

Court File No. CV-23-00699432-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

MARSHALLZEHRGROUP INC.

Applicant

and

2557386 ONTARIO INC. and 2363823 ONTARIO INC. O/A MARIMAN
HOMES

Respondents

MOTION RECORD

October 8, 2024

RORY MCGOVERN PC

Lawyer

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Toronto, ON, M5C 3A1

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Lawyer for the Respondents,

2557386 Ontario Inc. and 2363823 Ontario

Inc. o/a Mariman Homes

TO: **THE SERVICE LIST**

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HOMES

Respondents

NOTICE OF MOTION

The Respondents, 2557386 Ontario Inc. and 2363823 Ontario Inc. o/a Mariman Homes,
will make a Motion to a Judge at a date and time when the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

☐ In writing under subrule 37.12.1(1) because it is
[insert on consent, unopposed or made without notice];

☐ In writing as an opposed motion under subrule 37.12.1(4);

☐ In person;

☐ By telephone conference;

☒ By video conference.

at the following location:

Zoom link to be provided by the Court in due course.

THE MOTION IS FOR

- (a) An Order for an accounting of all funds received by the MarshallZehr Group Inc. (“MZ”) in connection with the Commitment Letter (as defined below) and a statement showing how the amounts set out in the October 2024 Discharge Statement were determined by MZ;
- (b) An Order determining the amounts lawfully owed to MZ pursuant to the Commitment Letter (as defined below);
- (c) An order, if necessary, extending the time for the Respondents to serve affidavit evidence and an expert report in connection with this Motion;
- (d) Costs of this motion, if it is opposed by MZ; and
- (e) Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE

- (f) Pursuant to a commitment letter dated June 23, 2022 (the “**Commitment Letter**”), MZ allegedly advanced approximately \$14,791,500.50 to the Respondent, 2557386 Ontario Inc. (“**255**”) in connection with a development project known as the “**York Estates Project**” in Haldimand, Ontario;

- (g) On April 6, 2023, demands for payment (the “**Demands for Payment**”) and notices of intention to enforce security under Section 244 of the *Bankruptcy and Insolvency Act* were served on the Respondents;
- (h) The Demands for Payment indicated that as of April 6, 2023, \$15,133,933.65 (the “**April 2023 Indebtedness**”) was owed to MZ under the terms of the Commitment Letter;
- (i) On June 5, 2023, MZ and the Respondents entered into a forbearance agreement dated June 5, 2023 (the “**Forbearance Agreement**”);
- (j) Pursuant to Section 3 of the Forbearance Agreement, 255 advanced \$500,000 to MZ (the “**\$500,000 Payment**”), which amount was supposed to be applied as against the April 2023 Indebtedness;
- (k) Pursuant to Section 5 of the Forbearance Agreement, in or around July, 2024, 255 (or Remax) provided MZ with an additional \$160,000 (the “**\$160,000 Payment**”) after the sale of the Property, as that term is defined in the Forbearance Agreement;
- (l) The \$160,000 Payment was supposed to be applied to an interest reserve due to MZ under the terms of the Forbearance Agreement or otherwise to the principal due and owing to MZ under the terms of the Commitment Letter;
- (m) The Forbearance Agreement expired on October 30, 2023;

- (n) On January 16, 2024, KSV Restructuring Inc. (the “**Receiver**”) was appointed as the receiver over the assets, undertakings and properties of the Respondents pursuant to the Order of Justice Osborne dated January 16, 2024;
- (o) Beginning in February, 2024, the Respondents began working diligently to secure take-out financing from another lender to satisfy the amounts due to MZ;
- (p) On March 27, 2024, the Receiver obtained a sales process approval order authorizing the sale of the land in respect of the York Estates Project;
- (q) On or around July 10, 2024, MZ provided the Respondents with a discharge statement indicating that \$17,645,285.40 (the “**July 2024 Discharge Statement**”) was owed to MZ under the terms of the Commitment Letter;
- (r) At the time the July 2024 Discharge Statement was provided, there was no provision for any amounts owing under Section 17 of the *Mortgages Act*, RSO 1990 c. M. 40 (the “***Mortgages Act***”);
- (s) In addition, the July 2024 Discharge Statement did not appear to account for the \$500,000 Payment or the \$160,000 Payment which were made pursuant to the Forbearance Agreement;
- (t) At all material times, 255 relied on the fact that MZ would not be charging any amounts under Section 17 of the *Mortgages Act* in connection with negotiating take-out financing for the York Estates Project with potential lenders;

- (u) The Respondents obtained a commitment letter from a lender which would provide take-out financing for the York Estates Project provided certain conditions were fulfilled;
- (v) On October 1, 2024, the parties attended before Justice Black of the Ontario Superior Court of Justice in connection with a sale approval/discharge motion which was brought by the Receiver;
- (w) As part of an agreement between the Respondents, the Receiver and MZ, the Respondents were provided with additional time (until November 12, 2024) to satisfy the amounts due and owing to MZ under the terms of the Commitment Letter;
- (x) In addition, the Respondents agreed that any challenge to any amounts purportedly due to MZ or any fees charged by the Receiver would be brought by way of motion prior to 11:59 pm on October 8, 2024;
- (y) On October 3, 2024, MZ provided a revised discharge statement (as of November 12, 2024) (the “**October 2024 MZ Discharge Statement**”) claiming to be owed \$19,008,573.87 pursuant to the Commitment Letter;
- (z) It is not clear how MZ arrived at the amount it claims to be owed under the October 2024 MZ Discharge Statement and the Respondents reserve their rights to raise other issues after a fulsome and proper accounting is provided by MZ;
- (aa) In the October 2024 MZ Discharge Statement, MZ appears to have failed to account for the \$500,000 Payment and the \$160,000 Payment.

- (bb) In addition, in the October 2024 Discharge Statement, MZ is purportedly charging 255 an interest penalty under Section 17 of the *Mortgages Act*;
- (cc) The October 2024 Discharge Statement indicates that \$105,000 are owed for legal fees and another \$150,000 are owed for “Deferred Fees”;
- (dd) On October 7, 2024, the Receiver provided a statement setting out the total amount needed to satisfy the amounts due to MZ as of October 31, 2024 (The “**October 7 Receiver Statement**”);
- (ee) The Amount Noted for amounts due to MZ’s counsel in the October 7 Receiver Statement is materially different from the amount set out in the October 2024 MZ Discharge Statement;
- (ff) As of the date of the drafting of this notice of motion, no explanation for the discrepancies regarding the legal fees for MZ between the October 2024 MZ Discharge Statement and the October 7 Receiver Statement has been provided;
- (gg) MZ has failed to account properly for the amounts owed to it under the terms of the Commitment Letter and has overstated same, including but not limited, to those amounts referred to in this notice of motion;
- (hh) It would be unjust for MZ to recover amounts that are not lawfully due to it under the terms of the Commitment Letter;
- (ii) The purported charge under Section 17 of the *Mortgages Act* is not lawful;

- (jj) Given the short turn-around time between October 1 and October 8, it was not possible for the Respondents to obtain all of their financial records and an expert report prior to October 8, 2024;
- (kk) Rules 1,2,3, 37, 57 of the *Rules of Civil Procedure*, RRO 1990 Reg. 194;
- (ll) The *Mortgages Act* and the *Interest Act*, RSC 1985, c. I-15
- (mm) Such further and other grounds as the lawyers may advise.

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

- (a) The affidavit of Mike Bettiol sworn October 8, 2024;
- (b) The supplementary affidavit of Mike Bettiol, to be sworn;
- (c) An expert report on the calculation of amounts due to MZ, to be provided in advance of the hearing;
- (d) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

October 8, 2024

RORY MCGOVERN PC

Lawyer

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Lawyer for the Respondents,

2557386 Ontario Inc. and 2363823 Ontario

Inc. o/a Mariman Homes

TO: **THE SERVICE LIST**

RCP-E 37B (January 2, 2024)

MARSHALLZEHRGROUP INC.
Applicant

-and- 2557386 ONTARIO INC. et al.
Respondents

Court File No. CV-23-00699432-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

RORY MCGOVERN PC

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Homes

Email for party served:
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File Number:

RCP-F 4C (September 1, 2020)

Court File No. CV-23-00699432-00CL

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

B E T W E E N:

MARSHALLZEHRGROUP INC.

Applicant

and

2557386 ONTARIO INC. and 2363823 ONTARIO INC. O/A MARIMAN
HOMES

Respondents

AFFIDAVIT OF MIKE BETTIOL SWORN OCTOBER 8, 2024

I, Mike Bettiol, of the City of Hamilton, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am the President of 2557386 Ontario Inc., one of the Respondents in this proceeding, and, as such, have knowledge of the matters contained in this Affidavit. Where I do not have direct knowledge of the facts deposed to in this affidavit or where I have received information from others, I have stated the source of my information and verily believe that information to be true.
2. Pursuant to a commitment letter dated June 23, 2022 (the “**Commitment Letter**”), the MarshallZehrGroup Inc. (“**MZ**”) allegedly advanced approximately \$14,791,500.50 to the Respondent, 2557386 Ontario Inc. (“**255**”) in connection with a development project known as the

“York Estates Project” in Haldimand, Ontario. A copy of the Commitment Letter is attached as Exhibit **“A”**.

3. On April 6, 2023, demands for payment (the **“Demands for Payment”**) and notices of intention to enforce security under Section 244 of the *Bankruptcy and Insolvency Act* were served on the Respondents. Copies of the Demands for Payment are attached as Exhibit **“B”**.

4. The Demands for Payment indicated that as of April 6, 2023, \$15,133,933.65 (the **“April 2023 Indebtedness”**) was owed to MZ under the terms of the Commitment Letter.

5. On June 5, 2023, MZ and the Respondents entered into a forbearance agreement dated June 5, 2023 (the **“Forbearance Agreement”**). A copy of the Forbearance Agreement is attached as Exhibit **“C”**.

6. Pursuant to Section 3 of the Forbearance Agreement, 255 advanced \$500,000 to MZ (the **“\$500,000 Payment”**), which amount was supposed to be applied as against the April 2023 Indebtedness. Copies of the bank records showing the \$500,000 Payment will be provided in a supplemental affidavit, to be sworn. In any case, MZ is in possession of these records.

7. Pursuant to Section 5 of the Forbearance Agreement, in or around July, 2024, 255 (or Remax) provided MZ with an additional \$160,000 (the **“\$160,000 Payment”**) after the sale of the Property, as that term is defined in the Forbearance Agreement. Copies of the records showing the \$160,000 Payment will be provided in a supplemental affidavit, to be sworn. In any case, MZ is in possession of these records.

8. The \$160,000 Payment was supposed to be applied to an interest reserve due to MZ under the terms of the Forbearance Agreement or otherwise to the principal due and owing to MZ under the terms of the Commitment Letter.
9. The Forbearance Agreement expired on October 30, 2023.
10. On January 16, 2024, KSV Restructuring Inc. (the “**Receiver**”) was appointed as the receiver over the assets, undertakings and properties of the Respondents pursuant to the Order of Justice Osborne dated January 16, 2024 (the “**Receivership Order**”). A copy of the Receivership Order is attached as Exhibit “**D**”.
11. Beginning in February, 2024, the Respondents began working diligently to secure take-out financing from another lender to satisfy the amounts due to MZ.
12. On March 27, 2024, the Receiver obtained a sales process approval order authorizing the sale of the land in respect of the York Estates Project. A copy of the Sale Process Approval Order is attached as Exhibit “**E**”.
13. On or around July 10, 2024, MZ provided me with a discharge statement indicating that \$17,645,285.40 (the “**July 2024 Discharge Statement**”) was owed to MZ under the terms of the Commitment Letter. A copy of the July 2024 Discharge Statement is attached as Exhibit “**F**”.
14. At the time the July 2024 Discharge Statement was provided, there was no provision for any amounts owing under Section 17 of the *Mortgages Act*, RSO 1990 c. M. 40 (the “***Mortgages Act***”).

15. In addition, the July 2024 Discharge Statement did not appear to account for the \$500,000 Payment or the \$160,000 Payment which were made pursuant to the Forbearance Agreement.

16. At all material times, I relied on the fact that MZ would not be charging any amounts under Section 17 of the *Mortgages Act* in connection with negotiating take-out financing for the York Estates Project with potential lenders.

17. 255 obtained a commitment letter from a lender which would provide take-out financing for the York Estates Project provided certain conditions were fulfilled.

18. On October 1, 2024, the parties attended before Justice Black of the Ontario Superior Court of Justice in connection with a sale approval/discharge motion which was brought by the Receiver. A copy of Justice Black's endorsement dated October 1, 2024 is attached as Exhibit "G".

19. As part of an agreement between the Respondents, the Receiver and MZ, the Respondents were provided with additional time (until November 12, 2024) to satisfy the amounts due and owing to MZ under the terms of the Commitment Letter.

20. In addition, the Respondents agreed that any challenge to any amounts purportedly due to MZ or any fees charged by the Receiver would be brought by way of motion prior to 11:59 pm on October 8, 2024.

21. On October 3, 2024, MZ provided a revised discharge statement (as of November 12, 2024) (the "**October 2024 MZ Discharge Statement**") claiming to be owed \$19,008,573.87 pursuant to the Commitment Letter. A copy of the October 2024 MZ Discharge Statement is attached as Exhibit "H".

Concerns about the October 2024 MZ Discharge Statement

22. In the October 2024 MZ Discharge Statement, MZ appears to have failed to account for the \$500,000 Payment and the \$160,000 Payment.

23. In addition, in the October 2024 Discharge Statement, MZ is purportedly charging 255 an interest penalty under Section 17 of the *Mortgages Act*.

24. The October 2024 Discharge Statement indicates that \$105,000 are owed for legal fees and another \$150,000 are owed for “Deferred Fees”;

25. On October 7, 2024, the Receiver provided a statement setting out the total amount needed to satisfy the amounts due to MZ as of October 31, 2024 (The “**October 7 Receiver Statement**”). A copy of the October 7 Receiver Statement is attached as Exhibit “I”.

26. The Amount Noted for amounts due to MZ’s counsel in the October 7 Receiver Statement is materially different from the amount set out in the October 2024 MZ Discharge Statement.

27. As of the date of the drafting of this affidavit, no explanation for the discrepancies regarding the legal fees for MZ between the October 2024 MZ Discharge Statement and the October 7 Receiver Statement has been provided.

28. In my view, MZ has failed to account properly for the amounts owed to it under the terms of the Commitment Letter and has overstated same. I reserve my right to raise other issues after a fulsome accounting in respect of the Commitment Letter is provided by MZ.

29. It would be unjust for MZ to recover amounts that are not lawfully due to it under the terms of the Commitment Letter and it would be highly prejudicial to the Respondents and their potential lender to have to overpay MZ.

30. Given the short turn-around time between October 1 and October 8, it was not possible for me to obtain all of the Respondents' financial records and an expert report prior to October 8, 2024. As such, I intend on providing a supplemental affidavit providing further evidence of the \$500,000 Payment and the \$160,000 Payment.

31. There is no prejudice to MZ if these records are provided in a supplemental affidavit as MZ is already in possession of these records.


32. As a result of these apparent errors by MZ, I have concerns that MZ has also improperly calculated various other amounts purportedly due to it (including interest) under the terms of the Commitment Letter.

33. Upon receiving a fulsome accounting from MZ in respect of the Commitment Letter, I intend to retain an expert to determine the amounts that are properly owed to MZ under the terms of same.

[The rest of this page as been intentionally left blank]

34. I swear this affidavit in support of the within motion and for no other or improper purpose.

SWORN BEFORE ME by Mike Bettiol at the City of Hamilton in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario on October 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

RORY MCGOVERN



MIKE BETTIOL

RCP-E 4D (February 1, 2021)

MARSHALLZEHRGROUP INC.
Applicant

-and- 2557386 ONTARIO INC. et al.
Respondents

Court File No. CV-23-00699432-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF MIKE BETTIOL SWORN OCTOBER 8,
2024**

RORY MCGOVERN PC

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Lawyer for the Respondents,
2557386 Ontario Inc. and 2363823 Ontario Inc. o/a Mariman
Homes

Email for party served:
Maya Poliak: maya@chaitons.com

File Number:

RCP-F 4C (September 1, 2020)

This is Exhibit “A” referred to in the Affidavit of Mike Bettiol sworn by Mike Bettiol of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN

019



Thursday, June 23, 2022

This letter replaces and renders null and void the previous commitment letter dated 2022-06-13 under the project name York Estates - MZGI 452

2557386 Ontario Inc.
558 Upper Gage Ave #363
Hamilton, ON, L8V 4J6
Attention: Michael Bettiol, President

Dear Mr. Bettiol

RE: Land, Servicing, and Construction Financing for 30 Front Street, Haldimand, ON

Project Name: York Estates – MZGI 452

This commitment letter confirms that MarshallZehr Group Inc. is prepared to provide financing as detailed in the document herein, conditional on the terms and conditions contained in this letter agreement (this “**Commitment**”). Upon execution by the Lender and the Obligors, this Commitment will constitute an agreement which shall bind each of them, subject to and in accordance with the terms hereinafter set out. All capitalized terms not otherwise defined in this Commitment shall have the meanings ascribed thereto in Appendix B.

A. LOAN

- 1. Borrower:** 2557386 Ontario Inc. (collectively, the “**Borrower**”).
- 2. Guarantors:** Michael Bettiol, 2363823 Ontario Inc. (o/a Mariman Homes), together with such other related parties as the Lender may deem advisable, in its sole discretion (collectively, the “**Guarantors**”).
- 3. Obligors:** Means, collectively, the Borrower and the Guarantors (collectively, the “**Obligors**” and each, an “**Obligor**”).
- 4. Lender:** MarshallZehr Group Inc. and/or such other assignees or lenders as MarshallZehr Group Inc. may arrange to participate in the Loan (the “**Lender**”).
- 5. Project Description** Those lands and premises together with all fixtures and improvements now or hereafter situate thereon municipally known as 30 Front Street, Haldimand, ON and legally described in Appendix A (the “**Property**”).

The Project is to consist of 66 detached custom estate homes on approximately 70 acres of land (currently vacant). Each lot will be 1+ acre in size (collectively, the “**Project**”). Additionally, the Lender understands that the Project is Draft Plan Approved and the land is appropriately zoned for the Project.
- 6. Loan Amount** **\$ 26,849,000** (the “**Loan**” or “**Loan Amount**”) to be advanced through multiple facilities as follows:

Facility/Tranche	Amount
Facility 1 (Construction)	\$ 8,000,000
Facility 2A (Land & Servicing)	\$ 15,825,000
Facility 2B (Mezzanine)	\$ 3,024,000
Total Loan Amount	\$ 26,849,000



Provided the Obligors are not in Default of the Loan or Security, Facility 2B shall be fully subordinate and postponed to Facility 1 and Facility 2A. Provided the Obligors are not in Default of the Loan or Security, Facility 2A shall be ranked pari-passu with Facility 1.

7. Interest Rate:

The Loan shall bear interest at the following rates (collectively, the “**Interest Rate**”):

Facility/Tranche	Interest Rate	Floor Rate
Facility 1 (Construction)	Prime + 5.30% per annum	9.00%
Facility 2A (Land & Servicing)	Prime + 5.30% per annum	9.00%
Facility 2B (Mezzanine)	Prime + 11.05% per annum	13.75%

Interest shall accrue commencing on the date of each Advance to the Lender’s trust account and shall be calculated daily (365 days/year), compounded and payable monthly, in arrears and due and payable on the first (1st) day of each month, both before and after the Maturity Date, Default, demand and judgment. Interest only payments in respect of the Loan shall be paid from the a) Interest Reserve, if applicable, or b) Borrower Draws up to the budgeted amount set out in the Sources and Uses of Funds herein. Once the budgeted amount has been utilized, interest payments shall be made from the Obligors’ own cash resources.

Prime shall be defined as the Bank of Montreal Prime Business Rate of Interest (the “**Prime Rate**” or “**Prime**”). For the purpose of determining the Interest Rate, the Prime Rate on the first (1st) day of each month will be used as the rate for that entire month.

8. Fees:

The Borrower shall pay the following fees (collectively, the “**Fees**”) to the Lender and the transaction mortgage broker, to the extent applicable:

Fee:	Amount
Good Faith Deposit (<i>Received</i>)	\$ 75,000
Lender Fee (inclusive of Good Faith Deposit)	\$ 775,000
Administration Fee	\$ 5,000
Draw Fee (per Borrower Draw)	\$ 500
Partial Discharge Fee (per Unit)	\$ 500
Final Discharge Fee	\$ 1,000
Pre-Payment Fee (per pre-payment)	\$ 1,000

The Lender Fee and Administration Fee shall each be deemed to be fully earned by the Lender and/or broker, as applicable, and non-refundable to the Borrower upon written notification by the Lender to the Borrower of the successful syndication as described in Section A. 22.1. The Lender Fee and Administration Fee, less the Good Faith Deposit, shall be deducted from the Initial Advance.

Notwithstanding Section A. 22.1, in the event that the Initial Advance does not occur on or prior to the Outside Date for any reason whatsoever, the (i) balance of the Lender Fee and Administration Fee shall immediately become due and payable by the Obligors to the Lender and (ii) Obligors shall be responsible for all expenses incurred by the Lender to date in connection with this Commitment, including, without limitation, the cost of any third party reports issued and/or in process and all legal fees and disbursements in connection with the Loan and/or the recovery of any portion of the balance of the unpaid Lender Fee and Administration Fee, to the extent applicable.



All applicable Fees are further detailed in Appendix G. The Borrower hereby acknowledges and agrees that the Fees set out above and in Appendix G herein are a genuine pre-estimate of the value of the services performed by the Lender and/or its Affiliates for same and are not a penalty or additional interest under the Loan.

9. Term: The Loan shall mature (the "**Term**") and any outstanding balance shall become due and payable in full on the date (the "**Maturity Date**") that is the earlier of a) **thirty-seven (37)** months commencing from the Interest Adjustment Date and b) the date on which the Lender demands repayment of the Loan.

10. Extension: The Borrower may request **one (1)** extension of the Maturity Date for a period of **six (6)** months each (each, an "**Extension Term**"), which shall be at the sole discretion of the Lender and shall, at minimum, require:

- a) that there has been no default under this Commitment or the Security;
- b) the payment of a fully earned extension fee (the "**Extension Fee**") to the Lender in an amount equal to **zero-point-seven-five percent (0.75%)** of either of the (i) Loan Amount, or (ii) outstanding principal balance of the Loan if the Loan has been fully advanced and repayment by the Borrower has begun, in each case, on a per extension basis; and
- c) 60 days prior written notice by the Borrower to the Lender prior to the Maturity Date.

The interest during the Extension Term shall be calculated and compounded at the same Interest Rate applicable during the Term. A title search of the Property will be conducted by the Lender's solicitor upon the request by the Borrower of an Extension Term and at the Borrower's expense. The Borrower will be responsible for any reasonable costs associated with each Extension Term.

11. Wrap-Up Period Commencing the final month (the "**Wrap-Up Period**") of the Term, or the Extension Term, as applicable, interest shall accrue at twice the Interest Rate (the "**Wrap-Up Rate of Interest**"). If there are multiple facilities or tranches, interest shall accrue at the Wrap-Up Rate of Interest and be calculated, compounded, and payable in the same manner as prior to entering the Wrap-Up Period for each applicable facility or tranche.

12. Expenses All reasonable expenses of the Lender and the Borrower shall be paid by the Borrower including (but not limited to), the cost of any third-party reports, all legal costs regardless of whether the Borrower proceeds with the Loan, and any cost recovery of unpaid amounts, if required. Upon request by the Borrower, the Lender shall provide an estimate of the legal fees to be incurred by the Lender in connection with the preparation of the Security and the Initial Advance. Upon execution by the Borrower of this Commitment, the Obligors shall be responsible for all reasonable legal fees actually incurred by the Lender in connection herewith.

13. Demand and Cancellation The Lender may, on demand, require immediate payment of all amounts outstanding or accrued in connection with this Commitment and the Loan. The Lender may at any time, for any reason, and without notice, cancel the undrawn portion of the Loan.

**14. Purpose**

The Loan shall at all times be used for the following purposes and for no other purpose without the prior written consent of the Lender:

Facility/Tranche	Description
Facility 1 (Construction)	This facility will provide funding for the construction of the 66 homes. Notability this facility will be administered as a Revolving funding source with a balance limit of \$8,000,000 . This facility will fund approximately \$33,702,000 in construction costs throughout the construction period of the Project (subject to limitations as described in Article 22.5 Advance Margin). Funds in this facility will be placed into a MarshallZehr trust in time for construction. Upon placement into the MarshallZehr trust, interest will begin to accrue interest on the entire amount of the facility.
Facility 2A (Land & Servicing)	This facility will provide funding for the land and servicing (pre-construction) component of the Project.
Facility 2B (Mezzanine)	This facility will provide funding for the land and servicing (pre-construction) component of the Project.

15. Sources and Uses of Funds

Uses	
Land Costs	\$ 22,000,000
Development Charges	\$ 725,000
Servicing Costs	\$ 6,420,000
Construction Costs	\$ 39,039,000
Soft Costs	\$ 4,888,000
Contingency	\$ 3,097,000
Financing Costs	\$ 5,126,000
Total	\$ 81,440,000

Sources	
Facility 1 (Construction)	\$ 33,702,000
Facility 2A (Land & Servicing)	\$ 15,825,000
Facility 2B (Mezzanine)	\$ 3,024,000
Deferred Trade Carry	\$ 9,760,000
Borrower Equity	\$ 12,043,000
Deferred Costs	\$ 5,497,000
Deposits	\$ 1,589,000
Total	\$ 81,440,000



The above Sources and Uses of Funds are further detailed in the Project Pro Forma contained in Appendix D.

16. Initial Advance and Draw

The first advance and draw (the “**Initial Advance**” and “**Draw 1**”, respectively) shall be advanced upon satisfaction of the conditions contained herein, including without limitation, Sections B. 1. and B. 2. thereof. The Initial Advance and Draw 1 is expected to be advanced as follows:

Use of Funds	Amount
Existing 1 st Mortgages	\$ 8,125,000
Existing 2 nd Mortgages	\$ 2,000,000
Lender Fee	\$ 775,000
Administration Fee	\$ 5,000
Legal Costs	\$ 50,000
Interest Reserve	\$ 907,000
Working Capital	\$ 2,438,000
Initial Advance Amount	\$ 14,300,000

Further Advances shall be advanced in accordance with Section B. 2. hereof.

17. Order of Advances

The Loan shall be advanced in the following order, until each facility has been fully advanced:

- a) Facility 2B (Mezzanine);
- b) Facility 2A (Land & Servicing); then
- c) Facility 1 (Construction)

18. Interest Reserve and Cost Reserve

At the time of an Advance, the Lender may, at its sole discretion while acting reasonably, hold back sufficient funds to fund ongoing interest (the “**Interest Reserve**”) and/or Project Costs (the “**Cost Reserve**”), in each case, during the Term, .

The Interest Reserve and the Cost Reserve (collectively, the “**Reserves**”) shall be held in the Lender’s trust account and shall be deemed to be principal advanced. Interest shall accrue at the Interest Rate on those funds held in the Reserves as if they had been paid directly to the Borrower. The Reserves, together with any interest earned thereon will be pledged by the Borrower to the Lender as security for the Loan. In the Event of Default under this Commitment and/or the Security, the Lender may apply, in its sole discretion, all or any part of the Reserves for payment of any principal, interest, fees, costs or other amounts payable under the Security.

In consideration of each Advance by the Lender to the Borrower, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Borrower, the Borrower hereby irrevocably authorizes and directs the Lender to:

- a) hold back sufficient funds from each Advance, as it may determine in its sole discretion, to fund the Reserves;
- b) automatically debit the Interest Reserve for all payments of interest required hereunder; and
- c) automatically debit the Cost Reserve for all payments of Project Costs required hereunder, including without limitation, payment of due and owing realty taxes in respect of the Property,



and this shall be the Lender's good, sufficient and irrevocable authority for so doing.

19. Partial Discharges and Mandatory Repayment

Provided that the Borrower is not in Default under this Commitment and/or the Security, the Lender shall provide partial discharges of the Security on a per Unit basis to the Borrower upon receipt of the greater of the following amounts (the "**Net Sale Proceeds**"):

- a) the Gross Sale Price less the Permitted Deductions in respect of the sale of any such Unit; and
- b) the Lender's minimum discharge amount set forth in Appendix E, less the Permitted Deductions in respect of the sale of any such Unit.

A Partial Discharge Fee shall be paid by the Borrower to the Lender on a per Unit basis together with the Lender's solicitors legal fees incurred in connection with any such partial discharge.

Any payments received by the Lender pursuant to this Section A. 19 shall be applied towards repayment of the Loan in the order set out in Section A. 21 below.

20. Voluntary Pre-Payment

The Loan may be prepaid in whole or in part at any time or times on the following terms:

- a) upon at least 60 days' prior written notice by the Borrower to the Lender;
- b) in an amount not less than \$100,000 (the "**Pre-Payment Proceeds**") or, if a lesser amount, upon the Lender's prior written consent; and
- c) payment by the Borrower to the Lender of the Pre-Payment Fee together with its solicitors' reasonable legal fees in respect thereof.

Any payments received by the Lender pursuant to this Section A. 20 shall be applied towards repayment of the Loan in the order set out in Section A. 21 below.

21. Allocation of Proceeds

The Net Sale Proceeds and/or Pre-Payment Proceeds, as the case may be, shall be applied in the following order:

- a) as repayment of all accrued and unpaid interest due under the Loan;
- b) as repayment of the outstanding Facility 1 – Construction principal balance, as a minimum, by the amount funded from the Facility to complete the unit being discharged as determined by the Project's Quantity Surveyor;
- c) as repayment of the outstanding Facility 2A – Land & Servicing principal balance, in an amount which will average \$344,000 per unit for the first 55 closed units. Refer to Appendix E for further information. Further, on the closing of a unit and in the event of shortfall, the borrower will provide funding sufficient where deemed necessary by the Quantity Surveyor to maintain of an average paydown of \$344,000 per units on the closing of the first 55 units.
- d) if no balance remains on Facility 2A – Land & Servicing, as repayment of the outstanding Facility 2B – Land & Servicing principal balance, in an amount averaging \$344,000 per unit for the first 55 closed units. Refer to Appendix E for further information. Further, on the closing of a unit and in the event of shortfall, the borrower will provide funding sufficient where deemed necessary by the Quantity Surveyor to maintain of an average paydown of \$344,000 per unit on the closing of the first 55 units.



- e) If no unit is being discharged, such Pre-Payment Proceeds shall be applied as repayment of the outstanding principal balance due under Facility 1 – Construction and Facility 2A – Land & Servicing, on a proportional basis;
- f) If no unit is being discharged, and no balance remains on Facility 1 – Construction and Facility 2A – Land & Servicing, such Pre-Payment Proceeds shall be applied as repayment of the outstanding principal balance due under Facility 2B – Land & Servicing;
- g) All remaining proceeds will be available to the Borrower to fund deferred trades payable, as confirmed by the Quantity Surveyor;
- h) All remaining proceeds will be available to the Borrower.

22. Special Provisions

The following special provisions shall apply to the Loan:

22.1. Servicing or Syndication of the Loan

It is the Lender's intention to syndicate all or a portion the Loan on the terms and conditions satisfactory to it, in its sole discretion. All obligations of the Lender in connection with any such servicing or syndication aforesaid are conditional to the Lender. The Obligors hereby acknowledge and agree that the Lender may disclose confidential information relating to each of them, the Loan and/or the Security, including without limitation, any financial information provided by any of the Obligors to the Lender at any time or otherwise relating to the Property and the Project together with any and all plans, drawings or other documentation or information regarding the Property and the Project, including without limitation the Project Documents and the Project Plans. The Lender shall notify the Borrower in writing once all Initial Funding Conditions as specified in Section B. 1., excluding B 1.1. Security to Be Delivered, have been met, in the Lender's sole discretion. Upon receipt of notification that the Initial Funding Conditions have been met, the Lender shall, within fifteen (15) Business Days, notify the Borrower that the Loan has been successfully syndicated.

Notwithstanding anything contained in this Commitment to the contrary, in the event that the Lender is unable to syndicate the Loan:

- a) on the terms and conditions satisfactory to it, in its sole discretion, then this Commitment shall be null and void and the Lender shall have no obligation to advance the Loan to the Borrower. In such event, the Lender shall return to the Borrower all Fees, less the Good Faith Deposit and due diligence costs and legal fees incurred by the Lender up to such date as the Lender determines that it is unable to syndicate the Loan; or
- b) as a result of the Borrower's Default, then this Commitment shall be null and void and the Lender shall have no obligation to advance the Loan to the Borrower. In such event, the Lender shall retain the Good Faith Deposit and the (i) balance of the Lender Fee and Administration Fee shall immediately become due and payable by the Obligors to the Lender and (ii) Obligors shall be responsible for all expenses incurred by the Lender to date in connection with this Commitment, including, without limitation, the cost of any third party reports issued and/or in process and all legal fees and disbursements in connection with the Loan and/or the recovery of any portion of the balance of the unpaid Lender Fee and Administration Fee, to the extent applicable.

22.2. Permitted Encumbrances

The Borrower shall not enter into any further financing of the Property and/or the Project subsequent to the Loan, secured or unsecured, without the prior written consent of the Lender, which consent shall be in the Lender's sole discretion.



22.3. Standby Interest The Initial Advance and Draw 1 shall be completed on the date (the “**Standby Date**”) that is not less than three (3) business days following the later of:

- a) notification by the Lender to the Borrower that the Loan has been successfully syndicated; or
- b) Receipt by the Lender of the Borrower’s executed advance requests in the forms provided by the Lender.

In the event that the Initial Advance and Draw 1 has not been fully advanced to the Borrower by the Standby Date, for any reason other than a default by the Lender, interest will commence on the Standby Date (the “**Standby Interest**”) on any unadvanced portion of Draw 1 and will become due and payable monthly at a rate equal to the applicable Interest Rate set out herein until the earlier of Draw 1 being fully advanced and the termination of this Commitment without Draw 1 having been made. Any accrued and unpaid Standby Interest shall be payable at the time that Draw 1 is fully advanced by the Lender to the Borrower and shall be deducted therefrom.

In the event that this Commitment is terminated prior to the advance of Draw 1, the amount of Standby Interest shall immediately become due and payable by the Obligors in addition to any other rights and/or remedies which the Lender may have against the Obligors hereunder, at law or otherwise. The Obligors hereby acknowledge and agree that the Standby Interest is a reasonable estimate of the fees to be incurred by the Lender, which amount is deemed not to be a penalty.

22.4. Other Terms The definitions, terms and conditions set out in Appendices attached to this Commitment shall form a part hereof as if incorporated herein.

22.5. Advance Margin Loan advances from Facility 1 – Construction for the construction of residential units will be permitted on a unit-by-unit basis upon receipt of an Eligible Pre-sale. The following requirements must be met for Facility 1 – Construction advances to occur:

- a) No more than 2 speculative units can be under construction throughout the entire project at any given time; these speculative units will not be required to be presold.
- b) No more than 18 units can be under construction throughout the entire project at any given time.
- c) Loan advances from Facility 1 – Construction, on a per unit basis, shall be drawn to fund the vertical construction costs, limited to the lesser of 75% Loan-to-Vertical Costs, or 85% Loan-to-Net Sales Proceeds.



B. TERMS AND CONDITIONS

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

1. **Initial Funding Conditions**

The Lender shall not be required to advance any funds prior to the Borrower having fulfilled, to the Lender's satisfaction, the following conditions:
- 1.1. **Security to Be Delivered**

All the Security, ancillary loan agreements and documents, and opinions shall have been executed and delivered to the Lender or its solicitors and registered where and as required. Please refer to Article C herein.
- 1.2. **Financial Performance**

The Lender, in its sole discretion, shall have satisfied itself with the financial performance and condition of each of the Obligors. The Obligors shall provide within ten (10) Business Days of the date of execution of this Commitment, at a minimum, the following deliverables:

 - a) Corporate Obligors shall provide externally accountant prepared Notice to Reader annual financial statements for its two most recently ended fiscal years, or alternatives acceptable to the Lender.
 - b) Corporate Obligors shall provide corporate Notice of Assessments for its two most recently ended fiscal years, or alternatives acceptable to the Lender.
 - c) Personal Obligors shall provide Notice of Assessments received from the Canada Revenue Agency for their two most recently ended taxation years, with respect to their income tax filings.
 - d) Personal Obligors shall provide the Lender's form of Personal Net Worth Statement with supporting documentation.
 - e) All Obligors shall complete the Lender's form of Mortgage Application. To facilitate the Lender's due diligence regarding the creditworthiness of the Obligors, each of the Obligors shall authorize the Lender to conduct credit checks and authorize each of the financial institutions with which the Obligors deal to release any and all information reasonably required and requested by the Lender to adequately assess the credit worthiness of each Obligor.
- 1.3. **Project Conditions**

The Borrower shall deliver the following to the Lender within ten (10) Business Days of the acceptance of this Commitment for the Lender's satisfactory review and acceptance:

 - a) A copy of the agreement of purchase and sale (and any subsequent amendments or side letters related thereto) and statement of adjustments for the purchase by the Borrower of the Property, confirming a purchase price of not less than \$13,250,000.
 - b) An appraisal(s), satisfactory to the Lender, of the Project confirming the fair market value in the following states:

Appraisal or Letter Type	
"As Is" Appraisal	\$ 22,000,000
"As Serviced" Appraisal	\$ 33,000,000
"As Complete" Appraisal / Letter of Value*	\$ 96,130,000

to be prepared at the Borrower's expense. All appraisal reports are to be prepared by a Lender approved appraiser.



Such appraisal reports must be addressed to the Lender or be accompanied by reliance letters from the appraiser(s) to the Lender and shall confirm that the Lender can rely upon such appraisals for lending purposes.

*Regarding an indication of "as Complete" value, the Lender understands that value will be confirmed with the combination of Contractual Pre-Sales at the time of commitment (\$74,870,000) and an Appraised Value of the remaining units to be built (\$21,260,000).

- c) Evidence that the Borrower has entered into Eligible Pre-Sales of not less than 55 Units and totaling gross proceeds of not less than \$74,870,000. All Eligible Pre-Sales shall include a contracted Purchaser Deposit averaging not less than 10.00% of the applicable Unit's Gross Sale Price. The Borrower hereby acknowledges and agrees as follows:
 - i. all agreements of purchase and sale relating to the Units shall be to the satisfaction of the Lender as to Gross Sale Price, contracted Purchaser Deposits, form, and content. The Borrower will provide the Lender with an electronic copy of all agreements of purchase and sale within five (5) Business Days of an offer being received;
 - ii. the Lender must be provided with the full contact details (name, mailing address, e-mail address and telephone number) for each purchaser of a Unit;
 - iii. [Intentionally deleted – N/A]
 - iv. The Lender understands that, to-date, approximately \$5,497,000 of costs included in the Sources & Uses have been funded with Purchaser Deposits. The lender further understands that Purchaser Deposit not exceeding \$3,400,000 have been used for costs outside of those contemplated in the Sources & Uses.
 - v. [Intentionally deleted – N/A]
- d) [Intentionally Deleted – N/A]
- e) Evidence that the Borrower is licensed by the HCRA, or such other requirements as the Lender may determine, in its sole discretion.
- f) A soils-test/geotechnical report (load bearing capacity) by a professional engineer as is acceptable to the Lender that the proposed construction and site improvements of the Project are feasible under existing soil conditions, together with evidence that the construction specifications for the Project provide for construction in compliance with such conditions and recommendations, if any, which may be contained in such soils-test/geotechnical report. If deemed necessary by the Lender in their sole discretion, this report and the Project will be reviewed by a separate engineering professional engaged by the Lender at the Borrower's expense.

Such soils-test/geotechnical report must be addressed to the Lender or be accompanied by a reliance letter, or notice/report satisfactory to the Lender, from the engineer or third party consultant to the Lender and shall confirm that the Lender can rely upon such report for lending purposes.
- g) A satisfactory Phase I environmental site assessment report conducted and prepared by a Lender approved engineer (and any further environmental site assessment reports, environmental remediation plans, environmental risk assessments and/or Record of Site Condition, as may be required by the Lender or the approved engineer, in their respective and sole discretion). If



deemed necessary by the Lender in their sole discretion, these reports and the Project will be reviewed by a separate environmental professional engaged by the Lender at the Borrower's expense and the Borrower will provide an appropriate emergency response plan for the Project and related activities.

Any reports, both Phase I and supplemental reports, are to be accompanied by a reliance letter, or notice/report satisfactory to the Lender, from the engineer or third party consultant permitting the Lender to rely on the reports.

- h) All architectural and engineering plans, drawings and specifications upon which construction of the Project is based, including without limitation, all structural, architectural, mechanical, electrical, landscape and interior design and specifications (collectively, the **"Project Plans"**).
- i) A survey of the Project by and Ontario licensed land surveyor showing access to the Property from public thoroughfares and indicating no encroachments, easements or rights of way, except those that do not encroach or hinder the Borrower's ability to construct the Project in accordance with the proposed Project Plans. If no survey is available at the time of the Initial Advance, the Lender, in its sole discretion, may rely upon the title insurance policy to be obtained in connection with the Loan.
- j) Evidence confirming zoning approval, development permit and partial/full building permit availability to construct and develop the Project, together with evidence satisfactory to the Lender, in its sole discretion, that the full building permit will be issued by the applicable Governmental Authority in time to meet the Project Schedule.
- k) A detailed planning letter from a third-party planner outlining the timeline for, and probability associated with, approval of the various stages and phases of the Project in accordance with the Project Plans, acceptable to the Lender. If deemed necessary by the Lender in their sole discretion, these reports and the Project will be reviewed by a separate planning professional engaged by the Lender at the Borrower's expense.
- l) Discharge statement from Current Mortgagee(s), if any, confirming the outstanding principal balance does not exceed \$10,250,000 and is in good standing.
- m) [Intentionally Deleted – N/A]
- n) A detailed pro forma budget prepared by the Borrower showing all sources of revenue and a breakdown of the estimated cost to complete the Project, to the extent that such information is not contained in the Project Budget or Quantity Surveyor's report, as may be determined by the Lender, in its sole discretion.
- o) An executed engagement letter among the Quantity Surveyor, the Borrower and the Lender formally engaging such Quantity Surveyor as the Lender's quantity surveyor for the Project. The Quantity Surveyor shall be retained at the sole cost and expense of the Borrower. The engagement letter shall be in a form as provided by the Lender and subject to satisfactory review by the Lender, in its sole discretion.



- p) A detailed Project Budget prepared by the Borrower in conjunction with the Quantity Surveyor, to the extent applicable, satisfactory to the Lender. The Lender and the Quantity Surveyor, in their sole discretion, shall be satisfied:
 - i. that the budgeted Hard Costs and Soft Costs (including financing and contingency costs) shall be sufficient to complete the Project as planned;
 - ii. that the sources and uses of funds are acceptable;
 - iii. with the terms of all construction contracts relating to the Project;
 - iv. with the reputation, qualification and capabilities of the general contractor/project manager; and
- q) Prior to advance of Facility 1 – Construction, evidence of \$12,043,000, in invested capital in the Project and means to cover any potential closing costs, if required, satisfactory to the Lender and the Quantity Surveyor, to the extent applicable. Such invested capital shall include land equity up to \$8,750,000 and cash contributions from the Borrower and/or Gaurantor.
- r) The initial Loan to Value ratio at the time of the Initial Advance, as determined in the Lender's sole discretion, shall not be greater than 65%. For the purpose of calculating the Loan to Value ratio in the absence of current market values:
 - i. The Loan amount shall include all outstanding debt obligations including the Permitted Encumbrances, unapproved subordinate debt, and outstanding Project accounts payable.
 - ii. The Value shall be calculated by utilizing the appraised value at the time of the Initial Advance as per the appraisal provided per the initial transaction underwriting unless otherwise agreed to by the Lender. In the case of unsold Units, the value shall be calculated as per the methodology used by the appraisal. For Units under construction, the appraised value shall be the estimated value of the Units upon completion, less the cost to complete including financing costs as per the methodology used by the appraisal, less the expected profit margin.
- s) The initial Loan to Cost ratio at the time of the Initial Advance, as determined in the Lender's sole discretion, shall not be greater than 56%. For the purpose of calculating the Loan to Cost ratio:
 - i. The Loan amount shall include all advanced debt obligations including the Permitted Encumbrances, unapproved subordinate debt, and outstanding Project accounts payable, regardless of repayment.
 - ii. The Cost shall be determined by utilizing the net Project Costs incurred to date as set out in the Quantity Surveyor's report unless otherwise determined by the Lender, in its sole discretion.
- t) Evidence of the existence, details, and signing authorities related to a Project bank account, through which, all Project related transactions will flow. The Borrower and/or the Corporate Guarantor (as such term is defined in Section C.4.) shall execute the Lender's form of pre-authorized debit form, which shall authorize the Lender to automatically debit the Borrower's and/or the Corporate Guarantor's respective accounts with the Lender for all interest payments required in connection with the Loan.



- u) Confirmation satisfactory to the Lender that all property taxes for the Property are current and have been paid.
- v) Evidence of appropriate insurance coverage in accordance with the requirements contained in Appendix C, subject to satisfactory review by the Lender and the Lender's insurance consultant.
- w) Applicable Advance Requests in the forms provided by the Lender.
- x) MarshallZehr Group Inc., or a related party, may post two MarshallZehr Group Inc. signs on the Property (on each main street).
- y) Receipt by the Lender's solicitors of completed Agent Examination of Identification Forms for each of the Obligors and any other due diligence materials required in connection therewith to permit the Lender to comply with its obligations under the *Proceeds of Crime Money Laundering and Terrorist Financing Act* (Canada).
- z) Receipt by the Lender's solicitors of the corporate documentation for all corporate Obligors which shall include, without limitation, an up to date organizational chart for each of the corporate Obligors together with copies of the articles of incorporation, by-laws and corporate minute book registers.
- aa) Such other matters as the Lender may deem appropriate and necessary to satisfy itself of the Project's viability, the Borrower's creditworthiness and the ability of the Borrower and Guarantors to fulfil their obligations herein.

1.4. Special Conditions The Borrower shall deliver the following to the Lender within five (5) Business Days of the acceptance of this Commitment for the Lender's satisfactory review and acceptance:

- a) *[Intentionally Deleted]*



2. Progress Funding Conditions

The Borrower shall adhere to the following conditions when requesting Lender Advances or Borrower Draws, as the case may be:

2.1. Lender Advance Conditions

The following conditions must be fulfilled by the Borrower, to the Lender's satisfaction, in its sole discretion, prior to the Lender calling for funds to its trust account (each, a "**Lender Advance**"), in anticipation of a Borrower Draw:

- a) Each Lender Advance shall be requested in writing and in the form (each, an "**Advance Request**") provided to the Borrower by the Lender;
- b) The Lender shall have not less than five (5) Business Days following receipt of an Advance Request to fund the applicable Lender Advance into its trust account;
- c) Each Lender Advance shall be in an amount not less than \$100,000;
- d) A title search will be conducted by the Lender's solicitors for each Lender Advance. The title search and solicitors' fees and expenses applicable thereto are at the Borrower's expense and shall be deducted from the Lender Advance by the Lender. In the event a Lender Advance is occurring simultaneously with a Borrower Draw, only one title search will be conducted;
- e) There shall be no more than one Lender Advance per month, unless otherwise agreed to by the Lender, in its sole discretion; and
- f) The Lender Advances in the aggregate (plus the Initial Advance) shall not be greater than the Loan Amount.

The Borrower hereby acknowledges and agrees that interest shall accrue as of the date that the Lender Advance is deposited into the Lender's trust account, regardless of whether the Borrower has met the conditions of a Borrower Draw as set out below.

2.2. Borrower Draw Conditions

The following conditions must be fulfilled by the Borrower, to the Lender's satisfaction, in its sole discretion, prior to the Lender releasing a Lender Advance from its trust account to the Borrower (each, a "**Borrower Draw**"):

- a) Each Borrower Draw shall be requested in writing through an Advance Request in the form provided to the Borrower by the Lender. In the event a Lender Advance is occurring simultaneously with a Borrower Draw, only one Advance Request is required;
- b) Each of the conditions required in respect of a Lender Advance shall have been satisfied by the Borrower, to the Lender's satisfaction, in its sole discretion;
- c) The Borrower has satisfied all Initial Funding Conditions and Special Conditions, to the extent applicable, as set out in this Commitment and is compliance with the provisions set out herein;
- d) Each Borrower Draw shall set out the Project Budget (together with any revisions thereto, as approved by the Lender, in its sole discretion) and the Project Costs paid to date;
- e) Each Borrower Draw shall only be used to pay for Project Costs as set out in the Project Budget;
- f) The Borrower shall deliver an executed statutory declaration, in the form provided by the Lender, indicating it is in compliance with the requirements of the Construction Act, if applicable, and that all Borrower Draws shall be used to pay for the applicable Project Costs outlined in the Advance Request;



- g) The undrawn portion of the Loan shall not exceed the Borrower's cost to complete, including Holdbacks and expected financing costs;
- h) **Hard Cost Draw Conditions** – The following conditions must be fulfilled for each and every Borrower Draw used to pay for Hard Costs:
 - i. Each Borrower Draw request will be supported by a report of the Quantity Surveyor, which report shall indicate the amount of work in place, the cost to complete, and confirm that the work in place is in accordance with the Project Budget and the Project Plans. The Lender shall deduct an amount from each Borrower Draw equal to the Quantity Surveyor's invoiced amount associated with preparing the report for the Borrower Draw;
 - ii. The Borrower shall ensure compliance with all Applicable Laws, including without limitation, the Construction Act; and
 - iii. The Lender shall make the required Holdbacks.
- i) **Soft Cost Draw Conditions** – The following conditions must be fulfilled for each and every Borrower Draw used to pay for Soft Costs:
 - i. Each Borrower Draw request shall be supported by a monthly summary of Project Costs incurred to date;
 - ii. The Lender, at its sole discretion, shall request additional support for the summary of Soft Costs incurred to date including, but not limited to: invoices, bank statements, and cancelled cheques; and
 - iii. The Lender reserves the right to require an Advance Request in this regard to be supported by the Quantity Surveyor's report, which report shall indicate the amount of work in place, the cost to complete, and that the work in place is in accordance with the Project Budget and the Project Plans. The Lender shall deduct an amount for each Borrower Draw equal to the Quantity Surveyor's invoiced amount associated with preparing the report for the Borrower Draw.

The Lender will be under no obligation to conduct further Advances if any of the foregoing funding conditions and timelines outlined in this Section B. 2 are not met. The foregoing conditions may be waived by the Lender, in whole or in part (with or without terms or conditions), in respect of an Advance without prejudicing the right of the Lender at any time to assert such conditions in respect of any subsequent Advances.



C. SECURITY TO BE DELIVERED

The Borrower shall deliver the following security (the “**Security**”) duly registered where applicable subject only to the Permitted Encumbrances, if any, and all in the form and on the terms acceptable to the Lender’s solicitor:

1. **Mortgage** A 1st mortgage registered on the York Estates – MZGI 452 Project Property in the amount of 35,000,000, plus any accrued contingent payments. The mortgage will be registered at the Wrap-Up Rate of Interest, being two times the Prime Rate plus 22.10% (Floor Rate: 27.5%).
2. **Collateral Mortgage** [Intentionally Deleted – N/A]
3. **General Security Agreement of the Borrower** A General Security Agreement of the Borrower providing a first (1st) priority security interest over all of the present and future assets and undertaking of the Borrower.
4. **General Security Agreement of the Guarantors** A General Security Agreement of the Guarantors providing a security interest over all of the present and future assets and undertaking of the Guarantors. The General Security Agreement of 2363823 Ontario Inc. (the “Corporate Guarantor”) shall provide a second (2nd) priority security interest over all of the present and future assets and undertaking of the Corporate Guarantor relating to the Property and/or the Project including, without limitation, all bank accounts in the name of the Corporate Guarantor relating thereto.
5. **Assignment of Insurance** An assignment of the Borrower’s insurance policies relating to the Property.
6. **Assignment of Material Contracts** An assignment of the Borrower’s construction contracts, including without limitation all the Project Documents and the Project Plans.
7. **Assignment and Pledge of Securities** An assignment and pledge of, *inter alia*, all term deposits, guaranteed investment certificates, cash collateral in respect of any Letters of Credit issued and/or the Reserves from the Borrower and the Corporate Guarantor.
8. **Assignment of Leases** A general assignment of leases and rents registered on title to the Property.
9. **Assignment of Agreements of Purchase and Sale** A general assignment of all third-party purchase and sale agreements for the Units together with any other rights, interests and obligations of any kind respecting the Project and reasonably necessary for the completion of the Project as contemplated by the Lender, upon default by the Borrower.
10. **Assignment of Purchaser Deposits** An assignment of all Purchaser Deposits subject only to any prior security interest of the Deposit Insurer, to the extent applicable.
11. **Assignment of Cash Security** An assignment and pledge of all securities posted in relation to the Project and Property, including, but not limited to, cash security posted (i) directly with Tarion (ii) directly with a Governmental Authority, and/or (iii) with a financial institution as security for letters of credit for the Project. The Borrower covenants to deliver the Lender’s form of executed direction to the party holding the cash security accordingly (i.e. Tarion, City/Municipality, Financial Institution, etc.) directing that all releases/reductions in the cash security are delivered to the Lender.
12. **Letter of Credit Indemnity** An indemnification agreement from the Borrower in favour of the Lender in respect of any Letter of Credit issued, to the extent applicable;
13. **Guarantees** An unlimited joint and several guarantees from each of the Guarantors.



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| 14. Deficiency Agreement | A joint and several cost overrun and deficiency agreement executed by the Obligors agreeing to fund costs not included or in excess of the Project Budget. This Deficiency Agreement is in addition to the Guarantee. |
| 15. Environmental | An unlimited Environmental Undertaking and Indemnity from the Obligors and Environmental Review Checklist from the Borrower. The Environmental Undertaking and Indemnity is in addition to the Guarantee. |
| 16. Security Opinion | A favourable letter of opinion from the Borrower's solicitors containing the usual corporate opinions relating to the corporate Obligors, including, without limitation as to the enforceability of the Security. |
| 17. Insurance | Proof of appropriate insurance satisfactory to the Lender's insurance consultant and in accordance with the requirements set out in Appendix C. |
| 18. Title Insurance | A policy of title insurance satisfactory to the Lender and its solicitors. |
| 19. Taxes | Evidence that the realty taxes relating to the Property have been paid to date. |
| 20. Postponement | A postponement, subrogation and assignment from each of the shareholders of the Borrower (and such other creditors as the Lender may require upon completion of its due diligence) of all indebtedness owed by and claims against the Borrower to and by the shareholders to the indebtedness and claims of the Lender. |
| 21. Priorities Agreements | If required, a priorities agreement in connection with any Permitted Encumbrances, satisfactory to the Lender and the Lender's solicitors. |
| 22. PPSA Priorities Agreement | A priorities agreement between the Lender and Scotland Real Estate Venture Limited Partnership. The form and content of the priorities agreement shall be satisfactory to the Lender and the Lender's solicitors. |
| 23. Restriction on Register | An authorization from the Borrower to the Lender and its solicitors directing the Lender's solicitors to register a notice pursuant to Section 118 of the <i>Land Titles Act</i> (Ontario) on title to the Property restricting the Borrower from further charging the Property without the prior consent of the Lender. |
| 24. Further Security | Such further security, guarantors and ancillary documents and agreements as the Lender or its solicitors may, acting reasonably, deem necessary to adequately secure the Loan obligations and complete and perfect the Security. |



D. BORROWERS COVENANTS

The Obligors hereby covenant and agree as follows:

1. **Affirmative Covenants** So long as any amount under the Loan is outstanding or available, the Borrower covenants and agrees with the Lender that unless the Lender otherwise consents in writing:
 - 1.1. **Punctual Payment** The Borrower shall duly and punctually pay the principal of all Advances made to it under the Loan, all interest thereon, and all fees and other amounts required to be paid by the Borrower hereunder in the manner specified hereunder.
 - 1.2. **Corporate Existence and Conduct of Business** The Borrower shall, and the Borrower shall cause the corporate Guarantors to, maintain their respective corporate existences in good standing and do or cause to be done all things necessary to keep in full force and effect all properties, rights, franchises, licenses and qualifications to carry on business in any jurisdiction in which it or they carry on business and the Borrowers shall, and the Borrower shall cause the corporate Guarantors to, maintain all of its or their respective properties and assets consistent with industry standards.
 - 1.3. **Compliance with Legislation** The Borrower shall do or cause to be done, and the Borrower shall cause the Guarantors to do or cause to be done, all acts necessary or desirable to comply with all material Applicable Laws, including, without limitation, all requirements of all Environmental Laws and to preserve and keep in full force and effect all franchises, licenses, rights, privileges and permits necessary to enable each of the Obligors to operate and conduct their respective businesses in accordance with standard industry practice and to advise the Lender of any anticipated changes, loss or sale of such franchises, licenses, rights, privileges and permits.
 - 1.4. **Litigation** The Borrower shall promptly give written notice to the Lender of any litigation, proceeding, or dispute affecting it or an of the other Obligors if the result might, in such Borrower's bona fide opinion, have a Material Adverse Effect on the financial condition or operations of any of the Obligors or any of their respective Affiliates and from time to time furnish to the Lender all reasonable information requested by the Lender concerning the status of any such litigation, proceeding, or dispute.
 - 1.5. **Reporting Requirements** The Borrower shall deliver, or cause to be delivered, to the Lender all items specified in Appendix F in the form and at the time specified therein.

The Lender, acting reasonably, may request such other financial information, reporting, certificates, projections of income and cash flow, and any information affecting the financial condition of the Project, the Property and/or the Obligors' business that are not directly specified in Appendix F. This list and the reporting items stated in this Commitment are not exhaustive and the Lender, acting reasonably, may also request such other qualitative information including expected pre-sales, expected closings and associated timing, closed transactions, and editorial updates including Project status, and photos showing progress at a reporting frequency prescribed at the time of request.
 - 1.6. **Rights of Inspection** At any reasonable time and from time to time upon reasonable prior notice, the Borrower shall permit and cause each of the other Obligors to permit, the Lender or any representative(s) thereof, at the expense and risk of the Borrower, to examine and make copies of and abstracts from the records and its physical and computer books of account with respect to the Project and to visit and inspect the Project and to discuss the affairs, finances and accounts of it with any of its officers, senior employees or managers (but not tenants, if applicable).
 - 1.7. **Project Specific** The Borrower shall:
 - a) comply in all relevant aspects with the provisions of the Construction Act;



- b) as and when requested by the Lender, provide the Lender complete records relating to all holdbacks, including cancelled cheques, bank statements, WSIB certificates, statutory declarations, and completion certificates, as the Lender may reasonably require;
- c) provide a covenant that the Borrower will supply to the Lender a statutory declaration in conjunction with each Borrower Draw, confirming the status of the Holdbacks as at the date of the statutory declaration;
- d) substantially complete the Project in accordance with the approved Project Plans, the Project Budget and Project Schedule;
- e) pay its taxes, protect its properties by contest of adverse claims, maintain required insurance, perform its obligations under all contracts and agreements relating to the Project, obtain all necessary approvals for construction and use of the Project, comply with all governmental rules and regulations, permit reasonable inspections, by the Lender and its agents of the Project and all records pertaining to the Project;
- f) make and ensure that all payments due to the architect, general contractor, all contractors, sub-contractors, and all other suppliers of materials and services of any kind to the Project are made when and as they become due in compliance with the terms of their respective contracts and the provisions of the Construction Act;
- g) fund all Project Costs in excess of the Project Budget from cash resources derived from outside the Loan and the Project. In this regard, the Obligors shall be jointly and severally liable to immediately cover any such excesses as soon as same arise and/or are identified by the Lender;
- h) ensure that no liens are registered against the Property or its assets. In the event that a lien aforesaid is registered, the Borrower shall cause such lien to be vacated or discharged within ten (10) days of the earlier of the date (i) of registration (ii) that the Borrower has received written notice thereof and (iii) that the Borrower has been provided written notice thereof by the Lender, with any payment being made from financial resources derived from outside of the Loan; and
- i) grant the Lender the right to approve professional services involved in the Project. Such professional reports and services include, but are not limited to, appraisals, environmental reports, geotechnical reports, quantity surveyors, and auditors.

1.8. Insurance

The Borrower shall maintain, or shall cause to be maintained, appropriate insurance coverage as agreed with the Lender or any insurance consultant engaged by the Lender to assess the required coverage during the Project. All insurance shall be in accordance with the requirements contained within Appendix C.

1.9. Notices

The Borrower shall promptly give notice to the Lender of:

- a) Any fire or other casualty or any notice of expropriation, action or proceeding materially affecting any Project;
- b) All claims, proceedings, suits, actions, or litigation in respect of any Obligor or the Project (whether or not any such claim, proceeding, suit, action, or litigation is covered by insurance) which, if determined adversely could have a Material Adverse Effect;
- c) the occurrence of any Default or Event of Default; and



d) any other matter or event that has a Material Adverse Effect.

1.10. Use of Advances

The Borrower shall use all Borrower Draws in accordance with the specific purposes set out herein and in the applicable Advance Request.

1.11. Payment of Taxes, etc.

The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time:

- a) Pay or cause to be paid all rents, taxes, rates, levies or assessments, ordinary or extraordinary, governmental fees or dues, lawfully levied, assessed or imposed upon any Obligor or any of the assets of any Obligor, as and when the same become due and payable;
- b) Withhold, deduct and collect all taxes required to be withheld, deducted and collected by it, and remit such taxes to the appropriate Governmental Authority at the time and in the manner required; and
- c) Pay and discharge all obligations incidental to any trust imposed upon it, by statute which, if unpaid, might become an encumbrance upon any of the Property, except when and so long as any such rents, taxes, rates, levies, assessments, fees, dues or obligations constitute a Permitted Encumbrance and the validity thereof is in good faith being contested by such Obligor.

1.12. Project Documents, Leases, and Permitted Encumbrances

The Borrower shall ensure that all Project Documents and Permitted Encumbrances are kept in good standing in all material respects and will advise the Lender forthwith after being so notified of a material breach or alleged material breach of any material documents or Permitted Encumbrances. The Borrower shall not default under any Lease related to any Property and shall advise the Lender immediately following being so notified of any breach thereof.

1.13. New Project Documents

The Borrower will promptly advise the Lender if any Obligor enters into any agreement which could reasonably be expected to be a Project Document and shall provide a copy of such agreement to the Lender.

1.14. Security

The Borrower shall, and the Borrower shall cause each of the Guarantors to, provide the Security contemplated hereunder, perfected to the satisfaction of the Lender and its solicitors, in their sole discretion.

1.15. Maintain Security

The Borrower will fully and effectually maintain and keep the Security valid and effective at all times during the continuance of this Agreement, and it will not permit or suffer the registration of any debt, lien, privilege or encumbrance whatsoever other than Permitted Encumbrances and the Security, whether of workmen, builders, contractors, engineers, architects or suppliers of material, on or in respect of any Property (except such liens which only affect or purport to affect a tenant's interest in the Property, if applicable).

1.16. Environmental Law

The Borrower shall, and the Borrower shall cause each of the Guarantors to, with respect to each Project:

- a) notify the Lender promptly of any event or occurrence that will, or is likely to, give rise to an inquiry or investigation, or any legal proceeding, relating to, or a violation of, the Requirements of Environmental Law;
- b) provide the Lender, on request, such information, certificates or statutory declarations, and shall conduct such environmental audits or site assessments, as may be reasonably necessary to ensure the compliance with all Requirements of Environmental Law; and



- c) execute, and cause each of the Guarantors to execute, all consents, authorizations and directions to appropriate Governmental Authorities that are required to permit the inspections mandated by Applicable Laws of the Property and the release to the Lender, or its representatives, of information relating to the assets or undertakings of each Obligor. The Obligors hereby irrevocably constitute and appoint the Lender the true and lawful attorney of each of them, with full power of substitution, to execute any of the foregoing consents, authorizations and directions; provided however that such power of attorney shall only be exercised during the continuance of an Event of Default.

1.17. Operation and Repair

Except as otherwise permitted herein, the Borrower will ensure the diligent management and operation of the Property and repair and keep in repair and good order and condition, or cause to be so repaired and kept in repair and good order and condition, all buildings, structures, plant, machinery and equipment used in or in connection with the Property and which are necessary in connection with the efficient operation of such business and undertaking up to a modern standard of usage and, subject to the provisions of this Commitment, renew and replace, or cause to be renewed or replaced all and any of the same which may be worn, dilapidated, unserviceable, inconvenient or destroyed, even by a fortuitous event, fire or other cause, and at all reasonable times allow, and cause the Guarantors to allow, the Lender or its representative access to the Property in order to review the state and condition the same are in.

1.18. Maintain and Operate

The Borrower will diligently maintain, use and operate or will cause to be maintained, used and operated the Project, in a proper and efficient manner so as to preserve and protect the Property.

1.19. Payment of Preferred Claims

The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time pay or cause to be paid, all amounts related to taxes, wages, workers' compensation obligations, government royalties or pension fund obligations and any other amount which may result in an encumbrance against the assets of any Obligor arising under Applicable Law.

1.20. HST Filings

The Borrower shall file on a monthly basis all returns and other documents necessary to obtain the refund of HST in respect of the Project and apply the amount of any such refund to payment of Project Costs.

1.21. Lease Attornment

Subject to the requirements, if any, within any Leases for the Lender to execute and deliver non-disturbance agreements, the Borrower agrees, at the written request of the Lender, to use all reasonable commercial efforts to obtain from the tenants under such Leases and deliver to the Lender such instruments of attornment, postponement or subordination as the tenants under such Leases are required to provide and as the Lender may reasonably request in a form acceptable to the Lender, acting reasonably, and which is otherwise consistent with the terms of such Leases.

1.22. Expropriation

Any awards or payments received by an Obligor for expropriation of any portion of the Property, which are, in respect of any single payment or award, equal to or greater than \$1,000 shall, unless the Lender otherwise agrees, be forthwith paid to the Lender to repay the Loan.

1.23. Condominium Registration

To the extent applicable, the Borrower shall pursue registration of the Project under the Condominium Act for registration as a condominium thereunder to ensure that the Units may be delivered in a timely basis in accordance with the planned schedule of closings of the Units.



2. Financial Covenants

So long as any amount payable hereunder is outstanding or the Loan is available hereunder, the Obligors covenant and agree with the Lender that:

2.1. Project Net Equity

Prior to construction, the Obligors shall maintain a minimum combined net equity in the Project equal to \$10,042,000; Upon time of construction, the Obligors shall maintain a minimum combined net equity in the Project equal to \$12,043,000. For the purposes of this paragraph **"Project Net Equity"** shall be equal to:

	cost of the Property, as determined by the Lender or the Quantity Surveyor (to a maximum value of \$ 22,000,000)
+	cost of the Project completed to date (exclusive of Property value) as determined by the Lender or the Quantity Surveyor
-	project payables
-	Purchaser Deposits paid into the Project
-	Holdbacks
-	unsubordinated Project financing
-	the aggregate amount of Lender Advances to date under the Loan
-	all recaptured Project expenses, including HST, previously funded by the proceeds of the Loan herein
=	Project Net Equity

2.2. Project Loan to Value Ratio (LTV)

The Borrower shall, at all times, maintain a LTV ratio of less than 85%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in **Appendix F** the LTV ratio shall be calculated in accordance with the parameters defined in **Section B. 1.3(r)**.

2.3. Project Loan to Cost Ratio (LTC)

The Borrower shall, at all times, maintain an LTC ratio of less than 90%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in **Appendix F**, the LTC ratio shall be calculated in accordance with the parameters defined in **Section B. 1.3(s)**.

2.4. Maximum Borrowing

The Borrower shall ensure that Advances under this Commitment do not exceed the most current calculation of the Maximum Borrowing. **"Maximum Borrowing"** shall be equal to:

	Loan Amount (as defined in Section 1.6)
-	cost to complete Project
-	Holdbacks
+	unadvanced approved Purchaser Deposits to be used in the Project
+	deferred costs as approved by the Lender
+	unadvanced additional approved Project financing
=	Maximum Borrowing



- 3. Negative Covenants** So long as any amount payable hereunder is outstanding or the Loan is available hereunder, the Obligors covenant and agree with the Lender that, unless the Lender otherwise consents in writing:
- 3.1. Sale of Guarantors** The Borrower shall not, and shall cause every other Person with an ownership interest in a Guarantor (other than the Borrower) not to, sell, transfer, assign, convey or otherwise dispose of its ownership interest in any of the Guarantors (other than the Borrower) to any Person except another Affiliate of the Borrower (but only if such Guarantor remains a direct or indirect wholly-owned Subsidiary of the Borrower) or except with the prior written consent of the Lender, such consent not to be unreasonably withheld or delayed.
- 3.2. No Merger, Amalgamation, Etc.** Except as otherwise permitted hereunder, no Obligor shall enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other Person (whether by way of reconstruction, reorganization, recapitalization, consolidation, amalgamation, merger, transfer, sale or otherwise).
- 3.3. No Sale, etc. of Property Interests** No Obligor shall sell, transfer, assign or otherwise dispose of all or any portion of its respective interest in the Property except pursuant to a Permitted Encumbrance.
- 3.4. No Additional Encumbrances or Financing** No additional encumbrances or financing, subject to **Section A. 1.22**, will be permitted without the prior written consent of the Lender, which consent shall be in its sole discretion. In the event that the foregoing covenant is not complied with, the entire amount of outstanding principal, interest, fees and all other amounts due under the Commitment and the Security shall become immediately due and payable by the Borrower.
- In the event that the Lender consents to any such additional subordinate financing aforesaid, such consent shall be conditional upon the subordinate lender entering into an unconditional postponement, subordination and permanent standstill agreement whereby, *inter alia*, the subordinate lender shall agree to a) issue zero dollar discharges on a per Unit basis and b) execute all postponements and consents as may be required to development the Project, in each case, within two (2) Business Days immediately following request therefor by the Borrower and/or the Lender.
- 3.5. No Dissolution** No Obligor shall liquidate, dissolve or wind-up or take any steps or proceedings in connection therewith, provided, however, that a Guarantor may enter into a transaction designed to wind-up or dissolve such Guarantor into the Borrower upon the Lender's prior written consent, such consent not to be unreasonably withheld or delayed. The parties agree that the Lender's consent will not have been unreasonably withheld if, in the Lender's sole discretion, the Lender's credit risk or the Security will be adversely affected by the proposed transaction.
- 3.6. Non-Arm's Length Transactions** No Obligor shall enter into any contract relating in any manner to the Property with an Affiliate for the sale, purchase, lease or other dealing in any property other than at a consideration which is no more than the fair market value of such property or other than at a fair market rental as regards leased property.
- 3.7. Negative Pledge** Except for the Permitted Encumbrances, no Obligor shall create, issue, incur, assume or permit to exist any mortgage, charge, lien or other encumbrance against the Property without the Lender's prior written consent.
- 3.8. No Changes to Project Documents** No Obligor shall amend, surrender or terminate any Project Document without the prior written consent of the Lender, which consent is not to be unreasonably withheld or delayed.
- 3.9. No Changes to Leases** No Obligor shall terminate or accept a surrender of, or agree to any material amendment to, any Lease, without the consent of the Lender which consent is not to be unreasonably withheld or delayed. For



the sake of clarification, amendments related to the term, rent or premises to be rented shall be considered material.

3.10. Dealing with Leases

Notwithstanding the immediately preceding paragraph above, no Obligor shall enter into any new Leases or amend, renew, terminate, forfeit or cancel any existing Leases, in each case, in respect of all of portion of the Property unless:

- a) such Lease and/or amendment, extension, termination, forfeiture or cancellation are made on arm's length terms and in good faith; and
- b) such Leases and/or amendment, extension, termination, forfeiture or cancellation reflects good business practice, as determined by the Lender, in its sole discretion.

3.11. Concerning Leases Generally

Except in the ordinary course of business and provided such action is prudent in the circumstances, none of the Obligors shall accept or require payment of rent or other moneys payable by a tenant under any Lease that would result in more than three months of such rent or other moneys being prepaid under such Lease other than:

- a) prepaid rent or deposits on account of rent which represent the portion of the cost of construction of the relevant demised premises which exceeds the portion of such cost which was used as the basis for determining the basic rental otherwise payable under such Lease;
- b) amounts representing a bona fide pre-calculation of any amount (which is required to be paid under such Lease) in addition to basic rent, including amounts payable with respect to taxes and maintenance of the applicable Property and overage and percentage rents; or
- c) Lease surrender payments made by the tenant under such Lease; and/or
- d) except for any renewals or extensions of existing Leases pursuant to the terms thereof, each of the Obligors shall not hereafter enter or purport to enter into or suffer to exist any Lease in respect of any Project except if the Security shall have priority over such Lease and such Lease shall provide that it is subordinated to the Security and contain a covenant of the tenant thereunder obligating such tenant if and whenever required by the Lender to attorn to and become the tenant of the Lender or any purchaser from the Lender, for the then unexpired residue of the term of, and upon all of the terms and conditions of such Lease.

3.12. No Waiver

Except as otherwise provided pursuant to **Article F**, no Obligor shall waive, or agree to waive, any failure of any party to any Permitted Encumbrance, Project Document or Lease to perform any material obligation thereunder or suffer or permit anything allowing any party thereto to terminate any such agreement or consent to any assignment thereof by any party thereto unless the same is in the ordinary course of business, is in accordance with good business practice and the same would not have a Material Adverse Effect.

3.13. No Name Change

No Obligor shall change its name without first giving notice to the Lender of its new name and the date when such new name is to become effective.

3.14. No Change of Chief Executive Officer

No Obligor shall change its chief executive office or the location of the offices where it keeps its records respecting receivables and rents or move any of the inventory, securities or equipment from the present locations thereof without prior written notice to the Lender.



The Obligors hereby acknowledge and agree that a breach of any of the foregoing covenants contained in this Article D shall constitute an Event of Default, entitling the Lender to terminate this Commitment subject to and in accordance with the provisions of Article F hereof.

E. TERMINATION PROVISIONS

The Lender shall have the right to terminate this Commitment and its obligation to provide the Loan to the Borrower in the event that any of the following should occur:

1. **Non-Compliance with Terms** The Obligors fail or are unable or unwilling for any reason whatsoever to comply with any of the terms and conditions set out in this Commitment and/or the Security within the time indicated for such compliance.
2. **Non-Execution of Documents** The Obligors fail or refuse to execute any documentation requested by the Lender's solicitors or to deliver such documentation to them.
3. **Outside Date** The Initial Advance has not been fully advanced on or before **April 10, 2022** (the "**Outside Date**").
4. **Non-Acceptance of Borrower Draw** The Borrower refuses to accept either the Initial Advance or a Borrower Draw when so advanced by the Lender.
5. **Default** The Borrower and/or the Guarantors commit a Default that remains uncured in accordance with Article F hereof.
6. **Non-Compliance with Construction Act** The Borrower has not complied with all the provisions of the Construction Act to the satisfaction of the Lender's solicitors.
7. **Non-Satisfaction of Due Diligence** The Lender's solicitors, acting reasonably, are not satisfied with the title to the Property.

If, in accordance with the foregoing, the Lender elects to terminate this Commitment prior to the advance of the entire Loan, the amounts so advanced, if any, together with interest and fees thereon shall become immediately due and payable.



F. DEFAULT PROVISIONS

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

1. **Events of Default**

The occurrence of any one or more of the following events shall constitute an Event of Default under this Commitment (an “**Event of Default**” or “**Default**”):

 - 1.1. **Payment of Principal**

If the Borrower defaults in the payment of the principal of any Lender Advance made under the Loan when due and payable, without any requirement by the Lender to provide notice of the same;
 - 1.2. **Payment of Interest and Fees**

If the Borrower defaults in the payment of:

 - a) any interest (including, if applicable, default interest) due on any Advance under this Commitment;
 - b) any Fees with respect to this Commitment; or
 - c) any other amount not specifically referred to herein payable by the Borrower to the Lender hereunder when due and payable;

and such default continues for three (3) Business Days after notice of such default has been given by the Lender to the Borrower;
 - 1.3. **Covenants or Obligations**

If any Obligor neglects to observe or perform any covenant or obligation contained in any Document on its part to be observed or performed (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this **Section F.1**) and, such Obligor shall fail (in the case of those defaults which can be rectified by such Obligor) to remedy such default within a period of **thirty (30)** days after the giving of notice, unless the Lender (having regard to the subject matter of the default) shall have agreed to a longer period and, in such event, within the period agreed to by the Lender;
 - 1.4. **Cross Default**

If a default or an event of default as defined in any indenture or instrument evidencing, or under which, any indebtedness for borrowed money of any Obligor or of any Affiliate (as that term is defined in the Business Corporations Act (Ontario)) of any Obligor has occurred and is continuing; provided, however, that if such default or event of default under such indenture or instrument shall be remedied or cured by such Obligor or Affiliate of such Obligor or be waived by the holders of such indebtedness before any judgment or decree for the payment of the money due shall have been obtained or entered, then the Event of Default hereunder by reason thereof shall be deemed likewise to have been thereupon remedied, cured or waived without further action on the part of the Lender;
 - 1.5. **Priority Encumbrance Cross Default**

If an event of default as defined in any indenture or instrument which is a Permitted Encumbrance on any Property in priority to the Security shall have occurred and be continuing and all applicable cure periods have expired;
 - 1.6. **Bankruptcy or Insolvency Order**

If a decree or order of a court of competent jurisdiction is entered adjudging any Obligor a bankrupt or insolvent, or approving as properly filed a petition seeking the winding-up of such Obligor, under the Companies’ Creditors Arrangement Act (Canada), the Bankruptcy and Insolvency Act (Canada) or the Winding Up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against, or against any substantial part of the assets of any Obligor or material subsidiary or ordering the winding up or liquidation of its affairs, and any such decree or order continues unstayed and in effect for a period of **ten (10) Business Days**;



- 1.7. Insolvency** If any Obligor becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the Bankruptcy and Insolvency Act (Canada) or any comparable law, seeks relief under the Companies' Creditors Arrangement Act (Canada), the Winding Up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency;
- 1.8. Trustee or Receiver Appointed** If any proceedings are commenced against, or steps are taken by, any Obligor for the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of such Obligor or of all or any substantial portion of its assets, or seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights and in the case of any such proceedings commenced against such Obligor, such proceedings are not stayed or dismissed within **ten (10) days** after the commencement thereof;
- 1.9. Dissolution, Liquidation or Wind-Up Proceedings** If proceedings are commenced for the dissolution, liquidation or winding-up of any Obligor, or for the suspension of the operations of any Obligor, unless such proceedings are stayed or dismissed within **thirty (30) days** of the commencement thereof;
- 1.10. Material Provision or Agreement Null and Void** If any material provision of this Agreement or of any Material Document ceases to be in full force and effect (other than through the normal expiration of the stated term of such Material Document pursuant to the terms thereof) or is declared null and void or invalid or any breach or default shall occur under any Material Document that has a Material Adverse Effect and such breach or default is not remedied within **ten (10) Business Days** of such occurrence or such longer or shorter cure period as may be allowed the applicable Obligor pursuant to the terms of such Material Document;
- 1.11. Judgements** If a judgment or decree for payment of money due in an amount of \$5,000 or more (in any single instance or in the aggregate for all such judgments and decrees against each of the Obligors) shall have been obtained or entered against any Obligor (except in the case of any such judgment or decree in respect of which recourse is limited to property which is not subject to the Security hereunder) and such judgment or decree shall not have been, and remain, vacated, discharged or stayed pending appeal within the applicable appeal period;
- 1.12. Incorrect Representation or Warranty** If any representation or warranty made or deemed to be made by any Obligor in any Document or in any certificate or other document at any time delivered in connection with this Commitment to the Lender shall prove to have been incorrect or misleading in any material respect on and as of the date thereof and with respect to any such incorrect or misleading representation or warranty that is capable of being cured, such incorrectness or misleading aspect continues for a period of **ten (10) Business Days** or more;
- 1.13. Invalid Security** If any of the Security shall cease to be a valid and perfected first priority security interest as against third parties subject only to Permitted Encumbrances and such state continues for more than **two (2) Business Days**;
- 1.14. Material Adverse Effect** If the Lender determines, in their sole discretion acting reasonably, that there has been a material change in the business, assets, properties, liabilities, operations, condition (financial or otherwise) of the Obligors, individually, or its subsidiaries taken as a whole or the ability to perform its obligations under the Commitment (a "**Material Adverse Effect**");
- 1.15. Creditor Seized Property** If the property of any Obligor or a part thereof which is, in the opinion of the Lender, a substantial portion thereof, is seized or otherwise attached by creditors pursuant to any legal process, the enforcement of a secured claim or otherwise or if a distress, execution or any similar process is levied



or enforced against any Obligor and the same is not released, bonded, satisfied, discharged, vacated or stayed within the shorter of a period of **thirty (30) days** or such shorter period as would permit any property or any part thereof to be sold thereunder;

1.16. Assignment, Disposition or Conveyance

If any Obligor makes or agrees to make an assignment, disposition or conveyance, whether by sale or otherwise, of all its assets (or a material portion thereof) in bulk;

1.17. Default Under Permitted Encumbrance or Material Document

If there is a default by any Obligor under any Permitted Encumbrance, or Material Document in respect of the Project and such default has a Material Adverse Effect and is not rectified within **five (5) Business Days**; or

1.18. Financial Covenant Default

If there is a default by the Borrower of any of the Financial Covenants outlined in **Section 4.2**;

1.19. Merger or Amalgamation

If any transaction occurs (whether by reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale or otherwise) whereby all or substantially all of an Obligor's undertaking, property and assets, or any interest therein becomes the property of any other person, or in the case of any amalgamation, of the continuing company resulting therefrom, or if any Obligor is dissolved; or

1.20. Environmental

If any Obligor violates or breaches any requirements of Environmental Law applicable to the Project (or, in the case of the Guarantor, applicable to all or any material part of its property and assets) or if any Obligor violates or breaches any other Applicable Law and such breach or violation of Applicable Law has or could reasonably be expected to have a Material Adverse Effect and continues for the shorter of a period of **thirty (30) days** or **ten (10) Business Days** less than any such period as would permit the property in question to escheat to the Crown or be sold or otherwise forfeited.

For greater certainty, none of the foregoing events shall constitute an Event of Default hereunder if the default is cured or remedied within the time limited therefor pursuant to the applicable provision of this **Section F.1**.

2. Acceleration and Demand

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

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

Upon the occurrence of an Event of Default specified in **Section F.1.1**, the Loan shall automatically terminate and all Obligations specified in **Section 1** shall automatically become due and payable, in each case without any requirement that notice be given to the Borrower;

Immediately upon the occurrence of an Event of Default specified in **Section F.1** or at the time stated in an Acceleration Notice, the Borrower shall pay to the Lender all amounts owing or payable in respect of all Obligations of such Borrower specified in **Section 1**, failing which all rights and remedies



of the Lender under the Documents, at law, in equity or otherwise shall thereupon become enforceable and shall be enforced by the Lender.

3. Appointment of Receiver

Upon any default under this Commitment or the Security, that is not cured within the time frames set out herein, the Lender may proceed to realize the Security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Lender or not, and the Lender may remove any receiver or receivers so appointed and appoint another or others in his or their stead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Project or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Borrower. Any such receiver or receivers so appointed shall have power to take possession of the Project or any part thereof and to carry on the business of the Borrower, and to borrow money required for the maintenance, preservation or protection of the Project or any part thereof, and to further charge the Project in priority to the Security constituted by this Commitment as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Project on such terms and conditions and in such manner as he shall determine. In exercising any powers, any such receiver or receivers shall act as agent or agents for the Borrower and the Lender shall not be responsible for his or their actions.

In addition, the Lender may enter upon the applicable premises and lease or sell the whole or any part or parts of the Project. The Borrower agrees that it will be commercially reasonable to sell such part of the Project:

- a) as a whole or in various units;
- b) by a public sale or call for tenders by advertising such sale; and
- c) by private sale.

Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Lender in its sole discretion may seem advantageous and such sale may take place whether or not the Lender has taken possession of such property and assets.

No remedy for the realization of the security hereof or for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this letter includes a receiver and manager.

4. Application of Payments Following Demand and Acceleration

Except as otherwise agreed to by the Lender in its' sole discretion, any sum received by the Lender at any time after the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section F.1, which the Lender is obliged to apply in or towards the satisfaction of sums due from the Borrower under any Document shall be applied by the Lender in accordance with amounts owed to the Lender by the Borrower in respect of each category of amounts set forth below, each such application to be made in the following order with the balance remaining after application in respect of each category to be applied to the next succeeding category:

- a) in or towards payment of any expenses and fees then due and payable to the Lender hereunder and owing by the Borrower (including, without limitation, in the case of the Borrower, any such fees and expenses owing whether or not deferred or contingent);
- b) in respect of amounts due and payable by such Borrower to the Lender by way of interest and fees (including, without limitation, in the case of the Borrower, any such interest and fees owing whether or not deferred or contingent);



- c) in respect of any other amount (other than Loan) not hereinbefore referred to in this Section F.4 which are then due and payable by the Borrower hereunder such Borrower under any Document (including, without limitation, in the case of the Borrower, any such other amounts owing whether deferred or contingent);
- d) in or towards repayment to the Lender of the principal advanced to such Borrower then outstanding hereunder; and
- e) any remaining amounts to be released to the Borrower or as required by the loan.

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

5. Remedies Cumulative

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

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

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

6. Set-Off

In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Lender is authorized at any time after the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section F.1 which has not theretofore been waived or rescinded by the Lender and from time to time thereafter without notice to Borrower or to any other person, any such notice being expressly waived by the Borrower, to set-off and to appropriate and to apply any and all deposits (general and special) and any other indebtedness at any time held by or owing to the Lender for the account of the Borrower against and on account of the obligations and liabilities of the such Borrower to the Lender or such Lender under this Commitment, including, without limitation, contingent or deferred obligations of the Lender.

7. Cash Collateral Accounts

Upon delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section F.1 and in addition to any other rights or remedies of the Lender hereunder, the Lender shall thereafter be entitled to deposit and retain in an account to be maintained by the Lender, and which for the



purposes hereof shall be considered to be the Lender's account and not the Borrower's account bearing interest for the Borrower at the rates of interest of the Lender as may be applicable in respect of other deposits of similar amounts for similar terms, amounts which are received by the Lender from the Borrower to the extent that and for so long as such amounts either may be required to satisfy any Obligations of such Borrower or are actually used to satisfy any such Obligations; provided that if such amounts are no longer required or not so used, the Lender shall forthwith return the same together with interest accrued thereon to the Borrower.

8. Lender May Perform Covenants

If the Borrower shall fail to perform any covenant on its part herein contained, the Lender may, upon prior notice to the Borrower, perform any of the said covenants capable of being performed by the Lender and, if any such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds and shall be entitled to reimbursement of any such expenditure. All amounts so paid by the Lender hereunder shall be repaid by the Borrower on demand and therefore, shall bear interest at the rate set forth in Section 1.8 from the date paid by the Lender hereunder to and including the date such amounts are repaid in full by the Borrower.

9. Administration Fee Payable in Default

In the event of a default by the Borrower or any Guarantor in their respective obligations under this Commitment, Loan or Security that is not cured within the timeframes set out herein, the Lender shall, notwithstanding anything contained herein to the contrary, be entitled to receive in addition to all other fees, charges and disbursements, an administration and management fee in the amount of \$5,000 for each month or part thereof that the Borrower and/or any Guarantor is in default of its obligations under the Commitment, Loan or Security. The said sum or sums are agreed to be liquidated damages to cover the Lender's administration and management costs and are not intended nor shall they be construed as a penalty. All such sums payable to the Lender shall be a charge upon the Project and its assets and interest shall accrue thereon as if they were Loan principal.

10. Priority of Loan in Default

In the event of a default by the Borrower or any Guarantor in their respective obligations under this Commitment, Loan or Security that is not cured within the timeframes set out herein, the Loan priority shall change to be as follows:

- a) Facility 1 – Construction shall remain in 1st position on all project lands
- b) Facility 2A – Land & Servicing shall be in 2nd position on lands of which have not been discharged by Pre-Payment or Net Sales Proceeds; then
- c) Facility 2B – Land & Servicing shall be in 3rd position on lands of which have not been discharged by Pre-Payment or Net Sales Proceeds.

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G. GENERAL PROVISIONS

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

Chaitons LLP
 5000 Yonge Street, 10th Floor
 Toronto, ON M2N 7E9
 Attention: Robert Miller
4. The Borrower's solicitors shall be:

Grechi Carter, Hamilton Barristers & Solicitors
 235 Highway 8
 Stoney Creek, ON, L8G1E2
 Attention: Michael Luppino
 mluppino@gclaw.ca
 (905) 930-9957
5. The Borrower shall bear any and all reasonable legal costs of the Lender.
6. Time is of the essence in this Commitment.
7. This Commitment shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.
8. The Obligors agree that if any one or more of the provisions contained in this Commitment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any or all other provisions of this Commitment and this Commitment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
9. The waiver by the Lender of any breach or Default by the Obligors of any provisions contained herein shall not be construed as a waiver of any other or subsequent breach or Default by them. In addition, any failure by the Lender to exercise any rights or remedies hereunder or under the Security shall not constitute a waiver thereof.
10. Notwithstanding the registration of the Security or the advancement of funds, the terms of this Commitment shall not merge with the delivery and/or registration of the Security and shall remain in full force and effect. Any default under the terms of this Commitment shall be deemed a default under the Security and any default under the terms of the Security shall be deemed a default under the terms hereof. In the event of a conflict between the terms of the Security and the terms of this Commitment, the Lender, in its sole discretion may determine which shall take precedence and govern.
11. This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.
12. From time to time, the Lender publishes advertisements or announcements of completed transactions. The advertisements or announcements include, but are not limited to, press releases, paid advertisements, internally displayed tombstones,

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social media, investor brochures or information displayed on the internet and/or the Lender's intranet. The Obligors consent to the publication of an advertisement or announcement of the transaction contemplated by this Commitment. The Obligors covenant and agree to permit the Lender to photograph or utilize existing photographs or artistic renderings (for unfinished Projects) of the Property for the possible use in internal or external marketing programs.

13. Any word importing the singular or plural shall include the plural and singular, respectively. If any party is comprised of more than one entity, the obligations of each of such entities shall be joint and several. Any word incorporating persons of either gender, or firms, or corporations shall include persons of other gender, and firms, and corporations were the context so requires.
14. The headings and section numbering appearing in this Commitment are included only for convenience of reference and in no way define, limit, construe, or describe the scope or intent of any provision of this Commitment.

If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this letter agreement. The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied at the sole discretion of the Lender and its solicitors.

By signing this Commitment, pertaining to **York Estates – MZGI 452** the Borrower and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower and the Guarantors, including reports from other credit grantors, consumer reporting agencies, and credit bureau.

Unless this Commitment is accepted by the Borrower and all required Guarantors within **five (5) Business Days** of the date hereof by delivery of a fully executed copy to the Lender, then, at the Lender's sole option, the Commitment shall be terminated.

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

Yours truly,

DocuSigned by:

 6697E6642B774AE...


Cecil Hayes CIM
 Chief Operating Officer, Broker

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6/23/2022

Acknowledged and agreed at _____ this _____ day of _____, 2022.

Borrower:

2557386 Ontario Inc

DocuSigned by:
Per: Mike Bettiol
Name: EFFC4443B3D54AA...
Title: _____

Per: _____
Name: _____
Title: _____

I/we have authority to bind the Corporation

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

Guarantors:

2363823 Ontario Inc. (o/a Mariman Homes)

DocuSigned by:
Per: Mike Bettiol
Name: EFFC4443B3D54AA...
Title: _____

Per: _____
Name: _____
Title: _____

I/we have authority to bind the Corporation

DocuSigned by:
Mike Bettiol

Michael Bettiol I/S

Witness: _____



APPENDIX "A"
PROPERTY AND PERMITTED ENCUMBRANCES

- 1. Project Property**
 - a) PART WARNER NELLES TRACT DESIGNATED AS PART 1, 18R-7058; SAVE & EXCEPT PART 1, 18R-7281; T/W EASEMENT OVER PART 2, 18R-7058 AS IN HC252899; TOWNSHIP OF SENECA HALDIMAND COUNTY

- 2. Permitted Encumbrances**
 - a) Not Applicable



APPENDIX "B" DEFINITIONS

1. **"Advances"** means collectively, the Initial Advance, a Lender Advance and a Borrower Draw and **"Advance"** means any one (1) of them as the context so requires.
2. **"Affiliate"** means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate and **"Affiliates"** means more than one (1) of them. A Person shall be deemed to control a Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the term "controlled" shall have a similar meaning.
3. **"Applicable Laws"** means all statutes, laws, by laws, regulations, ordinances, orders, codes, rules and requirements of governmental or other public authorities having jurisdiction in force from time to time and includes all Environmental Law.
4. **"Business Day"** means any day which is not a Saturday, Sunday, or day observed as a holiday under the Applicable Laws in the province in which the Project is located.
5. **"Condominium Act"** means the *Condominium Act, 1998* (Ontario).
6. **"Condominium Documents"** means the declaration, condominium corporation by-laws, shared facilities agreements, insurance trust agreement (if any) and/or other documents relating to the creation and operation of the Project as a condominium.
7. **"Construction Act"** means the *Construction Act* (Ontario).
8. **"Project Schedule"** means the schedule Project activities provided to and approved by the Lender and the Quantity Surveyor, to the extent applicable, as same may be amended from time to time with the consent of the Lender, in its sole discretion.
9. **"Deposit Insurer"** means a deposit bonding and deposit insurance company acceptable to the Lender as the surety for bonds and/or excess deposit insurance issued to Tarion and/or purchasers of Units pursuant to the terms of the agreements of purchase and sale made between the Borrower and such purchasers thereunder.
10. **"Eligible Pre-sales"** means the sale of a Unit in which:
 - a) such sale is made pursuant to a binding and unconditional agreement of purchase and sale, a copy of which has been provided to the Lender and which is in the form satisfactory to the Lender;
 - b) the period in which any right of rescission or right to claim a return of a Purchaser Deposit by the applicable purchasers under such agreement of purchase and sale is expired;
 - c) the purchasers under such agreement of purchase and sale must:
 - (i) be *bona fide*;
 - (ii) be arm's length from the Borrower and the Guarantors;



- (iii) be obligated to make a Purchaser Deposit of not less than 8.00% of the Gross Sale Price to be received prior to occupancy; and
 - (iv) not be in default of its payment obligations (including payments on account of the relevant Purchaser Deposit) under the agreement of purchase and sale or in respect of any mortgage commitment;
 - d) the Lender may, in its sole discretion, exclude foreign purchasers and purchasers who are not natural Persons from Eligible Pre-Sales;
 - e) if the purchaser either individually or in conjunction with a spouse or child (or, in the case of Persons that are not individuals, together with affiliates thereof within the meaning of the *Business Corporations Act* (Ontario)) is purchasing more than three (3) Units, the sale of such Units will not be designated Eligible Pre-Sales unless approved in writing by the Lender in its sole discretion; and
 - f) all Purchaser Deposits are held in trust by designated solicitors acceptable to the Lender in accordance with the agreement of purchase and sale (except those Purchaser Deposits that have been released for application towards Project Costs) at an account with the Lender.
- 11. "Environmental Law"** means the statutes, regulations, policies, directives, orders, approvals, and other legal requirements of any Governmental Authority or the common law which affect the Project, the Property, the Borrower's and/or Guarantors' respective business, and which impose any obligations relating to protection, conservation, or restoration of the environment.
- 12. "Fiscal Quarter"** means the four (4), three (3) month financial accounting periods for the Borrower, commencing on the first day immediately following the Borrower's year end, in each year.
- 13. "Governmental Authority"** means any government, parliament, legislature, municipal council, or other regulatory or legislative authority, agency, commission, department or board of any government, parliament, legislature, municipal council or any political subdivision thereof, or any court or any other law, by-law, regulation or rule-making entity (including self-regulating and industry boards, associations and entities of all kinds empowered by legislation, by-law, proclamation, order, the exercise of prerogative power or regulation charged with the administration, regulation or enforcement of Applicable Laws or such board's, association's or entity's own codes, ordinances, orders, decrees, edicts, rules, by-laws, regulations policies, voluntary restraints, practices or guidelines), having jurisdiction in the relevant circumstances, or any Person acting under the authority of any of the foregoing (including any arbitrator with the authority to bind the parties at law) or any other authority, agency, commission, department, association or board charged with the administration, regulation or enforcement of Applicable Laws.
- 14. "Gross Sale Price"** means the gross sale price (inclusive of HST) set out in an agreement of purchase and sale relating to the sale of a Unit (and any related parking, locker and other ancillary units), net of any pricing incentives.
- 15. "Hard Costs"** means the amounts expended or to be expended for work, services or materials done, performed, placed or furnished in connection with the construction of the Project, all as more particularly set out in the Project Budget.
- 16. "Hazardous Substance"** means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to any Environmental Law, including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous



wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law.

17. **"HCRA"** means the Home Construction Regulatory Authority and/or its successors and assigns.
18. **"Holdbacks"** means any amounts required to be retained by or on behalf of the Borrower in respect of the value of work, services and materials actually done, performed, placed or furnished on or in the Project in accordance with the Construction Act.
19. **"HST"** means any goods and services tax, harmonized sales tax or similar value added tax exigible or applicable in the Province of Ontario pursuant to the *Excise Tax Act* (Canada) as amended from time to time and/or any successor legislation.
20. **"Interest Adjustment Date" or "IAD"** means the date that is the first (1st) of the month following the date of the Initial Advance.
21. **"Lease"** means any lease, sublease, agreement to lease, offer to lease, licence or right of occupation granted from time to time by or on behalf of the Borrower entitling the lessee, sublessee or grantee thereunder to use or occupy all or any part of the Property.
22. **"Letter of Credit"** means a standby letter of credit, commercial or letter of guarantee, as applicable, issued by an Affiliate of the Lender under Facility 3, to the extent applicable.
23. **"Permitted Deductions"** means the following amounts, in the aggregate, Purchaser Deposits, reasonable closing costs such as approved legal fees, arm's length realty commissions, realty taxes, and any other closing adjustments acceptable to the Lender, in its sole discretion.
24. **"Person"** means any individual, partnership, corporation, trust, trustee or other entity or any combination of them.
25. **"Project Budget"** means the budget of all Project Costs, which has specified on a line-by-line basis, all Project Costs, as prepared by the Borrower, reviewed by the Quantity Surveyor, to the extent applicable, and approved by the Lender, and as may be amended from time to time with the consent of the Lender, which consent shall be in the Lender's sole discretion.
26. **"Project Costs"** means the aggregate of all Hard Costs and all Soft Costs expended or to be expended to construct the Project in accordance with the Project Documents and Project Schedule.
27. **"Project Documents"** Means the plans and specifications (including all structural, architectural, mechanical, electrical, landscape and interior design and specifications) pertaining to the development and construction of the Project prepared by or at the direction of the Borrower and as approved by the Lender in consultation with the Quantity Surveyor, to the extent applicable, as amended from time to time with the consent of the Lender, in its sole discretion.
28. **"Purchaser Deposits"** means the deposits paid by purchasers of Units under the agreements of purchase and sale.
29. **"Quantity Surveyor"** means a quantity surveyor, as approved by the Lender, in its sole direction, to assist the Lender with respect to the Borrower's construction of the Project.
30. **"Requirements of Environmental Law"** means all requirements of Applicable Laws and of any Governmental Authority relating to environmental or occupational health and safety matters (as they relate to exposure to a Hazardous Substance) and the assets and undertaking of such Person and the intended uses thereof in connection with such matters, including all such requirements relating to: (a) the protection,



preservation or remediation of the natural environment (the air, land, surface water or groundwater);
(b) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation;
(c) consumer, occupational or public safety and health (as they relate to exposure to a Hazardous Substance); and (d) Hazardous Substance or conditions.

31. "Soft Costs"

means all amounts expended or to be expended in respect of the Project for consultants, architects, taxes, surveys, insurance, bonding costs, legal fees, promotions of the Project, financing, leasing, pre-operating costs and all other costs related to the Project, except Hard Costs and the cost of acquiring the Property.

32. "Tarion"

means Tarion Warranty Corporation and/or its successors and assigns.

33. "Unit"

means a "unit" (as defined in the Condominium Act) comprising part of the Project for use as a residence and/or ancillary uses together with the common elements and exclusive use interests appurtenant thereto, to the extent applicable.



APPENDIX "C" INSURANCE REQUIREMENTS

1. General

The following shall be provided with respect to insurance on the Project:

- a) Proof of appropriate Commercial Liability insurance and an assignment of insurance. A certificate of insurance showing the Lender as additional insured and loss payee, and coverage of not less than the amount deemed adequate by the Lender's insurance consultant.
- b) Proof of Builders' All Risks property insurance in connection with the Project, including rental loss insurance, if applicable, with responsible and reputable insurance companies in such amounts equal to 100% of projected Hard Costs and not less than 25% of all Soft Costs, plus 100% of finance charges.
- c) If applicable, Boiler and Pressure Vessel insurance including rental loss, for such amount as may be acceptable to the Lender, all with such deductibles as are customary in the case of businesses of established reputation engaged in the same or similar businesses and, in an event, as are acceptable to the Lender. The Lender shall be added as an additional insured to the liability policies.
- d) Other insurance including, but not limited to, Environmental Insurance, Pollution Insurance, and Key Persons Insurance, as the Lender's insurance consultant may deem necessary given the nature of the Project. The amount of coverage required shall be reasonably determined by the Lender's insurance consultant.

2. Insurance Policies

All such insurance policies shall:

- a) Name the Lender as mortgagee thereunder as its interest may appear;
- b) Name the Lender as additional insured and loss payee;
- c) Have attached the Insurance Bureau of Canada standard mortgage clause;
- d) Provide that no cancellation, termination, or adverse amendment thereof shall take effect unless the insurer concerned has given the Lender not less than thirty (30) days prior written notice of such proposed action;
- e) Provide that proceeds of all insurance for physical damage and rental losses shall be payable to the Lender or as it may direct; and
- f) Otherwise be in such form as the Lender and/or the Lender's insurance consultant shall reasonably require.

3. Application of Proceeds

So long as no Event of Default has occurred and is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be, with the approval of the Lender:

- a) Applied in reduction of amounts outstanding hereunder; or
- b) Released to the Borrower subject to compliance with such conditions as the Lender may require.

**4. Other Conditions**

- a) If an Event of Default has occurred or is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be payable to the Lender to be applied by it in reduction in the Loan Amount outstanding hereunder.
- b) The proceeds of all insurance held by the Lender shall, unless and until the same are applied or released to the Borrower as aforesaid, constitute continuing collateral security for the Borrower's obligations and liabilities in respect of amounts outstanding hereunder.
- c) In the event that the Lender shall not be obligated hereunder to apply the proceeds of insurance to pay for the cost of repairing the damage or destruction to or replacement of the Property in respect of which the insurance is payable and the Lender elects to apply the proceeds of insurance to the Loan Amount owing by the Borrower hereunder, each of the Borrower (on its own behalf and on behalf of each of the Guarantors), hereby irrevocably waives any and all statutory provisions which may require that proceeds of insurance be used to restore or rebuild the Property.
- d) The Borrower shall deliver or cause to be delivered to the Lender, certificates of insurance signed by the insurers, or other evidence satisfactory to the Lender, acting reasonably, of the insurance coverage required hereunder, including certificates of renewal as soon as they are available.

5. Insurance Consultant

The Borrower acknowledges that all policies of insurance shall be subject to review and approval by an insurance consultant acting on behalf of the Lender and the Borrower agrees to pay for the consultant's fees in connection with such review upon registration of the Security and for each insurance renewal throughout the Term.



6. Broker Contact Information and Release

Please provide the following information for our records:

Insurance Broker	
Brokerage Name:	
Contact Name:	
Address:	
City:	
Phone #:	
Email Address:	

The Borrower and persons otherwise connected with this Commitment, hereby authorize the above noted insurance broker to release insurance information required by the Lender and their insurance consultant for this transaction.

The Borrower and persons otherwise connected with this Commitment, hereby authorize the Lender to release information necessary to determine insurance requirements, as needed, to the Lender’s insurance consultant for the purposes of conducting an insurance review.

Borrower:

2557386 Ontario Inc

Per: _____
Name:
Title:
I/we have authority to bind the Corporation



APPENDIX "D"
PROJECT PRO FORMA

Project Revenue

Gross Residential Revenue	\$ 96,143,825
Less: HST	\$ (9,659,000)
Plus: Upgrades & Recoveries	\$ 1,848,000
Net Residential Revenue	88,332,825

Non-Land Costs

Development Charges and Permits	\$ 725,000
Servicing Costs	\$ 6,420,000
Construction Costs	\$ 39,039,000
Consultant & Professional Costs	\$ 915,000
Marketing & Advertising Costs	\$ 3,973,000
Financing Costs	\$ 5,310,000
Contingency	\$ 3,058,000
Total non-land costs	59,440,000

Land Costs

Land	\$ 13,250,000
Appraised Land Surplus	\$ 8,750,000
Total land-costs	22,000,000

Total Costs	81,440,000
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Project Profit	6,892,825
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Return of Gross Revenue 7.2%

Return on Project Costs 8.5%



APPENDIX "E"
SUPPORTING MATERIAL REGARDING DISCHARGES

The following units have been identified and are anticipated to fall below the \$344,000 payment requirement (as delineated in A.21 Partial Discharge Provisions). The Lender understands that it is the Borrower's objective to paydown the summation of Facility 2A – Land and Servicing and F2B – Mezzanine by the closing of the 55th unit. As such, the Borrower will be required to paydown these facilities, as delineated in A.21 Partial Discharge Provisions, in the average amount of \$344,000.

The table below has been provided as guidance for anticipated paydown amounts associated with each unit, and each facility.

Purchaser	Purchase Price	Total Deposit	Lot #	Servicing	Construction	Total	HST	Deferred(s)	NSP	F1:	F2A&B:
Devine	870,000	87,000	43	521,000	723,906	1,244,906	-78,850	24,080	680,070	573,743	0
Grecia	870,000	87,000	11	521,000	627,385	1,148,385	-78,850	24,080	680,070	497,244	52,000
Bates	860,000	86,000	8	521,000	609,288	1,130,288	-77,699	24,080	672,221	482,900	62,000
Horvat	910,000	91,000	64	521,000	627,385	1,148,385	-83,451	24,080	711,469	497,244	84,000
Mabee	950,000	95,000	9	521,000	609,288	1,130,288	-88,053	24,080	742,867	482,900	133,000
Periera	945,000	90,000	62	521,000	609,288	1,130,288	-87,478	24,080	743,442	482,900	134,000
Philip	1,299,500	115,000	20	521,000	872,307	1,393,307	-128,261	24,080	1,032,159	691,360	159,000
Gray	1,200,000	180,000	10	521,000	699,776	1,220,776	-116,814	24,080	879,106	554,618	179,000
Manav	1,250,000	125,000	13	521,000	699,776	1,220,776	-122,566	24,080	978,354	554,618	385,000
Pooni	1,327,750	117,500	14	521,000	647,896	1,168,896	-131,511	24,080	1,054,659	513,500	385,000
Shah	1,327,750	117,500	15	521,000	647,896	1,168,896	-131,511	24,080	1,054,659	513,500	385,000
Arora	1,250,000	125,000	16	521,000	699,776	1,220,776	-122,566	24,080	978,354	554,618	385,000
Aestajada	1,412,000	211,800	17	521,000	609,288	1,130,288	-141,204	24,080	1,034,916	482,900	385,000
Mand	1,250,000	125,000	18	521,000	681,196	1,202,196	-122,566	24,080	978,354	539,892	385,000
Antony	1,327,750	117,500	19	521,000	647,896	1,168,896	-131,511	24,080	1,054,659	513,500	385,000
Prakash	1,327,750	117,500	21	521,000	681,196	1,202,196	-131,511	24,080	1,054,659	539,892	385,000
Mathura	1,327,750	117,500	22	521,000	647,896	1,168,896	-131,511	24,080	1,054,659	513,500	385,000
Shah	1,751,500	155,000	23	521,000	699,776	1,220,776	-180,261	24,080	1,392,159	554,618	385,000
Ding	1,700,000	255,000	24	521,000	872,307	1,393,307	-174,336	24,080	1,246,584	691,360	385,000
Xu	1,505,000	225,750	25	521,000	681,196	1,202,196	-151,903	24,080	1,103,267	539,892	385,000
Xin	1,519,500	227,100	26	521,000	699,776	1,220,776	-153,571	24,080	1,114,749	554,618	385,000
Fang	1,435,000	215,250	27	521,000	699,776	1,220,776	-143,850	24,080	1,051,820	554,618	385,000
Thambilipillai	1,299,500	115,000	28	521,000	627,385	1,148,385	-128,261	24,080	1,032,159	497,244	385,000
Healing Touch	1,327,750	117,500	30	521,000	647,896	1,168,896	-131,511	24,080	1,054,659	513,500	385,000
Liao	1,638,500	217,500	32	521,000	699,776	1,220,776	-167,261	24,080	1,229,659	554,618	385,000
Phan	1,460,000	219,000	33	521,000	681,196	1,202,196	-146,726	24,080	1,070,194	539,892	385,000
Shane George	1,500,000	225,000	34	521,000	681,196	1,202,196	-151,327	24,080	1,099,593	539,892	385,000
John George	1,500,000	225,000	35	521,000	681,196	1,202,196	-151,327	24,080	1,099,593	539,892	385,000
Bawa	1,250,000	125,000	36	521,000	699,776	1,220,776	-122,566	24,080	978,354	554,618	385,000
Manocha	1,250,000	125,000	37	521,000	699,776	1,220,776	-122,566	24,080	978,354	554,618	385,000
Pahuja	1,250,000	125,000	38	521,000	681,196	1,202,196	-122,566	24,080	978,354	539,892	385,000
Jakhu	1,550,000	155,000	39	521,000	947,834	1,468,834	-157,080	24,080	1,213,840	751,221	385,000
Singh	1,480,000	222,000	40	521,000	699,776	1,220,776	-149,027	24,080	1,084,893	554,618	385,000
406398 BC	1,480,000	222,000	41	521,000	699,776	1,220,776	-149,027	24,080	1,084,893	554,618	385,000
Kondola	1,480,000	222,000	42	521,000	681,196	1,202,196	-149,027	24,080	1,084,893	539,892	385,000

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Thomas	2,498,000	360,000	44	521,000	1,085,859	1,606,859	-266,142	24,080	1,847,778	860,614	385,000
Mogridge	1,350,000	135,000	45	521,000	699,776	1,220,776	-134,071	24,080	1,056,849	554,618	385,000
Sheppard	1,491,500	223,725	46	521,000	681,196	1,202,196	-150,350	24,080	1,093,345	539,892	385,000
Thind	1,150,000	115,000	47	521,000	627,385	1,148,385	-111,062	24,080	899,858	497,244	385,000
Muddadan/Antony	1,150,000	115,000	48	521,000	627,385	1,148,385	-111,062	24,080	899,858	497,244	385,000
1386579 (Bajwa)	1,299,500	115,000	49	521,000	627,385	1,148,385	-128,261	24,080	1,032,159	497,244	385,000
Jose/Joy/George	1,327,750	117,500	50	521,000	872,307	1,393,307	-131,511	24,080	1,054,659	691,360	385,000
Camara	1,350,000	135,000	51	521,000	699,776	1,220,776	-134,071	24,080	1,056,849	554,618	385,000
Skariah	1,175,000	120,000	52	521,000	647,896	1,168,896	-113,938	24,080	916,982	513,500	385,000
Ribeiro	1,445,500	216,750	53	521,000	627,385	1,148,385	-145,058	24,080	1,059,612	497,244	385,000
Richardson	1,494,200	225,000	54	521,000	723,906	1,244,906	-150,660	24,080	1,094,460	573,743	385,000
Shi	1,425,000	20,000	55	521,000	699,776	1,220,776	-142,699	24,080	1,238,221	554,618	385,000
Liu	1,434,000	209,000	56	521,000	699,776	1,220,776	-143,735	24,080	1,057,185	554,618	385,000
Kumarasamy	1,327,750	117,500	57	521,000	723,906	1,244,906	-131,511	24,080	1,054,659	573,743	385,000
Cao	1,480,000	222,000	58	521,000	699,776	1,220,776	-149,027	24,080	1,084,893	554,618	385,000
Antony	1,327,750	117,500	59	521,000	681,196	1,202,196	-131,511	24,080	1,054,659	539,892	385,000
Crawford	1,440,000	215,250	60	521,000	699,776	1,220,776	-144,425	24,080	1,056,245	554,618	385,000
Ronbeck	1,600,000	240,000	61	521,000	872,307	1,393,307	-162,832	24,080	1,173,088	691,360	385,000
Fijomon	1,327,750	117,500	63	521,000	647,896	1,168,896	-131,511	24,080	1,054,659	513,500	385,000
Akbar	1,700,000	255,000	65	521,000	723,906	1,244,906	-174,336	24,080	1,246,584	573,743	385,000
[Purchaser]	1,812,500	210,000	29	521,000	699,776	1,220,776	-187,279	24,080	1,391,141	554,618	
[Purchaser]	1,812,500	210,000	31	521,000	699,776	1,220,776	-187,279	24,080	1,391,141	554,618	
[Purchaser]	2,078,625	240,000	1	521,000	872,307	1,393,307	-217,895	24,080	1,596,650	691,360	
[Purchaser]	2,078,625	240,000	2	521,000	872,307	1,393,307	-217,895	24,080	1,596,650	691,360	
[Purchaser]	2,078,625	240,000	3	521,000	872,307	1,393,307	-217,895	24,080	1,596,650	691,360	
[Purchaser]	2,078,625	240,000	4	521,000	872,307	1,393,307	-217,895	24,080	1,596,650	691,360	
[Purchaser]	2,078,625	240,000	5	521,000	872,307	1,393,307	-217,895	24,080	1,596,650	691,360	
[Purchaser]	1,812,500	210,000	6	521,000	699,776	1,220,776	-187,279	24,080	1,391,141	554,618	
[Purchaser]	1,812,500	210,000	7	521,000	699,776	1,220,776	5	24,080	1,578,425	554,618	
[Purchaser]	1,812,500	210,000	12	521,000	699,776	1,220,776	-187,279	24,080	1,391,141	554,618	
[Purchaser]	1,812,500	210,000	66	521,000	699,776	1,220,776	-187,279	24,080	1,391,141	554,618	



APPENDIX "F" REPORTING REQUIREMENTS

Annual	
1. Annual Financial Statements of the Corporate Obligor(s)	<p>As soon as available and, in any event, within ninety (90) days after the end of each of the Corporate Obligors' fiscal years, copies of such Obligors' annual Notice to Reader financial statements prepared by an external professional accountant shall be provided to the Lender.</p> <p>Statements shall be prepared on a consolidated basis and, in each case, consisting of a balance sheet, statement of profit and loss, and statement of changes in financial position for each such year, together with the notes thereto, all prepared in accordance with generally accepted accounting principles consistently applied.</p>
2. Annual Project Budget	As soon as available and, in any event, within ninety (90) days after the end of the Borrower's fiscal year, an updated Project Budget shall be provided to the Lender.
3. Annual Corporate Notice of Assessment	<p>As soon as available and, in any event, within sixty (60) days after each of the Corporate Obligors' corporate tax deadline, copies of such Obligors' Notice of Assessment shall be provided to the Lender.</p> <p>If such Notice(s) of Assessment show a balance owing, such Obligor(s) shall provide proof of payment for the balance.</p>
4. Annual Personal Notice of Assessment	<p>As soon as available and, in any event, within sixty (60) days after each of the Personal Obligors' corporate tax deadline, copies of such Obligors' Notice of Assessment shall be provided to the Lender.</p> <p>If such Notice(s) of Assessment show a balance owing, such Obligor(s) shall provide proof of payment for the balance.</p>
5. Annual Personal Net Worth Statement(s)	As soon as available and, in any event, after the anniversary of the previously received personal net worth statement, an updated personal net worth statement with supporting documentation for each of the Personal Obligors shall be provided to the Lender.
Quarterly	
1. Quarterly Compliance Certificates	As soon as available and, in any event, within thirty (30) days after the end of each of the Borrower's Fiscal Quarters, a loan compliance certificate, in a form and substance satisfactory to the Lender, shall be provided to the Lender.
Monthly	
1. Monthly Project Bank Account Statements	As soon as available and, in any event, within seven (7) days after the end of each calendar month, the bank statement detailing the activity in the bank account specifically designated for the Project (inclusive of future deposits) shall be provided to the Lender. Such bank account, and related statement, shall contain activity relating to the Project.



Other	
1. Property Tax Information	<p>As soon as available, the Borrower shall provide a copy of the property tax bill(s) for the Project to the Lender.</p> <p>On each tax instalment date, as specified on the property tax bill(s), the Borrower shall provide proof of property tax payment to the Lender.</p>
2. Insurance	<p>As soon as available and, in any event, no later than thirty (30) days prior to the insurance expiry date(s), the Borrower will provide a certificate of insurance and policy from its insurance broker indicating that all insurance required by the Lender, as specified in Appendix C, is adequate and still in effect.</p>



APPENDIX "G" FEE DETAILS

The Obligors hereby acknowledge (i) having received and had explained to each of them all of the possible fees and charges set forth in this Commitment, including, without limitation, the Fees in this Appendix G, which would be in addition to the principal and interest due hereunder and (ii) that all such fees and charges are reasonable and reflect a reasonable pre-estimate of Lender's actual costs with respect to same.

- 1. Good Faith Deposit** The Good Faith Deposit delivered by the Borrower to the Lender upon execution of the letter of intent shall be non-refundable to the Borrower and is deemed fully earned by the Lender upon delivery of this Commitment to the Obligors. The Obligors hereby acknowledge and agree that the Good Faith Deposit is a reasonable estimate of the fees to be incurred by the Lender in connection with the preparation of this Commitment, which amount is deemed not to be a penalty.
- 2. Lender Fee** The Lender Fee shall be earned by the Lender upon notification of successful agreement on loan servicing or syndication. The Lender Fee less the Good Faith Deposit shall be deducted from the Initial Advance. Failing an Initial Advance, these funds are due and payable by the Obligors. The Obligors hereby acknowledge and agree that the Lender Fee is a reasonable estimate of the fees to be incurred by Lender in connection with the due diligence and underwriting required hereunder, which amount is deemed not to be a penalty.
- 3. Broker Fee** *[Intentionally Deleted]*
- 4. Syndication Fee** *[Intentionally Deleted]*
- 5. Deferred Lender Fee** *[Intentionally Deleted]*
- 6. Administration Fee** The Administration Fee shall be earned by the Lender upon notification of successful agreement of loan servicing or syndication as compensation for the setup of administration files and completion of all regulatory documentation. The Administration Fee shall be deducted from the Initial Advance. Failing an Initial Advance, these funds are due and payable by the Borrower.
- 7. Draw Fee** The Draw shall be paid to the Lender upon each and every Advance Request as an administrative fee associated with preparing and administering such Borrower Draw request.
- 8. Partial Discharge Fee** The Partial Discharge Fee shall be paid to the Lender upon discharge of the Lender's Security from each Unit as compensation for administering such partial discharge.
- 9. Final Discharge Fee** The Final Discharge Fee shall be paid to the Lender upon final discharge of the Security from the Project as compensation for administering the final discharge.
- 10. Pre-Payment Fee** The Pre-Payment Fee shall be paid to the Lender upon each and every pre-payment request.



- 11. Letters of Credit Fee** The Letters of Credit Fee shall be paid to the lender upon the issuance of the Letters of Credit facility. The Letters of Credit Fee shall be calculated on the Letters of Credit facility value issued and active as at the date of issuance. The Letters of Credit Fee will be payable to the Lender on every subsequent anniversary from the date of issuance of the Letters of Credit facility. The Letters of Credit Fee will be recalculated and applied based on the Letters of Credit facility value remaining as at the anniversary date of its issuance. Any reductions, specific circumstances drawing down the facility value, or cancellations of said Letters of Credit will be reflected as reductions to the facility value of the Letters of Credit facility, upon receipt of adequate supporting documentation, and Lender approval.
- 12. Due Diligence Expenses and Fees** The Borrower shall be responsible for the Lender's legal and other, professional fees and out of pocket expenses in connection with the Loan.
- 13. Accrued Interest** The Obligors hereby acknowledge and agree that interest shall accrue as of the date that the Initial Advance and/or a Lender Advance is deposited into the Lender's trust account. In the event that this Commitment is terminated following the date of such deposit aforesaid, the Obligors hereby acknowledge and agree that such interest up to the date of termination shall immediately become due and payable hereunder, notwithstanding no Advance having been made to the Borrower.



APPENDIX "H" OTHER TERMS

- 1. Maximum Rate of Return**

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

The Borrower shall grant to the Lender a right of first opportunity (the "**Right of First Opportunity**") with respect to providing any further financing required for the Project, including, without limitation, arranging replacement or additional financing for the Project as contemplated herein, and financing for any further development of the Project or of any improvements thereon (the "**Further Financing**"). Prior to consulting with any other lender with respect to any Further Financing, the Borrower shall provide to the Lender in writing a request for such Further Financing with all information necessary for the Lender to process the request and the Lender shall have a period of **sixty (60) days** after receipt of same (the "**Opportunity Period**") to provide to the Borrower a mortgage commitment letter to provide the Further Financing. The Borrower hereby undertakes not to communicate with any other lender with respect to provision of the Further Financing during the Opportunity Period, and to fully cooperate with the Lender in good faith during the Opportunity Period to provide such further information as the Lender may require in pursuit of its Right of First Opportunity.
- 3. Right of First Refusal** [intentionally Deleted – N/A]



4. Time and Place of Payments

Payments due by the Borrower under the Commitment are to be made to the Lender by way of:

- a) pre-authorized debit payment;
- b) wire payment;
- c) electronic fund transfer (EFT);
- d) bank draft; and/or
- e) certified cheque.

Payments shall be made no later than 1:00 P.M. (Eastern Daylight Time) on the date scheduled for payment. Payments made after such time shall be treated as having been received on the next Business Day. Whenever any payment is due on a day that is not a Business Day, then such payment will be due on the next Business Day, and interest will accrue to such Business Day.

Payments made in person shall be made at the Lender's offices at 206-465 Phillip Street, Waterloo, Ontario.

5. Principal Payments

There shall be no regularly scheduled principal repayments and the entire outstanding principal amount shall become due and payable at the Maturity Date.

6. Beneficial Owner

In the event that the Borrower holds title to the Property as nominee and bare trustee for the sole use, benefit and advantage of another Person (the "**Beneficial Owner**"), the Borrower and Beneficial Owner shall grant to the Lender a trustee and beneficial owner agreement (in form and content satisfactory to the Lender and its solicitors, in their sole discretion) prior to the Initial Advance, and all the covenants, agreements, rights, obligations, representations, warranties and other provisions set out in this Commitment relating to the Borrower shall apply, *mutatis mutandis*, to the Beneficial Owner.

7. Assignment by the Lender

The Obligors acknowledge and agree that the Lender may transfer and assign, without their consent and without prior notice to them, the Lender's rights and obligations under this Commitment and the Security to any other Person.

This is Exhibit "B" referred to in the Affidavit of Mike Bettiol sworn by Mike Bettiol of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN

071



DISCHARGE STATEMENT AT: April 4th, 2023

Prepared on April 4th, 2023

ID#: DS202304041MZGI452

Terms: \$26,849,000 1st mortgage for the Servicing and Construction of the York Estates project with a term of 37 months.

Facility 1: \$8,000,000: Interest at Prime + 5.30% per annum

Facility 2A: \$15,825,000: Interest at Prime + 5.30% per annum

Facility 2B: \$3,024,000: Interest at Prime + 11.05% per annum

Interest shall accrue commencing on the date of the Initial Advance, calculated daily (365 days/year), compounded and payable monthly with interest only payments made from Borrower Draws up to the budgeted amount, after which payments shall be made from the Borrower and/or the Guarantor's own resources.

York Estates - MZGI 452

30 Front Street Haldimand, ON

	Facility 1	Facility 2A	Facility 2B	Total
Principal Amount Outstanding	\$ 11,767,500.50	\$ 3,024,000.00	\$ 14,791,500.50	
Unpaid Monthly Interest	\$ 241,193.85	\$ 91,924.05	\$ 333,117.90	
Unpaid First Amendment Fee			\$ 5,000.00	
Outstanding Legal Fees***			\$ 3,315.25	
Final Discharge Admin Fee			\$ 1,000.00	
Less: Cash held in Trust			\$ -	
Total Balance on April 4th, 2023				\$ 15,133,933.65
Per Diem	\$ 3,944.17	\$ 1,513.07	\$ 5,457.24	

Payment must be received by 1:00 p.m. or per diem interest will be added up to the next business day

***Final Legal Fees to be verified at time of closing

You are authorized and directed to make the balance due payable to our solicitor; **Chaitons LLP "In Trust"**, OR as they may further direct.

MARSHALLZEHR GROUP INC.

DocuSigned by:

 5D7B047774B943F...
 Murray Snedden, Principal Broker
 Mortgage Administrator #: 11955

DocuSigned by:

 F7F40E6466094E2...
 Lisa Evans, Manager - Project Management

E. & O. E.

If Total Payable is not received by the Proposed Settlement Date, then a per diem rate set out above will be charged. This Statement is only valid until April 30th, 2023. Please confirm the Total Payable prior to remitting funds. Balances are projected and are based on the assumption that all outstanding amounts/payments due up to the Proposed Settlement Date are paid as set out therein. MarshallZehr Group Inc. will not provide a discharge of the mortgage until the entire outstanding balance, including interest and costs have been paid and honored.

MarshallZehr Group Inc.

FSRA Mortgage Brokerage #12453 | FSRA Mortgage Administrator #11955 | BCFSA Mortgage Broker #MB600627
 412 Albert Street, Suite 100, Waterloo ON, N2L 3V3

0071

NOTICE OF INTENTION TO ENFORCE A SECURITY
(given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)

To: **2557386 Ontario Inc.**, an insolvent person

Take notice that:

1. **MarshallZehr Group Inc.**, a secured creditor, intends to enforce its security on all of the present and after-acquired property of 2557486 Ontario Inc.
2. Charge/Mortgage in the principal amount of \$35 million granted in favour of the Lender and registered on lands municipally known as 30 Front Street, Haldimand, Ontario, as instrument number CH118769, and a General Security Agreement dated June 30, 2022 granted by the Borrower in favour of the Lender (collectively, the "**Security**").
3. The total amount of indebtedness secured by the Security as at the close of business on April 4, 2023 is **\$15,133,933.65** inclusive of principal, interest, and fees (excluding certain legal costs).
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at Toronto, this 6th day of April, 2023

MARSHALLZEHR GROUP INC.,
by its lawyers, Chaitons LLP

Per: 

PRIVATE & CONFIDENTIAL

April 6, 2023

VIA E-MAIL, REGISTERED AND REGULAR MAIL

2363823 Ontario Inc. o/a Mariman Homes	Michael Bettiol
558 Upper Gage Ave #363	3500 Cemetery Road
Hamilton ON	Binbrook, Ontario
L8V 4J6	L0R 1C0

Re: *Indebtedness of 25573869 Ontario Inc. (the "Borrower") to MarshallZehr Group Inc. (the "Lender")*

Dear Sir,

We are the lawyers for the Lender.

Please find enclosed a copy of our letter to the Borrower dated April 6, 2023 demanding payment of its indebtedness and liabilities to the Lender under the Commitment Letter dated June 23, 2022 (the "**Commitment Letter**"), which, as of April 4, 2023, was **\$15,133,933.65**.

We refer to a written guarantee dated June 30, 2022 granted by 2363823 Ontario Inc. and Michael Bettiol (collectively, the "**Guarantors**" and individually a "**Guarantor**") in favour of the Lender (the "**Guarantee**").

Pursuant to the Guarantee, each Guarantor has jointly and severally guaranteed payment of all of the indebtedness and liabilities of the Borrower to the Lender under the Commitment Letter. Each Guarantor's obligations under the Guarantee are secured by, *inter alia*, General Security Agreements each dated June 30, 2022 granted by each Guarantor in favour of the Lender.

The Guarantors' indebtedness and liabilities to the Lender under the Guarantee are payable on demand. On behalf of the Lender, we hereby demand immediate payment of the Guarantors' indebtedness and liabilities to the Lender under the Guarantee.

Enclosed please find a Lender's Notice of Intention to Enforce Security for each Guarantor, which is served upon each Guarantor pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada).

Govern yourselves accordingly.

Yours truly,
 CHAITONS LLP



Maya Poliak
 PARTNER
 ENCL.

Cc: MarshallZehr Group Inc.

NOTICE OF INTENTION TO ENFORCE A SECURITY
(given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)

To: **2363823 Ontario Inc. and Michael Bettiol**, insolvent persons

Take notice that:

1. **MarshallZehr Group Inc.**, a secured creditor, intends to enforce its security on all of the present and after-acquired property of 2363823 Ontario Inc. and Michael Bettiol.
2. The security that is to be enforced includes General Security Agreements each dated June 30, 2022 (collectively, the "**Security**").
3. The total amount of indebtedness secured by the Security as at the close of business on April 4, 2023 is **\$15,133,933.65** inclusive of principal, interest, and fees (excluding certain legal costs).
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at Toronto, this 6th day of April, 2023.

MARSHALLZEHR GROUP INC.,
by its lawyers, Chaitons LLP

Per: 

PRIVATE & CONFIDENTIAL

April 6, 2023

VIA EMAIL, REGISTERED AND REGULAR MAIL

2557386 Ontario Inc.
558 Upper Gage Ave. #363
Hamilton, ON, L8V 4J6

Re: *Indebtedness of 2557386 Ontario Inc. (the "Borrower") to MarshallZehr Group Inc. (the "Lender")*

Dear Sir,

We are the lawyers for the Lender. Pursuant to the Commitment Letter dated June 23, 2022 (the "**Commitment Letter**"), the Lender made available to the Borrower credit facilities in the aggregate maximum principal amount of \$26,849,000 (the "**Loan**").

We are advised by the Lender that the Borrower is indebted to the Lender under the Commitment Letter in the amount of **\$15,133,933.65** as of April 4, 2023, as detailed in the discharge statement enclosed herewith.

The Borrower's indebtedness to the Lender is secured by, *inter alia*, a Charge/Mortgage in the principal amount of \$35 million granted in favour of the Lender and registered on lands municipally known as 30 Front Street, Haldimand, Ontario, as instrument number CH118769, and a General Security Agreement dated June 30, 2022 granted by the Borrower in favour of the Lender (collectively, the "**Security**").

The Borrower defaulted on its obligations to the Lender under the Commitment Letter as a result of, among other things, its failure to make the required interest payments that were due to the Lender on March 1, 2023 and April 1, 2023. As a result, Events of Default occurred under the Commitment Letter, and the Lender is entitled to declare all Obligations under the Commitment Letter to be immediately due and payable.

On behalf of the Lender, we hereby demand payment of the Borrower's indebtedness to the Lender. Unless payment of the amount set out above, together with additional interest accrued and fees and costs (including legal costs) incurred to the date of payment are paid forthwith, the Lender shall take such steps as it deems necessary to recover payment of the Borrower's indebtedness in full, without further demand upon or notice to you.

Enclosed please find the Lender's Notice of Intention to Enforce Security, which is served upon the Borrower pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada).

Govern yourselves accordingly.

Yours truly,
CHAITONS LLP



Maya Poliak
PARTNER
ENCL.

Cc: MarshallZehr Group Inc.
2363823 Ontario Inc. and Michael Bettiol

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DISCHARGE STATEMENT AT: April 4th, 2023

Prepared on April 4th, 2023

ID#: DS202304041MZGI452

Terms: \$26,849,000 1st mortgage for the Servicing and Construction of the York Estates project with a term of 37 months.

Facility 1: \$8,000,000: Interest at Prime + 5.30% per annum

Facility 2A: \$15,825,000: Interest at Prime + 5.30% per annum

Facility 2B: \$3,024,000: Interest at Prime + 11.05% per annum

Interest shall accrue commencing on the date of the Initial Advance, calculated daily (365 days/year), compounded and payable monthly with interest only payments made from Borrower Draws up to the budgeted amount, after which payments shall be made from the Borrower and/or the Guarantor's own resources.

York Estates - MZGI 452

30 Front Street Haldimand, ON

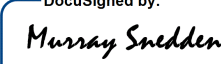
	Facility 1	Facility 2A	Facility 2B	Total
Principal Amount Outstanding	\$ 11,767,500.50	\$ 3,024,000.00	\$ 14,791,500.50	
Unpaid Monthly Interest	\$ 241,193.85	\$ 91,924.05	\$ 333,117.90	
Unpaid First Amendment Fee			\$ 5,000.00	
Outstanding Legal Fees***			\$ 3,315.25	
Final Discharge Admin Fee			\$ 1,000.00	
Less: Cash held in Trust			\$ -	
Total Balance on April 4th, 2023			\$ 15,133,933.65	
Per Diem	\$ 3,944.17	\$ 1,513.07	\$ 5,457.24	

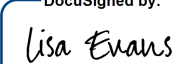
Payment must be received by 1:00 p.m. or per diem interest will be added up to the next business day

***Final Legal Fees to be verified at time of closing

You are authorized and directed to make the balance due payable to our solicitor; **Chaitons LLP "In Trust"**, OR as they may further direct.

MARSHALLZEHR GROUP INC.

DocuSigned by:

 5D7B047774B943F...
 Murray Snedden, Principal Broker
 Mortgage Administrator #: 11955

DocuSigned by:

 F7F40E6466094E2...
 Lisa Evans, Manager - Project Management

E. & O. E.

If Total Payable is not received by the Proposed Settlement Date, then a per diem rate set out above will be charged. This Statement is only valid until April 30th, 2023. Please confirm the Total Payable prior to remitting funds. Balances are projected and are based on the assumption that all outstanding amounts/payments due up to the Proposed Settlement Date are paid as set out therein. MarshallZehr Group Inc. will not provide a discharge of the mortgage until the entire outstanding balance, including interest and costs have been paid and honored.

MarshallZehr Group Inc.

FSRA Mortgage Brokerage #12453 | FSRA Mortgage Administrator #11955 | BCFSA Mortgage Broker #MB600627
 412 Albert Street, Suite 100, Waterloo ON, N2L 3V3

0076

NOTICE OF INTENTION TO ENFORCE A SECURITY
(given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)

To: **2557386 Ontario Inc.**, an insolvent person

Take notice that:

1. **MarshallZehr Group Inc.**, a secured creditor, intends to enforce its security on all of the present and after-acquired property of 2557486 Ontario Inc.
2. Charge/Mortgage in the principal amount of \$35 million granted in favour of the Lender and registered on lands municipally known as 30 Front Street, Haldimand, Ontario, as instrument number CH118769, and a General Security Agreement dated June 30, 2022 granted by the Borrower in favour of the Lender (collectively, the "**Security**").
3. The total amount of indebtedness secured by the Security as at the close of business on April 4, 2023 is **\$15,133,933.65** inclusive of principal, interest, and fees (excluding certain legal costs).
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at Toronto, this 6th day of April, 2023

MARSHALLZEHR GROUP INC.,
by its lawyers, Chaitons LLP

Per: 

This is Exhibit "C" referred to in the Affidavit of Mike Bettiol sworn by Mike Bettiol of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN

SETTLEMENT AGREEMENT

THIS AGREEMENT made the 5th day of June, 2023,

BETWEEN:

MARSHALLZEHR GROUP INC.
("MarshallZehr")

– and –

2557386 ONTARIO INC. (the "Debtor")

-and-

2363823 ONTARIO INC. o/a MARIMAN HOMES (the "Corporate Guarantor")

-and-

1000258812 ONTARIO INC. ("812")

RECITALS:

- A. Pursuant to a Commitment Letter dated June 23, 2022, as amended, (the "**Commitment Letter**"), MarshallZehr, for a syndicate of lenders (collectively, "**MarshallZehr**"), agreed to provide a loan to the Debtor in the maximum principal amount of \$26,849,000 (the "**Loan**"). MarshallZehr is a lender and the administrator of the Loan.
- B. Pursuant to a joint and several guarantee dated June 30, 2022 (the "**Guarantee**"), the Corporate Guarantor and Michael Bettiol (together with the Corporate Guarantor and the Debtor, the "**Obligors**") jointly and severally guaranteed all of the Debtor's obligations to MarshallZehr.
- B. The Obligors have committed numerous Events of Default under the Commitment Letter and MarshallZehr's security.
- C. On April 6, 2023, MarshallZehr served demands for payment (the "**Demands**") and notices of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) on the Obligors.
- D. On May 12, 2023, MarshallZehr commenced an application bearing Court File No. CV-23-00699432-00CL (the "**Receivership Application**") for the appointment of KSV Restructuring Inc. as receiver of the property, assets and undertakings of the Debtor and the Corporate Guarantor (the "**Receiver**").
- E. On May 30, 2023, MarshallZehr and the Obligors agreed to settle the Receivership Application in accordance with the terms of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto), the parties agree as follows:

1. The parties hereto acknowledge and agree that each of the foregoing recitals is true and accurate both in substance and in fact.
2. As of April 4, 2023, the amount owing by the Debtor to MarshallZehr under the Loan is \$15,133,933.65 for principal, interest and fees (excluding legal costs) as detailed in the Demands (the **"Indebtedness"**).
3. The Debtor shall pay to MarshallZehr:
 - (a) \$100,000 by no later than 2:00 pm on June 9, 2023;
 - (b) \$100,000 by no later than 2:00 pm on June 19, 2023;
 - (c) \$300,000 by no later than 2:00 pm on June 30, 2023; and
 - (d) the balance of the Indebtedness by no later than 2:00 pm on October 30, 2023 (the **"Forbearance Termination Date"**).
4. The Debtor agrees to an interest reserve under the Loan effective May 31, 2023 in the amount of \$711,000 (the **"Interest Reserve"**).
5. The Debtor advised MarshallZehr that it does not have the financial resources to establish the Interest Reserve concurrent with the execution of this Agreement. The Obligors and 812 agree that as security for the Interest Reserve, 812 shall grant a collateral charge/mortgage in the principal amount of \$1,000,000 against the property bearing legal description of:

PIN: 38144-0187(LT)

Property Description: PT GRANT TO JAMES DAVIS SENECA BEING PT 1 18R6735;
SAVE AND EXCEPT PTS 1 & 2 18R6822, PTS 1, 2 & 3 18R6978,
AND PT 1 18R7367 HALDIMAND COUNTY (the **"Property"**)

on the terms set out in the charge/mortgage attached as **Schedule "A"** to this Agreement (the **"Charge"**).
6. The Debtor and 812 agree that in the event that the Property is sold or refinanced before the Forbearance Termination Date, the proceeds from the sale or refinancing up to the amount of the Charge shall be used first to fund the Interest Reserve in full, which shall be deposited with MarshallZehr, with the balance applied by MarshallZehr to reduce the amount of the Indebtedness.
7. The Obligors and 812 agree to reimburse MarshallZehr in respect of all reasonable expenses (including fees and disbursements at its lawyers' normal charges) which

MarshallZehr has incurred or will incur in connection with the review of the Charge, the negotiation and preparation of this Agreement, the administration and the enforcement of the Indebtedness and this Agreement. To the extent that such expenses have not been included in the Indebtedness, MarshallZehr may pay such expenses directly and the amount so paid shall form part of the Indebtedness, shall bear interest from the date of payment at the highest rate payable by the Debtor for any of the Indebtedness to MarshallZehr and shall be secured by the security granted by the Obligors and §12, including the Charge.

8. The Debtor shall pay to MarshallZehr a forbearance fee in the amount of \$150,000 which shall be added to the Indebtedness.
9. Concurrent with the execution of this Agreement, the Debtor and the Corporate Guarantor hereby consent to the issuance of the receivership order in the form included in the Receivership Application record and attached hereto as **Schedule "B"** (the "**Consent**")
10. The following constitute an "**Event of Default**" under this Agreement:
 - (a) Failure to pay any of the amounts owing under this Agreement in accordance with the prescribed timelines; and
 - (b) Failure to comply with any other terms of this Agreement.
11. The Consent may be utilized by MarshallZehr at any time after the occurrence of an Event of Default, acting in MarshallZehr's sole and unfettered discretion. The Borrower and the Corporate Guarantor agree not to contest the appointment of the Receiver on any basis whatsoever. The Borrower and the Corporate Guarantor shall take no step or action that may in any way delay or interfere with the appointment of the Receiver.
12. The Receivership Application shall be adjourned *sine die*. If the Borrower has paid the Indebtedness in full on or before the Forbearance Termination Date, the Receivership Application shall be withdrawn on a without costs basis.
13. This Agreement and all other documents to be executed and delivered pursuant to this Agreement constitute the entire agreement between the parties hereto as to the matters dealt with herein or therein and supersede all prior negotiations, understandings and agreements. Any amendment to this Agreement or waiver of any provision of this Agreement must be in writing and signed by the parties hereto.
14. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
15. This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective heirs, executors, successors and assigns.
16. This Agreement may be signed in counterparts and exchanged via facsimile transmission or e-mail and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

- 4 -

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

REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

2557386 ONTARIO INC.

Per: 
Name: Michael Bettiol
Title: Presid

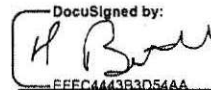
I have authority to bind the corporation.

2363823 ONTARIO INC. o/a MARIMAN HOMES

Per: 
Name: Michael Bettiol
Title: Presid

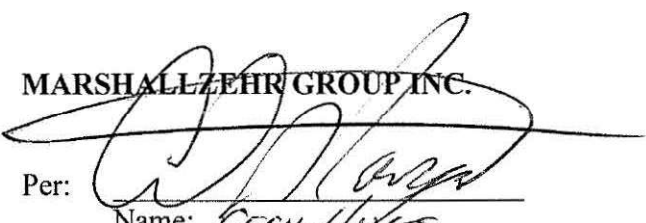
I have authority to bind the corporation.

1000258812 ONTARIO INC.

Per: 
Name: Michael Bettiol
Title: Presid

I have authority to bind the corporation.

MARSHALLZEHR GROUP INC.

Per: 
Name: CECIL HAYES
Title: PRESIDENT

I have authority to bind the corporation.

SCHEDULE "A"
CHARGE/MORTGAGE

LRO # 18 Charge/Mortgage

In preparation on 2023 05 30 at 16:26

This document has not been submitted and may be incomplete.

yyyy mm dd Page 1 of 1

Properties

PIN 38144 - 0187 LT **Interest/Estate** Fee Simple
Description PT GRANT TO JAMES DAVIS SENECA BEING PT 1 18R6735; SAVE AND EXCEPT PTS
1 & 2 18R6822, PTS 1, 2 & 3 18R6978, AND PT 1 18R7367; HALDIMAND COUNTY
Address YORK

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 1000258812 ONTARIO INC.
Acting as a company
Address for Service 558 Upper Gage Avenue, Unit 363, Hamilton, Ontario L8V 4J6
A person or persons with authority to bind the corporation has/have consented to the registration of this document.
This document is not authorized under Power of Attorney by this party.

Chargee(s)**Capacity****Share**

Name MARSHALLZEHR GROUP INC.
Acting as a company
Address for Service 412 Albert St., Suite 100, Waterloo, Ontario N2L 3V3

Statements

Schedule:

Provisions

Principal \$1,000,000.00 **Currency** CDN
Calculation Period
Balance Due Date on demand
Interest Rate
Payments
Interest Adjustment Date
Payment Date
First Payment Date
Last Payment Date
Standard Charge Terms
Insurance Amount Full insurable value
Guarantor

SCHEDULE "A" – ADDITIONAL PROVISIONS**1. COLLATERAL MORTGAGE**

This charge/mortgage of land (the "**Collateral Charge**") is given by 1000258812 Ontario Inc. (the "**Chargor**") as collateral security for the liabilities and obligations of 2557386 Ontario Inc. (the "**Debtor**") to MarshallZehr Group Inc. ("**MZG**") pursuant to the settlement agreement dated May 30, 2023 (the "**Settlement Agreement**") among MZG, the Debtor, the Chargor and 2363823 Ontario Inc., o/a Mariman Homes. The total amount secured by this Collateral Charge shall not exceed the principal sum of One Million (\$1,000,000) Dollars together costs thereon.

2. DEFAULT

The Chargor acknowledges and agrees that a default under the Settlement Agreement, the Priority Charge (as hereinafter defined) and/or any of the collateral security granted by the Obligors (as such term is defined in the Settlement Agreement) in connection with the Settlement Agreement shall (i) constitute a default by the Chargor under this Collateral Charge and (ii) entitle MZG to exercise any and all remedies available to it in connection therewith. For clarity, in the event of a default under this Collateral Charge, MZG may, at its option by notice in writing to the Chargor, immediately declare the whole of the outstanding principal hereby secured to be due and payable and exercise all of the remedies available to it under this Collateral Charge, in equity and/or at law. For purposes of this Section, the "**Priority Charge**" means the charge/mortgage of land granted by the Chargor in favour of 1372301 Canada Inc., 2689918 Ontario Inc. and 1000158298 Ontario Inc. on August 19, 2022 against title to the property secured hereby (the "**Property**").

3. STANDARD CHARGE TERMS

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

4. DUE ON SALE

If the Chargor sells, conveys, transfers or enters into any agreement of sale or transfer of the title of the Property and/or any part thereof, without the written consent of MZG, which consent shall not be unreasonably withheld, the balance of the principal then outstanding and all amounts secured by this Collateral Charge shall, at the option of MZG, become immediately due and payable.

5. NON-MERGER

Notwithstanding the registration of this Collateral Charge, the Chargor hereby acknowledges that the terms, conditions, obligations, liabilities, warranties and representations contained in the Settlement Agreement shall not merge but shall remain binding and effective upon the parties hereto and in full force effect. It is understood and agreed that any default under the Settlement Agreement shall be deemed a default under this Collateral Charge. In the event of an inconsistency or conflict between any of the terms of this Collateral Charge and the terms of the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

6. NO FURTHER CHARGE/ENCUMBRANCE

In the event that the Chargor further charges, mortgages or encumbers the Property in any way without first obtaining the written consent of MZG, which consent shall not be unreasonably withheld, then at the option of MZG, the balance of the principal then outstanding and all amounts secured by this Collateral Charge shall, at the option of MZG, become immediately due and payable.

7. APPOINTMENT OF RECEIVER

If the Chargor shall be in default in the observance or performance of any of the terms, conditions, covenants or payments described herein or in any additional or collateral security given by the Chargor to MZG, then MZG may in writing appoint any person, whether an officer or employee of MZG or not, to be a Receiver of the Property and the rents and profits derived therefrom and may remove the Receiver so appointed and appoint another in his stead. The term "**Receiver**" as used herein includes a receiver and manager. The following provisions shall apply to this paragraph:

- (a) The Receiver so appointed is conclusively the Chargor's agent and the Chargor shall be solely responsible for the acts or defaults and for the remuneration and expenses of the Receiver. MZG shall not be responsible in any way for any misconduct or negligence on the part of the Receiver and may, from time to time, fix the remuneration of the Receiver and be at liberty to direct the payment thereof from proceeds collected;
- (b) Nothing contained herein and nothing done by MZG or by the Receiver shall render MZG a mortgagee in possession or responsible as such;

- (c) All monies received by the Receiver, after providing for payment and charges ranking prior to this charge and for all applicable costs shall be applied in or towards satisfaction of the remaining monies payable under MZG;
- (d) The Receiver so appointed shall have the power to:
 - (i) take possession of the Property, collect rents and profits, and realize upon additional or collateral security granted by the Chargor to MZG and for that purpose may take proceedings, be they legal or otherwise in the Chargor's name or otherwise;
 - (ii) carry on or occur in carrying on the business which the Chargor is conducting on and from the Property, and for that purpose borrow money on the security of the Property in priority to this Collateral Charge; and
 - (iii) lease all or any portion of the Property and for this purpose execute contracts in the Chargor's name which said contracts shall be binding upon the Chargor.

This is Exhibit “D” referred to in the Affidavit of Mike Bettiol sworn by Mike Bettiol of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN

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

THE HONOURABLE MR.)	WEDNESDAY, THE 16 TH
)	
JUSTICE OSBORNE)	DAY OF JANUARY, 2024

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

**2557386 ONTARIO INC. and 2363823 ONTARIO INC.
o/a MARIMAN HOMES**

Respondents

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

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of 2557386 Ontario Inc. and 2363823 Ontario Inc., o/a Mariman Homes (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day via videoconference.

ON READING the affidavit of Cecil Hayes sworn May 15, 2023 and the Exhibits thereto, the affidavit of Cecil Hayes sworn January 16, 2024 and on reading the consent of KSV Restructuring Inc. to act as the Receiver and the consent of the Respondents to this Order,

APPOINTMENT

1. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**"), including, without limitation, the real property described in **Schedule "A"** attached hereto.

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking

of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

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

EMPLOYEES

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

PIPEDA

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

provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider

necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

RETENTION OF COUNSEL

24. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL “<https://www.ksvadvisory.com/experience/case/grand-York-estates>”.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier,

personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

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

GENERAL

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

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

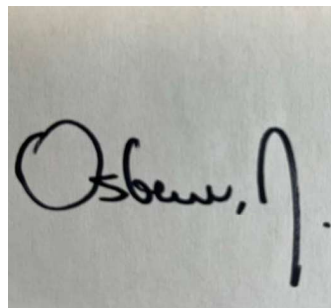
30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

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

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

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

34. **THIS COURT ORDERS** that this order is effective from the date it is made, and it is enforceable without any need for entry and filing, provided that any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.

A handwritten signature in black ink, appearing to read "Osborne, J.", is written over a light gray rectangular background.

2024.01.1

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-05'00'

SCHEDULE "A"**Property owned by 2557386 Ontario Inc.**

Municipal Address: 30 Front Street, Haldimand, Ontario

PIN: 38148-0128 (LT)

Property Description: PART WARNER NELLES TRACT DESIGNATED AS PART 1, 18R-7058; SAVE & EXCEPT PART 1, 18R-7281; T/W EASEMENT OVER PART 2, 18R-7058 AS IN HC252899; TOWNSHIP OF SENECA; HALDIMAND COUNTY

Property owned by 2363823 Ontario Inc.

Municipal Address: 178 Moores Road, Haldimand, Ontario

PIN: 38147-0005 (LT)

Property Description: PT LT 19 CON 4 SE STONEY CREEK RD SENECA AS IN HC68736; HALDIMAND COUNTY

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of 2557386 Ontario Inc. and 2363823 Ontario Inc. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ● day of May, 2023 (the "**Order**") made in an application having Court file number CV-23-00699432-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

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

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

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

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

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

DATED the ____ day of _____, 202__.

KSV RESTRUCTURING INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

MARSHALLZEHR GROUP INC.
Applicant

-and-

2557386 ONTARIO INC., et al.
Respondents

108

Court File No. CV- 23-00699432-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

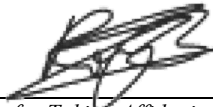
ORDER
(Appointing Receiver)

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

Maya Poliak (54100A)
Tel: (416) 218-1161
E-mail: maya@chaitons.com

Lawyers for the Applicant

This is Exhibit “E” referred to in the Affidavit of Mike Bettiol sworn by Mike Bettiol of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

WEDNESDAY, THE 27TH

JUSTICE STEELE

)

DAY OF MARCH, 2024

)

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

2557386 ONTARIO INC. and 2363823 ONTARIO INC. O/A MARIMAN HOMES

Respondents

**ORDER
(Sale Process Approval)**

THIS MOTION, made by KSV RESTRUCTURING INC. in its capacity as Court-appointed receiver, without security (in such capacities, the “**Receiver**”), over all assets, undertakings and properties the Respondents for an order, *inter alia*, approving a sale process (the “**Sale Process**”) for the real property owned by 2557386 Ontario Inc., located in Haldimand, Ontario (the “**Real Property**”), was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated March 20, 2024 and on hearing the submissions of counsel for the Receiver, and such other counsel as are present and listed on the counsel slip,

SERVICE

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

APPROVAL OF SALE PROCESS

2. **THIS COURT ORDERS** that the Listing Agreement between the Receiver and Colliers Macaulay Nicolls Inc., for the sale of the Real Property substantially in the form attached as Appendix B to the First Report (the “**Listing Agreement**”) be and hereby is approved and the Receiver is authorized to engage Colliers as a listing agent for the sale of the Real Property on the terms set out in the Listing Agreement.


3. **THIS COURT ORDERS** that the Sale Process, as described in section 3.2 of the First Report, be and is hereby approved and the Receiver is hereby authorized to perform its obligations under and in accordance with the Sale Process and to take such further steps as it considers necessary or desirable in carrying out the Sale Process.

SEALING

4. **THIS COURT ORDERS** that the Confidential Appendix to the First Report is sealed pending the completion of the sale of the property municipally known as 2051 Vickery Drive, Oakville, Ontario or a further order of the Court.

APPROVAL OF ACTIVITIES

5. **THIS COURT ORDERS** that the First Report and the activities of the Receiver described therein be and hereby are approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

 Digitally signed
by Jana Steele
Date: 2024.03.27
13:20:12 -04'00'

Applicant

Respondents

Court File No. CV-23-00699432-00CL	
	<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>PROCEEDING COMMENCED AT TORONTO</p>
	<p>SALE PROCESS APPROVAL ORDER</p>
	<p>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9</p> <p>Maya Poliak (LSO #54100A) Tel: (416) 218-1161 E-mail: maya@chaitons.com</p> <p>Lawyers for KSV Restructuring Inc., in its capacity as Court-Appointed Receiver</p>

This is Exhibit “F” referred to in the Affidavit of Mike Bettiol sworn by Mike Bettiol of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN



DISCHARGE STATEMENT AT: July 15th, 2024

Prepared on: July 10th, 2024

ID#:

DS202407151MZGI452

Terms: Facility 2 A - Land & Servicing : \$15,825,000 Prime + 5.3% per annum (Floor Rate: 9%)
Facility 2 B - Mezzanine: \$ 3,024,000 Prime + 11.05% per annum (Floor rate 13.75%)

Interest shall accrue commencing on the date of each Advance to the Lender's trust account and shall be calculated daily (365 days/year), compounded and payable monthly, in arrears and due and payable on the first (1st) day of each month, both before and after the Maturity Date, Default, demand and judgment. Interest only payments in respect of the Loan shall be paid from the a) Interest Reserve, if applicable, or b) Borrower Draws up to the budgeted amount set out in the Sources and Uses of Funds herein. Once the budgeted amount has been utilized, interest payments shall be made from the Obligors' own cash resources.


York Estates - MZGI 452
30 Front Street, Haldimand, ON

	Facility 2 - Tranche A	Facility 2 - Tranche B	Total
Principal Amount Outstanding	\$ 11,767,500.50	\$ 3,024,000.00	\$ 14,791,500.50
Accrued and Unpaid Interest	\$ 1,728,234.44	\$ 901,064.17	\$ 2,629,298.61
Cost To Recover			\$ 73,486.29
Deferred Fees			\$ 150,000.00
Final Discharge Fee			\$ 1,000.00
Less: Cash held in Trust			\$ -
Total Balance on July 15th, 2024	\$ 13,495,734.94	\$ 3,925,064.17	\$ 17,645,285.40
Per Diem	\$ 4,599.77	\$ 1,948.89	\$ 6,548.66

NOTE: Payment must be received by 1:00 p.m. or per diem interest will be added up to the next business day

You are authorized and directed to make the balance due payable to our solicitor; **Chaitons LLP "In Trust"**, OR as they may further direct.

MARSHALLZEHR GROUP INC.

Per: 
Murray Snedden, Principal Broker
Mortgage Administrator #: 11955

Per: 
Benjamin Perdomo, Manager - Mortgage Operations

E. & O. E.

If Total Payable is not received by the Proposed Settlement Date, then a per diem rate set out above will be charged. This Statement is only valid for a period of 30 days from the Proposed Settlement Date. Please confirm the Total Payable prior to remitting funds. Balances are projected and are based on the assumption that all outstanding amounts/payments due up to the Proposed Settlement Date are paid as set out therein. MarshallZehr Group Inc. will not provide a discharge of the mortgage until the entire outstanding balance, including interest and costs have been paid and honored.

* Excludes MarshallZehr Receivership Financing to KSV restructuring in its capacity as receiver of the Borrower.

MarshallZehr Group Inc.

FSRA Mortgage Brokerage #12453 | FSRA Mortgage Administrator #11955 | BCFSA Mortgage Broker #MB600627

412 Albert Street, Suite 100, Waterloo ON, N2L 3V3

This is Exhibit “G” referred to in the Affidavit of Mike Bettiol sworn by Mike Bettiol of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-23-00699432-00CL **DATE:** OCTOBER 1, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: MARSHALLZEHR GROUP INC. et al v. 2557386 ONTARIO INC et al

BEFORE JUSTICE: JUSTICE W.D. BLACK

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Maya Poliak	Marshallzehr Group Inc.	Maya@chaitons.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Rory McGovern	Mariman Receivership Respondents	rory@rorymcgovernpc.com
Brendan Bissell	Receiver	bbissell@reconllp.com
Mitch Vininsky, KSV Restructuring	Receiver	mvininsky@ksvadvisory.com
Robert Trifts Counsel	Omer Arshed Bhatti	ronaldflom@gmail.com
Jasmine Landau	Reconstruct LLP, the Receiver KSV	Jlandau@reconllp.com 416.613.4880

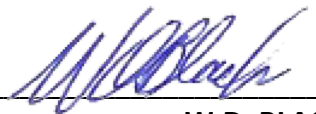
For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Andrew Colautti	Ana Pereira and Tiago Pereira	andrew@cplaw.net 519-966-1300 ext. 498
Darrell Paul	Bobby James Muckadan and Siji Anthony, buyers from Mariman Homes	dpaul5859@yahoo.com 416-559-1249
Paulo Ribeiro and Julie Parkinson	Observe the York Estate Receivership proceedings	(905) 928-1150 - Cell jvestate.pr@gmail.com
Gurminder Kandola	Unsecured Creditor	n/a

ENDORSEMENT OF JUSTICE W.D. BLACK:

- [1] The “main” matter before me this morning was the motion by KSV Restructuring Inc. (“KSV”) in its capacity as court-appointed receiver and manager (the “Receiver”) of all of the assets, undertakings, and properties of 2557386 Ontario Inc. (“255”) and 2363823 Ontario Inc. (“236”) operating as Mariman Homes (“Mariman”, and together with 255 and 236 the “Companies”).
- [2] In that capacity, the Receiver carried out a Sale Process for the Grand York Estates property (the “York Property”), the Companies’ largest intended development. Although the Sale Process appears to have been appropriately robust and wide-ranging, it did not result in any bids. As such, the Receiver’s evidence is that the only viable prospect of selling the York Property was through a credit bid by one of the applicant’s affiliates, as set out in an agreement of purchase and sale dated August 6, 2024.
- [3] It is apparent that there are a number of parties with pre-construction agreements, many of whom were in attendance before me today, who assert that their interests supersede that of the applicant’s interest as the registered secured creditor and mortgagee. One or more of those would-be homebuyers also complain about the fact that the only bidder for the York Property is affiliated to the applicant, suggesting that this represents a conflict of interest that should, as I understand it, preclude the proposed transaction from proceeding.
- [4] The position of these would-be homebuyers is no doubt influenced by the fact that, if the proposed transaction proceeds, it would result in the termination of the pre-construction sale agreements. While this would have the benefit, for the homebuyers, of allowing them to begin steps to recover from Tarion (under the Ontario New Home Warranty Plan Act), the evidence indicates that many of the homebuyers have made deposits in excess of the \$100,000 maximum payment potentially available from Tarion.
- [5] While I agree with the Receiver’s observation that these circumstances are unfortunate for the homebuyers, I also agree with the Receiver that the law in this area is settled (see in particular the decision of Morawetz J., as he then was, in *Firm Capital Mortgage Fund Inc. v. 2012241 Ontario Ltd.*, 2012 ONSC 4816). I see no basis on which the homebuyers’ interests would in fact outrank those of the secured lender.
- [6] I am also not persuaded by the suggestion of a conflict of interest. It is not unusual, for example in the setting of a “stalking horse” bid, for a party with affiliation to one of the principals involved in the underlying relationship, to become involved in a subsequent transaction relative to the assets at issue. The applicants have been transparent about the affiliation of the potential buyer, and the Sale Process, which as noted appears to have been robust, wide-ranging and appropriate, yielded no other bidders.
- [7] There was a small ray of hope today for the homebuyers.
- [8] That is, Receiver’s counsel advised that the respondent Debtors (the “Debtors”) remain confident that, if given some additional time, they will be in a position to redeem their debt(s), will pay out the applicant and will pay out the Lien Claimant VanRooyen Earthmoving Ltd. (the lien claim of which, in the amount of \$171,909.00, appears to be accepted by all concerned as fairly representing its priority interest for construction holdback). In that scenario, the Debtors would not terminate the pre-construction agreements.

- [9] The Receiver is prepared to allow until November 12, 2024, as requested by the Debtors, to permit the Debtors to redeem.
- [10] Independent counsel for the Receiver expressed some uncertainty about whether or not the Debtors will in fact be able to redeem, but to the Receiver's credit, it is prepared to allow the opportunity.
- [11] The Receiver's willingness to do so is in part predicated on my making the order sought today, but deferring its effect and operation until November 13, 2024 (i.e. a day following the date by which the Debtors have indicated they will redeem the debt(s)).
- [12] This approach makes sense to me. One of the homebuyers, Mr. Kandola, requested (in an articulate and respectful fashion) that I defer my decision on the Receiver's motion until after November 12, building in an opportunity for a further hearing after November 12 at which point Mr. Kandola and presumably other homebuyers could make further submissions.
- [13] With due respect to Mr. Kandola, I do not see any real utility in doing so. As noted, in my view the law strongly supports the Receiver's position on the merits of this matter. In the circumstances, the Receiver's willingness to wait until November 13 for its relief is reasonable and generous. While all concerned hope that the Debtors will come through and redeem, there is no basis, in the absence of the Debtors doing so, to prolong the matter further.
- [14] Accordingly, on the main motion, I grant the relief sought by the Receiver, but with the additional proviso that that relief will be suspended until November 13, and will take effect that day if the Debtors' effort to redeem does not succeed. Mr. Bissel of independent counsel for the Receiver noted that the proposed form of order that had been uploaded will have to be updated, depending on my decision, to reflect recent developments. I will review the order whenever it is ready for me to do so.
- [15] In addition to the main matter discussed above, there were materials recently uploaded to Case Center concerning a dispute about responsibility for water damage, and the cost of repairs, to a home on Vickery Drive in Oakville (as I understand it in a development not within the York Property).
- [16] It emerged during the discussion of that matter that the Receiver had made a proposal for consideration by the relevant homebuyer (with respect to potential assignment of an insurance claim).
- [17] Counsel for the homebuyer, Mr. Bhatti, advised that he had just received the proposal, and had not had time to review it or to discuss it with his client.
- [18] As such, counsel are to confer, and to report to me by the end of the week concerning the status of the matter, and whether or not a deal has been reached. If not, I will consider how that matter should proceed.



W.D. BLACK J.

DATE: OCTOBER 1, 2024

This is Exhibit “H” referred to in the Affidavit of Mike Bettiol sworn by Mike Bettiol of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN



DISCHARGE STATEMENT AT: November 12th, 2024

Prepared on: September 30th, 2024

ID#:

DS202407151MZGI452

Terms: Facility 2 A - Land & Servicing : \$15,825,000 Prime + 5.3% per annum (Floor Rate: 9%)
Facility 2 B - Mezzanine: \$ 3,024,000 Prime + 11.05% per annum (Floor rate 13.75%)

Interest shall accrue commencing on the date of each Advance to the Lender's trust account and shall be calculated daily (365 days/year), compounded and payable monthly, in arrears and due and payable on the first (1st) day of each month, both before and after the Maturity Date, Default, demand and judgment. Interest only payments in respect of the Loan shall be paid from the a) Interest Reserve, if applicable, or b) Borrower Draws up to the budgeted amount set out in the Sources and Uses of Funds herein. Once the budgeted amount has been utilized, interest payments shall be made from the Obligors' own cash resources.

York Estates - MZGI 452

30 Front Street, Haldimand, ON

	Facility 2 - Tranche A	Facility 2 - Tranche B	Total
Principal Amount Outstanding	\$ 11,767,500.50	\$ 3,024,000.00	\$ 14,791,500.50
Accrued and Unpaid Interest	\$ 2,244,053.72	\$ 1,134,021.25	\$ 3,378,074.97
Section 17 Mortgages Act	\$ 404,518.50	\$ 178,479.90	\$ 582,998.40
Legal Fees			\$ 105,000.00
Deferred Fees			\$ 150,000.00
Final Discharge Fee			\$ 1,000.00
Less: Cash held in Trust			\$ -
Total Balance on November 12th, 2024	\$ 14,416,072.72	\$ 4,336,501.15	\$ 19,008,573.87


Per Diem \$ 4,494.65 \$ 1,983.11 \$ 6,477.76

NOTE: Payment must be received by 1:00 p.m. or per diem interest will be added up to the next business day

You are authorized and directed to make the balance due payable to our solicitor; **Chaitons LLP "In Trust"**, OR as they may further direct.

MARSHALLZEHR GROUP INC.

Per: 
box SIGN 4697JLW-4W23JK9X
Murray Snedden, Principal Broker
Mortgage Administrator #: 11955

Per: 
box SIGN 178JKX36-4W23JK9X
Benjamin Perdomo, Manager - Mortgage Operations

E. & O. E.

If Total Payable is not received by the Proposed Settlement Date, then a per diem rate set out above will be charged. This Statement is only valid for a period of 30 days from the Proposed Settlement Date. Please confirm the Total Payable prior to remitting funds. Balances are projected and are based on the assumption that all outstanding amounts/payments due up to the Proposed Settlement Date are paid as set out therein. MarshallZehr Group Inc. will not provide a discharge of the mortgage until the entire outstanding balance, including interest and costs have been paid and honored.

* Excludes MarshallZehr Receivership Financing to KSV restructuring in its capacity as receiver of the Borrower.

MarshallZehr Group Inc.

FSRA Mortgage Brokerage #12453 | FSRA Mortgage Administrator #11955 | BCFA Mortgage Broker #MB600627

412 Albert Street, Suite 100, Waterloo ON, N2L 3V3

This is Exhibit "I" referred to in the Affidavit of Mike Bettiol sworn by Mike Bettiol of the City of Hamilton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on October 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

RORY MCGOVERN

2557386 Ontario Inc. and 2363823 Ontario Inc. o/a Mariman Homes**Summary of professional fees, Receiver borrowings, broker commissions and other priority amounts**

Estimated amount as of October 31, 2024

(C\$; unaudited)

MarshallZehr's outstanding debt	18,930,841	As of October 31, 2024
Realtor commission	226,000	inclusive of HST
VanRooyen lien - 10% holdback priority claim	171,909	
Receiver's and Receiver's counsel's fee accrual	141,250	\$125K plus HST
Funds borrowed from MarshallZehr, including fees and interest	109,312	
Receiver's accrued fees from May 1 to August 31, 2024	76,725	inclusive of HST
Chaitons' accrued fees from March 1 to August 31, 2024	60,021	inclusive of HST
Security	21,048	\$17K from March to August plus \$4K estimate for Sept to Oct.
Reconstruct's accrued fees from July 1 to August 21, 2024	13,450	inclusive of HST
Contingency - utilities and sundry expenses	11,300	\$10K plus HST
Total	19,761,857	
Less: funds on hand	-	106,850
Total	<u>19,655,007</u>	

*Assumes closing on October 31, 2024

MARSHALLZEHRGROUP INC.
Applicant

-and- 2557386 ONTARIO INC. et al.
Respondents

Court File No. CV-23-00699432-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

RORY MCGOVERN PC

Lawyer

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rory@rorymcgovernpc.com

Tel: (416) 938-7679

Lawyer for the Respondents,
2557386 Ontario Inc. and 2363823 Ontario Inc. o/a Mariman
Homes

Email for party served:
The Service List

File Number:

RCP-F 4C (September 1, 2020)