN402290; CITY OF NIAGARA FALLS

Address NIAGARA FALLS

Consideration

Consideration \$30,244.34

Claimant(s)

Name SOIL-MAT ENGINEERS & CONSULTANTS LTD.

Address for Service c/o Derek A. Schmuck
SimpsonWigle LAW LLP
1 Hunter Street East, Suite 200
Hamilton, Ontario L8N 3W1

I, Ian Shaw, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

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

Statements

Name and Address of Owner See Schedule. Name and address of person to whom lien claimant supplied services or materials CAPITAL BUILD CONSTRUCTION MANAGEMENT CORP., 280 Applewood Crescent, Concord, Ontario, L4K 4B4. Time within which services or materials were supplied from 2021/02/17 to 2021/12/10 Short description of services or materials that have been supplied Geotechnical investigation, testing and consultation as well as construction quality control and materials testing for earthworks and foundation construction. Contract price or subcontract price \$30,244.34 (including H.S.T.) Amount claimed as owing in respect of services or materials that have been supplied \$30,244.34 (including H.S.T.)

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: Names and Addresses of Owners: GO-TO NIAGARA FALLS EAGLE VALLEY INC., 1267 Cornwall Road, Unit 201, Oakville, Ontario, L6J 7T5 and GO-TO NIAGARA FALLS EAGLE VALLEY LP, 1267 Cornwall Road, Unit 301, Oakville, Ontario, L6J 7T5.

Signed By

Nicole Margaret Dean	1 Hunter St. E., Suite 200 Hamilton L8N 3W1	acting for Applicant(s)	Signed	2022 01 25
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Tel 905-528-8411

Fax 905-528-9008

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

Submitted By

SIMPSON WIGLE LAW LLP	1 Hunter St. E., Suite 200 Hamilton L8N 3W1	2022 01 25
-----------------------	---	------------

Tel 905-528-8411

Fax 905-528-9008

Fees/Taxes/Payment

Statutory Registration Fee	\$66.30
Total Paid	\$66.30

File Number

Claimant Client File Number : MAT81801 DAS/ND

SOIL-MAT ENGINEERS & CONSULTANTS LTD.
Plaintiff

-and- CAPITAL BUILD CONSTRUCTION MANAGEMENT CORP. et al.
Defendants

Court File No. CV-22-00013857-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the Construction Act, R.S.O. 1990, c. C.30

**PROCEEDING COMMENCED AT
WELLAND**

FRESH AS AMENDED STATEMENT OF CLAIM

SimpsonWigle LAW LLP

1 Hunter Street East

Suite 200

Hamilton, Ontario

L8N 3W1

Derek A. Schmuck (LSO #24551U)

Email: SchmuckD@simpsonwigle.com

Cameron D. Neil (LSO #49383O)

Email: NeilC@simpsonwigle.com

Tel: 905-528-8411

Lawyers for the Plaintiff

Invoice

SOIL-MAT ENGINEERS & CONSULTANTS LTD.

www.soil-mat.ca info@soil-mat.ca TF: 800.243.1922

Hamilton: 130 Lancing Drive L8W 3A1 T: 905.318.7440 F: 905.318.7455

Milton: PO Box 40012 Derry Heights PO L9T 7W4 T: 800.243.1922



April 27, 2021

Project No: 301481

Invoice No: 000002104009

Go-To Niagara Falls Eagle Valley Inc.
 1267 Cornwall Rd., Ste 301
 Oakville, ON L6J 7T5
 Attention: Mike Smith (mike@capitalbulld.ca)

Supplemental Test Pit Study
 Proposed Claret Condos
 2334 St. Paul Avenue
 Niagara Falls, Ontario
 Report dated April 8, 2021

For Professional Services Rendered

Fieldwork and Reporting	2,275.00	
Grain Size Analyses	520.00	
Total	\$2,795.00	\$2,795.00

Taxes (HST#133019380RT0001)

HST	13.00 % of 2,795.00	363.35	
Total Taxes		\$363.35	\$363.35

Total this Invoice	\$3,158.35
---------------------------	-------------------

Authorized By: _____

Invoice

SOIL-MAT ENGINEERS & CONSULTANTS LTD.

www.soil-mat.ca info@soil-mat.ca TF: 800.243.1922

Hamilton: 130 Lancing Drive L8W 3A1 T: 905.318.7440 F: 905.318.7455

Milton: PO Box 40012 Derry Heights PO L9T 7W4 T: 800.243.1922



October 31, 2021

Project No: 301481

Invoice No: 000002110068

Go-To Niagara Falls Eagle Valley Inc.

1267 Cornwall Rd., Ste 301

Oakville, ON L6J 7T5

Attention: Mike Smith (mike@capitalbuild.ca)

Construction Quality Control Services & Reliance Letter

Proposed Claret Condos

2334 St. Paul Avenue

Niagara Falls, ON

Professional Services from August 25, 2021 to October 31, 2021**Professional Personnel**

	Hours	Rate	Amount
Field Technician	221.00	54.00	11,934.00
Senior Technician	22.75	95.00	2,161.25
Project Engineer	1.50	125.00	187.50
Totals	245.25		14,282.75
			\$14,282.75

Reliance Letter		150.00	
			\$150.00

Reimbursable Expenses

Mileage - KM		2,727.60	
			\$2,727.60

Unit Billing

Grain Size Analyses			
Lab Nos. 21-483, 490, 496	3.0 Tests @	130.00	390.00
Molsture Content Determinations			
	147.0 Tests @	4.75	698.25
Standard Proctor Density Test			
Lab No. 21-409, 416, 432, 434, 483, 490, 496	7.0 Test @	130.00	910.00
			\$1,998.25

Taxes (HST#133019380RT0001)

HST	13.00 % of 19,158.60	2,490.62	
			\$2,490.62

Total this Invoice \$21,649.22

Authorized


 Kyle Richardson

Date: Nov. 23, 2021

Invoice

SOIL-MAT ENGINEERS & CONSULTANTS LTD.

www.soil-mat.ca Info@soil-mat.ca TF: 800.243.1922

Hamilton: 130 Lancing Drive L8W 3A1 T: 905.318.7440 F: 905.318.7455

Milton: PO Box 40012 Derry Heights PO L9T 7W4 T: 800.243.1922



December 31, 2021

Project No: 301481.000

Invoice No: 000002112033

Go-To Niagara Falls Eagle Valley Inc.

1267 Cornwall Rd., Ste 301

Oakville, ON L6J 7T5

Attention: Mike Smith (mike@capitalbuild.ca)

Construction Quality Control Services

Proposed Claret Condos

2334 St. Paul Avenue

Niagara Falls, ON

Professional Services from November 1, 2021 to December 31, 2021**Professional Personnel**

	Hours	Rate	Amount
Field Technician	22.00	54.00	1,188.00
Senior Technician	18.25	95.00	1,733.75
Project Engineer	10.75	125.00	1,343.75
Senior Engineer	1.00	145.00	145.00
Totals	52.00		4,410.50
Total Labor			\$4,410.50

Reimbursable Expenses

Mileage - KM	400.80
	\$400.80

Taxes (HST#133019380RT0001)

HST	13.00 % of 4,811.30	625.47
		\$625.47

Total this Invoice	\$5,436.77
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Authorized


 Kyle Richardson

Date: Jan. 10, 2022

Eunice Baltkois

From: Jeremy Nemers
Sent: December 19, 2022 8:09 PM
To: Derek A. Schmuck
Cc: Ian Aversa; Danielle Muise
Subject: RE: Eagle Valley Construction Lien Holdback

Hi Derek,

Happy to speak with you during the week of December 27. How about December 28 at 11 a.m.? I'll send a calendar invite with dial-in coordinates if this works for you.

In the interim, hoping you'll be able to make the simple enquiry with your client referenced in my original email. Paragraph 7 of your client's statement of claim states that "Go-To Niagara or Capital Build hired Soil-Mat ..." Does your client have any documentary support that it contracted with Capital Build?

Thanks,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724
 E jnemers@airdberlis.com

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724
 E jnemers@airdberlis.com

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Derek A. Schmuck <SchmuckD@simpsonwiggles.com>
Sent: December 19, 2022 1:21 PM
To: Jeremy Nemers <jnemers@airdberlis.com>
Subject: RE: Eagle Valley Construction Lien Holdback

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

I have a pretrial tomorrow and with Christmas holidays around the corner, please give me until the first week in January to provide information on the Soil Mat claim, before you prepare your motion materials.

Are you available between Dec 27-30 to discuss?

If so, what times and number is best?

Derek A. Schmuck
Partner



SimpsonWigle
 LAW LLP

Phone: 905-528-8411 ext 353
 Fax: 905-528-9008
 Direct line: 905-777-2394
 E-mail: Schmuckd@simpsonwigle.com
 Website: <http://www.simpsonwigle.com>

From: Jeremy Nemers <jnemers@airdberlis.com>

Sent: December 19, 2022 12:23 PM

To: Anthony J. Gabriele <gabriele@paveylaw.com>; Varoujan Arman <varman@blaney.com>; Derek A. Schmuck <SchmuckD@simpsonwigle.com>

Cc: Ian Aversa <iaversa@airdberlis.com>; cscalzi@scalzilaw.com; Aram Simovonian <aram.simovonian@scalzilaw.com>; gcaplan@mcr.law

Subject: Eagle Valley Construction Lien Holdback

Counsel,

We are writing to you in your respective capacities as counsel for HC Matcon, HK United and Soil-Mat, in the receivership proceedings of Go-To Developments Holdings Inc., et al. As you know, we are counsel to KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager in these proceedings (in such capacity, the "Receiver").

As you know, the Receiver is currently holding the Eagle Valley Construction Lien Holdback of \$916,196.24 pursuant to Her Honour's Order dated August 22, 2022.

We are writing to advise you that the Receiver has reviewed your respective clients' lien claims, and, based on the information presently available to the Receiver, intends to recommend to the Court that your clients receive the following funds from the Eagle Valley Construction Lien Holdback in priority to Imperio (being the second mortgagee that was registered on title to the Eagle Valley Real Property immediately prior to its Court-approved sale):

- HC Matcon - \$25,901.58 (being the totality of the priority amount claimed by this stakeholder);
- HK United - \$43,194.07 (being 10% of the \$431,940.65 associated with this stakeholder in the Receiver's Fifth Report); and
- Soil-Mat - between \$3,024.43 and \$30,244.34 (being the range of 10% to 100% of the \$30,244.34 associated with this stakeholder in the Receiver's Fifth Report). The range for Soil-Mat is because of an ambiguity at paragraph 7 of its statement of claim regarding whether its agreement was with the owner directly or with the construction manager. If the agreement were with the construction manager, and because the value of the improvements provided by the construction manager exceeded \$302,443, this would entitle Soil-Mat to \$30,244.34. Soil-Mat should provide any documentary support to the Receiver for the proposition that Soil-Mat contracted with the construction manager instead of directly with the owner. If the Receiver is satisfied with this support, the Receiver will accept Soil Mat's priority claim at the higher amount. If it is not, the Receiver will accept Soil Mat's priority claim at the lower amount.

The Receiver also intends to recommend to the Court that the balance of the Eagle Valley Construction Lien Holdback (i.e., after deducting the aforementioned amounts) be distributed to Imperio.

The Receiver understands that Imperio believes it is entitled to the totality of the Eagle Valley Construction Lien Holdback. Nonetheless, the Receiver also understands from Imperio's counsel that Imperio will accept the above recommendations of the Receiver, but only if HC Matcon, HK United and Soil-Mat also agree.

Please let us know if you have any questions regarding the above and/or wish to discuss. We would ask that Soil-Mat's counsel please provide any documentary support for the proposition that Soil-Mat contracted with the construction manager instead of directly with the owner. Absent any new relevant information coming to the Receiver's attention in the next few days, the Receiver intends to bring a motion to Court in the new year to recommend the aforementioned distributions (including the treatment of Soil-Mat's claim as stated above).

Thanks,

Jeremy Nemers

T 416.865.7724
F 416.863.1515
E jnemers@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com



This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

Jeremy Nemers

From: Jeremy Nemers
Sent: December 19, 2022 8:39 PM
To: 'Anthony J. Gabriele'
Cc: Ian Aversa
Subject: RE: Eagle Valley Construction Lien Holdback
Attachments: ExtractPage1.pdf; Issued Statement Of Claim.pdf

Hi Anthony,

The \$25,901.58 figure is calculated based on the amounts claimed as outstanding for holdback on the Statement of Account found at page 48 of your client's proof of claim package. See that page attached, which shows the amount claimed for holdback as \$12,421.75 plus \$10,500. We added HST to those figures to get the combined \$25,901.58 figure.

That also accords with the amount claimed for work and extras at paragraph 19 of your client's statement of claim, also attached for convenience:

Work: \$168,780
 Extras: \$60,437.50
 Total: \$229,217.50
 10% holdback: \$22,921.75
 Holdback inclusive of HST: \$25,901.58

Hope this is helpful.

Thanks,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724
 E jnemers@airdberlis.com

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Anthony J. Gabriele <gabriele@paveylaw.com>
Sent: December 19, 2022 3:22 PM
To: Jeremy Nemers <jnemers@airdberlis.com>
Cc: Ian Aversa <iaversa@airdberlis.com>
Subject: RE: Eagle Valley Construction Lien Holdback

CAUTION - EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Jeremy,

Before I seek instructions, are you able to clarify how you arrived at a number of \$25,901.58.

In accordance with the attached, my client's lien claim is \$270,772.30. 10% would be \$27,077.23.

I just want to make sure we are on the same page.

Thank you,

Anthony J. Gabriele, B.Comm., LL.B.



Pavey Law LLP | 73 Water Street North
Suite 200, Cambridge, Ontario, N1R
T. 519.621.7260, x244 | F. 519.621.1304
www.paveylaw.com

MOVING ALERT: Please be advised that our office has moved effective October 1, 2022, to 73 Water Street North, Suite 200, Cambridge, Ontario, N1R 7L6. All phone numbers and emails will remain the same. Also please note we will not have a Post Office Box thereafter.

WARNING: From time to time, our spam filters eliminate legitimate email from clients. If your email contains important instructions, please ensure that we acknowledge receipt of those instructions. The contents of this e-mail message and all attachments are intended for the confidential use of the addressee and where addressed to our client are the subject of solicitor and client privilege. Any retention, review, reproduction, distribution or disclosure other than by the addressee is prohibited. Please notify us immediately if we have transmitted this message to you in error. Thank you.

From: Jeremy Nemers <jnemers@airdberlis.com>

Sent: December 19, 2022 12:23 PM

To: Anthony J. Gabriele <gabriele@paveylaw.com>; Varoujan Arman <varman@blaney.com>; schmuckd@simpsonwigle.com

Cc: Ian Aversa <iaversa@airdberlis.com>; cscalzi@scalzilaw.com; Aram Simovonian <aram.simovonian@scalzilaw.com>; gcaplan@mcr.law

Subject: Eagle Valley Construction Lien Holdback

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Jeremy Nemers

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If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

MA - HC Matcon Inc.
 A/R - Accounts Receivables
 Customer Inquiry as of Jan27/22 - All Categories
 Job J21046

Pg 1

Customer Code: GOTONIA

Go-To Niagara Falls Eagle Valley LP

1267 Cornwall Rd Suite 301

Oakville ON

Phone :

Fax No :

Contact: Mike

Email : mike@capitalbuild.ca

L6J 7T5

Last Sale Jan25/22

T.T.D. Sales: 553572.50

Inv.	Date of				Source/	
Invoice	Date	Tran	Record	Refer.	Net A/R	Holdback #Days Sales Cat.
007510	Dec16/21	IN	Dec23	J21046	126,329.20	12,421.75 SJ2893 PROJ
007550	Jan25/22	IN	Jan25	J21046	329,869.04	32,435.50 SJ2961 PROJ
7348R1	Oct15/21	IN	Nov01	J21046	106,785.00	10,500.00 SJ2782 PROJ

(Avg days to Pay: 0)

Total

562,983.24

55,357.25

Current	31-60 Days	61-90 Days	91-120 Days	Over 120 Days
329,869.04	126,329.20	0.00	106,785.00	0.00

===== End of Report =====

Court File No./N° du dossier du greffe: CV-22-00013882-0000



Electronically issued
 Délivré par voie électronique : 09-Mar-2022
 Welland:

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

BETWEEN:

(Court Seal)

HC MATCON INC.

Plaintiff

and

GO-TO NIAGARA FALLS EAGLE VALLEY INC.,
 GO-TO NIAGARA FALLS EAGLE VALLEY LP, QUEEN PROPERTIES INC.,
 TRISURA GUARANTEE INSURANCE COMPANY, IMPERIO SA HOLDINGS INC.,
 GABRIELE FISCHER and PETER LESDOW

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
 The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

~~If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.~~

~~Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.~~

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF

-2-

YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

~~TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.~~

Date _____ Issued by _____
Local Registrar

Address of 102 East Main Street
court office: Welland ON L3B 3W6

TO: **GO-TO NIAGARA FALLS EAGLE VALLEY INC.**
1267 Cornwall Road, Suite 301
Oakville, ON L6G 7T5

TO: **GO-TO NIAGARA FALLS EAGLE VALLEY LP**
1267 Cornwall Road, Suite 301
Oakville, ON L6G 7T5

TO: **QUEEN PROPERTIES INC.**
2334 St. Paul Ave.
Niagara Falls, ON
L2E 6S4

TO: **TRISURA GUARANTEE INSURANCE COMPANY**
Bay-Adelaide Centre
333 Bay Street
Suite 1610, Box 222
Toronto, ON M5H 2R2

TO: **IMPERIO SA HOLDINGS INC.**
917-60 Southport Street
Toronto, ON M6S 3N4

TO: **GABRIELE FISCHER**
151 Oxford Street
Richmond Hill, ON L4C 4L6

Electronically Issued / Délivré par voie électronique : 09-Mar-2022

Court File No./N° du dossier du greffe: CV-22-00013882-0000

-3-

TO: **PETER LESDOW**
6710 Drummond Road
Niagara Falls, on L2G 4P1

-4-

CLAIM

1. The Plaintiff, HC Matcon Inc., claims:
 - (a) Payment, jointly and severally, from Go-To Niagara Falls Eagle Valley Inc. and/or Go-To Niagara Falls Eagle Valley LP in the amount of **Six Hundred and Twenty-Five Thousand, Five Hundred and Thirty-Six Dollars and Ninety-Three Cents (\$625,536.93)**;
 - (b) A declaration that the Plaintiff is entitled to a lien upon Go-To Niagara Falls Eagle Valley Inc.'s and/or Go-To Niagara Falls Eagle Valley LP's interest in the Subject Lands, *as defined herein*, in the amount of **Two Hundred and Seventy Thousand, Seven Hundred and Seventy-Two Dollars and Thirty Cents (\$270,772.30)**;
 - (c) A charge on any and all holdbacks required to be retained pursuant to the *Construction Act*, R.S.O. 1990 c. C-30, as amended;
 - (d) Full priority over the Queen, Trisura, Imperio-Fischer, and Lesdow Mortgages, *as defined herein*; in the alternative, priority over said mortgages to the extent that any portion of such mortgages advanced exceeded the actual value of the premises at the time when the first lien arose; in the alternative, priority over said mortgages to the extent of any unadvanced portion thereof at the time when the first lien arose; or in the further alternative priority over said mortgages to the extent of any advances made by the mortgagees, or any of them, after notice of lien was received; or in the further alternative, priority over the said mortgage to the extent of any deficiencies in the holdback required to be retained pursuant to the *Construction Act*, R.S.O. 1990, c. C. 30;
 - (e) That, in default of payment in the amount of \$270,772.30 plus legal costs, that all the estate and interest of the Go-To Niagara, *as defined herein*, in the Subject Lands hereinafter set out be sold and the proceeds applied in and towards payment of the Plaintiff's claim, costs and interest pursuant to the *Construction Act*, R.S.O. 1990, c. C. 30;
 - (f) For the purposes aforesaid, and for all other purposes, that all proper directions be given, inquires made, and accounts taken;
 - (g) Prejudgment interest in accordance with the Agreement, *as defined herein*, or, in the alternative, pursuant to Section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (h) Post judgment interest in accordance with the Agreement, *as defined herein*, or, in the alternative, pursuant to Section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (i) Its costs of this proceeding, plus all applicable taxes; and

-5-

(j) Such further and other relief as this Honourable Court may deem just.

The Parties

2. The plaintiff, HC Matcon Inc. ("**HCM**"), is a corporation incorporated pursuant to the laws of the Province of Ontario, with its registered office in the Township of North Dumfries in the Province of Ontario where, *among other places*, it carries on business as an excavation, foundation and shoring contractor.

3. The defendant, Go-To Niagara Falls Eagle Valley Inc., is a corporation incorporated pursuant to the laws of the Province of Ontario, with its office in the Town of Oakville.

4. The defendant, Go-To Niagara Falls Eagle Valley LP, is a limited partnership under the laws of the Province of Ontario, with its office in the Town of Oakville.

5. Go-To Niagara Falls Eagle Valley Inc. and Go-To Niagara Falls Eagle Valley LP are hereinafter individually and collectively referred to as "**Go-To Niagara**". Go-To Niagara was at all material times the registered owner of the Subject Lands identified by PIN 64269-0559 (LT) as more fully and legally described in the Construction Lien attached hereto as Schedule "A" (the "**Subject Lands**").

6. The Defendant, Queen Properties Inc. ("**Queen**") is a mortgagee with respect to the Subject Lands. On June 22, 2017, a mortgage for the principal sum of \$2,500,000.00 was registered against the Subject Lands as Instrument No. SN515883 in favour of Queen (the "**Queen Mortgage**").

7. The Defendant, Trisura Guarantee Insurance Company ("**Trisura**") is a mortgagee with respect to the Subject Lands. On November 16, 2017, a mortgage for the principal sum of

-6-

\$2,650,000 was registered against the Subject Lands as Instrument No SN534116 in favour of Trisura (the **“Trisura Mortgage”**).

8. The Defendants, Imperio SA Holdings Inc. and Gabriele Fischer are mortgagees with respect to the Subject Lands. On May 30, 2018, a mortgage for the principal sum of \$1,442,000.00 was registered against the Subject Lands as Instrument SN553433 in favour of Imperio SA Holdings Inc., Gabriele Fischer and Baltazar De Jesus Pina Patuleia Figueiras (the **“Imperio-Fischer Mortgage”**). On August 28, 2020, the Imperio-Fischer Mortgage was transferred to Imperio SA Holdings Inc. and Gabriele Fischer by way of Charge Transfer registered as Instrument No. SN639911.

9. The Defendant, Peter Lesdow (**“Lesdow”**) is a mortgagee with respect to the Subject Lands. On December 3, 2020, a mortgage for the principal sum of \$200,000.00 was registered against the Subject Lands as Instrument No SN653077 in favour of Lesdow (the **“Lesdow Mortgage”**).

The Agreement

10. On or around August 30, 2021, HCM and Go-To Niagara entered into a written agreement (the **“Agreement”**) pursuant to which the parties agreed, *inter alia*, that HCM would supply labour, materials, equipment and services to install caissons (the **“Work”**) for the construction of a project (the **“Improvement”**) upon the Subject Lands.

11. Pursuant to the Agreement, the parties agreed that, in consideration for HCM's supply of the Work, Go-To Niagara would pay HCM a price of \$599,126.00 inclusive of H.S.T (the **“Price”**),

-7-

12. Pursuant to Section 6.5.1 of the Agreement, it was agreed that, in the event that HCM was delayed in performing the Work as a result of the action(s) or omission(s) of Go-To Niagara, the Consultant, the Construction Manager, and/or anyone directly or indirectly employed or engaged by them, then HCM would be paid by Go-To Niagara for all reasonable costs incurred by HCM as a result thereof.

13. Pursuant to Subsection 5.3 of the Agreement, it was agreed that HCM would be entitled to interest on all overdue accounts at a rate of:

- (a) 2% above the prime rate, *as defined in the Agreement*, for the first 60 days; and
- (b) 4% above the prime rate, *as defined in the Agreement*, after the first 60 days.

The Work, Extras & The Delay Claim

14. From August 30, 2021 to January 24, 2022, HCM supplied the Work to the Improvement upon the Subject Lands pursuant to the Agreement.

15. In the course of fulfilling its obligations under the Agreement, HCM, at the request and upon the approval and direction of Go-To Niagara and/or its agents and representatives, provided extra services, material, labour and equipment to the Improvement upon the Subject Lands (**the "Extras"**), which resulted in the Price increasing by \$68,294.38 inclusive of H.S.T.

16. HCM states that its performance of the Work and Extras was delayed and impeded as a result of the decisions, action(s) and/or omission(s) of Go-To Niagara, the Consultant, the Construction Manager, and/or other parties directly or indirectly employed or engaged by them (**the "Delays"**).

-8-

17. HCM states that, as a result of the Delays, it was required to supply additional labour, material, services, and equipment to the Improvement upon the Subject Lands, which resulted in HCM incurring additional expenses in the amount of \$366,521.15 inclusive of H.S.T.

18. HCM states that pursuant to Section 6.5.1 of the Agreement, HCM is entitled to be reimbursed by Go-To Niagara for all reasonable costs incurred as a result of the Delays.

19. As a result of the Work, Extras, and Delays, the amount to be paid by Go-to-Niagara to HCM pursuant to the Agreement is \$625,536.93, which can be broken down as follows:

Item	Amount
Work	\$168,780.00
Extras	\$60,437.50
Delays	\$324,355.00
Subtotal	\$553,572.50
H.S.T.	\$71,964.43
Total	\$625,536.93

Invoicing and Indebtedness

20. HCM has issued invoices to Go-To Niagara requesting payment in the total amount of \$625,536.93 inclusive of H.S.T.

21. The current amount due and payable by Go-To Niagara to HCM pursuant to the Agreement is \$625,536.93 plus accruing interest and now legal costs.

-9-

22. HCM states that despite its repeated requests and demands for payment, and in breach of the Agreement, Go-To Niagara has failed, refused or otherwise neglected to pay the amount outstanding to HCM.

The Mortgages

23. HCM claims that the Queen, Trisura, Imperio-Fischer, and Lesdow Mortgages, or any of them, were given and taken with the intention of securing the financing of the Improvement, and/or taken out to repay such mortgage, and HCM claims that its lien has full priority over the Queen, Trisura, Imperio-Fischer, and Lesdow Mortgages, or any of them. In the alternative, HCM claims,

- (a) Priority over the said mortgages, *or any of them*, to the extent of any deficiency in the holdback required to be retained by Go-To Niagara; and/or
- (b) Priority over the said mortgages, *or any of them*, to the extent that any portion advanced exceeded the actual value of the premises at the time when the lien arose; and/or
- (c) Priority over the said mortgages, *or any of them*, to the extent of any unadvanced portions thereof; and/or
- (d) Priority over said mortgages, *or any of them*, to the extent of any advance made at a time when there was a preserved or perfected lien against the lands and premises hereinafter described, or after receipt of written notice of a lien.

Interest

24. HCM claims pre and post judgment interest on all overdue accounts in accordance with the Agreement. In the alternative, HCM claims pre and post judgment interest, respectively, pursuant to Sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

The Construction Lien

25. By reason of (i) supplying the Work and Extras to the Subject Lands and (ii) as a result of the additional expenses incurred as a result of the Delays, HCM became entitled to a lien upon the Subject Lands more fully and legally described in the Claim for Lien attached hereto as **Schedule “A”** in the amount of \$270,772.30.

26. On January 28, 2022, HCM, pursuant to the *Construction Act*, registered a Construction Lien in the Land Titles Office for the Registry Division of Niagara South (No. 59) as Instrument Number SN710958 for the sum of \$625,536.93, a true copy of which is attached hereto as Schedule “A”. As per above, HCM’s Claim for Lien has been reduced to \$270,772.30 plus legal expenses (*incl. fees, disbursements and applicable taxes*).

27. The Subject Lands are owned by Go-To Niagara, and are the lands for which HCM supplied labour, material, equipment and services to complete the Work and Extras for the direct benefit of Go-To Niagara.

28. HCM pleads and relies upon the *Construction Act*, R.S.O. 1990, c. C.30, *as amended*.

29. In addition, and in the alternative, HCM states that Go-To Niagara has been unjustly enriched by HCM's supply of goods and services to the Improvement upon the Subject Lands and that HCM has suffered a corresponding deprivation. HCM relies on the doctrine of unjust enrichment and claims compensation on a *quantum meruit* basis.

30. HCM requests that this action be tried in the City of Welland in the Province of Ontario.

Electronically issued / Délivré par voie électronique : 09-Mar-2022

Court File No./N° du dossier du greffe: CV-22-00013882-0000

-11-

March 8, 2022

PAVEY LAW LLP

LAWYERS

19 Cambridge Street, P.O. Box 1707

Cambridge, Ontario N1R 7G8

Anthony J. Gabriele

LSO# 67752L

Meagan J. Swan

LSO# 56443C

Tel: 519-621-7260

Fax: 519-621-1304

Lawyers for the Plaintiff,

HC Matcon Inc.

RCP-E 14A (June 9, 2014)

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

yyyy mm dd Page 1 of 1

Properties**SCHEDULE "A"**

PIN 64269 - 0559 LT

Description PT TWP LT 16 STAMFORD; PT TWP LT 24 STAMFORD; PT TWP LT 25 STAMFORD; PT RDAL BTN TWP LT 24 & 25 STAMFORD; PT RDAL BTN TWP LT 16 & 25 STAMFORD; BEING PTS 2,3,4,5,7,8,9 & 10 59R14717; TOGETHER WITH AN EASEMENT AS IN R0756108; SUBJECT TO AN EASEMENT OVER PTS 7, 8, 9 & 10 59R14717 IN FAVOUR OF PT 1 59R14717 AS IN SN370529; SUBJECT TO AN EASEMENT OVER PTS 2, 7, 4 & 9 59R14717 IN FAVOUR OF PT 1 59R14717 AS IN SN370529; TOGETHER WITH AN EASEMENT OVER PT TWP LT 24 STAMFORD BEING PT 1 ON 59R16044 AS IN SN402290; CITY OF NIAGARA FALLS

Address NIAGARA FALLS

Consideration

Consideration \$625,536.93

Claimant(s)

Name HC MATCON INC.

Address for Service C/O ANTHONY J. GABRIELE PAVEY
LAW LLP 19 CAMBRIDGE ST., PO
BOX 1707 CAMBRIDGE N1R 7G8

I, Frank Claessens, Senior Project Manager, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

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

Statements

Name and Address of Owner GO-TO NIAGARA FALLS EAGLE VALLEY INC., 1267 Cornwall Road, Unit 201, Oakville, Ontario L6J 7T5

Name and address of person to whom lien claimant supplied services or materials GO-TO NIAGARA FALLS EAGLE VALLEY INC., 1267 Cornwall Road, Unit 201, Oakville, Ontario L6J 7T5 Time within which services or materials were supplied from 2021/12/08 to 2022/01/24

Short description of services or materials that have been supplied Labour, Material and Equipment to design and install calssons Contract price or subcontract price \$1,238,824.65 (Incl. H.S.T.) Amount claimed as owing in respect of services or materials that have been supplied \$625,536.93 (Incl. H.S.T.)

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Schedule: Name and Address of Additional Owner GO-TO NIAGARA FALLS EAGLE VALLEY LP, 1267 Cornwall Road, Unit 201, Oakville, Ontario L6J 7T5

Additional Person to whom lien claimant supplied services for materials GO-TO NIAGARA FALLS EAGLE VALLEY LP, 1267 Cornwall Road, Unit 201, Oakville, Ontario L6J 7T5

Signed By

Ioana Mandru 19 Cambridge St, Box 1707 acting for Signed 2022 01 28
Cambridge Applicant(s)
N1R 7G8

Tel 519-621-7260

Fax 519-621-1304

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

Submitted By

PAVEY LAW LLP 19 Cambridge St, Box 1707 2022 01 28
Cambridge
N1R 7G8

Tel 519-621-7260

Fax 519-621-1304

Fees/Taxes/Payment

Statutory Registration Fee \$66.30

Total Paid \$66.30

File Number

Claimant Client File Number : 20220094

HC MATCON INC.
Plaintiff

-and- GO-TO NIAGARA FALLS EAGLE VALLEY INC. et al.
Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30
PROCEEDING COMMENCED AT
WELLAND**

STATEMENT OF CLAIM

**PAVEY LAW LLP
LAWYERS**

19 Cambridge Street, P.O. Box 1707
Cambridge, Ontario N1R 7G8

Anthony J. Gabriele
LSO# 67752L

Meagan J. Swan
LSO# 56443C

Tel: 519-621-7260

Fax: 519-621-1304

Lawyers for the Plaintiff,
HC Matcon Inc.

File Number: 20190690

RCP-E 4C (May 1, 2016)

Jeremy Nemers

From: Varoujan Arman <VArman@blaney.com>
Sent: December 22, 2022 2:39 PM
To: Jeremy Nemers
Cc: John Polyzogopoulos; Ian Aversa; Danielle Muise
Subject: RE: Eagle Valley Construction Lien Holdback

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Hi Jeremy,

Thank you for your response.

There is some further information that we need in order to properly consider our client's position. For efficiency, we have conferred with the other lien claimants' counsels to come up with one consolidated list of requests. Anthony Gabriele will be sending out a letter to this effect shortly.

On a preliminary basis, however, we wish to observe that the default position pursuant to section 78(1) of the *Construction Act* is that liens have full priority to mortgages, unless the mortgage can properly fall within one of the exceptions contained in the subsections. If Imperio has not suggested that its mortgage was a building mortgage, and in fact, denies that it was, then we do not believe that the Receiver should be reaching the conclusion that it is a building mortgage and/or that the lien claimants should be paid anything less than 100% of the amounts of their liens.

Regards,
 Varoujan

Varoujan Arman (He | Him)
 Partner - B.A., J.D., C.F.I.
 varman@blaney.com
 ☎ 416-596-2884 | ☎ 416-593-2960

From: Jeremy Nemers <jnemers@airdberlis.com>
Sent: Wednesday, December 21, 2022 9:00 AM
To: Varoujan Arman <VArman@blaney.com>
Cc: John Polyzogopoulos <jpolyzogopoulos@blaney.com>; Ian Aversa <iaversa@airdberlis.com>; Danielle Muise <dmuise@airdberlis.com>
Subject: RE: Eagle Valley Construction Lien Holdback

Hi Arman,

In answer to your email:

- ? Answer: The Receiver has not come across anything to date to suggest otherwise.

- ? Answer: The Receiver has advised Imperio's counsel that it appears to the Receiver (absent additional information) that the funds from Imperio's mortgage were used to fund improvements pursuant to section 78(2) of the Act.

•
 .? Answer: This is not clear to the Receiver. Imperio's counsel has advised that it disagrees with the Receiver's view that the funds were used to fund improvements, but Imperio's counsel has not provided an alternative intended use of funds to support its position at this time. As noted in my original email below, the Receiver understands from Imperio's counsel that Imperio will accept the recommended distributions of the Receiver, but only if HC Matcon, HK United and Soil-Mat also agree.

Hope this helps,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724

E jnemers@airdberlis.com

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From: Varoujan Arman <VArman@blaney.com>
Sent: December 19, 2022 2:15 PM
To: Jeremy Nemers <jnemers@airdberlis.com>
Cc: John Polyzogopoulos <jpolyzogopoulos@blaney.com>
Subject: RE: Eagle Valley Construction Lien Holdback

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Without Prejudice

Hi Jeremy,

Thanks for your email. So that we can more fully consider our client's position, could you please provide answers to the following questions:

-
-
-

Thank you for your assistance.

Regards,

Varoujan

Varoujan Arman (He | Him)
Partner - B.A., J.D., C.F.I.

varman@blaney.com
☎ 416-596-2884 | ☎ 416-593-2960

From: Jeremy Nemers <jnemers@airdberlis.com>
Sent: Monday, December 19, 2022 12:23 PM
To: Anthony J. Gabriele <gabriele@paveylaw.com>; Varoujan Arman <VArman@blaney.com>; schmuckd@simpsonwiggles.com
Cc: Ian Aversa <iaversa@airdberlis.com>; cscalzi@scalzilaw.com; Aram Simovonian <aram.simovonian@scalzilaw.com>; gcaplan@mcr.law
Subject: Eagle Valley Construction Lien Holdback

Counsel,

We are writing to you in your respective capacities as counsel for HC Matcon, HK United and Soil-Mat, in the receivership proceedings of Go-To Developments Holdings Inc., et al. As you know, we are counsel to KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager in these proceedings (in such capacity, the "Receiver").

As you know, the Receiver is currently holding the Eagle Valley Construction Lien Holdback of \$916,196.24 pursuant to Her Honour's Order dated August 22, 2022.

We are writing to advise you that the Receiver has reviewed your respective clients' lien claims, and, based on the information presently available to the Receiver, intends to recommend to the Court that your clients receive the following funds from the Eagle Valley Construction Lien Holdback in priority to Imperio (being the second mortgagee that was registered on title to the Eagle Valley Real Property immediately prior to its Court-approved sale):

- HC Matcon - \$25,901.58 (being the totality of the priority amount claimed by this stakeholder);
- HK United - \$43,194.07 (being 10% of the \$431,940.65 associated with this stakeholder in the Receiver's Fifth Report); and
- Soil-Mat - between \$3,024.43 and \$30,244.34 (being the range of 10% to 100% of the \$30,244.34 associated with this stakeholder in the Receiver's Fifth Report). The range for Soil-Mat is because of an ambiguity at paragraph 7 of its statement of claim regarding whether its agreement was with the owner directly or with the construction manager. If the agreement were with the construction manager, and because the value of the improvements provided by the construction manager exceeded \$302,443, this would entitle Soil-Mat to \$30,244.34. Soil-Mat should provide any

documentary support to the Receiver for the proposition that Soil-Mat contracted with the construction manager instead of directly with the owner. If the Receiver is satisfied with this support, the Receiver will accept Soil Mat's priority claim at the higher amount. If it is not, the Receiver will accept Soil Mat's priority claim at the lower amount.

The Receiver also intends to recommend to the Court that the balance of the Eagle Valley Construction Lien Holdback (i.e., after deducting the aforementioned amounts) be distributed to Imperio.

The Receiver understands that Imperio believes it is entitled to the totality of the Eagle Valley Construction Lien Holdback. Nonetheless, the Receiver also understands from Imperio's counsel that Imperio will accept the above recommendations of the Receiver, but only if HC Matcon, HK United and Soil-Mat also agree.

Please let us know if you have any questions regarding the above and/or wish to discuss. We would ask that Soil-Mat's counsel please provide any documentary support for the proposition that Soil-Mat contracted with the construction manager instead of directly with the owner. Absent any new relevant information coming to the Receiver's attention in the next few days, the Receiver intends to bring a motion to Court in the new year to recommend the aforementioned distributions (including the treatment of Soil-Mat's claim as stated above).

Thanks,

Jeremy Nemers

T 416.865.7724
F 416.863.1515
E jnemers@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com

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Stephen F. Witteveen, B.A., M.B.A., J.D.
 Luba D. Yamoah, B.A. (Hons.), LL.B.
 Meagan J. Swan, B.A., M.A., LL.B. *
 Anthony J. Gabriele, B.Comm., LL.B.
 Ioana A. Mandru, B.A. (Hons.), J.D.
 Simon A. Marmur, B.A. (Hons.), M.A., J.D.
 Vincent De Cicco, B.A., M.P.S., J.D.
 Andrew M. Beney, B.Eng., M.A.Sc., J.D.

19 Cambridge Street, P.O. Box 1707
 Cambridge, ON N1R 7G8
 Telephone: 519-621-7260 Fax: 519-621-1304
 Email: gabriele@paveylaw.com

December 23, 2022

Aird & Berlis LLP
 Brookfield Place
 181 Bay Street, Suite 1800
 Toronto, Ontario
 M5J 2T9

VIA EMAIL

Scalzi Professional Corporation
 868A Eglinton Avenue West
 Toronto, Ontario
 M6C 2B6

VIA EMAIL

Mason Caplan Roti LLP
 123 Front Street West, Suite 1204
 Toronto, Ontario
 M5J 2M2

VIA EMAIL

Attention: Messrs. Jeremy Nemers, Ian Aversa, Carmine Scalzi & Gary Caplan

Dear Messrs.

Re: Construction Lien Upon: 2334 St. Paul Avenue, Niagara Falls, ON L2J 0C7
Lien Claimants: HC Matcon Inc., HK United Construction Ltd. and
Soil Mat Engineers & Consultants Ltd.
Your File No.:39856/BM

As you know, we are legal counsel for HC Matcon Inc. We write on behalf of counsel for all of the above noted lien claimants. We are in receipt of your correspondence dated December 19, 2022 and thank you for the same.

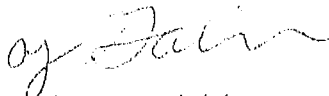
The lien claimants have reviewed your correspondence and the tentative proposal submitted. In order for us to properly advise our clients, we ask that you kindly provide the lien claimants with the following additional information and documentation:

1. A copy of the opinion received by the Receiver as to the validity of the subject mortgage in favour of Imperio SA Holdings Inc. and Gabriele Fischer (the "Subject Mortgage"), referenced at Page 12 of the Receiver's 5th Report;
2. Details with respect to the dates and quantum advanced under the Subject Mortgage, and evidence in support of the same;
3. The Receiver's information as to the value of the subject property when the first lien arose;
4. A copy of the original Subject Mortgage and subsequent increase;
5. Confirmation or clarification as to whether or not the Receiver found or considered if the Subject Mortgage was an arm's length transaction;
6. Clarification as to why the Subject Mortgage was guaranteed by Capital Build Construction Management Corp. and Mr. Michael Smith; and
7. The Receiver and/or Mortgagee's' positions as to why the Construction Liens do not maintain priority over the Subject Mortgage as prescribed by Subsection 78(1) of the *Construction Act*, R.S.O. 1990, c. C.30.

Should you have any questions or concerns with respect to our request for additional information, please do not hesitate to contact us. If beneficial, my office would be happy to arrange a conference call to discuss.

Yours very truly,

PAVEY LAW LLP



Anthony J. Gabriele
AJG/at

cc. Mr. Derek Schmuck (Counsel for Soil Mat Engineers & Consultants Ltd.) & Mr. Varoujan Arman (Counsel for HK United Construction Ltd.)

Jeremy Nemers

From: Jeremy Nemers
Sent: December 27, 2022 1:41 PM
To: Anthony J. Gabriele
Cc: Varoujan Arman; schmuckd@simpsonwagle.com; Ian Aversa; cscalzi@scalzilaw.com; Aram Simovonian; gcaplan@mcr.law; Danielle Muise; bkofman@ksvadvisory.com; mvininsky@ksvadvisory.com; Jordan Wong
Subject: RE: Eagle Valley Construction Lien Holdback
Attachments: Letter to A. Gabriele dated December 27, 2022.pdf; Security Opinion (Imperio_Eagle Valley_Beard)(51590869.1).pdf; Charts re Advances (21-NOV-2022)(51590873.1).pdf; 004 - Registered Charge by Partnership (SN553433)(48771837.1).pdf; SN606209 - Notice(49269338.1).pdf; SN606209 - Schedule to Notice(49269342.1).pdf; 02 - Registered Notice re Amending Charge (SN639912)(48771660.1).pdf

Counsel,

Please see the attached letter of today's date, together with the enclosures thereto.

Please note that none of the attached, including, without limitation, the security opinion, constitutes a waiver of privilege (or an intent to waive privilege).

Thanks,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724
 E jnemers@airdberlis.com

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From: Anthony J. Gabriele <gabriele@paveylaw.com>
Sent: December 23, 2022 10:14 AM
To: Jeremy Nemers <jnemers@airdberlis.com>; Ian Aversa <iaversa@airdberlis.com>; cscalzi@scalzilaw.com; Aram Simovonian <aram.simovonian@scalzilaw.com>; gcaplan@mcr.law
Cc: Varoujan Arman <varman@blaney.com>; schmuckd@simpsonwagle.com
Subject: RE: Eagle Valley Construction Lien Holdback

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Counsel,

Please see attached correspondence being sent on behalf of all lien claimants.

Thank you,

Anthony J. Gabriele, B.Comm., LL.B.



Pavey Law LLP | 73 Water Street North
 Suite 200, Cambridge, Ontario, N1R
 T. 519.621.7260, x244 | F. 519.621.1304
www.paveylaw.com

MOVING ALERT: Please be advised that our office has moved effective October 1, 2022, to 73 Water Street North, Suite 200, Cambridge, Ontario, N1R 7L6. All phone numbers and emails will remain the same. Also please note we will not have a Post Office Box thereafter.

WARNING: From time to time, our spam filters eliminate legitimate email from clients. If your email contains important instructions, please ensure that we acknowledge receipt of those instructions. The contents of this e-mail message and all attachments are intended for the confidential use of the addressee and where addressed to our client are the subject of solicitor and client privilege. Any retention, review, reproduction, distribution or disclosure other than by the addressee is prohibited. Please notify us immediately if we have transmitted this message to you in error. Thank you.

From: Jeremy Nemers <jnemers@airdberlis.com>

Sent: December 19, 2022 12:23 PM

To: Anthony J. Gabriele <gabriele@paveylaw.com>; Varoujan Arman <varman@blaney.com>; schmuckd@simpsonwigle.com

Cc: Ian Aversa <iaversa@airdberlis.com>; cscalzi@scalzilaw.com; Aram Simovonian <aram.simovonian@scalzilaw.com>;

gcaplan@mcr.law

Subject: Eagle Valley Construction Lien Holdback

Counsel,

We are writing to you in your respective capacities as counsel for HC Matcon, HK United and Soil-Mat, in the receivership proceedings of Go-To Developments Holdings Inc., et al. As you know, we are counsel to KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager in these proceedings (in such capacity, the "Receiver").

As you know, the Receiver is currently holding the Eagle Valley Construction Lien Holdback of \$916,196.24 pursuant to Her Honour's Order dated August 22, 2022.

We are writing to advise you that the Receiver has reviewed your respective clients' lien claims, and, based on the information presently available to the Receiver, intends to recommend to the Court that your clients receive the following funds from the Eagle Valley Construction Lien Holdback in priority to Imperio (being the second mortgagee that was registered on title to the Eagle Valley Real Property immediately prior to its Court-approved sale):

- HC Matcon - \$25,901.58 (being the totality of the priority amount claimed by this stakeholder);
- HK United - \$43,194.07 (being 10% of the \$431,940.65 associated with this stakeholder in the Receiver's Fifth Report); and
- Soil-Mat - between \$3,024.43 and \$30,244.34 (being the range of 10% to 100% of the \$30,244.34 associated with this stakeholder in the Receiver's Fifth Report). The range for Soil-Mat is because of an ambiguity at paragraph 7 of its statement of claim regarding whether its agreement was with the owner directly or with the construction manager. If the agreement were with the construction manager, and because the value of the improvements provided by the construction manager exceeded \$302,443, this would entitle Soil-Mat to \$30,244.34. Soil-Mat should provide any documentary support to the Receiver for the proposition that Soil-Mat contracted with the construction manager instead of directly with the owner. If the Receiver is satisfied with this support, the Receiver will accept Soil Mat's priority claim at the higher amount. If it is not, the Receiver will accept Soil Mat's priority claim at the lower amount.

The Receiver also intends to recommend to the Court that the balance of the Eagle Valley Construction Lien Holdback (i.e., after deducting the aforementioned amounts) be distributed to Imperio.

The Receiver understands that Imperio believes it is entitled to the totality of the Eagle Valley Construction Lien Holdback. Nonetheless, the Receiver also understands from Imperio's counsel that Imperio will accept the above recommendations of the Receiver, but only if HC Matcon, HK United and Soil-Mat also agree.

Please let us know if you have any questions regarding the above and/or wish to discuss. We would ask that Soil-Mat's counsel please provide any documentary support for the proposition that Soil-Mat contracted with the construction manager instead of directly with the owner. Absent any new relevant information coming to the Receiver's attention in the next few days, the Receiver intends to bring a motion to Court in the new year to recommend the aforementioned distributions (including the treatment of Soil-Mat's claim as stated above).

Thanks,

Jeremy Nemers

T 416.865.7724
F 416.863.1515
E jnemers@airdberlis.com

Aird & Berlis LLP | Lawyers
Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Canada M5J 2T9 | airdberlis.com

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LEAP Email Reference [F:15461579-79c7-4fc9-891c-5a28fd2ffa4|M:1d71142f-bcdc-7b4e-838d-e362496b63da] (Please do not delete)

AIRD BERLIS

Jeremy Nemers
Direct: 416.865.7724
E-mail: jnemers@airdberlis.com

Décember 27, 2022

BY EMAIL (gabriele@paveylaw.com)

Pavey Law LLP

73 Water Street North, Suite 200
Cambridge, ON N1R 7L6
Attention: Anthony J. Gabriele

Dear Mr. Gabriele:

**Re: Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. –
Court File No. CV-21-00673521-00CL (the "Receivership Proceedings")**

As you know, we are the lawyers for KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") in the Receivership Proceedings.

Thank you for your letter dated December 23, 2022, which was in response to our correspondence dated December 19, 2022. Unless otherwise stated, all capitalized terms below are defined in the Receiver's Fifth Report dated August 12, 2022 (the "**Fifth Report**").

As requested, please see the below responses to the questions/requests in your letter (which, for convenience, are presented in the same order as they appear in your letter):

1. *"A copy of the opinion received by the Receiver as to the validity of the subject mortgage in favour of Imperio SA Holdings Inc. and Gabriele Fischer (the 'Subject Mortgage'), referenced at Page 12 of the [Fifth Report]."* A copy of this opinion is attached to this letter.
2. *"Details with respect to the dates and quantum advanced under the Subject Mortgage, and evidence in support of same."* A package summarizing this information (including evidence of the advances), as prepared by Imperio's counsel and provided to the Receiver on November 21, 2022, is attached to this letter.
3. *"The Receiver's information as to the value of the subject property when the first lien arose."* As noted in the Fifth Report, the Eagle Valley Real Property was purchased by 255 for \$3.7 million on June 22, 2017, and was then sold by 255 to Go-To Eagle Valley for \$5.1 million later that same day. As noted in the Receiver's Sixth Report dated November 14, 2022, the Receiver sold the Eagle Valley Real Property for \$5.85 million on June 30, 2022. Soil-Mat's lien is in respect of services and materials that Soil-Mat claims it started to provide on February 17, 2021 (before the starting dates for the liens claimed by HK United and your client). HK United was the first to register its lien on December 10, 2021.
4. *"A copy of the original Subject Mortgage and subsequent increase."* Copies of these instruments, as referenced on title to the Eagle Valley Real Property prior to its sale by the Receiver, are attached.

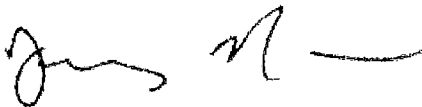
Page 2

5. "Confirmation or clarification as to whether or not the Receiver found or considered if the Subject Mortgage was an arm's length transaction." The Receiver has not received any evidence suggesting that the Subject Mortgage was a non-arm's length transaction.
6. "Clarification as to why the Subject Mortgage was guaranteed by Capital Build Construction Management Corp. and Mr. Michael Smith." The Receiver does not know what the business reasons were for these parties guaranteeing (and postponing to) the Subject Mortgage. As noted in the Fifth Report, Capital Build and Mr. Smith also guaranteed (and postponed to) other mortgagees on other Real Property. As noted in our correspondence dated December 19, 2022, the Receiver has requested that Soil-Mat provide any documentary support for the statement in Soil-Mat's claim that it contracted with Capital Build.
7. "The Receiver and/or the Mortgagee's positions as to why the Construction Liens do not maintain priority over the Subject Mortgage as prescribed by Subsection 78(1) of the Construction Act, R.S.O. 1990, c. C.30." Subsection 78(2) provides that "Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvement have priority over that mortgage, and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered" [emphasis added]. Given that the Eagle Valley Real Property was vacant land, and given that development of such land was the sole business of Go-To Eagle Valley, it appears to the Receiver that the only reasonable conclusion is that the Subject Mortgage¹ was intended to fund improvements, thereby giving rise to the distributions to the three lien claimants and Imperio that are described in our correspondence dated December 19, 2022. These distributions to the three lien claimants are limited to the deficiency in the holdbacks required to have been retained by the owner under Part IV, as quantified in our correspondence dated December 19, 2022 for each lien claimant.

We trust that the foregoing is helpful.

Yours truly,

AIRD & BERLIS LLP



Jeremy Nemers
jn

Encls.

cc: Imperio's counsel, HK United's counsel, Soil-Mat's counsel and client (via email)

51591114.2

¹ And the mortgage that the Subject Mortgage repaid.

AIRD BERLIS

AIRD BERLIS

Ian Aversa
 Direct: 416-865-3082
 Email: iaversa@airdberlis.com

June 28, 2022

VIA EMAIL

KSV Restructuring Inc.
 2308-150 King Street West
 Toronto, ON M5H 1T9

Attention: Bobby Kofman, Mitch Vininsky and Jordan Wong

Dear Sirs:

Re: Receivership Proceedings of Go-To Developments Holdings Inc. et. al. (Court File No. CV-21-00673521-00CL)

KSV Restructuring Inc., in its capacity as the court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security of all of, *inter alia*, the assets, undertakings and properties of Go-To Niagara Falls Eagle Valley LP (“**Eagle Valley LP**”), Go-To Niagara Falls Eagle Valley Inc. (“**Eagle Valley GP**”), Go-To St. Catharines Beard LP (“**Beard LP**”) and Go-To St. Catharines Beard Inc. (“**Beard GP**”, and together with Eagle Valley LP, Eagle Valley GP and Beard LP, the “**Debtors**”), has requested our opinion concerning the perfection of the security documents herein discussed granted to Imperio SA Holdings Inc. and Gabriele Fischer (collectively, the “**Secured Creditors**”) by the Debtors. We confirm that we have received and reviewed the security documents granted by the Debtors in favour of the Secured Creditors described herein, and hereby provide you with our opinion concerning the perfection of same.

As used herein:

- (a) “**Eagle Valley Debtors**” means, collectively, Eagle Valley LP and Eagle Valley GP;
- (b) “**Beard Debtors**” means, collectively, Beard LP and Beard GP;
- (c) “**Limited Partners**” means, collectively, Eagle Valley LP and Beard LP; and
- (d) “**General Partners**” means, collectively, Eagle Valley GP and Beard GP.

A. DOCUMENTS EXAMINED AND SEARCHES CONDUCTED

In connection with the opinions contained in this letter, we have examined a copy of:

1. the Charge/Mortgage registered on title on May 30, 2018 to the property known municipally as 2334 St. Paul Avenue, Niagara Falls and legally described in PIN 64269-0559 (LT) (the “**Eagle Valley Premises**”) as Instrument Number SN553433, together with Notices registered on title on October 17, 2019 and August 28, 2020 as Instrument Nos. SN606209 and SN639912, granted by the Eagle Valley Debtors to Baltazar De Jesus Pina

- 2 -

Patuleia Figueiras (“**Baltazar**”) and the Secured Creditors (collectively, the “**Eagle Valley Charge**”);

2. the Transfer of Charge registered on August 28, 2020 as Instrument No. SN639911, in respect of the Eagle Valley Charge, granted by Baltazar and the Secured Creditors to the Secured Creditors (the “**Eagle Valley Charge Transfer**”), including, without limitation, the statement therein that the signatory, Davide Joseph Di Iulio of Schneider Ruggiero Spencer Milburn LLP, acting for both the transferors and the transferees, has “*the authority to sign and register the document on behalf of all parties to the document;*” and
3. the Charge/Mortgage registered on title on August 28, 2020 to the property known municipally as 19 Beard Place, St. Catharines, Ontario and legally described in PIN 46265-0022 (LT) (the “**Beard Premises**”, and together with the Eagle Valley Premises, the “**Premises**”), as Instrument Number NR550481, granted by the Beard Debtors to the Secured Creditors (the “**Beard Charge**” and, together with the Eagle Valley Charge, the “**Charges**”)

(collectively, the “**Security**”).

In addition, in connection with the opinions contained in this letter, we have conducted the following searches:

1. a review of the certified searches from the Ontario Personal Property Registration System against (a) the Eagle Valley Debtors with a file currency of May 17, 2022, and (b) the Beard Debtors with a file currency of May 23, 2022 (collectively, the “**PPSA Searches**”); and
2. a review of the parcel pages for the Premises with a file currency of June 24, 2022.

We have conducted no further searches in connection with the delivery of this opinion.

B. OPINIONS

Eagle Valley Charge

Based on, limited by and subject to the assumptions and qualifications contained below, we are of the opinion that the Eagle Valley Charge has been registered against title to the Eagle Valley Premises and constitutes a valid and enforceable Charge/Mortgage in favour of the Secured Creditors.

Beard Charge

Based on, limited by and subject to the assumptions and qualifications contained below, we are of the opinion that the Beard Charge has been registered against title to the Beard Premises and constitutes a valid and enforceable Charge/Mortgage in favour of the Secured Creditors.

AIRD BERLIS

- 3 -

C. PPSA REGISTRATIONS

The PPSA Searches did not disclose any registration in favour of any of the Secured Creditors, but did include the following other registrations against one or more of the Debtors, as indicated below:

In respect of the Eagle Valley Debtors:

- Hillmount Capital Mortgage Holdings Inc. made a registration on May 27, 2021 against the Eagle Valley Debtors, Go-To Vaughan Islington Avenue LP and Go-To Vaughan Islington Avenue Inc. under File No. 772879194, which covers "Accounts" and "Other" and includes a general collateral description of "an assignment of rents and income relating to or derived from the property municipally known as 150 Sudbury Street, Toronto, Ontario and security agreements respecting deposits and cash security," which was registration was assigned to Oscar Furtado on March 4, 2022; and
- Trisura Guarantee Insurance Company made a registration on November 16, 2017 against the Eagle Valley Debtors under File No. 734076558, which covers "Accounts" and "Other" and includes a general collateral description of "purchasers' deposits and monies paid pursuant to agreements of purchase and sale and interest earned thereon held in escrow/trust pursuant to a deposit trust agreement together with any monies retained in escrow from such deposits and interest as security for any bond or other security provided to Tarion Warranty Corporation, for a project located at 2334 St. Paul Avenue, Niagara Falls, Ontario," as renewed on November 17, 2017.

In respect of the Beard GP:

- Prudential Property Management Inc. made a registration on June 25, 2020 against Beard GP under File No. 763063065, which covers "Inventory," "Equipment," "Accounts" and "Other," is limited to \$750,000 and includes a general collateral description of "general security agreement."

We have not reviewed the security documents with respect to these registrations and express no opinion with respect these registrations.

D. OTHER REGISTRATIONS ON TITLE TO THE PREMISES

We note that there are additional registrations on title to the Premises in favour of parties other than the Secured Creditors. We have not reviewed the security documents with respect to any of these other registrations and express no opinion with respect to these other registrations.

E. ASSUMPTIONS

In connection with the opinions contained in this letter, we have assumed the following:

1. the entering into, execution and delivery of the Security to the Secured Creditors has been duly authorized by all necessary resolutions and other corporate and/or partnership actions on the part of the Debtors;

AIRD BERLIS

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2. the Security has been executed and delivered to the Secured Creditors by a director and/or officer of the Debtors, in their own capacity and in their capacity as general partners of the Debtors, duly authorized to execute and deliver those documents, and the signatures on the copies of the Security examined by us are those of the duly authorized director and/or officer of the Debtors;
3. the Security constitutes valid and enforceable obligations of each of the Debtors to the Secured Creditors as security for the Debtors' obligations to the Secured Creditors, subject to the requirements of the *Personal Property Security Act* (Ontario) (the "PPSA"), the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"), the *Mortgages Act* (Ontario) and the *Planning Act* (Ontario);
4. the Security has been unconditionally delivered by each of the Debtors, to the Secured Creditors;
5. the Security has not been assigned, released, discharged or otherwise impaired, either in whole or in part;
6. the financing statements filed under the PPSA in respect of the Security, if any, were completed in compliance with the regulations under the PPSA and copies thereof were delivered to the Debtors in accordance with the provisions of the PPSA;
7. the Debtors are indebted to the Secured Creditors and received adequate consideration for the grant of the Security;
8. the genuineness of the signatures and the conformity to authentic original documents of the documents submitted to us as photocopies, electronic copies or fax copies, and that all documents were fully completed prior to signature;
9. "Go-To Niagara Falls Eagle Valley LP," "Go-To Niagara Falls Eagle Valley Inc.," "Go-To St Catharines Beard LP" and "Go-To St Catharines Beard Inc." were the proper legal names of each of the Debtors at the time of execution and delivery of the Security, and these name have not subsequently been changed;
10. each of the General Partners was a valid and subsisting corporation at the time of execution and delivery of the Security;
11. each of the Limited Partners was a duly constituted and validly existing limited partnership at the time of execution and delivery of the Security;
12. the copies of the PPSA Searches examined by us in connection with the opinions given herein were complete and accurate when examined and continue to reflect registrations against the Debtors as of the date hereof;
13. the Debtors, the Secured Creditors and Baltazar intended the security interests created by the Security to attach, value has been given and the Debtors obtained rights in the collateral secured by the Security; and

AIRD BERLIS

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14. all facts set forth in official public records and other documents supplied by public officials or otherwise conveyed to us by public officials are complete, true and accurate, including, without limitation, the statement in the Eagle Valley Charge Transfer that Davide Joseph Di Iulio of Schneider Ruggiero Spencer Milburn LLP was acting for both the transferors and the transferees and had "*the authority to sign and register the document on behalf of all parties to the document.*"

F. QUALIFICATIONS

The opinions that we have expressed in this letter are further subject to the following qualifications:

1. we express no opinion as to the right, title or interest of the Debtors in or to the Premises or any of the assets, undertakings and properties of the Debtors;
2. we express no opinion as to whether any security interest was created in any personal property whatsoever, including, without limitation:
 - (a) whether any secured party may have a perfected purchase money security interest which may exist in respect of any of the assets, undertakings and properties of the Debtors;
 - (b) whether a security interest was created in:
 - (i) property consisting of a receivable, license, approval, privilege, franchise, permit, lease or agreement to the extent that the terms of such property or any applicable law prohibit its assignment or require, as a condition of its assignability, a consent, approval or other authorization or registration which has not been made or given;
 - (ii) permits, quotas or licenses which are held by or issued to the Debtor; and
 - (iii) federal crown debts;
3. we have made no searches under applicable statutes, including the *Copyright Act* (Canada), the *Patent Act* (Canada) and the *Trade-marks Act* (Canada), to confirm that the Secured Creditors have made registrations that may be necessary to perfect its security interests, if any, in intellectual property;
4. we express no opinion as to the ranking or priority of any of the Security in relation to the security interests, liens (including construction liens and any holdbacks required to be maintained pursuant to the *Construction Act* (Ontario)) or trust claims of any other party;
5. the validity, binding effect and enforceability of the Security may be limited by applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium, or other similar laws affecting the enforceability of creditors' rights generally;
6. the rights and remedies of the Secured Creditors contained in the Security may be subject to and affected by general principles of equity;

AIRD BERLIS

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7. no opinion is expressed as to the enforceability of any provision in the Security which suggests that modifications, amendments or waivers of or with respect to any of the Security that are not in writing will not be effective;
8. no opinion is given regarding any provision in the Security which purports to relieve a person from a liability or duty otherwise owed or to require compliance regardless of law;
9. we express no opinion as to the effect of those provisions of the Security which purport to allow the severance of invalid, illegal or unenforceable provisions or restricting their effect;
10. enforcement of the Security may be affected or limited by any collateral agreements or arrangements relating thereto entered into between the parties thereto, of which we are not aware;
11. enforcement of the rights to indemnity, contribution and waiver of contribution may be limited or voided by applicable law and may not be ordered by a court on grounds of public policy;
12. the enforceability of the Security is subject to the *Limitations Act, 2002* (Ontario), and we express no opinion as to whether a court may find that any provision of the Security will be unenforceable as an attempt to vary or exclude a limitation period under that statute;
13. we express no opinion as to the enforceability of any provision of the Security which may be characterized by a court as an unenforceable penalty and not as a genuine pre-estimate of damages;
14. we express no opinion as to the application of the *Securities Act* (Ontario);
15. we express no opinion as to the enforceability of any provision of the Security:
 - (a) which purports to waive all defences which might be available to, or constitute a discharge of the liability of the Debtors or any party thereto;
 - (b) to the extent it purports to exculpate, or provide indemnity to, the Secured Creditors, their agents or any receiver, manager or receiver-manager appointed by them from liability in respect of acts or omissions which may be illegal, fraudulent or involve wilful misconduct; or
 - (c) which states that amendments or waivers of or with respect to the Security that are not in writing will not be effective;
16. we express no opinion as to any provision of the Security which states that any failure to exercise, or any delay in exercising, any right or remedy shall not operate as a waiver thereof;
17. we have not explored and express no opinion as to whether the Security may be successfully attacked as a preference or transfer under value under sections 95 or 96 of the BIA or any similar provincial legislation;

AIRD BERLIS

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18. a waiver of a provision of applicable law may not be effective;
19. any provision which is considered to offend public policy or to contravene laws of public order may not be enforceable;
20. to the extent that the Security purports to extend the benefit thereof to persons who are not parties to the Security, those persons may be unable to enforce that benefit;
21. no fine, penalty or rate of interest may be extracted on any arrears of principal or interest secured by a mortgage on real property that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears;
22. no opinion is given as to security interests which are not registered on title to the Premises;
23. the enforceability of the Charges may be subject to the terms of any instruments or encumbrances registered on title to the Premises in priority to the Charges or any instruments or encumbrances to which the Secured Creditors have agreed to postpone registered on title to the Premises subsequent to the Charges; and
24. we have not conducted any title or off-title searches in connection with the Premises other than a review of the parcel pages. Without limiting the generality of the foregoing, we have not conducted any searches for compliance of the Charges or the Debtors' title to the Premises with the terms of the *Planning Act* (Ontario).

The opinions that we have expressed in this letter are limited to the laws of the Province of Ontario and the federal laws of Canada applicable in Ontario. We trust that the foregoing opinions are satisfactory for your purposes. If you should have any questions or require further clarification in any respect, please do not hesitate to contact us.

Yours truly,

AIRD & BERLIS LLP

Ian Aversa

Ian Aversa

IA/jn

AIRD BERLIS



20 Caldari Road, Unit 2
Vaughan, ON, L4K 4N8

CHRONOLOGY: CHARGE REGISTRATION AND LIEN REGISTRATIONS	
DATE	EVENT
May 30, 2018	Imperio SA Holdings Inc., and Gabriel Fischer register a charge on Eagle Valley in the sum of \$1,442,000.
August 28, 2020	Imperio SA Holdings Inc., Gabriel Fischer, amend the charge on Eagle Valley to the sum of \$3,000,000. In other words,
August 28, 2020	Imperio SA Holdings Inc., and Gabriel Fischer register a charge partnership on the Beard Property for the sum of \$3,000,000.
December 10, 2021	HK United Construction registers its construction lien on Eagle Valley in the sum of \$431,940.65. It claims that it supplied services and materials between August 12, 2021 and October 25, 2021.
January 25, 2022	Soil-Mat Engineers & Consultants Ltd. registers its construction lien on Eagle Valley in the sum of \$30,244.34. It claims that it supplied services and materials between February 17, 2021 to December 10 2021.
January 28, 2022	HC Matcon Inc. registers its construction lien in the sum of \$625,536.93. It claims that it supplied services and materials between December 8, 2021, to January 24, 2022.

CHRONOLOGY: ADVANCE OF FUNDS	
May 30, 2018	\$607,488.13 to Murray Maltz PC, in trust. Attached as Tab 1. \$596,846.90 to Torkin Manes LLP, in trust. Attached as Tab 2. A Trust Advance Summary is attached in Tab 2.
August 28, 2020	\$637,015.26 to Torkin Manes LLP, In Trust. Attached as Tab 3. This was an advance of \$1,558,000 but \$460,707.81 was held back for various fees. Attached in Tab 3 is the Trust Advance Summary of August 2020.
November 9, 2020	\$454,266.32 to Go To Niagara Falls Eagle Valley. Attached as Tab 4. This was an advance of \$455,266.32, but \$1,000 was held back for various fees. Attached in Tab 4 is a Trust Advance Summary of November 2020.

TAB 1

31717

TD CANADA TRUST
COMMERCIAL BANKING CENTRE
55 KING STREET WEST
TORONTO, ONTARIO M5K 1A2

SCHNEIDER RUGGIERO LLP
BARRISTERS & SOLICITORS
120 ADELAIDE STREET W., SUITE 1000
TORONTO, ONTARIO M5H 3W1

30052018
DATE D D M M Y Y Y

\$*****607,488.13

MAY 30 2018
***Six Hundred Seven Thousand Four Hundred Eighty Eight and

PAY
TO THE ORDER OF

55 King Street West, Murray Maltz Professional Corporation

TO THE ORDER OF
Murray Maltz Professional Corporation

SCHNEIDER RUGGIERO LLP - TRUST ACCOUNT

CERTIFIED CHEQUE
DO NOT DESTROY

901150011

11003171711 11992200411

329076



Branch: 1020 TD CENTRE BRANCH
55 KING ST W
TORONTO, ON

Date: May 30, 2018, 04:51 PM
Ref #: 00879066/12 - ZSHI

From: Cheque Total 607,488.13

To: 241-52111109
Deposit
Cash: 0.00
Number of Items: 1
MALTZ 607,488.13

Customer Signature

X

Banking can be this comfortable

TAB 2

6/30/2018

Web Business Banking

Wire Payments**Activity List - Payment Status**[Help](#)[Print this page](#)**Payment Status:** Accepted**Details:****LVTs #:****TD Payment ID:** 180530B4712600**Template Name****Due Date****Value Date****Payment Must be Sent to TD by:**

05/30/2018

05/30/2018

[View Cutoff Table](#)**Beneficiary's Name****Beneficiary's Account**

TORKIN MANES LLP IN TRUST

00022 1316098

Payment Amount**Payment ID**

596,846.90 CAD

97881180530002

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(Server ID: basmwap20_node:WP_ActivityListStatusDetails.jsp)

	A	D	L	U
1	TRUST SUMMARY	FILE: 40309		
	Trilend Inc. loan to Go To			
2	Niagara Falls Eagle Valley LP			
3				
4	RECEIVED:			
	Imperio SA Holdings Inc. from			
5	#40082 discharge	\$	700,000.00	
6	Gabriel Fischer	\$	682,000.00	
7	Baltzar Figuerias	\$	32,500.00	
8	PAID TO:			
9	Torkin Manes LLP in trust PAY	\$	596,846.90	
	Murray Maltz Professional			
	Corporation discharge in trust			
10	PAY	\$	607,488.13	
	Goldmount Capital Inc.			
11	brokerage fee PAY	\$	21,630.00	
	TRILEND INC. interest			
12	adjustment PAY	\$	4,740.82	
	TRILEND INC. Interest Reserve			
13	PAY	\$	145,540.00	
	Stewart Title Guaranty			
14	Company PAY	\$	1,414.15	
15	TRILEND INC. Lender's Fee PAY	\$	28,840.00	
	Balance held back in trust			
	account to be applied in			
	payment of legal fees and			
16	disbursements HOLD	\$	8,000.00	
17	TOTAL:	\$ 1,414,500.00	\$ 1,414,500.00	
18				

TAB 3

8/28/2020

Web Business Banking

Wire Payments[Help](#)**Activity List - Payment Status**[Print this page](#)**Payment Status:** Accepted**Details:****LVTS #:****TD Payment ID:** 200828B9648800

Template Name	Due Date	Value Date	Payment Must be Sent to TD by:
	08/28/2020	08/28/2020	View Cutoff Table

Beneficiary's Name

TORKIN MANES LLP IN TRUST

Beneficiary's Account

00022 1316098

Payment Amount

637,015.26 CAD

Payment ID

97881200828004

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(Server ID: wasappvm2-kj3cjr_node:WP_ActivityListStatusDetails.jsp)

	A	B	C
1	TRUST SUMMARY	FILE: 40309	
2	Trilend Inc. loan to Go To		
3	Niagara Falls Eagle Valley LP		
4	RECEIVED:		
5	Trilend Inc. increase in		
6	principal		\$ 1,558,000.00
7			
8	PAID TO:		
9	Torkin Manes LLP in trust PAY	\$ 637,015.26	
10	Holdback	\$ 460,707.81	
	Goldmount Capital Inc.		
11	brokerage fee PAY	\$ 45,000.00	
	TRILEND INC. Interest Reserve		
12	PAY	\$ 250,000.00	
	Stewart Title Guaranty		
13	Company PAY	\$ 1,776.93	
14	TRILEND INC. Lender's Fee PAY	\$ 150,000.00	
	Balance held back in trust		
	account to be applied in		
	payment of legal fees and		
15	disbursements HOLD	\$ 13,500.00	
16	TOTAL:	\$ 1,558,000.00	\$ 1,558,000.00
17			
18	E & OE.		
19			
20			

TAB 4

Wire Payments[Help](#)**Create Payment - Confirmation**[Print this page](#)

Created From Template	Due Date	Value Date	Payment Must be Sent to TD by:
	11/09/2020	11/09/2020	11/09/2020 05:00 PM Eastern Time (ET)
Beneficiary's Name	Beneficiary's Account		
GO TO NIAGARA FALLS EAGLE VALLEY	00932 1046804		
Payment Amount	Payment ID		Created on:
454,266.32 CAD	97881201109001		09/11/2020 03:11 PM ET

[Create Another Payment](#)[Print this page](#)[Privacy Policy](#) | [Internet Security](#) | [Legal](#) | [CDIC member](#)

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(Server ID: wasappvm1-vr1fal_node:WP_CreatePayment_Confirmation.jsp)

A

B

C

1 **TRUST SUMMARY** **FILE: 40309**

Trilend Inc. loan to Go To
2 **Niagara Falls Eagle Valley LP**

3

4 **RECEIVED:**

5 Trilend Inc. second advance \$ 455,266.32

6

7 **PAID TO:**

Go-To Niagara Falls Eagle
8 Valley Inc. PAY \$ 454,266.32

Balance held back in trust
account to be applied in
payment of legal fees and
9 disbursements HOLD \$ 1,000.00

10 **TOTAL:** \$ 455,266.32 \$ 455,266.32

11

12 **E & OE.**

LRO # 59 Charge By Partnership

Received as SN553433 on 2018 05 30 at 13:56

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

yyyy mm dd Page 1 of 25

Properties

PIN 84269 - 0559 LT **Interest/Estate** Fee Simple

Description PT TWP LT 16 STAMFORD; PT TWP LT 24 STAMFORD; PT TWP LT 25 STAMFORD; PT RDAL BTN TWP LT 24 & 25 STAMFORD; PT RDAL BTN TWP LT 16 & 25 STAMFORD; BEING PTS 2,3,4,5,7,8,9 & 10 59R14717; TOGETHER WITH AN EASEMENT AS IN R0756108; SUBJECT TO AN EASEMENT OVER PTS 7, 8, 9 & 10 59R14717 IN FAVOUR OF PT 1 59R14717 AS IN SN370529; SUBJECT TO AN EASEMENT OVER PTS 2, 7, 4 & 9 59R14717 IN FAVOUR OF PT 1 59R14717 AS IN SN370529; TOGETHER WITH AN EASEMENT OVER PT TWP LT 24 STAMFORD BEING PT 1 ON 59R15044 AS IN SN402290; CITY OF NIAGARA FALLS

Address NIAGARA FALLS

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name GO-TO NIAGARA FALLS EAGLE VALLEY INC.
Address for Service 1267 Cornwall Road, Suite 301
 Oakville,
 Ontario
 L6G 7T5

I, Oscar Furtado, President, have the authority to bind the corporation.

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

This transaction is for a partnership purpose within the meaning of the Limited Partnerships Act.

I am a general partner.

Name GO-TO NIAGARA FALLS EAGLE VALLEY LP
Address for Service 1267 Cornwall Road, Suite 301
 Oakville,
 Ontario
 L6G 7T5

This is the firm name of the Partnership/Limited Partnership.

Chargee(s)		Capacity	Share
Name	IMPERIO SA HOLDINGS INC.	Tenants In Common	700,000.00 of 1,442,000.00
Address for Service	917-60 Southport Street Toronto, Ontario M6S 3N4		
Name	FISCHER, GABRIELE	Tenants In Common	682,000.00 of 1,442,000.00
Address for Service	151 Oxford Street Richmond Hill, Ontario L4C 4L8		
Name	FIGUEIRAS, BALTAZAR DE JESUS PINA PATULEIA	Tenants In Common	80,000.00 of 1,442,000.00
Address for Service	5A Old Mill Drive Toronto, Ontario M6S 4S7		

Statements

Schedule: See Schedules

Provisions

Principal \$1,442,000.00 **Currency** CDN

Calculation Period INTEREST ONLY PAYMENTS

Balance Due Date 2019/06/01

Interest Rate 12.00

Payments

Interest Adjustment Date 2018 06 01

Payment Date

First Payment Date

LRO # 59 Charge By Partnership

Received as SN553433 on 2018 05 30 at 13:56

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

yyyy mm dd Page 2 of 25

Provisions

Last Payment Date 2019 06 01
Standard Charge Terms 200033
Insurance Amount Full Insurable value
Guarantor see Additional Provisions

Additional Provisions

The Guarantors for this Charge/ Mortgage are Oscar Furtado, Michael Smith, Capital Build (Eagle Valley) Holdings Inc., and Capital Build Construction Management Corp.

An interest reserve in the amount of \$173,040.00 shall be held back from the advance representing interest payable to the end of term.

Signed By

Davide Joseph Di Iulio 1000-120 Adelaide St. W. acting for Signed 2018 05 30
Toronto
M5H 3V1 Chargor(s)

Tel 416-363-2211

Fax 416-363-0645

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

Submitted By

SCHNEIDER RUGGIERO LLP 1000-120 Adelaide St. W. 2018 05 30
Toronto
M5H 3V1

Tel 416-363-2211

Fax 416-363-0645

Fees/Taxes/Payment

Statutory Registration Fee \$63.65
Total Paid \$63.65

File Number

Chargee Client File Number: 40309

SCHEDULE TO THE ATTACHED CHARGE/MORTGAGE

RECITALS

The Lender has agreed to make a loan in favour of Go-To Niagara Falls Eagle Valley LP upon the terms and conditions more particularly contained herein.

Go-To Niagara Falls Eagle Valley Inc. as general partner for Go-To Niagara Falls Eagle Valley LP, is the registered owner of the lands and premises described in the electronic Charge to which this schedule is attached.

This Charge is given by the Borrower to the Lender as continuing security for the repayment by Go-To Niagara Falls Eagle Valley LP to the Lender of such loan and the performance by Go-To Niagara Falls Eagle Valley LP of its obligations as more particularly described herein.

ARTICLE 1 - DEFINITIONS

1.1 For the purposes of this Charge the following definitions will apply:

"Additional Amount" has the meaning ascribed to it in Section 6.2 hereof;

"Applicable Laws" means, at any time, in respect of any Person, property, transaction, event or other matter, as applicable, all then current laws, rules, statutes, regulations, treaties, orders, judgments and decrees and all official directives, rules, guidelines, orders, policies, decisions and other requirements of any Governmental Authority (whether or not having the force of law) (collectively, the "Law") relating or applicable to such Person, property, transaction, event or other matter and shall also include any interpretation of the Law or any part of the Law by any Person having jurisdiction over it or charged with its administration or interpretation;

"Applicable Rate" means the interest rate set out in the electronic Charge to which this schedule is attached or, in the alternative, the interest rate set out in the Commitment. The Applicable rate shall, in no event, be less than 12% per annum, calculated monthly not in advance;

"Bills" has the meaning ascribed thereto in Section 10.1(a);

"Borrower" means each party(s) identified as "Chargor" set out in the electronic Charge to which this schedule is attached and its successors and assigns;

"Business Day" means a day on which the Lender is open for business but specifically excluding Saturdays, Sundays or statutory holidays pursuant to the laws of Canada or the Province of Ontario and "Business Days" means more than one Business Day;

"Charge" means this charge/mortgage of land and all instruments supplemental hereto or in amendment, renewal, extension, restatement, replacement or confirmation hereof;

"Charged Premises" means, collectively, the Lands and the Improvements;

"Commitment" means the letter of commitment between the Borrower Go-To Niagara Falls Eagle Valley Inc. in its capacity as general partner for Go-To Niagara Falls Eagle Valley LP and Trilend Inc. as the Lender, dated 7 May 2018, as the same has been or may be amended, restated, supplemented, renewed, extended or superseded from time to time;

"Environmental Approvals" has the meaning ascribed to it in Section 12.1 hereof;

"Environmental Laws" or "Environmental Law" has the meaning ascribed to them in Section 12.1 hereof;

"Event of Default" has the meaning ascribed thereto in Section 18.1 hereof;

"Event of Insolvency" means the occurrence of any one of the following events:

- (a) If the Borrower, or the Guarantor(s), shall, other than as expressly permitted hereby:
 - (i) be wound up, dissolved or liquidated, whether pursuant to the provisions of the laws of the Province of Ontario or the federal laws of Canada applicable therein, or any other law or otherwise, or becomes subject to the provisions of the *Winding-Up and Restructuring Act* (Canada), or has its existence terminated or has any resolution passed therefor; or
 - (ii) makes a general assignment for the benefit of its creditors or files a proposal or a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada), shall otherwise acknowledge its insolvency or shall be declared or become bankrupt or insolvent; or
 - (iii) proposes a compromise or arrangement or otherwise brings proceedings under or becomes subject to the provisions of the *Companies' Creditors Arrangement Act* (Canada) or shall file any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or any other relief for itself under, or in any way takes the benefit of, the *Bankruptcy and Insolvency Act* (Canada) or any other present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors; or
 - (iv) be unable, by reason of insolvency or similar circumstances, to pay its trade creditors generally, within one hundred and twenty (120) days of the rendering of trade accounts or admit its inability to pay its debts or perform its obligations as they become due; or

- (b) If a court of competent jurisdiction shall enter an order, judgment or decree against the Borrower in respect of any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency, or similar relief under any present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors, or the Borrower shall acquiesce in the entry of such order,

judgment or decree, unless the Borrower is also proceeding forthwith to diligently and in good faith contest the same and, provided that none of the Charged Premises, the Charge or the Security, the value of the Charged Premises or the operation thereof, are adversely affected and there is no prejudice to the Lender in the Lender's reasonable opinion, and such order, judgement or decree is vacated or permanently stayed within fifteen (15) days of its making; or

- (c) If any trustee in bankruptcy, receiver, receiver and manager, monitor or liquidator or any other officer with similar powers shall be appointed for the Charged Premises or any portion thereof, or for the Borrower or the Guarantor(s), or for all or any substantial part of its assets or its interest in the Charged Premises with the consent or acquiescence of the Borrower; or
- (d) If, other than as expressly permitted hereby, an encumbrancer or the holder of any lien or charge or any other creditor takes possession of the Charged Premises or the Borrower's interest in the Charged Premises, or any part thereof, or if a distress, execution, garnishment or any similar process is levied or enforced upon or against the same;

"Governmental Authority" means any federal, provincial, territorial or municipal government and any executive, judicial, regulatory or administrative functions of, or pertaining to, government (including, without limitation, all boards, commissions, agencies, departments and ministries);

"Guarantor(s)" means any Person from time to time guaranteeing the Indebtedness;

"Hazardous Substance" has the meaning ascribed to it in Section 12.1 hereof;

"Improvements" means the buildings, erections, structures, fixed machinery, fixed equipment, plant, and improvements now located on the Lands and all appurtenances pertaining thereto, together with all other buildings, structures, fixtures and improvements hereafter located from time to time in, on or under the Lands and all personal property, equipment and chattels now or hereafter affixed to the Lands or to such buildings, erections, structures, fixed machinery, fixed equipment, plant, and improvements owned by the Borrower;

"Indebtedness" means, collectively, the Principal Sum, any debts, liabilities, obligations, covenants and duties owing by the Borrower to the Lender of any kind or nature, present or future and arising under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith, whether or not evidenced by any note, guarantee or other instrument, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guarantee, indemnification, or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired and in all cases arising under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith. The term includes, without limitation, all interest, yield maintenance, charges, expenses, fees, including all processing and commitment fees and all legal fees and disbursements (in each case whether or not allowed), and any other sum chargeable to the Borrower under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith;

"Inspections" has the meaning ascribed to it in Section 12.1 hereof;

"Interest Adjustment Date" means the interest adjustment date set by the Lender for the purposes of setting a payment schedule;

"Lands" means the lands and premises described in the electronic Charge to which this schedule is attached, including all tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, and the reversion or reversions, remainder and remainders, rents, issues and profits therefrom, and all the estate, right, title, interest, property claim and demand whatsoever of the Borrower of, in and to the same and of, in and to every part thereof;

"Lease Benefits" means the benefit of all covenants and obligations of tenants, licencees or occupants contained in any of the Leases, including, without limitation, all rights and benefits of any guarantees thereof, the right to demand, sue for, collect, recover and receive all Rents, to enforce the landlord's rights under any Lease and generally any collateral advantage or benefit to be derived from the Leases or any of them;

"Lease Rights" means, collectively, the Leases, the Rents and the Lease Benefits;

"Leases" means all present and future leases, subleases, licencees, agreements to lease, agreements to sublease, options to lease or sublease, rights of renewal or other agreements by which the Borrower, or any predecessor or successor in title thereto, has granted or will grant the right to use or occupy all or part or parts of the Charged Premises, including all agreements collateral thereto, but which, for the purpose of this definition does not include the Property Lease, and "Lease" means any one of them;

"Lender" means the party identified as "Chargee" in the electronic Charge to which this schedule is attached, and its successors and assigns;

"Loan" means the loan extended or to be extended by the Lender to the Borrower in the principal amount set out in the electronic Charge to which this schedule is attached and secured by this Charge and other security given to the Lender by the Borrower and the Guarantor(s), if any;

"Major Tenant Leases" means any agreements to lease, offers to lease or leases, subleases or occupancy agreements in respect of premises situate on the Charged Premises and which are determined by the Lender in its discretion to be material to the Charged Premises and the extension and maintenance of the Loan;

"Maturity Date" means, subject to early maturity by reason of the occurrence of an Event of Default and the acceleration of repayment at the option of the Lender, the balance due date set out in the electronic Charge to which this schedule is attached;

"Permitted Encumbrances" means encumbrances, liens and interests affecting the Charged Premises which are acceptable to the Lender in its sole discretion;

"Person" means any natural person, sole proprietorship, partnership, syndicate, trust, joint venture, Governmental Authority or any incorporated or unincorporated or entity or association of any nature;

"Principal" or "Principal Sum" means the principal amount of the Loan owing from time to time by the Borrower to the Lender;

"Rents" means all rents, issues and profits now due or to become due under or derived from the Leases;

"Security" means, collectively, all other or additional security, other than this Charge, given by the Borrower or others to the Lender as security for the Loan;

"Taxes" means for each year during the term of this Charge all real property taxes, business taxes, rates, duties, charges, assessments, impositions, taxes, levies and charges for local improvements or otherwise, imposed upon or assessed against the Charged Premises or any part or parts thereof by any Governmental Authority including, without limitation, school boards, and paid or payable by the Borrower or any tenant of the Charged Premises, but shall not include franchise, capital levy or transfer tax or any income, excess profits or revenue tax or any other tax or impost of a personal nature charged or levied upon the Borrower or any tenant of the Charged Premises. If the system of real property taxation or business shall be altered or varied and any new tax shall be levied or imposed on all or any portion of the Charged Premises or the revenues therefrom in substitution for, or in addition to, taxes presently levied or imposed, then any such new tax or levy shall be deemed to be and shall be included herein; and

"Term" means the term of this Charge and being a period which expires on the Maturity Date.

ARTICLE 2 - CHARGING PROVISIONS

2.1 Now therefore witnesseth that the Borrower, being the registered owner of a freehold estate in fee simple in possession of the Lands, in consideration of the Loan advanced or to be advanced by the Lender to the Borrower or for its benefit, and as security for the repayment of all Indebtedness and the performance of the obligations of the Borrower hereunder, does hereby grant, mortgage, charge and create a security interest in, to and in favour of the Lender all of its estate, right, title and interest in and to the Charged Premises and covenants and agrees to and with the Lender as hereinafter provided.

2.2 The last day of any term reserved by any lease or sublease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Borrower, as lessee, and forming part of the Charged Premises is hereby excepted out of the mortgage, charge, assignment and security interest hereby created or granted or any instrument in implementations hereof, and the same shall be deemed to be a charge by way of sublease. As further security for the payment of the Indebtedness, the Borrower agrees that it will stand possessed of the reversion of such last day of the term and shall hold it in trust for the Lender for the purpose of this Charge and to assign and dispose thereof, without cost or expense to the Lender, in such manner as the Lender shall by notice in writing, for such purpose, direct. Upon any sale, assignment, sublease or other disposition of such leasehold interest or any part thereof, the Lender, for the purpose of vesting the aforesaid one day residue of such term or renewal thereof in any purchaser, assignee, sublessee or other acquirer thereof, shall be entitled by deed or writing to appoint such party or parties as a new trustee or trustees of the aforesaid residue of any such term or renewal thereof in the place of the Borrower and to vest the same accordingly in the new trustee or trustees so appointed freed and discharged from any obligation respecting the same.

ARTICLE 3 - REPAYMENT AND INTEREST

3.1 The Borrower covenants to pay to or to the order of the Lender at its offices as set out in Article 23 hereof or at such other address as the Lender may from time to time designate in writing, without set-off, compensation or deduction, and without deduction for bank service or any other charges, the Principal Sum together with all other Indebtedness with interest thereon at the Applicable Rate, as well after as before maturity and both before and after default, demand and judgment. Such interest at the Applicable Rate shall be computed from the date of advance to become due and be paid initially on the Interest Adjustment Date and thereafter to be paid in equal instalments of interest, commencing on the first payment date set out in the Commitment or in the electronic Charge to which this schedule is attached and continuing each month during the Term, to and including the last payment date set out in the Commitment or the electronic Charge to which this schedule is attached, each such instalment to be in the amount stipulated in the Commitment or in the electronic Charge to which this schedule is attached and the last instalment, in the amount of the then remaining balance of the Principal Sum, other Indebtedness and accrued interest thereon, to be paid on the Maturity Date.

3.2 The Borrower acknowledges and agrees that monthly instalments for interest described in Section 3.1 together with all payments for Taxes as set out in Section 10.1 hereof must pass through a single bank account on which the Borrower will have provided post-dated cheques (as required by the Lender) or have pre-authorized the Lender to withdraw the monthly payments under this Charge plus any Taxes payable in respect of the Charged Premises if not otherwise paid by the Borrower. In addition, the Borrower must maintain at all times in such account a minimum balance equal to the sum of the monthly payment of principal, interest and Taxes (as such Taxes become due).

3.3 It is hereby agreed that if default should occur in payment of any sum due at the time appointed for payment thereof as herein provided, compound interest at the Applicable Rate shall be payable on the sum in arrears from time to time, as well after as before maturity, and if interest as compounded is not paid within one (1) month from the time of default, a rest shall be made, and compound interest at the Applicable Rate shall be payable on the aggregate then due, as well after as before maturity, both before and after default, demand and judgement and so on from time to time and all such interest and compound interest shall be a charge on the Charged Premises.

3.4 All interest in arrears shall be treated (as to payment of interest thereon) as Principal and shall bear compound interest, as well after as before maturity, default and judgement as provided in Section 3.3 hereof.

3.5 The Borrower will pay interest, including interest on overdue interest, at the Applicable Rate on any arrears of instalments of principal and/or interest, and any payment by the Borrower shall be applied by the Lender first on account of interest and then on account of principal.

- 3.6 All payments of principal and interest pursuant to Section 3.1 shall be made to and received by the Lender prior to 3:00 p.m. on the date due, failing which such payment shall be deemed received on the next succeeding Business Day provided that in such case, such extension of time shall be included for the purpose of computation for interest; provided further that in the event any payment is due on a day which is not a Business Day, it shall be payable prior to 3:00 p.m. on the next succeeding Business Day and provided such payment is received by such date and such time, then, save in respect of repayment of the Indebtedness at the Maturity Date where interest shall be charged for extensions to the next succeeding Business Day, interest shall not be charged for such extension.

ARTICLE 4 - CRIMINAL RATE OF INTEREST

- 4.1 Notwithstanding any other provisions of this Charge, in no event shall the aggregate "Interest" (as defined in Section 347 of the Criminal Code, (Canada), as the same shall be amended, replaced or re-enacted from time to time) payable to the Lender under this Charge exceed the effective annual rate of interest on the "credit advances" (as defined in that section) under this Charge lawfully permitted under that section and, if any payment, collection or demand pursuant to this Charge in respect of "Interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection, or demand shall be deemed to have been made by mutual mistake of the Lender and the Borrower and the amount of such payment or collection in excess of that lawfully permitted shall be refunded by the Lender to the Borrower.

ARTICLE 5 - INTEREST ACT (CANADA)

- 5.1 For the purposes of this Charge, whenever interest is payable or stated not on the basis of a yearly rate, such rate of interest may be determined by multiplying the Applicable Rate by a fraction the numerator of which is the actual number of days in the calendar year in which the same is to be ascertained and the denominator of which is the number of days in the period for which such rate is determined to be payable.
- 5.2 All calculations of interest or fees under this Charge are to be made on the basis of the stated rates set out herein and not on any basis which gives effect to the principle of deemed re-investment.

ARTICLE 6 - PREPAYMENT

- 6.1 Subject to prepayment provisions provided for in the Commitment, if any, or early maturity by reason of the acceleration of the repayment of the Indebtedness at the option of the Lender upon the occurrence of an Event of Default, the Borrower shall not be entitled to prepay all or any portion of the Principal under this Charge prior to the Maturity Date.
- 6.2 For the purpose of this paragraph and the capitalized terms used in this paragraph, the following expressions shall have the following respective meanings:
- (a) "Discounted Value" means, with respect to any Prepaid Principal, the amount calculated by the Lender, obtained by discounting all Remaining Scheduled Payments relating to such Prepaid Principal from their respective scheduled due dates to the Prepayment Date, in accordance with accepted financial practice at a discount factor (applied on a monthly basis) equal to the Effective Bond Rate;
 - (b) "Effective Bond Rate" means at any time, the rate of interest, expressed as an annual rate, compounded semi-annually, equal to the average of the closing mid-point bid side yields for the three (3) Business Days commencing five (5) Business Days prior to the Prepayment Date of the most actively-traded issue of non-callable Government of Canada bonds with interest compounded semi-annually and having a term to maturity as close as possible to the remaining unexpired term of the Loan from and after the Prepayment Date and with a face coupon as close as possible to the yield to maturity of such bonds as selected by the Lender;
 - (c) "Government of Canada Bond" means a non-callable Government of Canada bond issued in Canadian dollars with interest payable semi-annually, not in advance, and which matures on the Maturity Date (and if more than one of such bonds matures on such date, the bond selected shall be the bond with the coupon rate closest to the interest rate of the Loan (provided such bond is actively traded) or, where no bond matures on such date or a bond matures on such date but is not actively traded, then the two most actively traded bonds (the "Active Bond") with maturity dates closest to such date, the first of which shall have a maturity date prior to such date and the second, of which shall have a maturity date after such date, and if there is more than one bond with these characteristics, or which matures on the Maturity Date, the bond selected shall be the bond with the coupon rate closer to the current yield to maturity of the Loan;
 - (d) "Prepaid Principal" means the principal component of any amount prepaid or otherwise received by the Lender on the Prepayment Date which is applied in reduction of the Principal Sum of the Loan;
 - (e) "Prepayment Date" means the date on which the Lender receives any Prepaid Principal; and
 - (f) "Remaining Scheduled Payments" means the amounts of such Prepaid Principal plus all interest which would accrue thereon and would be due on dates after the Prepayment Date if no payment of such Prepaid Principal were made prior to its scheduled due date.

If prepayment of all or any part of the Principal Sum (in excess of that permitted by the Commitment, if any) occurs prior to the Maturity Date by reason of payment after acceleration by the Lender at its option upon the occurrence of an Event of Default or by any other reason whatsoever (the Borrower acknowledging that it has no right of prepayment prior to the Maturity Date and this Paragraph 6.2 does not provide it with such right), the Borrower agrees to pay the Lender an amount equal to the Principal Sum, all accrued and unpaid interest and all other monies secured by this Charge, and to indemnify and save harmless the Lender from and against all costs and losses resulting from such prior repayment or prepayment to the extent permitted by law. In addition thereto and only to the extent permitted by law, the Borrower shall pay to the Lender, an additional amount (the "Additional Amount") equal to the amount, if any, by which the Discounted Value exceeds the Prepaid Principal. In the event of prepayment as a result of a default, the Borrower acknowledges and agrees that this Additional Amount represents only a genuine pre-estimate of the damage from lost yield and other costs to the Lender and is not a penalty. In the event of prepayment for any other reason whatsoever, the Borrower acknowledges and agrees that Additional Amount is the price to be

paid for any prepayment of all, or any part, of the Loan for any reason. In these circumstances, the Additional Amount represents a freely negotiated price for prepayment.

ARTICLE 7 - NO OBLIGATION TO ADVANCE

- 7.1 The Borrower acknowledges and agrees that the Lender is not bound to make any advance of any of the Principal Sum or any unadvanced portion thereof by reason of the registration of this Charge in any place or registry office or the advance of any part of the said Principal Sum, it being acknowledged by the Borrower that any advance hereunder is subject, inter alia, to: (i) the representations and warranties contained herein being true and correct as of the date of any advance of the Loan; (ii) no default having occurred hereunder, under any of the Security or under the Commitment; and (iii) the conditions precedent contained in the Commitment having been satisfied.
- 7.2 In the event this Charge is registered and either no advance whatsoever is made hereunder by the Lender or the Borrower's ability to draw down funds is terminated by the Lender before any funds are advanced, the Lender will, at the expense of the Borrower and upon payment of all monies, costs, fees and disbursements then due to the Lender, promptly upon request by the Borrower execute and deliver to the Borrower, or any agent thereof, registrable discharges of this Charge and of the Security, for use in every registry office where they or notices thereof have been recorded or filed; provided that the Borrower acknowledges that this Section 7.2 shall be of no effect once any advance of the funds is made hereunder by the Lender.

ARTICLE 8 - REPRESENTATIONS AND WARRANTIES

- 8.1 The Borrower represents and warrants in favour of the Lender, acknowledging that the Lender is relying on such representations and warranties in extending the Loan:
 - (a) The Borrower is a corporation duly organized, validly subsisting and in good standing under the laws of its incorporating jurisdiction and has all necessary corporate power and authority to enter into this Charge and the Security and to perform or cause to be performed its obligations contained herein and therein, to own and operate the Charged Premises and to carry on its business pertaining thereto as presently carried on;
 - (b) There are no provisions in the articles or bylaws of the Borrower or any unanimous shareholders agreement of or with respect to the Borrower or to which the Borrower is a party which restrict, limit or regulate in any way the powers of the Borrower to borrow on credit or to issue, sell or pledge any of the property or assets now or hereafter owned by it to secure its debt obligations, save and except any provisions which have been complied with. No steps or proceedings have been taken or are pending to amend or supersede the articles or bylaws of the Borrower in a manner which would impair or limit the Borrower's ability to perform its obligations hereunder or under the Security;
 - (c) The Borrower has taken all necessary corporate action to authorize the execution and delivery of this Charge and the Security, and performance of the provisions of each in accordance with its terms;
 - (d) The authorization, creation, execution or delivery of this Charge or the Security or the Borrower's performance of its obligations hereunder or thereunder does not require any approval or consent of any Governmental Authority having jurisdiction nor will any such action be in conflict with or contravene any of the Borrower's articles, bylaws, unanimous shareholders agreement, if any, or resolutions of directors or shareholders, or the provisions of any indenture, instrument, agreement or undertaking to which the Borrower is a party or by which it or its properties or assets are bound, or result in the creation, imposition or crystallization of any hypothec, title retention, charge, pledge, lien, encumbrance or security interest of any kind upon any of its property or assets subject to the Charge or security interest created thereby or by the Security other than in accordance with the provisions of this Charge and the Security. This Charge and the Security when executed and delivered will constitute valid and legally binding obligations of the Borrower, enforceable against it in accordance with its terms;
 - (e) There is not now pending or, to the best of the Borrower's knowledge or belief after due inquiry, threatened against the Borrower, any litigation, action, suit, investigation or other proceeding by or before any court, tribunal or other competent Governmental Authority which would materially adversely affect the present or prospective ability of the Borrower to perform its obligations under this Charge or the Security, as the case may be, or which calls into question the validity or enforceability of this Charge or the Security;
 - (f) No Event of Insolvency has occurred or is threatened or pending;
 - (g) The Borrower is the registered owner of and has a good and marketable title in fee simple to the Lands, and, unless otherwise disclosed to the Lender in writing, is the legal and beneficial owner of the Charged Premises, free and clear of all security interests, charges, liens and other encumbrances whatsoever except for the Permitted Encumbrances, which Permitted Encumbrances are in good standing;
 - (h) The Borrower has the right to charge the Charged Premises to the Lender;
 - (i) The Borrower has not received any notice of or threat of a lien under the *Construction Lien Act* (Ontario), as amended, against the Charged Premises nor has any lien been registered against the Charged Premises in respect of labour, materials or services furnished with respect to any improvement thereon which has not been discharged;
 - (j) Unless expressly stipulated in the Commitment, the Charge is not being given with the intention to use the proceeds thereof to finance any alterations, additions or repairs to, or any construction, erection, demolition or installation on the Charged Premises or any structure thereon;
 - (k) Unless expressly stipulated in the Commitment, the Charge is not a building mortgage, within the meaning of the *Construction Lien Act* (Ontario), as amended, and the funds to be advanced by the Lender are not being used to repay a building mortgage;
 - (l) There has been no improvement or materials supplied on or in respect of the Charged Premises in respect of which a construction lien could arise and which has not been completed or abandoned within the forty-five (45) days immediately preceding the date hereof;

- (m) Except as disclosed to the Lender in writing, the existing and proposed uses, the operation of the Charged Premises and the business conducted thereon comply and, to the best of the Borrower's knowledge and belief, have (including all prior uses) at all times complied with all Applicable Laws, including all Environmental Laws, and the Borrower is not in violation of, and does not violate, by virtue of the ownership, use, maintenance or operation of the Charged Premises or the conduct of any business related thereto, any Applicable Laws, including all Environmental Laws;
 - (n) The Charged Premises may be charged by the Borrower in compliance with the *Planning Act* (Ontario), and no severance of any adjoining lands owned by the Borrower is required;
 - (o) All financial statements and data delivered or presented to the Lender by the Borrower up to and including the date hereof are true and correct in all material respects as at the dates and for the periods indicated and have been prepared in accordance with Canadian generally accepted accounting principles and disclose to the Lender all financial information relevant to the Lender in respect of making the Loan and there is no information, financial or otherwise, which has not been disclosed to the Lender which would be material to the Lender in its decision to advance the Loan, and, without limiting the foregoing, neither the Guarantor(s) nor the Borrower has failed to disclose to the Lender any facts or information material to the making of the Loan;
 - (p) No Event of Default, or an event which with the giving of notice, lapse of time or otherwise, would constitute an Event of Default exists;
 - (q) Each Permitted Encumbrance is in good standing and all obligations and covenants required to be met or complied with thereunder on the part of the Borrower have been complied with and, in respect to any other party thereto to the best of the Borrower's knowledge and belief, have been met or complied with;
 - (r) All Leases entered into as of the date hereof are valid, subsisting and enforceable leases and are in good standing as of the date hereof without right of set-off or abatement;
 - (s) The Borrower is not bound by any indenture, agreement, lease or other instrument, nor is it subject to any trust agreement, charter, by-law, unanimous shareholders agreement or other corporate restriction or any of the Applicable Laws, which materially adversely affects its business operations in respect of the Charged Premises or the performance of its obligations under this Charge or the Security;
 - (t) The Borrower has complied with all Applicable Laws in respect of any residential unit located on the Charged Premises, including in respect of any conversion, demolition, rentals charged or filings or applications to be made and there are no outstanding orders, decisions or directives made or pending which are or would be adverse to the Borrower or the Charged Premises in respect of any residential unit located on the Charged Premises;
 - (u) If the Borrower is a limited partnership, each partner of the limited partnership is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
 - (v) With respect to each partner of the limited partnership of which the Borrower is a general partner that is a Canadian corporation, either (i) the shares of that corporation do not derive their value, directly or indirectly, primarily from foreign property, all within the meaning of the *Income Tax Act* (Canada) or (ii) the corporation is a corporation described in subsection 206(1.1) of the *Income Tax Act* (Canada), as that provision may be amended from time to time;
 - (w) The Borrower shall not, without the prior written consent of the Lender, execute or deliver any mortgage, charge, lien or other encumbrance of the Lands intended to rank subordinate to this Charge; and
 - (x) The Borrower is not and shall not be during the Term (without the prior written consent of the Lender), a farmer within the meaning of the *Farm Debt Mediation Act* (Canada).
- 8.2 The representations and warranties set out in this Article 8 shall speak as of the date made, survive the execution and delivery of this Charge and the making of any advance hereunder and continue to be true and accurate during the Term of this Charge, notwithstanding any investigations or examinations which may be made by the Lender or the Lender's solicitors and the Lender shall be deemed to have relied on such representations and warranties in making advances under the Loan.
- 8.3 The Borrower shall indemnify and save harmless the Lender from and against all losses, damages, claims and expenses directly or indirectly incurred or suffered by the Lender resulting from any omission, inaccuracy or misrepresentation of the Borrower herein relating to or concerning the Charged Premises and with respect to all losses, charges, claims and expenses directly or indirectly incurred or suffered by the Lender resulting from or arising in connection with environmental matters relating to, arising from, in connection with or concerning the Charged Premises, whether referred to or contemplated herein or hereby.

ARTICLE 9 – COVENANTS

- 9.1 The Borrower covenants with the Lender that upon the occurrence of an Event of Default, the Lender shall have quiet possession of the Charged Premises, free from any encumbrances, save and except for the Permitted Encumbrances.
- 9.2 The Borrower shall not without the prior written consent of the Lender, which may be withheld in the sole discretion of the Lender permit or suffer to exist any charges, liens, security interests or other encumbrances against the Charged Premises, save and except for the Permitted Encumbrances; and the Borrower shall maintain the Permitted Encumbrances in good standing and provide notice to the Lender forthwith of any default under any of the Permitted Encumbrances.
- 9.3 The Borrower shall not initiate, permit or suffer to exist any Event of Insolvency, in respect of itself or, to the extent that the Loan, this Charge or the Security is affected by the occurrence of any such event, of any related person or corporation, including without limitation, any parent corporation of the Borrower. The Borrower covenants and agrees (i) to provide two Business Days' notice prior to the occurrence of an Event of Insolvency (an "Insolvency Notice"), and agrees that the receipt of an Insolvency Notice by the Lender shall constitute an immediate Event of Default if the Borrower or any Guarantor(s) is an applicant or takes the benefit of such statute or proceeding or if any of these proceedings otherwise affect the rights or

entitlements of the Lender under the Loan, this Charge or the Security or the Lender's ability to enforce this Charge or the Security, and (ii) prior to the commencement of any such proceedings, to deliver to the Lender copies of all relevant filing materials, including, without limitation, copies of draft court orders, plans of compromise, proposals and notices of intention, it being intended by the Borrower that the Lender be entitled during the period after receipt of an Insolvency Notice to enforce this Charge and the Security for the purpose of, among other things, taking possession and control of the Charged Premises, in the Lender's sole discretion.

- 9.4 The Borrower shall not, without the prior written consent of the Lender, initiate, join in or consent to any change to or modification in any private restrictive covenant, municipal or other governmental law, rule or regulation, by-law, or any other public or private restrictions, limiting or defining the uses which may be made of the Charged Premises, or any part thereof and which could adversely affect the Charge, the Security, the day-to-day operations of the Charged Premises, the income derived therefrom or the value of the Charged Premises.
- 9.5 The Borrower shall comply in all respects with all covenants, deed restrictions, easements and Applicable Laws which pertain to the ownership, use or operation of the Charged Premises or the performance by the Borrower of its obligations under this Charge and shall ensure that all representations and warranties contained herein continue to be true and accurate at all times during the Term.
- 9.6 The Borrower shall permit the Lender, or cause to be made available to the Lender, access to all records, both written and electronic, pertaining to the Charged Premises and upon request shall make copies of such information for the Lender. For such purposes, the Lender shall have reasonable access to the Charged Premises or such other place as such records are kept upon reasonable prior written notice to the Borrower.
- 9.7 The Borrower shall fulfil on a timely basis any undertaking provided by it to the Lender at the time of the advance of the Loan.
- 9.8 The Borrower covenants to ensure that this Charge will remain a valid and enforceable mortgage of the Charged Premises with first priority subject only to the Permitted Encumbrances and the Borrower will fully and effectively maintain and keep the Security as valid and effective security during the currency hereof.
- 9.9 The Borrower shall promptly give written notice to the Lender of any litigation, proceeding or dispute affecting the Charged Premises if the result thereof might have a material adverse effect on the Charged Premises, the financial condition or operations of the Borrower or any Guarantor(s) or its ability to perform its obligations hereunder and shall, from time to time, furnish to the Lender all reasonable information requested by the Lender concerning the status of such litigation, proceeding or dispute and shall in all such cases diligently and in good faith proceed to defend, settle or otherwise deal with any such litigation, proceeding or dispute in a commercially reasonable manner.
- 9.10 The Borrower shall promptly give notice to the Lender upon becoming aware of and provide particulars in respect of:
 - (a) An Event of Default or any event which with the passage of time or giving of notice would constitute an Event of Default;
 - (b) Any default under a Lease;
 - (c) Details of material renovations to the Charged Premises when the Borrower intends to or reasonably anticipates that it will renovate the Charged Premises;
 - (d) Any default under any Permitted Encumbrance;
 - (e) Any notice of expropriation, action or proceeding materially affecting the Charged Premises or the violation of any Applicable Law which may have a material adverse affect on the Charged Premises; and
 - (f) Any matter which may have a material adverse affect upon the Borrower or the Guarantor(s) or Charged Premises or the operations conducted thereon, or the security constituted by this Charge and the Security.
- 9.11 The Borrower covenants at all times:
 - (a) to perform or cause to be performed all of the covenants and obligations on the part of lessor contained in the Leases (except the extent the same have been expressly waived by the other parties to such Leases and except in circumstances where the tenant is in default and the Borrower is acting prudently and in the best interests of the Charged Premises);
 - (b) to maintain or cause to be maintained the Lease Rights in good standing and not to do, permit to be done or omit to do anything which may impair the enforceability of the Lease Rights;
 - (c) save for the deposits for the first and last month rentals, not to accept Rents more than one (1) month in advance of the dates when Rents fall due;
 - (d) not to enter into Leases which are not at arm's length unless the terms thereof are at least equal to current market terms;
 - (e) not to enter into Lease which do not constitute Major Tenant Leases (each of which must be approved by the Lender as hereafter provided) unless such leases are substantially on Lender pre-approved standard lease forms and not to enter into Major Tenant Leases without the Lender's approval as hereafter provided;
 - (f) not to or to permit termination, alteration or amendment or waiver of rights or remedies or otherwise take any action with respect to any of the Leases which in the aggregate would create a material reduction in Rents from those payable as of the date hereof, without the prior approval of the Lender;
 - (g) not to further assign, mortgage or pledge or permit the assignment, mortgaging or pledging of any Lease or the rents

thereunder, save for assignments by tenants of their tenant's interest in Leases, to the extent permitted under such Leases; and

- (h) to ensure in respect of all Leases now or hereafter entered into that (i) the tenant thereunder, at the option of the Lender, subordinates its lease to the security of this Charge and attorns to and becomes a tenant of the Lender or any purchaser from the Lender in the event of the exercise of a sale remedy by the Lender, for the unexpired residue of the term and upon the terms and conditions of said lease, provided the Lender will agree to enter into non-disturbance agreements on commercially reasonable terms with all such tenants; and (ii) at the request of the Lender, provide as further security specific assignments of Leases hereinafter entered into.
- 9.12 The Borrower shall not, without the prior written consent of the Lender, acting reasonably and promptly, enter into any agreement or document in respect of the Charged Premises (except for leases in accordance with the terms hereof and the Security) which is material to the ownership, value, operation, or use of the Charged Premises unless the same is in the ordinary course of business.
- 9.13 With respect to any Major Tenant Lease, the Borrower shall not and shall not permit without the prior written consent of the Lender:
- (a) cancel or modify any Major Tenant Lease, release the obligations of any lessee thereunder, accept a surrender of a Major Tenant Lease, accept any prepayment of Rents thereunder or consent to any sublet or assignment by the lessee under any Major Tenant lease (except where the provisions of such Major Tenant Lease require the landlord to do so); or
 - (b) enter into any Major Tenant Lease unless the terms, form and substance of such Major Lease is satisfactory to the Lender, acting reasonably; or
 - (c) to further assign, mortgage, pledge, hypothecate or otherwise deal with any Major Tenant Lease.
- 9.14 The Borrower shall do or cause to be done all things necessary to keep in full force and effect all rights, franchises, licences and qualifications necessary or incidental to perform or cause to be performed its obligations contained in this Charge and the Security and to carry on its business pertaining thereto as presently carried on.
- 9.15 The Borrower shall from time to time to pay or cause to be paid all amounts related to taxes, wages, workers compensation obligations, government royalties, and any other similar amounts relating to the business conducted on the Charged Premises if non-payment thereof may result in an encumbrance (other than a Permitted Encumbrance) against the Charged Premises or any of the assets secured in favour of the Lender by the Security.
- 9.16 The Borrower shall not, without the prior written consent of the Lender, acting reasonably and promptly, cause or permit any change in the status of the Borrower that results in the representations contained in Subparagraph 8.1(u) or Subparagraph 8.1(v) ceasing to be accurate in all material respects.
- 9.17 The Borrower covenants, subject to the rights of reorganization herein contained, to continue as a corporation duly organized, validly subsisting and in good standing under the laws of its incorporating jurisdiction and maintain all necessary corporate power and authority to perform or cause to be performed its obligations contained herein and in the Security, to own and operate the Charged Premises and to carry on its business pertaining thereto as presently carried on.
- 9.18 The Borrower covenants that, unless in respect of a reorganization of the Borrower permitted under Paragraph 18.1(h) or with the consent of the Lender as provided therein, no steps or proceedings will be taken to amend or supersede the articles or bylaws of the Borrower and in any event no steps or proceedings, including any reorganization of the Borrower, will be taken in a manner which would impair or limit the Borrower's or its successor's ability to perform its obligations hereunder or under the Security.
- 9.19 The Borrower will not enter into any indenture, agreement, lease or other instrument, nor become subject to any trust agreement, charter, by-law, unanimous shareholders agreement or other corporate restriction, which materially adversely affects the Charged Premises.

ARTICLE 10 - TAXES/LIENS

10.1

- (a) The Borrower shall pay or cause to be paid, all Taxes together with such other amounts, the failure to pay which would give rise to a lien against the Charged Premises, as and when the same shall fall due and payable (collectively, the "Bills").
- (b) With respect to Taxes at the option of the Lender, the Borrower shall pay to the Lender in equal monthly instalments on the first day of each month in each calendar year during the Term, commencing on the first day of the month next following the Interest Adjustment Date, one-twelfth (1/12) of the annual Taxes (or such amount as may be required in order to pay the Taxes as they become due) as reasonably estimated by the Lender; said payments of Taxes shall be paid to the Lender in addition to the instalments of principal and interest due and payable under this Charge, to be deposited upon receipt and held by the Lender in an interest-bearing account for the payment of Taxes, with interest to accrue thereon to the benefit of the Borrower and to be credited in reduction of the amount required to be paid to the Lender for Taxes. The Lender agrees that upon and subject to receipt of monies for Taxes it will remit such monies to the proper municipal offices in payment of Taxes as required from time to time; provided that if any Event of Default shall occur and be continuing, then the Lender, at its sole option, may apply all or any part of any funds held in such account to any amount due hereunder, whether principal, interest or otherwise. The Borrower shall also pay, or cause to be paid, to the Lender before the due date for the payment of Taxes (or next periodic instalment date therefor, as the case may be) any sums in addition to the aforesaid monthly instalments which may be required in order that out of such sums held in trust or escrow by the Lender and such additional sums, the Lender may pay the whole amount of Taxes

assessed thereto, on the due date for payment thereof. Notwithstanding the foregoing provisions of this Paragraph 10.1(b), the Borrower acknowledges that the Lender is under no obligation to collect from the Borrower monthly instalments on account of Taxes. In addition, the Borrower acknowledges its obligation to pay all Taxes when due, whether or not the payment of all Taxes are the responsibilities of tenants and whether or not such tenants have remitted the same to the Borrower.

- (c) The Lender may, after written notice being given to the Borrower, pay all unpaid and due Taxes, and any amounts, the failure to pay which would give rise to a lien and any amounts so paid by the Lender shall become part of the Principal hereby secured and be a charge on the Charged Premises in favour of the Lender and shall be payable forthwith by the Borrower to the Lender with interest at the Applicable Rate until paid.
- (d) If the Charged Premises or any part thereof are sold or forfeited for nonpayment of Taxes while any sum remains unpaid hereunder, the Lender may acquire the title and rights of the purchaser at any sale, or the rights of any other person or corporation becoming entitled on or under any such forfeiture, or the Lender may pay, either in its own name or in the name of the Borrower and on the Borrower's behalf, any and all sums necessary to be paid to redeem such land so sold or forfeited, and to re-vest such lands in the Borrower, and the Borrower hereby nominates and appoints the Lender as agent to pay such monies on the Borrower's behalf and in the Borrower's name, and any monies so expended by the Lender shall become part of the Principal Sum hereby secured and be a charge on the Charged Premises in favour of the Lender and shall be payable forthwith by the Borrower to the Lender and until so paid shall bear interest at the Applicable Rate or in the alternative, the Lender may purchase the Charged Premises at any tax sale of the same.
- (e) Notwithstanding anything to the contrary herein contained, the Borrower shall have the right to contest or defend any actions brought to recover, or appeal any judgments recovered against it in respect of any Bills, or other like charges, or any construction or other liens levied or registered against the Charged Premises, by appropriate proceedings diligently conducted in good faith, provided that the Borrower shall have first deposited with the Lender, or otherwise provided to the reasonable satisfaction of the Lender, such security as the Lender acting reasonably may require including, without limitation, security for the payment of such Bills, charges or liens and any costs payable in connection therewith, and further provided that the Lender shall have determined, to its reasonable satisfaction, that any such contest, defence or appeal or any delay or nonpayment of such Bills, charges or liens shall not materially prejudice the prior charge or lien of this Charge or the title of the Borrower to the Charged Premises. Should the Lender at any time thereafter determine, in its reasonable discretion, that any such contest, defence or appeal or any delay or nonpayment of such Bills, charges or liens shall materially prejudice the prior charge or lien of this Charge or the title of the Borrower to the Charged Premises, the Lender may realize upon such security for payment as aforesaid and pay such Bills, charges or liens. Upon termination of such proceedings, the Borrower shall promptly pay or cause to be paid the amount of the Bills, charges or liens and any other costs, fees, interest and penalties as are properly payable upon determination of such proceedings and promptly cause any tax notifications, caveats, liens, certificates of or pertaining litigation or any other form of notice or encumbrance in respect thereof to be promptly discharged from the title to the Charged Premises at the sole expense of the Borrower whereupon all such security deposited or otherwise provided to the Lender and any proceeds from the realization thereof not paid on account of Bills as aforesaid, shall be returned and paid to the Borrower.
- (f) The Borrower agrees to and does hereby indemnify the Lender against all claims, demands, costs, damages and expenses which arise in respect of any default, late payment, omission, act or proceeding by the Borrower, under or in respect of this Section 10.1.
- (g) If the Lender comes into and for as long as it is in possession of the Charged Premises, the Lender, in its sole discretion, shall be entitled to and shall enjoy all the rights of the Borrower set out in Paragraph 10.1(d) hereof, to the exclusion of the Borrower.

ARTICLE 11 – INSURANCE

- 11.1 Subject to the terms and provision of the Commitment, the Borrower will immediately insure, unless already insured, and during the continuance of the Charge keep insured against loss or damage by fire, in such proportions upon each building as may be required by the Lender, the buildings on the land to the amount of not less than their full insurable value on a replacement cost basis in dollars of lawful money of Canada. Such insurance shall be placed with a company approved by the Lender. Buildings shall include all buildings whether now or hereafter erected on the land, and such insurance shall include insurance against loss or damage customarily provided in insurance policies including "all risks" insurance. Evidence of continuation of all such insurance having been effected shall be produced to the Lender at least thirty (30) days before the expiration thereof; otherwise the Lender may provide therefore and charge the premium paid and interest thereon at the rate provided for in the Charge to the Borrower and the same shall be payable forthwith and shall also be a charge upon the land. It is further agreed that the Lender may at any time require any insurance of the buildings to be cancelled and new insurance effected in a company to be named by the Lender and also of his own accord may effect or maintain any insurance herein provided for, and any amount paid by the Lender therefore shall be payable forthwith by the Borrower with interest at the rate provided for in the Charge and shall also be a charge upon the land. Policies of insurance herein required shall provide that loss, if any, shall be payable to the Lender as its interest may appear, subject to the standard form of mortgage clause approved by the Insurance Bureau of Canada which shall be attached to the policy of insurance.
- 11.2 Subject to the terms and provision of the Commitment, during any construction on the Charged Property, the Borrower shall maintain:
 - (i) Builders' all-risk coverage for 100% of the construction cost with loss payable to the Lender by way of an Insurance Bureau of Canada ("IBC") approved mortgage clause. The policy must cover flood, earthquake, building by-laws, delayed opening, must allow for partial occupancy of the premises and provide for interim loss payments during reconstruction;
 - (ii) adequate Wrap-Up Liability coverage;
 - (iii) Project performance and completion bonds and insurance, including coverage for labour and material bonds;

and

- (iv) adequate Professional Liability coverage;

- 11.3 The Borrower shall at all times maintain any other or additional insurance which the Lender may from time to time reasonably require and providing same is available on commercially reasonable terms.

ARTICLE 12 - ENVIRONMENTAL

- 12.1 The following capitalized terms shall have the following respective meanings:

"Environmental Approvals" means all applicable permits, licences, authorizations, consents, directions or approvals required by Governmental Authorities pursuant to the Environmental Laws with respect to the use, occupation, ownership or operation of the Charged Premises;

"Environmental Laws" means all applicable federal, provincial and municipal laws, by-laws, regulations, executive orders, judgments and protocols, relating in whole or in part, to the environment or its protection, and without restricting the generality of the foregoing, includes without limitation, those laws relating to the manufacturing, processing, use, handling, packaging, labelling, sale, storage, recycling, transportation, treatment, destruction, burial or disposal of Hazardous Substances, employee safety, and the emission, discharge, release, deposit, issuance, spraying, dumping, throwing, pouring, spilling, emptying, placing, leaking, seeping, exhausting or abandonment of Hazardous Substances into the atmosphere, air, surface water, ground water, land surface or subsurface strata and, in each such case, as such Environmental Laws may be amended or supplemented from time to time, and "Environmental Law" means any of them;

"Hazardous Substance" means any pollutant, contaminant, waste, hazardous waste, toxic substance or dangerous good which is defined or identified in or the object of any Environmental Law, the presence of which in the environment is in contravention of any Environmental Law; and

"Inspections" means all inspections, evaluations or tests conducted by the Lender or any agent or consultant thereof for the purpose of determining the environmental condition of the Charged Premises, as the Lender may deem appropriate, acting reasonably.

- 12.2 The Borrower represents and warrants (which representations and warranties shall continue throughout the Term of the Loan) that:

- (a) The condition and use of the Charged Premises is and, to the best of the Borrower's knowledge, any prior use of the same was, in compliance in all material respects with all applicable Environmental Laws;
- (b) The Charged Premises is not subject to any judicial or administrative proceedings alleging violation of any Environmental Laws and there are no outstanding orders or proceedings against the Charged Premises from a Governmental Authority responsible for protecting the environment alleging the violation of any Environmental Laws;
- (c) To the knowledge of the Borrower, the Charged Premises is not the subject of any investigation by Governmental Authorities having jurisdiction evaluating whether any remedial action is needed to respond to a contravention of any Environmental Laws; and
- (d) There is no contingent liability of which the Borrower has knowledge or reasonably should have knowledge in connection with the contravention of any Environmental Laws.

- 12.3 The Borrower covenants with the Lender:

- (a) If not already provided, to provide to the Lender within ninety (90) days of the execution of this Charge, an environmental audit with respect to the Lands, and if an event shall have occurred after the date of this Charge, which the Lender, acting reasonably, believes may have resulted or may result in material adverse change in the environmental condition of the Charged Premises or any part thereof, to provide such further environmental audits as the Lender may require;
- (b) To provide notice within fifteen (15) days of either having learned of any enactment or promulgation of any Environmental Laws which may result in any material adverse change in the condition, financial or otherwise, of the Charged Premises;
- (c) To defend, indemnify and hold harmless the Lender, its directors, officers, employees, agents and their respective successors and assigns, against any and all loss, cost, expense, claim, liability or alleged liability arising out of any environmental damage occasioned to the Charged Premises contravention of any Environmental Laws;
- (d) To, at all times and at its own expense, conduct its business and maintain the Charged Premises in compliance with all Environmental Laws and Environmental Approvals including causing all tenants of the Charged Premises to comply with the same;
- (e) If the Borrower:
 - (i) receives notice from any Governmental Authority having jurisdiction that violation of any Environmental Law or Environmental Approval has been committed by the Borrower or any tenant with respect to the Charged Premises;
 - (ii) receives notice that any remedial order or other proceeding has been filed against the Borrower or any tenant alleging in respect of the Charged Premises violations of any Environmental Law or requiring the Borrower to take any action in connection with the release of a Hazardous Substance into the environment; or

- (iii) receives any notice from a Governmental Authority having jurisdiction in respect of the Charged Premises that the Borrower or any tenant may be liable or responsible for costs associated with a nuisance or a response to, or clean up of, a release of a Hazardous Substance into the environment or any damages caused thereby;

to provide to the Lender a copy of such notice within ten (10) days of the Borrower's receipt thereof, and thereafter shall keep the Lender informed in a timely manner of any developments in such matters, and shall provide to the Lender such other information in respect thereto as may be reasonably requested by the Lender from time to time and shall proceed to deal with the same diligently and in good faith in order to bring the Charged Premises into compliance to the extent necessary to comply with Environmental Laws;

- (f) Unless in existence on the Charged Premises on the date of this Charge, not to use, discharge, transport or install in or upon the Charged Premises any material or equipment containing PCBs or permit any tenant of the Charged Premises to do so and, to the extent in existence on the Charged Premises as of the date of this Charge, to maintain the same in compliance with all Environmental Laws;
- (g) To maintain, and to require all occupants of the Charged Premises to maintain in good leak-proof condition all above-ground and underground storage tanks and drums on the Charged Premises;
- (h) Not to install asbestos or permit asbestos to be installed in the Charged Premises. With respect to any asbestos present in the Charged Premises on the date of this Charge, the Borrower shall, at its expense, promptly comply with the requirements of Environmental Laws and Governmental Authorities respecting the use, removal and disposal of asbestos; and
- (i) To obtain or cause its solicitors to obtain copies of all relevant environmental studies or assessments of the Charged Premises which the Borrower or its solicitors or agents have commissioned or which are in the possession or control of the Borrower, as of the date of this Charge and, to the extent any such assessments or studies are required by the Lender from time to time, to promptly provide same to the Lender upon request and hereby authorizes and directs its solicitors, agents and consultants to promptly release same to the Lender.

12.4 Having due regard to the rights of any tenant of the Borrower, the Lender and its employees and agents shall have the right, and are hereby granted permission by the Borrower, to enter the Charged Premises from time to time, and to have access to the Borrowers' relevant documents and records, in order to conduct inspections, to determine compliance with Environmental Laws as the Lender, acting reasonably, may deem appropriate. Inspections shall be:

- (a) at such times and to such extent as may be reasonable in the circumstances on prior notice to the Borrower if the Lender has reasonable grounds for believing that:
 - (i) there are, contrary to Environmental Laws or Environmental Approvals, Hazardous Substances in or upon the Charged Premises which have not been disclosed to and approved by the Lender and appropriate Government Authorities; or
 - (ii) the Borrower is in breach of any environmental representations in this Charge or its covenants in this Article; or
 - (iii) the Borrower is not in compliance with any Environmental Laws or material Environmental Approvals; and
- (b) at any time without prior notice upon the occurrence of an Event of Default which is continuing.

If the Borrower is found not to be in compliance with the Environmental Laws or Environmental Approvals and such failure to comply becomes an Event of Default that is continuing, the Lender may, at its option (but without any obligation to do so) take such actions as are required, acting reasonably, to bring the Charged Premises into compliance, and the costs thereof shall immediately become due and payable to the Lender by the Borrower and shall be secured by the Security.

12.5 The Lender shall not, by virtue of being the chargee under this Charge or the enforcement of its rights contained herein for purposes of the Environmental Laws, be or be deemed to be the owner of, any of the Charged Premises, or to have management, charge, control, occupation or possession of any of the Charged Premises or the businesses of the Borrower, or of any Hazardous Substances located on, upon or within any of the Charged Premises.

12.6 The Borrower hereby covenants and agrees to be responsible for, and to indemnify and hold harmless the Lender and each of its officers, directors, employees and agents and their respective successors and assigns (in this Section, collectively referred to as the "Indemnified Parties") from and against all claims, demands, liabilities, losses, costs, damages and expenses (including, without limitation, reasonable legal fees and all costs incurred in the investigation, pursuing of any claim, or in any proceeding with respect to, defense and settlement of any item or matter hereinafter set out) that the Indemnified Parties may incur or suffer, directly or indirectly as a result of or in connection with:

- (a) Any inaccuracy in or breach of the Borrower's representations and warranties relating to the environmental matters contained herein;
- (b) The presence of any Hazardous Substance on, upon or within the Charged Premises, or the escape, seepage, leakage, spillage, discharge, emission, release, disposal or transportation away from the Charged Premises of any Hazardous Substance, whether or not there is compliance with all applicable Environmental Laws and Environmental Approvals;
- (c) The imposition of any remedial order affecting the Lands, or any non-compliance with Environmental Laws or Environmental Approvals pertaining to the Charged Premises by any person, including the Borrower, the Lender or any person acting on behalf of the Lender; and
- (d) Any diminution in the value or any loss on the disposition of the Charged Premises arising directly or indirectly as a

result of the presence on the Lands of any Hazardous Substance, or as a result of the imposition of any remedial order or the breach by any person of any Environmental Law or Environmental Approval.

This indemnity shall survive the satisfaction and release of this Charge and the Security and the payment and satisfaction of all indebtedness hereunder. The benefit of this indemnity may be assigned by the Lender to any successor or assign of the Lender and the Borrower hereby consents to any such assignment.

ARTICLE 13 - ASSIGNMENT OF RENTS AND LEASES

- 13.1 As further security for the payment of all monies owing and the performance of all obligations to be performed hereunder, the Borrower does, as and by way of security, hereby sell, assign, transfer and set over unto to the Lender all of the Borrower's right, title and interest, both at law and equity, in and to the Lease Rights, to hold and receive the same unto the Borrower with full power and authority to demand, collect, sue for, recover and receive and give receipts for Rents and enforce payments of the same and enforce performance of the obligations of tenants under the Leases, provided, however, that, subject to the terms of this Charge, the Borrower shall have the full right, so long as no Event of Default has occurred and is continuing, to continue to collect Rents, to take or cause to take all actions as it deems necessary with respect to the Lease Rights, acting as a reasonable lessor.
- 13.2 It is expressly acknowledged and agreed by the Borrower that nothing contained in this Charge shall oblige the Lender to assume or perform any obligation of the Borrower to any third party in respect of or arising out of the assigned Lease Rights. The Lender may, however, after the occurrence of an Event of Default and while such Event of Default continues, at its option, assume or perform any such obligation as the Lender considers necessary or desirable to obtain the benefit of the Lease Rights, free of any set-off, reduction or abatement, and any money expended by the Lender in this regard shall form part of or be deemed to form part of the indebtedness secured by this Charge and shall bear interest at the Applicable Rate.

ARTICLE 14 - MANAGEMENT AND REPAIR

- 14.1 The Borrower shall cause the Charged Premises at all times to be professionally maintained, managed and operated and fully and continuously operational during customary business hours, including all uses ancillary or incidental to its operations, at all times, by competent managers and staff of proper background and training, in a first class manner consistent with the management and operation of other properties which are of size, location, use, class, age and type comparable to the Charged Premises, and the Borrower shall obtain the Lender's prior written approval of any manager and any management contract with any manager which may be entered into by the Borrower for the management of the Charged Premises. In addition to any other rights hereunder of the Lender, the Lender shall have the right, acting reasonably, to replace the manager at the expense of the Borrower in the event the management standards are not maintained as required hereunder and the situation is not remedied within thirty (30) days after written notice from the Lender. The Lender acknowledges and approves, as of the date hereof, of the Borrower or a company controlled by the Borrower acting as manager of the Charged Premises provided that the Charged Premises are managed and maintained in accordance with the provisions hereof.
- 14.2 The Borrower shall promptly repair, maintain, restore, replace, rebuild, keep, make good, finish, add to and put in order, or cause to be so done, the Charged Premises, so that the same shall, at all times, be in good condition and repair and to pay or cause to be paid when due all claims for labour performed and materials furnished therefor. The Borrower shall not commit or suffer any waste of the Charged Premises nor take any action that might invalidate or give cause for cancellation of any insurance maintained in respect of the Charged Premises. No building or other property now or hereafter charged by this Charge shall be removed, or demolished or nor shall the structure of any building be materially altered, redeveloped, retrofitted or renovated, without the prior written consent of the Lender, except that the Borrower shall have the right, without such consent, to remove and dispose of, free from the lien or charge of this Charge, such fixed equipment as from time to time may become worn out or obsolete, provided that either (a) simultaneously with or prior to such removal, and if necessary for the operation of the Charged Premises such equipment shall be replaced with other equipment of a quality comparable to that of the replaced equipment and free from any lien, title retention agreement, conditional sale contract, security agreement or other encumbrance, and by such removal and replacement the Borrower shall be deemed to have subjected such fixed equipment to the lien or charge of this Charge, or, (b) any net cash proceeds received from such disposition shall, at the option of the Lender, be paid over promptly to the Lender to be applied in a manner determined by Lender in its sole discretion toward the payment of any amounts owing hereunder or secured hereby. The Borrower shall notify the Lender promptly of any material damage to or defects in any of the Improvements, and thereafter forthwith shall make or cause to be made such repairs thereto as are required to correct any such damage or defects and return the Charged Premises to a state of condition and repair equivalent to the state of condition and repair required by the provisions of this Charge.
- 14.3 The Borrower shall comply with, or cause to be complied with, all statutes including without limitation the provisions of the *Construction Lien Act* (Ontario), ordinances and requirements of any Governmental Authority having jurisdiction with respect to the Charged Premises; the Borrower shall complete and pay for, within a reasonable time, any structure at any time in the process of construction on the Charged Premises.
- 14.4 The Borrower shall permit the Lender or its authorized agents at all reasonable times to enter upon the Charged Premises and inspect same, and if such inspection reveals that any repairs or like actions are necessary, the Lender may give notice to the Borrower requiring the Borrower to repair, rebuild or reinstate the same, or take such other like action within a reasonable time. Any failure by the Borrower to comply with such notice shall constitute an Event of Default hereunder and the Lender may repair, rebuild or reinstate the Charged Premises at the cost of the Borrower and charge all sums of money determined by the Lender to be properly paid therefor and interest thereon at the Applicable Rate until paid.

ARTICLE 15 - INCREASED COSTS

- 15.1 In the event that as a result of any application of or any change in or enactment of any applicable law, regulation, treaty or official directive after the date hereof (whether or not having the force of law), or in the interpretation of application thereof by any court or by any governmental or other authority or entity charged with the administration thereof which now or hereafter:
 - (a) Subjects the Lender to any tax or changes the basis of taxation, or increases any existing tax, on payments of principal, interest or other amounts payable by the Borrower to the Lender under this Charge (except for taxes on the overall net

income of the Lender or capital of the Lender imposed by the Government of Canada or any political subdivision thereof or by the jurisdiction in which the principal or lending office of the Lender is located); or

- (b) Imposes, modifies or deems applicable any special requirements against assets held by, or deposits in or for the account of or any other acquisition of funds by the Lender or imposes on the Lender a requirement to maintain or allocate capital or additional capital in relation to the Loan; or
- (c) Imposes on the Lender any other condition with respect to this Charge; or
- (d) Renders any portion of this Charge illegal or unenforceable;

and the result of any of the foregoing is to increase the cost to the Lender, or reduce the amount of principal, interest or other amount received or receivable by the Lender hereunder or its effective return hereunder in respect of making or maintaining the Loan hereunder or to reduce the payments receivable by the Lender in respect of the Loan by an amount which the Lender deems to be material, the Lender shall promptly give written notice thereof to the Borrower setting out in reasonable detail the facts giving rise to and a summary calculation of such increased costs or reduced payments, and the Borrower shall forthwith pay to the Lender upon receipt of such notice that amount which will compensate the Lender for such additional cost or reduction in income (herein referred to as "Additional Compensation"). Upon the Lender having determined that it is entitled to Additional Compensation in accordance with the provisions of this Section, the Lender shall promptly so notify the Borrower. The Borrower shall forthwith pay to the Lender upon receipt of such notice such Additional Compensation calculated on the date of demand. The Lender shall be entitled to be paid such Additional Compensation from time to time to the extent that the provisions of this Section are then applicable notwithstanding that the Lender has previously been paid any Additional Compensation. The Lender shall endeavour to limit the incidence of any such Additional Compensation, including seeking recovery for the account of the Borrower, by appealing any assessment at the expense of the Borrower upon the Borrower's request.

- 15.2 All payments made by the Borrower to the Lender will be made free and clear of all present and future taxes, withholdings or deductions of whatever nature. If these taxes, withholdings or deductions are required by Applicable Law and are made, the Borrower shall, as a separate and independent obligation, pay to the Lender all additional amounts as shall fully indemnify the Lender from any such taxes, withholding or deduction. Provided, however, that the Borrower shall have no obligation to pay any withholding or like tax which may be exigible, incurred or required as a result of the Lender being a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

- 15.3 If the result of any law, regulation, treaty or official directive or request or any change in or any introduction thereof or change in the interpretation or application thereof or compliance by the Lender with the same (including, without limitation, those relating to taxation, reserve requirements, capital adequacy or other banking or monetary controls) is such that it is or will become (other than as a result of some positive action of the Lender, including any participation or syndication hereof by the Lender) unlawful for the Lender to make, fund or allow to remain outstanding all or part of the Loan, or to carry out all or any of its other obligations under this Charge and/or the Security or receive interest or any fee at the Applicable Rate, then in such case:

- (a) The Lender may give written notice to the Borrower of such law, regulation, treaty or official directive or request (whether or not having the force of law) or such change in or any introduction thereof or change in the interpretation or application thereof or compliance by the Lender with the same (including, without limitation, those relating to taxation, reserve requirements, capital adequacy or other banking or monetary controls) which such notice shall certify that such law, regulation, treaty, official directive or request is generally applicable to all other borrowers from the Lender with any accommodation similar to that herein provided; and
- (b) The Borrower shall prepay the Indebtedness, including the Additional Amount, on such date and to such extent as the Lender shall certify to be necessary to comply with the relevant law or change described above;

provided, however, that should the Loan become unlawful, the Lender, without prejudice to its rights to require repayment and without any obligation on its part, will consider other means of funding the Loan which would not be unlawful, would allow the Lender to carry out its obligations in respect of the Loan and would enable the Lender to receive interest at the Applicable Rate, provided always, notwithstanding the foregoing, the Lender is not obligated to provide alternate funding.

ARTICLE 16 - OBTAINING AND MAINTAINING SECURITY

- 16.1 Regardless of whether such sums are advanced or incurred with the knowledge, consent, concurrence or acquiescence of the Borrower or otherwise and in addition to any other amounts provided for herein or otherwise permitted by Applicable Law to be secured hereby, except as herein otherwise provided, the following are to be secured hereby and shall be a charge on the Charged Premises, together with the interest thereon at the Applicable Rate, and all such monies shall be repayable to the Lender, on demand, except as herein otherwise provided:

- (a) All reasonable and properly chargeable solicitor's, inspector's, valuator's, consultant's, architect's, engineer's, surveyor's and appraiser's fees and out-of-pocket expenses:
 - (i) for drawing and registering this Charge and the Security and financing statements in connection therewith, and attending to advances hereunder;
 - (ii) for examining the Charged Premises and the title thereto up to the date hereof;
 - (iii) for making and maintaining this Charge as a registered charge on the Charged Premises and maintaining the Security (including the registration and filing of renewals);
 - (iv) for the preparation of this Charge, the Security and any related documents and in exercising or enforcing or attempting to enforce or advising the Lender in respect of defaults hereunder or in pursuit of any right, power, remedy or purpose hereunder or subsisting at law;

- (v) reasonable allowance for the time, work and expenses of the Lender or of any agent of the Lender in connection therewith; and
- (b) All reasonable sums which the Lender may from time to time advance, expend, incur or suffer hereunder:
 - (i) for insurance premiums, Bills, Taxes, rates, or in or toward payment of prior liens, charges, encumbrances or claims charged or to be charged against the Charged Premises;
 - (ii) in maintaining, repairing, restoring or completing construction of the Charged Premise;
 - (iii) in inspecting, leasing, managing or improving the Charged Premises as permitted hereunder, including the price or value of any goods of any sort or description supplied to be used on the Charged Premises as permitted hereunder; and
- (c) Without limiting the generality of any of the foregoing, the then current reasonable fee of the Lender and/or its solicitor for the following matters:
 - (i) executing any cessation or discharge of this Charge, notwithstanding that said cessation or discharge may have been prepared by the Borrower;
 - (ii) entering into an agreement to amend the interest rate or any other provision in the Charge;
 - (iii) handling any dishonored cheque;
 - (iv) preparing an amortization schedule showing the principal and interest components of payments due under this Charge;
 - (v) the cost of completing a Phase I & II Environmental Audit and such other environmental audits as the Lender may require in its discretion;
 - (vi) such other administrative matters as the Lender may perform with regards to the Charge or with regards to any collateral security, as permitted by the Commitment;
 - (vii) the fee charged by the Lender's insurance consultant to review the Borrower's policy of insurance for the subject lands including business interruption insurance if required by the Lender; and
 - (viii) the execution and delivery of any consents, postponements, acknowledgments or any other documents that may be required from the Lender, whether from the Borrower and/or any governmental authorities and/or public/private utilities.

- 16.2 If any action or proceeding be commenced (except an action to foreclose this Charge or to collect the money that is secured hereby) in which the Lender becomes a party or participant by reason of being the holder of this Charge or the indebtedness secured hereby, all sums paid by the Lender for the expense of so becoming a party or participating (including all reasonable and properly chargeable legal costs) shall, on written notice, be paid by the Borrower, together with interest thereon at the Applicable Rate from the dates of payment of such sums by the Lender, and shall be a lien and charge on the Charged Premises, prior to any right or title to, interest in, or claim upon the Charged Premises subordinate to the lien and charge of this Charge, and shall be deemed to be secured by this Charge, and that in any action or proceeding to foreclose this Charge, or to recover or collect the indebtedness secured hereby, provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

ARTICLE 17 - CONDEMNATION AWARDS

- 17.1 The Borrower shall notify the Lender promptly upon it being aware of any and all awards or payments ("Condemnation Award(s)") including interest thereon, and the right to receive the same (save for any portion of any such Condemnation Award paid for remedial purposes and which is actually used for such purpose) which may be made with respect to the Charged Premises, or any part thereof, as a result of:
- (a) Any condemnation, eminent domain, compulsory acquisition, expropriation or like procedures ("Condemnation"), partial or complete, including any sidewalk or lane; or
 - (b) The imposition, and enforcement, of any restriction, regulation or condition to meet any building or development guideline for development or restriction of or by any municipality or other competent authority; or
 - (c) Any other material injury to or decrease in the value of the Charged Premises by any lawful regulation or any governmental authority having jurisdiction;
- (any matter referred to in (a), (b) or (c) above being hereinafter called an "Incident of Expropriation") to the extent of all amounts which may be secured by this Charge at the date of receipt of any such Condemnation Award by the Borrower. Notwithstanding the occurrence of any Incident of Expropriation, the Borrower shall continue to pay interest at the Applicable Rate on the Principal Sum. The Borrower does hereby charge, assign, set over as transfer to the Lender, as security for the repayment of all Indebtedness.
- 17.2 Any Condemnation Award received by the Lender shall be held by the Lender as part of the security for the Loan subject to application as provided in this Article 17. Pending such application, such amounts received shall be held and invested by the Lender, acting reasonably. If at any time an Event of Default has occurred and is continuing, the Lender may, at its option, apply such amounts in reduction of the amounts owing hereunder.
- 17.3 Notwithstanding the provisions of Sections 17.1 and 17.2, in the event that any Incident of Expropriation shall occur which, in

the reasonable opinion of the Lender, would materially and adversely affect the security of the Charge or any other Security after the application of any Condemnation Award pursuant to Section 17.1 hereof, the Lender may, at its option, declare such Incident of Expropriation to be an Event of Default and be entitled to exercise any and all rights and remedies available to it hereunder at law or in equity.

ARTICLE 18 - EVENTS OF DEFAULT

- 18.1 The whole of the Principal Sum together with interest thereon at the Applicable Rate, interest on overdue interest and any amounts payable pursuant to Article 6, and all other amounts secured hereby shall, at the option of the Lender, subject to Section 18.2 hereof, become due and payable and all powers conferred on the Lender herein and hereby shall become exercisable, in like manner to all intents and purposes as if the time herein mentioned for payment of such Principal monies had fully come and expired, if specifically provided for in this Charge, or if any of the following events shall occur (the occurrence of any such event together with the expiry of the applicable cure period, if any, and any other occurrence specifically provided for herein as an Event of Default being collectively referred to as an "Event of Default"):
- (a) Upon default in payment of any regularly scheduled instalment of interest beyond the date such payment is due and payable; or
 - (b) Upon default in payment of the Indebtedness due and owing on the Maturity Date; or
 - (c) Upon default in payment of any Indebtedness (other than an instalment of principal and/or interest and upon maturity) due hereunder within five (5) Business Days after written notice thereof is provided by the Lender; or
 - (d) Save as otherwise provided for in subparagraphs (a), (b) and (c) hereof or otherwise specifically provided herein, upon any default in the performance of any covenant or obligation of the Borrower hereunder within fifteen (15) days after written notice thereof is provided by the Lender, provided that if such default is curable and the nature of such default is such that the exercise of reasonable diligence of more than fifteen (15) days is required to cure such default, and if such default in the Lender's reasonable discretion does not jeopardize or adversely affect the security interest of the Lender hereunder or adversely affect the Borrower or its ability to perform its obligations hereunder or under the Security or adversely affect the Charged Premises, the Lender will not, for a further sixty (60) days so long as no other Event of Default has occurred, enforce its remedies in respect of such default while and so long as during such time the Borrower is actively continuing to diligently and in good faith cure such default; or
 - (e) If at any time during the Term there is a breach of any representation or warranty contained herein or at any time during the Term if any representation or warranty contained herein is no longer true or accurate or becomes untrue or inaccurate for any reason and provided the same can be rectified, and the same is not rectified within thirty (30) days after written notice thereof is provided by the Lender; or
 - (f) Upon the assignment by the Borrower to any other party of the whole or a part of the rents, income or profits arising from the Charged Premises, without the written consent of the Lender; or
 - (g) The occurrence of an Event of Insolvency; or
 - (h) If without the prior written consent of the Lender, in its sole and absolute discretion:
 - (i) the Borrower transfers, sells, conveys, or otherwise disposes of all or any part of the Charged Premises, or any interest therein (other than by way of Leases), whether legal or beneficial or enters into any transaction or series of transactions where all or any part of the Charged Premises becomes the property of another person, whether through reorganization, amalgamation, merger, consolidation or otherwise, or if there is any change in the legal or beneficial interest, in whole or in part, of the Charged Premises; or
 - (i) If, without the prior written consent of the Lender, in its sole and absolute discretion:
 - (i) there is any change in the Borrower's corporate control or change in the Borrower's effective control existing as of the date of this Charge; or
 - (ii) the Borrower creates, permits or suffers to exist any mortgage, pledge, charge, loan, assignment, hypothecation, security interest or other encumbrance attaching the Charged Premises other than this Charge, the Security and the Permitted Encumbrances; or
 - (j) Upon default by or non-compliance of the Borrower or any Guarantor(s), or any others bound by or acknowledging to be bound by the terms of this Charge, with respect to any of the provisions of the Security or the Permitted Encumbrances; or
 - (k) If the Charged Premises are abandoned; or
 - (l) Failure by the Borrower to fulfil, complete or comply with any undertakings delivered by the Borrower to Lender in connection with the Loan in accordance with the terms of such undertakings; or
 - (m) Upon any breach, default, non-observance occurring or being alleged, charged or claimed against the Borrower as lessor under any lease or as sublessor under any sublease of the Charged Premises and the Borrower is not diligently proceeding to rectify any such breach, default, non-observance or non-performance or defend any allegations, charges or claims of the same; or
 - (n) If this Charge, or any of the Security, shall fail to constitute a legal, valid, binding and enforceable first charge, first assignment or first security interest, each enforceable in accordance with its terms, subject only to Permitted Encumbrances; or

- (o) If in the reasonable opinion of the Lender there occurs an event which has a material adverse effect on the financial condition or operation of the Borrower, the Charged Premises, this Charge, the Security or the ability of the Borrower to pay the Indebtedness or to perform its obligations hereunder or under the Security and which cannot be rectified by the Borrower within a reasonable period of time.

18.2 Save as otherwise specifically provided, an Event of Default hereunder or under any Security shall not have occurred or be deemed to have occurred until the expiration of any applicable notice period, if any, called for in this Charge or in such Security within which the Borrower may remedy such default. In any event, if in the opinion of the Lender, an event has occurred which with the passing of time, the giving of notice or otherwise would constitute an Event of Default and as a result of which the Charged Premises or the property assets and undertaking subject to the Security is materially at risk, the Lender may take such action or exercise such remedies as may be appropriate without notice to the Borrower or the expiry of any cure period.

ARTICLE 19 - REMEDIES

19.1 If an Event of Default has occurred hereunder and is continuing (or if the Lender exercises its rights pursuant to Section 18.2 hereof before the occurrence of an Event of Default), then at any time thereafter, but subject always to the waiver thereof by the Lender, the Lender may:

- (a) Declare the Indebtedness to be immediately due and payable and proceed to exercise any and all rights hereunder or under the Security or any other rights available to it under any other document or instrument or at law or in equity including without limitation, the drawdown of any letter of credit held by the Lender;
- (b) Commence legal action to enforce payment of the Indebtedness or performance of the obligations by the Borrower to the Lender;
- (c) At the expense of the Borrower, when and to such extent as the Lender deems advisable, observe and perform or cause to be observed and performed any covenant, agreement, proviso or stipulation contained herein or in the Security, and the reasonable cost thereof with interest thereon at the Applicable Rate until paid, shall immediately become due from the Borrower to the Lender after demand by the Lender upon the Borrower therefor;
- (d) Pay or discharge any mortgage, encumbrance, lien, adverse claim or charge that may exist or be threatened against the Charged Premises; in any such case, the amounts so paid together with costs, charges and expenses incurred in connection therewith shall be added to the Principal outstanding and shall bear interest at the Applicable Rate;
- (e) Send or employ any inspector or agent to inspect and report upon the value, state and condition of the Charged Premises and may employ a lawyer to examine and report upon the title to the same;
- (f) Immediately take possession of all of the Charged Premises or any part or parts thereof by action or otherwise, with power, among other things, to exclude the Borrower, to enforce the Borrower's rights, to preserve and maintain the Charged Premises, to repair, alter or extend the Charged Premises, to lease the Charged Premises, to complete construction and development of the Charged Premises, to operate and manage the Charged Premises and to collect or receive rents, income and profits of all kinds (including taking proceedings in the name of the Borrower for that purpose) and pay therefrom all reasonable expenses and charges of maintaining, preserving, protecting and operating the Charged Premises (payment of which may be necessary to preserve or protect the Charged Premises), and to enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including without limitation, power to advance its own moneys and enter into contracts and undertake obligations for the foregoing purposes upon the security hereof, and all sums advanced or expended shall be added to the Principal outstanding and shall bear interest at the Applicable Rate;
- (g) On default of payment for at least fifteen (15) days may, on at least thirty-five (35) days' notice, sell and dispose in the Charged Premises with or without entering into possession of the same and with notice to such persons and in such manner and form and within such terms as provided under Part III of the *Mortgages Act* (Ontario), as amended; and all remedies available may be resorted to and all rights, powers and privileges granted or conferred upon the Lender under and by virtue of any statute or by this Charge may be exercised and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made in the Charged Premises; and the Lender may sell, transfer and convey any part of the Charged Premises on such terms, including on credit for all or part of the consideration, (provided the Borrower shall not be accountable for any default in respect of the credit), secured by contract or agreement for sale, or charge, or otherwise, as shall appear to the Lender most advantageous and for such prices as can reasonably be obtained therefor in the circumstances; and in the event of sale on credit or part cash and part credit, whether by way of contract for sale or by conveyance or transfer, charge, or otherwise, the Lender is not to be accountable for or charged with any monies until the same shall be actually received in cash or received by a take-back charge; and sales may be made from time to time of parts of the Charged Premises to satisfy interest and leaving the Principal or part thereof to run with interest at the Applicable Rate; and the Lender may make any stipulations as to title or evidences or commencement of title or otherwise as the Lender shall deem proper and may buy or rescind or vary any contract for sale; and on any sale or resale, the Lender shall not be answerable for loss occasioned thereby; and for any of such purposes the Lender may make and execute all arrangements and assurances that the Lender shall deem advisable or necessary;
- (h) With respect to the Leases:
 - (i) to demand, collect and receive the Rents or any part thereof and to give acquittances therefor, and to take from time to time, in the name of the Borrower, any proceeding which may be, in the opinion of the Lender or its counsel, expedient for the purpose of collecting the Rents or for securing the payment thereof or for enforcing any of the Borrower's rights under the Leases;
 - (ii) to compound, compromise or submit to arbitration any dispute which has arisen or may arise in respect to any amount of Rent and any settlement arrived at shall be binding upon the Borrower;

- (iii) to enter upon the Lands by its officers, agents or employees for the purpose of collecting the Rents; (iv) to receive, enjoy or otherwise avail itself of the Lease Rights; and
- (v) on behalf of the Borrower to alter, modify, amend or change the terms of Leases; to terminate Leases, to enter into new Leases; to give consents, concessions or waivers of any rights or provisions of Leases; to accept surrenders of Leases; to give consents to assignment of or subletting under Leases;
- (i) With or without taking possession of all or any part of the Charged Premises, sell, lease or otherwise dispose of the whole or any part of the Charged Premises, as agent for the Borrower and not the Lender, and in exercising the foregoing power, the Lender may, in its absolute discretion:
 - (i) sell, lease or otherwise dispose of the whole or any part of the Charged Premises by public auction, public tender with notice, or by private contract (in the name of or on behalf of the Borrower) or otherwise, with such notice, advertisement or other formality as is required by law;
 - (ii) make and deliver to the purchaser good and sufficient deeds, assurances and conveyances of the Charged Premises and give receipts for the purchase money, and any such sale once effected shall be a perpetual bar, both at law and in equity, to the Borrower and all those claiming an interest in the Charged Premises by, from, through or under the Borrower making any claim against the purchaser of the Charged Premises;
 - (iii) grant, rescind, vary or complete any contract for sale, lease or options to purchase or lease, or rights of first refusal to purchase or lease the whole or any part of the Charged Premises, for cash or for credit, with or without security being given therefor, and on terms as shall appear to be most advantageous to the Lender (including a term that a commission be payable to the Lender or a related corporation in respect thereof) and if a sale is on credit, the Lender shall not be accountable for any moneys until actually received;
 - (iv) make any stipulation as to title or conveyance or commencement of title;
 - (v) re-sell or re-lease the Charged Premises or any part thereof without being answerable for any loss occasioned thereby; and
 - (vi) make any arrangements or compromises which the Lender shall think expedient in the interest of the Lender and to assent to any modification of this Charge, and to exchange any part or parts of the Charged Premises for any other property suitable for the purposes of the Lender on such terms as the Lender considers expedient, either with or without payment of money for equality or exchange or otherwise;
- (j) Take proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;
- (k) To borrow or raise money on the security of the Charged Premises or any part thereof in priority to this Charge or otherwise, for the purpose of the maintenance, preservation or protection of the Charged Premises or any part thereof or for carrying on all or any part of the business of the Borrower relating to the Charged Premises;
- (l) Take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term as used in this Charge includes a manager and a receiver and manager, and hereafter, the "Receiver") of all or any part of the Charged Premises;
- (m) By instrument in writing appoint, with or without taking possession, any person to be a Receiver of the Charged Premises or of any part thereof and may remove any Receiver so appointed and appoint another in his stead, with all fees and costs related thereto being the Borrower's obligations; and the following shall apply in respect of any such Receiver so appointed:
 - (i) the Lender may from time to time fix the remuneration of the Receiver who shall be entitled to deduct that same out of the revenue from the Charged Premises or the proceeds thereof;
 - (ii) the Receiver shall, to the fullest extent permitted by law, be deemed the agent or attorney of the Borrower for all purposes and the Lender shall not be in any way responsible for any actions other than as caused by gross negligence, willful misconduct or fraud, of any Receiver, and the Borrower hereby agrees to indemnify and save harmless the Lender from and against any and all claims, demands, actions, costs, damages, expenses or payments which the Lender may hereafter suffer, incur or be required to pay as a result, in whole or in part, of any action taken by the Receiver or any failure of the Receiver to do any act or thing other than as are caused by gross negligence, willful misconduct or fraud;
 - (iii) the appointment of the Receiver by the Lender shall not incur or create any liability on the part of the Lender to the Receiver in any respect and such appointment or anything which may be done by the Receiver or the removal of the Receiver or the termination of any such Receivership shall not have the effect of constituting the Lender a mortgagee in possession in respect of the Lands or any part thereof;
 - (iv) the Receiver may exercise or pursue any other remedy or proceeding which the Lender is entitled as the holder of the Charge authorized or permitted hereby or by law or in equity in order to enforce the security constituted by this Charge;
 - (v) and for the purposes above, the Borrower hereby irrevocably empowers the Receiver so appointed as its attorney to execute deeds, transfers, leases, contracts, agreements or other documents on its behalf and in its place (and the same shall bind the Borrower and have the same effect as if such deeds were executed by the Borrower) and to affix the Borrower's seal, if necessary, or a duplicate thereof to any of the same. On its own account or through a Receiver and whether alone or in conjunction with the exercise of all or any other remedies contemplated hereby, shall have the right, at any time, to notify and direct any account debtor to

make all payments whatsoever to the Lender and the Lender shall have the right, at any time, to hold all amounts received from any account debtor and any proceeds as part of the Secured Property; any payments received by the Borrower from and after the security hereby constituted becomes enforceable, shall be held by the Borrower in trust for the Lender in the same medium in which received, shall not be commingled with any assets of the Borrower and shall, at the request of the Lender, be turned over to the Lender not later than the next Business Day following the day of their receipt; and

- (vi) save as to claims for accounting under paragraph (o) below, the Borrower hereby releases and discharges the Lender and the Receiver from every claim of every nature, whether resulting in damages or not, which may arise or be caused to the Borrower by reason or as a result of anything done by the Lender or any successor or assign claiming through or under the Lender or the Receiver under the provisions of this paragraph unless such claim be the direct result of dishonesty or gross neglect;
- (n) The Lender may at any time and from time to time terminate any receivership by notice in writing to the Borrower and to the Receiver;
- (o) The Receiver shall account for all monies received in respect of the Charged Premises or any part thereof, and shall pay, out of such monies received, subject to the further direction of the Lender in its discretion, the following in the order specified:
 - (i) the Receiver's remuneration;
 - (ii) all payments reasonably made or incurred by the Receiver in connection with its receivership;
 - (iii) all payments of interest, Principal and other money which may, from time to time, be or become charged upon the Charged Premises in priority to this Charge, and all Bills, Taxes, insurance premiums and every other proper expenditure reasonably made or incurred by the Receiver in respect to the Charged Premises or any part thereof; and
 - (iv) all payments to the Lender of all interest due or falling due hereunder and the balance to be applied upon Principal due and payable and secured hereby;

and thereafter any surplus remaining in the hands of the Receiver after payments made as aforesaid shall be accountable to the Borrower or other persons entitled thereto; and

- (p) On its own account or through a Receiver and whether alone or in conjunction with the exercise of all or any other remedies contemplated hereby, shall have the right, at any time, to notify and direct any account debtor to make all payments whatsoever to the Lender and the Lender shall have the right, at any time, to hold all amounts received from any account debtor and any proceeds thereof as security for the Indebtedness; any payments received by the Borrower from and after the security hereby constituted becomes enforceable, shall be held by the Borrower in trust for the Lender in the same medium in which received, shall not be commingled with any assets of the Borrower and shall, at the request of the Lender, be turned over to the Lender not later than the next Business Day following the day of their receipt.

ARTICLE 20 - DEFAULT UNDER SECURITY, PARAMOUNTCY DISCHARGE AND RENEWAL

- 20.1 Payments of principal and interest made under and pursuant to the terms of the Security shall constitute payment hereunder and vice versa and default in the payment of principal and interest under the Security shall constitute default hereunder and vice versa. Default in compliance with any of the conditions, covenants, undertakings, provisions and stipulations contained in the Security shall entitle the Lender to exercise all or any of the rights or remedies provided herein and the occurrence of and Event of Default hereunder or in compliance with any of the conditions, covenants, undertakings, provisions and stipulations contained herein shall entitle the Lender to exercise all or any of the rights or remedies provided in the Security. The occurrence of an Event of Default hereunder shall constitute an Event of Default under the Security and vice versa.
- 20.2 The cancellation of or any other dealing with any Security (other than foreclosure thereof) shall not release or affect this Charge, and the taking of this Charge, or the cancellation of or any other dealing with, or proceeding under (other than foreclosure hereunder), this Charge, shall not release or affect any Security:
 - (a) The Lender may at any time and from time to time release any part or parts of the Charged Premises or any other Security or any surety for payment of all or any part of the monies hereby secured or may release the Borrower or any other person from any covenant or other liability to pay the Principal Sum and interest and all other monies secured hereby, or any part thereof, either with or without any consideration therefor, and without being accountable for the value thereof or for any monies except those actually received by the Lender, and without thereby releasing any other part of the Charged Premises, or any other Security or covenants herein contained, it being especially agreed that notwithstanding any such release, the Charged Premises, the Security and the covenants remaining unreleased shall stand charged with the whole of the monies hereby secured;
 - (b) In the event that the monies advanced hereunder are applied to payment of any charge or encumbrance, the Lender shall be subrogated to all the rights of and stand in the position of and be entitled to all the equities of the party or parties so paid whether such charge or encumbrance has or has not been discharged; and the decision of the Lender as to the validity or amount of any advance or disbursement made under this Charge or of any claims so paid, shall be final and binding on the Borrower; and
 - (c) The Lender shall not be charged with any monies receivable or collectible out of the Charged Premises or otherwise, except those actually received by or on behalf of the Lender and all revenue of the Charged Premises received or collected by the Lender from any source other than payment by the Borrower may, at the option of the Lender, be retained in a separate account to be used in, maintaining, insuring or improving the Charged Premises to the extent required for such purpose, in the opinion of the Lender, acting reasonably, or in payment of Taxes or other liens, charges or encumbrances against the Charged Premises, or

applied in reduction of the amounts owing hereunder.

- 20.3 Subject to Section 6.1 hereof, upon payment of all amounts secured by this Charge, including, without limitation, any amounts required pursuant to Section 6.2 hereof, the Borrower shall be entitled to receive and the Lender shall provide a discharge of this Charge and the Security within a reasonable period of time after the request therefor. The Lender shall have a reasonable time after such payment within which to prepare and execute such discharge and all reasonable legal and other expenses for the preparation, execution and registration of such discharge and/or documents, as the case may be, shall be borne by the Borrower.
- 20.4 All payments made pursuant to Section 20.3 shall be made to and received by the Lender prior to 1:00 p.m. on the date due or the next succeeding Business Day in the event the date due is not a Business Day; provided such extension of time shall be included for the purposes of computation of interest.

ARTICLE 21 - NO MERGER OR WAIVER OF LENDER'S RIGHTS

- 21.1 It is further understood and agreed that this Charge and the Security shall stand as a continuing security for repayment of the Loan, including, all advances made thereunder together with all interest, damages, costs, charges and expenses which may become due and payable to the Lender in respect of or in connection with the Loan or any portion thereof, notwithstanding any fluctuation or change in the amount, nature or form of the Loan or in the obligations now or hereafter representing the Loan or any portion thereof or in the names of the obligors or any of them.
- 21.2 The rights of the Lender arising under this Charge shall be separate, distinct and cumulative and, except as expressly provided herein, none of them shall be in exclusion of the other and no act of the Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.
- 21.3 The giving and taking of this Charge shall in no way merge, waive, prejudice, suspend or affect any of the rights or remedies of the Lender under any Security which may be given or which may have been or may hereafter be given in respect of the Principal Sum hereof, interest and other monies secured by this Charge, or any part thereof, or under the Security and all rights and remedies which the Lender now has or may hereafter have against any one or more persons, are hereby preserved.
- 21.4 The taking of a judgment or judgments under any of the covenants or obligations herein or under any Security shall not operate as a merger of the covenants of the Borrower or affect the Lender's right to interest at the Applicable Rate on any monies due or owing to the Lender during the continuance of this Charge, under any of the covenants herein contained or on any judgment to be recovered thereon.
- 21.5 The covenant of the Borrower to pay interest shall not merge in any judgment in respect of any covenant or obligation of the Borrower under this Charge or any Security and such judgment shall bear interest at the Applicable Rate until such judgment and all interest thereon have been paid in full.
- 21.6 Any waiver by the Lender of any default by the Borrower or any omission on the Lender's part in respect of any default by the Borrower shall not extend to or be taken in any manner whatsoever to affect any subsequent default by the Borrower or the rights resulting therefrom.
- 21.7 No extension of time given by the Lender to the Borrower or anyone claiming under the Borrower, shall in any way affect or prejudice the rights of the Lender against the Borrower or any person liable for payment of the monies hereby secured.

ARTICLE 22 - FINANCIAL DATA

- 22.1 Subject to the terms and provision of the Commitment, the Borrower shall provide or cause to be provided promptly to the Lender full and complete information about the financial condition and operations of the Charged Premises, including a comprehensive rent roll of all space in the Charged Premises, about the financial condition of the Borrower and any Guarantor(s) and such other information which the Lender may reasonably require from time to time, and the Lender shall have the right to examine the books and records of the Borrower relating to the Charged Premises at reasonable times and upon reasonable prior notice.
- 22.2 The Borrower shall provide or cause to be provided to the Lender, or as the Lender may direct, a comprehensive list of all current tenants and rentals of space in the Charged Premises during the Term, which list shall disclose, without limitation, the name of each tenant, the duration of its term, renewal options, if any, and the term thereof, the rental being paid, the last date on which rental was paid and whether such tenancy is in good standing. Such list shall contain an endorsement by an officer of the Borrower as to being complete and accurate.
- 22.3 All statements, reports and other documents required to be provided hereunder shall be prepared in a manner acceptable to the Lender, in its reasonable discretion.

ARTICLE 23 - NOTICE

- 23.1 Unless otherwise provided herein, any demand, notice or communication given or required to be given to a party hereunder shall be in writing and shall be personally delivered or given by transmittal by telecopy or facsimile transmission addressed to the respective parties at its address or telecopy or facsimile number set forth below or to such other address or telecopy or facsimile number as such party may designate by notice in writing to the other party hereto:

- (a) If to the Borrower, at the address for service set out in the electronic Charge to which this schedule is attached; and
- (b) If to the Lender, at the address for service set out in the electronic Charge to which this schedule is attached.

Any demand, notice or communication made by or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, and, if made or given by telecopy or by facsimile, on the first day other than a Saturday, Sunday or a statutory holiday in Ontario, on which Schedule I banks are open for commercial business in Toronto,

Ontario, following the transmittal thereof.

ARTICLE 24 - GENERAL

- 24.1 If any provision of this Charge or the application thereof to any circumstances shall be held to be invalid or unenforceable, it shall be deemed severed herefrom and the remaining provisions of this Charge, or the application thereof to other circumstances, shall not be affected thereby and shall be held valid and enforceable to the full extent permitted by law. In particular, and without limiting the generality of the foregoing, to the extent any and all amounts due pursuant to Article 6 hereof may be deemed to be in excess of what is permissible by law, any such excess shall be deemed not to be due under this Charge.
- 24.2 Wherever used in this Charge, unless the context clearly indicates a contrary intent as unless or otherwise specifically provided herein, the word "Borrower" shall mean "Borrower and/or subsequent owner or owners of the Charged Premises", the word "Lender" shall mean "Lender or any subsequent holder or holders of this Charge".
- 24.3 The descriptive headings of the several subparagraphs or paragraphs or sections or articles of this Charge are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- 24.4 Wherever the singular number or masculine gender is used in this Charge, the same shall be construed as including the plural and feminine or a body corporate, respectively, and vice versa, where the fact or context so requires; and the successors and assigns of any party executing this Charge are bound by the covenants, agreements stipulations and provisos herein contained. The covenants, agreements stipulations and provisos herein stated shall, except as otherwise limited hereby, be in addition to those granted or implied by statutory law.
- 24.5 This Charge shall be construed and enforceable under and in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and the Borrower hereby irrevocably attorns to the non-exclusive jurisdiction of the courts sitting at Toronto, Ontario.
- 24.6 The Borrower shall at all times, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, transfers, assignments, security agreements and assurances as the Lender may reasonably require in order to give effect to the provisions hereof and for the better granting, transferring, assigning, charging, setting over, assuring, confirming or perfecting the Charge and the priority accorded to them by law or under this Charge.
- 24.7 If any of the forms of words contained herein are also contained in Column 1 of Schedule "B" of the Short Forms of Mortgages Act (Ontario) and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column 2 of Schedule "B" of the said Act distinguished by the same number, and this Charge shall be interpreted as if the *Short Forms of Mortgages Act* (Ontario) were still in full force and effect. The implied covenants deemed to be included in a charge under Subsection 7(1) of the *Land Registration Reform Act* (Ontario) shall be and are hereby expressly excluded from the terms of this Charge.
- 24.8 This Charge shall, whether or not it secures a current or running account, be a general and continuing security to the Lender for payment of the indebtedness in an amount not exceeding the amount secured by this Charge and performance of the Borrower's other obligations under the Charge notwithstanding any fluctuation or change in the amount, nature or form of the indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Lender representing all or any part of the indebtedness outstanding at any particular time; and the Charge will not be deemed to have been redeemed or become void as a result of any such event or circumstance.
- 24.9 This Charge is given as collateral security to the Commitment.
- 24.10 In the event of conflict between the Commitment and the terms of this Charge, the provisions of the Commitment shall prevail; provided that any provision herein contained that is not contained in the Commitment and vice versa shall not in and of itself be considered to be inconsistent or in conflict.

ARTICLE 25 - CONDOMINIUM PROVISIONS

- 25.1 The Borrower covenants and agrees that in the event that the security for the within Charge shall be or shall become a condominium unit(s) the following provisions shall apply.
 - (i) the Borrower does hereby assign to the Lender all of its rights to vote or consent in the affairs of the Condominium Corporation having jurisdiction over the subject lands and the Lender, may at its option, exercise the right of an owner of a condominium unit to vote or consent in the affairs of the Condominium Corporation in the place and stead of such owner, without in any way consulting the owner as to the manner in which the vote shall be exercised or not exercised, and without incurring any liability to the owner or anyone else because of the manner in which such vote or right to consent in the affairs of the Condominium Corporation was exercised.
 - (ii) the Borrower shall pay promptly, when due, any common expenses, assessments, instalments or payments due to the Condominium Corporation.
 - (iii) the Borrower shall observe and perform the covenants and provisions required to be observed and performed under or pursuant to the provisions of the *Condominium Act* (Ontario), all amendments thereto, and any legislation passed in substitution thereof, and the declaration and by-laws of the Condominium Corporation and any amendments thereto.
 - (iv) Where the Borrower defaults in the Borrower's obligation to contribute to the common expenses assessed or levied by the Condominium Corporation, or any authorized agent on its behalf, or any assessment, instalment of payment due to the Condominium Corporation, upon breach of any of the foregoing covenants or provisions in this paragraph contained, regardless of any other action or proceeding taken, or to be taken by the Condominium Corporation, the Lender, at its option and without notice to the Borrower, may deem such default to be a default under the terms of this Charge and proceed to exercise its rights therein and the Lender shall be entitled at its option to pay all common expense amounts as they come due and these amounts so paid together with legal fees shall form part of the

Indebtedness.

ARTICLE 26 – CONSTRUCTION LOAN PROVISIONS

In the event that any of the monies advanced or to be advanced under this Charge are intended to finance any improvement to the Charged Premises, the parties hereto covenant and agree that the following conditions shall apply:

- 26.1 All construction on the Charged Premises shall be carried out by reputable contractors having experience which is commensurate to nature and size of the project to be constructed, which contractors must be prior approved by the Lender in writing, such approval not to be unreasonably withheld.
- 26.2 The construction of the building and structures located on the Charged Premises have been commenced and shall be continued in a good and workmanlike manner, with all due diligence and in accordance with the plans and specifications delivered to the Lender and to the satisfaction of all governmental and regulatory authorities having jurisdiction.
- 26.3 Provided that should construction of the project on the Charged Premises cease for any reason whatsoever (strikes, material shortages and weather conditions beyond the control of the Borrower excepted), for a period of ten (10) consecutive days (Saturdays, Sundays and Statutory holidays excepted), then, at the option of the Lender, this Charge shall immediately become due and payable. In the event that construction does cease, then the Lender shall have the right, at its sole option, to assume complete control of the construction of the said project in such manner and on such terms as it deems advisable. The cost of completion of the said project by the Lender and all expenses incidental thereto shall be added to the principal amount of this Charge, together with a management fee of fifteen percent (15%) of the costs of the construction completed by the Lender. All costs and expenses, as well as the management fee of fifteen percent (15%) added to the principal amount of this Charge shall bear interest at the rate as herein provided for and shall form part of the principal sum herein and the Lender shall have the same rights and remedies to collection of principal and interest hereunder or at law.
- 26.4 At all times there shall be sufficient funds unadvanced under this Charge and retained by the Lender to complete the construction and/or renovation of the project on the Charged Premises and as may be necessary to retain the Lender's priority with respect to any deficiency in the holdbacks required to be retained by the Borrower under the *Construction Lien Act* (Ontario).
- 26.5 This Charge will be advanced in stages as construction upon the Charged Premises proceeds or as the conditions as enumerated by the Commitment are complied with.
- 26.6 All advances which are made from time to time hereunder shall be based on certificates of a duly qualified architect, engineer, quantity surveyor, cost consultant or other consultant(s) retained for the purpose of reviewing and advising the Lender with respect to the said project and the progress thereof, whose fees and costs shall be for the account of the Borrower regardless of by whom such person has been retained. All such certificates shall without limitation certify the value of the work completed and the estimated costs of any uncompleted work and such certificates shall further certify that such completed construction and/or renovation to the date of such certificate shall be in accordance with the approved plans and specifications for the said construction and further, in accordance with the building permits issued for such construction and in accordance with all municipal and other governmental requirements of all authorities having jurisdiction pertaining to such construction and that there shall be no outstanding work orders or other requirements pertaining to construction on the Charged Premises. Such certificates with respect to any values shall not include materials on the site which are not incorporated into the building.
- 26.7 The Borrower shall pay to the Lender on each occasion when an inspection of the Charged Premises is required to confirm construction costs to date and compliance with conditions for further advances, an inspection fee in such reasonable amount as the Lender may charge from time to time for each such inspection and the Lender's solicitors shall be paid their reasonable fees and disbursements for each sub-search and work done prior to each such advance and all such monies shall be deemed to be secured hereunder and the Lender shall be entitled to all rights and remedies with respect to collection of same in the same manner as it would have with respect to collection of principal and interest hereunder or at law.
- 26.8 The Borrower agrees to indemnify and hold the Lender harmless from any and all claims, demands, sums of money, debts, covenants, bonds, accounts, actions, causes of action, rights, obligations and liability of every kind whatsoever which arise out of claims against the property under the *Construction Lien Act* (Ontario) and that any liens for work and/or supplies that are registered against the Borrower's interest in the property will be promptly discharged within seven (7) days from the date of registration of the lien. The Lender may, but is not required to, deal with the lien claimant and pay the lien claim into court pursuant to the provision of the *Construction Lien Act* (Ontario) for the purpose of vacating the lien from title to the property. The Borrower agrees to be liable for all costs, claims, amounts and fees including, without limitation, all legal fees (on a solicitor and his client basis) incurred by the Lender arising from or in connection with the Borrower or the Lender obtaining and registering either a release of the lien or an order vacating the lien.

ARTICLE 27 - ASSIGNMENT AND SALE

- 27.1 The Loan and all other amounts secured hereby, this Charge, the Security and all documents ancillary or collateral thereto may, in the Lender's sole discretion and without the consent of the Borrower, in whole or in part, be participated, sold, securitized, syndicated or assigned by the Lender from time to time to one or more Persons.
- 27.2 The Lender may disclose to participants, transferees or assignees or to potential participants, transferees or assignees or others in connection with any sale, assignment, participation, securitization, transfer or syndication, such information concerning the Borrower or the Charged Premises as the Lender may consider to be appropriate in connection therewith.
- 27.3 No grant, assignment or transfer pursuant to this Article 27 shall constitute a repayment by the Borrower to the Lender of the Loan or any other amounts owing hereunder and included in such assignment or transfer and the Borrower acknowledges that all obligations under this Charge and the Security with respect to such assignment or transfer will continue and not constitute new obligations.
- 27.4 The Borrower agrees to be bound by and do all things necessary or appropriate to assist and give effect to any transfer,


participation, securitization, sale, syndication or assignment, but shall incur no increased liabilities as a result thereof.

ARTICLE 28 – RIGHT OF FIRST OFFER

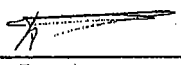
- 28.1 The Borrower covenants to provide the Lender with the right of first offer to finance or arrange financing for any replacement financing of this Charge and shall provide the Lender with the first opportunity and a reasonable period of time, after delivery to the Lender of all reasonably requested information, to provide a commitment to fund such replacement financing.

DATED this _____ day of May 2018

**GO-TO NIAGARA FALLS EAGLE VALLEY INC.,
IN ITS CAPACITY AS GENERAL PARTNER, ON
BEHALF OF GO-TO NIAGARA FALLS EAGLE
VALLEY LP**

Per: 
Name: Oscar Furtado
Title: President
I have the authority to bind the corporation

GO-TO NIAGARA FALLS EAGLE VALLEY INC.


Per: 
Name: Oscar Furtado
Title: President
I have the authority to bind the corporation

**CAPITAL BUILD EAGLE VALLEY HOLDINGS
INC.**

Per: _____
Name: _____
Title: President
I have the authority to bind the corporation

**CAPITAL BUILD CONSTRUCTION
MANAGEMENT CORP.**

Per: _____
Name: _____
Title: President
I have the authority to bind the corporation



Oscar Furtado

Michael Smith

participation, securitization, sale, syndication or assignment, but shall incur no increased liabilities as a result thereof.

ARTICLE 28 - RIGHT OF FIRST OFFER

- 28.1 The Borrower covenants to provide the Lender with the right of first offer to finance or arrange financing for any replacement financing of this Charge and shall provide the Lender with the first opportunity and a reasonable period of time, after delivery to the Lender of all reasonably requested information, to provide a commitment to fund such replacement financing.

DATED this 26 day of May 2018

GO-TO NIAGARA FALLS EAGLE VALLEY INC.,
IN ITS CAPACITY AS GENERAL PARTNER, ON
BEHALF OF GO-TO NIAGARA FALLS EAGLE
VALLEY LP

Per: _____
Name: Oscar Furtado
Title: President
I have the authority to bind the corporation

GO-TO NIAGARA FALLS EAGLE VALLEY INC.

Per: _____
Name: Oscar Furtado
Title: President
I have the authority to bind the corporation

CAPITAL BUILD (EAGLE VALLEY) HOLDINGS
INC.

Per: _____
Name: Michael Smith
Title: President
I have the authority to bind the corporation

CAPITAL BUILD CONSTRUCTION
MANAGEMENT CORP.

Per: _____
Name: Michael Smith
Title: President
I have the authority to bind the corporation

Oscar Furtado

Michael Smith

LRO # 59 Notice

Registered as SN606209 on 2019 10 17 at 14:05

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

yyyy mm dd Page 1 of 5

Properties

PIN 64269 - 0559 LT

Description PT TWP LT 16 STAMFORD; PT TWP LT 24 STAMFORD; PT TWP LT 25 STAMFORD; PT RDAL BTN TWP LT 24 & 25 STAMFORD; PT RDAL BTN TWP LT 16 & 25 STAMFORD; BEING PTS 2,3,4,5,7,8,9 & 10 59R14717; TOGETHER WITH AN EASEMENT AS IN R0758108; SUBJECT TO AN EASEMENT OVER PTS 7, 8, 9 & 10 59R14717 IN FAVOUR OF PT 1 59R14717 AS IN SN370529; SUBJECT TO AN EASEMENT OVER PTS 2, 7, 4 & 9 59R14717 IN FAVOUR OF PT 1 59R14717 AS IN SN370529; TOGETHER WITH AN EASEMENT OVER PT TWP LT 24 STAMFORD BEING PT 1 ON 59R15044 AS IN SN402290; CITY OF NIAGARA FALLS

Address NIAGARA FALLS

Consideration**Consideration** \$2.00**Applicant(s)**

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name GO-TO NIAGARA FALLS EAGLE VALLEY INC.

Address for Service 1267 Cornwall Road, Suite 301
Oakville,
Ontario
L6G 7T5

I, Oscar Furtado A.S.O., have the authority to bind the corporation.

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

This transaction is for a partnership purpose within the meaning of the Limited Partnerships Act.

I am a general partner.

Name GO-TO NIAGARA FALLS EAGLE VALLEY LP

Address for Service

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

This is the firm name of the Partnership/Limited Partnership.

Party To(s)	Capacity	Share
-------------	----------	-------

Name IMPERIO SA HOLDINGS INC.	Tenants In Common	
Address for Service 8830 Jane St. Concord, ON L4K 2M9		

I, John Marquez A.S.O., have the authority to bind the corporation

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

Name FISCHER, GABRIELE	Tenants In Common	
Address for Service 8830 Jane St. Concord, ON L4K 2M9		

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

Name FIGUEIRAS, BALTAZAR DE JESUS PINA PATULEIA	Tenants In Common	
Address for Service 8830 Jane St. Concord, ON L4K 2M9		

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

Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice may be deleted by the Land Registrar when the registered instrument, SN553433 registered on 2018/05/30 to which this notice relates is deleted

Schedule: See Schedules

LRO # 59 Notice

Registered as SN606209 on 2019 10 17 at 14:05

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

yyyy mm dd Page 2 of 5

Signed By

Davide Joseph Di Iulio

1000-120 Adelaide St. W.
Toronto
M5H 3V1acting for
Applicant(s)

Signed 2019 10 17

Tel 416-363-2211

Fax 416-363-0645

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

Submitted By

Schneider Ruggiero Spencer Milburn LLP

1000-120 Adelaide St. W.
Toronto
M5H 3V1

2019 10 17

Tel 416-363-2211

Fax 416-363-0645

Fees/Taxes/Payment

Statutory Registration Fee

\$64.40

Total Paid

\$64.40

File Number

Party To Client File Number :

40309

AGREEMENT AMENDING CHARGE

WHEREAS:

- (A) By a Charge of land registered in the Land Registry Office for the Land Titles Division of Niagara North (No. 59) on 30 May 2018, as Instrument No. SN553433.

GO-TO NIAGARA FALLS EAGLE VALLEY LP (the "Chargor")

gave a Charge upon the lands described therein (the "Real Property") in favour of

**IMPERIAL SA HOLDINGS INC, GABRIELE FISCHER, BALTAZAR DE JESUS PINA
PATULEIA FIGUEIRAS (the "Chargee")**

to secure the payment of the principal sum of ONE MILLION FOUR HUNDRED AND FORTY TWO THOUSAND (\$1,442,000.00) DOLLARS with interest as therein set out upon the terms therein mentioned;

- (B) The principal sum of ONE MILLION FOUR HUNDRED AND FORTY TWO THOUSAND (\$1,442,000.00) DOLLARS secured by the Charge still remains due and owing to the Chargee as of 1 June 2019.
- (C) The parties hereto signing as Chargor and Chargee have agreed to vary certain terms of the Charge as hereinafter set out.

NOW THEREFORE In consideration of the mutual covenants and agreements as set out herein, the Charge is hereby amended from and including the 1st day of June 2018 (the "Effective Date") as follows:

1. The term is extended to 1 November 2019 as agreed upon between the Chargor, the Guarantor and the Chargee at a cost determined among the Chargor and Chargee being one (1) percent of the principal amount outstanding per month and accruing until such time payment is made.
2. In all other respects the parties hereto confirm the terms and conditions contained in the aforesaid Charge and all other security documents related to or given in conjunction with the Charge which security documents shall continue in full force and effect in all respects.
3. The Chargor and Guarantor hereby covenant with the Chargee to pay the said principal and interest at the rate and in the manner hereinbefore mentioned, and well and truly to keep, observe, perform and fulfill all the covenants, provisos and agreements in the said Charge contained.
4. Provided further that nothing herein contained shall create any merger or alter the rights of the Chargee as against any subsequent encumbrancer or other person interested in the Real Property, nor affect the liability of any person not a party hereto who may be liable to pay the said mortgage money or the rights of any such person all of which rights are hereby reserved.
5. In construing this document, the words "Chargor" "Guarantor" and "Chargee" and all personal pronouns shall be read as the number and gender of the party or parties referred requires and all necessary grammatical changes, as the context requires, shall be deemed to be made.
6. The provisions of this document shall enure to and be binding upon the executors, administrators, successors and assigns of each party and all covenants, liabilities and obligations shall be joint and several.

DATED this 1 day of June 2019

**GO-TO NIAGARA FALLS EAGLE VALLEY INC., IN ITS
CAPACITY AS GENERAL PARTNER, ON BEHALF OF
GO-TO NIAGARA FALLS EAGLE VALLEY LP**

Per: _____

Name: Oscar Furtado

Title: President

I have the authority to bind the corporation

GO-TO NIAGARA FALLS EAGLE VALLEY INC.

Per: _____

Name: Oscar Furtado

Title: President

I have the authority to bind the corporation

- 2 -

CAPITAL BUILD EAGLE VALLEY HOLDINGS INC.

Per: _____

Name: Mike Smith

Title: President

I have the authority to bind the corporation

**CAPITAL BUILD CONSTRUCTION MANAGEMENT
CORP.**

Per: _____

Name: Mike Smith

Title: President

I have the authority to bind the corporation

~~Osca Furtado~~

Michael Smith

- 2 -

CAPITAL BUILD EAGLE VALLEY HOLDINGS INC.

Per: 

Name: Mike Smith

Title: President

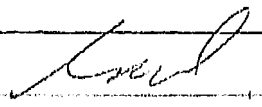
I have the authority to bind the corporation

CAPITAL BUILD CONSTRUCTION MANAGEMENT
CORP.Per: 

Name: Mike Smith

Title: President

I have the authority to bind the corporation


Oscar Furtado
Michael Smith

LRO # 59 Notice

Received as SN639912 on 2020 08 28 at 14:31

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

yyyy mm dd Page 1 of 5

Properties

PIN 64269 - 0559 LT

Description PT TWP LT 16 STAMFORD; PT TWP LT 24 STAMFORD; PT TWP LT 25 STAMFORD;
PT RDAL BTN TWP LT 24 & 25 STAMFORD; PT RDAL BTN TWP LT 16 & 25
STAMFORD; BEING PTS 2,3,4,5,7,8,9 & 10 59R14717; TOGETHER WITH AN
EASEMENT AS IN R0756108; SUBJECT TO AN EASEMENT OVER PTS 7, 8, 9 & 10
59R14717 IN FAVOUR OF PT 1 59R14717 AS IN SN370529; SUBJECT TO AN
EASEMENT OVER PTS 2, 7, 4 & 9 59R14717 IN FAVOUR OF PT 1 59R14717 AS IN
SN370529; TOGETHER WITH AN EASEMENT OVER PT TWP LT 24 STAMFORD
BEING PT 1 ON 59R15044 AS IN SN402290; CITY OF NIAGARA FALLS

Address NIAGARA FALLS

Consideration

Consideration \$3,000,000.00

Applicant(s)

The notice is based on or affects a valid and existing estate, right, interest or equity in land

Name GO-TO NIAGARA FALLS EAGLE VALLEY INC.

Address for Service 1267 Cornwall Road, Suite 301
Oakville, Ontario
L6G 7T5

I, Oscar Furtado A.S.O., have the authority to bind the corporation.

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

This transaction is for a partnership purpose within the meaning of the Limited Partnerships Act.

I am a general partner.

Name GO-TO NIAGARA FALLS EAGLE VALLEY LP

Address for Service 1267 Cornwall Road, Suite 301
Oakville, Ontario
L6G 7T5

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

This is the firm name of the Partnership/Limited Partnership.

Party To(s)	Capacity	Share
Name IMPERIO SA HOLDINGS INC.	Tenants in Common	\$1,164,253.33
Address for Service 8830 Jane St. Concord, ON L4K 2M9		

I, John Marquez A.S.O., have the authority to bind the corporation

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

Name FISCHER, GABRIELE	Tenants in Common	\$1,835,746.67
Address for Service 8830 Jane St. Concord, ON L4K 2M9		

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

Statements

This notice is pursuant to Section 71 of the Land Titles Act.

This notice may be deleted by the Land Registrar when the registered instrument, SN553433 registered on 2018/05/30 to which this notice relates is deleted

Schedule: See Schedules

Signed By

Davide Joseph Di Iulio

1000-120 Adelaide St. W.
Toronto
M5H 3V1

acting for
Applicant(s)

Signed 2020 08 28

Tel 416-363-2211

Fax 416-363-0645

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

LRO # 58 Notice

Received as SN639912 on 2020 08 28 at 14:31

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

yyyy mm dd Page 2 of 5

Submitted By

Schneider Ruggiero Spencer Milburn LLP

1000-120 Adelaide St. W.
Toronto
M5H 3V1

2020 08 28

Tel 416-383-2211

Fax 416-383-0845

Fees/Taxes/Payment

Statutory Registration Fee

\$65.05

Total Paid

\$65.05

File Number

Party To Client File Number :

40309

AGREEMENT AMENDING CHARGE

WHEREAS:

- (A) BY a Charge of land registered in the Land Registry Office for the Land Titles Division of Niagara North (No. 59) on 30 May 2018, as Instrument No. SN663433 (the "Charge")

GO-TO NIAGARA FALLS EAGLE VALLEY LP (the "Chargor")

gave a Charge upon the lands described therein (the "Real Property") in favour of

IMPERIAL SA HOLDINGS INC, GABRIELE FISCHER, BALTAZAR DE JESUS PINA
PATULEIA FIGUEIRAS (the "Chargee")

to secure the payment of the principal sum of ONE MILLION FOUR HUNDRED AND FORTY TWO THOUSAND (\$1,442,000.00) DOLLARS with interest as therein set out upon the terms therein mentioned;

- (B) AND by a Transfer of Charge whereby Baltazar de Jesus Pina Patuleia Figueiras transferred his portion of the Charge to Imperio SA Holdings Inc. and Gabriele Fischer;
- (C) The principal sum of ONE MILLION FOUR HUNDRED AND FORTY TWO THOUSAND (\$1,442,000.00) DOLLARS secured by the Charge still remains due and owing to the Chargee as of 1 September 2020.
- (D) The parties hereto signing as Chargor, Guarantor and Chargee have agreed to vary certain terms of the Charge as hereinafter set out.

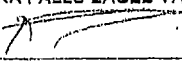
NOW THEREFORE in consideration of the mutual covenants and agreements as set out herein, the Charge is hereby amended from and including the 1st day of September 2020 (the "Effective Date") as follows:

1. The term is extended to 1 September 2021 as agreed upon between the Chargor, the Guarantor and the Chargee and the principal amount is increased to THREE MILLION (\$3,000,000.00) DOLLARS and the interest rate shall be TWELVE AND A HALF (12.60%) PERCENT.
2. A Lender's Fee in the amount of FIVE (5%) PERCENT of the new principal amount is deemed earned and collected on or before 1 September 2020 and payable to TriLend Inc.
3. An Interest reserve in the amount of TWO HUNDRED AND FIFTY THOUSAND (\$250,000.00) DOLLARS shall be held back from the new principal amount on or before 1 September 2020.
4. The property municipally known as 19 Beard St., St. Catharines, Ontario (the "Collateral Property") shall be added as collateral property and the Chargor shall authorize an affiliated partnership to place a second charge on the Collateral Property on or before 1 September 2020 (the "Collateral Charge"). Any payment under the Charge shall constitute payment on the Collateral Charge.
5. The Chargee and Guarantor acknowledge all current outstanding principal and interest under the Charge and acknowledge the Chargee is Imperio SA Holdings Inc. and Gabriele Fischer.
6. In all other respects the parties hereto confirm the terms and conditions contained in the aforesaid Charge and all other security documents related to or given in conjunction with the Charge which security documents shall continue in full force and effect in all respects.
7. The Chargor and Guarantor hereby covenant with the Chargee to pay the said principal and interest at the rate and in the manner hereinbefore mentioned, and well and truly to keep, observe, perform and fulfill all the covenants, provisos and agreements in the said Charge contained.
8. Provided further that nothing herein contained shall create any merger or alter the rights of the Chargee as against any subsequent encumbrancer or other person interested in the Real Property, nor affect the liability of any person not a party hereto who may be liable to pay the said mortgage money or the rights of any such person all of which rights are hereby reserved.
9. In construing this document, the words "Chargor" "Guarantor" and "Chargee" and all personal pronouns shall be read as the number and gender of the party or parties referred requires and all necessary grammatical changes, as the context requires, shall be deemed to be made.
10. The provisions of this document shall enure to and be binding upon the executors, administrators, successors and assigns of each party and all covenants, liabilities and obligations shall be joint and several.

- 2 -

DATED this 27 day of August 2020

GO-TO NIAGARA FALLS EAGLE VALLEY INC., IN ITS
CAPACITY AS GENERAL PARTNER, ON BEHALF OF
GO-TO NIAGARA FALLS EAGLE VALLEY LP

Per: 
Name: Oscar Furtado
Title: President
I have the authority to bind the corporation

CAPITAL BUILD EAGLE VALLEY HOLDINGS INC.

Per: _____
Name: Mike Smith
Title: President
I have the authority to bind the corporation

CAPITAL BUILD CONSTRUCTION MANAGEMENT
CORP.

Per: _____
Name: Mike Smith
Title: President
I have the authority to bind the corporation


Oscar Furtado

Michael Smith

DocuSign Envelope ID: 38206025-B665-416D-B4AF-C2F9FE403E72

- 2 -

DATED this _____ day of August 2020

GO-TO NIAGARA FALLS EAGLE VALLEY INC., IN ITS
CAPACITY AS GENERAL PARTNER, ON BEHALF OF
GO-TO NIAGARA FALLS EAGLE VALLEY LP

Per: _____
Name: Oscar Furtado
Title: President
I have the authority to bind the corporation

CAPITAL BUILD EAGLE VALLEY HOLDINGS INC.

Per: _____
Name: Mike Smith
Title: President
I have the authority to bind the corporation

CAPITAL BUILD CONSTRUCTION MANAGEMENT
CORP.

Per: _____
Name: Mike Smith
Title: President
I have the authority to bind the corporation

Oscar Furtado _____
Michael Smith _____



Stephen F. Witteveen, B.A., M.B.A., J.D.
 Luba D. Yamoah, B.A. (Hons.), LL.B.
 Meagan J. Swan, B.A., M.A., LL.B. *
 Anthony J. Gabriele, B.Comm., LL.B.
 Ioana A. Mandru, B.A. (Hons.), J.D.
 Simon A. Marmur, B.A. (Hons.), M.A., J.D.
 Vincent De Cicco, B.A., M.P.S., J.D.
 Andrew M. Beney, B.Eng., MASc., J.D.

19 Cambridge Street, P.O. Box 1707
 Cambridge, ON N1R 7G8
 Telephone: 519-621-7260 Fax: 519-621-1304
 Email: gabriele@paveylaw.com

January 5, 2023

Aird & Berlis LLP
 Brookfield Place
 181 Bay Street, Suite 1800
 Toronto, Ontario
 M5J 2T9

VIA EMAIL

Attention: Mr. Jeremy Nemers

Dear Mr. Nemers:

Re: Construction Lien Upon: 2334 St. Paul Avenue, Niagara Falls, ON L2J 0C7
Lien Claimants: HC Matcon Inc., HK United Construction Ltd. and
Soil Mat Engineers & Consultants Ltd.
Your File No.:39856/BM

We again write on behalf of counsel for all of the above noted lien claimants. We are in receipt of your correspondence dated December 27, 2022 and thank you for your efforts.

In order for us to properly advise the lien claimants, we ask that the Receiver kindly provide the following additional information and documentation:

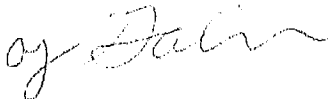
1. We understand that you advised Mr. Schmuck during a phone call that the Mortgagees advised you in writing that the subject mortgage was not a building mortgage pursuant to section 78(2) of the *Construction Act* – please provide us with a copy of that communication;
2. Clarification and details as to why funds advanced were paid to:
 - a. Torkin Manes LLP (*i.e. In what capacity were they acting?*);
 - b. Murray Maltz Professional Corporation (*i.e. In what capacity were they acting?*);
 - c. Goldmount Capital Inc.;
 - d. Trilend Inc.; and
 - e. Go-To Niagara Falls Eagle Valley Inc,

3. If funds were paid to Torkin Manes LLP and/or Murray Maltz P.C. as agents for both the Mortgagees and the Owner, confirmation as to when such funds were released to the Owner or Third Parties on behalf of the Owner, and the quantum of such release(s);
4. To the extent that Torkin Manes LLP and/or Murray Maltz LLP were acting for the Owner, details as to how and when such funds were disbursed, including a trust statement or disbursement summary. If funds were applied to legal fees, please confirm and advise for which properties the legal work was performed;
5. Confirmation as to whether or not the subject mortgage was secured against any additional properties beyond the Eagle Valley and Beard Properties. If so, please provide details of such properties;
6. Confirmation as to how much money has been recovered by the Mortgagees on account of the sale of the Beard Property and/or any other properties in relation to the subject mortgage; and
7. Any information that the Receiver may have as to the total value of the Work completed for the subject property by all trades and professionals.

Should you have any questions or concerns with respect to our request for additional information, please do not hesitate to contact us. If beneficial, my office would be happy to arrange a conference call to discuss.

Yours very truly,

PAVEY LAW LLP



Anthony J. Gabriele
AJG/at

cc. Mr. Derek Schmuck (Counsel for Soil Mat Engineers & Consultants Ltd.) & Mr. Varoujan Arman (Counsel for HK United Construction Ltd.)



Jeremy Nemers
Direct: 416.865.7724
E-mail: jnemers@airdberlis.com

January 11, 2023

BY EMAIL (gabriele@paveylaw.com)

Pavey Law LLP

19 Cambridge Street, P.O. Box 1707
Cambridge, ON N1R 7G8

Attention: Anthony J. Gabriele

Dear Mr. Gabriele:

**Re: Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. –
Court File No. CV-21-00673521-00CL (the “Receivership Proceedings”)**

As you know, we are the lawyers for KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “Receiver”) in the Receivership Proceedings.

Thank you for your letter dated January 5, 2023.

As requested, please see the below responses to the statements/questions/requests in your letter (which, for convenience, are presented in the same order as they appear in your letter). Unless otherwise stated, all capitalized terms in our responses are defined in the Receiver’s Fifth Report dated August 12, 2022:

1. *“We understand that you advised Mr. Schmuck during a phone call that the Mortgagees advised you in writing that the subject mortgage was not a building mortgage pursuant to section 78(2) of the Construction Act – please provide us with a copy of that communication.”*

On December 28, 2022, I had a call with Soil-Mat’s counsel, Mr. Schmuck, which call was an off-the-record discussion (at Mr. Schmuck’s request). During that call, and in response to one of his questions, I advised Mr. Schmuck what I advised HK United’s counsel, Mr. Arman, in writing on December 21, 2022 (in response to a communication similarly marked “without prejudice” by Mr. Arman), namely, that *“The Receiver has advised Imperio’s counsel that it appears to the Receiver (absent additional information) that the funds from Imperio’s mortgage were used to fund improvements pursuant to section 78(2),”* and that *“Imperio’s counsel has advised that it disagrees with the Receiver’s view that the funds were used to fund improvements, but Imperio’s counsel has not provided an alternative intended use of funds to support its position.”* These communications with Imperio’s counsel will be appended to the Supplement of the Sixth Report of the Receiver (the “**Sixth Report Supplement**”), which we intend to serve on the Service List later today.

2. *“Clarification and details as to why funds advanced were paid to: a. Torkin Manes LLP (i.e. In what capacity were they acting); b. Murray Maltz Professional Corporation (i.e. In what capacity were they acting); c. Goldmount Capital Inc.; d. Trilend Inc.; and e. Go-To Niagara Falls Eagle Valley Inc.”*

- a. Torkin Manes LLP was counsel to Go-To Eagle Valley, which was the borrower under the Imperio mortgage. As noted below in response to point #4, the mortgage funds advanced to Torkin Manes LLP were paid by Torkin Manes LLP to Go-To Eagle Valley.
 - b. Murray Maltz (of Murray Maltz Professional Corporation) registered a mortgage on title to the Eagle Valley Real Property on February 12, 2018. Like the Imperio mortgage, the Murray Maltz mortgage was not used to acquire the Eagle Valley Real Property (which had been purchased approximately eight months earlier). The Murray Maltz mortgage was subsequently paid-out from part of the funds advanced under Imperio's mortgage and discharged from title on May 31, 2018 (i.e., the day after the registration of Imperio's mortgage on May 30, 2018).
 - c. As noted in the "Charts re Advances" attachment contained in our previous letter to you dated December 27, 2022, Goldmount Capital Inc. received a brokerage fee of \$21,630 in connection with the initial aggregate advance under the Imperio mortgage of \$1,414,500, and a second brokerage fee of \$45,000 in connection with the subsequent aggregate advance under the Imperio mortgage of \$1,558,000.
 - d. The Receiver understands that Trilend Inc. is a private mortgage administrator (www.trilend.com). The Imperio mortgage was initially stylized with "Trilend Inc. and its investors" as the lender, before being replaced on or around closing to specify the names of the investors that Trilend Inc. appears to have sourced to fund the mortgage. As stated in the security opinion that we provided to you as part of our previous letter dated December 27, 2022, these investors were originally Imperio SA Holdings Inc., Gabrielle Fischer and Baltazar De Jesus Pina Patuleia Figueiras, which interest was subsequently transferred to Imperio SA Holdings Inc. and Gabrielle Fischer (jointly defined as "Imperio"). As noted in the "Charts re Advances" attachment contained in the same letter dated December 27, 2022, the amounts received by Trilend Inc. (i.e., Imperio) were in respect of interest and lender's fees.
 - e. Eagle Valley was the borrower.
3. *"If funds were paid to Torkin Manes LLP and/or Murray Maltz P.C. as agents for both the Mortgagees and the Owner, confirmation as to when such funds were released to the Owner or Third Parties on behalf of the Owner, and the quantum of such release(s)."*

Nothing has come to the Receiver's attention to suggest that either Torkin Manes LLP or Murray Maltz Professional Corporation acted as agents for both Imperio and Eagle Valley.

4. *"To the extent that Torkin Manes LLP and/or Murray Maltz LLP [sic] were acting for the Owner, details as to how and when such funds were disbursed, including a trust statement or disbursement summary. If funds were applied to legal fees, please confirm and advise for which properties the legal work was performed."*

Not applicable with respect to Murray Maltz Professional Corporation (see answer to question #2b). Torkin Manes LLP was counsel to Eagle Valley (i.e., the borrower). The Receiver has confirmed that all the funds listed as being paid to Torkin Manes LLP in the

Page 3

"Charts re Advances" attachment referenced above were paid to Eagle Valley, in full and without deduction, within one business day following their receipt by Torkin Manes LLP.

5. *"Confirmation as to whether or not the subject mortgage was secured against any additional properties beyond the Eagle Valley and Beard Properties. If so please provide details of such properties."*

As noted on the mortgage registrations previously provided to you, the Imperio mortgage was only secured against the Eagle Valley Real Property and the Beard Real Property. Nothing has come to the Receiver's attention to suggest that the mortgage was secured by any other real estate.

6. *"Confirmation as to how much money has been recovered by the Mortgagees on account of the sale of the Beard Property and/or any other properties in relation to the subject mortgage."*

As noted in sections 5.2 and 5.3 of the Receiver's Sixth Report dated November 14, 2022, approximately \$3.4 million was owing under the Imperio mortgage prior to any distributions, and Imperio has received distributions of approximately \$2.139 million (being approximately \$1.139 million from Go-To Beard and \$1 million from Go-To Eagle Valley).

7. *"Any information that the Receiver may have as to the total value of the Work [sic] completed for the subject property by all trades and professionals."*

Based on Eagle Valley's books and records, approximately \$2.2 million to \$2.9 million was paid by, and/or invoiced to, Eagle Valley by trades and professionals (which the Receiver notes may not be the same as the actual value of the work). The range reflects uncertainty regarding a portion of the services performed (or not performed) by Capital Build, and the amounts associated with same.

We trust that the foregoing is helpful. As noted above, the Receiver intends to serve the Sixth Report Supplement later today. We would be happy to speak with you further in connection with this matter after you have had a chance to review the Sixth Report Supplement. We also invite you to engage with Imperio's counsel to attempt to resolve the lien priority dispute, given that the lien claimants and Imperio are the ultimate economic stakeholders in respect of same.

Yours truly,

AIRD & BERLIS LLP



Jeremy Nemers
jn

cc: Imperio's counsel, HK United's counsel, Soil-Mat's counsel and client (via email)

51691941.3

AIRD BERLIS

APPENDIX “H”

AIRD BERLIS

Ian Aversa
 Direct: 416.865.3082
 E-mail: iaversa@airdberlis.com

December 1, 2022

BY REGISTERED MAIL AND BY EMAIL (lawmaltz@on.aibn.com)

Murray Maltz Professional Corporation

933 Mount Pleasant Road
 Toronto, ON M4P 2L7
Attention: Murray Maltz

Dear Mr. Maltz:

**Re: Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. –
 Court File No. CV-21-00673521-00CL (the "Receivership Proceedings")**

We are the lawyers for KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") in the above-referenced Receivership Proceedings. The Receiver was appointed pursuant to the Order of The Honourable Mr. Justice Pattillo of the Ontario Superior Court of Justice (Commercial List) dated December 10, 2021 (the "**Receivership Order**"), a copy of which is available on the Receiver's website at: <https://www.ksvadvisory.com/experience/case/go-to>. Unless otherwise stated, all capitalized terms in this letter are defined as in the Receivership Order. Amongst other things, paragraph 7 of the Receivership Order requires all Persons to forthwith:

- i. advise the Receiver of the existence of any Records (including, without limitation, information of any kind, including, without limitation, corporate and accounting records), in that Person's possession or control, related to the business or affairs of any of the Receivership Respondents (including, without limitation, Go-To Spadina Adelaide Square Inc. and Go-To Spadina Adelaide Square LP (the "**Go-To Adelaide Receivership Respondents**") or the Property (including, without limitation, the real property owned by the Go-To Adelaide Receivership Respondents); and
- ii. provide to the Receiver copies thereof.

Based on the first attached re-direction regarding funds dated April 15, 2022 (the "**First Re-Direction**"), the Receiver understands that, in connection with the purchase of real property by the Go-To Adelaide Receivership Respondents (the "**Transaction**"), Adelaide Square Developments Inc. ("**ASD**") irrevocably authorized and directed Concorde Law Professional Corporation to pay \$20,950,000 to the parties listed on the First Re-Direction. Murray Maltz Professional Corporation, in trust, does not appear on the First Re-Direction.

Based on the second attached re-direction regarding funds dated April 2019 (the "**Second Re-Direction**") and corresponding trust statements, the Receiver understands that, in connection with the same Transaction, ASD irrevocably authorized and directed Concorde Law Professional Corporation to pay \$22,100,000 to the parties listed on the Second Re-Direction. This represents an aggregate increase of \$1,150,000 from the First Re-Direction, with the totality of the \$1,150,000 difference being paid to Murray Maltz Professional Corporation, in trust (the "**Murray Maltz Trust Funds**"). The other fund recipients and their allocated amounts on the Second Re-Direction are the same as on the First Re-Direction.

Page 2

In accordance with paragraph 7 of the Receivership Order, the Receiver requires that you please provide it with all the non-privileged Records (including, without limitation, all accounting Records) evidencing:

- a) who Murray Maltz Professional Corporation represented in connection with the Transaction;
- b) what role such Person(s) played in the Transaction;
- c) who ultimately received the Murray Maltz Trust Funds;
- d) what role such ultimate fund recipient(s) played in the Transaction; and
- e) why such ultimate recipient(s) was/were entitled to receive the Murray Maltz Trust Funds (or any proceeds at all from the Transaction).

Please ensure that these Records are provided forthwith, as described at paragraph 7 of the Receivership Order, and, in any event, by no later than the close of business on December 9, 2022.

Yours truly,

AIRD & BERLIS LLP



Ian Aversa
IA/jn
Encls.

cc: client (via email)
51228547.2

AIRD BERLIS

RE-DIRECTION

TO: CONCORDE LAW PROFESSIONAL CORPORATION

RE: Adelaide Square Developments Inc. (the "Assignor") assignment of Agreement of Purchase and Sale dated March 28, 2019, as amended time to time (the "APS") between Quantum Capital Developments Inc., in trust for the Assignor (the "Purchaser") and Fortress Charlotte 2014 Inc. (the "Vendor") for the property municipally known as 46 Charlotte Street, Toronto, Ontario (the "Property") and assigned to the Assignee by Assignment Fee Agreement dated March 29th, 2019 for the assignment purchase price of \$20,950,000.00 (the "Assignment Agreement")

This is to further direct you and shall constitute your good and sufficient and irrevocable authority to make the Assignment Purchase Price in the above transaction payable as follows:

West Maroak Developments Inc.	\$19,500,000.00
Goldmount Financial Group Corp.	\$300,000.00
Concorde Law Professional Corporation	\$113,000.00
Concorde Law Professional Corporation	\$2,5000.00
R A R Litigation Lawyers	\$200,000.00
AKM Holdings Corp.	\$388,087.33
AKM Holdings Corp.	\$58,325.34
Furtado Holdings Inc.	\$388,087.33
TOTAL:	<u>\$20,950,000.00</u>

DATED at Vaughan, this 15 day of April, 2019.

ADELAIDE SQUARE DEVELOPMENTS INC.

Per: Angelo Pucci
Name: Angelo Pucci
Title: President

I have authority to bind the Corporation

RE-DIRECTION

TO: CONCORDE LAW PROFESSIONAL CORPORATION

RE: **Adelaide Square Developments Inc.** (the "Assignor") assignment of Agreement of Purchase and Sale dated March 28, 2019, as amended time to time (the "APS") between Quantum Capital Developments Inc., in trust for the Assignor (the "Purchaser") and Fortress Charlotte 2014 Inc. (the "Vendor") for the property municipally known as 46 Charlotte Street, Toronto, Ontario (the "Property") and assigned to **Go-To Spadina Adelaide Square LP** (the "Assignee") by Assignment Fee Agreement dated March 29th, 2019 for the assignment purchase price of \$20,950,000.00 (the "Assignment Agreement")

This is to further direct you and shall constitute your good and sufficient and irrevocable authority to make the Assignment Purchase Price in the above transaction payable as follows:

West Maroak Developments Inc.	\$19,500,000.00
Goldmount Financial Group Corp.	300,000.00
Concorde Law Professional Corporation	113,000.00
Concorde Law Professional Corporation	2,500.00
R A R Litigation Lawyers	200,000.00
AKM Holdings Corp.	388,087.33
AKM Holdings Corp.	58,325.34
Furtado Holdings Inc.	388,087.33
Murray Maltz Professional Corporation, in trust	<u>1,150,000.00</u>
TOTAL:	<u>\$22,100,000.00</u>

DATED at Vaughan, this day of April, 2019.

ADELAIDE SQUARE DEVELOPMENTS INC.

Per: 

Name: Angelo Pucci

Title: President

I have authority to bind the Corporation

Invoice #: 961

Page 3

April 8, 2019

TRUST STATEMENT

		Disbursements	Receipts
Apr-04-19	Received From: Torkin Manes LLP assignment fee		20,950,000.00
Apr-05-19	Paid To: West Maroak Developments Inc. (wire tra Assignment funds	19,500,000.00	
Apr-08-19	Paid To: Concorde Law Professional Corporation Payment for invoice: 961	113,000.00	
	Total Trust	<u>19,613,000.00</u>	<u>\$20,950,000.00</u>
	Trust Balance		\$1,337,000.00

Invoice #: 966

Page 3

April 17, 2019

TRUST STATEMENT

		Disbursements	Receipts
	Trust Balance Forward		1,337,000.00
Apr-10-19	Received From: Go-To Spadina Adelaide Square L return of deposit on assignment		1,000,000.00
	Received From: Go-To Spadina Adelaide Square L return of deposit on assignment		150,000.00
Apr-11-19	Paid To: Goldmount Financial Group Corp. 46 Charlotte St. Toronto	300,000.00	
	Paid To: R A R Litigation Lawyers 46 Charlotte St. Toronto	200,000.00	
	Paid To: AKM Holdings Corp. 46 Charlotte St. Toronto	58,325.34	
Apr-12-19	Paid To: Murray Maltz Professional Corporation, i 46 Charlotte Street, Toronto	1,150,000.00	
Apr-15-19	Paid To: AKM Holding Corp. 46 Charlotte Street, Toronto	388,087.33	
	Paid To: Furtado Holdings Inc. 46 Charlotte Street, Toronto	388,087.33	
Apr-17-19	Paid To: Concorde Law Professional Corporation Payment for invoice: 966	1,982.81	
	Total Trust	<u>\$2,486,482.81</u>	<u>\$2,487,000.00</u>
	Trust Balance		\$517.19

APPENDIX “I”

**MURRAY MALTZ PROFESSIONAL CORPORATION
MURRAY N. MALTZ
BARRISTER AND SOLICITOR
933 MOUNT PLEASANT ROAD
TORONTO ONTARIO M4P 2L7
TEL: 416-398-6900 FAX: 416-398-6845
EMAIL: lawmaltz@on.aibn.com**

December 1, 2022

Ian Aversa
Aird & Berlis LLP
Brookfield Place
181 Bay Street
Suite 1800
Toronto, Ontario
M5J 2T9

Delivered by email
iaversa@airdberlis.com

Dear Mr. Aversa,

**RE: Ontario Securities Commission v Go-To Developments Holdings Inc., et al.
Court File No. CV-21-00673521-00CL (the "Receivership Proceedings")**

In reply to your letter dated the 1st of December 2022. I was advised that my client was receiving funds associated with brokering a transaction associated with 46 Charlotte Street Toronto Ontario.

Find enclosed trust ledger associated with the payment of \$1,150,000.00 which tracks the receipt of the funds from Concorde Law Professional Corp and payout of the funds.

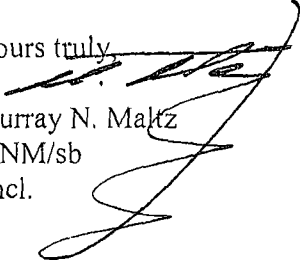
The funds were then used pursuant to a mortgage commitment in which a mortgage was registered on a property known as 1041 and 1407 Lakeshore and additional collateral on other properties. As can be seen by the trust statement the funds were directed primarily to Garfinkle Biderman in Trust on behalf of their client the borrower as well as brokerage fees and payment of an execution and outstanding mortgage payment. A small amount was directed to 13 Construction Management Corp.

Upon the mortgage coming due the funds were returned including interest and fees in the sum of \$1,424,170.05 by Garfinkle Biderman and after paying legal fees and ancillary expenses disbursed out at the instruction of the client to 13 Construction Management Corp.

Find enclosed second trust ledger showing repayment of the mortgage and payout pursuant to the client's instructions.

I have sought legal advice on the issue of providing the clients name. Based on legal advice received and my understanding of the law I consider that to be privileged information and subject to client solicitor privilege and confidentiality. I therefore have removed the name of the client. I would be happy to send a non-redacted version of the trust ledgers if you can provide case law on the issue concerning releasing a client's name that is not a party to the litigation.

Yours truly,



Murray N. Maltz

MNM/sb

Encl.

ALL DATES

Received From/Paid To		Chq#	General		Fees	Bld	Trust Activity			
Entry #	Explanation	Rec#	Rcpts	Disbs		Inv#	Acc	Rcpts	Disbs	Balance
7										
5669	PURCHASE 46 CHARLOTTE STREET TORONTO									
25/2019	Concorde Law Professional Corp.									
131378	deposit	01682								
2/2019	Garfinkle Biderman LLP In Trust									
131979	mortgage advance	18976								
8/2019	Privcomm Mortgages									
132029	broker fee re lakeshore 19-5817	18990								
8/2019	Global Legal Services In Trust									
132031	booth execution payment re 19-5817	18991								
1/2019	Creemore Financial Limited									
132243	august mortgage payment 1041 and 1407 Lakeshore	19044								
27/2019	13Construction Management Corp									
132483	disbursement of funds	19093								

UNBILLED					BILLED					BALANCES							
FALS	CHE	+	RECOV	+	FEE	=	TOTAL	DISBS	+	FEE	+	TAX	-	RECEIPTS	=	A/R	TRUST
RIOD	0.00		0.00		0.00		0.00	0.00		0.00		0.00		0.00		0.00	0.00
D DATE	0.00		0.00		0.00		0.00	0.00		0.00		0.00		0.00		0.00	0.00

UNBILLED					BILLED					BALANCES							
RM TOTAL	CHE	+	RECOV	+	FEE	=	TOTAL	DISBS	+	FEE	+	TAX	-	RECEIPTS	=	A/R	TRUST
RIOD	0.00		0.00		0.00		0.00	0.00		0.00		0.00		0.00		0.00	0.00
D DATE	0.00		0.00		0.00		0.00	0.00		0.00		0.00		0.00		0.00	0.00

PORT SELECTIONS - Client Ledger	Default
yout Template	None
vanced Search Filter	ADMIN
quested by	Thursday, December 01, 2022 at 01:34:18 PM
nished	9.20f
r	18-5669
atters	All
ients	All
ajor Clients	All
ient Intro Lawyer	All
ssponsible Lawyer	All
ssigned Lawyer	All
ype of Law	All
elect From	Active, Inactive, Archived Matters
atters Sort by	Default
ew Page for Each Lawyer	No
ew Page for Each Matter	No
o Activity Date	Dec 31/2199
irm Totals Only	No
otals Only	No
ntries Shown - Billed Only	No
ntries Shown - Disbursements	Yes
ntries Shown - Receipts	Yes
ntries Shown - Time or Fees	Yes
ntries Shown - Trust	Yes
incl. Matters with Retainer Bal	No
incl. Matters with Neg Unbld Disb	No
rust Account	All
orking Lawyer	All
include Corrected Entries	No
Show Cheque # on Paid Payables	No
Show Client Address	No
Consolidate Payments	No
Show Trust Summary by Account	No
Show Interest	No
Interest Up To	Dec 1/2022
Show Invoices that Payments Were Applied to	No

c 1/2022

Murray Maltz Professional
Client Ledger

ALL DATES

Entry#	Received From/Paid To Explanation	Chq# Rec#	General		Fees	Bld Inv#	Trust Activity		Balance
			Rcpts	Disbs			Rcpts	Disbs	
1-5817	SECOND MORTGAGE ON 1041 AND 1407 LAKESHORE RD								
									Resp Lawyer: MMM
in 26/2019	Wyatt Booth and Aiden Booth								
131972	retainer	01729				12	35000.00		35000.00
11 24/2019	Agedo Inc.								
132179	commitment fee	19024				12		10000.00	25000.00
ug 14/2019	JCLD Online								
132374	ppsa registration/19-5817	14472		20.52					
ug 14/2019	void								
132623	void	14473		0.00					
ug 22/2019	Garfinkle Biderman								
132475	mortgage payout	01767				12	1424170.05		1449170.05
ug 23/2019	Murray Maltz Professional Corpora								
132477	client paying	19090				12		25799.28	1423370.77
	bill [REDACTED]/19-5817								
ug 23/2019	Murray Maltz Professional Corpora								
132479	client paying	19091				12		2690.04	1420680.73
	bill [REDACTED]/19-5817								
ug 23/2019	[REDACTED]								
137809	RET -	02219	2690.04						
ug 23/2019	[REDACTED]								
137811	RET - retainer - for legal fees	02220	25799.28						
Aug 27/2019	13Construction Management Corp								
132487	disbursement of funds	19095				12		1420680.73	0.00
Sep 23/2019	JCLD Online								
132625	ppsa discharge/19-5817	14508		9.60					

UNBILLED					BILLED					BALANCES	
TOTALS	CHE	+	RECOV	= TOTAL	DISBS	+	FEEES	+ TAX	- RECEIPTS	= A/R	TRUST
PERIOD	30.12		0.00	30.12	0.00		0.00	0.00	0.00	0.00	0.00
END DATE	30.12		0.00	30.12	0.00		0.00	0.00	0.00	0.00	0.00
General Retainer				28489.32							

UNBILLED					BILLED					BALANCES	
FIRM TOTAL	CHE	+	RECOV	= TOTAL	DISBS	+	FEEES	+ TAX	- RECEIPTS	= A/R	TRUST
PERIOD	30.12		0.00	30.12	0.00		0.00	0.00	0.00	0.00	0.00
END DATE	30.12		0.00	30.12	0.00		0.00	0.00	0.00	0.00	0.00
General Retainer				28489.32							

REPORT SELECTIONS - Client Ledger

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 Matters 19-5817
 Clients All
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 Select From Active, Inactive, Archived Matters
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 New Page for Each Lawyer No
 New Page for Each Matter No
 No Activity Date Dec 31/2199
 Firm Totals Only No
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 Entries Shown - Billed Only No
 Entries Shown - Disbursements Yes
 Entries Shown - Receipts Yes
 Entries Shown - Time or Fees Yes
 Entries Shown - Trust Yes
 Incl. Matters with Retainer Bal No
 Incl. Matters with Neg Unbld Disb No
 Trust Account All
 Working Lawyer All
 Include Corrected Entries No
 Show Cheque # on Paid Payables No
 Show Client Address No
 Consolidate Payments No
 Show Trust Summary by Account No
 Show Interest No
 Interest Up To Dec 1/2022
 Show Invoices that Payments Were Applied to No

APPENDIX “J”

AIRD BERLIS

Ian Aversa
 Direct: 416.865.3082
 E-mail: iaversa@airdberlis.com

December 2, 2022

BY REGISTERED MAIL AND BY EMAIL (lawmaltz@on.aibn.com)

Murray Maltz Professional Corporation

933 Mount Pleasant Road

Toronto, ON M4P 2L7

Attention: Murray Maltz

Dear Mr. Maltz:

**Re: Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. –
 Court File No. CV-21-00673521-00CL (the “Receivership Proceedings”)**

As you know from our letter to you dated December 1, 2022 (our “**First Letter**”), we are the lawyers for KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) in the above-referenced Receivership Proceedings. Unless otherwise stated, all capitalized terms below are defined in our First Letter.

We are writing in connection with your responding letter dated December 1, 2022. Our First Letter asked you five questions, the first of which was who did Murray Maltz Professional Corporation represent in connection with the Transaction? You refused to answer this question on the basis of alleged “*client solicitor privilege and confidentiality*.”¹ You invited us to provide you with case law demonstrating that the Receiver is entitled to the name of your client(s), and, in the interim, you provided us with trust statements with the name of your client(s) redacted.

Please see the attached recent case of *Haroon*,² in which you were involved personally, and which confirms that solicitor-client privilege “*applies only to communications*.”³ *Haroon* also cites from the attached case of *Greymac*,⁴ which confirms the “*general rule*” that “*whenever a solicitor asserts that a communication is protected by the solicitor-and-client privilege, he cannot refuse to identify the client on whose behalf the privilege is asserted, because the identity of his client is not the subject of a professional confidence*.”⁵ Accordingly, please advise who Murray Maltz Professional Corporation represented in connection with the Transaction, by, amongst other things, providing us with unredacted copies of the trust statements that you provided on December 1, 2022.

¹ Confidentiality, absent privilege, is not a basis to withhold the Records from the Receiver pursuant to paragraph 7 of the Receivership Order.

² *Haroon v. Sheikh*, 2020 ONSC 1284 [*Haroon*].

³ *Ibid*, at para. 42.

⁴ *Greymac Ontario (Securities Commission) v. Greymac Credit Corp.* (1983), 41 O.R. (2d) 328 (Div. Ct.) [*Greymac*].

⁵ *Ibid*, at 338 [emphasis added].

Page 2

In addition, of the remaining four questions in our First Letter, you did not address two of them, namely:

- d) what role the ultimate fund recipient(s) played in the Transaction (which, for greater certainty, is the Transaction referenced in our First Letter concerning the purchase of real property by the Go-To Adelaide Receivership Respondents); and
- e) why such ultimate recipient(s) was/were entitled to receive the Murray Maltz Trust Funds (or any proceeds at all from the Transaction).

Finally, the trust statements that you provided are cut-off at the left-hand side, such that many of the dates are not visible. Please provide us with the full copies of the trust statements, inclusive of the dates near the left-hand margin.

As stated in our First Letter, please ensure that these Records are provided forthwith, as described at paragraph 7 of the Receivership Order, and, in any event, by no later than the close of business on December 9, 2022.

Yours truly,

AIRD & BERLIS LLP



Ian Aversa
IA/jn
Encls.

cc: client (via email)

51330511.1

AIRD BERLIS

CITATION: Haroon v. Sheikh 2020 ONSC 1284

COURT FILE NO.: FS-18-4130

DATE: 20200302

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Tazeen Haroon

Applicant

– and –

Haroon Anwar Sheikh

Respondent

– and –

Murray N. Maltz

Respondent on Motion

Shelly Kalra, for the Applicant*James R. G. Cook*, for the Respondent on Motion

HEARD: February 4, 2020

SHORE, J.

- [1] This is a motion by the Applicant seeking costs against Murray Maltz, the Respondent's previous lawyer. On November 19, 2019, Gilmore, J. ordered costs of \$6,500 in favour of the Applicant and "Mr. Maltz and Ms. Kalra to appear before me in an agreed upon date with further material as to why costs should not be ordered against Mr. Maltz personally". Justice Gilmore is no longer sitting in the family law court. This motion came before me as I am familiar with the facts and history of the file, having heard previous motions.
- [2] For the reasons set out below, I find that Mr. Maltz shall pay the costs of \$6,500 personally, pursuant to rule 24(9) of the *Family Law Rules*, O. Reg. 114/99.

History:

- [3] Both parties on this motion agree that a motion for costs to be paid personally by a lawyer should not be determined in isolation but having regard to the entire context of the file. It is important to understand the relevant history in this file to properly determine the motion.
- [4] The parties separated in January 2018. The application was issued in July 2018. The matter has been litigated continuously since January 2019.
- [5] In August 2018, the Applicant registered designations of matrimonial home against 2230 Lakeshore Blvd. West, Unit 606, Etobicoke, ON ("Lakeshore property") and 16 Harbour Street, Unit 5302, Toronto, ON ("Harbour property"). The properties were owned by the Respondent.
- [6] On January 17, 2019, the Respondent brought a motion to have the entire application dismissed for a lack of jurisdiction by this court. The Respondent was partially successful. On January 30, 2019, I dismissed the Applicant's claims under the *Divorce Act*, R.S.C. 1985 c.3 (2nd Supp.) but permitted her claims to proceed on the issues of custody, support, and equalization under Ontario legislation. The Respondent was ordered to pay costs of \$24,120.95.
- [7] For the purpose of the cost motion, it is important to highlight the last sentence of paragraph 24 of my reasons which states: "**given that no divorce has been issued by another jurisdiction**, the applicant has the right to bring a support claim before this court, under the provincial legislation" (emphasis added).
- [8] The Respondent appealed the decision.
- [9] The Respondent began divorce proceedings in Pakistan and allegedly obtained a divorce certificate on January 30, 2019. The certificate was not filed with the court in Ontario until after the release of the January 30th decision. The Applicant took the position that the divorce was fraudulently obtained in Pakistan, and that the certificate was subsequently cancelled.
- [10] On March 21, 2019, the Applicant obtained an order for \$6,000 of spousal support per month on a temporary basis. No order was made with respect to child support because there were arrangements in place to meet the financial needs of the children. In ordering spousal support, the Court relied on its jurisdiction as set out in my January 30th order. In the reasons, Justice Gilmore stated "**[t]here are conflicting decisions from the Pakistani court which have yet to be resolved. If the parties have indeed been divorced as a result of the challenged Pakistani order, the applicant's entitlement to spousal support may be an issue**" (emphasis added). Therefore, the concern about the validity of the Pakistani divorce was known to the parties, their lawyers, and the court by this date.

- [11] The Respondent brought a motion in the Court of Appeal to stay the earlier orders pending his appeal. The hearing of the stay motion was scheduled to be heard on April 8th, 2019 but was adjourned to June 2019.
- [12] The motion for support came back before Justice Gilmore on May 21, 2019, and an order was made for both child support and spousal support. The Respondent made no effort to comply with the order. Justice Gilmore also awarded the Applicant costs of \$20,000 and the Respondent made no effort to comply with that order.
- [13] In the Ruling on Motion, Gilmore J., at paragraph 27 specifically stated that “The respondent maintains that he has obtained a valid divorce in Pakistan. The applicant disagrees and submits that the divorce was obtained fraudulently. Both sides have retained counsel and experts to support their positions. The investigations are ongoing”. At paragraph 36(c) it further states: “While jurisdiction remains an issue on appeal, the order of Shore, J. currently stands”. Therefore, the Court made it clear again that there was a dispute as to whether there was a valid divorce obtained in Pakistan.
- [14] On May 16, 2019, Mr. Maltz retained an agent, Romeo Finder, to remove the designations of matrimonial home from the Lakeshore property and the Harbour property. No notice was given to the Applicant. Despite the court’s findings set out above, Mr. Maltz provided his own opinion to the Land Titles Office that the Respondent had a valid foreign divorce from Pakistan and therefore the designation was improperly registered. His letter includes the following wording: **“It is my opinion that the attached divorce is valid and binding in Ontario Canada and the Divorce Registration Certificate is valid and evidence of the decree absolute of divorce”** (emphasis added). These actions ultimately lead to the motion before me, as seen in more detail below.¹
- [15] On June 4, 2019, the Respondent’s motion to stay the January 19th order was heard in the Court of Appeal. On June 11, 2019, Bennotto J.A. dismissed the motion and ordered costs of \$10,000. In the Court of Appeal decision, Bennotto J.A. also references that fact that there is an issue with the validity of the foreign divorce.
- [16] The Respondent continued to ignore his support obligation. Several times throughout June 2019, Ms. Kalra, solicitor for the Applicant, writes to Mr. Maltz advising that her client intends to bring a motion to obtain a preservation order if the Respondent does not rectify his breaches of the court orders.

¹ On December 13, 2019, Mr. Maltz swore an affidavit in which he alleged that he sent the documents to the law firm of Horowitz, Finder for a second opinion and they opined that the divorce was final and that the firm removed the designation of matrimonial home from the properties. At para. 37, Mr. Maltz specifically stated that “Horowitz, Finder acted for the Respondent and billed the Respondent directly”. As set out below, these statements proved to be untrue.

- [17] In the meantime, having lifted the designation of matrimonial home, on June 21, 2019 the Respondent sold the Lakeshore property with a closing date of July 8, 2019. Mr. Maltz acted as the real estate lawyer for the Respondent. The Applicant was not advised of the sale or the lifting of the designation of the matrimonial home before the closing of sale.
- [18] On July 5, 2019, Ms. Kelra advised Mr. Maltz that her client intends to proceed with the motion for a preservation order on July 18, 2019.
- [19] On July 8, 2019, Mr. Maltz acts as the real estate agent on the closing of sale of the Lakeshore property.
- [20] On July 8, 2019, Mr. Maltz wired \$66,028 out of the country to the Respondent from the proceeds of sale of the Lakeshore property.
- [21] On July 9, 2019, Mr. Maltz wrote a letter to Ms. Kalra advising that he is not available on July 18, 2019 for the motion for a preservation order, but he could be available on July 25th. What is also key to the motion before me is that in his letter dated July 9, 2019 (one day before he disburses the remaining proceeds of sale of the Lakeshore property), Mr. Maltz states “**There is no urgency in this matter**” (emphasis added). As seen from the events below, this is a misrepresentation by Mr. Maltz. Further, as set out below, on July 18th, the date the Applicant wanted her motion heard, Mr. Maltz is a witness to the Respondent assigning his interests in various condominiums.
- [22] On July 10, 2019, Mr. Maltz pays himself \$60,000 from the proceeds of sale for outstanding fees and transfers the remaining \$90,000 out of the country, to the Respondent. All the proceeds of sale were disbursed.²
- [23] On July 18, 2019, the date Ms. Kalra suggested for the motion for the preservation order and Mr. Maltz advised he was not available, Mr. Maltz witnessed the Respondent’s signature to reassign the condominiums to third parties.
- [24] At this time, the Applicant is still unaware that the designations have been lifted from the properties, that the Lakeshore property was sold, or that the Respondent assigned the condominiums to third parties. Neither the Respondent nor Mr. Maltz disclosed this to the other side. Mr. Maltz’s representation on July 9, 2019 was that there was no urgency in the matter.
- [25] On July 25, 2019, the Respondent was ordered to produce disclosure and a preservation order was made against him. That order was continued on August 8, 2019, and the Respondent was ordered to pay costs of \$8000.

² At para. 68 of his December 13, 2019 affidavit, Mr. Maltz stated “At no time did I assist the Respondent in avoiding any obligations that were imposed upon him by the courts of Ontario”. Except that at the time Mr. Maltz both paid himself and transferred the money to the Respondent, the Respondent had not paid any support as per the court orders and all the cost orders were outstanding.

- [26] On September 11, 2019, the Court of Appeal dismissed the Respondent's appeal as he failed to appear. He was ordered to pay costs of \$40,000.
- [27] On September 17, 2019, the Respondent signed a notice of change in representation and Mr. Maltz ceased acting for the Respondent.
- [28] On September 20, 2019, the Respondent was found to be owing significant arrears of child support and spousal support and to have not paid any of the cost awards. He owed \$172,000 to the Applicant by this date. He was in breach of all orders made by both this court and the Court of Appeal.
- [29] On and around September 21, 2019, the Applicant discovered that the Respondent had been depleting his assets and that the designations of matrimonial home had been lifted allegedly by Mr. Finder. Mr. Maltz's involvement was still unknown and it was thought that Mr. Finder acted on the sale of the Lakeshore property because his name was on the documents.
- [30] On September 23, 2019, the Applicant obtained an order for certificates of pending litigation to be registered against the remaining Canadian properties, including the condominiums. The Applicant was unaware that the Respondent had also disposed of his interest in the condominiums. Costs of \$2,500 were ordered against the Respondent.
- [31] On September 25, 2019, Mr. Finder releases his file along with a letter advising that he only acted as agent for Mr. Maltz. He was never retained by the Respondent and did not act for him to remove the matrimonial home designations. All correspondence in Mr. Finder's file is from Mr. Maltz's office. Mr. Finder registered the removal of designations as an agent for Mr. Maltz.
- [32] On September 26, 2019, an order was made vesting the properties in the Applicant's name. The Respondent was ordered to pay costs of \$8,000. He did not appear at the motion. When trying to register the order, the Applicant discovered that the two condominiums were already assigned to third parties.
- [33] On October 10, 2019, the Respondent's pleadings were struck. He had not participated in the court proceedings since August 8, 2019. He failed to abide by any court orders. He owed significant arrears of child support and spousal support. He had not paid any of the cost awards. He had dissipated his assets. He was ordered to pay costs of \$10,000.
- [34] By this date the Applicant had discovered that most of the properties subject to the vesting order had previously been transferred by the Respondent to third parties. The Applicant obtained documents showing Mr. Maltz's involvement with the transfers and the sale of the Lakeshore property.
- [35] That same day, the Applicant advised Mr. Maltz's that she will be bringing a motion for the release of the real estate file. Mr. Maltz advised that he was available on November 19 for the motion.

- [36] On November 11, 2019, Mr. Maltz produced the file but failed to disclose the tracing of funds. It was Mr. Maltz's position that his client specifically instructed him not to release information regarding the disbursement of funds. The Applicant therefore had to attend on the motion on November 19th.
- [37] The motion was heard November 19, 2019. Mr. Maltz's position was that the information with respect to the disbursement of funds was protected by solicitor-client privilege and that he needed a court order to release the information. The order was made as requested by the Applicant and the documents released. Although Mr. Maltz could have taken no position on the motion and simply advise that he needed an order, he swore an affidavit on November 12, 2019, containing several derogatory comments about the Applicant and advocating for his ex-client on the support issues.
- [38] Further, Mr. Maltz acknowledges that while the Applicant's counsel was signing in, he approached the Applicant and told her she would "never see a penny". He also advised the Applicant and her lawyer to read an article in the *Globe and Mail*, about a husband fleeing the jurisdiction and the wife receiving nothing. In his affidavit of December 13, 2019, Mr. Maltz's explanation for his actions was that he did not represent the Respondent at the time but he "was asked to deliver a message from the Respondent", that the Respondent wanted to settle the matter.
- [39] The motion on November 19th was heard by Justice Gilmore. Justice Gilmore, having heard from the Applicant and Mr. Maltz, ordered costs of \$6,500 in favour of the Applicant and that "Mr. Maltz and Ms. Kalra to appear before me in an agreed upon date with further material as to why costs should not be ordered against Mr. Maltz personally".
- [40] In her reasons of November 19, 2019, Justice Gilmore at paragraph 18 stated:

This motion was entirely unnecessary. Raising the issue of privilege over the tracing of funds was yet another ploy in the respondent's unrelenting attempt to make his family suffer and to treat the Ontario Court system with disdain.

Mr. Maltz's involvement in the sale of the subject property raises questions, the two most concerning ones being why he did not give notice to the applicant of the removal of the designation of matrimonial home (whether it was proper or not) and failing to inform the court of the sale of the subject property on July 25, 2019. Costs are properly sought against him, but the request was only raised at the motion. Mr. Maltz and Ms. Kalra to appear before me on an agreed upon date with further material as to why costs should not be ordered against Mr. Maltz personally.

Law and Analysis:

- [41] Mr. Maltz submitted that he could not release the information requested without his client's consent or a court order as it was protected by solicitor-client privilege. Both parties relied on Justice Perell's decision in *Glegg v. Glass*, 2019 ONSC 6623, 313

A.C.W.S. (3d) 738. In considering the issue of solicitor-client privilege, Perell J. specifically states that “information about funds held by the lawyer in respect of the client’s transactions in which the identity of the participants has become known is not privileged because the privilege applies only to communications and records pertaining to the client’s transactions directed through the lawyer’s trust account are evidence of actions not communications”: at para. 136. In the decision Perell J. relies on *Ontario (Securities Commission) v. Greymac Credit Corp.* (1983), 41 O.R. (2d) 328 (Div. Ct.). In that decision, the court was considering whether money given to a trustee in bankruptcy by the debtor or held in trust for the debtor was protected by solicitor-client privilege. The Divisional Court held that solicitor-client privilege does not extend to prohibit a solicitor from answering questions as to the movement of funds into and out of his trust account.

- [42] Evidence as to whether a solicitor holds or has paid or received moneys on behalf of a client is evidence of an act or transaction, whereas the privilege applies only to communications: see *Greymac*, at paras. 23-24. It may be helpful to ask in such a case whether the client himself, if he were the witness, could refuse on the ground of the solicitor-and-client privilege to disclose particulars of a transaction directed by him through his solicitor's trust account. The fact that a client has paid to, received from, or left with his solicitor a sum of money involved in a transaction is not a matter as to which the client himself could claim the privilege, because it is not a communication at all. It is an act. The solicitor-and-client privilege does not enable a client to retain anonymity in transactions in which the identity of the participants has become relevant in properly constituted proceedings: *Greymac*, at para. 24.
- [43] Whether Mr. Maltz should or could have disclosed the information was only one small factor to consider in determining whether he should be personally responsible for costs.
- [44] Both parties on this motion agree that an order awarding costs against a lawyer personally should only be ordered in exceptional circumstances and are rare.
- [45] Rule 24(9) of the *Family Law Rules* states:

(9) If a party's lawyer or agent has run up costs without reasonable cause or has wasted costs, the court may, on motion or on its own initiative, after giving the lawyer or agent an opportunity to be heard,

...

(c) order the lawyer or agent personally to pay the costs of any party.
- [46] The Supreme Court of Canada held that costs are rewarded as compensation for the successful party and not to punish a lawyer: see *Young v. Young*, [1993] 4 S.C.R. 3 and *F.(V.) v. F.(J.)*, 2016 ONCJ 759, 86 R.F.L. (7th) 452, at paras. 9-11. Courts must be extremely cautious in awarding costs personally against a lawyer, given the duties upon a lawyer to guard confidentiality of instructions and to bring forward with courage even unpopular cases or positions (see *Young*, at para. 263).

- [47] Although the rules are not identical, the test used under Rule 57.07(1) of the *Rules of Civil Procedure*, applies to rule 24(9) of the *Family Law Rules*. The two-part test was set out by the Court of Appeal in *Galganov v. Russell*, 2012 ONCA 410, 350 D.L.R. (4th) 679. Specifically, the court must first determine if the lawyer's conduct falls within the ambit of the rule in the sense that he or she caused costs to be incurred or wasted unnecessarily or without reasonable cause; and second, as a matter for discretion whether an order for costs personally is warranted in the circumstances of the case: see paras. 18 and 22 and see *F.(V.) v. F. (J.)*.
- [48] In *Covriga v. Covriga*, 2010 CarswellOnt 3602 (SCJ), Justice Horkins found that the lawyer supported and encouraged her client's unreasonable conduct and ordered the lawyer to pay costs: see paras. 111 and 184. The lawyer's unreasonable conduct was described as "shocking" (at para. 185). Specifically, Justice Horkins found that the wife did not do what she did alone. The lawyer must bear responsibility for much of the conduct. She "had a duty to take all reasonable steps to ensure that her client complied with court orders and the *Family Law Rules*. Instead, she pursued Ms. Covriga's application with a breathtaking disregard for the *Family Law Rules*, court orders and the *Rules of Professional Conduct*": at para. 185. The lawyer's behaviour was found to have "aggravated and perpetuated the existing problems and numerous new problems arose": at para. 186. A lawyer may not rely on a client's instructions as a defence when a lawyer acts in a manner inconsistent with the goals of the justice system: *MacMull v. MacMull*, 2015 ONSC 5667, 258 A.C.W.S. (3d) 342, at para. 19. I find that much of the description of the lawyer in Justice Horkin's order aptly describes Mr. Maltz's behaviour in the case before me.
- [49] Amongst other reasons, the Court of Appeal in *Galganov* stated that the cost rule is intended to apply "when a lawyer pursues a goal which is clearly unattainable or is **clearly derelict in his or her duties as an officer of the court**" (emphasis added): at para. 18; see also *F.(V.) v. F.(J.)*, at para. 11. In determining whether the rule applies, the court must examine "the entire course of the litigation that went on before the application judge": *Galganov*, at para. 20; *F.(V.) v. F.(J.)*, at para. 11. This requires a "holistic examination of the lawyer's conduct" in order to provide an "accurate tempered assessment": *Galganov*, at para. 20; *F.(V.) v. F.(J.)*, at para. 11. As stated by Justice George Czutrin in *R. (C.) v. Children's Aid Society of Hamilton*, 2004 CarswellOnt 1414 (S.C.), any person whose conduct "flies in the face" of the primary goals of the *Family Law Rules* may be subject to cost consequences (at para. 51). In that case, he was referring to costs ordered against the Office of the Children's Lawyer, but the statement is equally applicable in this case.
- [50] There is no bad faith requirement in the *Family Law Rules*: see *Covriga* at para. 11. In *MacMull*, Justice McGee held that "The wording of Rule 24(9) as it refers to 'fault' within the heading, requires a finding of negligence, inappropriate conduct, or abuse of process on the part of the lawyer, even if the conduct does not amount to bad faith": at para. 18.

[51] I find that Mr. Maltz's actions caused additional costs to be incurred without reasonable cause. His behaviour perpetuated existing problems and created new problems. Further, he assisted his client in avoiding his obligations under court orders. A few examples of his conduct that was contrary of his obligations as an officer of the court include:

- a. Providing a written legal opinion that the parties were divorced and the divorce certificate valid, knowing that the issue was in dispute and a live issue before the Ontario Court.
- b. Sending an agent to remove the matrimonial home designation, knowing the validity of the divorce was in question.
- c. Swearing an affidavit that he did not retain Mr. Finder and that the relationship was between Mr. Finder and the Respondent, when Mr. Finder had no communication with anyone but Mr. Maltz (and his office).
- d. Advising the other side in writing that there was nothing urgent pending with respect to a non-depletion order, knowing the Lakeshore property had been sold (he acted as the real estate lawyer on the closing) and within days of the letter to the other side he disbursed the remaining funds from his trust account to himself and his client.
- e. Paying himself \$60,000 and wiring money to his client out of the country knowing his client is avoiding his support and cost obligations under several court orders.
- f. Acting for his client on the sale of property, knowing he was assisting in his client avoiding his court-ordered obligations.
- g. Instead of limiting his affidavit to the issues before the court (specifically whether he needed his client's instructions to release part of the file), Mr. Maltz used his affidavit as an opportunity to attack and criticize the Applicant and advocate for his (previous) client, despite many of the issues not being before the court.
- h. He made inappropriate comments to the Applicant when her lawyer was not present (that she would "never see a penny"), alleging he was simply passing on a message from his (former) client.


[52] Mr. Maltz's tenuous legal opinion on the validity of the foreign divorce, the clandestine manner in which he removed the designation of matrimonial home, acting for the Respondent on the closing of sale of the property, the misleading letter to the other side, and the disbursement of funds are examples of Mr. Maltz's actions that assisted his client in avoiding his court obligations and demonstrative of shocking behaviour for an officer of the court, leading to increased costs for the Applicant. This was not a case of an isolated lapse in judgement. This was a series of deliberate actions by a lawyer that contributed directly to increased costs for the Applicant. Had Mr. Maltz not provided his opinion on the validity of the foreign divorce and removed the designations of the

matrimonial home, this motion and the events leading up to this motion would not have unfolded as they did.

- [53] Mr. Maltz relies on a series of cases included in his book of authorities where costs were not ordered personally against counsel. In those cases, the lawyers' behaviour does not come close to the behaviour of Mr. Maltz in these proceedings and are therefore easily distinguishable. See e.g. *Sgrignuoli v. Melara*, 2018 ONSC 255, 290 A.C.W.S. (3d) 347, *Carleton v. Beaverton Hotel* (2009), 96 O.R. (3d) 391 (Div. Ct.) and *Walsh v. 1124660 Ontario Limited*, 2007 CanLII 4789 (Ont. S.C.).
- [54] I find Mr. Maltz's actions unnecessarily increased the Applicant's costs without reasonable cause. I have considered the warnings of the Supreme Court of Canada and Court or Appeal in awarding costs against counsel sparingly and only in exceptional circumstances. Ultimately, it is a matter of discretion.
- [55] The role of the lawyer in our system of justice is an important one. Lawyers must be able to put forward their client's case, even difficult or unpopular cases without having to look over their shoulders or be concerned about costs being ordered against them personally. There are very serious public policy considerations when determining whether to order costs against a lawyer, including the integrity of the administration of justice. It is for this reason that the discretion is to be exercised with extreme caution.
- [56] However, to ignore Mr. Maltz's conduct in these circumstances would put into question the integrity of the profession and the administration of justice. This is not a case of a lawyer vigorously putting his client's case before the court. Mr. Maltz crossed a line. As set out in *Covriga* and *F.(V.) v. F.(J.)*, not granting an order of costs against counsel in the appropriate circumstances "would send a very different message to the profession: that they can engage in unacceptable behaviour without the risk of being penalized with a costs order." *Covriga*, at para. 258; *F.(V.) v. F.(J.)*, at para. 119.
- [57] Further, rule 2(4) of the *Family Law Rules* places a duty on counsel to help the court promote the primary objective of these rules. The primary objective is to enable the court to deal with cases justly (rule 2(2)). Dealing with a case justly includes ensuring that the procedure is fair to all parties (rule 2(3)).
- [58] For all the reasons set out above, I find Mr. Maltz's conduct comes within the scope of rule 24(9) and he should be personally responsible for the costs of the motion.
- [59] Order to go as follows:
 - a. Mr. Maltz shall be personally responsible for paying the costs of \$6,500 as ordered by Gilmore J.
- [60] The Applicant was successful on her motion and presumptively entitled to her costs of the motion before me. If the parties are unable to agree on costs of the motion before me within 10 days of release of this order, the Applicant shall serve and file cost submissions, limited to two pages, not including her bill of costs and any offers to settle.

Page: 11

Within five business days of receipt of the Applicant's cost submissions the Respondent shall serve and file any responding material, also limited to two pages, not including his bill of costs and any offers to settle. The parties can assume that I am familiar with rule 24 of the *Family Law Rules* and recent case law.


Justice S. Shore

Released: March 2, 2020

CITATION: Haroon v. Sheikh 2020 ONSC 1284
COURT FILE NO.: FS-18-4130
DATE: 20200302

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Tazeen Haroon

Applicant

– and –

Haroon Anwar Sheikh

Respondent

– and –

Murray N. Maltz

Respondent on Motion

REASONS FOR JUDGMENT

S. Shore, J.

Released: March 2, 2020

Re Ontario Securities Commission and Greymac Credit Corp.
Re Ontario Securities Commission and Prousky

41 O.R. (2d) 328
146 D.L.R. (3d) 73

ONTARIO
HIGH COURT OF JUSTICE
DIVISIONAL COURT
SOUTHEY, KREVER AND CRAIG JJ.
30TH MARCH 1983.

Barristers and solicitors -- Solicitor-and-client privilege
-- Receivership order -- Whether receiver can waive solicitor-
and-client privilege.

Barristers and solicitors -- Solicitor-and-client privilege
-- Trust account -- Whether solicitor may be compelled to
testify as to payments into and out of trust account.

Barristers and solicitors -- Solicitor-and-client privilege
-- Corporate officer solicitor -- Whether privilege available.

Barristers and solicitors -- Solicitor-and-client privilege
-- Name of client -- Whether solicitor may be compelled to
testify as to name of client.

M was appointed by the Minister of Consumer and Commercial Relations pursuant to the Loan and Trust Corporations Act, R.S.O. 1980, c. 249, s. 152, to make a special examination and audit of the books, accounts and securities of certain trust companies. Under that Act M had the power to summon witnesses and take evidence under oath and generally had the powers of a commission under Part II of the Public Inquiries Act, R.S.O. 1980, c. 411. In carrying out this mandate, M examined certain solicitors who had acted for the trust companies in question,

and those solicitors refused to answer many questions on the ground of solicitor-and-client privilege. The registrar under the Loan and Trust Corporations Act, s. 159, ordered to take possession and control of the assets of the companies, informed M that he was willing to waive the privilege on behalf of the companies. M stated a case for the court which raised the following questions:

1. Would answers to the questions involve a breach of solicitor-and-client privilege? 2. Could the registrar, appointed as receiver of the companies under the Loan and Trust Corporations Act, waive the privilege? 3. Is the president of a company, who is a solicitor, prohibited by solicitor-and-client privilege from answering questions as to the ownership of that company? 4. Does solicitor-and-client privilege extend to prohibit a solicitor from answering questions as to the movement of funds into and out of his trust account.

Held, the questions, which the court answered in the following sequence, should be answered as follows:

Question 2: The purpose for which the registrar under the Loan and Trust Corporations Act, s. 159, was ordered to take possession and control of the assets of these companies was to conduct their businesses and take such steps as should be taken towards their rehabilitation or continued operation. The Order in Council appointing the registrar gave him all the powers of the boards of directors which would include the power to waive a solicitor-and-client privilege, but such powers were expressly conferred for the purposes for which the registrar was ordered to take control. It was no part of those purposes to render assistance to the commission in its inquiry into the affairs of the companies, and accordingly the registrar had no right to waive the privilege to enable their solicitors or former solicitors to disclose confidential information to the commission.

Question 4: Payments into and out of a solicitor's trust account do not constitute communications from the client and accordingly are not covered by solicitor-and-client privilege.

Thus, a solicitor may be compelled to give evidence as to the movement of funds into and out of his trust account, including the source and recipient of payments, and to produce for inspection his books and records relating thereto.

Question 1: The question as phrased was too general as a stated case should be specific and at least specify the type of question to which the direction of the court is sought. The question did, however, appear to relate to whether disclosure by the solicitor of the name of his client is protected by solicitor-and-client privilege. In general, a solicitor cannot refuse to identify the client on whose behalf the privilege is asserted because the identity of his client is not the subject of a professional confidence. While there may be circumstances in which a solicitor would be justified in refusing to disclose the name of his client or his former client, those circumstances were not present here.

Question 3: The president of a company who is also a solicitor cannot assert solicitor-and-client privilege in respect of information acquired by him in the performance of duties that could be and usually are performed by an employee or an agent of the company who is not a solicitor. A president would have or could acquire knowledge of the names of registered shareholders. However, the names of beneficial owners may come to the president in his capacity as a solicitor. If so, it would be privileged unless shares were held in the name of the solicitor or his partner, employee or agent on trust for the beneficial owner.

Re Furney, a debtor, [1964] A.L.R. 814; Bursill v. Tanner (1885), 16 Q.B.D. 1; Canary v. Vested Estates Ltd., [1930] 3 D.L.R. 989, [1930] 1 W.W.R. 996, 43 B.C.R. 1, apld

Re Cirone, Sabato and Priori (Con-form Construction Co.) (1965), 8 C.B.R. (N.S.) 237, distd

Other cases referred to

Descoteaux et al. v. Mierzwinski and A.-G. Que. et al. (1982), 141 D.L.R. (3d) 590, 70 C.C.C. (2d) 385, 28 C.R. (3d) 289, 1 C.R.R. 318, 44 N.R. 462; Solosky v. The Queen,

[1980] 1 S.C.R. 821, 105 D.L.R. (3d) 745, 50 C.C.C. (2d) 495, 16 C.R. (3d) 294, 30 N.R. 380; R. v. Littlechild (1979), 108 D.L.R. (3d) 340, 51 C.C.C. (2d) 406, [1980] 1 W.W.R. 742, 11 C.R. (3d) 390, 19 A.R. 395; Re Borden & Elliot and the Queen (1975), 13 O.R. (2d) 248, 70 D.L.R. (3d) 579, 30 C.C.C. (2d) 337, 36 C.R.N.S. 334 sub nom. Re R. v. Froats; Re Director of Investigation & Research and Shell Canada Ltd. (1975), 55 D.L.R. (3d) 713, 22 C.C.C. (2d) 70, 18 C.P.R. (2d) 155, [1975] F.C. 184, 29 C.R.N.S. 361, 7 N.R. 157, sub nom. Re Shell Canada Ltd.; Re Abacus Cities Ltd. (1981), 128 D.L.R. (3d) 566, 40 C.B.R. (N.S.) 172, 16 Alta. L.R. (2d) 279; Re Presswood et al. and Int'l Chemalloy Corp. (1975), 11 O.R. (2d) 164, 65 D.L.R. (3d) 228, 25 C.P.R. (2d) 33, 36 C.R.N.S. 322; Alfred Crompton Amusement Machines Ltd. v. Com'rs of Customs & Excise (No. 2), [1972] 2 All E.R. 353; affd [1973] 2 All E.R. 1169

Barristers and solicitors -- Solicitor-and-client privilege -- Receiver -- Whether privilege precludes solicitor from disclosing information relating to affairs of company to receiver -- Securities Act, R.S.O. 1980, c. 466, ss. 11, 17.

Securities -- Receiver -- Solicitor-and-client privilege -- Whether privilege precludes solicitor from disclosing information relating to affairs of company to receiver -- Securities Act, R.S.O. 1980, c. 466, ss. 11, 17.

A receiver-manager, appointed by the court pursuant to the Securities Act, R.S.O. 1980, c. 466, s. 17, is to preserve the undertaking and assets of the company in question pending completion of an investigation pursuant to s. 11. The function of the receiver-manager is not to investigate the affairs of the company except to the extent necessary to locate and take possession of its assets. Persons appointed pursuant to s. 11 of the Act to conduct an investigation are no more entitled to demand disclosure of privileged information and documents than are peace officers executing a search warrant. The powers of the receiver appointed pursuant to s. 17 are those of the board of directors, but those powers can only be exercised by the receiver-manager for the purposes for which he was appointed. Accordingly, the receiver can waive the privilege to obtain

information regarding the assets and affairs of the company. The report of the receiver-manager to the court is not confidential although it is based in part upon formerly privileged information from the solicitors. However, the receiver-manager does not have authority to waive privilege with respect to an investigation conducted by persons appointed pursuant to s. 11.

Cases referred to

Moss Steamship Co., Ltd. v. Whinney, [1912] A.C. 254

Statutes referred to

Combines Investigation Act, R.S.C. 1970, c. C-23

Loan and Trust Corporations Act, R.S.O. 1980, c. 249, ss. 152, 158a(1)(b) (enacted 1982 (Ont.), c. 62, s. 3); 159 (am. idem, s. 4(1))

Public Inquiries Act, R.S.O. 1980, c. 411, ss. 8, 11

Securities Act, R.S.O. 1980, c. 466, ss. 11, 17

DETERMINATION of a case stated by a commission under the Public Inquiries Act (Ont.); APPEALS from two orders of O'Brien J.

Ian V. B. Nordheimer, for Morrison Commission.

Ronald E. Carr, for Greymac Credit Corporation, Greymac Trust Company and Crown Trust Company, clients.

James J. Carthy, Q.C., for Victor Prousky, solicitor.

Ronald B. Moldaver, Q.C., for Gordon, Traub and Rotenberg, solicitors.

B. P. Bellmore, and D. C. Moore, for Ontario Securities Commission and Coopers and Lybrand Limited, receiver and manager of Greymac Credit Corporation.

The judgment of the court was delivered by

SOUTHEY J.:-- These three matters, a stated case and appeals from two orders of O'Brien J. dated February 21, 1983, all involve questions as to the extent of the solicitor-and-client privilege, and the right of a person appointed to manage the affairs of a corporate client to waive that privilege. I shall deal first with the stated case, because the issues of law are raised clearly in it, without the procedural complexities which exist in the two appeals and may affect their outcome.

The stated case

The stated case was stated to this court by James A. Morrison (the "'Morrison Commission"), who was appointed by the Minister of Consumer and Commercial Relations on November 23, 1982, under s. 152 of the Loan and Trust Corporations Act, R.S.O. 1980, c. 249, to make a special examination and audit of the books, accounts and securities of Seaway Trust Company, Seaway Mortgage Corporation, Greymac Trust Company, Greymac Mortgage Corporation and Crown Trust Company, and to inquire generally into the conduct of the business of those corporations. Under s. 152(4) of the Loan and Trust Corporations Act, the Morrison Commission has the power to summon witnesses and take evidence under oath, and generally has the powers of a commission under Part II of the Public Inquiries Act, R.S.O. 1980, c. 411. Part II applies to the inquiry of the commission, and authorizes it in s. 8 to state a case to the Divisional Court as follows:

8. Where any person without lawful excuse,

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(b) being in attendance as a witness at an inquiry, refuses to take an oath or to make an affirmation legally required by the commission to be taken or made, or to produce any document or thing in his power or control legally required by the commission to be produced to it, or to answer any question to which the commission may legally require an

answer ...

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the commission may state a case to the Divisional Court setting out the facts ...

The stated case stated by the Morrison Commission on February 17, 1983, after its introductory paragraphs, reads as follows:

As part of the special examination being conducted by me, I have examined various individuals as witnesses under oath. On January 17th, 1983 I attempted to examine Walter M. Traub with respect to matters within the scope of my special examination. Mr. Traub is a solicitor and had acted for Greymac Credit Corporation, Greymac Trust Company and Crown Trust Company at times material to the matters which are the subject of the special examination. Mr. Traub refused to answer a great number of salient questions on the ground that he could not answer such questions without being in breach of the privilege between solicitor and client.

On February 16, 1983 I attempted to examine Victor Prousky, Q.C., on similar matters. Mr. Prousky had also acted for the aforesaid three companies at material times. The nature of the questions asked of Mr. Prousky were similar in kind to those asked of Mr. Traub. Mr. Prousky also objected to answer numerous salient questions on the same ground that Mr. Traub had refused, that is, that to do so would be a breach of solicitor/client privilege.

It was my view that the questions asked of Mr. Traub and Mr. Prousky were proper questions necessary to my special examination and I directed them to answer. Both Mr. Traub and Mr. Prousky refused. Pursuant to section 8 of the Public Inquiries Act of Ontario I am therefore stating this case to the Divisional Court to determine whether Mr. Traub and Mr. Prousky should be compelled to answer such questions and in particular to determine:

1. Was I right in ruling that answers to the questions asked

did not involve any breach of solicitor/client privilege in the circumstances of this special examination?

2. Was I right in ruling that, even if the answers to the questions asked would have involved a breach of solicitor/client privilege, there can be no such breach now since the privilege has been waived by the person now in charge, possession and control of the clients involved namely, the Registrar under the Loan and Trust Corporations Act of Ontario?

3. Was I right in ruling that the President of a company is not prohibited by solicitor/client privilege from answering questions as to the ownership of that company merely because the President also happens to be a solicitor?

4. Was I right in ruling that solicitor/client privilege does not extend to prohibit a solicitor from answering questions as to the movement of funds into and out of his trust account?

Question 2

I shall deal first with Q. 2, which involves important questions relating to the waiver of the solicitor-and-client privilege.

The registrar under the Loan and Trust Corporations Act, to whom reference is made in Q. 2, was ordered to take possession and control of the assets of Greymac Trust Company and Crown Trust Company by Orders in Council passed on January 7, 1983, under s. 158a(1)(b) of the Loan and Trust Corporations Act, as amended by 1982 (Ont.), c. 62, s. 3. The powers of the registrar resulting from those Orders in Council are derived from s. 159 of the Act, as amended in 1982 [*idem*, s. 4], which provides, in part, as follows:

159(1) If so ordered by the Lieutenant Governor in Council under section 158 or 158a, the Registrar shall take possession and control of the assets of a provincial corporation and shall thereafter conduct its business and

take such steps as in his opinion should be taken toward its rehabilitation, or where an order is made under paragraph 1 of section 158a, its continued operation, and for such purposes the Registrar has all the powers of the board of directors of the corporation, and, without limiting the generality of the foregoing, the Registrar may,

(a) exclude the directors, officers, servants and agents of the corporation from the premises, property and business of the corporation; and

(b) carry on, manage and conduct the operations of the corporation and in the name of the corporation preserve, maintain, realize, dispose of and add to the property of the corporation, receive the incomes and revenues of the corporation and exercise all the powers of the corporation.

The registrar has informed the Morrison Commission that he is willing to waive the client's privilege of Greymac Trust Company and Crown Trust Company in respect of the questions put by the Morrison Commission to the former solicitors for those corporations, Gordon, Traub & Rotenberg and Victor Prousky.

The nature and importance of the solicitor-and-client privilege were recently considered at some length by the Supreme Court of Canada in *Descoteaux et al. v. Mierzwinski and A.-G. Que. et al.* (1982), 141 D.L.R. (3d) 590, 70 C.C.C. (2d) 385, 44 N.R. 462. Lamer J., delivering the judgment of the court, quoted early in his reasons (at p. 601 D.L.R., p. 516 N.R.) from a prior decision of the court in *Solosky v. The Queen*, [1980] 1 S.C.R. 821, 105 D.L.R. (3d) 745, 50 C.C.C. (2d) 495, in which Dickson J. had said [at p. 839 S.C.R., p. 760 D.L.R.]:

"... the right to communicate in confidence with one's legal adviser is a fundamental civil and legal right, founded upon the unique relationship of solicitor and client ...".

He also quoted with approval at p. 609 D.L.R., p. 526 N.R., the following passage from the judgment of Laycraft J.A. in *R. v. Littlechild* (1979), 108 D.L.R. (3d) 340 at p. 347, 51 C.C.C.

(2d) 406, [1980] 1 W.W.R. 742, emphasizing the importance of the privilege:

"The privilege protecting from disclosure communications between solicitor and client is a fundamental right -- as fundamental as the right to counsel itself since the right can exist only imperfectly without the privilege. The Courts should be astute to protect both. As long ago as *Pearson v. Foster* (1885), 15 Q.B.D. 114, Brett, M.R., warned the free and confident communication within the solicitor-client relationship is so vital a part of the right to counsel that the privilege ought not to be "frittered away". At pp. 119-20 he said:

'The privilege with regard to confidential communications between solicitor and client for professional purposes ought to be preserved, and not frittered away. The reason of the privilege is that there may be that free and confident communication between solicitor and client which lies at the foundation of the use and service of the solicitor to the client ...' "

As to the scope of the privilege, Lamer J. at 603 D.L.R., p. 518 N.R., referred to Wigmore:

The following statement by Wigmore (8 Wigmore, *Evidence*, Section 2292, p. 554 (McNaughton Rev. 1961), of the rule of evidence is a good summary, in my view, of the substantive conditions precedent to the existence of the right of the lawyer's client to confidentiality:

"Where legal advice of any kind is sought from a professional legal adviser in his capacity as such, the communications relating to that purpose, made in confidence by the client, are at his instance permanently protected from disclosure by himself or by the legal adviser, except the protection be waived."

The Supreme Court of Canada approved the decisions of lower courts that the privilege is not simply a rule of evidence which prevents the disclosure of confidential communications in

evidence at trial, but that the privilege comes into existence at the time when the communications are made. Thus, the privilege protects documents in the hands of a solicitor from seizure under a search warrant issued under the Criminal Code (Re Borden & Elliot and The Queen (1975), 13 O.R. (2d) 248, 70 D.L.R. (3d) 579, 30 C.C.C. (2d) 337 (Ont. H.C.J.)), or from examination by the director of investigation in an inquiry under the Combines Investigation Act, R.S.C. 1970, c. C-23 (Re Director of Investigation & Research and Shell Canada Ltd. (1975), 55 D.L.R. (3d) 713, 22 C.C.C. (2d) 70, 18 C.P.R. (2d) 155 (Federal Ct. of Appeal)).

The privilege applies to items of information that a lawyer requires from a person in order to decide if he will agree to advise or represent him, and remains even if the lawyer does not agree to advise or act. It applies not only to information given before the retainer is perfected concerning the legal problem itself, but also to information concerning the client's ability to pay the lawyer and any other information which a lawyer is reasonably entitled to require before accepting the retainer (Descoteaux v. Mierzewski at p. 606 D.L.R., p. 522 N.R.).

As is pointed out by Lamer J. at p. 603 D.L.R., p. 518 N.R., communications made to a lawyer in order to facilitate the commission of a crime or fraud will not be privileged, whether or not the lawyer is acting in good faith. This exception to the rule of confidentiality has no application to the cases at bar, because no allegations have been made against any of the clients in these cases that their communications with Gordon, Traub & Rotenberg or Victor Prousky were in furtherance of a crime or fraud.

The Public Inquiries Act itself clearly stipulates that a commission may not compel a witness to give evidence that is privileged. Section 11 of the Act reads as follows:

11. Nothing is admissible in evidence at an inquiry that would be inadmissible in a court by reason of any privilege under the law of evidence.

The issue raised in Q. 2 in the stated case is whether the solicitor-and-client privilege, which has been recognized by the courts as being of such fundamental importance to our legal system, can be waived by the registrar under the Loan and Trust Corporations Act on behalf of Greymac Trust and Crown Trust, in order to assist the Morrison Commission in its inquiry into the conduct of the business of Seaway Trust Company, Seaway Mortgage Company, Greymac Trust Company, Greymac Mortgage Corporation and Crown Trust Company.

Counsel for the commission, in urging that the answer to Q. 2 should be in the affirmative, relied on the decision of McDermott J. in *Re Cirone, Sabato and Priori* (Con-Form Construction Co.) (1965), 8 C.B.R. (N.S.) 237, that a trustee of a bankrupt client steps into the shoes of the bankrupt and may waive the solicitor-and-client privilege to obtain confidential information from the bankrupt's solicitor. McDermott J. relied on the following passage in 2 Hals., 3rd ed., p. 408:

The solicitor of a person who afterwards becomes bankrupt cannot set up against the trustee in the bankruptcy any privilege which is the client's.

The decision in *Re Cirone et al.* was followed by MacDonald J. in the Alberta Queen's Bench (in Bankruptcy) in *Re Abacus Cities Ltd.* (1981), 128 D.L.R. (3d) 566, 40 C.B.R. (N.S.) 172, 16 Alta. L.R. (2d) 279.

The decision in *Re Cirone et al.* is not determinative of the issue raised in Q. 2, in my judgment, because of the differences between the purposes for which a trustee in bankruptcy is appointed, and the purposes, as stated in s. 159 of the Loan and Trust Corporations Act, for which the registrar was ordered to take possession and control of the assets of Greymac Trust and Crown Trust. The object of a bankruptcy, as was pointed out by the late R. W. S. Johnston, Q.C., in his lecture on "Receivers" in *Special Lectures of the Law Society of Upper Canada* (1961), Remedies, 101 at p. 113, is to liquidate the assets of the bankrupt and distribute them amongst the creditors. The purposes for which the registrar was

ordered to take possession and control of the assets of Greymac Trust and Crown Trust were to conduct the businesses of those corporations and take such steps as in his opinion should be taken towards their rehabilitation or continued operation. Section 159 of the Loan and Trust Corporations Act expressly provides that the registrar has his powers "for such purposes". The result of the Orders in Council is that the registrar has all the powers of the boards of directors of Greymac Trust and Crown Trust, which would include the power to waive a solicitor-and-client privilege of either of those corporations, but those powers are expressly conferred for the purposes for which the registrar was ordered to take control. It is no part of those purposes, in my judgment, to render assistance to the Morrison Commission in its inquiry into the affairs of Greymac Trust and Crown Trust and other corporations. That being so, the registrar, in my judgment, has no right to waive the solicitor-and-client privilege of Greymac Trust or Crown Trust so that their solicitors or former solicitors may be free to disclose confidential information to the commission.

This conclusion is consistent with the clear implication of the decision of Osler J. in *Re Presswood et al. and Int'l Chemalloy Corp.* (1975), 11 O.R. (2d) 164, 65 D.L.R. (3d) 228, 25 C.P.R. (2d) 33, that the Clarkson Company Limited, which had been appointed receiver of Chemalloy in other proceedings (the nature of which is not disclosed in his decision), was the only person qualified to claim the privilege, and was prepared to waive it, could not waive the privilege of Chemalloy in order to make privileged material available to an inspector appointed under s. 186(1) of the Business Corporations Act, R.S.O. 1970, c. 53. Section 186(3) of the Act required every director, officer, agent, employee, etc. of the corporation, and every other person to produce for the examination of the inspector all accounts and records of or relating to the affairs of the corporation in their custody or control. It was submitted that the receiver could waive the privilege, but Osler J. refused to permit a general inspection by the inspector (who was also the Clarkson Company) because the inspector had been appointed at the instance of one Delzotto (presumably a shareholder of Chemalloy outside the control group), and was under a duty to report to Delzotto, as well as the court. Osler J. said there

might be a conflict of interest in such a situation, and that this pointed up the necessity of insuring that whatever proper privilege existed should be claimed and exercised in the interest of the client corporation. He did not decide as to what documents, or classes of documents, the privilege related, but directed that the bundle of documents seized from a director of Chemalloy, who was also its solicitor, should be opened in the presence of the solicitor, or his solicitor, who would have the right to claim privilege for any particular letter. Such direction would obviously have been unnecessary, if Osler J. had thought that the receiver had the power to waive the privilege.

The answer to Q. 2 is "NO".

Question 4:

4. Was I right in ruling that solicitor/client privilege does not extend to prohibit a solicitor from answering questions as to the movement of funds into and out of his trust account?

The other questions in the stated case relate to matters involving clients, about which, it is submitted by counsel for the commission, a solicitor may be compelled to testify without any waiver by the client of the solicitor-and-client privilege. It is convenient to deal first with Q. 4 quoted above.

The only case directly in point that was cited to us was the decision of Clyne J. in the Federal Court of Bankruptcy in Australia in *Re Furney*, a debtor, [1964] A.L.R. 814. There a solicitor for a bankrupt, when summoned by the registrar in bankruptcy to attend and give evidence relating to moneys received from the debtor, or held in trust for the debtor, or paid from his trust account to the debtor, refused to answer on the grounds of solicitor-and-client privilege. He also refused to produce documents relating to such payments. In very short reasons, Clyne J. ruled that the solicitor was obliged to answer the questions, and should produce any relevant documents, because the privilege was intended to protect communications, whereas the questions related to "questions of

objective fact".

In my judgment, if I may say so with respect, the Furney case was rightly decided. Evidence as to whether a solicitor holds or has paid or received moneys on behalf of a client is evidence of an act or transaction, whereas the privilege applies only to communications. Oral evidence regarding such matters, and the solicitor's books of account and other records pertaining thereto (with advice and communications from the client relating to advice expunged) are not privileged, and the solicitor may be compelled to answer the questions and produce the material.

It may be helpful to ask in such a case whether the client himself if he were the witness, could refuse on the ground of the solicitor-and-client privilege to disclose particulars of a transaction directed by him through his solicitor's trust account. The fact that a client has paid to, received from, or left with his solicitor a sum of money involved in a transaction is not a matter as to which the client himself could claim the privilege, because it is not a communication at all. It is an act. The solicitor-and-client privilege does not enable a client to retain anonymity in transactions in which the identity of the participants has become relevant in properly constituted proceedings.

The answer to Q. 4 is "YES". In answering questions as to the movement of funds into and out of his trust account, the solicitor must give the source and recipient of payments, and produce for inspection his books and records relating thereto.

Question 1

1. Was I right in ruling that answers to the questions asked did not involve any breach of solicitor/client privilege in the circumstances of this special examination?

This question is too general. A stated case should be specific as to the questions sought to be put. It must at least specify the type of question as to which the direction of the court is sought.

Mr. Nordheimer stated at the beginning of his argument that the questions in issue fall into three categories.

1. Whether disclosure by the solicitor of the name of his client is protected by the solicitor-and-client privilege.
2. Whether particulars of receipts and disbursements of funds through a solicitor's trust account are the subject of the solicitor-and-client privilege.
3. Whether an individual who is the president of a company, but who also is a solicitor, can refuse to answer questions about the company on the ground that his knowledge is protected by the solicitor-and-client privilege.

The only one of those three categories that is not covered by questions in the stated case which I have answered, or shall answer shortly, is the first question, as to disclosure of the name of the client. I shall deal with that question next.

The general rule is that whenever a solicitor asserts that a communication is protected by the solicitor-and-client privilege, he cannot refuse to identify the client on whose behalf the privilege is asserted, because the identity of his client is not the subject of a professional confidence: see *Bursill v. Tanner* (1885), 16 Q.B.D. 1, per Lord Esher at p. 4.

As I have earlier said in connection with Q. 4, a solicitor cannot withhold as privileged the name of a client on whose behalf he receives, pays, or holds money, if the identity of the person paying, receiving, or holding such money becomes relevant in legal proceedings. The same rule applies, in my judgment, whenever a solicitor does any act on behalf of a client, and it becomes relevant in legal proceedings to determine on whose behalf the act was done. The doing of an act does not fall within the ambit of the privilege, because it is not a communication at all.

I am not prepared to go so far as to say that circumstances can never arise in which a solicitor being examined in legal

proceedings would be justified in refusing to disclose the name of a client, or former client. It suffices to say that none of the questions before the commission that were the subject of argument before us arose out of circumstances which would justify the withholding by the solicitor or former solicitor of the names of his clients.

Question 3

3. Was I right in ruling that the President of a company is not prohibited by solicitor/client privilege from answering questions as to the ownership of that company merely because the President also happens to be a solicitor?

The law relating to this question is stated as follows by Morrison C.J.S.C. (B.C.) in *Canary v. Vested Estates Ltd.*, [1930] 3 D.L.R. 989 at p. 990, [1930] 1 W.W.R. 996 at p. 998, 43 B.C.R. 1:

The fact that a person is by profession a solicitor and is intrusted with and performs duties which can be and usually are, performed by an official, servant or agent of a company does not render him immune from examination on discovery if he performs those duties. In this particular transaction I am inclined to believe that the defendant company is advised to take refuge behind one who in reality was an agent or servant engaged for this particular negotiation along with his associate Austin. He was not clothed for this particular transaction with the professional duties of a solicitor by the defendants. Mr. Brougham [the solicitor], as agent or servant or agent ad hoc of the defendants being in possession of knowledge which is relevant to the issues herein and which is necessary for the proper and final determination of the matters in dispute, I think must submit to be examined as applied for.

The character of the particular work performed and in respect of which examination is sought, is to be looked at.

In *Re Presswood and Int'l Chemalloy Corp.*, supra, Osler J. referred [at p. 165 O.R., p. 229 D.L.R.] to *Canary v. Vested*

Estates Ltd. as "authority, if one is needed, for the proposition that not every communication or transaction between persons, one of whom happens to be the solicitor of the other, is privileged". He also quoted [at pp. 166-7 O.R., pp. 230-1 D.L.R.] the following passage from the judgment of Lord Denning M.R. in *Alfred Crompton Amusement Machines Ltd. v. Com'rs of Customs & Excise (No. 2)*, [1972] 2 All E.R. 353; affirmed [1973] 2 All E.R. 1169, at pp. 376-7 of the earlier report:

"It does sometimes happen that such a legal adviser does work for his employer in another capacity, perhaps of an executive nature. Their communications in that capacity would not be the subject of legal professional privilege. So the legal adviser must be scrupulous to make the distinction. Being a servant or agent too, he may be under more pressure from his client. So he must be careful to resist it. He must be as independent in the doing of right as any other legal adviser. It is true, as the Law Reform Committee said in their report in 1967 that the 'system is susceptible to abuse', but I have never known it abused. So much so that I do not think the law should be changed in the way that the judge would have it. There is a safeguard against abuse. It is ready to hand. If there is any doubt as to the propriety or validity of a claim for privilege, the master or the judge should without hesitation inspect the documents himself so as to see if the claim is well-founded, or not."

It follows from these authorities that the president of a company, who is also a solicitor, cannot assert the solicitor-and-client privilege in respect of information acquired by him in the performance of duties that can be, and usually are, performed by an employee or agent of the company who is not a solicitor.

One must next ask whether knowledge as to "ownership" of the company would ordinarily be acquired by a president who was not a solicitor? It is obvious that such a president would have, or could acquire, the names of the registered shareholders of the company, and no president, in my judgment, can lawfully refuse to disclose such information on the ground that it is privileged.

It appears from the transcript of the examination of Victor Prousky by the Morrison Commission that the commission was asking for information as to the beneficial ownership of shares of the companies involved. The beneficial owners may not be the registered owners of the shares, and the president may or may not know the identity of the beneficial owners. If the president is a solicitor, information as to the identity of the beneficial owners may have come to him in his capacity as a solicitor. If so, it would be privileged, unless the shares were held for the client in the name of the solicitor, or a partner, employee or agent of the solicitor. In that case, holding the shares for the client, but in the name of the solicitor or his partner, employee or agent, would be like holding money for a client in the solicitor's trust account. As with money in his trust account, the solicitor must give particulars of the beneficial ownership of shares held by him for clients, when such particulars are relevant in any duly constituted legal proceedings. Such particulars relate to acts or transactions, not to communications.

Applying the test suggested above in connection with Q. 4, the client, if giving evidence himself, would be obliged to disclose that his solicitor was holding shares for him. Particulars of such holdings are, therefore, not privileged.

To sum up, the answer to Q. 4 is "YES" in respect of the names of registered owners of shares, but not necessarily as to the names of persons beneficially entitled, who are not the registered owners of shares, unless the shares are registered in the name of the solicitor, or in the name of a partner, employee or agent of the solicitor.

An order will go declaring that the answers to the questions in the stated case are as stated in the foregoing reasons. There will be no costs of the stated case.

The appeals from the two orders of O'Brien J. of February 21, 1983 (Ontario Securities Commission v. Greymac Credit and Ontario Securities Commission v. Victor Prousky)

The reasons for judgment of O'Brien J. released on February 21, 1983, disposed of two motions by the Ontario Securities Commission ("OSC") which were heard together and which involved the assertion of a solicitor-and-client privilege in respect of Greymac Credit Corporation by the same solicitors who raised such privilege on behalf of Greymac Trust and Crown Trust before the Morrison Commission.

The first motion (OSC v. Greymac Credit) related to the refusal of those solicitors, Gordon, Traub and Rotenberg and Victor Prousky, as former solicitors for Greymac Credit, to deliver the property of their former client to Coopers & Lybrand Limited, which had been appointed receiver and manager of Greymac Credit by order of the court under s. 17(2) of the Securities Act, R.S.O. 1980, c. 466, and to answer questions put by the receiver and manager relating to the affairs of their former client.

The second motion (OSC v. Victor Prousky) related to the refusal of Victor Prousky, on the grounds of solicitor-and-client privilege, to answer questions put to him by persons appointed by the OSC under s. 11(2) of the Securities Act to make an investigation into the affairs of Greymac Credit.

In both cases, the information refused by the solicitors included information as to large sums of money belonging to Greymac Credit that had been paid to the solicitors.

Coopers & Lybrand Limited was originally appointed receiver and manager of Greymac Credit under s. 17(2) of the Securities Act by order of Maloney J. made ex parte on January 21, 1983. The appointment was to continue until February 4, 1983. An application to set aside the order of Maloney J. was dismissed on January 25, 1983, by Montgomery J. On February 4, 1983, O'Brien J. made a further order appointing Coopers & Lybrand Limited until March 31, 1983, as receiver and manager of all property in the possession of or under the control of Greymac Credit. The order required the receiver and manager to report to the court and to the OSC as to its findings and conclusions regarding the affairs of Greymac Credit on or before March 31, 1983.

The order of O'Brien J. of February 4, 1983, also contained the following provisions:

3. AND IT IS FURTHER ORDERED that Greymac Credit Corporation their officers, directors, trustees, servants, solicitors and agents, do forthwith deliver to the said Coopers & Lybrand Limited as such Receiver and Manager or to such agent or agents or counsel as it may appoint, all of the said property and all books, documents, papers, deeds and records of every nature and kind whatsoever and wherever situate relating to the said Respondent.

4. AND IT IS FURTHER ORDERED that the said Receiver and Manager be and it is hereby authorized and empowered to subpoena witnesses and conduct examinations under oath in relation to the affairs of Greymac Credit Corporation.

The provisions I have quoted obviously resulted from the difficulties being encountered by the receiver and manager in locating and taking possession of the assets owned by or otherwise in the possession of Greymac Credit, including the sum of \$7,500,000 that had apparently been paid to the solicitors of Greymac Credit. The order contained the following recital: "and nothing in this order shall be deemed to affect any applicable solicitor client privilege".

A motion for leave to appeal from the order of O'Brien J. of February 4, 1983, appointing Coopers & Lybrand as receiver and manager for Greymac Credit was brought before Labrosse J. on March 8, 1983. It was argued particularly that the paragraphs of the order authorizing the examination of witnesses, and directing the receiver and manager to report to the OSC and the court were in error. Labrosse J. dismissed the application for leave to appeal, and in my view, it is no longer open to Greymac Credit to question the validity of any part of the order of O'Brien J. of February 4, 1983, appointing Coopers & Lybrand as receiver and manager.

On February 4, 1983, O'Brien J. also dismissed an application brought by Greymac Credit for an order directing Coopers &

Lybrand to retain counsel independent of the solicitors acting for the OSC, and to refrain from consulting with the OSC, or its counsel, with respect to matters concerning Greymac Credit. O'Brien J. further dismissed on February 4, 1983, an application by Greymac Credit to discharge Coopers & Lybrand as receiver and manager of Greymac Credit on the grounds, *inter alia*, that it had failed to maintain a position of neutrality between the OSC and Greymac Credit, had retained as counsel Messrs. Lockwood, Bellmore and Moore, who were the same solicitors as were retained to act for the OSC in the matter, and were carrying out an investigation for and on behalf of the OSC to determine the status of a deposit of \$7,500,000 paid by Crown Trust to Greymac Credit. No leave was sought to appeal the orders of O'Brien J. of February 4, 1983, dismissing the motions referred to in this paragraph.

By order dated January 25, 1983, the OSC appointed G. W. Curran and others under s. 11(2) of the Securities Act to make an investigation for the due administration of the Act into the affairs of Greymac Credit during the period from September 1, 1982, to the date of the order.

The powers of the investigators so appointed are derived from s-ss. (3) and (4) of s. 11 of the Securities Act, which read as follows:

11(3) For the purposes of any investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine,

(a) the affairs of the person or company in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the person or company and any property, assets or things owned, acquired or alienated in whole or in part by the person or company or by any person or company acting on behalf of or as agent for the person or company; and

(b) the assets at any time held, the liabilities, debts,

undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the person or company and the relationship that may at any time exist or have existed between the person or company and any other person or company by reason of investments, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money, stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

(4) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in his custody or possession makes the person liable to be committed for contempt by a judge of the Supreme Court as if in breach of an order or judgment of the Supreme Court provided that no provision of the Evidence Act exempts any bank or any officer or employee thereof from the operation of this section.

The former solicitors for Greymac Credit refused to deliver all of the property of Greymac Credit to Coopers & Lybrand, despite the provision to do so that was contained in the order appointing Coopers & Lybrand as receiver and manager of Greymac Credit. The former solicitors also made it clear that they would not answer questions about the affairs of Greymac Credit of the type I have dealt with in the stated case in any examination by the receiver and manager under its order of appointment, or by the investigators appointed under s. 11 of the Securities Act. The OSC then brought motions for rulings as to the extent to which the former solicitors could rely on the solicitor-and-client privilege of Greymac Credit as against the receiver and manager, and as against the investigators appointed under s. 11 of the Securities Act. These motions were argued together before O'Brien J. on February 18, 1983.

In reasons for judgment delivered on February 21, 1983, O'Brien J. held that the solicitor-and-client privilege, if it existed, could be waived by the receiver and manager. Counsel had agreed that one decision by him would apply to both applications. The effect of his decision, therefore, was to hold that the receiver and manager could waive the solicitor-and-client privilege of Greymac Credit both in its examinations of the solicitors in connection with its duties as receiver and manager and in respect of the investigation under s. 11 of the Securities Act.

Linden J. granted leave to appeal to this court from the order of February 21, 1983, in OSC v. Greymac Credit, the application dealing with the right of waiver in connection with the inquiries by the receiver and manager. The grounds for the granting of leave were that the decision of O'Brien J. appeared to be in conflict with the decision of Osler J. in *Re Presswood et al.* and *Int'l Chemalloy Corp.* (1975), 11 O.R. (2d) 164, 65 D.L.R. (3d) 228, 25 C.P.R. (2d) 33, and it was desirable that an appeal be allowed. Linden J. assumed that the order under appeal was interlocutory in nature.

The order regarding the investigation under s. 11 of the Securities Act was appealed by Greymac Credit directly to the Court of Appeal. We were informed that the Court of Appeal held that an appeal did not lie to it, because the order below was interlocutory. In order that all matters might be heard together, I granted leave to appeal the order to this court, for the reasons given by Linden J. in the case of the other order.

Decision on the appeal in OSC v. Greymac Credit

The duty of Coopers & Lybrand, as receiver and manager appointed under s. 17 of the Securities Act by the order of O'Brien J. of February 4, 1983, was and is, in its role as receiver, to locate and take possession of property belonging to Greymac Credit on behalf of, or in trust for, any other person or company. As manager, it was and is the responsibility of Coopers & Lybrand to manage the business of Greymac Credit for the time being. The appointing order states in several

places, where special powers are given to the receiver and manager, that they are given for the protection of the undertaking, property and assets of Greymac Credit.

The receiver and manager was appointed by the court, not by the OSC, and its purpose, in my view, is to preserve the undertaking and assets of Greymac Credit pending completion of the investigation of Greymac Credit by investigators appointed by the OSC under s. 11 of the Securities Act, or pending the expiry of other sanctions imposed by the OSC under s. 17(1) that may affect its ability to carry on business. It is only to that extent, in my view, that the appointment of the receiver and manager under s. 17(2) can be said to be a part of the investigating process, as was suggested by Labrosse J. in his endorsement of March 8, 1983, refusing leave to appeal from the order of O'Brien J. of February 4, 1983, appointing the receiver.

The function of the receiver and manager is not to investigate the affairs of Greymac Credit, except to the extent necessary to locate and take possession of its assets. If it was intended that Coopers & Lybrand should investigate generally the affairs of Greymac Credit, Coopers & Lybrand should have been appointed by the OSC for that purpose under s. 11 of the Act. Persons appointed by the OSC under s. 11 are no more entitled to demand disclosure of privileged information and documents than are peace officers executing a search warrant, or the director of investigation under the Combines Investigation Act. It is significant that the OSC has no power to appoint a receiver or a receiver and manager under s. 11. That power can only be exercised by the court under s. 17. A receiver and manager thus appointed is an officer of the court, and responsible to the court.

Greymac Credit still exists as a legal entity. The effect on a corporation of the appointment of a receiver and manager was described by the House of Lords in *Moss Steamship Co., Ltd. v. Whinney*, [1912] A.C. 254 at p. 263, in the following passage quoted by O'Brien J.:

This appointment of a receiver and manager over the assets

and business of a company does not dissolve or annihilate the company, any more than the taking possession by the mortgagee of the fee of land let to tenants annihilates the mortgagor. Both continue to exist; but it entirely supersedes the company in the conduct of its business, deprives it of all power to enter into contracts in relation to that business, or to sell, pledge, or otherwise dispose of the property put into the possession, or under the control of the receiver and manager. Its powers in these respects are entirely in abeyance.

The powers of the board of directors of Greymac Credit to manage the affairs of the corporation are held for the time being by the receiver and manager. Included in these powers, in my judgment, is the power to waive any solicitor-and-client privilege of the corporation. But that power of waiver, like the other powers of the board of directors held by the receiver and manager, can be exercised by the receiver and manager only for the purposes for which it was appointed. Thus, the receiver and manager, as was held by the learned judge below, can waive the privilege to obtain information regarding the assets and affairs of the company from a solicitor or former solicitor of the company. Neither Gordon, Traub and Rotenberg nor Victor Prousky can lawfully refuse to answer questions put to them by, or on behalf of, the receiver and manager, regarding the assets and affairs of Greymac Credit, because the receiver and manager can waive the solicitor-and-client privilege of Greymac Credit upon which the solicitors now rely as justification for their refusal to answer.

The receiver and manager is required under the order of O'Brien J. of February 4, 1983, to report to the court and to the OSC "as to its findings and conclusions regarding the affairs of Greymac Credit on or before the 31st day of March, 1983". No doubt that date may be extended, if necessary, because of the delays resulting from the events and proceedings that led to the matters before this court. There is no merit, in my view, in the submission that such report should be confidential, if it is based, in part, on information received from the solicitors that was formerly privileged. The submission is that the report should be for the eyes of the

court only, and should be sealed. That suggestion is quite unrealistic, in my view, because the court is not equipped or qualified to deal with the report from the receiver and manager without hearing the submissions of counsel for interested persons. One of those persons is the OSC. As Labrosse J. pointed out, the OSC is a public body, and its duty is to protect the interests of members of the public who are creditors of, or otherwise interested in, Greymac Credit.

In any event, it is obvious that the likelihood of the report being based to any great extent on privileged material is greatly reduced by the finding above on the stated case, that many of the matters as to which those solicitors have asserted the privilege are not protected by the privilege, apart altogether from the question of waiver.

For the foregoing reasons, the appeal from the order of O'Brien J. in the application OSC v. Greymac Credit Corp. is dismissed. There will be no order as to costs.

Decision on the appeal in OSC v. Victor Prousky

With the greatest deference to the learned judge below, I think he was wrong in holding that the receiver and manager has power to waive the solicitor-and-client privilege of Greymac Credit for the purpose of requiring the former solicitors to answer questions put to them by the persons appointed under s. 11 of the Securities Act to investigate the affairs of Greymac Credit. This conclusion follows from the views expressed above that the powers of the receiver and manager can be validly exercised only for the purposes for which the receiver and manager was appointed. As the investigation of the affairs of Greymac Credit is not one of those purposes, the power to waive the solicitor-and-client privilege cannot be exercised in order to make available to the investigators privileged information and material that they could not otherwise obtain.

On the other hand, it is apparent from the findings above that much of the information and material refused by the former solicitors is not privileged. I think that the reasons above respecting the stated case will provide sufficient guidance as

to what is privileged and what is not.

The appeal, therefore, is allowed, and the order below is varied by adding to para. 2 thereof the words "except to the extent that such questions require the disclosure of information that is subject to the solicitor-and-client privilege of Greymac Credit Corporation."

Again, there will be no costs of the appeal.

Orders accordingly.

APPENDIX “K”



GARDINER
ROBERTS

Stephen Thiele
Direct Line: 416.865.6651
sthiele@grllp.com
File No.: TBA

December 6, 2022

Sent via E-mail: iaversa@airdberlis.com

Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON, M5J 2T9

Attention: Ian Aversa

Dear Mr. Aversa,

**Re: Ontario Securities Commission v. Go-To Developments Holdings Inc.
Court File No. CV-21-00673521-00CL (the "Receivership
Proceedings")**

We have been retained by Mr. Murray Maltz in connection with the above noted matter and your correspondence dated December 1, 2022 and December 2, 2022 respectively.

In response to your letter of December 1, 2022, it is our understanding that Mr. Maltz provided you with details of the transactions that took place in connection with funds received from Concorde Law Professional Corporation in a real estate transaction. Mr. Maltz advised you that his client received funds associated with brokering a transaction associated with 46 Charlotte Street, Toronto, Ontario.

Mr. Maltz redacted the identity of his client and requested case law on the issue concerning the release of a client's name that is not a party to the litigation.

You responded citing two cases in which client identity in connection with legal proceedings is not subject to solicitor-client privilege.

We have reviewed Justice Patillo's order dated December 10, 2021. We understand that you are relying on paragraph 7 of that order to request the identity of Mr. Maltz's client. Paragraph 7 of the order provides as follows:

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 the paragraph 8 of this

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ROBERTS

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.

As you can appreciate, the information that you are asking Mr. Maltz to disclose is “administrative information” which is presumptively subject to solicitor-client privilege. Client identity, in general, is subject to privilege. We note the following comment in Law Society of Alberta v. Fair, 2010 ABLS 21 (CanLII):

It is well established that protection of solicitor and client privilege is a compelling privacy interest, and that the privilege extends to the identity of the client.

Similar comments were made by the Court of Appeal for Ontario in Kaiser (Re), 2012 ONCA 838 (CanLII).

In Wintercorn v. Global Learning Group Inc., 2022 ONSC 4576 (CanLII), Justice Glustein summarized the general principles governing solicitor-client privilege, one of which is that where a third party seeks production from a lawyer of “information pertaining to a solicitor-client relationship”, the proper course for the lawyer to follow is to do refuse to do so unless the client has given clear, valid and explicit consent to disclose.

As well, we note that the Supreme Court of Canada in Greymac stated that the identity of a client does not need to be disclosed in all circumstances.

Paragraph 7 of the order clearly states that nothing in the paragraph 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. This statement protects solicitor-client privilege.

We have reviewed Schedule B to the order which listed the Receivership Respondents.

Mr. Maltz’s client was not any of the Receivership Respondents.

As you can further appreciate, the Rules of Professional Conduct require a lawyer to maintain client confidentiality. The identity of a client, subject to legal proceedings where the client is a party to the litigation, is confidential information and subject to privacy.

Based on the foregoing, Mr. Maltz would like to seek direction from the Law Society of Ontario to receive advice on whether in the circumstances he is obligated to disclose the identity of a client that is not a Receivership Respondent. Paragraph 7 of Justice Patillo’s order is vague and unclear in regard to whether he must disclose the identity of his client. A clear order requiring Mr. Maltz to disclose the identity of his client to either the Ontario Securities Commission or your client may be required. Mr. Maltz simply does not want to put himself in a position where compliance with your request will cause him to breach solicitor-client privilege or the Rules of Professional Conduct with respect to client confidentiality.



Please let me know if you have any questions.

Yours truly,

Gardiner Roberts LLP

A handwritten signature in cursive script, appearing to read 'Stephen Thiele'.

Stephen Thiele
Partner
ST/

c. client

AIRD BERLIS

Ian Aversa
 Direct: 416.865.3082
 E-mail: iaversa@airdberlis.com

December 8, 2022

BY EMAIL (sthiele@grllp.com)

Gardiner Roberts LLP

Bay Adelaide Centre – East Tower
 Toronto, ON M5H 4E3

Attention: Stephen Thiele

Dear Mr. Thiele:

**Re: Ontario Securities Commission v. Go-To Developments Holdings Inc., et al. –
 Court File No. CV-21-00673521-00CL (the "Receivership Proceedings")**

We understand from your letter dated December 6, 2022 that you have been retained by Mr. Murray Maltz in connection with the above-referenced Receivership Proceedings, and, in particular, in connection with our correspondence with him dated December 1, 2022 and December 2, 2022 (our "**Previous Letters**"). As you know from our Previous Letters, we are the lawyers for KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") in the Receivership Proceedings.

The Receiver has no objection with Mr. Maltz seeking direction from the Law Society of Ontario (the "**LSO**") regarding the "client identity" issue raised in your letter. Our next scheduled Court attendance in the Receivership Proceedings is currently planned for January 20, 2023, and we would appreciate receiving Mr. Maltz's position in writing ahead of time, after he has had the opportunity to seek direction from the LSO.

In the meantime, several points that are separate and apart from the "client identity" issue remain outstanding, and were not addressed by your letter. Specifically, we advised Mr. Maltz in our correspondence to him dated December 2, 2022 that:

- i. the trust statements he provided are cut-off at the left-hand side, such that many of the dates are not visible. We asked Mr. Maltz to provide us with properly scanned copies of these documents that include the dates near the left-hand margin, and to do so by no later than the close of business on December 9, 2022; and
- ii. the following additional questions are still outstanding, with a response deadline remaining the close of business on December 9, 2022:
 - what role the ultimate fund recipient(s) played in the Transaction (as defined in Our Previous Letters), being the transaction concerning the purchase of real property by Go-To Spadina Adelaide Square Inc. and Go-To Spadina Adelaide Square LP; and
 - why such ultimate recipient(s) was/were entitled to receive the Murray Maltz Trust Funds (as defined in our Previous Letters) or any proceeds at all from the Transaction.

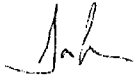
Page 2

We look forward to having the properly scanned trust statements delivered, and the above two questions answered, by no later than the close of business on December 9, 2022.

Finally, both your letter and Mr. Maltz's letter to us advised that Mr. Maltz's client brokered a transaction associated with 46 Charlotte Street, Toronto, Ontario (the "**Brokered Transaction**"). As you know from your review of the Receivership Order (as defined in our Previous Letters), the Receiver was appointed over this property. In accordance with paragraph 7 of the Receivership Order, the Receiver requires that Mr. Maltz please provide to the Receiver, by no later than one week from the date of this letter, further details regarding the Brokered Transaction, and, specifically, any and all non-privileged information in his possession or control regarding the Brokered Transaction.

Yours truly,

AIRD & BERLIS LLP



Ian Aversa
IA/jn

cc: client (via email)

51379624.2

AIRD BERLIS



**GARDINER
ROBERTS**

Stephen Thiele
Direct Line: 416.865.6651
sthiele@grllp.com
File No.: TBA

December 8, 2022

Sent via E-mail: laversa@airdberlis.com

Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON, M5J 2T9

Attention: Ian Aversa

Dear Mr. Aversa,

**Re: Ontario Securities Commission v. Go-To Developments Holdings Inc.
Court File No. CV-21-00673521-00CL (the "Receivership
Proceedings")**

Thank you for your letter dated December 8, 2022.

Attached are rescanned copies of the ledgers that Mr. Maltz had provided to you previously.

Mr. Maltz has no further information in connection with the transaction other than what he has previously advised and what was stated in my letter dated December 6, 2022.

With respect to the identity of Mr. Maltz's client, I understand that Mr. Maltz contacted the Law Society of Ontario to inquire whether he was required to disclose his client's identity in the circumstances.

The issue of a client's identity gives rise to a consideration of solicitor-client privilege and confidentiality. On the issue of confidentiality, the Rules of Professional Conduct provide:

3.3-1 A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of a client in the course of the professional relationship and shall not divulge any such information unless

- a) expressly or impliedly authorized by the client;
- b) required by law or by order of a tribunal of competent jurisdiction to do so;
- c) required to provide the information to the Law Society; or
- d) otherwise permitted by rules 3.3.-2 or 3.3-6.

Paragraph 7 of Justice Patillo's order, in fairness to Mr. Maltz, does not expressly obligate him to divulge the identity of his client. Accordingly, in light of the foregoing and Mr. Maltz's outreach for legal advice and

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consultation with the Law Society, there remains a strong consensus that Mr. Maltz's disclosure of his client's identity will constitute, at a minimum, a breach of the Rules of Professional Conduct.

That said, Mr. Maltz is prepared for the Receiver to obtain either the necessary court order or clarification of paragraph 7 of Justice Patillo's order regarding your client's request. Mr. Maltz would certainly comply with a clearly worded order and take no position on the issue. Mr. Maltz has no desire to obstruct the Court-appointed Receiver in carrying out the receivership. He simply requires 100 percent comfort from a clearly worded Court Order that he must disclose the identity of his client so that he is protected against an action for breach of solicitor-client privilege or breach of confidentiality and protected against a complaint that he breached the Rules of Professional Conduct.

We trust that the foregoing is satisfactory.

Please let me know if you have any further questions.

Yours truly,

Gardiner Roberts LLP

Stephen Thiele
Partner
ST/

c. client

Dec 8/2022

Murray Maltz Professional Corporation
Client Ledger

Page:

Date	Received From/Paid To	Chq#	ALL DATES	Bld	Trust Activity	
Entry #	Explanation	Rec#	General	Inv#	Acc	Balance
	SECOND MORTGAGE ON 1041 AND 1407 LAKESHORE RD					
						Resp Lawyer: MM1
Jun 26/2019	Wyatt Booth and Aiden Booth					
131972	retainer	01729		12	35000.00	35000.00
Jul 24/2019	Agedo Inc.					
132179	commitment fee	19024		12	10000.00	25000.00
Aug 14/2019	JCLD Online					
132374	ppsa registration/19-5817	14472	20.52			
Aug 14/2019	void					
132623	void	14473	0.00			
Aug 22/2019	Garfinkle Biderman					
132475	mortgage payout	01767		12	1424170.05	1449170.05
Aug 23/2019	Murray Maltz Professional Corpora					
132477	client paying	19090		12	25799.28	1423370.77
Aug 23/2019	Murray Maltz Professional Corpora					
132479	client paying	19091		12	2690.04	1420680.73
Aug 23/2019	bill/19-5817					
137809	RET -	02219	2690.04			
Aug 23/2019	RET -					
137811	RET - retainer - for legal fees	02220	25799.28			
Aug 27/2019	13Construction Management Corp					
132487	disbursement of funds	19095		12	1420680.73	0.00
Sep 23/2019	JCLD Online					
132625	ppsa discharge/19-5817	14508	9.60			

TOTALS	CHE	+	UNBILLED	+	FEEES	=	TOTAL	DISBS	+	BILLED	+	TAX	-	RECEIPTS	=	BALANCES	TRUST
PERIOD	30.12		0.00		0.00		30.12	0.00		0.00		0.00		0.00		0.00	0.00
END DATE	30.12		0.00		0.00		30.12	0.00		0.00		0.00		0.00		0.00	0.00
General Retainer			28489.32														

FIRM TOTAL	CHE	+	UNBILLED	+	FEEES	=	TOTAL	DISBS	+	BILLED	+	TAX	-	RECEIPTS	=	BALANCES	TRUST
PERIOD	30.12		0.00		0.00		30.12	0.00		0.00		0.00		0.00		0.00	0.00
END DATE	30.12		0.00		0.00		30.12	0.00		0.00		0.00		0.00		0.00	0.00
General Retainer			28489.32														

REPORT SELECTIONS - Client Ledger

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 Matters 19-5817
 Clients All
 Major Clients All
 Client Intro Lawyer All
 Responsible Lawyer All
 Assigned Lawyer All
 Type of Law All
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 Matters Sort by Default
 New Page for Each Lawyer No
 New Page for Each Matter No
 No Activity Date Dec 31/2199
 Firm Totals Only No
 Totals Only No
 Entries Shown - Billed Only No
 Entries Shown - Disbursements Yes
 Entries Shown - Receipts Yes
 Entries Shown - Time or Fees Yes
 Entries Shown - Trust Yes
 Incl. Matters with Retainer Bal No
 Incl. Matters with Neg Unbld Disb No
 Trust Account All
 Working Lawyer All
 Include Corrected Entries No
 Show Cheque # on Paid Payables No
 Show Client Address No
 Consolidate Payments No
 Show Trust Summary by Account No
 Show Interest No
 Interest Up To Dec 8/2022
 Show Invoices that Payments Were Applied to No

Dec 8/2022

Murray Maltz Professional Corporation

Page:

Client Ledger

ALL DATES

Date	Received From/Paid To	Chq#	General	Bld	Trust Activity	
Entry #	Explanation	Rec#	Rcpts Disbs	Inv# Acc	Rcpts Disbs	Balance
	PURCHASE 46 CHARLOTTE STREET TORONTO					Resp Lawyer: MMM
Apr 25/2019	Concorde Law Professional Corp.					
131378	deposit	01682		12	1150000.00	1150000.00
Jul 2/2019	Garfinkle Biderman LLP In Trust					
131979	mortgage advance	18976		12	895601.94	254396.06
Jul 8/2019	Privcomm Mortgages					
132029	broker fee re lakeshore 19-5817	18990		12	64000.00	190396.06
Jul 8/2019	Global Legal Services In Trust					
132031	booth execution payment re	18991		12	70392.51	120003.55
	19-5817					
Aug 1/2019	Creemore Financial Limited					
132243	august mortgage payment 1041	19044		12	49597.92	70405.63
	and 1407 Lakeshore					
Aug 27/2019	13Construction Management Corp					
132483	disbursement of funds	19093		12	70405.63	0.00

UNBILLED					BILLED					BALANCES	
TOTALS	CHE	+	RECOV	= TOTAL	DISBS	+	FEEES	+ TAX	- RECEIPTS	= A/R	TRUST
PERIOD	0.00		0.00	0.00	0.00		0.00	0.00	0.00	0.00	0.00
END DATE	0.00		0.00	0.00	0.00		0.00	0.00	0.00	0.00	0.00

UNBILLED					BILLED					BALANCES	
FIRM TOTAL	CHE	+	RECOV	= TOTAL	DISBS	+	FEEES	+ TAX	- RECEIPTS	= A/R	TRUST
PERIOD	0.00		0.00	0.00	0.00		0.00	0.00	0.00	0.00	0.00
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REPORT SELECTIONS - Client Ledger

Layout Template

Advanced Search Filter

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Matters

Clients

Major Clients

Client Intro Lawyer

Responsible Lawyer

Assigned Lawyer

Type of Law

Select From

Matters Sort by

New Page for Each Lawyer

New Page for Each Matter

No Activity Date

Firm Totals Only

Totals Only

Entries Shown - Billed Only

Entries Shown - Disbursements

Entries Shown - Receipts

Entries Shown - Time or Fees

Entries Shown - Trust

Incl. Matters with Retainer Bal

Incl. Matters with Neg Unbld Disb

Trust Account

Working Lawyer

Include Corrected Entries

Show Cheque # on Paid Payables

Show Client Address

Consolidate Payments

Show Trust Summary by Account

Show Interest

Interest Up To

Show Invoices chat Payments Were Applied to

Default

None

ADMIN

Thursday, December 08, 2022 at 09:45:41 AM

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18-5669

All

All

All

All

All

All

Active, Inactive, Archived Matters

Default

No

No

Dec 31/2199

No

No

No

Yes

Yes

Yes

Yes

No

No

All

All

No

No

No

No

No

Dec 8/2022

No

APPENDIX “L”



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-21-00673521-00CL DATE: 23 November 2022

NO. ON LIST: 4

TITLE OF PROCEEDING: Ontario Securities Commission v. Go-To Developments et
al

BEFORE JUSTICE: MADAM JUSTICE CONWAY

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

Name of Person Appearing	Name of Party	Contact Info
Jeremy Nemers	Receiver	jnemers@airdberlis.com
Tammy Dolny	Receiver	tdolny@airdberlis.com
Ian Aversa	Receiver	iaversa@airdberlis.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Erin Hoult	Ontario Securities Commission	eholt@osc.gov.on.ca
Heather Gray	Lloyds Underwriters	heather.gray@clydeco.ca
Kenneth Kraft	341868 Ontario & Kesbro	Kenneth.kraft@dentons.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Delna Contractor	Cameron Stephens	dcontractor@litigate.com
Adam Slavens	Tarion Warranty	aslavens@torys.com
Rich Yehia	Trisura	ryehia@blg.com
Sanee Tanvir	Matt and Diana Gallo	stanvir@mccarthy.ca
Monica Faheim	Receivership Respondents	mfaheim@millerthompson.com

ENDORSEMENT OF JUSTICE CONWAY:

All defined terms used in this Endorsement shall, unless otherwise defined, have the meanings ascribed to them in the Factum of the Receiver dated November 21, 2022.

The Receiver brings this motion for the Major Mackenzie AVO, the Glendale Tarion Holdback Order, and an Ancillary Order. The motion is unopposed. I am satisfied that the relief sought should be granted. In particular, the *Soundair* test has been met for the Major Mackenzie Transaction – the sale process was conducted by the Receiver in accordance with the court-approved Sale Process and the Stalking Horse Sale Process. The property was sufficiently marketed by the Receiver. The purchaser, the Stalking Horse Bid, was the only bidder for the property.

Counsel has revised the Major Mackenzie AVO to include the requested relief re distribution of proceeds to Cameron Stephens, the first-registered mortgagee of the Major Mackenzie Real Property.

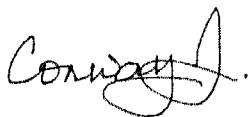
The Ancillary Order has now been revised to include the standard language re only the Receiver being entitled to rely on this court's approval of the Sixth Report.

Three orders to go as signed by me and attached to this Endorsement. These orders are effective from today's date and are enforceable without the need for entry and filing.

The Receiver updated the court with respect to the situation with Mr. Raffaghello, as outlined in further detail in the Factum. The Receiver reiterated that if Mr. Raffaghello does not provide non-privileged Records to the Receiver as required under the Receivership Order, the Receiver intends to move forward with a contempt motion against him, Concorde Law and Montana.

Finally, there was a discussion among counsel with respect to the Lloyd's insurance. Ms. Gray asks to schedule a lift stay motion for the substantive purpose of allowing Lloyd's to rescind the Investment Management Policy as against the applicable Receivership Respondents. Counsel for each of the Receiver, the OSC and certain stakeholders expressed concern that scheduling such a motion now would be premature and would impose a potentially unnecessary cost on the receivership estates and their stakeholders.

I am not prepared to schedule such a lift stay motion today. The parties will return **before me for a 30-minute case conference on January 20, 2023 at 10 a.m. (30 minutes, confirmed with the Commercial List office).** In the interim (and as agreed by counsel to the Receiver, the OSC, and Lloyd's), none of the creditors and none of the investors needs to take any steps (including contacting Lloyd's or its counsel) to preserve whatever rights, if any, they may have under the Investment Management Policy as I am advised that the Receiver has already delivered copies of all the Creditor Claims against the Receivership Respondents that were submitted to the Receiver on or prior to the Claims Bar Date and all of the Investor Claims against the Receivership Respondents that have been identified based on the Books and Records to Lloyd's, its counsel, the excess insurer and its claims agent.



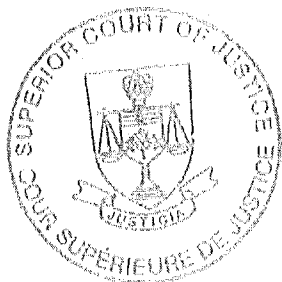
APPENDIX “M”

W-22-00088655-0000
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

(Court Seal)



OSCAR FURTADO

Applicant

and

LLOYD'S UNDERWRITERS

Respondent

APPLICATION UNDER Rule 14.05(3)(d) and (h)

NOTICE OF APPLICATION

TO THE RESPONDENT

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

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- ☐ In writing
- ☐ In person
- ☐ By telephone conference
- ☒ By video conference

at the following location:

Zoom details to be provided

On a date to be fixed by the Registrar

-2-

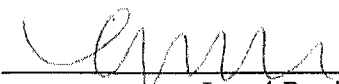
IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the 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 October 14, 2022

Issued by



Local Registrar

Address of Superior Court of Justice
court office: 330 University Avenue, 8th Floor
Toronto ON M5G 1R7

TO: Lloyd's Underwriters (Neon Syndicate NEO/2468)
Attorney In Fact in Canada for Lloyd's Underwriters
Royal Bank Plaza South Tower
200 Bay Street, Suite 2930, P.O. Box 51
Toronto ON M5J 2J2

-3-

APPLICATION

1. The applicant makes application for:
 - (a) an order that the applicant be relieved from forfeiture with respect to his imperfect compliance with the Investment Management Insurance policy no. B0621PGOTO000218 issued by the respondent (the “**Policy**”);
 - (b) an order directing the respondent to indemnify the applicant for his “Defence costs” and other “Loss” in connection with the following proceedings, all pursuant to the terms and conditions of the Policy:
 - (i) the enforcement proceeding commenced in the Capital Markets Tribunal by the Ontario Securities Commission bearing file no. 2022-8 (the “**Enforcement Proceeding**”);
 - (ii) the application commenced in the Superior Court of Justice by the Ontario Securities Commission bearing court file no. CV-21-00673521-00CL (the “**Receivership Proceeding**”);
 - (c) costs on a full indemnity basis;
 - (d) such further and other relief as to this Honourable Court may seem just.

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2. The grounds for the application are:

- (a) The applicant, Oscar Furtado, was at all material times the directing mind of a real estate development business operating through Go-To Developments Holdings Inc. (“Go-To”) and related entities.
- (b) The respondent, Lloyd’s Underwriters (“Lloyd’s”), is a group of subscribing insurance companies that collectively underwrote the Policy described herein.
- (c) Lloyd’s issued to Go-To a series of policies styled Investment Management Insurance between 2017 and 2020. The policy at issue in this application bears policy no. B0621PGOTO000218 and had a policy period from October 6, 2018 to October 5, 2019 (the “Policy”).
- (d) The Policy provides broad coverage for “Individual insureds” where a “Wrongful act” gives rise to a “Claim”.
- (e) Mr. Furtado was at all material times an “Individual insured” within the meaning of the Policy.

OSC Begins Investigation

- (f) On March 20, 2019, Go-To received a letter from the Ontario Securities Commission (“OSC”) advising that “Staff of the OSC are making an inquiry

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regarding certain business activities of GTDH and have a number of questions and requests in this respect.”

- (g) Go-To provided answers to these questions in April 2019 with the assistance of its long-time counsel Torkin Manes.
- (h) On or about May 2, 2019, Mr. Furtado received a Summons to a Witness Before a Person Appointed under Section 11(1)(a) of the Ontario *Securities Act* requiring him to attend examinations at the offices of the OSC and to produce additional documents.
- (i) Mr. Furtado with the assistance of Torkin Manes complied in all respects with the Summons.
- (j) Mr. Furtado and Go-To over the following two years were served with additional Summonses requiring Mr. Furtado to attend an examination at the offices of the OSC and to produce additional documents, all of which Go-To and Mr. Furtado responded to with the assistance of counsel.
- (k) The correspondence from the OSC and the Summonses themselves emphasized the confidentiality of the investigation and quoted from the provision entitled “Non-disclosure” found at s. 16 of the *Securities Act*. Go-To accordingly did not disclose the nature or existence of the investigation to anyone other than Go-To’s counsel, in keeping with what Mr. Furtado and others at Go-To understood was required of them.

-6-

OSC Commences Proceedings

- (l) The OSC commenced the Receivership Proceeding on December 6, 2021, on two days' notice, seeking the appointment of a receiver and manager over Go-To and certain related entities, among other relief.
- (m) On December 7, 2021, the OSC provided Mr. Furtado with an Enforcement Notice putting him on notice of a potential enforcement proceeding for alleged breaches of securities law.
- (n) The Enforcement Proceeding was then commenced by a Notice of Hearing and Statement of Allegations dated March 30, 2022 (together with the Receivership Proceeding, the "**Proceedings**").

Both 2017-2020 and 2020-2022 Insurers Deny Coverage

- (o) As noted, the respondent Lloyd's underwriters insured Go-To from 2017 to 2020. By the time the OSC commenced the Proceedings, Go-To was insured under a different Investment Management Insurance policy issued by a different group of Lloyd's underwriters. These new Lloyd's underwriters insured Go-To from October 2020 through to November 2022.
- (p) The policy in effect at the time the Proceedings were initiated had a policy period of November 9, 2021 to November 9, 2022.

-7-

- (q) Mr. Furtado sought coverage for the Proceedings under that policy but was denied. That insurer asserted, among other things, that there was no coverage because, while the Proceedings were “Claims” first made during the policy period of the 2021-2022 policy, coverage was excluded by the exclusion entitled “Prior claims, insured events and circumstances”. In short, because the Proceedings were closely related to the OSC investigation and the OSC investigation occurred before the 2021-2022 policy period, there was no coverage under the 2021-2022 policy period.
- (r) Mr. Furtado accordingly sought coverage under the 2018-2019 Policy issued by the respondent, as this was the time period in which the OSC investigation commenced. The respondent also denied coverage. The OSC’s March 2019 letter and subsequent summonses first occurred during the 2018-2019 policy period but did not constitute “Claims”. The OSC’s subsequent Proceedings constituted “Claims” but were not first made during the policy period.
- (s) In the result, Go-To and Mr. Furtado were left without coverage despite being continuously insured from October 2017 to November 2022.

Relief from Forfeiture under 2018-2019 Policy is Warranted

- (t) The 2018-2019 Policy contains a “Notice of Circumstance” clause in s. 5.8(2) that allowed insureds to give notice to Lloyd’s if the insured became aware of a circumstance during the 2018-2019 policy period that could later

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give rise to a "Claim". If those reported circumstances did in fact lead to a "Claim" after the 2018-2019 policy period, the clause required Lloyd's to treat the Claim as having been made during the 2018-2019 policy period, and thus cover it.

- (u) Mr. Furtado was aware during the 2018-2019 policy period of a circumstance, being the OSC investigation, that could later give rise to a Claim. Had he reported the OSC investigation to Go-To's insurance broker during that policy period, the Proceedings later commenced by the OSC would have been covered pursuant to s. 5.8(2) of the Policy. He did not report the OSC investigation, however, because neither he nor Go-To believed they were at liberty to do so.
- (v) Mr. Furtado has asked Lloyd's to relieve him from his imperfect compliance with the Notice of Circumstances clause given the extenuating circumstances of this case and agree to pay his defence costs incurred in the Proceedings. Lloyd's has declined to do so.
- (w) Mr. Furtado asks this court to exercise its discretion under s. 98 of the *Courts of Justice Act* and relieve him from forfeiture with respect to his imperfect compliance with the Policy. He pleads that his conduct was reasonable, that the insurer has suffered minimal if any prejudice, and that the consequence of forfeiting the entirety of his insurance coverage is disproportionate to the

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gravity of his imperfect compliance. He accordingly asks the court to exercise its discretion in granting the relief sought in paragraph 1.

Procedural Pleading

- (x) The applicant additionally pleads and relies upon:
 - (i) *Insurance Act*, R.S.O. 1990, c. I.8, as amended;
 - (ii) *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (iii) Rules 14 and 38 of the *Rules of Civil Procedure*; and
 - (iv) Such further and other grounds as the lawyers may advise.
- 3. The following documentary evidence will be used at the hearing of the application:
 - (a) affidavit evidence, to be sworn; and
 - (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

-10-

October 13, 2022

ADAIR GOLDBLATT BIEBER LLP

95 Wellington Street West

Suite 1830, P.O. Box 14

Toronto ON M5J 2N7

Gordon McGuire (58364S)

Email: gmcguire@agblp.com

Tel: 416.941.5860

Fax: 647.689.2059

Lawyers for the Applicant

RCP-E 14E (September 1, 2020)

OSCAR FURTADO
Applicant

-and- LLOYD'S UNDERWRITERS
Respondent

W-22-00688655-0000
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

ADAIR GOLDBLATT BIEBER LLP
95 Wellington Street West
Suite 1830, P.O. Box 14
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Gordon McGuire (58364S)
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Tel: 416.941.5860

Lawyers for the Applicant

RCP-F 4C (September 1, 2020)

APPENDIX “N”

Court File No.: CV-22-00688655-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

OSCAR FURTADO

Applicant

- and -

LLOYD'S UNDERWRITERS

Respondent

NOTICE OF APPEARANCE

The Respondent, Lloyd's Underwriters, intends to respond to this Application.

October 21, 2022

DOLDEN WALLACE FOLICK LLP
609 Granville Street, 18th Floor
Vancouver, BC V7Y 1G5

20 Adelaide Street East, 14th Floor
Toronto, ON M5C 2T6

Eric A. Dolden
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Paul C. Dawson
Tel. No.: 604-891-0378
Email: pdawson@dolden.com

Lawyers for the Respondent,
Lloyd's Underwriters

✓

TO: **ADAIR GOLDBLATT BIEBER LLP**
95 Wellington Street West
Suite 1830, P.O. Box 14
Toronto, ON M5J 2N7

Gordon McGuire (LSO#: 58364S)
Tel. No.: 416-941-5860
Email: GMcGuire@agblp.com

Lawyer for the Applicant

OSCAR FURTADO LLOYD'S UNDERWRITERS
Applicant and **Respondent**

Court File No: CV-22-00688655-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

NOTICE OF APPEARANCE

DOLDEN WALLACE FOLICK LLP
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Eric A. Dolden
Tel. No.: 604-891-0350
Email: edolden@dolden.com

Paul C. Dawson
Tel. No.: 604-891-0378
Email: pdawson@dolden.com

**Lawyers for the Respondent,
Lloyd's Underwriters**

APPENDIX “O”

From: Gord McGuire <GMcGuire@agblp.com>
Sent: December 16, 2022 8:13 AM
To: Jeremy Nemers; EDolden@dolden.com
Cc: pdawson@dolden.com; Ian Aversa
Subject: RE: Oscar Furtado v. Lloyd's Underwriters [DWF-IMANAGE.FID470534]

CAUTION -- EXTERNAL E-MAIL - Do not click links or open attachments unless you recognize the sender.

Hi Jeremy,

I have conferred with Eric Dolden and confirm our collective view is as follows.

Mr. Furtado's application seeks coverage for his defence costs in the enforcement action and receivership proceeding. Whether those defence costs are reimbursable under the insurance policy is a private matter as between Mr. Furtado and his insurer. It therefore does not appear that the receiver qualifies as an interested party entitled to notice within the meaning of the *Rules of Civil Procedure*.

We have not reviewed the Order in question, however, and it could be that that impacts the analysis. Ultimately, though, once the documents are filed they are part of the public domain, and your client is entitled to see them in the same way that any other member of the public is. We are therefore content to share the application materials after they are filed as a professional courtesy, to avoid you going to the hassle and expense of pulling the court file.

I trust that is satisfactory?

Gord

Gord McGuire

Partner

gmcguire@agblp.com



95 Wellington Street West,
 Suite 1830
 Toronto, Ontario, M5J 2N7
 Cell 416-271-1906
 Direct 416 941 5860
 Fax 647 689 2059

*Practising through Gord McGuire Professional Corporation

From: Jeremy Nemers <jnemers@airdberlis.com>
Sent: Thursday, December 15, 2022 8:04 AM
To: Gord McGuire <GMcGuire@agblp.com>; EDolden@dolden.com
Cc: pdawson@dolden.com; Ian Aversa <iaversa@airdberlis.com>
Subject: RE: Oscar Furtado v. Lloyd's Underwriters [DWF-IMANAGE.FID470534]

Hi Gord and Eric,

We've simply asked to be served (electronically) with the pleadings and whatever else gets served in your proceeding (which, as Gord notes in his email, are filed with the court and become a matter of the public record) (collectively, the "**Public Litigation Filings**").

The Receiver is an interested party in your proceeding given that Mr. Furtado's insurance coverage was provided under policies in favour of our receivership respondents.

Furthermore, the policies and the Public Litigation Filings constitute "Records" relating to our receivership respondents and/or their property. Pursuant to paragraph 7 of the attached Order, all Persons with notice of the Order are required to provide such Records to the Receiver forthwith upon request.

Thanks,

Jeremy Nemers
Aird & Berlis LLP

T 416.865.7724
E jnemers@airdberlis.com

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Eric Dolden <EDolden@dolden.com>
Sent: Wednesday, December 14, 2022 7:51 PM
To: Gord McGuire; Jeremy Nemers; Paul Dawson
Cc: Ian Aversa
Subject: RE: Oscar Furtado v. Lloyd's Underwriters [DWF-IMANAGE.FID470534]

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The question to consider: is the Receiver treated as an "interested party"? We will reflect on the matter and revert back.



Eric Dolden*

edolden@dolden.com

T 604.891.0350 | C 778.288.7386 | F 604.689.3777

18th floor - 609 Granville St. Vancouver, B.C. V7Y 1G5

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This email is privileged/confidential and you need our consent to disclose the contents to a third party. If sent to you in error, please delete.

From: Gord McGuire <GMcGuire@agblp.com>
Sent: December 14, 2022 1:40 PM
To: Jeremy Nemers <jnemers@airdberlis.com>; Eric Dolden <EDolden@dolden.com>; Paul Dawson <pdawson@dolden.com>
Cc: Ian Aversa <iaversa@airdberlis.com>
Subject: RE: Oscar Furtado v. Lloyd's Underwriters

Hi Jeremy,

Materials exchanged in this proceeding are protected by deemed undertaking rule. I wouldn't be in a position to share them unless and until they are filed in court.

As for the service list, I'm not quite following the rationale for your request. Why would the receiver be entitled to service of the materials?

Gord

Gord McGuire

Partner

gmcguire@agblp.com

**ADAIR
GOLDBLATT
BIEBER LLP**

95 Wellington Street West,
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From: Jeremy Nemers <jnemers@airdberlis.com>

Sent: Wednesday, December 14, 2022 4:32 PM

To: Gord McGuire <GMcGuire@agblp.com>; edolden@dolden.com; pdawson@dolden.com

Cc: Ian Aversa <iaversa@airdberlis.com>

Subject: Oscar Furtado v. Lloyd's Underwriters

Counsel,

Mr. Aversa and I are counsel for the Court-appointed receiver and manager in the receivership proceedings of Go-To Developments Holdings Inc., et al., as described more fully on the court officer's website at <https://www.ksvadvisory.com/experience/case/go-to>.

We have been made aware of your attached proceeding, bearing court file number CV-22-00688655-0000. Please add Mr. Aversa and me to the Service List in your proceeding. Please also provide us with whatever pleadings may have already been exchanged in your proceeding.

Thank you,

**Jeremy Nemers
Aird & Berlis LLP**

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