

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

BETWEEN

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

-AND-

2203284 ONTARIO INC.

Respondent

APPLICATION UNDER Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

**APPLICATION RECORD
(returnable June 22, 2017)**

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

David J. Jackson
LSUC No. AO15656R

Tel: (905) 528-8411
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Lawyers for the Applicant

TO: SEE SERVICE LIST

SERVICE LIST

<p>2203284 Ontario Inc. 93 Skyway Avenue Suite 210 Toronto, ON M9W 6N6</p> <p>Attention: Luigi Santaguida</p> <p>Email: louie@stantonrenaissance.com</p>	<p>Zimmerman Associates Barrister and Solicitors 3338 Dufferin Street Toronto, ON M6A 3A4</p> <p>Lawrence Zimmerman Tel: (416) 489-9222 Fax: (416) 489-6222 Email: larry@zimlaw.ca</p> <p>Lawyers for the Respondent, 2203284 Ontario Inc.</p>
<p>msi Spergel Inc. 21 King Street West Suite 1602 Hamilton, ON L8P 4W7</p> <p>Trevor Pringle Tel: (905) 527-2227 Fax: (905) 527-6670 Email: tpringle@spergel.ca</p> <p>Proposed Receiver</p>	<p>The Guarantee Company of North America 4950 Yonge Street Suite 1400, Madison Centre Toronto, ON M2N 6K1</p> <p>Tel: (416) 223-9580 Fax: (416) 223-6577</p> <p>Randy Musselman rmusselman@gcna.com</p> <p>Jules Quenneville jquenneville@gcna.com</p> <p>Dick Longland dlongland@gcna.com</p> <p>Second Mortgagee</p>
<p>Schneider Ruggiero Law 1000 – 120 Adelaide Street West Toronto, ON M5H 3V1</p> <p>George Ruggiero Tel: (416) 363-2212 Fax: (416) 363-0645 Email: gruggiero@srlawpractice.com</p> <p>Lawyer for Diversified Capital Inc., Third Mortgagee</p>	<p>Zimmerman Associates Barrister and Solicitors 3338 Dufferin Street Toronto, ON M6A 3A4</p> <p>Lawrence Zimmerman Tel: (416) 489-9222 Fax: (416) 489-6222 Email: larry@zimlaw.ca</p> <p>Lawyers for Mary Lou Santaguida, Fourth and Fifth Mortgagee</p>

<p>1220356 Ontario Limited and Taragar Holdings Limited % Avenue Capital Mortgage Administration Inc. 480 Lawrence Ave. W. 4th Fl. Toronto, ON M5M 1C4</p> <p>Tel: (416) 225-0555 Fax: (647) 438-2066</p>	<p>Her Majesty the Queen in Right of the Province of Ontario as represented by The Ministry of Finance 33 King Street West 6th Floor Oshawa, ON L1H 1A1</p> <p>Kevin J. O'Hara Kevin.Ohara@ontario.ca</p> <p>Tel: (905) 433-6934 Fax: (905) 436-4510</p>
<p>Canada Revenue Agency % Department of Justice The Exchange Tower 130 King Street West Suite 3400 Toronto, ON M5X 1K6</p> <p>Diane Winters Diane.Winters@justice.gc.ca</p> <p>Peter Zevenhuizen Peter.Zevenhuizen@justice.gc.ca</p> <p>Tel: (416) 973-3172 Fax: (416) 973-0810</p>	

**ONTARIO
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BETWEEN

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APPLICATION UNDER Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

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TAB 1

NOTICE OF APPLICATION

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

-AND-

2203284 ONTARIO INC.

Respondent



APPLICATION UNDER Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

NOTICE OF APPLICATION

TO THE RESPONDENT

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

THIS APPLICATION will come on for a hearing on **Thursday, the 22nd day of June, 2017 at 10:00 a.m., at 330 University Avenue, Toronto, Ontario.**

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

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance,

serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

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

Dated: June 9, 2017

Issued by:



Local Registrar

C. Irwin
Registrar

Address of Court: 330 University Ave
7th Floor
Toronto, ON
M5G 1R7

TO: SEE SERVICE LIST

SERVICE LIST

<p>2203284 Ontario Inc. 93 Skyway Avenue Suite 210 Toronto, ON M9W 6N6</p> <p>Attention: Luigi Santaguida</p> <p>Email: louie@stantonrenaissance.com</p>	<p>Zimmerman Associates Barrister and Solicitors 3338 Dufferin Street Toronto, ON M6A 3A4</p> <p>Lawrence Zimmerman Tel: (416) 489-9222 Fax: (416) 489-6222 Email: larry@zimlaw.ca</p> <p>Lawyers for the Respondent, 2203284 Ontario Inc.</p>
<p>msi Spergel Inc. 21 King Street West Suite 1602 Hamilton, ON L8P 4W7</p> <p>Trevor Pringle Tel: (905) 527-2227 Fax: (905) 527-6670 Email: tpringle@spergel.ca</p> <p>Proposed Receiver</p>	<p>The Guarantee Company of North America 4950 Yonge Street Suite 1400, Madison Centre Toronto, ON M2N 6K1</p> <p>Tel: (416) 223-9580 Fax: (416) 223-6577</p> <p>Randy Musselman rmusselman@gcna.com</p> <p>Jules Quenneville jquenneville@gcna.com</p> <p>Dick Longland dlongland@gcna.com</p> <p>Second Mortgagee</p>
<p>Schneider Ruggiero Law 1000 – 120 Adelaide Street West Toronto, ON M5H 3V1</p> <p>George Ruggiero Tel: (416) 363-2212 Fax: (416) 363-0645 Email: gruggiero@srlawpractice.com</p> <p>Lawyer for Diversified Capital Inc., Third Mortgagee</p>	<p>Zimmerman Associates Barrister and Solicitors 3338 Dufferin Street Toronto, ON M6A 3A4</p> <p>Lawrence Zimmerman Tel: (416) 489-9222 Fax: (416) 489-6222 Email: larry@zimlaw.ca</p> <p>Lawyers for Mary Lou Santaguida, Fourth and Fifth Mortgagee</p>

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<p>Canada Revenue Agency % Department of Justice The Exchange Tower 130 King Street West Suite 3400 Toronto, ON M5X 1K6</p> <p>Diane Winters Diane.Winters@justice.gc.ca</p> <p>Peter Zevenhuizen Peter.Zevenhuizen@justice.gc.ca</p> <p>Tel: (416) 973-3172 Fax: (416) 973-0810</p>	

APPLICATION

1. THE APPLICANT, DUCA FINANCIAL SERVICES CREDIT UNION LIMITED ("DUCA") MAKES APPLICATION FOR:

- (a) An order, if necessary, abridging the time for service and filing of this Notice of Application and the Application Record herein and validating service and directing any further service of this Notice of Application and Application Record be dispensed with such that this Application is properly returnable on June 22, 2017;
- (b) An Order substantially in the form of the draft Order attached hereto as Schedule "A" appointing msi Spergel Inc. ("Spergel") (21 King Street West, Suite 1602, Hamilton, Ontario, attention Mr. Trevor Pringle), a licensed bankruptcy trustee, as receiver ("Receiver") pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and/or Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended, without security, of all of the assets, undertakings and properties of 2203284 Ontario Inc. ("220 Co."), including property municipally known as 98 James Street South, Hamilton, Ontario and more particularly described as:

PIN	17171 – 0009 LT
DESCRIPTION	PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; CITY OF HAMILTON

(hereinafter referred to as the "Property").

- (c) Costs of this Application on a full indemnity basis; and
- (d) Such further and other relief as this Honourable Court should deem just.

2. THE GROUNDS FOR THE APPLICATION ARE:

BACKGROUND

- (a) Duca is a Credit Union incorporated pursuant to the laws of the Province of Ontario with head office located at 5290 Yonge Street, Toronto, Ontario M2N 5P9 and holds a First Mortgage with respect to the Property.
- (b) 220 Co. is an Ontario corporation, with its registered office address at 93 Skyway Avenue, Unit 210, Toronto, Ontario, M9W 6N6.
- (c) The Corporate Profile Report and the books and records of 220 Co. disclose that Luigi Santaguida also known as Louie Santaguida is the sole officer and director of 220 Co.
- (d) The Property is presently vacant lands save and except, situated thereon is the remnant of a former church without a full roof, all four walls or interior structure.

LOAN FACILITY

- (e) 220 Co. is currently indebted to Duca with respect to a loan facility in the principal amount of \$5,000,000.00 ("Mortgage Loan"), made pursuant to a Commitment Letter dated June 22, 2015 ("Commitment Letter").

- (f) The Mortgage Loan was advanced on or about July 8th 2015 and as security for payment of the same, Duca holds, among other things, a first Mortgage, which is hereinafter described.
- (g) The Property which is municipally known as 98 James Street South, Hamilton, Ontario, is presently vacant lands save and except, situated thereon is the remnant of a former church without a full roof, all four walls or interior structure. The aforementioned information is confirmed from my review of my credit file.
- (h) The purpose of the Mortgage Loan was to provide financing to 220 Co. with respect to its proposed condominium development at the Property.
- (i) The proposed condominium development was to be a 259 unit residential development with two floors of commercial units and as at June 12, 2015, 220 Co. had entered into 114 presale agreements with respect to the proposed condominium units.
- (j) Potential condominium unit purchasers have delivered deposits with respect to the agreements of purchase and sale or reservation agreements and those deposits are believed to be held in trust by Schneider Ruggiero LLP, former lawyers for 220 Co., or Zimmerman Associates, lawyers for 220 Co., and their repayment, where appropriate, is secured by the hereinafter described Second Mortgage registered against the Property in favour of The Guarantee Company of North America, as Mortgagee, in the principal amount of \$5,180,000.00.
- (k) On December 13, 2016, the Mortgage Loan was outstanding as follows:

Principal	\$5,000,000.00
Accrued interest to December 13, 2016	27,328.77
Discharge Fee	1,000.00
PPSA Discharge Fee	150.00

Registration Fee	75.00
Late Payment Fee	1,000.00
Three months penalty interest pursuant to Section 17 of the <i>Mortgage Act</i> RSO 1990, cM.40	71,250.00
Legal Enforcement Expense (inclusive of disbursements and HST)	1,153.70
TOTAL	\$5,101,957.47
Interest continued to accrue from December 13, 2016 on the aforesaid principal amount, late payment fee and legal enforcement expense at Duca's Prime Rate plus 3% per annum, as it varies from time to time, calculated and payable monthly and not in advance, to the date of payment.	

- (l) The Mortgage Loan required monthly installment payments of interest only.
- (m) The term of the Mortgage Loan ended on July 8, 2016 but was extended to August 8, 2016 and then to September 8, 2016.
- (n) 220 Co. failed to make repayment of the Mortgage Loan on the expiration of its term on September 8, 2016 and on December 13, 2016, Duca caused its lawyers, SimpsonWigle LAW LLP ("SimpsonWigle") to make demand upon 220 Co. for payment of the aforesaid amounts.
- (o) Subsequent to December 13, 2016, Duca has received no payment on account of the outstanding indebtedness save and except payments in the amount of \$23,750.00 on December 22, 2016 and on January 8, 2017 which Duca applied against the outstanding indebtedness owed to it with respect to the Mortgage Loan.
- (p) By reason of the default in payment of the outstanding indebtedness, Duca initiated enforcement proceeding by, among other things, initiating Notice of Power of Sale proceedings on December 28, 2016.

SECURITY

- (q) As security for payment of the aforesaid indebtedness of 220 Co. to Duca, 220 Co. provided Duca with, *inter alia*, the following security:
- i. Charge/Mortgage registered in first position with respect to property municipally known as 98 James Street South, Hamilton, Ontario, registered in the Registry Office of Hamilton (#62) on July 8, 2015 as Instrument No. WE1048981 for the principal amount of \$5,000,000. (the "First Mortgage").
 - ii. General Security Agreement dated July 7, 2015 made by 2203284 Ontario Inc. in favour of Duca Financial Services Credit Union Ltd. ("Security Agreement") providing Duca with a security interest in all of the present and future undertaking and property of 220 Co.
 - iii. Assignment of Rents – General registered in the Registry Office of Hamilton (#62) July 8, 2015 as Instrument No. WE1048982 ("Assignment of Rents").
- (r) A *Personal Property Security Act* search with respect to 220 Co. dated June 7, 2017 discloses the registration on June 23, 2015 of the security interest held by Duca pursuant to the General Security Agreement and also discloses:
- i. A security interest registered October 30, 2014 in favour of The Guarantee Company of North America with respect to accounts and other;
 - ii. A security interest registered August 11, 2016 in favour of 1220356 Ontario Limited and Taragar Holdings Limited in equipment, accounts and other (particulars of which equipment are unknown).

- (s) A subsearch of the Property conducted on June 7, 2017 reveals that the parties having a registered security interest in the Property other than the First Mortgage held by Duca as aforesaid, are The Guarantee Company of North America, Diversified Capital Inc. and Mary Lou Santaguida who have registered the following encumbrances:
- i. A Charge/Mortgage registered in second position on October 30, 2014 as Instrument No. WE998973 in the amount of \$5,180,000.00 (the "Second Mortgage") in favour of The Guarantee Company of North America (the "Second Mortgagee") which also discloses that The Guarantee Company of North America's address for service is 4950 Yonge Street, Suite 1400, Toronto, Ontario.
 - ii. A Charge/Mortgage registered in third position on August 12, 2016 as Instrument No. WE1141288 in the amount of \$3,000,000.00 (the "Third Mortgage") in favour of Diversified Capital Inc. (the "Third Mortgagee") which also discloses that Diversified Capital Inc.'s address for service is 1243 Islington Avenue, Suite 701, Toronto, Ontario.
 - iii. A Charge/Mortgage registered in fourth position on June 13, 2013 as Instrument No. WE903381 in the amount of \$1,500,000.00 (the "Fourth Mortgage") in favour of Mary Lou Santaguida (the "Fourth Mortgagee") which also discloses that Mary Lou Santaguida's address for service is 14 St. Margarets Drive, Toronto, Ontario.
 - iv. A Charge/Mortgage registered in fifth position on April 11, 2016 as Instrument No. WE1111875 in the amount of \$701,583.00 (the "Fifth Mortgage") in favour of Marylou Santaguida (the "Fifth Mortgagee") which also discloses that Marylou Santaguida's address for service is 14 St. Maragret's Drive, Toronto, Ontario.

- (t) The Mortgage registered in favour of Diversified Capital Inc. collaterally secures indebtedness owed to Diversified Capital Inc. by a party, related to 220 Co., namely Terrasan 327 Royal York Road Limited, Toronto, and the aforesaid related party is the subject of a Court-appointed receivership respecting premises municipally known as 327 Royal York Road, Toronto.
- (u) As at December 20, 2016, municipal property taxes with respect to the Property were outstanding in the amount of \$106,127.62 and Duca is not aware of any payment having been made on account of such arrears.

DUCA'S INDEBTEDNESS AND SECTION 244 BIA NOTICE

- (v) The term of the Mortgage Loan expired on September 8, 2016 and 220 Co. was in default of making payment of the outstanding indebtedness owed with respect to its Mortgage Loan and Duca made due demand upon 220 Co. with respect to the outstanding indebtedness.
- (w) In conjunction with the delivery of the aforesaid demand, SimpsonWigle LAW LLP also delivered to 220 Co. a Notice of Intention to Enforce Security pursuant to Section 244 of the *Bankruptcy and Insolvency Act*.
- (x) As at June 6, 2017, 220 Co. is indebted to Duca with respect to the Mortgage Loan as follows:

Principal	\$5,000,000.00
Accrued interest to June 6, 2017	116,342.47
Three months penalty interest pursuant to Section 17 of the <i>Mortgage Act</i> R.S.O. 1990, Chapter M-40	71,250.00
Late Payment Fee	1,000.00

Discharge Fee	1,000.00
PPSA Discharge Fee	150.00
TOTAL	\$5,189,742.47

- (y) As at April 20, 2017, Duca had incurred legal expense in the amount of \$21,397.65, inclusive of HST and disbursements, with respect to the enforcement and realization on its security and in attempting to procure payment of the indebtedness owed to it and legal enforcement expense has continued to be incurred since that date.
- (z) Pursuant to the terms of its security, Duca is entitled to be fully indemnified by 220 Co. with respect to payment of the aforesaid expense. Further, the payment of such expense is secured by the security held by Duca, as aforesaid.
- (aa) By reason of the default in payment of the outstanding indebtedness, Duca initiated enforcement proceeding by, among other things, initiating Notice of Power of Sale proceedings on December 28, 2016.

BASIS FOR A RECEIVER

- (bb) Given:
- I. the failure of 220 Co. to repay its obligations to Duca despite demands having been made;
 - II. the length of time that has elapsed since default; and
 - III. the fact that Duca has a right to appoint a receiver under its security,

a Court appointed receiver should be appointed with respect to the Property.

- (cc) A Court appointed receiver would be best placed to realize upon the Property that are subject to Duca's security.
- (dd) It is reasonable and prudent for Duca to further the enforcement of its security in an effort to recover its outstanding Mortgage Loan to 220 Co. and it is within Duca's rights to do so. Duca believes that the appointment of a receiver will enhance the prospect of recovery by Duca and protect the interest of all stakeholders.
- (ee) It would be just and convenient and in the best interest of all creditors of 220 Co. that a receiver be appointed by this Honourable Court.
- (ff) 220 Co. has been unable or unwilling to make payment of the indebtedness owed by it to Duca and a Court appointed receivership will provide a mechanism to preserve, protect and realize upon the Property.
- (gg) At law, Duca is entitled to an order that the Court appoint a receiver with respect to the Property.
- (hh) Spergel has consented to being appointed as receiver, without security, of the Property of 220 Co. including all proceeds thereof.
- (ii) Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1984 c.B-3, as amended.
- (jj) Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, as amended.
- (kk) Rules 1.04, 2.03, 3.02(1), 14.05(3)(g) and (h), 16.04(1) and 38 of the *Rules of Civil Procedure*.

- (II) Such further and other grounds as counsel may advise and as this Honourable Court may allow.

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

- (a) The Affidavit of Sergiu Cosmin, sworn June 9, 2017 and the exhibits attached thereto;
- (b) The Consent of msi Spergel Inc. to act as receiver of 2203284 Ontario Inc.; and
- (c) Such further evidence as counsel may advise and as this Honourable Court may permit.

DATE OF ISSUE: June 9, 2017

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

David J. Jackson
LSUC No. AO15656R

Tel: (905) 528-8411
Fax: (905) 528-9008

Lawyers for the Applicant

SCHEDULE "A"

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE)

THURSDAY, THE 22ND
DAY OF JUNE, 2017.

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

- and -

2203284 ONTARIO INC.

**ORDER
(appointing Receiver)**

THIS APPLICATION, made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing msi Spergel Inc. as receiver, (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2203284 Ontario Inc. (the "Debtor"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Sergiu Cosmin sworn June 9, 2017, and the Exhibits thereto and on hearing the submissions of counsel for Duca Financial Services Credit Union Ltd., no one appearing for the Debtor, although duly served as appears from the affidavit of service of Sherine Burke affirmed June 9, 2017, and on reading the consent of msi Spergel Inc. to act as the Receiver,

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s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver
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Applicant

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Plaintiff
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Respondent

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Defendant
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Deleted: [RECEIVER'S NAME]
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carried on by the Debtor
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SERVICE

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

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APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor including property municipally known as 98 James Street South, Hamilton, Ontario and more particularly described as:

Deleted: [RECEIVER'S NAME]

PIN	17171 – 0009 LT
DESCRIPTION	PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; CITY OF HAMILTON

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(the "Property").

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RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

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- 3 -

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or

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in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

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- (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 \$_____, provided that the aggregate consideration for all such transactions does not exceed \$_____; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario

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Mortgages Act, as the case may be,⁵ shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

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

⁵ If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.

- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or

Deleted: <#>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.¶

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the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

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

EMPLOYEES

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge

(the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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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 \$_____ (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.

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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 "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

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

SERVICE AND NOTICE

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<@>'

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

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

GENERAL

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

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

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

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

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

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any

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other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 2203284 Ontario Inc., acquired for, or used in relation to a business carried on by the Debtor, including property municipally known as 98 James Street South, Hamilton, Ontario and more particularly described as:

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PIN	17171 - 0009 LT
DESCRIPTION	PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; CITY OF HAMILTON

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(the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 22nd day of June, 2017, (the "Order") made in an action having Court file number -CL-, 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.

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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.

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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 _____, 2017,

msi Spergel Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name: Trevor Pringle

Title: Senior Vice-President

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Deleted: (RECEIVER'S NAME)

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DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

- AND -

2203284 ONTARIO INC.
Respondent

CV-17-11827-0002
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial Court)**

PROCEEDINGS COMMENCED AT TORONTO

NOTICE OF APPLICATION

SimpsonWigle LAW LLP
1 Hunter Street East
Suite 200
P.O. Box 990
Hamilton, Ontario, L8N 3R1

DAVID J. H. JACKSON
LSUC NO. AO15656-R

Tel: (905) 528-8411
Fax: (905) 528-9008

Lawyers for the Applicant

TAB 2

AFFIDAVIT OF SERGIU COSMIN

Court File No. CV-17-11827-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

BETWEEN

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

-AND-

2203284 ONTARIO INC.

Respondent

APPLICATION UNDER Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

AFFIDAVIT OF SERGIU COSMIN

I, **SERGIU COSMIN**, of the City of Richmond Hill, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Manager, Special Accounts of the Applicant, Duca Financial Services Credit Union Ltd. ("Duca"). I have responsibility of matters pertaining to the Respondent, 2203284 Ontario Inc. ("220 Co.") and as such, I have personal knowledge of the matters to which I depose.
2. Where this Affidavit is based upon information received from others, I verily believe that information to be true.

THE PURPOSE OF THE APPLICATION

3. Duca is seeking an order to appoint msi Spergel Inc. ("Spergel") (21 King Street West, Suite 1602, Hamilton, Ontario, attention Mr. Trevor Pringle), a licensed bankruptcy trustee, as receiver ("Receiver") pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and/or Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended, without security of all of the assets, undertakings and properties of 220 Co. including property municipally known as 98 James Street South, Hamilton, Ontario and more particularly described as:

PIN	17171 – 0009 LT
DESCRIPTION	PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; CITY OF HAMILTON

(hereinafter referred to as the "Property").

BACKGROUND

4. Duca is a Credit Union incorporated pursuant to the laws of the Province of Ontario and is a mortgagee with respect to the Property with head office located at 5290 Yonge Street, Toronto, Ontario M2N 5P9.
5. 220 Co. is an Ontario corporation, with its registered office address at 93 Skyway Avenue, Unit 210, Toronto, Ontario, M9W 6N6. The Corporate Profile Report for 220 Co. dated June 6, 2017 is attached hereto and marked as **Exhibit "A"**.
6. The Corporate Profile Report and the books and records of 220 Co. disclose that Luigi Santaguida also known as Louie Santaguida is the sole officer and director of 220 Co.

LOAN FACILITIES

7. 220 Co. is currently indebted to Duca with respect to a loan facility in the principal amount of \$5,000,000.00 ("Mortgage Loan"), made pursuant to a Commitment Letter dated June 22, 2015 ("Commitment Letter"). Attached hereto and marked as **Exhibit "B"** to this my Affidavit is a copy of the Commitment Letter.
8. The Mortgage Loan was advanced on or about July 8th 2015 and as security for payment of the same, Duca holds, among other things, a First Mortgage, which is hereinafter described.
9. I am advised by David John Hopkins Jackson, partner in the office of SimpsonWigle LAW LLP that he has attended at the Property and determined and I do verily believe that the Property which is municipally known as 98 James Street South, Hamilton, Ontario, is presently vacant lands save and except, situated thereon is the remnant of a former church without a full roof, all four walls or interior structure. The aforementioned information is confirmed from my review of my credit file.
10. The purpose of the Mortgage Loan was to provide financing to 220 Co. with respect to its proposed condominium development at the Property.
11. I am advised by the credit application of 220 Co. with respect to the Mortgage Loan and do verily believe that the proposed condominium development was to be a 259 unit residential development with two floors of commercial units and as at June 12, 2015, 220 Co. had entered into 114 presale agreements with respect to the proposed condominium units.
12. I am advised from a communication that included Lawrence Zimmerman, lawyer for Luigi Santaguida and 220 Co. and do verily believe that the potential condominium unit purchasers have delivered deposits with respect to the agreements of purchase and sale or reservation agreements and those deposits

are believed to be held in trust by Schneider Ruggiero LLP, former lawyers for 220 Co., or Zimmerman Associates, lawyers for 220 Co., and their repayment, where appropriate, is secured by the hereinafter described Second Mortgage registered against the Property in favour of The Guarantee Company of North America, as Mortgagee, in the principal amount of \$5,180,000.00.

13. On December 13, 2016, the Mortgage Loan was outstanding as follows:

Principal	\$5,000,000.00
Accrued interest to December 13, 2016	27,328.77
Discharge Fee	1,000.00
PPSA Discharge Fee	150.00
Registration Fee	75.00
Late Payment Fee	1,000.00
Three months penalty interest pursuant to Section 17 of the <i>Mortgage Act</i> RSO 1990, cM.40	71,250.00
Legal Enforcement Expense (inclusive of disbursements and HST)	1,153.70
TOTAL	\$5,101,957.47
Interest continued to accrue from December 13, 2016 on the aforesaid principal amount, late payment fee and legal enforcement expense at Duca's Prime Rate plus 3% per annum, as it varies from time to time, calculated and payable monthly and not in advance, to the date of payment.	

14. The Mortgage Loan required monthly installment payments of interest only.
15. The term of the Mortgage Loan ended on July 8, 2016 but was extended to August 8, 2016 and then to September 8, 2016.

16. 220 Co. failed to make repayment of the Mortgage Loan on the expiration of its term on September 8, 2016 and on December 13, 2016, Duca caused its lawyers, SimpsonWigle LAW LLP ("SimpsonWigle") to make demand upon 220 Co. for payment of the aforesaid amounts. Attached hereto and marked as **Exhibit "C"** to this my Affidavit is a copy of the demand letter.
17. Subsequent to December 13, 2016, Duca has received no payment on account of the outstanding indebtedness save and except payments in the amount of \$23,750.00 on December 22, 2016 and on January 8, 2017 which Duca applied against the outstanding indebtedness owed to it with respect to the Mortgage Loan.
18. By reason of the default in payment of the outstanding indebtedness, Duca initiated enforcement proceeding by, among other things, initiating Notice of Power of Sale proceedings on December 28, 2016. Attached hereto and marked as **Exhibit "D"** to this my Affidavit is a copy of the Notice of Sale Under Charge/Mortgage.

DUCA'S SECURITY

19. As security for payment of the aforesaid indebtedness of 220 Co. to Duca, 220 Co. provided Duca with, *inter alia*, the following security:
 - (a) Charge/Mortgage registered in first position with respect to property municipally known as 98 James Street South, Hamilton, Ontario, registered in the Registry Office of Hamilton (#62) on July 8, 2015 as Instrument No. WE1048981 for the principal amount of \$5,000,000. (the "First Mortgage"). Attached hereto and marked as **Exhibit "E"** to this my Affidavit is a copy of the Mortgage.
 - (b) General Security Agreement dated July 7, 2015 made by 2203284 Ontario Inc. in favour of Duca Financial Services Credit Union Ltd. ("Security Agreement") providing Duca with a security interest in all of the present and future undertaking and property of 220 Co. Attached hereto and marked

as **Exhibit “F”** to this my Affidavit is a copy of the General Security Agreement.

- (c) Assignment of Rents – General registered in the Registry Office of Hamilton (#62) July 8, 2015 as Instrument No. WE1048982 (“Assignment of Rents”). Attached hereto and marked as **Exhibit “G”** to this my Affidavit is a copy of the Assignment of Rents – General.

- 20. On December 13, 2016, Duca caused SimpsonWigle LAW to deliver Notice of Intention to Enforce Security pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act* to 220 Co. with respect to the security described in paragraph 14 hereof. Attached hereto and marked as **Exhibit “H”** to this my Affidavit is a copy of the aforesaid Notice of Intention to Enforce Security.

PERSONAL PROPERTY SECURITY INTEREST

- 21. A *Personal Property Security Act* search with respect to 220 Co. dated June 7, 2017 discloses the registration on June 23, 2015 of the security interest held by Duca pursuant to the General Security Agreement, and also discloses:

- (a) A security interest registered October 30, 2014 in favour of The Guarantee Company of North America with respect to accounts and other;
- (b) A security interest registered August 11, 2016 in favour of 1220356 Ontario Limited and Taragar Holdings Limited in equipment, accounts and other (particulars of which equipment are unknown);

Attached hereto and marked as **Exhibit “I”** to this my Affidavit is a copy of the Personal Property Security Act search result.

REAL PROPERTY ENCUMBRANCES

22. A subsearch of the Property conducted on June 7, 2017 reveals that the parties having a registered security interest in the Property other than the first Mortgage held by Duca as aforesaid, are The Guarantee Company of North America, Diversified Capital Inc. and Mary Lou Santaguida. Attached hereto and marked as **Exhibit "J"** to this my Affidavit is a copy of the Parcel Register (Abbreviated) for Property Identifier with respect to the Property. The following encumbrances are registered against the Property:
- (a) A Charge/Mortgage registered in second position on October 30, 2014 as Instrument No. WE998973 in the amount of \$5,180,000.00 (the "Second Mortgage") in favour of The Guarantee Company of North America (the "Second Mortgagee"). Attached hereto and marked as **Exhibit "K"** to this my Affidavit is a copy of the Second Mortgage which also discloses that The Guarantee Company of North America's address for service is 4950 Yonge Street, Suite 1400, Toronto, Ontario.
 - (b) A Charge/Mortgage registered in third position on August 12, 2016 as Instrument No. WE1141288 in the amount of \$3,000,000.00 (the "Third Mortgage") in favour of Diversified Capital Inc. (the "Third Mortgagee"). Attached hereto and marked as **Exhibit "L"** to this my Affidavit is a copy of the Third Mortgage which also discloses that Diversified Capital Inc.'s address for service is 1243 Islington Avenue, Suite 701, Toronto, Ontario.
 - (c) A Charge/Mortgage registered in fourth position on June 13, 2013 as Instrument No. WE903381 in the amount of \$1,500,000.00 (the "Fourth Mortgage") in favour of Mary Lou Santaguida (the "Fourth Mortgagee"). Attached hereto and marked as **Exhibit "M"** to this my Affidavit is a copy of the Fourth Mortgage which also discloses that Mary Lou Santaguida's address for service is 14 St. Margarets Drive, Toronto, Ontario.

(d) A Charge/Mortgage registered in fifth position on April 11, 2016 as Instrument No. WE1111875 in the amount of \$701,583.00 (the "Fifth Mortgage") in favour of Marylou Santaguida (the "Fifth Mortgagee"). Attached hereto and marked as **Exhibit "N"** to this my Affidavit is a copy of the Fifth Mortgage which also discloses that Marylou Santaguida's address for service is 14 St. Margaret's Drive, Toronto, Ontario.

23. I understand that the Mortgage registered in favour of Diversified Capital Inc. collaterally secures indebtedness owed to Diversified Capital Inc. by a party, related to 220 Co., namely Terrasan 327 Royal York Road Limited, Toronto, and I understand that the aforesaid related party is the subject of a Court-appointed receivership respecting premises municipally known as 327 Royal York Road, Toronto. I believe that the aforementioned information is generally known in the marketplace.

MUNICIPAL PROPERTY TAXES

24. As at December 20, 2016, municipal property taxes with respect to the Property were outstanding in the amount of \$106,127.62 and I am not aware of any payment having been made on account of such arrears.

OUTSTANDING INDEBTEDNESS

25. As at June 6, 2017, 220 Co. is indebted to Duca with respect to the Mortgage Loan as follows:

Principal	\$5,000,000.00
Accrued interest to June 6, 2017	116,342.47
Three months penalty interest pursuant to Section 17 of the <i>Mortgage Act</i> R.S.O. 1990, Chapter M-40	71,250.00
Late Payment Fee	1,000.00

Discharge Fee	1,000.00
PPSA Discharge Fee	150.00
TOTAL	\$5,189,742.47

26. As of April 20, 2017, Duca had incurred legal expense in the amount of \$21,397.65, inclusive of HST and disbursements, with respect to the enforcement and realization on its security and in attempting to procure payment of the indebtedness owed to it and legal enforcement expense has continued to be incurred since that date. Pursuant to the terms of its security, Duca is entitled to be fully indemnified by 220 Co. with respect to payment of the aforesaid expense. Further, the payment of such expense is secured by the security held by Duca, as aforesaid.

REFINANCE OR RESTRUCTURE

27. I have been in communication with Luigi Santaguida and his lawyer, Lawrence Zimmerman, with respect to a proposed refinance restructuring of the condominium development with investors being represented by Erik Inspektor and his lawyer, Mark Atlin.
28. On May 31, 2017, I was advised by Erik Inspektor and do verily believe that the potential to refinance or restructure with his group of investors was then at an end.
29. Without obligation or commitment, Duca voluntarily forbore from enforcing its security by reason of the potential that the condominium development might be refinanced or restructured through Mr. Inspektor's group of investors.

BASIS FOR A RECEIVER

30. Given:


- (a) the failure of 220 Co. to repay its obligations to Duca despite demands having been made;
- (b) the length of time that has elapsed since default; and
- (c) the fact that Duca has a right to appoint a receiver under its security,

I believe that a Court appointed receiver should be appointed with respect to the Property.

31. A Court Appointed Receiver would be best placed to realize upon the Property that is subject to Duca's security.
32. Duca wishes to take any and all steps necessary to protect the security granted to it by 220 Co. and realize on the same.
33. I believe it is reasonable and prudent for Duca to further the enforcement of its security in an effort to recover its outstanding Mortgage Loan to 220 Co. and it is within Duca's rights to do so.
34. I believe that the appointment of a receiver will enhance the prospect of recovery by Duca and protect the interest of all stakeholders.
35. I believe that in all of the circumstances, it would be just and convenient and in the best interest of all creditors of 220 Co. that a receiver be appointed by this Honourable Court because, among other things:
 - (a) 220 Co. has been unable or unwilling to make payment of the Mortgage Loan or satisfy his obligations to Duca, despite demands having been made; and
 - (b) A receivership will provide a mechanism to preserve, protect and realize upon the Property.

36. Duca proposes that Spergel be appointed as receiver of the Property of 220 Co.
37. Spergel is an experienced, licensed Trustee in Bankruptcy and has consented to act as receiver, without security, of the Property of 220 Co. and all proceeds thereof. Attached hereto and marked as **Exhibit "O"** to this my Affidavit is a copy of the Consent of Spergel.
38. I make this Affidavit in support of the relief sought in the within Application and for no other or improper purpose.

AFFIRM BEFORE ME at the City
of Hamilton, in the Province of
Ontario, this 9th day of June, 2017.



Commissioner for Taking Affidavits (or as may be)




Sergiu Cosmin

Paul Joseph Demarco, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 6, 2019.

EXHIBIT "A"

This is Exhibit "A" referred to in the
affidavit of Sergiu Cosmin
sworn before me, this 9th
day of June 2017.


A COMMISSIONER FOR TAKING AFFIDAVITS

Paul Joseph Demarco, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 6, 2019.

Request ID: 019879724
Transaction ID: 63482513
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2017/02/03
Time Report Produced: 12:08:28
Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date
2203284	2203284 ONTARIO INC.	2009/04/14
		Jurisdiction
		ONTARIO
Corporation Type	Corporation Status	Former Jurisdiction
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
Registered Office Address		Date Amalgamated
93 SKYWAY AVENUE		NOT APPLICABLE
Suite # 210 TORONTO ONTARIO CANADA M9W 6N6		New Amal. Number
		NOT APPLICABLE
Mailing Address		Notice Date
93 SKYWAY AVENUE		NOT APPLICABLE
Suite # 210 TORONTO ONTARIO CANADA M9W 6N6		Letter Date
		NOT APPLICABLE
		Revival Date
		NOT APPLICABLE
		Transferred Out Date
		NOT APPLICABLE
		EP Licence Eff.Date
		NOT APPLICABLE
	Number of Directors Minimum Maximum	EP Licence Term.Date
	00001 00010	NOT APPLICABLE
Activity Classification		Date Commenced in Ontario
NOT AVAILABLE		NOT APPLICABLE
		Date Ceased in Ontario
		NOT APPLICABLE

Request ID: 019879724
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Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

2203284

Corporation Name

2203284 ONTARIO INC.

Corporate Name History

2203284 ONTARIO INC.

Effective Date

2009/04/14

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator: Name (Individual / Corporation)

LOUIE

SANTAGUIDA

Address

94 BROCKPORT DRIVE

TORONTO
ONTARIO
CANADA M9W 5C5

Date Began

2009/04/14

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Request ID: 019879724
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Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

2203284

Corporation Name

2203284 ONTARIO INC.

Administrator: Name (Individual / Corporation)

LOUIE
SANTAGUIDA

Address

94 BROCKPORT DRIVE

TORONTO
ONTARIO
CANADA M9W 5C5

Date Began

2009/04/14

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

Administrator: Name (Individual / Corporation)

LOUIE
SANTAGUIDA

Address

94 BROCKPORT DRIVE

TORONTO
ONTARIO
CANADA M9W 5C5

Date Began

2009/04/14

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

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Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

2203284

Corporation Name

2203284 ONTARIO INC.

Administrator: Name (Individual / Corporation)

LUIGI
SANTAGUIDA

Address

14 ST. MARGARETS DRIVE

TORONTO
ONTARIO
CANADA M4N 3E5

Date Began

2009/04/14

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

Administrator: Name (Individual / Corporation)

LUIGI
SANTAGUIDA

Address

14 ST. MARGARETS DRIVE

TORONTO
ONTARIO
CANADA M4N 3E5

Date Began

2009/04/14

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Y

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Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

2203284

Corporation Name

2203284 ONTARIO INC.

Administrator: Name (Individual / Corporation)

LUIGI
SANTAGUIDA

Address

14 ST. MARGARETS DRIVE

TORONTO
ONTARIO
CANADA M4N 3E5

Date Began

2009/04/14

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

Y

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Province of Ontario
Ministry of Government Services

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CORPORATION PROFILE REPORT

Ontario Corp Number

2203284

Corporation Name

2203284 ONTARIO INC.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	CHANGE NOTICE	1	2016/10/06

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.

Request ID: 019879726
Transaction ID: 63482517
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2017/02/03
Time Report Produced: 12:08:32
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CORPORATION DOCUMENT LIST

Ontario Corporation Number
2203284

Corporation Name
2203284 ONTARIO INC.

ACT/CODE	DESCRIPTION	FORM	DATE (YY/MM/DD)
CIA	CHANGE NOTICE PAF: ROSS, PETER M.	1	2016/10/06
CIA	INITIAL RETURN PAF: SANTAGUIDA, LOUIE	1	2009/11/09 (ELECTRONIC FILING)
BCA	ARTICLES OF INCORPORATION	1	2009/04/14 (ELECTRONIC FILING)


THIS REPORT SETS OUT ALL DOCUMENTS FOR THE ABOVE CORPORATION WHICH HAVE BEEN FILED ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

ALL "PAF" (PERSON AUTHORIZING FILING) INFORMATION IS DISPLAYED EXACTLY AS RECORDED IN ONBIS. WHERE PAF IS NOT SHOWN AGAINST A DOCUMENT, THE INFORMATION HAS NOT BEEN RECORDED IN THE ONBIS DATABASE.

The issuance of this report in electronic form is authorized by the Director of Companies and Personal Property Security Branch.

EXHIBIT "B"

This is Exhibit "B" referred to in the
affidavit of Sergiu Cosmin
sworn before me, this 9th
day of June 2017


A COMMISSIONER FOR TAKING AFFIDAVITS

Paul Joseph Demarco, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 6, 2019.

Signed copy

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Head Office
5200 Yonge Street
Toronto, ON M2N 5P9
T 416.223-8502
F 416.223.2575
E duca.info@duca.com
www.duca.com

June 22, 2015

2203284 ONTARIO INC.
93 Skyway Avenue, Unit 104
Toronto, Ontario M9W 6N6

Attention: Brennan Wood c/o Luigi Santaguida

Dear Mr. Santaguida:

We are pleased to advise that DUCA Financial Services Credit Union Ltd. has approved a first mortgage loan upon the terms and conditions described in this commitment letter ("Commitment") which upon execution by the Lender, Borrower and Guarantor will constitute an agreement which shall bind the Borrower, Guarantor and Lender:

MORTGAGE NO.:	TBD
LENDER:	DUCA Financial Services Credit Union Ltd.
BORROWER:	2203284 ONTARIO INC.
GUARANTOR:	Luigi Santaguida ("Guarantor")
LOAN:	\$5,000,000.00
PROPERTY:	98 James Street South, Hamilton, Ontario legally described as PIN 17171-0009 (LT) being: Part of Lots 75 and 76 P. Hamilton Survey (unregistered) City of Hamilton (Between Hunter St., McNab St., Jackson St. and James St.) as in HA59712; City of Hamilton (together with all improvements now or hereafter situate or erected thereon, collectively, " Property ")
PURPOSE:	The Loan shall be used to (i) finance equity take-out of \$4,707,500.00, which funds shall be used to finance development and pre-construction soft costs and restoration costs in connection with the redevelopment of the project known as "The Connolly" on the Property; (ii) to establish and secure a reserve one (1) year's

interest, being the Interest Reserve Amount (as defined below) to be applied to interest payments falling due during the Term (as defined below); and (iii) to pay any Lender's costs or fees as required herein and shall at all times be used for these purposes and for no other purpose without the prior written consent of the Lender.

CLOSING DATE: The date of the Loan advance ("**Closing Date**")

TERM: One (1) year from the Closing Date ("**Term**").

MATURITY DATE: The first (1st) anniversary of the Closing Date ("**maturity date**")

INTEREST ADJUSTMENT DATE: The Closing Date

INTEREST RATE: **Prime Rate Plus 3%** per annum calculated and payable monthly and not in advance both before and after maturity, default and judgment payable one month from the Interest Adjustment Date and every month thereafter until maturity.

For the purposes hereof "**Prime Rate**" means the prime lending rate of interest posted by the Lender from time to time.

AMORTIZATION: n/a

REPAYMENT: Interest only shall be paid by the Borrower by consecutive monthly instalments in the amount of \$24,375.00. The Borrower authorizes the Lender to deduct and apply interest payments falling due during the Term from the Interest Reserve Amount. The Borrower also authorizes the Lender to automatically debit the Borrower's account with the Lender for all payments and charges owing and payable to the Lender from time to time, if any.

The Borrower shall open an account with the Lender and deposit the sum of \$1.00 into a membership share account and a one-time commercial account opening fee of \$30.00 will be required. The Lender's pre-authorized debit form is required for all new accounts together with a void cheque.

PREPAYMENT: No prepayment of the Loan is permitted unless otherwise agreed upon in writing by the Lender.

SECURITY:

The Loan shall be secured by the following security (collectively, "**Security**"):

- (a) A first mortgage and charge on the Property ("**Charge**"). The Charge shall contain, *inter alia*, the Lender's standard terms and conditions and such other terms and conditions typical of commercial financing transactions of similar real property, including, without limitation, restrictions in respect of the sale or further encumbrancing of the Property, and/or the demolition or construction of any improvements thereon, without the Lender's prior written consent;
- (b) A first ranking general assignment of leases and rents and revenues from the Property;
- (c) A general security agreement providing a first ranking security interest against all the Borrower's present and future assets, property and undertaking;
- (d) A general assignment of accounts;
- (e) An assignment of material contracts;
- (f) An environmental indemnity to be provided by the Borrower and Guarantor;
- (g) An unconditional joint and several guarantee and postponement of claim by the Guarantor of the Charge and 100% of all debts, liabilities and obligations owing by the Borrower to the Lender under this Commitment and the Security; the guarantees and postponement of claim are in addition to the Guarantor's obligations under the environmental indemnity;
- (h) A postponement and subordination of claims ("**Postponement and Subordination**") by each shareholder of the Borrower and by Mary Lou Santaguida in respect of any and all loans or other financial assistance to the Borrower;
- (i) A certificate of independent legal advice is required for Mary Lou Santaguida regarding the delivery of the Postponement and Subordination and any other documents to be delivered in favor of the Lender;
- (j) A postponement, subordination and standstill agreement from Canada Guaranty Mortgage Insurance Company in respect of any security interest in the Property relating to purchaser deposits;
- (k) A trustee and beneficial owner agreement if the Borrower holds the Property as nominee and bare trustee for the sole use, benefit and advantage of another person or persons;
- (l) Title insurance to be provided to the Lender for its first ranking mortgage; and
- (m) Such other pledges, assignments, security agreements and documents as the Lender or its solicitors may deem necessary.

All documentation shall be in the Lender's standard form, where applicable, and otherwise in form and content satisfactory to the Lender or its solicitors.

TITLE: The Borrower shall have a good and marketable fee simple title to the Property. The Lender shall be first in priority in respect of the Property over all other encumbrances whatsoever, to the full extent

of the Loan. Title insurance is mandatory. The Borrower shall promptly provide any authorization that the Lender may request in order to permit it to obtain information on file with any government authority having jurisdiction over the Property.

**FINANCIAL
INFORMATION:**

The Borrower and Guarantor shall provide: (a) annual net worth statement for the Guarantor; (b) notice to reader financial statements with T2 Corporation Tax Return and Notice of Assessment for the Borrower prepared by accountants acceptable to the Lender within 5 months of the Borrower's fiscal year end; (c) for the Guarantor annual Notice of Assessment within 5 months of calendar year end and (d) such other financial and other information as the Lender may require.

LEASES:

n/a

TAXES:

With respect to municipal taxes, school taxes and local improvement rates ("Taxes") levied against the Property (a) the Lender may deduct from any Loan advance an amount sufficient to pay the Taxes which have become or will become due and payable and are unpaid at the date of such advance; (b) subject to subparagraph (c) below, the Borrower will pay all Taxes as they fall due and will provide the Lender with receipts confirming payment of same as it may require; (c) unless waived by the Lender, the Borrower shall pay to the Lender in monthly instalments on the dates on which monthly instalments on the Loan are payable hereunder, sums which in the sole opinion of the Lender will be sufficient to enable it to pay the whole amount of Taxes on or before the due date for payment thereof or, if such amount is payable in instalments, on or before the due date for payment of the first instalment thereof; (d) the Lender agrees to apply such deduction and payments to the Taxes levied against the Property so long as the Borrower is not in default under this Commitment or the Security, but nothing herein contained shall obligate the Lender to apply such payments on account of Taxes more often than yearly; provided, however, that if before any sum so paid to the Lender shall have been so applied, there shall be default by the Borrower in respect of any monthly payments on the Loan, the Lender may apply such sum in or towards payment of the principal and/or interest in default; the Borrower shall transmit to the Lender the assessment notices, tax bills and other notices affecting the imposition of Taxes forthwith upon receipt; and (e) the Lender shall allow the Borrower interest on the average monthly balance standing in the account from time to time to the credit of the Borrower for payment of Taxes, at a rate per annum

and at such times as the Lender may determine in its sole discretion, and the Borrower shall be charged interest at the Interest Rate on the debit balance, if any, of Taxes in the account outstanding after payment of Taxes by the Lender until such debit balance is fully repaid.

INSURANCE:

The Borrower shall insure the Property and keep it insured against the following in each case to the extent applicable:

- (a) Loss or damage by fire and other insurable hazards defined in an "all risks" insurance policy for the full replacement cost with provision for permission to occupy and with automatic vacancy permit;
- (b) Prior to commencement of any construction activities on the Property, "builder's risk"/"continuation of construction" insurance;
- (c) Comprehensive boiler and pressure vessel insurance for the full replacement cost or such lesser amount as shall be acceptable to the Lender;
- (d) Business interruption or rental loss insurance acceptable to the Lender for an indemnity period of not less than 12 months and with coverage of not less than 100% of the resulting loss of rent or other revenue received from the operation of the Property; and
- (e) Public liability insurance on a comprehensive basis to an amount not less than \$5,000,000.00 on an occurrence basis, or such other amount as the Lender may reasonably request, adding the Lender as an additional insured.

The policy to be maintained shall not contain any co-insurance clauses, shall be in form and with an insurer satisfactory to the Lender and shall include the agreement of the insurer that the policy will not be cancelled without at least 30 days' prior written notice of intended cancellation to the Lender. The Lender shall be named in all policies of insurance as first or second mortgagee, as the case may be, upon the terms of the standard Insurance Bureau of Canada mortgage clause or as loss payee as its interest may appear, and as additional insured with respect to public liability insurance.

The Lender may in its sole discretion, at the Borrower's expense, retain an insurance consultant to review the insurance coverage to ensure that it meets the Lender's requirements.

**REPLACEMENT
RESERVE:**

n/a

**ENVIRONMENTAL AND
OTHER PROVISIONS:**

The Borrower represents to the Lender as follows: (a) no environmental hazard exists on the Property or on adjacent land; (b) no claim, complaint or notice of any action has been made or issued relating to an environmental hazard on the Property; (c) the Property is being used in compliance with applicable laws; and (d) the Borrower does not own any real property abutting the Property. The Borrower shall give the Lender immediate notice of any change in circumstances which would render any of the above representations untrue; and shall ensure that the Property and all improvements thereon comply in all respects with all applicable laws, including those in respect of zoning, use, occupancy, construction liens, subdivision, parking, historical designation, fire, access, loading facilities, landscaping, pollution of the environment, toxic materials or other environmental hazards, building construction and public health and safety; and shall ensure that there will be no outstanding work orders against the Property or any part thereof.

In the event that the Property does not comply with all applicable environmental and other laws on the Closing Date or at any other time during the term of the Loan, the Borrower will forthwith remediate and cure any non-compliance, including removal of any hazardous substances, to the entire satisfaction of the Lender, failing which the Borrower shall be in default under this Commitment and the Security.

COSTS AND FEES:

Whether or not the Loan transaction contemplated hereby is completed, the Borrower shall pay the legal fees and disbursements of the Lender's solicitors, and the costs incurred by the Lender or its consultants in connection with this Commitment, the Loan and the Security including those related to fire and title insurance, appraisal and environmental reports, survey, inspection, monitoring and reserve advances. Such fees, disbursements and costs may be deducted from any Loan advance.

APPLICATION FEE:

A fee of \$20,000.00 is acknowledged as received. This fee is non-refundable and is earned by the Lender as compensation for costs incurred, including time expended in processing, approving and

providing this Commitment, but excluding the Costs and Fees referred to above.

COMMITMENT FEE: A fee of **\$30,000.00** is due payable on the date of acceptance of this Commitment. The Borrower authorizes the Lender to deduct this fee from the Loan advance.

STANDBY FEE: n/a

ANNUAL REVIEW FEE: n/a

APPRAISALS

AND ASSESSMENT: All appraisals, inspections, assessments and information with respect to the Property provided to the Lender are provided only for the purpose of assisting it in determining whether to grant the Loan, and no acceptance, use of or adoption of such appraisals, inspections, assessments or information by the Lender shall be construed as any agreement by it as to the value or condition of the Property. The Borrower is responsible for all appraisal and assessment fees.

CONDITIONS PRECEDENT

TO ADVANCE: The Lender's obligation to advance the Loan is conditional upon receipt by it of the following, all in form and substance satisfactory to the Lender or its solicitors:

- (a) a duly executed copy of this Commitment, together with the Commitment Fee;
- (b) duly executed copies of the Security registered where required;
- (c) a certificate or binder of insurance satisfactory to the Lender;
- (d) an appraisal report of the property for not less than **\$9,091,000.00** prepared for the Lender by an approved appraiser, the assumptions, findings and conclusions of which are satisfactory to the Lender in its absolute discretion addressed or with transmittal letter to the Lender **(RECEIVED)**;
- (e) an environmental site assessment addressed to or with transmittal letter satisfactory to the Lender **(Phase I ESA Report by ECOH (Environmental Consulting and Occupational Health Management Inc.) dated April**

2013 and transmittal letter RECEIVED, subject to satisfactory Lender and peer review);

- (f) Pre-Demolition Designated Substance and Hazardous Materials Assessment Report satisfactory to the Lender **(Report dated March 2013 RECEIVED, subject to Lender review);**
- (g) confirmation that all Taxes are current;
- (h) corporate documentation to the Lender's and its solicitors' satisfaction, where applicable;
- (i) an authorization by the Borrower authorizing the Lender to contact at any time its external accountant/auditor and any government agency with respect to financial statements, income taxes, payroll deductions, worker's compensation, PST and HST, to the extent applicable;
- (j) a solicitor's corporate opinion in respect of the Borrower and each Corporate Guarantor satisfactory to the Lender and its solicitors;
- (k) confirmation of sales to purchasers of units in the Project and all deposits received by any deposit holder in accordance with the *Condominium Act, 1998* (Ontario), as amended;
- (l) confirmation of the status of all existing and any prior litigation proceedings and related judgments involving the Guarantor or any affiliates of the Borrower;
- (m) a legal opinion from the Lender's solicitors satisfactory to the Lender confirming that (i) the Borrower has good and marketable title insured title to the Property; and (ii) the Charge constitutes a good and valid title insured first charge on the Property;
- (n) if the Borrower is a bare trustee, a copy of the declaration of trust or nominee agreement;
- (o) the Lender shall deduct the sum of \$292,500 ("**Interest Reserve Amount**") from the Loan advance to pay interest during the Term; the Interest Reserve Amount shall be deposited into an account with the Lender for the purpose

of paying monthly interest payments under this Commitment, and shall be pledged and charged to the Lender as security for the Loan; if the Interest Reserve Amount is not enough to pay interest that is due during the Term, the Borrower shall pay such deficiencies directly to the Lender on the dates on which monthly instalments on the Loan are payable hereunder; and

- (p) such other information, documentation, opinions and registrations as the Lender or its solicitors may request.

**RENEWAL/
REFINANCING:**

The Borrower and Guarantor acknowledge that, notwithstanding the Lender has provided the conditional offer to finance the Loan herein, the Lender shall have no obligation whatsoever and is in no way providing any offer to finance in respect of the renewal or refinancing of the Loan, or any other refinancing of the Property.

RIGHT OF TERMINATION:

The Lender shall have the right to terminate its agreement to provide the Loan to the Borrower and be relieved of all obligations in connection with this Commitment or the Security in the event any of the following events should occur:

- (a) the Borrower fails or is unable or unwilling for any reason whatsoever to comply with any of the terms and conditions set out in this Commitment within the time indicated for such compliance;
- (b) the Borrower fails or refuses to execute any documentation requested by the Lender's solicitors or to deliver such documentation to them;
- (c) the Loan has not been fully advanced on or before **July 15, 2015**;
- (d) the Borrower refuses to accept the Loan proceeds when advanced;
- (e) the Borrower or any Guarantor shall become bankrupt, or subject to proceedings under the *Companies' Creditors Arrangement Act* (Canada), or subject to bankruptcy, receivership or insolvency proceedings;
- (f) there has been, in the Lender's sole opinion, a material adverse change in the condition of the Property, the Borrower or the Guarantor or in the actual or anticipated revenues from the Property;
- (g) any construction material containing asbestos has been used or will be used in the Property or there are PCBs or other contaminants or hazardous materials on the Property;
- (h) the Borrower has not complied with all the provisions of the *Construction Lien Act* (Ontario) to the satisfaction of the Lender's solicitors;

- 61
- (i) any representation made by the Borrower in this Commitment or the Security is not accurate as of the date of any Loan advance or during the Term of the Loan;
 - (j) the Financial Covenants herein have not been complied with; or
 - (k) 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 its agreement to provide the Loan to the Borrower prior to the advance of the entire Loan, the amount advanced, if any, together with interest thereon at the rate set out herein shall become immediately due and payable.

**FINANCIAL
COVENANTS:**

The Borrower and Guarantor covenant and agree with the Lender that the Borrower will:

- (a) maintain a Debt Service Coverage Ratio for Borrower of not less than [n/a]; and
- (b) maintain a Debt to Equity Ratio for Borrower of not greater than 2:1.

The Lender shall have the right to test the above covenants at any time while the Loan is outstanding (and shall do so at least once per year on the annual review of the Loan) using the most current annual financial statements of the Borrower in the Lender's possession.

For the purpose hereof, the following terms shall have the following meanings:

"Debt Service Coverage Ratio" means, for any fiscal year, the ratio obtained where the numerator equals EBITDA for such fiscal year and the denominator equals the total of monthly instalments of principal and interest paid for the same period. Any other additional voluntary principal payments will be excluded from this calculation.

"EBITDA" means earnings calculated in accordance with GAAP before interest expense, income taxes, depreciation, amortization and extraordinary/unusual non-recurring items (such latter items to be determined by the Lender).

"Debt to Equity Ratio" means the ratio obtained where the numerator equals total debt plus liabilities and the denominator equals equity minus intangibles (e.g. goodwill, incorporation costs, patents etc.) plus appraisal surplus (as approved by the Lender).

"Working Capital Ratio" means the ratio obtained where the numerator equals current assets and the denominator equals current liabilities, both calculated in accordance with GAAP.

"GAAP" means Generally Accepted Accounting Principles. Except as otherwise expressly provided herein, all terms of accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time. All calculations of the components of financial information for the purposes of determining compliance with the financial ratios and financial covenants contained herein shall be made on a basis consistent with GAAP in existence as at the date of this Commitment and used in the preparation of financial statements.

In cases where Borrower's financial performance cannot satisfy the financial covenants or any of them, the Lender may calculate such financial covenants based on one or more of any corporate Guarantor's financial statements (at the discretion of the Lender) in addition to or in lieu of the Borrower's financial statements and will be combined with the financial statements of such Guarantor to calculate EBITDA, Debt Service Coverage Ratio, Debt to Equity Ratio and Working Capital Ratio, as the case may be.

**REPORTING
REQUIREMENTS:**

For the purposes of the Lender's annual review of the Loan and Property, the Borrower and Guarantor shall provide the following statements and information (collectively the "Statements") to the Lender:

- (a) Notice to Reader (unaudited) financial statements prepared by independent chartered accountants acceptable to the Lender for the Borrower and any corporate guarantor within five months of each fiscal year end together with copies of all tax filings and notices of assessment to confirm all taxes are paid up-to-date;
- (b) Updated net worth statement for the Guarantor together with supporting information to support asset values and income as requested by the Lender within five months of each fiscal year end of the Borrower together with copies of all tax filings and notices of assessment to confirm all taxes are paid up-to-date;
- (c) Current Taxes bill with confirmation that all required Taxes have been paid;
- (d) Current insurance policy indicating the Lender as first loss payee/first mortgagee, and as additional insured with respect to public liability insurance;

- (e) Quarterly updates as to the status of all existing and any prior litigation proceedings and related judgements involving the Guarantor or any affiliates of the Borrower; and
- (f) Such other information pertinent to the Property as the Lender may request.

LATE REPORTING:

In the event that any of the Statements are not provided to the Lender within the time limited therefor, the Lender will assess penalty charges against the Borrower or Guarantor including deeming such failure to be a default under this Commitment entitling the Lender to exercise its rights and remedies consequent upon default. The Lender may request the Borrower or Guarantor to provide the Lender with updated Statements at any time during a fiscal year of the Borrower or any corporate Guarantor. The failure to provide the updated Statements may be deemed by the Lender to be a default under this Commitment and the Security.

ASSIGNMENT:

Neither the Borrower nor the Guarantor shall have the right to assign any of its respective rights or obligations under this Commitment or in respect of the Loan to any person. The Borrower and the Guarantor agree that the Lender may transfer and assign, without their consent and without notice to them, the Lender's rights and obligations under this Commitment, the Loan, the Security and any related documentation ("**Mortgage Loan and Security**") to any person. The Lender may also syndicate, securitize or grant participation interests in the Mortgage Loan and Security without the consent of the Borrower and Guarantor or notice to them. The Borrower and Guarantor agree that the Lender may disclose confidential information relating to the Mortgage Loan and Security, including any financial information provided by them at any time or otherwise relating to the Property and any plans, drawings or other documentation or information regarding the Property, to any person in connection with any of the transactions contemplated in this paragraph.

TIME:

Time is of the essence hereof.

AMENDMENT:

This Commitment shall only be amended by agreement in writing executed by all the parties hereto.

WAIVER:

Any failure by the Lender to exercise any rights or remedies under this Commitment or any Security shall not constitute a waiver thereof.

GOVERNING LAW:

This Commitment shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

SURVIVAL:

The terms and conditions of this Commitment shall survive the execution and registration of the Security and there shall be no merger of these provisions or conditions in the Security; provided that in the event of any conflict between the provisions of this Commitment and the Security, the provisions of this Commitment shall prevail to the extent necessary to remove such conflict. Notwithstanding the foregoing, in the event that the Security contains remedies which are in addition to the remedies set forth in this Commitment, the existence of such additional remedies in the Security shall not constitute a conflict or inconsistency with the provisions of the Commitment.

NOTICES:

Any notice or demand or other written communication hereunder shall be given by facsimile, letter or by electronic means of communication. A facsimile communication shall be deemed received on the Business Day following its transmission. A letter shall be deemed received when delivered to the receiving party at the address shown on page 1 hereof. An electronic communication shall be deemed received on the day of transmittal if a Business Day and before 5:00 p.m. or, if not, on the next Business Day. Each party shall be bound by any notice given as provided hereunder and entitled to act in accordance therewith. "**Business Day**" means any day other than a Saturday, Sunday or any statutory or civic holiday observed in the Province of Ontario.

INTERPRETATION:

In this Commitment (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; (b) the word "including" shall mean "including, without limitation,"; (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto; (d) any reference to this Commitment, the Security or other concomitant agreement or instrument shall include all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto from time to time; (e) any reference to the Lender, Borrower, Guarantor and any other person shall include their respective heirs, estate trustees, legal representatives, successors and assigns; and reference to a "person" shall include an individual, general or limited partnership, joint venture, sole proprietorship, corporation, unincorporated association, trust, trustee, estate trustee, legal representative or any federal, provincial, municipal or other form of government; and reference to a "corporation" shall include a company or other form of body corporate; (f) all dollar amounts are expressed in Canadian dollars; (g) the division of this Commitment into separate sections

and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this Commitment; and (h) if more than one person is named as, or otherwise becomes liable for or assumes the obligations and liabilities of the Borrower or Guarantor, then the obligations and liabilities of all such persons shall be joint and several. This Commitment is intended to supplement and not derogate from the Security or any other concomitant document.

**ADDITIONAL
LOAN TERMS:**

The additional loan terms attached as Schedule "A" to this commitment letter shall form a part thereof as if incorporated herein.

**LENDER APPROVED
SOLICITORS:**

Enzo Sallese, Minden Gross LLP
Suite 2200, 145 King Street West
Toronto, ON M5H 4G2
esallese@mindengross.com
T. 416.369.4107
F. 416.864.9223

ACCEPTANCE:

The terms of this Commitment are open for acceptance by the Borrower and Guarantor by executing the original hereof where indicated below and delivering it to the Lender's head office at 5290 Yonge Street, Toronto, Ontario M2N 5P9, on or before 5:00 p.m. on June 24, 2015, after which date and time this Commitment shall lapse and become null and void.

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: 
Michelle Schulder
Senior Manager Commercial Banking

Per: 
Francis F. Sajed
Chief Lending Officer

[Continued on next page]

ACCEPTANCE

ACCEPTED on: June ^{23rd.} 23 2015

2203284 ONTARIO INC.

Per: Luigi Santaguida
Luigi Santaguida, A.S.O.

The undersigned Guarantor has read, understands and accepts the terms and conditions of this Commitment.

ACCEPTED on: June ^{23rd.} 23 2015

Luigi Santaguida
Luigi Santaguida

#2376576 v5 | 4095670

SCHEDULE "A"**ADDITIONAL LOAN TERMS**

Attached to and forming part of a commitment letter dated June 22, 2015 between DUCA Financial Services Credit Union Ltd., as Lender, and 2203284 Ontario Inc., as Borrower.

DEFAULT

In the event that the Borrower or Guarantor does not perform or comply with any of the provisions of this Commitment or the Security or any other agreement between the Borrower or Guarantor and the Lender relating to the Loan, such non-performance or failure to comply shall constitute a default under the terms of this Commitment and the Security and the Lender shall have the right to immediately demand payment of any amounts advanced, together with interest at the rate set out in this Commitment, as well as any other amounts due under this Commitment or the Security.

SALE OR OWNERSHIP CHANGE

The Borrower shall not sell, assign or otherwise dispose of the Property without the prior written consent of the Lender. If the Borrower is a corporation, it shall not make any changes to its authorized capital or its allocation or ownership which would result in a change of voting control or beneficial ownership of the corporation, without the prior written consent of the Lender.

SUBSEQUENT FINANCING

The Borrower shall not enter into any further financing of the Property and shall not further encumber the Property without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion.

APPOINTMENT OF RECEIVER

In the event that the Borrower or Guarantor shall be in default in the observance or performance of any of the terms, conditions, covenants or payments contained in this Commitment or the Security, the Lender may, by notice in writing, appoint any person to be a receiver, a manager or a receiver and manager of the Property upon and subject to terms more particularly set out in the Security.

INSPECTION

The Lender shall have the right at any reasonable time or times to fully inspect the Property, so long as any monies remain outstanding under the Loan.

CONSENT TO DISCLOSURE

The Borrower hereby consents (such consent to remain in force as long as the Loan is outstanding) to any government body or authority or other person having information relating to HST or any other amount required to be paid by the Borrower, where the failure to pay such other amount could give rise to a claim ranking or capable of ranking in priority to the Security, to release such information to the Lender at any time upon its request. The Borrower shall provide signed third party authorizations in support of the foregoing at any time upon the Lender's request, whether prior to or after disbursement of the Loan.

LENDER'S EXPENSES AND ADMINISTRATION FEES

The Borrower shall pay all costs, charges and expenses incurred by the Lender in connection with the operation or enforcement of the Commitment or the Security, including costs of registration of financing statements or financing change statements and searches in connection therewith, periodic property inspections and Taxes verifications and other similar costs, and any fees or charges of agents or other persons retained by the Lender for the purpose of conducting such activities on its behalf. In addition the Borrower shall pay the administration fees in connection with the administration of the Loan by the Lender, including the provision of mortgage statements and discharges, processing late payments, and cheques or automatic debits which are dishonoured or not accepted, the amount of each such administration fee being a liquidated amount to cover administrative costs and not a penalty. If the Borrower fails to pay any such costs, charges or expenses upon demand, they will be added to the outstanding Loan and shall be secured by the Security.

DEMOLITION

The Borrower shall not demolish all or any portion of the Property without the Lender's prior written consent.

MULTI-RESIDENTIAL PROPERTIES

If the Property is a multi-residential property, the Borrower represents and warrants with respect to the Property as follows:

- (a) except as permitted under laws applicable to residential housing,
 - (i) no demolition, conversion, renovation, repair or severance has taken place with respect to the Property; and
 - (ii) there have been no increases in the rental rate charged for any residential rental unit or units on the Property.
- (b) as provided in laws applicable to residential housing,
 - (i) all rents charged with respect to the Property are lawful rents and all required rebates have been paid; and
 - (ii) all required filings have been made and were timely, accurate and complete.
- (c) pursuant to laws applicable to residential housing,
 - (i) no applications, investigations or proceedings have been commenced or made; and
 - (ii) there are no outstanding orders or decisions made by any ministry, board or commission with respect to the Property or any residential rental unit.

On or before the date of the first Loan advance the Borrower shall provide a statutory declaration by an officer or director of the Borrower that the above representations and warranties are true and correct. The Borrower shall deliver to the Lender on or before the date of the first Loan advance all documents required to establish the legality of rents.

The Borrower hereby authorizes all government ministries, boards or commissions having jurisdiction over residential housing to release to the Lender or its solicitors any and all information contained in their files.

The Borrower shall comply with the provisions of all laws applicable to residential housing during the term of the Loan. In the event of a breach of this covenant or in the event that any of the representations and warranties hereinabove contained are false, the outstanding Loan and any accrued interest shall, at the Lender's option, become immediately due and payable.

CONDOMINIUM PROVISIONS

If any part of the Property is a condominium unit, the Borrower shall promptly observe and perform all of its covenants, duties and obligations under or pursuant to the *Condominium Act* (Ontario) and the declaration, by-laws and rules of the condominium corporation, and in accordance with terms more particularly set out in the Security.

INTEREST ON INTEREST

Interest shall be payable on all past due interest from the due date of such interest at the Interest Rate, both before and after default, demand, maturity and judgment until paid. Any overdue interest shall be payable on demand. If such overdue interest and compound interest are not paid within one month from the time of default, a rest will be made and compound interest at the Interest Rate will be payable on the aggregate amount then due, both before and after maturity, default and judgment, and so on from time to time until paid.

LENDER'S RECORDS

The Lender shall keep accounts showing the status of the Loan and records of the sums borrowed, principal and interest repayments and all other sums due under this Commitment. In the absence of manifest error, the Lender's records shall constitute conclusive evidence of the Borrower's indebtedness to the Lender hereunder.

PAYMENTS TO GOVERNMENT AUTHORITIES

During the term of the Loan the Borrower shall pay, when due, all amounts owing to any government authority which, if unpaid, would give such authority recourse for such amounts ranking in priority to the Security; the failure to pay any such amount, when due, shall constitute a default under this Commitment and the Security.

ACCELERATION OF LOAN

If any acceleration or prepayment of all or any portion of the Loan should occur prior to the Loan's maturity date for any reason whatsoever (whether as a result of default under this Commitment or the Security, by operation of law or otherwise) then an amount equal to the greater of (A) three months' interest at the Interest Rate on the Loan then outstanding; and (B) the positive difference, if any, between (i) the present value on the date of such acceleration or prepayment of all future monthly payments which the Borrower would otherwise be required to pay under the Loan during the remainder of the term of the Loan absent such prepayment or acceleration, including the unpaid principal of the Loan which would otherwise be due upon the Loan's maturity date absent such acceleration or prepayment, with such present value being determined by the use of a discount rate

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equal to the yield to maturity, less ½ %, on the date of such acceleration or prepayment of Government of Canada bonds having the term to maturity closest to what otherwise would have been the remainder of the term of the Loan absent such acceleration or prepayment; and (ii) the Loan principal on the date of such prepayment ("**Prepayment Charge**") shall immediately become due and payable and shall be secured by the Security. If there is more than one Government of Canada bond with a maturity equally close to what otherwise would have been the remaining term of the Loan absent the repayment by reason of such acceleration or prepayment, as the case may be, the selection of the applicable bond shall be made by the Lender, acting reasonably. The Borrower acknowledges that the Prepayment Charge represents reasonable and fair compensation for the loss that the Lender may sustain from any acceleration or prepayment of the Loan or any part thereof prior to the Loan's maturity date. Provided that nothing herein contained shall create any right to prepay all or any portion of the Loan at any time or under any circumstances prior to the Loan's maturity date.

CAPITALIZED WORDS

Unless otherwise defined herein, all capitalized words and expressions shall have the same meanings as defined in the commitment letter to which these additional loan terms are attached.

EXHIBIT “C”

This is Exhibit "C" referred to in the
affidavit of Sergiu Cosmin
sworn before me, this 9th
day of June 2017

PA
A COMMISSIONER FOR TAKING AFFIDAVITS

Paul Joseph Demarco, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 6, 2019.



SimpsonWigle
LAW FIRM

1 Hunter Street East, Suite 200
Hamilton, Ontario L8N 3W1
P.O. Box 990, Hamilton, Ontario L8N 3R1
Tel: 905-528-8411 Fax: 905-528-9008
www.simpsonwigle.com

David J. Jackson
Ext. 304
Email: djackson@simpsonwigle.com

December 13, 2016

BY REGULAR AND REGISTERED MAIL

2203284 Ontario Inc. 93 Skyway Avenue Suite 210 Toronto, ON M9W 6N6	2203284 Ontario Inc. 94 Brockport Drive Toronto, ON M9W 5C5
---	--

Attention: Luigi Santaguida, President

Dear Sir:

Re: Duca Financial Services Credit Union Ltd.

We are writing to you on behalf of Duca Financial Services Credit Union Ltd. ("Duca"). We advise that 2203284 Ontario Inc. is indebted to Duca with respect to a mortgage loan made pursuant to a commitment letter dated June 22, 2015. 2203284 Ontario Inc. is in default of the terms and conditions of the mortgage loan. The outstanding indebtedness owed to Duca Inc. with respect to the loan is as follows:

Principal	\$5,000,000.00
Accrued interest to December 13, 2016	27,328.77
Discharge Fee	1,000.00
PPSA Discharge Fee	150.00
Registration Fee	75.00
Late Payment Fee	1,000.00

P.D. MILNE
J.M. WIGLE
K.I. OSBORNE
S.R. LEE
M. DURDAN
G.B. DALEY

L.W. MATTHEWS
T. BULLOCK
R.A. FISHER*
H.A. HAMDANI
B. SARSH

J.N. ROSENBLATT
D.A. SCHMUCK*
P.A. RAMACIERI**
E. SAVAS**
S.H. COSTA

J.C. BROWN
J.C. MONACO*
S.M. LAW
G. NALSOK
A. KNUDSEN

D.J.H. JACKSON
B.J. FOREMAN
B.C. LANGLOTZ
K.G. HYLAND
A.M. STONE

M.C. MORGAN
R.S. DANKS (1957-2012)
C.A. OLSIAK
K. WYSYNSKI
T.P. LAMBERT

*Professional Corporation ** Member of the Ontario and New York Bar

Burlington Office: 390 Brant Street, Suite 501, Burlington, Ontario L7R 4J4 Tel: 905-639-1052 Fax: 905-333-3960

Three months penalty interest pursuant to Section 17 of the <i>Mortgage Act</i> RSO 1990, cM.40	71,250.00
Legal Enforcement Expense (inclusive of disbursements and HST)	1,153.70
TOTAL	\$5,101,957.47

Interest continues to accrue from December 13, 2016 on the aforesaid principal amount, late payment fee and legal enforcement expense at Duca's Prime Rate plus 3% per annum, as it varies from time to time, calculated and payable monthly and not in advance, to the date of payment.

We also enclose herewith Notice pursuant to Section 244(1) of the *Bankruptcy and Insolvency Act*.

On behalf of Duca, we hereby make demand upon 2203284 Ontario Inc. for payment of the aforesaid outstanding indebtedness owed to Duca. Our client requires payment of the aforesaid indebtedness and liability within ten (10) days of the date of this letter as otherwise it will take whatever action it considers appropriate to enforce payment of the aforesaid amount including the initiation of legal action against 2203284 Ontario Inc.

Kindly govern yourself accordingly.

Yours very truly,

SimpsonWigle LAW LLP

David J. Jackson

DJJ/spb


Encl.

cc. Client

Luigi Santaguida, Guarantor

EXHIBIT “D”

This is Exhibit "D" referred to in the
affidavit of Sergiu Cosmin
sworn before me, this 9th
day of June 2017


A COMMISSIONER FOR TAKING AFFIDAVITS

Paul Joseph Demarco, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires July 6, 2019.

NOTICE OF SALE UNDER CHARGE/MORTGAGE

TAKE NOTICE that default has been made in the payment of the monies due under a certain Charge/Mortgage dated July 8, 2015 made between

2203284 ONTARIO INC.

(Chargor/Mortgagor)

and

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

(Chargee/Mortgagee)

upon the following property, namely:

PIN	17171 – 0009 LT
DESCRIPTION	PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; CITY OF HAMILTON
ADDRESS	98 JAMES ST S HAMILTON

which Charge/Mortgage was registered on July 8, 2015 in the Land Registry Office of Hamilton (# 62) as Instrument No. WE1048981.

And we hereby give you notice that the amount now due on the Charge/Mortgage for principal money, interest, discharge fees, registration fee, late payment fee, penalty interest, legal enforcement expense and costs, respectively, is **\$5,092,396.10** made up as follows:

Principal	\$5,000,000.00
Accrued interest to December 28, 2016	15,291.09
Discharge Fee	1,000.00
PPSA Discharge Fee	150.00
Registration Fee	75.00
Late Payment Fee	1,000.00
Three months penalty interest pursuant to Section 17 of the <i>Mortgage Act</i> R.S.O. 1990, Chapter M-40	71,250.00
Legal Enforcement Expense (inclusive of disbursements and HST)	2,104.51
Costs for this proceeding (Notice of Sale) inclusive of disbursements and HST	1,525.50

TOTAL	\$5,092,396.10
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(such amount for costs being up to and including the service of this notice only, and thereafter such further costs and disbursements will be charged as may be proper) together with interest at Duca Financial Services Credit Union Ltd.'s Prime Rate of interest plus 3% per annum, as it varies from time to time, calculated and payable monthly and not in advance, on the principal money, late payment fee, legal enforcement expense and costs hereinbefore mentioned from the date hereof to the date of payment.

AND unless the said sums are paid on or before **Friday, February 3, 2017**, we shall sell the property covered by the said Mortgage under the provisions contained in it and pursuant to Part III of The Mortgages Act, R.S.O., 1990, Chapter M-40 and amendments thereto.

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

DATED: December 28, 2016

Duca Financial Services Credit Union Ltd.

Mortgagee by its lawyers
SimpsonWigle LAW LLP
1 Hunter Street East, Suite 200
Hamilton, ON L8P 4W7
Tel: (905) 528-8411

Per:

David J. Jackson

TO:

2203284 Ontario Inc. 93 Skyway Avenue Suite 210 Toronto, ON M9W 6N6	2203284 Ontario Inc. 94 Brockport Drive Toronto, ON M9W 5C5
2203284 Ontario Inc. 98 James Street South Hamilton, ON L8P 2Z6	Mr. Luigi Santaguida 93 Skyway Avenue Suite 210 Toronto, ON M9W 6N6
Mr. Luigi Santaguida 94 Brockport Drive Toronto, ON M9W 5C5	Mary Lou Santaguida 14 St. Margaret's Drive Toronto, ON M4N 2E5
Diversified Capital Inc. c/o Robins Appleby Barristers and Solicitors 120 Adelaide St. West, Suite 2600 Toronto, ON M5H 1T1 Attention: Dominique Michaud	Diversified Capital Inc. 1243 Islington Avenue, Suite 701 Toronto, ON M5P 1Y9
The Guarantee Company of North America 4950 Yonge Street, Suite 1400, Madison Centre Toronto, ON M2N 6K1	