

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

**MOTION RECORD
(returnable April 30, 2019)**

VOLUME 1 of 2

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ONTARIO

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B E T W E E N :

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INDEX

TAB	DOCUMENT	PAGE NO.
<u>VOLUME 1</u>		
1	Notice of motion (returnable April 30, 2019)	1-4
2	Third Report of the Receiver dated April 17, 2019	5-30
A	Appendix A - Receivership Order issued by The Honourable Madam Justice Conway dated June 22, 2017	31-48
B	Appendix B - First Report Of The Receiver Dated May 4, 2018 And Supplementary Report Of The Receiver Dated May 16, 2018	49-90
C	Appendix C - Approval and Vesting Order issued by The Honourable Justice Dunphy dated May 16, 2018	91-102
D	Appendix D - Ancillary Order issued by The Honourable Justice Dunphy dated May 16, 2018	103-108
E	Appendix E - Second Report of The Receiver dated November 23, 2018 (excluding appendices)	109-117
F	Appendix F - Further Fresh as Amended Deposit Claims Procedure Order issued by The Honourable Justice McEwan dated November 29, 2018	118-156

G	Appendix G -	Claims Determination Summary	157-161
H	Appendix H -	Claims Barred Summary	162-163
I	Appendix I -	Sufficient Funds Certificate	164-165
J	Appendix J -	Receiver's Interim Statement of Receipts and Disbursements as at April 8, 2019	166-167
K	Appendix K -	Security Opinion re Guarantee Company of North America	168-210
L	Appendix L -	2203284 Ontario Inc.'s General Ledger Account of Santerra Asset Management	211-212
M	Appendix M -	Correspondence to Santerra Asset Management dated August 4, 2017	213-214
N	Appendix N -	Correspondence to Marylou Santaguida dated October 26, 2017	215-216
O	Appendix O -	Correspondence to Brett. D. Moldaver dated April 23, 2018	217-220

VOLUME 2

P	Appendix P	Correspondence from Brett D. Moldaver dated January 29, 2019	221-300
Q	Appendix Q -	Correspondence from Brett D. Moldaver dated February 8, 2019	301-387
R	Appendix R -	Corporate Profile Search Of 2274889 Ontario Inc.	388-392
S	Appendix S -	Documentation Representing Payments Issued by 2274889 Ontario Inc.	393-395
T	Appendix T -	Discharge Statement Of 2274889 Ontario Inc.	396-397
U	Appendix U -	Discharge Statement of Marylou Santaguida	398-399
V	Appendix V -	Second Mortgage Registration of Marylou Santaguida	400-402
W	Appendix W -	Security Opinion re Marylou Santaguida mortgages	403-429
X	Appendix X -	Receiver's Calculation of Outstanding Balance Due To Marylou Santaguida	430-431
Y	Appendix Y -	Financial Statement of 2203284 Ontario Inc. as at	432-436

March 31, 2015

Z	Appendix Z -	List of Unsecured Creditors	437-438
AA	Appendix AA -	CORFinancial letter dated June 17, 2017	439-441
BB	Appendix BB -	Affidavit of Deborah Hornbostel Sworn April 8, 2019 re Receiver's fees	442-475
CC	Appendix CC -	Affidavit of Oren Chaimovitch Sworn April 4, 2019 re Receiver's counsel's fees	476-503

TAB 1

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

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :

DUCA FINANCIAL SERVICES CREDIT LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

**NOTICE OF MOTION
(returnable April 30, 2019)**

THE RECEIVER will make a motion to the court on April 30, 2019, at 10:00 a.m., or as soon after that time as the motion can be heard, at the Superior Court of Justice located at 330 University Avenue, Toronto.

PROPOSED METHOD OF HEARING: Orally.

THE MOTION IS FOR:

1. An order if necessary, validating, abridging the time for or dispensing with service of this notice and materials which accompany it.
2. To report to the court on the completion of the deposit claims procedure.
3. An order for a final and/or interim distribution to secured creditors.
4. An order for directions in respect of surplus deposit trust funds.
5. Orders relating to the continuation or discharge of the Tarion bond;
6. Orders, if necessary, with respect to unsecured claims as well as transfers from the respondent to Santerra Asset Management and Development Inc. ("Santerra").

7. Costs of this motion on a substantial-indemnity basis, if opposed.
8. Such further and other relief as counsel may advise and this Honourable Court permit.

THE GROUNDS FOR THE MOTION ARE:

1. On June 22, 2017, the court issued a receivership order (“Receivership Order”) in respect of the respondent, of 2203284 Ontario Inc. (“220 Ontario” or the “Respondent”).
2. msi Spergel Inc. (the “Receiver” or “Spergel”) was appointed receiver over 220 Ontario’s property, including the real property municipally known 98 James Street South, Hamilton (the “Property”) which was to be the site of a condominium project which was not completed.
3. On May 16, 2018, the court made orders relating to the Property, including a Vesting Order authorizing the sale of the Property, an order permitting the payment of what was outstanding on the first mortgage on the Property, and a Deposit Claims Procedure Order (which was subsequently amended), governing the repayment of deposits to those parties which had entered into agreements of purchase and sale for units in the condominium project.
4. The Property was sold and what was owing under the first mortgage was paid.
5. The claims bar date under the Deposit Claims Procedure Order was January 31, 2019.
6. Deposit claims were received, processed and the cheques for payment have been sent and, with the Receiver’s Report being delivered in support of this motion, the Receiver provides a report to the court about this.
7. There are surplus funds, including those relating to a small number of unpaid deposits and interest on the deposit funds in respect of which the Receiver seeks directions.
8. The Receiver proposes that the surplus funds be transferred into the estate.
9. Guarantee Company of North America (“GCNA”) holds security.

10. The Receiver proposes to make a final or interim distribution to GCNA on account of its security.

11. Tarion Warranty Corporation (“Tarion”) is reviewing the Deposit Claims Procedure.

12. The Receiver is hopeful that Tarion’s review will be completed by the return date of the motion, and that it will be in a position to make recommendations in respect of the continuation or discharge of the Tarion Bond.

13. Marylou Santaguida, a related party, has security.

14. Santerra, a corporation in respect of which Ms. Santaguida is the sole director, has received approximately \$3.5 million dollars from 220 Ontario, for which no accounting has ever been fully provided.

15. For the reasons set out in the Receiver’s Report relating to the foregoing, the Receiver is not recommending a final distribution to Ms. Santaguida on account of her security.

16. Given that it is possible that there may be sufficient funds to pay all creditors, including those which are unsecured (of which there appear to be less than 15), and in the interests of fairness and expediency, the Receiver is recommending that there be an interim payment to Ms. Santaguida, that funds held to satisfy any remaining claims, that a claims process be completed and any remaining funds be paid to 220 Ontario or to Ms. Santaguida on a further motion to the court.

17. Such further and other grounds as counsel may advise and this Honourable Court permit.

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

1. The Receiver’s Report of April 17, 2019, including the appendices attached to it; and,

2. Such further and other documents as counsel may advise and this Honourable Court permit.

April 17, 2019

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TAB 2



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

THIRD REPORT OF THE RECEIVER

APRIL 17, 2019

TABLE OF CONTENTS

	Page
I. Introduction And Background	5
II. Purpose Of This Report	9
III. Deposit Claims Procedure	10
IV. Receipts And Disbursements	13
V. Current Status Of Creditors	14
VI. Santerra And Mr. & Mrs. Santaguida	16
VII. Fees And Disbursements	24
VIII. Conclusions And Recommendations	25

LIST OF APPENDICES

- A.** Receivership Order Issued By The Honourable Madam Justice Conway On June 22, 2017
- B.** First Report Of The Receiver Dated May 4, 2018 And Supplementary Report Of The Receiver Dated May 16, 2018
- C.** Approval And Vesting Order Issued By The Honourable Justice Dunphy On May 16, 2018
- D.** Ancillary Order Issued By The Honourable Justice Dunphy On May 16, 2018
- E.** Second Report Of The Receiver Dated November 23, 2018 (excluding appendices)
- F.** Further Fresh As Amended Deposit Claims Procedure Order Issued By The Honourable Justice Mc Ewan Dated November 29, 2018
- G.** Claims Determination Summary
- H.** Claims Barred Summary
- I.** Sufficient Funds Certificate
- J.** Receiver's Interim Statement Of Receipts And Disbursements As At April 8, 2019
- K.** Security Opinion re Guarantee Company Of North America
- L.** 2203284 Ontario Inc.'s General Ledger Account Of Santerra Asset Management
- M.** Correspondence To Santerra Asset Management Dated August 4, 2017
- N.** Correspondence To Marylou Santaguida Dated October 26, 2017
- O.** Correspondence To Brett. D. Moldaver Dated April 23, 2018
- P.** Correspondence From Brett D. Moldaver Dated January 29, 2019
- Q.** Correspondence From Brett D. Moldaver Dated February 8, 2019
- R.** Corporate Profile Search Of 2274889 Ontario Inc.
- S.** Documentation Representing Payments Issued By 2274889 Ontario Inc.
- T.** Discharge Statement Of 2274889 Ontario Inc.
- U.** Discharge Statement Of Marylou Santaguida
- V.** Second Mortgage Registration Of Marylou Santaguida
- W.** Security Opinion re Marylou Santaguida Mortgages

- X.** Receiver's Calculation Of Outstanding Balance Due To Marylou Santaguida
- Y.** Financial Statement Of 2203284 Ontario Inc. As At March 31, 2015
- Z.** List of Unsecured Creditors
- AA.** CORFinancial Letter Dated June 17, 2017
- BB.** Affidavit Of Deborah Hornbostel Sworn April 8, 2019 re Receiver's Fees
- CC.** Affidavit Of Oren Chaimovitch Sworn April 4, 2019 re Receiver's Counsel's Fees

I. INTRODUCTION AND BACKGROUND

1. This Report is filed by msi Spergel Inc. ("**Spergel**") in its capacity as receiver (the "**Receiver**") appointed pursuant to an order of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice dated June 22, 2017 (the "**Receivership Order**"), of all of the assets, undertakings and properties of 2203284 Ontario Inc. (the "**Debtor**"). A copy of the Receivership Order is attached hereto as **Appendix "A"**.

2. Application for the Receivership Order was made by DUCA Financial Services Credit Union Ltd. ("**DUCA**"), the operating lender of the Debtor who was owed \$5,189,742.47 as at June 6, 2017.

3. The Debtor appears to be a single-purpose entity incorporated for the purpose of developing a condominium project located municipally as 98 James Street South, Hamilton, Ontario and more particularly described as:

PIN: 17171-0009LT

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**".

4. The Corporate Profile Report and the books and records of the Debtor disclose that Luigi Santaguida, also known as Louie Santaguida ("**Mr. Santaguida**"), is the sole officer, director and shareholder of the Debtor. To the best of the Receiver's knowledge, the Debtor had no other employees. Cooperation from Santaguida has been minimal, although it has improved in recent months.

5. The Property was acquired by the Debtor on June 4, 2013, at which time it consisted of a historical church. The Debtor subsequently demolished the church, with the exception of its façade, and obtained conditional site plan approval from the City of Hamilton to construct a 30-storey residential condominium project consisting of 259 units, known as *The Connolly* (the "**Project**"). Construction of the Project did not commence.

6. Sales of units in the Project commenced in November 2014. At the date of the Receivership Order, 185 of the units were sold pursuant to Agreements of Purchase and Sale (the “**Prebuild Agreements**”) with various deposit amounts paid (the “**Deposits**”) by the unit purchasers (the “**Unit Purchasers**”). The Deposits paid with respect to those Prebuild Agreements and the interest earned on those Deposits (the “**Deposit Trust Funds**”) were held in trust by the law firm Schneider Ruggiero LLP (“**SR Law**”).
7. On May 4, 2018, the Receiver issued its first report to the Court (the “**First Report**”) and a supplementary report to the First Report on May 16, 2018, copies of which are attached hereto as **Appendix “B”**, excluding appendices.
8. On May 16, 2018, the Honourable Mr. Justice Dunphy issued an Approval and Vesting Order approving a sale of the Property by the Receiver to Hue Developments & Investments Canada Inc. (“**Hue**”) pursuant to an agreement of purchase and sale entered into by Hue and the Receiver on February 12, 2018 (the “**Hue Transaction**”). A copy of that Order is attached hereto as **Appendix “C”**.
9. On May 16, 2018, Mr. Justice Dunphy also issued an Ancillary Order, attached hereto as **Appendix “D”**, which among other items, ordered the following:
- I. That Mr. Santaguida attend at an examination before the Receiver;
 - II. That Marylou Santaguida, also known as Mary Lou Santaguida (“**Mrs. Santaguida**”), the spouse of Mr. Santaguida, on her own and in her capacity as the sole director/officer of Santerra Asset Management and Development Inc. (“**Santerra**”), attend at an examination before the Receiver and provide the Receiver with a complete explanation and accounting of all funds received by Santerra from the Debtor, including supporting documentation to substantiate the value of services and work performed by Santerra, if any;
 - III. That the Receiver’s Interim Statement of Receipts and Disbursements as set out in the First Report be approved;

- IV. That the actions and activities of the Receiver as set out in the First Report be approved;
- V. That the fees and expenses of counsel for the Receiver as set out in the First Report be approved;
- VI. That the fees of the Receiver as set out in the First Report be approved;
- VII. That a distribution to DUCA to fully retire its mortgage debts be authorized and approved; and
- VIII. That certain confidential appendices attached to the First Report remain sealed until the closing of the Hue Transaction.

10. The Hue Transaction was scheduled to close on June 5, 2018; however, Hue was unable to close on time. The Receiver agreed to three successive extensions to the closing date upon receipt of further non-refundable deposits and extension-fee penalties totalling \$45,000. On October 5, 2018, the Receiver completed the sale of the Property.

11. In accordance with the Ancillary Order, the indebtedness owing to DUCA was paid in full by the Receiver on October 10, 2018.

12. On May 16, 2018, Mr. Justice Dunphy also issued an Order (the “**Deposit Claims Procedure Order**”) establishing a claims process and payment procedure protocol with respect to the Deposits paid by Unit Purchasers (“**Deposit Claims Procedure**”), to be effective only upon the closing of the Hue Transaction.

13. As a result of the aforementioned delays in the closing of the Hue Transaction, the Receiver sought to amend certain dates contained in the Deposit Claims Procedure Order, such as notice dates to Unit Purchasers, advertising dates, claims bar date, etc., and on August 29, 2018, in anticipation of the closing of the Hue Transaction scheduled for September 5, 2018, the Receiver obtained an Order from the Court issued by the Honourable Mr. Justice Hainey amending the various dates (the “**Fresh As Amended Deposit Claims Procedure Order**”).

14. On October 12, 2018, subsequent to the completion of the Hue Transaction, the Receiver sought and obtained a further Order from the Court issued by Madam Justice Chiappetta, to amend certain dates again, including an extension of the claims bar date to November 30, 2018 (the **“Further Fresh As Amended Deposit Claims Procedure Order”**).

15. On October 22, 2018, a few days after the mailing of the Deposit Claims Procedure forms to the Unit Purchasers, Canada Post commenced its series of rotating strikes.

16. On November 23, 2018, the Receiver issued its Second Report to the Court (the **“Second Report”**), a copy of which is attached hereto as **“Appendix “E”**, excluding appendices, to provide information to the Court with respect to

- I. The completion of the Hue Transaction;
- II. The status of the Receiver’s Deposit Claims Procedure with respect to the return of the Deposits related to the Prebuild Agreements; and,
- III. The Receiver’s motion for an Order of the Court to further amend the Deposit Claims Procedure in order to extend the claims bar date of November 30, 2018, to January 31, 2019, due to a significant number of unfiled claims which the Receiver believed to be as a result of the Canada Post rotating strikes.

17. On November 29, 2018, the Honourable Mr. Justice McEwan issued an Order revising the dates of the Deposit Claims Procedure (the **Second Further Fresh As Amended Deposit Claims Procedure Order**) which among other revisions, amended the claims bar date to January 31, 2019, and the deadline for filing the Sufficient Funds Certificate to February 18, 2019. A copy of that Order is attached hereto as **Appendix “F”**.

II. PURPOSE OF THIS REPORT

18. The purpose of this report dated April 10, 2019 (the “**Third Report**”) is to:

A. provide information to the Court with respect to:

- i. The status of the Deposit Claims Procedure;
- ii. The status of the remaining Deposit Trust Funds and general receivership funds.
- iii. The status of the examinations of Mr. and Mrs. Santaguida;
- iv. The documentation provided by counsel for Mr. and Mrs. Santaguida to the Receiver with respect to Santerra, Mrs. Santaguida’s secured claims and the unsecured claims of 220;

B. Seek approval of the following:

- i. The transfer of the surplus Deposit Trust Funds following completion of the Deposit Claims Procedure into the general receivership funds;
- ii. An interim distribution to pay to Guarantee Company of North America (“**Guarantee Co.**”);
- iii. The Receiver’s Interim Statement of Receipts & Disbursements as at April 8, 2019;
- iv. The fees and disbursements of the Receiver and its counsel Devry Smith Frank LLP (“**DSF**”);
- v. The Receiver’s conduct and actions to date;

C. Seek Directions from the Court with respect to:

- i. The validity of Mrs. Santaguida’s secured claims;
- ii. The Santerra indebtedness to 220;
- iii. The impact on the unsecured creditors;
- iv. Distribution of the remaining receivership funds; and
- v. The continuation or discharge of the Tarion Bond No. TM5120099 (“**Tarion Bond**”), if possible.

III. Deposit Claims Procedure

19. Pursuant to the Deposit Claims Procedure Order, SR Law was ordered to deliver the Deposits to the Receiver and all books and records pertaining to the Deposits. On June 29, 2018, SR Law turned over the Deposit Trust Funds to the Receiver in the total amount of \$6,327,556.53.
20. Pursuant to the Further Fresh As Amended Deposit Claims Procedure Order, the Receiver commenced the Deposit Claims Procedure process on October 16, 2018, by issuing a Deposit Claims package to each of the 185 known Unit Purchasers. The Receiver also advertised the Deposit Claims process in both the Toronto Star and the Hamilton Spectator on October 23 and 27, 2018, and posted a copy of the Deposit Claims package and the Further Fresh As Amended Deposit Claims Procedure Order on its website.
21. On November 16, 2018, the Receiver issued correspondence to 79 Unit Purchasers who, according to the records from SR Law, had entered into Prebuild Agreements and paid related Deposits, but had not yet filed a Deposit Claim with the Receiver.
22. On November 30, 2018, following the issuance of the Further Fresh As Amended Deposit Claims Procedure Order, the Receiver issued letters to 147 Unit Purchasers who had proven their Deposit Claims ("**Proven Deposit Claims**") to advise them of the acceptance of their Deposit Claims, the extension of the Claims Bar Date to January 31, 2019, and the resulting delay in the issuance of payment of the Deposit Claims.
23. On November 30, 2018, the Receiver also issued 38 letters to Unit Purchasers who had not yet submitted a Proven Deposit Claim to advise them of the Further Fresh As Amended Deposit Claims Procedure Order and the revised Claims Bar Date.
24. On January 9, 2019, the Receiver advertised the Deposit Claims process in the Toronto Star and the Hamilton Spectator and during the month of January 2019, the Receiver worked diligently to contact all Unit Purchasers who had not yet filed or proven their Deposit Claims.

25. By the Claims Bar Date of January 31, 2019, the Receiver had received and admitted 173 Proven Deposit Claims totaling \$6,207,640.66 (the “**Proven Deposit Claimants**”) and had also received executed consents from Guarantee Co. authorizing the Receiver to pay each of those Proven Deposit Claims. A copy of the Claims Determination Summary is attached as **Appendix “G”**. The Receiver reports that there are no disputed claims as all issues were resolved prior to the Claims Bar Date.

26. There are 11 Unit purchasers, pursuant to the records received from SR Law, that did not file Deposit Claims and are therefore barred. Attached as **Appendix “H”** is a detailed listing of the 12 Deposit Claims barred, each in the amount of \$1,000.

27. There were sufficient Deposits to pay all of the Deposit Claims, and on February 6, 2019, the Receiver executed the Sufficient Funds Certificate attached hereto as **Appendix “I”**, which was also filed with the Court.

28. On February 13, 2019, the Receiver provided Tarion Warranty Corporation (“**Tarion**”) with electronic copies of all documentation in its possession regarding the Prebuild Agreements and the Deposit Claims, as well as its Claim Determination Summary and listing of the 11 Deposit Claims which were barred.

29. On February 13, 2019, the Receiver commenced issuing payments to the Proven Deposit Claimants in accordance with the deposit payment protocol stipulated in the Further Fresh As Amended Deposit Claims Procedure Order (the “**Deposit Payment Protocol**”). The Receiver completed the initial issuance and mailing of all payments for Proven Deposit Claims on March 13, 2019, but notes that there appear to have been several delivery issues by Canada Post, resulting in the cancellation and re-issuance of some cheques. To date, there remain five uncashed cheques issued to Proven Deposit Claimants.

30. The Receiver issued four Receiver's Certificates to Tarion as prescribed in the Deposit Payment Protocol confirming the following payments:

Receiver's Certificate Date	No. Of Payments Issued	Amount
February 13, 2019	36	\$ 1,685,080.50
February 27, 2019	40	1,663,773.75
March 12, 2019	47	1,839,711.41
March 25, 2019	50	1,019,075.00
	<u>173</u>	<u>\$ 6,207,640.66</u>

31. The Receiver also provided Tarion and Guarantee Co. with a ledger of Proven Deposit Claims paid and unpaid on a regular basis during the payment process and a summary of the Deposit Claims barred.

32. Pursuant to the Deposit Payment Protocol, Tarion is entitled to retain a sufficient portion of the Tarion Bond or a reserve (the "**Reserve**"), as determined by Tarion, acting reasonably, to cover Tarion's liabilities in respect of amounts secured by the Tarion Bond that have not been extinguished to the satisfaction of Tarion. The Receiver has had discussions with Tarion's counsel on the foregoing but has not yet received advice from Tarion as to how it intends to proceed. It has been advised that Tarion may require that funds be held for a certain period, perhaps in an amount more than \$100,000, as security for any liabilities which may arise in the future.

33. The Receiver has been advised by counsel for Tarion that Tarion is currently in the process of reviewing the Deposit Claim Procedure documentation submitted to it by the Receiver and consequently, the Tarion Bond has not yet been decreased in accordance with the Deposit Claims paid.

34. Guarantee Co. has provided the Receiver with invoices for the unpaid bond premiums to May 31, 2019, in the total amount of \$100,363. Guarantee Co. has also incurred legal fees in the amount of \$32,893 as at March 31, 2019, and administrative costs, currently estimated at \$70,000, that are subject to payment pursuant to Guarantee Co.'s security registration.

35. Upon the clearing of all Deposit Claim payments issued by the Receiver, the Receiver anticipates a remaining balance of approximately \$200,000, (the “**Remaining Deposit Trust Funds**”), consisting of interest and the \$12,000 in unclaimed deposits. The Receiver proposes that the Remaining Deposit Trust Funds be transferred into the general receivership trust account for distribution in accordance with the proposed terms of distribution discussed later in this report.

36. Pursuant to the Deposit Payment Protocol in the Further Fresh As Amended Deposit Claims Procedure Order, Guarantee Co. is seeking reimbursement from the Receiver of its fees and expenses incurred with respect to the Tarion Bond in the amount of \$203,256, as detailed above. The Receiver recommends that the Court approve payment of the fees and expenses claimed by Guarantee Co. pursuant to its security (further discussed below), subject to Guarantee Co. providing the Receiver with proper supporting details with respect to the administrative fees currently estimated at \$70,000.

IV. Receipts And Disbursements

37. Attached at **Appendix “J”** is the Receiver’s Interim Statement of Receipts and Disbursements as at April 8, 2019, indicating total receipts of \$15,154,075, total disbursements of \$12,832,035 and total funds on hand of \$2,322,039. The Receiver notes that the Receiver’s fees and those of its counsel DSF have been paid to March 31, 2019.

38. The Receiver is pleased to report that it successfully negotiated a reduction to prior years’ property tax assessments with the City of Hamilton and the Municipal Property Assessment Corporation and recovered \$106,396 from the City of Hamilton with respect to the assessments for the years 2015 and 2016 and benefitted from reduced assessments of the Property for the years after.

39. The Receiver estimates that after completion of the Deposit Payment Protocol with respect to Tarion, payment of future professional fees and distribution to Guarantee Co., and provided

that the Receiver obtains an Order authorizing the Remaining Deposit Funds to be included in the general estate funds, there could be a balance available for further distributions of approximately \$2 million.

V. Current Status of Creditors

40. As at the date of the appointment of the Receiver, the following creditors had registered security on title of the Property in accordance with the following priority positions:

Position	Creditor	Date	Amount
1	DUCA	08-Jul-15	\$ 5,000,000
2	Guarantee Co.	30-Oct-15	5,180,000
3	Diversified Capital Inc.	12-Aug-16	3,000,000
4	Mary Lou Santaguida	13-Jun-13 and amended 10-April-15	1,500,000 and increased to \$4,000,000
5	Marylou Santaguida	11-April-16	701,583
Total			\$ 15,381,583

41. As previously indicated in this report, DUCA has been paid in full.

42. Guarantee Co.'s security registration was in support of its guarantee of the Tarion Bond as well as its own expenses which will eventually be extinguished as a result of the completion of the Deposit Payment Protocol and the termination of the Tarion Bond. As detailed earlier in this report, outstanding Tarion Bond premiums, fees and expenses in the amount of \$203,256 have been claimed to date pursuant to Guarantee Co.'s security. Attached hereto as **Appendix "K"** is the opinion of DSF, which includes a copy of the relevant charge as well as the agreements referred in it, attesting to the validity of Guarantee Co.'s security and its entitlement to claim the above referenced fees and expenses.

43. Diversified Capital Inc.'s ("**Diversified**") security registration was for a collateral mortgage against the Property with respect to another real estate development project undertaken by another corporation owned by Mr. Santaguida that was also in receivership. The Receiver has been advised by Diversified's lawyer that his client was fully paid out from that other receivership and accordingly has no claim in the receivership proceedings of 220.

44. Accordingly, the remaining real security registrations are those of Mrs. Santaguida, who claims to be owed \$2,495,606.48 as at January 31, 2019.

45. The Receiver notes that a *Personal Property Security Act* (“PPSA”) search dated June 21, 2017, disclosed the following security registrations:

Position	Creditor	Date	Security Particulars
1	DUCA	23-Jun-15	General Security Agreement
2	Guarantee Co.	30-Oct-15	Accounts & Other
3	1220356 Ontario Limited	11-Aug-16	Equipment, Accounts & Other
4	Taragar Holdings Limited	11-Aug-16	Equipment, Accounts & Other

46. The registrations of 12202356 Ontario Limited and Taragar Holdings Limited were done jointly with respect to *“an assignment of plans and related agreements and an assignment of purchase and sale affecting the property at 155 Wychwood Avenue, Toronto, and the property at 98 James Street South, Hamilton”*. There is no evidence of any amounts owing to them. The Receiver also notes that both of those companies had made registrations on the Parcel Register of the Property on August 12, 2016, and subsequently discharged them on September 30, 2016.

47. The Receiver is not aware of any trust claim of the Canada Revenue Agency (“CRA”) against the Debtor, nor does it anticipate any amount owing to CRA. The Receiver has informed CRA of the receivership and has not received any response from it with respect to any trust claims.

VI. Santerra And Mr. & Mrs. Santaguida

48. Immediately after receiving a \$5,000,000 advance under the DUCA mortgage in July, 2015, 220 transferred \$2,581,543.11 to Santerra, the corporation of which Mrs. Santaguida is the sole director (more about this below). The transaction is recorded in 220's general ledger as an intercompany transaction. There were several other transactions resulting in a total amount being transferred from 220 to Santerra of \$3,457,025.19. A copy of the relevant general ledger account which shows this is attached hereto at **Appendix "L"**.

49. On August 4, 2017, October 26, 2017 and April 23, 2018, the Receiver has asked Santerra and Mrs. Santaguida for an accounting for the \$3,457,025.19, something which, to date, has not been provided. Copies of these written requests are attached hereto at **Appendices "M", "N" and "O"**, respectively.

50. As set out above, Mr. Justice Dunphy ordered that Mr. Santaguida and Mrs. Santaguida be examined. The examinations have not taken place and in more recent months Mr. and Mrs. Santaguida have provided some information and documentation to the Receiver to assist with the matter.

51. On January 29, 2019, counsel for 220, Santerra and Mr. & Mrs. Santaguida provided the Receiver's counsel with various documentation in support of Mrs. Santaguida's mortgage registrations and purported secured advances made by Mrs. Santaguida to 220. Attached hereto as **Appendix "P"** are copies of that correspondence. At the Receiver's request, further documentation was provided on February 8, 2019, attached hereto as **Appendix "Q"**.

52. The foregoing documentation seems to show the following:

Purchase of the Property

- The Property was originally purchased by 2274889 Ontario Inc. ("**227**"), in the total amount of \$610,000 and later assigned to 220.

- The purchase price and closing costs were funded directly by 227 as per the evidence provided;
- The Receiver was advised by counsel for Mrs. Santaguida that Mrs. Santaguida is the “owner” of 227 although no other evidence of that was provided;
- The sole director and officer of 227 is Mr. Santaguida per the corporation profile report dated March 27, 2019, attached hereto as **Appendix “R”**;
- 227 holds no security over any of 220’s property.

Mortgage Instrument No. WE903381 (the “**First Santaguida Mortgage**”)

- Mrs. Santaguida registered the First Santaguida Mortgage against the Property in the amount of \$1,500,000 on June 13, 2013;
- A mortgage amending agreement was executed by Mrs. Santaguida and 220 on April 1, 2015, and registered on April 10, 2015, to among other items, increase the mortgage amount to \$4,000,000 and reduce the interest rate from 10% to 8% (the “**Mortgage Amending Agreement**”);
- Mrs. Santaguida subsequently postponed her security to DUCA and Guarantee Co.;
- The only documentation submitted by Mrs. Santaguida or her lawyer to purportedly support the funding of the First Santaguida Mortgage was:
 - a copy of an online banking report from January 2013 for the bank account of 227 purporting to indicate the issuance by 227 of a \$25,000 certified cheque for the initial deposit of the purchase the Property; and,
 - a copy of a certified cheque dated June 3, 2013, payable to SR Law in the amount of \$599,000 drawn from the account of 227; copies of which are attached hereto as **Appendix (“S”)**;
- According to a discharge statement dated January 15, 2019, provided by Mrs. Santaguida’s lawyer with respect to the First Santaguida Mortgage, the outstanding balance secured by the First Santaguida Mortgage as at January 31, 2019, was purported to be \$974,882.53 with a per diem rate of \$136.77. A copy of that discharge statement is attached hereto as **Appendix “T”** (the “**227 Discharge Statement**”).

Mortgage Instrument No. WE1111875 (the “**Second Santaguida Mortgage**”)

- On April 11, 2016, Mrs. Santaguida registered the Second Santaguida Mortgage against the Property in the amount of \$701,583. Mrs. Santaguida’s lawyer advised the Receiver that the purpose was “to cover further advances made”.
- A summary of advances claimed by Mrs. Santaguida to be secured by the Second Santaguida Mortgage are as follows:

Date	Chq. No.	Amount	Cheque Copy Or Bank Draft Provided	Proof Of Deposit Provided
19-Mar-14	51	\$ 49,000	Yes	No
02-Apr-14	53	45,000	Yes	Yes
17-Apr-14	72	11,000	Yes	Yes
30-Apr-14	203	34,500	No	No
28-May-14	212	12,500	Yes	Yes
04-Jun-14	220	20,000	Yes	Yes
24-Jun-14	225	70,000	Yes	Yes
24-Jul-14	237	45,000	Yes	Yes
30-Jul-14	241	75,000	Yes	Yes
14-Aug-14	244	32,000	Yes	Yes
04-Sep-14	253	50,000	Yes	Yes
15-Sep-14	256	85,000	Yes	Yes
20-Oct-14	262	50,000	Yes	Yes
29-Oct-14	266	89,000	Yes	Yes
20-Nov-14	279	90,000	Yes	Yes
24-Dec-14	297	35,000	Yes	Yes
13-Jan-15	176	20,000	Yes	Yes
04-Feb-15	183	30,000	Yes	Yes
26-Mar-15	111	7,000	No	No
06-Apr-15	116	70,000	Yes	Yes
29-Apr-15	133	10,500	Yes	Yes
06-May-15	138	49,000	Yes	Yes
14-May-15	141	80,000	Yes	No
02-Jun-15	145	50,000	Yes	Yes
01-Sep-16	156	6,000	Yes	Yes
Total		\$ 1,115,500		

- According to a discharge statement dated January 15, 2019, provided by Mrs. Santaguida's lawyer with respect to the Second Santaguida Mortgage, the outstanding balance secured by the Second Santaguida Mortgage as at January 31, 2019, is purported to be \$1,520,723.95 with a per diem rate of \$244.49. A copy of that discharge statement is attached hereto as **Appendix "U"** (the "**MLS Discharge Statement**").

Santerra

- In July 2015, upon receipt of the DUCA advance of \$5 million, 220 transferred \$2,581,543.11 to Santerra which appears in 220's records as an unsecured intercompany loan;
- In September 2015, 220 transferred a further \$1,130,000 to Santerra as an unsecured intercompany loan;
- Subsequent advances totaling \$277,738.02 were made by 220 to Santerra by March 2017 and payments from Santerra to 220 in the amount of \$532,255.94 were made during the same period;

- At the date of the receivership, Santerra was indebted to 220 in the amount of \$3,457,025.19;
- No explanation for the transfer of funds to Santerra has been provided; and,
- Counsel for the Santaguidas stated on page three of his January 29, 2019 correspondence that “monies owing by 220 to [Mrs. Santaguida] would be reduced from any monies owing to 220 by Santerra”.

53. With respect to the foregoing information provided on the First Santaguida Mortgage and the Second Santaguida Mortgage, the Receiver makes the following comments:

- The 227 Discharge Statement is based on funds advanced by 227 and not Mrs. Santaguida, the purported mortgagee. If 227 is owed money from 220, then 227 is an unsecured creditor, as 227 is neither registered on title to the Property, nor on PPSA.
- The Receiver has no evidence of any advances made by Mrs. Santaguida at the time of registration of the First Santaguida Mortgage and the Receiver is unaware of the purpose of the First Santaguida Mortgage or what it was meant to secure.
- The Mortgage Amending Agreement contains the following language which appears to be sufficient to have the First Santaguida Mortgage secure the advances that had been made by Mrs. Santaguida subsequent to the First Santaguida Mortgage registration, although the Receiver notes that Mrs. Santaguida has not claimed these subsequent advances pursuant to the First Santaguida Mortgage:

"4. Continuing Security - The Charge shall, whether or not It secures a current or running account, be a general and continuing security to the Chargee for payment of the Indebtedness in an amount not exceeding the amount secured by this Agreement and performance of the Charger's other obligations under the Charge notwithstanding any fluctuation or change in the amount, nature or form of the indebtedness or In the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Chargee representing all or any part of the indebtedness outstanding at any particular time..."

- The Receiver was not provided with an explanation as to why the Second Santaguida Mortgage was necessary if Mrs. Santaguida already had a valid mortgage on the Property in the amount of \$4,000,000;

- Insufficient documentation was provided to the Receiver with respect to \$170,500 in purported advances claimed with respect to the Second Santaguida Mortgage as no documentation was provided to support advances in the amounts of \$34,500 and \$7,000 and no proof of deposit/payment was provided with respect to advances in the amounts of \$49,000 and \$80,000;
- Attached as **Appendix “V”** is a copy of the Second Santaguida Mortgage registration, which mortgage indicates that *“This Charge is collateral security securing a bond issued by the Chargee in favour of Terrasan 327 Royal York Rd. Limited with respect to vacating a lien registered as Instrument No. AT4183314 in favour of Linen Group Ltd. from the property described in PIN 07617-0050 LT; interest hereunder shall begin to accrue one day before an event of a default by the Chargor under this Charge”*. Accordingly, the Second Santaguida Mortgage was not intended to secure the previous operating advances claimed by Mrs. Santaguida;
- 220’s records provided to the Receiver have no record of and the Receiver has not been provided with any evidence that Mrs. Santaguida issued the bond referred to or advanced any monies under or pursuant to that bond or that any monies are or will be owing by 220 to Mrs. Santaguida with respect to such bond or advances. Accordingly, the Receiver is of the view that the MLS Discharge Statement does not support payment of anything under the Second Santaguida Mortgage.

54. Attached hereto as **Appendix “W”** is the legal opinion of DSF addressed to the Receiver confirming the validity of the registrations of the First Santaguida Mortgage and the Second Santaguida Mortgage but providing no opinion of the quantum of the amounts claimed.

55. In consideration of the foregoing, the Receiver is of the opinion that the First Santaguida Mortgage could (subject to what else is set out in the present report) provide Mrs. Santaguida security for the funds advanced in the amount of \$1,115,500 submitted pursuant to the Second Santaguida Mortgage. The Receiver has calculated the potential amount due in that scenario to be \$1,592,001 as at March 31, 2019, as detailed in **Appendix “X”**.

56. The concern of the Receiver however is that there may in fact be no amount properly owing to Mrs. Santaguida for the following reasons:

- There were no mortgage liabilities to her reflected in the financial records provided by 220 to the Receiver on July 25, 2017, or on the March 31, 2015 Balance Sheet of 220 issued and approved by Mr. Santaguida in his capacity as the sole Director of 220, attached hereto as **Appendix “Y”**;
- There is nothing in 220’s records which explicitly shows a series of repayments made pursuant to the terms of the mortgage documents to lend credence to the legitimacy of the mortgages;
- The financial records of 220 appear to indicate that the amounts due to Mrs. Santaguida are simply unsecured shareholder loans;
- Mrs. Santaguida, the sole director and officer of Santerra which is indebted to 220 in the amount of \$3,457,025.19, has failed to provide the Receiver with an explanation for the advance of those funds and despite the Receiver’s demand for repayment of the funds, none has been made;
- It reasonably appears that payments made to Santerra may have been made to effectively repay any funds owed to Mrs. Santaguida by 220;
- In this respect, the general ledger description of the transfers from 220 to Santerra, as detailed in Appendix L, includes one on December 20, 2016, for \$30,000.00, which is described as “Loan from MLS”, which would reasonably appear to be a repayment to Mrs. Santaguida. There is no substantive explanation for the majority of the other transfers, described earlier in this report.

57. Given the foregoing, the Receiver cannot at this time recommend that Mrs. Santaguida be paid the entire amount she claims under the First Santaguida Mortgage and the Second Santaguida Mortgage.

58. Mrs. Santaguida, Mr. Santaguida and 220 have suggested to the Receiver that there is no need for the Receiver to pursue the collection of the funds due from Santerra to 220 if all of the other secured and unsecured creditors are paid in full, a position that is not without merit, and has

therefore suggested that the Receiver pay the outstanding unsecured liabilities of 220 in full and then pay all remaining funds to Mrs. Santaguida in satisfaction of the First Santaguida Mortgage and the Second Santaguida Mortgage or to 220.

59. As outlined below, there do not appear to be more than 10 to 15 unsecured creditors (including Tarion) to whom, in total, the Receiver estimates are owed between \$173,000 and \$500,000, depending on the quantum of any unsecured claim advanced by Tarion.

60. Attached as **Appendix "Z"** is the list of unsecured creditors as per the records of 220 originally received subsequent to the Receivership Order in the amount of \$608,022.45, as well as the updated listing of amounts owing in the total amount of \$172,818.24 pursuant to the recent advice of Mr. Santaguida as a result of payments already issued, amounts not properly owing and other reasons. The Receiver notes that Tarion will also have an unsecured claim for its administrative costs with respect to the Tarion Bond, the amount of which is currently estimated at \$75,000.

61. The Receiver notes that the major decrease in the amounts owing to unsecured creditors is a result of the removal of amounts previously recorded as owing for realty commissions. The Receiver is of the opinion that no amounts are owing because no sales closed as well as by the operation of the Vesting Order. It has also contacted two of the former brokers listed, including the largest one in the amount of \$315,578.63, and confirmed that the brokers do not believe that they are entitled to make any claims for realty commissions from the sale of the Prebuild Agreements because those agreements were subsequently terminated, and the sales never closed.

62. The Receiver notes that during the receivership proceedings, CORfinancial Corp. ("**CORfinancial**") advised the Receiver that it is owed \$291,724.32 from 220 with respect to a bridge loan facility that it arranged for 220 in 2016. 220 denies that it owes any amount to CORfinancial with respect to its claim. Attached as **Appendix "AA"** is a copy of the June 17, 2017, letter from CORfinancial to 220 advising of its claim, excluding attachments. The Receiver is unable at this time

to comment on the validity of this claim as it was not provided with any of the attachments and what CORfinancial claims is not reflected in 220's records.

63. Given the limited number of unsecured creditors, the Receiver is of the opinion that it could complete a relatively quick and efficient unsecured claims procedure, something which informs what is set out below.

64. The Receiver notes that if Santerra were to repay the \$3,457,025.19 which was advanced to 220, the Receiver would likely have enough funds to discharge all known liabilities of 220.

65. The following summarizes the Receiver's current projection of funds available for distribution assuming that the Tarion Bond is discharged by May 31, 2019, that Tarion requests a reserve of \$300,000 for a certain period (the "**Tarion Reserve**"), and before consideration of any payments on account of the First Santaguida Mortgage and the Second Santaguida Mortgage:

Total Funds on Hand at April 8, 2019	\$ 2,322,039
Estimated final costs of Guarantee Co.	(215,000)
Estimated Tarion Reserve	(300,000)
Estimated professional fees for completion	<u>(100,000)</u>
	<u>(615,000)</u>
Estimated funds available for further distribution	<u>\$ 1,707,039</u>

66. Without the collection of the Santerra indebtedness and without conducting a claims process for the unsecured creditors, the Receiver is uncertain if there are sufficient funds to pay all unsecured creditors and the secured claim being advanced by Mrs. Santaguida.

67. Mr. and Mrs. Santaguida have asked that there be an interim distribution under the First Santaguida Mortgage and the Second Santaguida Mortgage.

68. The Receiver appreciates Mr. and Mrs. Santaguida's request for an expedited resolution to the matter and therefore proposes the following:

- Mrs. Santaguida prepares a secured claim for the First Santaguida Mortgage in the amount of \$1,592,001 as at March 31, 2019 utilizing the advances made in the total amount of \$1,115,500, plus applicable per diem interest, as per the Receiver's calculations detailed in **Appendix "X"** (the **"Amended First Santaguida Mortgage Claim"**);
- The Receiver accepts the Amended First Santaguida Mortgage Claim provided that:
 - Mrs. Santaguida provides the missing documentation with respect to the purported advances of \$170,500, as detailed earlier in this report;
 - Mrs. Santaguida agrees that there be an interim distribution in the amount of \$500,000 with respect to her Amended First Santaguida Mortgage Claim, leaving an estimated balance of \$1.2 million in the receivership in order to ensure that there are enough funds available to fully pay all non-related party unsecured creditors of 220;
 - the Receiver conduct an unsecured claims procedure for unsecured creditors and return to court with recommendations as to the payment of such claims; and,
 - Mr. & Mrs. Santaguida's personal claims against 220, and the claims of any entity owned or controlled by them at any point in time against 220, are subordinated to the claims of the unsecured creditors of 220; and,
- Upon the completion of unsecured claims process and on approval of the court, any remaining receivership funds are paid to Mrs. Santaguida in satisfaction of her Amended First Mortgage Claim or to 220. Furthermore, any remaining Tarion Reserve funds would also be paid to either Mrs. Santaguida or 220 at the expiry of the Tarion Reserve period.

VII. FEES AND DISBURSEMENTS

69. Pursuant to the Receivership Order, the Receiver has provided services and incurred disbursements, which are described in the Affidavit of Deborah Hornbostel sworn April 8, 2019. A copy of that fee affidavit is attached hereto as **Appendix "BB"**.

70. The detailed time descriptions contained in the dockets provide a fair and accurate description of the services provided and the amounts charged by representatives of the Receiver. Included with the affidavit is a summary of the time charges of those whose services are reflected in the detailed dockets, including the total fees and hours billed.

71. Additionally, the Receiver has incurred legal fees of its counsel, DSF in respect of these proceedings, as more particularly set out in the fee affidavit of Oren Chaimovitch sworn April 4, 2019 and the exhibits attached thereto. A copy of that fee affidavit is attached hereto as **Appendix “CC”**.

72. The Receiver respectfully submits that the Receiver’s fees and disbursements and DSF LLP’s fees and disbursements are fair and reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

73. The Receiver requests that the Court approve its interim accounts from May 1, 2018 to and including March 31, 2019 in the amount of \$276,747.00, plus applicable HST of \$35,977.11.

74. The Receiver also requests that the Court approve the accounts of its legal counsel for the period from April 30, 2018 to March 25, 2019 in the amount of \$58,812.83 for fees and disbursements, inclusive of HST of \$6,690.31.

VIII. CONCLUSION AND RECOMMENDATIONS

75. The Receiver is of the view that the Deposit Claims Procedure has been sufficiently advertised and properly conducted and that there are not likely to be any future claims brought forward against the Remaining Deposit Trust Funds. The receiver anticipates that it will likely be requested by Tarion to hold a reserve of funds for a stipulated period of time and awaits details from Tarion.

76. The Receiver has provided the Court with information known to it with respect to Mr. and Mrs. Santaguida, their related companies and Mrs. Santaguida's secured claim and seeks instructions from the Court with respect to Mrs. Santaguida's claims and future distributions of the receivership funds.

77. The Receiver seeks an order of this Court:

- (a) Authorizing the Receiver to transfer the balance of the Remaining Deposit Funds to the general receivership trust account;
- (b) Authorizing the Receiver to proceed with payment of the fees and expenses of Guarantee Co. as claimed to date as well as any reasonable subsequent claims to be determined in accordance with their security;
- (c) Approving the activities and conduct of the Receiver as described in the Second Report and this Third Report;
- (d) Approving the Receiver's Interim Statement of Receipts and Disbursements set out in this Third Report;
- (e) Approving and authorizing payment of the fees and disbursements of the Receiver and its legal counsel, DSF, as set out in this Third Report; and
- (f) Instructing the Receiver as to the handling of the claims of Marylou Santaguida and the unsecured creditors and the amount due from Santerra to 220.

This Report is respectfully submitted this 17th day of April, 2019

msi Spergel Inc.,

In its capacity as Court Appointed Receiver of
2203284 Ontario Inc., and not in its personal or corporate capacity

Per:



Deborah Hornbostel, CPA, CA, CFE, CIRP, LIT

TAB A

Appendix “A”

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

THURSDAY, THE 22ND

JUSTICE

Conway

DAY OF JUNE, 2017

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Applicant

- and -

2203284 ONTARIO INC.

Respondent

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 12, 2017 and the affidavit of service of Samantha Harris sworn June 13, 2017 and on reading the consent of msi Spergel Inc. to act as the Receiver,

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.

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:

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

(the "Property").

RECEIVER'S POWERS

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

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

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$25,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

Mortgages Act, as the case may be,] shall not be required, 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
- (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.

4. THIS COURT ORDERS that, subject to any further order of this Court, the Receiver shall not provide less than ten (10) days' notice to the secured creditors of the Debtor of any motion for an order to approve a transaction which is the subject of section 3(k)(ii) of this Order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. 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.

6. 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.

7. 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

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and

suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this

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

EMPLOYEES

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

PIPEDA

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

other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and

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

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

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

FUNDING OF THE RECEIVERSHIP

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of

any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

SERVICE AND NOTICE

25. 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 www.spergel.ca/2203284OntarioInc.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or

other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

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

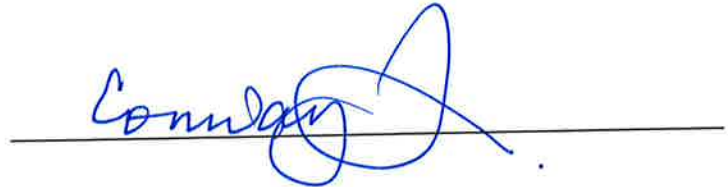
29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

30. 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.

31. 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.

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



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 22 2017

PER / PAR:



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:

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

(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.

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

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.
6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

- AND -

2203284 ONTARIO INC.
Respondent

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

PROCEEDINGS COMMENCED AT TORONTO

**ORDER
(appointing Receiver)**

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 B

Appendix “B”



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

FIRST REPORT OF THE RECEIVER

May 4, 2018

TABLE OF CONTENTS

	Page
I. Introduction and Background	
II. Purpose of the Report	
III. Disclaimer	
IV. Taking Possession	
V. Review of Books & Records	
VI. Sales Process	
VII. Receiver's View of the Marketing Process and the HUE APS	
VIII. Prebuild Agreements and Related Deposits	
IX. Deposit Claims Procedure	
X. Secured Creditors	
XI. Interim Distribution	
XII. Administrative Matters	
XIII. Receipts and Disbursements	
XIV. Fees and Disbursements	
XV. Conclusions and Recommendations	

LIST OF APPENDICES

- A. Receivership Order issued by the Honourable Madam Justice Conway on June 22, 2017**
- B. Notice of Motion and Affidavit of Deborah Hornbostel sworn July 17, 2017 (excluding exhibits)**
- C. Court Order dated July 21, 2017 issued by the Honourable Madam Justice Conway**
- D. General Ledger Account of Santerra Asset Management and Development Inc. ("Santerra")**
- E. Corporate Profile Search of Santerra**
- F. Correspondence to Marylou Santaguida dated October 26, 2017**
- G. Cheque to Zimmerman and Bank Reconciliations dated June 30, 2017 and July 25, 2017**
- H. Correspondence to Zimmerman dated August 23, 2017**
- I. Correspondence to B. Moldaver dated April 23, 2018**
- J. Statement of Account dated April 17, 2018 from the City of Hamilton Regarding Property Taxes**
- K. MLS Listing as at August 1, 2017**
- L. CBRE Marketing Report dated September 7, 2017**
- M. Redacted Executed Agreement of Purchase & Sale with Hue Developments & Investments Canada Inc.**
- N. Correspondence dated December 20, 2017 to Unit Purchasers Pursuant to Prebuild Agreements**
- O. Correspondence dated March 6, 2018 to Unit Purchasers Pursuant to Prebuild Agreements**
- P. Deposit Claims Procedure Order**
- Q. Parcel Register dated May 3, 2018**
- R. Independent Legal Opinion on DUCA's Mortgage Security**
- S. Correspondence dated November 6, 2017 to Ross & McBride LLP**
- T. Personal Property Security Search dated June 21, 2017**
- U. Statement of Account from DUCA dated April 13, 2018**

- V. Receiver's Notice and Statement of The Receiver (Section 245 notice)**
- W. Interim Statement of Receipts & Disbursements as at April 30, 2018**
- X. Affidavit of Deborah Hornbostel dated May 3, 2018 regarding Receiver's Fees**
- Y. Affidavit of Sara Mosadeq dated May 3, 2018 regarding Receiver's Counsel's Fees and Disbursements**

LIST OF CONFIDENTIAL APPENDICES

- A. Opinion of Value Letter from CBRE dated July 14, 2017**
- B. Summary of Marketing Proposals**
- C. Summary of Offers Received**
- D. Executed Agreement of Purchase and Sale with Hue Developments & Investments Canada Inc.**
- E. Appraisal by Cushman Wakefield Ltd. dated August 22, 2017**
- F. Appraisal by Antec Appraisal Group Inc. dated August 4, 2017**

I. INTRODUCTION AND BACKGROUND

1. This Report is filed by msi Spergel Inc. ("**Spergel**") in its capacity as receiver (the "**Receiver**") appointed pursuant to an order of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice dated June 22, 2017 (the "**Receivership Order**"), of all of the assets, undertakings and properties of 2203284 Ontario Inc. (the "**Debtor**"). A copy of the Receivership Order is attached hereto as **Appendix "A"**.
2. Application for the Receivership Order was made by DUCA Financial Services Credit Union Ltd. ("**DUCA**"), the operating lender of the Debtor who was owed \$5,189,742.47 as at June 6, 2017.
3. The Debtor appears to be a single purpose entity incorporated for the purpose of developing a condominium project located municipally as 98 James Street South, Hamilton, Ontario and more particularly described as:

PIN: 17171-0009LT
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**".
4. The Corporate Profile Report and the books and records of the Debtor disclose that Luigi Santaguida, also known as Louie Santaguida ("**Santaguida**"), is the sole director, President and Secretary of the Debtor. To the best of the Receiver's knowledge, the Debtor has no other employees. Cooperation from Santaguida has been minimal.
5. The Property was acquired by the Debtor on June 4, 2013, at which time it consisted of a historical church. The Debtor subsequently demolished the church, with the exception of its façade and obtained conditional site plan approval from the City of Hamilton to construct a 30

storey residential condominium project consisting of 259 units, known as *The Connolly* (the "**Project**"). Construction of the Project has not commenced.

6. Sales to unit purchasers of the Project commenced in November, 2014. At the date of the Receivership Order, 185 of the units were sold pursuant to Agreements of Purchase and Sale (the "**Prebuild Agreements**"). The deposits paid with respect to those Prebuild Agreements are held in trust by the law firm Schneider Ruggiero LLP ("**SR Law**"), (the "**Deposits**").
7. The registered office address of the Debtor is 93 Skyway Avenue, Unit 210, Toronto, M9W 6N6, (the "**Office Premises**").

II. PURPOSE OF THIS REPORT

8. The purpose of this Report dated May 3 2018 (the "**First Report**") is to provide information to the Court with respect to:
 - i. background information in respect of the Debtor;
 - ii. the Receiver's activities since the issuance of the Receivership Order;
 - iii. the sales process conducted by the Receiver with respect to the Property;
 - iv. the agreement of purchase and sale dated February 12, 2018, entered into by Hue Developments & Investments Canada Inc. ("**Hue**") and the Receiver with respect to the Property (the "**Hue APS**");
 - v. the Receiver's proposed deposit claims procedure with respect to the return of the Deposits (the "**Deposit Claims Procedure Order**", including the protocol for the issuance of the payment of the Deposits (the "**Deposit Payment Protocol**") ;
 - vi. the Receiver's receipts and disbursements;
 - vii. the Receiver's fees and disbursements and those of its counsel; and,
 - viii. the Receiver's motion for Orders of this Court:

- (a) approving and authorizing a sale of the Property by the Receiver to Hue pursuant to the Hue APS (the **"Transaction"**);
- (b) vesting the Debtor's right, title and interest, if any, in and to the Property free and clear of all encumbrances, subject to the terms of the Hue APS (the **"Approval and Vesting Order"**);
- (c) sealing all Confidential Appendices to this report until completion of the Transaction;
- (d) authorizing and approving a distribution by the Receiver to DUCA to fully retire its mortgage debt from the anticipated sale proceeds upon the completion of the Transaction;
- (e) discharging the construction lien and certificate registered by McCallum Sather Architects Inc. (**"McCallum"**) against the Property;
- (f) requiring the turnover of all funds held in trust by SR Law to the Receiver;
- (g) authorizing and approving a claims procedure and payment process with respect to the return of deposits from unit purchasers (the **"Deposit Claims Procedure"**) upon completion of the Transaction;
- (h) authorizing and directing the Receiver to make distributions to unit purchasers in respect of their proven deposit claims;
- (i) authorizing and approving the Deposit Payment Protocol which forms part of the Deposit Claims Procedure Order
- (j) requiring Zimmerman & Associates Inc. (**"Zimmerman"**) to pay \$10,500 to the Receiver with respect to funds received from the Debtor subsequent to the issuance of the Receivership Order;
- (k) requiring Santaguida to attend an examination by the Receiver;
- (l) requiring Marylou Santaguida, the sole director of Santerra Asset Management and Development Inc. (**"Santerra"**), to attend an examination by the Receiver and to provide the Receiver with a

complete explanation and accounting for all funds received by Santerra from the Debtor, including supporting documentation to substantiate the value of the services and work performed by Santerra, if any;

- (m) approving the activities and conduct of the Receiver as described in this First Report; approving the Receiver's Interim Statement of Receipts and Disbursements set out in the First Report; and
- (n) approving and authorizing payment of the fees and disbursements of the Receiver and its legal counsel, Devry Smith Frank LLP ("DSF") as set out in this First Report.

III. Disclaimer

9. This First Report is prepared solely for the use of the Court for the purpose of assisting the Court in making a determination whether to: (i) approve and authorize the Hue APS Transaction and a distribution to DUCA (ii) order the turnover of trust funds from SR Law to the Receiver (iii) approve and authorize the proposed Deposit Claims Procedure (iv) approve the actions and conduct of the Receiver as set out in this First Report, (v) approve and authorize payment of the Receiver's fees and disbursements and those of its legal counsel, and (vi) grant other ancillary relief being sought.

10. Except as otherwise described in this report:

- (a) The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information in a manner that would wholly or partially comply with Canadian Auditing Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and,

- (b) The Receiver has not conducted an examination or review of any financial forecast and projections in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.

11. Unless otherwise stated, all monetary amounts contained in this First Report are expressed in Canadian dollars.

IV. Taking Possession

12. On the date of the Receivership Order, the Receiver attended at the Property in Hamilton, Ontario to inspect the site. The Receiver ensured that access to the Property was restricted by a locked chain linked fence surrounding the Property and arranged for a change of locks to the Church door. It also ensured that all window access was blocked off and posted notices on the Property with respect to its appointment as Receiver. The Receiver also arranged for liability insurance for the Property. Regular site inspections and property maintenance have been undertaken by the Receiver.

13. The Receiver attended at the Office Premises in order to retrieve the books and records of the Debtor but found no one present. Over the course of the next few weeks following its appointment, the Receiver re-attended at the Debtor's office several times but found nobody there. Phone calls and emails to Santaguida were not responded to. The Receiver attempted to reach Santaguida through his lawyer, Zimmerman, which also proved unsuccessful.

14. The Receiver contacted the landlord of the Office Premises to arrange for access but was advised that the tenant of those premises was actually another company, Terrasan 327 Royal York Rd. Limited (the "Tenant" and "Terrasan Royal York") and therefore the landlord could not provide access to the Receiver. The Receiver notes that Terrasan Royal York is also subject to ongoing receivership proceedings pursuant to a receivership order dated February 24, 2017, issued by the Honourable Mr. Justice Wilton-Siegel.

15. The Receiver approached SR Law with respect to obtaining access to the records in its possession relating to the Prebuild Agreements but was informed by SR Law that it was not prepared to release documents to the Receiver until its outstanding accounts were paid.

16. As a result of the foregoing issues with Santaguida, the landlord and SR Law, the Receiver made a motion to the Court to seek directions. Attached as **Appendix "B"** is the Notice of Motion and the related Affidavit of Deborah Hornbostel sworn July 17, 2017, excluding exhibits, providing further details with respect to the foregoing issues.

17. On July 21, 2017, the Honourable Madam Justice Conway issued an Order (the "**July 21 Order**"), attached hereto as **Appendix "C"**, which among other items provided for the following:

- That the Tenant, landlord and property manager, provide the Receiver with access to the Office Premises;
- That Santaguida, Zimmerman, George Ruggiero and SR Law comply with the Receivership Order and in particular forthwith:
 - i. advise the Receiver of the existence and location of all property and information it has in respect of the Debtor
 - ii. provide full access to property within their possession, power or control; and
 - iii. permit the Receiver to remove property or, at its option and where possible, to make copies thereof.
- George Ruggiero and SR Law were also ordered to forthwith provide detailed information in electronic form on the deposits held by SR Law in respect of the condominium project.
- Santaguida, Zimmerman and SR Law were each order to pay costs to the Receiver in the sum of \$1,000 within 30 days.

18. The Receiver notes that Zimmerman and SR Law have complied with the cost order but Santaguida has yet to pay any funds to the Receiver in accordance with the July 21 Order.

19. On July 21, 2017, the Receiver discovered that there had been a break-in at the church on the Property through two of the boarded up windows. The Receiver inspected the premises to ensure there were no intruders present and arranged for the re-boarding of the windows. There

have been several minor intrusions and vandalism issues at the Property since then which the Receiver has attended to and rectified.

V. Review of Books & Records

20. On July 24, 2017, the Receiver attended at the Office Premises and retrieved several boxes containing the Prebuild Agreements. On July 25, 2017, the Debtor's bookkeeper contacted the Receiver and provided certain accounting information consisting of Quick Books, bank reconciliations and financial statements. No supporting documentation for any of the financial transactions was provided, nor was any information relating to the development of the Project provided. The Receiver had no information relating to the status of the site plan approval, the designs relating to the building or any other reports. No further cooperation was received from Santaguida.

21. The Receiver has minimal knowledge of the Debtor's financial accounts due to the lack of cooperation from Santaguida. According to the trial balance of the Debtor as at July 25, 2017, the following amounts are due to the Debtor:

Due From	Amount
Santerra	3,457,025.19
Security Deposits	42,800.00
2415118 Ontario Inc.	16,000.00
Terrasen 744 Dundas Street London	7,500.00
Prepaid Commissions	4,950.00

22. The Receiver notes that corporate profile searches on 2415118 Ontario Inc. ("**245 Co.**") and Terrasan 744 Dundas Street London ("**Terrasen London**") indicate that Santaguida is the sole Director and Officer for both 245 Co. and Terrasan London.

23. Details in the general ledger indicate that the security deposits were actually fees paid to the City of Hamilton with respect to site plan and zoning by-law amendment applications.

Santerra & Marylou Santaguida

24. On July 8, 2015, DUCA advanced \$5,000,000 to the Debtor pursuant to its secured mortgage over the Property. During a review of the Debtor's limited financial information, the Receiver discovered that immediately upon receipt of those funds, the Debtor transferred \$2,581,543.11 to Santerra. The transaction was recorded on the Debtor's general ledger as an Inter-Company transaction. On September 30, 2015, the Debtor issued a cheque in the amount of \$1,130,000 to Santerra. There were several other transactions posted subsequently resulting in a total balance due from Santerra to the Debtor in the amount of \$3,457,025.19. A copy of the general ledger inter-company account of Santerra is attached hereto at **Appendix "D"**.

25. The Receiver conducted a corporate profile search on Santerra, attached hereto at **Appendix "E"**, and discovered that the sole director of Santerra is Marylou Santaguida, the wife of Santaguida.

26. On August 4, 2017, the Receiver wrote to Santerra at its registered office address of 93 Skyway Avenue, Suite 104, Toronto, to request an accounting for the funds received from the Debtor, but no response was received. The Receiver subsequently attended at those premises and found that they were occupied by another tenant who had been there for many years and had never heard of Santerra. The Receiver therefore left a copy of the August 4, 2017, correspondence at the Office Premises.

27. Marylou Santaguida has also registered fourth and fifth position mortgages against the Property in the amounts of \$1,500,000 and \$701,583 respectively. Neither of these mortgage liabilities was reflected in the financial records provided by the Debtor to the Receiver at July 25, 2017.

28. On October 26, 2017 the Receiver sent a copy of its August 4, 2017, correspondence issued to Santerra to Marylou Santaguida's registered residence, as well as a request for documentation in support of her mortgages registered against the Property. A copy of that correspondence is attached hereto as **Appendix "F"**. To date, no response has been received.

29. There is a preponderance of missing financial documentation of the Debtor and a lack of cooperation from Santaguida and his spouse. The Receiver requests that the Court order both Santaguida and Marylou Santaguida to attend examinations to address the concerns of the Receiver.

Bank of Montreal

30. The July 25, 2017, bank reconciliation indicated that there was \$11,164.54 held in an account at the Bank of Montreal. In order to expedite the turnover of funds, the Receiver requested the bookkeeper to issue a cheque to the Receiver for the funds on hand. The bookkeeper undertook to promptly obtain a cheque signed by Santaguida for the account balance and to inform the Receiver once that was done.

31. Despite several subsequent follow up requests to the bookkeeper to obtain the cheque, no response was received, so a few days later the Receiver contacted the Bank of Montreal and requested that the account be frozen and the funds on hand be remitted to the Receiver. The Receiver attended at the Bank of Montreal branch in person and was assured that the funds were in the account and that it would receive the funds in due course.

32. Over the course of the next few weeks the Receiver attempted to follow up with the Bank of Montreal, which proved to be very unresponsive. On August 21, 2017, the Receiver received a bank draft dated August 4, 2017, in the amount of only \$644.54.

Zimmerman

33. Upon further enquiry with the Bank of Montreal, the Receiver discovered that a cheque had been written to Zimmerman in the amount of \$10,500 and had been deposited by Zimmerman on July 25, 2017, well after Mr. Zimmerman had been made aware of the receivership proceedings. The cheque was dated June 15, 2017 but had not been listed as an outstanding cheque on either the June 30, 2017 or July 25, 2017 bank reconciliations that had been provided by the bookkeeper to the Receiver. Attached as **Appendix "G"** are copies of the cashed cheque and the June 30, 2017 and July 25, 2017 bank reconciliations provided by the bookkeeper.

34. On August 23, 2017, the Receiver wrote to Zimmerman to request the return of the funds that were property of the Receiver. A copy of that correspondence is attached as **Appendix "H"**. To date, Zimmerman has not returned the funds.

35. On April 23, 2018, the Receiver repeated its request for information from Santaguida and Marylou Santaguida by way of a letter from its lawyers to their lawyer; no response has yet been received. A copy of that correspondence is attached hereto as **Appendix "I"**.

36. The Receiver seeks an Order from the Court requiring Zimmerman to pay \$10,500 to the Receiver, as Zimmerman was fully aware that the cashing of the cheque subsequent to the date of the Receivership was tantamount to removing property of the Debtor and in contravention to both the Receivership Order and the July 21 Order. The Receiver also request that the Court award costs to the Receiver against Zimmerman with respect to this matter.

Project Development & Site Plan Status

37. The Receiver contacted the City of Hamilton to advise it of the Receivership Order and arrange for a status report with respect to the Project and more particularly, the status of the site plan approval. The Receiver initially experienced difficulty in obtaining any response from the City

of Hamilton but eventually arranged a meeting with the planning department of the City of Hamilton for August 9, 2017. Following that meeting, the City of Hamilton provided the Receiver with copies of several reports and a copy of the May 25, 2015, conditional approval letter in response to the Debtor's site plan application (the "**Conditional Site Plan**").

38. The Receiver also reviewed the Debtor's financial records to ascertain potential leads as to which companies had done work on the project with the hope of being able to obtain copies of reports that had previously been prepared for the Debtor. The Receiver was successful in obtaining several reports from service providers.

39. On May 23, 2017, in response to a request by the Debtor, The City of Hamilton extended the Conditional Site Plan Approval date to May 25, 2018. On March 13, 2018, the Receiver advised the City of Hamilton that it had entered into the Hue APS and submitted a request for a further one year extension of the Conditional Site Plan. The Receiver is currently awaiting approval from the City of Hamilton. Time is of the essence to find a purchaser who can fulfill the Conditional Site Plan requirements and the Receiver is hopeful that the City of Hamilton will extend the date in consideration of the pending Transaction.

40. The Receiver also contacted the City of Hamilton to obtain a statement of account regarding the property taxes. Attached as **Appendix "J"** is a copy of the statement of account as at April 17, 2018, indicating an outstanding property tax balance of \$60,954.13 as well as an estimated balance owing of \$62,347.76 as at June 1, 2018.

Prebuild Agreements and Deposits

41. In response to the July 21 Order, SR Law worked with the Receiver to provide detailed information on the Prebuild Agreements and the Deposits that it was holding in trust. The Receiver conducted a thorough review of each Prebuild Agreement and reconciled the deposit requirements to the Deposits held in trust by SR Law. As at April 30, 2018, the balance of the funds held in trust by SR Law was \$6,314,885.81, including interest.

VI. Sales Process

42. The Receiver requested marketing proposals from Colliers International ("Colliers") and CBRE Limited's Land Services Group ("CBRE"). Both companies submitted proposals in early July 2017. The Receiver also requested CBRE to provide it with an opinion of estimated market value. Attached as **Confidential Appendix "A"** is a copy of the requested opinion letter dated July 14, 2017. A summary of the key terms of the marketing proposals, including projected sales prices, is attached as **Confidential Appendix "B"**.

43. The CBRE listing proposal offered a transparent process consisting of a modified tender process with a set bid date, unpriced offering to the market, exceptional international marketing exposure, a higher anticipated sales price and a more favourable compensation structure. On July 31, 2017, the Receiver listed the Property for sale with CBRE for a six month period ending January 31, 2018. On August 1, 2017, the Property was posted for sale on the Toronto Real Estate Board's multiple listing service ("MLS"). A copy of the MLS listing is attached hereto as **Appendix "K"**.

44. The Receiver, in consultation with DSF, prepared a proposed Agreement of Purchase and Sale ("APS") for use by prospective purchasers and provided all available information and reports on the Property to CBRE for posting to CBRE's virtual data room. CBRE and the Receiver jointly prepared the confidential information memorandum. All prospective purchasers were vetted by CBRE and were required to sign confidentiality agreements prior to accessing the virtual data room. The sales process had a deadline for the submission of offers of noon on September 15, 2017.

45. Weekly marketing reporting letters were provided by CBRE to the Receiver. Attached as **Appendix "L"** is a copy of the CBRE marketing report dated September 7, 2017, prepared prior to the deadline for offers. Salient points from that report are as follows:

- CBRE installed three large “For Sale” signs on the Property on August 3, 2017;
- The property was featured on CBRE’s website;
- An advertisement was featured on August 16, 2017, in the Greater Toronto Edition of *Novae Res Urbis*;
- Coloured advertisements appeared in *The Globe and Mail* on August 24, 2017, and August 29, 2017;
- An advertisement was featured on August 28, 2017, in the *Hamilton Spectator*;
- Personalized letters containing laminated cover brochures and the confidentiality agreement were mailed out to 770 potential buyers;
- CBRE conducted two distinct email campaign blasts. The first blasts were sent out on August 8, 2017, to over 1,000 recipients of CBRE’s national brokerages and to 84 CBRE Land Services Group brokers in North America. The second blasts were sent out August 15, 2017, and the third on August 22, 2017;
- The Property listing was included in CBRE’s weekly email campaign of *Available Properties* sent to all cooperating commercial brokerages in the GTA;
- CBRE also launched an industry specific group email campaign on August 1, 2017, that was repeated weekly. Tracking of results indicated that it was sent to 4,343 recipients, had 8,314 views and resulted in 642 file downloads;
- CBRE also included the Property listing in its weekly email blast to its Land Services Group’s entire distribution list. Tracking of results indicated that it was sent to 807 recipients and received 776 views; and,
- CBRE received 31 direct inquiries requesting the Confidential Information Memorandum and further information as a result of its marketing program.

46. Four offers were submitted by the deadline date of September 15, 2017. Attached as **Confidential Appendix “C”** is a summary of the pertinent details of those four offers. The Receiver reviewed the four offers and on September 18, 2017, the Receiver instructed CBRE to provide each of the offerors with the opportunity to improve the terms of their offers. Furthermore, on that same date, one of the offerors, CORfinancial Corp., in Trust for a Company to be incorporated (“COR”), was advised that its offer was unacceptable because the Receiver was only accepting cash offers.

47. The Receiver had grave concerns of accepting COR's offer and the associated risks of undertaking the required equity conversions, as well as the purchaser's ability to secure all approvals and building permits required to commence construction, particularly since the purchaser was not clearly disclosed and no financial information or guarantees were provided. In addition, no timelines were provided and as previously noted in this report, time is of the essence with respect to satisfying the conditions of the Conditional Site Plan. The Receiver was of the opinion that the COR offer contained too many risks for completion of the transaction, particularly in comparison to another offer that the Receiver was considering for acceptance.

48. On September 20, 2017, the Receiver held a conference call with representatives from the first and second position secured creditors, DUCA and Guarantee Co., to discuss the four offers received. Based upon the terms of the offers received, both DUCA and the Guarantee Co. supported the acceptance of the Lifestyle offer.

49. On September 28, 2017, following negotiations over certain terms and conditions contained in the proposed APS, the Receiver entered into an APS with Lifestyle Custom Homes Inc. ("Lifestyle").

50. The Lifestyle APS did not close and was terminated.

51. On December 20, 2017, the Receiver amended its listing agreement with CBRE such that the Property was re-listed for sale on the multiple listing service at an offering price of \$9.9 million. The listing agreement was also extended to March 31, 2018.

52. CBRE re-approached all of the potential purchasers who had previously expressed interest and conducted marketing efforts similar to those that were previously undertaken during the fall of 2017.

53. None of them made an offer.

54. COR did not make an offer.

55. On January 19, 2018, the Receiver was presented with an offer from Hue which the Receiver understands is partnering with Lifestyle in respect of the development of the Property.

56. On February 12, 2018, the Receiver entered into an unconditional APS with Hue, the closing date for which is 113 days following execution of the APS (June 5, 2018), subject to the Receiver obtaining an Approval and Vesting Order. The Hue APS requires that the Receiver terminate all of the Prebuild Agreements prior to or upon the closing of the transaction.

57. A copy of the Hue APS, redacting the purchase price, is attached hereto as **Appendix "M"**. A copy of the un-redacted Hue APS is attached hereto as **Confidential Appendix "D"**.

VII. Receiver's View of the Marketing Process and the Hue APS

58. The Receiver is of the view that the sale process was conducted in a commercially reasonable manner and that the market was extensively canvassed, both domestically and internationally pursuant to CBRE's marketing efforts detailed above in this report including print advertisements, email blasts, website exposure and direct mailings. There was significant interest expressed by potential purchasers as evidenced by the number of downloads of the marketing information, executed confidentiality agreements and offers received during the initial offering period. The Receiver believes that the subsequent efforts of CBRE through the re-listing of the Property on the multiple listing service and CBRE's internal network have provided sufficient exposure of the Property to the market.

59. The Receiver was advised by DUCA that it had commissioned an appraisal by Cushman Wakefield Ltd. ("CW") prior to the advancement of funds to the Debtor. On July 27, 2017, the

Receiver engaged CW to provide an updated appraisal of the Property. Attached as **Confidential Appendix "E"** is a copy of the CW appraisal dated August 22, 2017.

60. The Receiver also engaged Antec Appraisal Group Inc. ("**Antec**") to conduct an appraisal of the Property. Attached as **Confidential Appendix "F"** is a copy of the Antec appraisal dated August 4, 2017.

61. Upon review of the appraisal reports obtained from Antec and CW, the Receiver notes that the purchase price contained in the Hue APS is in line with the Antec and CW appraised values of the Property. The purchase price is also in excess of the projected sales price of both CBRE and Colliers.

62. The Hue APS and the purchase price contained therein represent the highest and best offer attainable for the Property at this time and contemplate completion of the Transaction by early June, 2018.

63. The Receiver is of the view that the Transaction is beneficial to the Debtor's creditors as a whole, as it maximizes the pool of funds available for distribution to the secured creditors, and potentially unsecured creditors as well, depending on the results of the collateral mortgages held by Diversified and Marylou Santaguida.

64. The Hue APS also provides for finality to the unit purchasers as it requires that the Receiver terminate all Prebuild Agreements effective on or before the closing date. The completion of the Transaction should result in a full return of deposits relating to the Prebuild Agreements.

65. The Receiver consulted with DUCA and Guarantee Co. in relation to the Hue APS prior to accepting it and both DUCA and Guarantee Co. supported the Receiver's recommendation to proceed with the Hue APS.

66. The Receiver recommends to the Court that the Approval and Vesting Order should be granted for the following reasons:

- The Receiver is of the view that the Transaction represents the highest recovery for creditors as a whole;
- DUCA and Guarantee Co. were consulted and support the Transaction;
- The closing date for the Transaction should allow sufficient time for Hue to remedy outstanding issues pursuant to the Conditional Site Plan, assuming that the City of Hamilton allows for a further one year extension;
- There is finality with respect to the Prebuild Agreements, as they will be terminated upon completion of the Transaction; and
- It is a condition to the closing of the Transaction that the Approval and Vesting Order be granted.

The Receiver therefore seeks approval from the Court for the completion of the Transaction and the issuance of the Approval and Vesting Order.

67. In the event the Court does not grant the Approval and Vesting Order or the Transaction does not close, the Receiver is of the view that efforts to re-market the Property would be impaired if any of the Confidential Appendices are made public at this time. Accordingly, the Receiver believes that it is appropriate for all of the Confidential Appendices to remain confidential until such time as the Transaction closes. Accordingly, the Receiver requests that an order sealing the Confidential Appendices be made.

VIII. Prebuild Agreements and Related Deposits

68. On December 20, 2017, following the expiry of the Lifestyle APS and any hope of resurrecting it, the Receiver sent a notice to each of the unit purchasers to advise them of the status of the receivership proceedings, the Receiver's marketing efforts and results to date, and

the status of their Deposits. The Receiver also posted the notice on its website. A copy of that correspondence is attached hereto as **Appendix "N"**.

69. On March 6, 2018, the Receiver sent a second notice to each of the unit purchasers to advise them of the acceptance of the Hue APS and of the Receiver's intention to seek Court approval of the sale of the Property to Hue as well as the impact that such a sale would have on the Prebuild Agreements and the related Deposits. A copy of that correspondence is attached hereto as **Appendix "O"**.

70. The Receiver seeks approval from the Court to terminate all of the Prebuild Agreements effective on or before the closing date, which has been included in the Deposit Claims Procedure Order.

71. The Receiver also seeks an order from the Court requiring SR Law to turn over to the Receiver all funds in its possession that are related to the Prebuild Agreements (the **"Deposit Funds"**).

72. As noted earlier in this First Report, the Receiver understands that there is an outstanding pre-receivership account owing to SR Law by the Debtor and for that reason SR Law has indicated previously to the Receiver that it is not willing to turn over the Deposit Funds to the Receiver. The Receiver is of the view that SR Law is an unsecured creditor of the Debtor for pre-receivership liabilities and that the Deposit Funds should be turned over to the Receiver to administer a proper claims procedure process.

IX Deposit Claims Procedure Order

73. As noted previously in this report, at the date of the Receivership Order, the Debtor had entered into approximately 185 Prebuild Agreements whereby each unit purchaser agreed to

purchase an un-built condominium in the Project ("**Purchaser**"). Each Purchaser had remitted Deposits with respect to the Prebuild Agreements to SR Law to be held in trust. To the best of the Receiver's knowledge, those Deposits remain in trust with SR Law. Prior to the Receivership Order, there were several agreements of purchase and sale by unit purchasers that had been terminated. To the best of the Receiver's knowledge, those unit purchasers received their deposits back.

74. The Receiver understands that the Debtor was entitled to receive Deposit Funds from SR Law and use those Deposit Funds for the development of the Project, subject to the Debtor obtaining a condominium deposit insurance policy to secure the release of those Deposit Funds.

75. Prior to the Receiver's appointment, the Guarantee Co., an insurer authorized under The *Condominium Act (Ontario)*, provided deposit insurance policies to the Debtor in order to secure the Deposit Funds that could be released to the Debtor (the "**Deposit Insurance Policies**"). The Deposit Insurance Policies included a Tarion bond and an excess condominium deposit insurance policy.

76. The Guarantee Co. has informed the Receiver that the Deposit Insurance Policies protect the Purchaser's right to a return of a deposit paid under a valid and enforceable Prebuild Agreement, in the event that such an agreement is terminated.

77. Upon the termination of a Prebuild Agreement, a Purchaser may be entitled to claim recovery of a Deposit pursuant to the Deposit Insurance Policies. Upon payment of any such claim by the Guarantee Co., the Receiver understands that the Guarantee Co. would have a subrogated claim against the Debtor for the amount of such payment. The Guarantee Co.'s subrogated claims against the Debtor are secured by a mortgage registered against the Property.

78. The Receiver is of the view that it is just, appropriate and in the best interest of the administration of the receivership estate to establish a procedure to identify and determine the Deposit claims of Purchasers as soon as possible following the closing of the Hue APS.

79. The Deposit Claims Procedure Order, attached herein as **Appendix "P"**, is necessary to enable the Receiver, in conjunction with the Guarantee Co. to: (i) determine proven Deposit claims and to facilitate the return of amounts payable in respect of Deposit claims to Purchasers, and (ii) assist the Receiver and the Guarantee Co. in quantifying the Guarantee Co.'s secured claim pursuant to its loan and security documentation (the **"Guarantee Co. Security"**).

80. As previously mentioned in this report, the Receiver is also seeking an Order directing SR Law to deliver the Deposit Funds to the Receiver. The Receiver will maintain the Deposit Funds in a separate account held by the Receiver and will coordinate the return of the Deposit Funds to those Purchasers having a specific claim to those Deposit Funds, in accordance with the Deposit Claims Procedure Order.

Summary of Deposit Claims Procedure

81. Capitalized terms not otherwise defined in this section are as defined in the Deposit Claims Procedure Order.

82. Notice of the Deposit Claims Procedure would include the following activities:

- (a) the Receiver will deliver a Claims Package to each Purchaser within 10 days following the successful closing of the Hue APS.
- (b) the Receiver will post the Newspaper Notice within 10 days following the successful closing of the Hue APS; and,
- (c) The Receiver will post the Claims Package on the Website within 10 days following the successful closing of the Hue APS.

83. The filing of Deposit Claim Forms and the determination of such claims would operate under the following procedure:

- (a) Purchasers asserting a Deposit Claim are required to deliver a Deposit Claim Form to the Receiver no later than August 31, 2018 (the "**Claims Bar Date**"), failing which, such Purchaser would stand forever barred, estopped and enjoined from asserting or enforcing any Deposit Claim against the Debtor, Tarion and the Guarantee Co., and such claim would be forever extinguished;
- (b) the Receiver will send a copy of each and every completed Deposit Claim Form to the Guarantee Co. for review and evaluation of the Deposit Claim. The Receiver will either accept, revise or disallow the claim set out in such Deposit Claim Form;
- (c) the Receiver, in consultation with the Guarantee Co., may attempt to resolve the amount of a Deposit Claim, either before or after accepting, revising or disallowing such Deposit Claim;
- (d) if the Receiver accepts a Deposit Claim as set forth in a Deposit Claim Form, that Deposit Claim would be a Proven Deposit Claim;
- (e) if the Receiver, in consultation with the Guarantee Co., chooses to revise or disallow a Deposit Claim, the Receiver will advise the Purchaser by sending a Notice of Revision or Disallowance to the Purchaser;
- (f) any Purchaser who disputes the amount of its Deposit Claim as set forth in a Notice of Revision or Disallowance, must deliver a Notice of Dispute to the Receiver by 5:00 p.m. (Toronto time) on the day that is fifteen (15) Calendar Days after the date of the Notice of Revision or Disallowance;

(g) any Purchaser who fails to deliver a Notice of Dispute by the deadline set forth in sub-paragraph above, will be deemed to accept the amount of its Deposit Claim as set out in the Notice of Revision or Disallowance;

(h) upon receipt of a Notice of Dispute, the Receiver will send a copy to the Guarantee Co. and the Receiver, in consultation with the Guarantee Co., may attempt to resolve the amount of the claim with the Purchaser by consent;

(i) If a Deposit Claim is resolved by consent between the Receiver, the Guarantee Co. and the Purchaser, the Receiver may accept a revised Deposit Claim Form setting forth the agreed amount of the Deposit Claim, and such settled Deposit Claim shall be a Proven Deposit Claim; and,

(j) in the event the Receiver, the Guarantee Co. and the Purchaser are not able to resolve the Deposit Claim amount and any matters arising pursuant to the Notice of Dispute, the Purchaser must schedule a motion before the Court, to be heard not later than 30 days following the delivery of the Notice of Dispute by the Purchaser to the Receiver. In the event the Purchaser fails to schedule the motion by the aforementioned deadline, the Purchaser will be deemed to accept the amount of the Deposit Claim as set out in the Notice of Revision and Disallowance.

84. The proposed time frame for administering the Deposit Claims Procedure, assuming that the Hue APS is completed on June 5, 2018, is summarized as follows:

Process	Date
Mailing to Purchasers	June 15, 2018
Website Posting	June 15, 2018
Newspaper Notice	June 15, 2018
Claims Bar Date	August 31, 2018
Notice of Revision or Disallowance	To be delivered by the Receiver, acting reasonably
Notice of Dispute	15 calendar days after the date of the Notice of Revision or Disallowance

85. The Receiver seeks approval of the Court to proceed with payment of the proven deposit claims following the completion of the Deposit Claims Procedure Order if the Deposits are sufficient to allow for payment of all Proven Claims. If the Deposits are not sufficient to pay all proven deposit claims, the Receiver will seek a further order of the Court.
86. The Deposit Claims Procedure includes a proposed payment protocol.
87. The protocol is summarized as follows:
- i. The Receiver will provide Tarion with copies of all documentation in its possession related to the Pre-Build Agreements, notices and correspondences regarding the termination of the Pre-Build Agreements and all Deposit Claims Procedure documentation in electronic form on a unit-by unit-basis;
 - ii. The Receiver will provide Tarion and the Guarantee Co. with details of the claims paid on a bi-weekly basis along with an updated ledger of the Proven Deposit Claims and details regarding the status of each Deposit Claim;
 - iii. The Receiver will provide Tarion with Receiver's Certificates which will attach copies of (a) the consents executed and delivered by the Guarantee Co. to the Receiver in respect of Proven Deposit Claims in accordance with the Deposit Claims Procedure; (b) the corresponding Certificates; and (c) the corresponding Receipts, and which Receiver's Certificate will deal with payments made to Purchasers in the preceding two week period;
 - iv. Upon receipt of a Receiver's Certificate as described above, Tarion will provide confirmation to the Guarantee Co. once every two weeks that the Tarion bond is reduced by the amount of claims paid by the Receiver, disallowed claims and barred claims to a maximum of \$20,000 for each Pre-Build Agreement;
 - v. Upon being satisfied that its liability in respect of amounts secured by the Tarion Bond has been extinguished, or upon the establishment of a reserve, Tarion will return the Tarion Bond to the Guarantee Co. for cancellation.

- vi. Following the establishment of a reserve or upon the extinguishment of Tarion's liability in respect of amounts secured by the Tarion Bond, the Receiver shall seek a distribution order that provides for a distribution from the proceeds of sale to the Guarantee Co. for final reimbursement of all its reasonable fees and expenses, together with any other amounts that may be claimed by the Guarantee Co.

X. Secured Creditors

88. Attached hereto as **Appendix "Q"** is a copy of the Parcel Register for the Property as at September 21, 2017. Pursuant to that report, the following encumbrances are registered against the Property:

Position	Creditor	Date	Amount	Comments
1	DUCA	08-Jul-15	\$ 5,000,000	Charge
2	Guarantee Co.	30-Oct-14	5,180,000	Charge Postponed to DUCA
3	Diversified	12-Aug-16	3,000,000	Charge
4	Marylou Santaguida	13-Jun-13	1,500,000	Charge Postponed to DUCA, Guarantee Co. & Diversified
5	Marylou Santaguida	11-Apr-16	701,583	Charge
6	McCallum Sather Architects Inc.	24-Aug-17	30,234	Construction Lien
Total			\$15,411,817	

89. The Receiver has obtained a security opinion from its counsel DSF LLP (the "**Security Opinion**"), attached hereto as **Appendix "R"**, and subject to the customary qualifications and assumptions contained therein, the Security Opinion opines that the security held by DUCA is valid and enforceable against the Debtor and that DUCA has a first priority security interest in the Property.

90. The collateral mortgage of Guarantee Co. is contingent in nature and was established to secure the Deposits paid pursuant to the Prebuild Agreements. As previously indicated, these Deposits are currently held in trust by SR Law and are anticipated to cover the amount in full that is required to discharge the mortgage registered by Guarantee Co.

91. The mortgage in favour of Diversified is a collateral mortgage securing the indebtedness owed to it by a party related to the Debtor, namely Terrasan Royal York, which is also subject to a Court Appointed receivership proceeding. At the present time, the Receiver is unaware of the amount that will ultimately be owing pursuant to this mortgage, if any.

92. As previously mentioned in this report, the Receiver has not received a response from Marylou Santatguida with respect to the provision of any documentation in support of her mortgages or any funds advanced pursuant to those mortgages. Furthermore, the mortgage registration with respect to her mortgage in the amount of \$701,583 indicates that *"the charge is collateral security securing a bond issued by the Chargee in favour of Terrasan 327 Royal York Road Limited with respect to vacating a lien registered as Instrument No. AT4183314 in favour of Linen Group Ltd. from the property described in PIN 07617-0050LT"*. The Receiver requires further information on this mortgage to determine validity.

Construction Lien

93. On October 27, 2017, the Receiver became aware of the construction lien that was registered by McCallum on August 24, 2017. McCallum also registered a Certificate on October 10, 2017. On November 6, 2017 the Receiver's solicitor issued correspondence to McCallum's solicitor to advise it of the Receivership Order and to demand that the lien be discharged from title by November 14, 2017. A copy of that correspondence is attached hereto as **Appendix "S"**.

94. On November 16, 2017, McCallum's solicitor advised that McCallum had continued to perform work until July 11, 2017, subsequent to the Receivership Order, pursuant to instructions from Santaguida and that it was not aware of the Receivership Order when it was conducting the work. On that same day, McCallum's counsel was requested to provide evidence of the instructions that McCallum received from Santaguida and to detail the dates and work undertaken. To date, the details have not been provided.

95. The Receiver requests that the construction lien and certificate of McCallum be discharged from the Parcel Register for the following reasons:

- i. The supply of any work subsequent to the Receivership Order was not authorized by the Receiver;
- ii. No Evidence was provided to the Receiver by McCallum in support of its purported post Receivership Order work undertaken;
- iii. The lien was filed more than 45 days after the purported provision of work by McCallum; and
- iv. The Certificate was filed more than 90 days after the purported provision of work by McCallum.

96. The Receiver notes that a *Personal Property Security Act* search dated June 21, 2017, attached hereto as **Appendix "T"** disclosed the following security registrations:

Position	Creditor	Date	Security Particulars
1	DUCA	23-Jun-15	General Security Agreement
2	Guarantee Co.	30-Oct-15	Accounts & Other
3	1220356 Ontario Limited	11-Aug-16	Equipment, Accounts & Other
4	Taragar Holdings Limited	11-Aug-16	Equipment, Accounts & Other

97. The Receiver currently has no information with respect to the registrations of 12202356 Ontario Limited or Taragar Holdings Limited or any amounts that may be owing to them. The Receiver also notes that both of those companies had made registrations on the Parcel Register of the Property on August 12, 2016, and subsequently discharged them on September 30, 2016.

98. The Receiver is not aware of any trust claim of the Canada Revenue Agency ("**CRA**") against the Debtor, nor does it anticipate any amount owing to CRA. The Receiver has informed CRA of the receivership and has not received any response from it with respect to any trust claim.

XI. Interim Distribution

99. As reflected in the mortgage payout statement attached hereto as **Appendix "U"**, DUCA is owed \$5,590,401.19, inclusive of accrued interest to June 5, 2018, with interest accruing at \$897.98 per diem thereafter.

100. If the Transaction is completed, the Receiver will have sufficient funds to repay the indebtedness owing to DUCA in full. In consideration of the Security Opinion provided and in order to limit interest charges accruing on the DUCA indebtedness, the Receiver is seeking approval of a distribution to DUCA in full and final satisfaction of all amounts owing to it by the Debtor.

101. It is likely that the collateral mortgage in favour of Guarantee Co. will be discharged subsequent to the return of the Deposits to Purchasers. The Receiver understands that since the receivership of Terrsan Royal York is still ongoing, the future status of the collateral mortgage in favour of Diversified is uncertain. The Receiver is still awaiting documentation from Marylou Santaguida in support of her registered mortgages. Accordingly, the Receiver is unable to recommend any distribution of funds to secured creditors at this time, other than DUCA.

102. The Receiver seeks an order from the Court authorizing a distribution to DUCA pursuant to the foregoing referenced payout statement upon the closing of the Transaction.

XII. Administrative Matters

103. The following administrative matters have been attended to by the Receiver:

- preparation and issuance of the Notices and Statements of the Receiver pursuant to sections 245 and 246 of the *Bankruptcy & Insolvency Act*, a copy of which is attached hereto as **Appendix "V"**;

- arranging for insurance for the Property;
- registering the receivership proceedings on title for the real estate of the Debtor;
- providing information to Purchasers and responding to enquiries from them;
- attending to the ongoing maintenance of the Property;
- contacting CRA to determine the status of claims against the Debtors and registering the receiverships and filing HST returns; and,
- communicating with prospective purchasers of the Property.

XIII. RECEIPTS AND DISBURSEMENTS

104. Attached at **Appendix "W"** is an Interim Statement of Receipts and Disbursements to April 30, 2018, indicating a balance on hand of \$444,363. Receiver's Certificates have been issued to DUCA in the amount of \$45,000 to date.

XIV. FEES AND DISBURSEMENTS

105. Pursuant to the Receivership Order, the Receiver has provided services and incurred disbursements, which are described in the Affidavit of Deborah Hornbostel sworn May 4, 2018. A copy of that fee affidavit is attached hereto as **Appendix "X"**.

106. The detailed time descriptions contained in the dockets provide a fair and accurate description of the services provided and the amounts charged by representatives of the Receiver. Included with the affidavit is a summary of the time charges of those whose services are reflected in the detailed dockets, including the total fees and hours billed.

107. Additionally, the Receiver has incurred legal fees of its counsel, DSF in respect of these proceedings, as more particularly set out in the fee affidavit of Sara Mosadeq sworn May 3, 2017 and the exhibits attached thereto. A copy of that fee affidavit is attached hereto as **Appendix "Y"**.

108. The Receiver respectfully submits that the Receiver's fees and disbursements and DSF LLP's fees and disbursements are fair and reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Receivership Order.

109. The Receiver requests that the Court approve its interim accounts from June 19, 2017 to April 30, 2018 in the amount of \$139,485.50, plus applicable HST of \$18,133.12.

110. The Receiver also requests that the Court approve the accounts of its legal counsel for the period from June 17, 2017 to April 30, 2018 in the amount of \$35,944.96 for fees and disbursements, inclusive of HST of \$4,134.34.

XV. CONCLUSION AND RECOMMENDATIONS

111. The Receiver is of the view that the sales process was fair and transparent and allowed for sufficient exposure of the Property to properly canvass the market for a purchaser. To the best of the Receiver's knowledge, all reasonable requests for information made by potential purchasers were satisfied. The Receiver believes that the Hue APS represents the highest and best realization for the Property and recommends that the Court approve the Transaction.

112. The Receiver is also of the view that upon the closing of the Transaction, the Receiver should forthwith proceed with the Claims Procedure Order in order to return the Deposits to the Purchasers as soon as possible and that in order to administer that process, it requires control of the Deposit Funds.

113. The Receiver seeks an Order of the Court:

- (a) approving and authorizing a sale of the Property by the Receiver to Hue pursuant to the Hue APS;

- (b) vesting the Debtor's right, title and interest, if any, in and to the Property free and clear of all encumbrances, subject to the terms of the Hue APS;
- (c) sealing all Confidential Appendices to this report until completion of the Transaction;
- (d) authorizing and approving a distribution by the Receiver to DUCA to fully retire its mortgage debt from the anticipated sale proceeds upon the completion of the Transaction;
- (e) discharging the construction lien and certificate registered by McCallum against the Property;
- (f) requiring the turnover of all funds held in trust by SR Law to the Receiver;
- (g) approving and authorizing the Deposit Claims Procedure, subject to the completion of the Transaction;
- (h) authorizing and directing the Receiver to make distributions to unit purchasers in respect of their proven deposit claims;
- (i) authorizing and approving the Deposit Payment Protocol which forms part of the Deposit Claims Procedure Order
- (j) requiring Zimmerman to pay \$10,500 to the Receiver with respect to funds received from the Debtor subsequent to the issuance of the Receivership Order;
- (k) requiring Santaguida to attend an examination by the Receiver;
- (l) requiring Marylou Santaguida to attend an examination by the Receiver and to provide the Receiver with a complete explanation and accounting for all funds received by Santerra from the Debtor, including supporting documentation to substantiate the value of the services and work performed by Santerra, if any;
- (m) approving the activities and conduct of the Receiver as described in this First Report;

- (n) approving the Receiver's Interim Statement of Receipts and Disbursements set out in the First Report; and
- (o) approving and authorizing payment of the fees and disbursements of the Receiver and its legal counsel, DSF, as set out in this First Report.

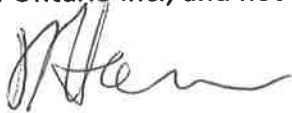
This Report is respectfully submitted this 4th day of May, 2018

msi Spergel Inc.,

In its capacity as Court Appointed Receiver of

2203284 Ontario Inc., and not in its personal or corporate capacity

Per:



Deborah Hornbostel, CPA, CA, CFE, CIRP, LIT



SPERGEL

085

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

SUPPLEMENTARY FIRST REPORT OF THE RECEIVER

May 16, 2018

TABLE OF CONTENTS

- I. Introduction and Purpose**
- II. The Agreements of Purchase and Sale for Individual Unit Purchasers**
- III. The Updated Clams Procedure Order**
- IV. The City of Hamilton**

LIST OF APPENDICES

- A.** Unit Agreement of Purchase and Sale
- B.** Affidavit of Sergiu Cosmin sworn June 9, 2017
- C.** Deposit Claims Procedure Order (with trackchanges)
- D.** Deposit Claims Procedure Order (clean copy)

I. INTRODUCTION AND PURPOSE

1. This Supplementary First Report is filed by msi Spergel Inc. (**"Spergel"**) in its capacity as receiver (**the "Receiver"**) appointed pursuant to an order of the Honourable Madam Justice Conway of Superior Court of Justice, dated June 22, 2017, (**the "Receivership Order"**), of all of the assets, undertakings and properties of 2203284 Ontario Inc. (**the "Debtor."**).
2. The present Supplementary First Report is in addition to the Receiver's First Report of May 4, 2018. Its purpose is to provide the Court with a copy of a redacted sample agreement of purchase and sale in respect of the condominium project in question, information about the termination of the agreements of purchase and sale on the basis of Early Termination Conditions, to file an updated version of the Deposit Claims Procedure Order which has been the product of collaboration between the Receiver, the Guarantee Company of North America, Tarion Warranty Corporation (**"Tarion"**) and DUCA Financial Services Credit Union Ltd. and to advise the court as to the status of the deadline for site approval.
3. This Supplementary First Report should be read with the Receiver's First Report of May 4, 2018. The disclaimer, limitations and qualifications set out in the First Report apply to and are incorporated into the current document.

II. THE AGREEMENTS OF PURCHASE AND SALE FOR INDIVIDUAL UNIT PURCHASERS

4. Individual unit holders entered into Agreements of Purchase and Sale with the Debtor. A typical sample copy of one, redacted (**the "Unit APS"**), is attached hereto as **Appendix "A"**.
5. The Early Termination Conditions in the Unit APS are set out on the Statement of Critical Dates (section 6) of the Tarion Addendum starting on page 34 of the Unit APS attached as **Appendix "A"**.
6. The Early Termination Conditions include a financing clause with the date for satisfaction of the financing condition being June 15, 2017. This appears at page 44 of the Unit APS.

7. At June 15, 2017, the Debtor had not satisfied the financing term. Its previous financing had matured in 2016 as is set out in the affidavit of Sergiu Cosmin which was sworn in support of the application for the Receivership Order. A copy of Mr. Cosmin's affidavit, without exhibits, is attached as **Appendix "B"**.

8. The financing was not replaced and the Debtor is not in a position to satisfy the relevant condition in light of the circumstances, including the passage of time.

9. Accordingly, the Debtor and now the Receiver is entitled to invoke the Early Termination Conditions.

10. In this respect, s 6(d) of the Early Termination Conditions of the Unit APS provides that the Debtor's obligation to complete the sale of a unit is subject to completion of the Early Termination Conditions and s 44 of the Unit APS states, among other things, that if the agreement is terminated through no fault of an individual purchaser, then deposit monies shall be repaid and that "[i]n no event shall the Vendor or its agents be liable for any damages or costs whatsoever for any loss of bargain or for any loss or for any professional or other fees paid in relation to this transaction."

III. THE UPDATED CLAIMS PROCEDURE ORDER

11. In the last few days, the Receiver, Guarantee Company of North America, Tarion and DUCA Financial Services Credit Union Ltd. have worked together to fine tune the draft Deposit Claims Procedure Order.

12. Since a draft was filed with the Court on May 4, 2018, the parties have made additional modifications to the proposed draft order. A copy of the draft Deposit Claims Procedure Order with trackchanges (from what was filed on May 4, 2018) is attached hereto as **Appendix "C"**. A clean copy is attached as **Appendix "D"**.

IV. THE CITY OF HAMILTON

13. The City of Hamilton has advised the Receiver that the deadline for site plan approval has been extended for an additional year, to May 27, 2019.

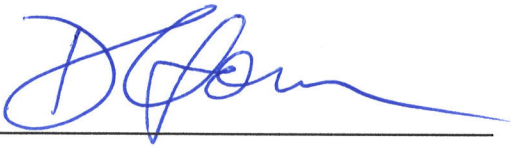
This Report is respectfully submitted this 16th day of May, 2018

msi Spergel Inc.,

In its capacity as Court Appointed Receiver of

2203284 Ontario Inc., and not in its personal or corporate capacity

Per:



Deborah Hornbostel, CPA, CA, CFE, CIRP, LIT

TAB C

Appendix “C”

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

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE

)

WEDNESDAY, THE 16thJUSTICE *DUNPHY*

)

DAY OF MAY, 2018

)

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by msi Spergel Inc., in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of 2203824 Ontario Inc. (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and Hue Developments & Investments Canada Inc. (the "Purchaser") dated February 8, 2018 and appended to the First Report of the Receiver dated May 4, 2018 (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for The Guarantee Company of North America, counsel for Tarion Warranty

Corporation, and such others as appear on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Sara Mosadeq sworn May 4, 2018 filed,

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Motion, and the Supplementary Motion Record is hereby abridged, if necessary, and validated so that this motion is properly returnable today. Further service of the Notice of Motion, Motion Record, and Supplementary Motion Record is hereby dispensed with.

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized to complete the sale of the Purchased Assets. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement, including the lands legally described in Schedule B hereto (the "Real Property") shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"¹) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Conway dated June 22, 2017; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "Encumbrances", which term

shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Wentworth of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*], the Land Registrar is hereby directed to enter the Purchaser as the owner of Real Property in fee simple..

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

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

7. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. THIS COURT ORDERS that, notwithstanding:

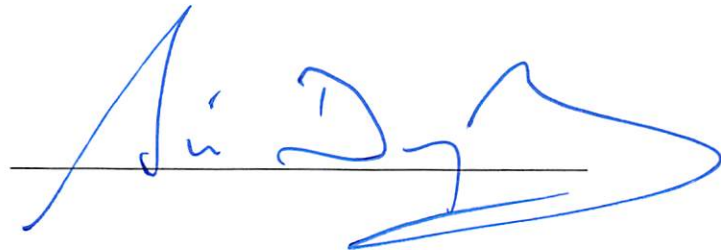
(a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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

9. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Retail Sales Tax Act* (Ontario) and section 6(3) of the *Retail Sales Tax Act* (Ontario).

10. 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.



Schedule A – Form of Receiver's Certificate

Court File No. 17-11827-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

RECEIVER'S CERTIFICATE**RECITALS**

A. Pursuant to an Order of the Honourable Justice Conway of the Ontario Superior Court of Justice (the "Court") dated June 22, 2017, msi Spergel Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of 2203284 Ontario Inc. (the "Debtor").

B. Pursuant to an Order of the Court dated May 16, 2018 the Court approved the agreement of purchase and sale made as of February 8, 2018 (the "Sale Agreement") between the Receiver and Hue Developments & Investments Canada Inc. (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 4.1 and section 4.2 of the Sale Agreement have been satisfied or waived by the Receiver and the

Purchaser, respectively; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 4.1 and section 4.2 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ on _____ .

**msi Spergel Inc. in its capacity as Receiver of
the undertaking, property and assets of
2203284 Ontario Inc., and not in its personal
capacity**

Per: _____

Name:

Title:

Schedule B – Real Property

LRO: 62
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

Schedule C – Claims to be deleted and expunged from title to Real Property and Purchased Assets

1. CHARGE registered 2013/06/13 as Instrument No. WE903381;
2. CHARGE registered 2014/10/30 as Instrument No. WE998973;
3. POSTPONEMENT registered 2014/10/30 as Instrument No. WE998974;
4. NOTICE registered 2015/04/10 as Instrument No. WE1029640;
5. CHARGE registered 2015/07/08 as Instrument No. WE1048981;
6. NOTICE OF ASSIGNMENT OF RENTS registered 2015/07/08 as Instrument No. WE1048982;
7. POSTPONEMENT registered 2015/07/08 as Instrument No. WE1048988;
8. POSTPONEMENT registered 2015/07/08 as Instrument No. WE1048989;
9. CHARGE registered 2016/04/11 as Instrument No. WE1111875;
10. CHARGE registered 2016/08/12 as Instrument No. WE1141288;
11. POSTPONEMENT registered 2016/08/12 as Instrument No. WE1141293;
12. POSTPONEMENT registered 2016/08/12 as Instrument No. WE1141294;
13. CONSTRUCTION LIEN 2017/08/24 registered as Instrument No. WE1231330;
14. CERTIFICATE registered 2017/10/10 as Instrument No. WE1242330; and
15. APL COURT ORDER registered 2017/10/20 as Instrument No. WE1244869
16. *Personal Property Security Act* (“PPSA”) registrations affecting the Purchased Assets, including the following:
 - a) PPSA File Number 701132553 in favour of The Guarantee Company of North America;
 - b) PPSA File Number 707377941 in favour of Duca Financial Services Credit Union Ltd.;
 - c) PPSA File Number 707378715 in favour of Duca Financial Services Credit Union Ltd.; and
 - d) PPSA File Number 719522406 in favour of 1220356 Ontario Limited.

(unaffected by the Vesting Order)

Capitalized terms used and not otherwise defined below shall have the definitions ascribed to such terms by the Sale Agreement

A. GENERAL

1. Encumbrances, liens, charges or prior claims for real property taxes (which term includes charges, rates and assessments) or for electricity, power, gas, water and other services and utilities (including levies or imposts for sewers and other municipal utility services) in connection with the Property that have accrued but are not yet due and owing or, if due and owing, are adjusted for on Closing and liens or charges for the excess of the amount of any past due taxes or utilities charges for which a final assessment or account has not been received over the amount of such taxes or utilities charges as estimated and paid by the Vendor;
2. subdivision agreements, site plan control agreements, development agreements (including amendments thereto or assumptions thereof), servicing agreements, utility agreements, facility cost sharing, sidewalk indemnification or similar agreements with Governmental Authorities or entities delivering, transmitting or supplying utilities that do not materially impair the use, operation or marketability of the Property;
3. restrictive covenants, private deed restrictions, and other similar land use control agreements that do not materially impair the use, operation or marketability of the Property;
4. encroachments by the Property over neighbouring lands and/or permitted under agreements with neighbouring landowners and minor encroachments over the Property by improvements of neighbouring landowners and/or permitted under agreements with neighbouring landowners that in either case do not materially impair the use, operation or marketability of the Property;
5. any subsisting reservations, limitations, provisos, conditions or exceptions, including royalties, contained in the original grant from the Crown;
6. the provisions of all Applicable Laws including, by-laws, regulations, and similar instruments relating to development and zoning such as, airport zoning regulations, use, development and building by-laws and ordinances and other restrictions as to the use of the Property and all active permits and inspection files regarding tenant, landlord and owner work at the Building and any minor active permit and inspection files outstanding in respect of elevating devices, boiler and pressure vessels and other restrictions as to the use of the Land, and all active permits;
7. any minor title defects, minor zoning or code non-compliance issues, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Property as disclosed by the plan of survey, certificate of location or technical description, if any, of the Property made available by the Vendor to the Purchaser;
8. the exceptions and qualifications contained in the *Land Titles Act* (Ontario);
9. any rights of expropriation, access or user or any other rights conferred or reserved by or in any statutes of Canada or of the Province of Ontario or any by-law of the City of Hamilton;

10. any unregistered interest in the Property (including, Leases, claims, agreements of purchase and sale, options and other encumbrances) of which the Purchaser has notice or ought reasonably should have had notice by virtue of its Due Diligence;
11. any unregistered easements regarding the provision of utilities to the Property;
12. permits, licenses, agreements, easements, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other Persons or Governmental Authority (including, heritage easements and agreements relating thereto), restrictions, restrictive covenants, rights-of-way, public ways, rights in the nature of an easement and other similar rights in land granted to or reserved by other Persons (including, permits, licenses, agreements, easements, rights-of-way, sidewalks, public ways, and rights in the nature of easements or servitudes for sewers, drains, steam, gas and water mains or electric light and power or telephone and telegraph conduits, poles, wires and cables);
13. security given to a public utility or any municipality or governmental or other public authority when required by the operations of the Property in the ordinary course of business including, the right of the municipality to acquire portions of the Property for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be provided to the Property;
14. undetermined or inchoate liens incidental to construction, renovation or current operations, a claim for which shall not at the time have been registered against the Property or of which notice in writing shall not at the time have been given to the Vendor pursuant to the *Construction Lien Act* (Ontario), and in respect of any of the foregoing cases, the Vendor, where applicable, has complied with the holdback or other similar provisions or requirements of the relevant construction contracts so as to protect the Property therefrom;
15. any and all statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever which are not registered on the title to the Property and of which the Vendor does not have notice, claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario, or by any other Governmental Authority under or pursuant to any Applicable Laws;
16. any matters disclosed by any survey delivered or deemed to be delivered to the Purchaser including, any discrepancies, defects or encroachments which are disclosed by the existing survey or which might be disclosed by an up-to-date survey and the encroachments specifically provided for in the legal descriptions of the Property;
17. without limiting the generality of the foregoing, all Existing Contracts and other Property Information Disclosed to the Purchaser as well as all Approved Contracts.

B. SPECIFIC

18. BYLAW registered 1990/02/16 as Instrument VM36576;
19. AGREEMENT - HISTORICAL EASEMENT registered 1990/09/01 as VM60787, and
20. NOTICE OF CLAIM registered 1992/02/17 as Instrument VM111553.

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

and

2203284 ONTARIO LTD.
Respondent

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

ONTARIO

SUPERIOR COURT OF JUSTICE
Proceeding commenced at

TORONTO

APPROVAL AND VESTING ORDER

DEVRY SMITH FRANK LLP
Lawyers & Mediators
95 Barber Greene Road, Suite 100
Toronto, ON M3C 3E9

LAWRENCE HANSEN
LSUC No. 41098W

SARA MOSADEQ
LSUC No. 67864K

Tel.: 416-449-1400
Fax: 416-449-7071

Lawyers for the receiver msi Spergel Inc.

TAB D

Appendix “D”

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

ONTARIO

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

THE HONOURABLE

)

WEDNESDAY, THE 16thJUSTICE *DUNPHY*

)

DAY OF MAY, 2018

)

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

ANCILLARY ORDER

THIS MOTION made by msi Spergel Inc., in its capacity as the Court-appointed Receiver (the “**Receiver**”) of 2203284 Ontario Inc. (the “**Debtor**”) was heard this day at the Ontario Superior Court of Justice, 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated May 4, 2018 (the “**First Report**”) and on hearing submissions of counsel for the Receiver and such counsel as were present as indicated on the counsel slip, no appearing for any other person on the service list, although properly served as appears from the affidavit of Sara Mosadeq sworn May 4, 2018 filed,

1. **THIS COURT ORDERS** that service of the Notice of Motion, Motion Record and Supplementary Motion Record is hereby validated such that the motion is properly returnable today and further service of the Notice of Motion and Motion Record is hereby dispensed with.

2. **THIS COURT ORDERS** that Lawrence Zimmerman also known as Larry Zimmerman and Zimmerman & Associates Inc. shall pay forthwith to the Receiver \$10,500.00 plus costs in the sum of .

3. **THIS COURT ORDERS** that Luigi Santaguida also known as Louie Santaguida, the sole director of the Debtor, attend at an examination before the Receiver.

4. **THIS COURT ORDERS** that Marylou Santaguida, on her own behalf and on her capacity as the sole director/officer of Santerra Asset Management and Development Inc. ("**Santerra**"), attend at an examination before the Receiver and provide the Receiver with a complete explanation and accounting of all funds received by Santerra from the Debtor, including supporting documentation to substantiate the value of services and work performed by Santerra if any.

5. **THIS COURT ORDERS** that the Receiver's Interim Statement of Receipts and Disbursements set out in the First Report, is hereby approved.

6. **THIS COURT ORDERS** that the actions and activities of the Receiver as set out in the First Report are hereby approved.

7. **THIS COURT ORDERS** that the fees and expenses of counsel for the Receiver in the amount of \$35,944.96 plus HST in the amount of \$4,134.34 is hereby approved.

8. **THIS COURT ORDERS** that the fees of the Receiver in the amount of \$139,485.50 plus HST in the amount of \$18,133.12 is hereby approved.

9. **THIS COURT ORDERS** that the distribution by the Receiver to DUCA Financial Services Credit Union Ltd. of \$5,590,401.19 inclusive of interest to June 1, 2018, with interest accruing at \$897.98 per diem thereafter plus its reasonable legal expense on a full indemnity basis

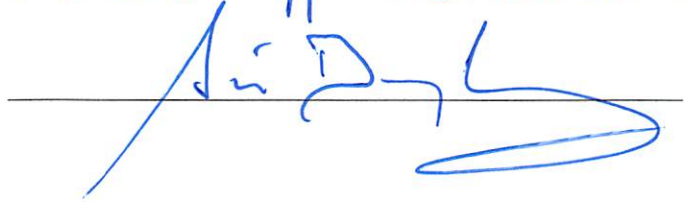
from April 13, 2018, to fully retire its mortgage debts from the anticipated sale proceeds upon completion of the Transaction is hereby authorized and approved.

10. **THIS COURT ORDERS** that the Confidential Appendices attached to the First Report of the Receiver shall remain sealed until the closing of the sale of the property described in **Schedule**

A to the present order.

with exception of the Agreement of Purchase and Sale (Confidential App. D) which is not sealed.

PTD



Schedule A

LRO: 62

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

and

2203284 ONTARIO LTD.
Respondent

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

ONTARIO

SUPERIOR COURT OF JUSTICE
Proceeding commenced at

TORONTO

ANCILLARY ORDER

DEVRY SMITH FRANK *LLP*
Lawyers & Mediators
95 Barber Greene Road, Suite 100
Toronto, ON M3C 3E9

LAWRENCE HANSEN
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Lawyers for the receiver msi Spergel Inc.

TAB E

Appendix “E”



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

SECOND REPORT OF THE RECEIVER

NOVEMBER 23, 2018

TABLE OF CONTENTS

	Page
I. Introduction and Background	4
II. Purpose of the Report	5
III. Closing of the Hue Transaction	6
IV. Deposit Claims Procedure	6

LIST OF APPENDICES

- A.** Receivership Order issued by the Honourable Madam Justice Conway on June 22, 2017
- B.** Further Fresh As Amended Deposit Claims Procedure Order issued by the Honourable Justice Chiappetta on October 12, 2018

I. INTRODUCTION AND BACKGROUND

1. This Report is filed by msi Spergel Inc. ("**Spergel**") in its capacity as receiver (the "**Receiver**") appointed pursuant to an order of the Honourable Madam Justice Conway of the Ontario Superior Court of Justice dated June 22, 2017 (the "**Receivership Order**"), of all of the assets, undertakings and properties of 2203284 Ontario Inc. (the "**Debtor**"). A copy of the Receivership Order is attached hereto as **Appendix "A"**.

2. Application for the Receivership Order was made by DUCA Financial Services Credit Union Ltd. ("**DUCA**"), the operating lender of the Debtor who was owed \$5,189,742.47 as at June 6, 2017.

3. The Debtor appears to be a single purpose entity incorporated for the purpose of developing a condominium project located municipally as 98 James Street South, Hamilton, Ontario and more particularly described as:

PIN: 17171-0009LT

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**".

4. The Corporate Profile Report and the books and records of the Debtor disclose that Luigi Santaguida, also known as Louie Santaguida ("**Santaguida**"), is the sole director, President and Secretary of the Debtor. To the best of the Receiver's knowledge, the Debtor has no other employees. Cooperation from Santaguida has been minimal.

5. The Property was acquired by the Debtor on June 4, 2013, at which time it consisted of a historical church. The Debtor subsequently demolished the church, with the exception of its façade and obtained conditional site plan approval from the City of Hamilton to construct a 30 storey residential condominium project consisting of 259 units, known as *The Connolly* (the "**Project**"). Construction of the Project did not commence.

6. Sales to unit purchasers of the Project commenced in November, 2014. At the date of the Receivership Order, 185 of the units were sold pursuant to Agreements of Purchase and Sale (the “**Prebuild Agreements**”). The deposits paid with respect to those Prebuild Agreements were held in trust by the law firm Schneider Ruggiero LLP (“**SR Law**”), (the “**Deposits**”).
7. On May 16, 2018 the Honourable Justice Dunphy issued an Order approving a sale of the Property by the Receiver to Hue Developments & Investments Canada Inc. (“**Hue**”) pursuant to an agreement of purchase and sale entered into with the Receiver on February 12, 2018 (the “**Hue Transaction**”).
8. On May 16, 2018 the Honourable Justice Dunphy also issued an Order establishing a claims process and payment procedure protocol with respect to the Deposits paid by unit purchasers (the “**Deposit Claims Procedure Order**”) to be effective upon the closing of the Hue Transaction.

II. PURPOSE OF THIS REPORT

9. The purpose of this report dated November 23, 2018 (the “**Second Report**”) is to provide information to the Court with respect to:
 - i. The completion of the Hue Transaction;
 - ii. The status of the Receiver’s deposit claims procedure with respect to the return of the Deposits related to the Prebuild Agreements and,
 - iii. The Receiver’s motion for an Order of this Court to further amend the claims procedure and payment process with respect to the Deposits, pursuant to the Further Fresh As Amended Deposit Claims Procedure Order issued on October 12, 2018 by the Honourable Justice Chiappetta (the “**Further Fresh As Amended Deposit Claims Procedure Order**”), a copy of which is attached hereto as **Appendix “B”**, in order to extend the claims bar date of November 30, 2018 to January 31, 2019.

III. Closing of The Hue Transaction

10. The Hue Transaction was scheduled to close on June 5, 2018; however, Hue was unable to close on time as a result of financial issues with respect to transferring required funds from Vietnam to Canada.

11. On June 5, 2018 the Receiver agreed to an extension of the closing date to July 5, 2018 upon the provision of an additional non-refundable deposit of \$450,000.

12. On July 5, 2018 the Receiver agreed to a further extension of the closing date to September 6, 2018 upon the provision of an additional non-refundable deposit of \$250,000 and an extension fee of \$25,000. Hue required the extension in order to have time to obtain Canadian financing for the Transaction.

13. The Receiver subsequently agreed to a further extension of the closing date to October 5, 2018 upon receipt of a further non-refundable deposit in the amount of \$305,000 and another extension fee of \$20,000.

14. On October 5, 2018 the Receiver completed the sale of the Property to Hue with an effective closing date of June 5, 2018.

IV. Deposit Claims Procedure

15. On June 29, 2018, the Receiver received the Deposits from SR Law in the amount of \$6,327,556.53. The Receiver currently holds the Deposits in a separate interest-bearing trust account.

16. The Deposit Claims Procedure Order was to be effective only upon the closing of the Hue Transaction. As a result of the aforementioned delays in the closing of the Hue Transaction, the Receiver sought to amend certain dates contained in the Deposit Claims Procedure Order, such as notice dates to unit purchasers, advertising dates, claims bar date, etc., and on August 29, 2018, the Receiver obtained an Order from the Court amending the various dates (the “**Fresh As Amended Deposit Claims Procedure Order**”).

17. On October 12, 2018, subsequent to the completion of the Hue Transaction, the Receiver sought and obtained the Further Fresh As Amended Deposit Claims Procedure Order to amend certain dates again. Of particular note, the claims bar date was amended to 5:00 PM on November 30, 2018 in that Order.

18. In accordance with the Further Fresh As Amended Deposit Claims Procedure Order, the Receiver wrote to the unit purchasers to advise them of the Deposit claims procedures and to provide them with a Deposit claim package for completion (the “**Deposit Claim Forms**”). This correspondence was mailed to each unit purchaser on October 16, 2018 and was also posted on the Receiver’s website along with a copy of the Further Fresh As Amended Deposit Claims Procedure Order on that same day.

19. On October 22, 2018, a few days after the mailing of the Deposit Claim Forms to the unit purchasers, Canada Post commenced its rotating strikes.

20. The Receiver has advertised the Deposit claims process twice in both the Hamilton Spectator and The Toronto Star within the time required timeline stipulated in the Further Fresh As Amended Deposit Claims Procedure Order.

21. On November 16, 2018, the Receiver sent a letter to 79 unit purchasers, for which it had not yet received any Deposit Claim Forms, to remind them that the deadline for filing a Deposit claim was 5:00 PM on November 30, 2018.

22. The Receiver summarizes the current status of claims as follows:

	# of Claims	Amount
Claims Filed & Accepted	114	\$4,410,309.25
Claims Not Proven	71	<u>1,809,331.41</u>
		<u>\$6,219,640.66</u>

23. Of the claims not proven, the Receiver has received 24 claims that require additional documentation in order to be admitted. There remain 47 unit purchasers for which the Receiver has not yet received any Deposit Claim Forms. According to the records of SR Law, these potential claimants should be submitting claims in the amount of \$965,168.50.

24. The Receiver is concerned that the significant number of unfiled claims may be as a result of the Canada Post rotating strikes and accordingly requests that the Court extend the claims bar date to January 31, 2019 in order to allow further time for unit purchasers to submit Deposit Claim Forms.

25. If the Court grants an extension of the claims bar date to January 31, 2019, the Receiver will also advertise the claims process again in the newspapers and send a third letter to the unit purchasers who have not filed claims by no later than January 11, 2019.

This Report is respectfully submitted this 23rd day of November, 2018

msi Spergel Inc.,

In its capacity as Court Appointed Receiver of
2203284 Ontario Inc., and not in its personal or corporate capacity

Per:



Deborah Hornbostel, CPA, CA, CFE, CIRP, LIT

TAB F

Appendix “F”

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

ONTARIO

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

THE HONOURABLE	)	THURSDAY, THE 29 TH DAY
)	
JUSTICE <i>MCLEWEN</i>	)	OF NOVEMBER, 2018

BETWEEN:



DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

**SECOND FURTHER FRESH AS AMENDED DEPOSIT CLAIMS PROCEDURE
ORDER**

THIS MOTION, made by msi Spergel Inc., in its capacity as Court appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of 2203284 Ontario Inc. (“**220**”) for an order approving a deposit claims procedure order, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver dated May 3, 2018 and the First Report of the Receiver dated May 4, 2018 (the “**First Report**”), the Second Report of the Receiver dated November 23, 2018, as well as the affidavit of Christopher Statham sworn November 26, 2018, to amend the Order made on May 16, 2018, and on hearing the submissions of counsel for the Receiver, and any such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Carmen Yuen sworn November 26, 2018.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is abridged and validated such that this Motion is properly returnable today, and further service of the Notice of Motion and the Motion Record is hereby dispensed with.

INTERPRETATION

2. **THIS COURT ORDERS** that for the purposes of this Deposit Claims Procedure Order, and the schedules appended herein, the following terms shall have the following meanings:

- (a) **"Purchase Agreement"** means an agreement of purchase and sale between 220 and a Purchaser for the sale and purchase of a residential condominium unit at the development located at 98 James Street South, Hamilton, Ontario and known as "*The Connolly*";
- (b) **"Business Day"** means a day, other than a Saturday or Sunday, on which banks are generally open for business in Toronto, Ontario;
- (c) **"Calendar Day"** means a day, including Saturday, Sunday or any statutory holiday;
- (d) **"Certificate"** means the purchaser certificate of identity attached as **Schedule "H"** herein;
- (e) **"Claims Bar Date"** means 5:00 p.m. (Toronto time) on January 31, 2019, or such later date as may be ordered by the Court;
- (f) **"Claims Package"** means the document package to be sent by the Receiver to all Purchasers which shall include a copy of a Deposit Claim Form, and such other materials and notices as the Receiver may consider necessary or appropriate and which will direct Purchasers to the Website for a copy of this Deposit Claims Procedure Order;
- (g) **"Condominium Act"** means the *Condominium Act* (Ontario), R.S.O. 1998, c. 19, as amended;

- (h) **"Court"** means the Ontario Superior Court of Justice (Commercial List);
- (i) **"Deposit"** means any monies including, without limitation, deposit monies and monies on account of extras and upgrades paid by a Purchaser pursuant to a Purchase Agreement for a Unit at the Project;
- (j) **"Deposit Claim"** means a claim by a Purchaser in respect of a Deposit, and any other amounts claimed by a Purchaser including claims pursuant to the ONHWP, the Condominium Act;
- (k) **"Deposit Claim Form"** means the claim form attached as **Schedule "D"** herein;
- (l) **"Deposit Claim Payment"** means a payment to a Purchaser in respect of a Proven Deposit Claim;
- (m) **"Deposit Claims Procedure"** means the deposit claims procedure attached as **Schedule "B"** herein;
- (n) **"Deposit Claims Procedure Order"** means this Second Further Fresh as Amended Deposit Claims Procedure Order;
- (o) **"Deposit Trustee"** means SR Law, in its capacity as Deposit Trustee;
- (p) **"Guarantee Co."** means The Guarantee Company of North America;
- (q) **"Net Sale Proceeds"** means the proceeds of the sale from the Hue Sales Transaction (as defined below) *less* the amount paid by the Receiver to DUCA Financial Services Credit Union Ltd. of \$5,590,401.19 inclusive of interest to June 1, 2018 with interest accruing at \$897.98 per diem thereafter plus its reasonable legal expense on a full indemnity basis from April 13, 2018 to fully retire 220's mortgage debts;
- (r) **"Newspaper Notice"** means the newspaper notice to Purchasers, in the form substantially attached as **Schedule "C"** herein;

- (s) **"Notice of Revision or Disallowance"** means the notice of revision or disallowance, in the form substantially attached as **Schedule "E"** herein;
- (t) **"Notice of Dispute"** means the notice of dispute, in the form substantially attached as **Schedule "F"** herein;
- (u) **"ONHWP"** means the *Ontario New Home Warranties Plan Act* (Ontario), R.S.O. 1990, c. O.31, as amended, and the regulations promulgated thereunder;
- (v) **"Project"** means the residential condominium development located at 98 James Street South, Hamilton, Ontario known as *"The Connolly"*;
- (w) **"Proven Deposit Claim"** means the amount and/or validity of a Deposit Claim as finally determined by the Receiver, in consultation with the Guarantee Co., in accordance with this Deposit Claims Procedure Order, and for greater certainty, a Proven Deposit Claim will be "finally determined" for the purposes of this definition if:
 - (i) a Deposit Claim has been accepted by the Receiver, in consultation with the Guarantee Co.;
 - (ii) the applicable time period for filing a Notice of Dispute has expired; and
 - (iii) the Court has made a determination with respect to the amount and/or validity of a Deposit Claim, and no appeal or application for leave to appeal therefrom has been taken or served, or where such appeal or application for leave to appeal has been dismissed, determined or withdrawn;
- (x) **"Purchaser"** means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity, who and/or that entered into a Purchase Agreement;
- (y) **"Receipt"** means the acknowledgment of receipt of funds attached as **Schedule "G"** herein;

- (z) **“Receivership Order”** means the receivership order granted on June 22, 2017 by the Court in these proceedings;
- (aa) **“SR Law”** means Schneider Ruggerio LLP;
- (bb) **“Tarion”** means the Tarion Warranty Corporation;
- (cc) **“Unit”** means a residential condominium unit at the Project; and
- (dd) **“Website”** means <http://www.spergelcorporate.ca/active-files-list/2203284-ontario-inc/>

CONDITIONAL TERMINATION OF PURCHASE AGREEMENT

3. **THIS COURT ORDERS AND DECLARES** that the Receiver is entitled to rely upon the Construction Financing Early Termination Condition to terminate the Purchase Agreements on behalf of 220 without damages and that the Receiver is hereby authorized to provide notice of termination to terminate the Purchase Agreements to the respective Purchasers at any time from the date of this Order.

DEPOSIT FUNDS HELD IN TRUST

4. **THIS COURT ORDERS** the Deposit Trustee to deliver:

- (a) all funds held in trust by SR Law in respect of all Deposits received by SR Law, including all earned interest, to the Receiver (the **“Deposit Trust Funds”**). The Deposit Trust Funds shall be deposited into a separate bank account held by the Receiver; and
- (b) all books and records pertaining to the Deposits, (the **“Trust Records”**);

Upon delivery of the Deposit Trust Funds and the Trust Records, the Deposit Trustee shall be released and forever discharged for any claims arising in respect of the Deposit Trust Funds, other than in respect of any claims arising from negligence or wilful misconduct.

5. **THIS COURT ORDERS** that within 20 Business Days of the completion of the sale of the real estate municipally known as 98 James Street South, Hamilton, Ontario currently owned by 220, to Hue Developments & Investments Canada Inc., pursuant to the

Approval and Vesting Order issued on this same date by the Court (the “**Hue Sales Transaction**”), the Receiver shall deliver correspondence, substantially in the form attached as **Schedule “A”** herein, to each Purchaser that the Receiver has identified, upon review of the Deposit Trustee records, to have a specific claim to the Deposit Trust Funds (a “**Deposit Trust Claim**”).

6. **THIS COURT ORDERS** that upon the Receiver receiving: (i) a properly completed Certificate, and (ii) an executed Receipt, the Receiver shall pay the Deposit Trust Claim to the Purchaser (a “**Deposit Trust Payment**”).

7. **THIS COURT ORDERS** that the Receiver and the Guarantee Co. shall have no liability to any person for a payment made to a Purchaser pursuant to a Deposit Trust Claim: (i) where the identification provided to the Receiver was bogus, forged, tampered with, altered, falsified or counterfeit, and (ii) where the signature applied to a Certificate and / or Receipt was forged or falsified.

8. **THIS COURT ORDERS** that: (i) if a Purchaser does not present two pieces of original current (and not expired) Canadian or provincial government issued identification to the Receiver in accordance with this Deposit Claims Procedure Order, (ii) the Purchaser does not execute a Certificate or Receipt, or (iii) for any reason, the Receiver is not satisfied with the identification of a Purchaser, the Receiver is entitled to refuse to pay a Deposit Trust Claim to the Purchaser which shall be addressed pursuant to a further Order of this Court.

9. **THIS COURT ORDERS** that, in each case where the Receiver makes a payment in relation to a Deposit Trust Claim, the Purchaser (including its heirs, executors and assigns) shall be:

- (a) deemed to absolutely and unconditionally remise, release, acquit and forever discharge 220, Tarion and the Guarantee Co. for any claims for return of a Deposit Trust Claim, including interest thereon, other than in respect of any claims arising from gross negligence or wilful misconduct; and

- (b) forever barred, estopped and enjoined from making, asserting or enforcing any such claim for a Deposit Trust Claim, including interest thereon, against 220, Tarion or the Guarantee Co. and all such claims shall be forever extinguished as against all such parties, other than in respect of any claims arising from gross negligence or wilful misconduct.

10. **THIS COURT ORDERS** that any Purchaser that has a Deposit Trust Claim and a Deposit Claim is subject to paragraphs 5 to 9 of this Deposit Claims Procedure Order in respect of a Deposit Trust Claim, and paragraphs 11 to 28 of this Deposit Claims Procedure Order in respect of a Deposit Claim.

DEPOSIT CLAIMS PROCEDURE

11. **THIS COURT ORDERS** that the Deposit Claims Procedure, attached as **Schedule "B"** herein, is hereby approved and the Receiver is hereby authorized and directed to implement the Deposit Claims Procedure, in conjunction with the Guarantee Co., upon the completion of the Hue Sales Transaction.

12. **THIS COURT ORDERS** that any Purchaser who fails to deliver a Deposit Claim Form in respect of a Deposit Claim in accordance with this Deposit Claims Procedure Order, on or before the Claims Bar Date shall:

- (a) be forever barred, estopped and enjoined from asserting or enforcing any claim in respect of a Deposit Claim as against 220, Tarion, the Guarantee Co. or the Deposit Trustee, and such Deposit Claim shall be forever extinguished, other than in respect of any claims arising from gross negligence or wilful misconduct; and
- (b) not be entitled to any further notice in respect of the Deposit Claims Procedure or in these proceedings.

13. **THIS COURT ORDERS** that the publication of the Newspaper Notice, the posting of the Claims Package and this Deposit Claims Procedure Order on the Website, and the mailing to the Purchasers of the Claims Package in accordance with the Deposit Claims Procedure and this Deposit Claims Procedure Order, shall constitute good and sufficient

service and delivery of: (i) notice of this Deposit Claims Procedure Order, (ii) the Deposit Claims Procedure, and (iii) the Claims Bar Date, on all Purchasers.

14. **THIS COURT ORDERS** that a Deposit Claim Form shall be deemed timely filed only if delivered by registered mail, personal delivery, courier, e-mail (in PDF format) or facsimile transmission so as to actually be received by the Receiver on or before the Claims Bar Date.

15. **THIS COURT ORDERS** that except as otherwise provided herein, the Receiver may deliver any notice or other communication to be given under this Deposit Claims Procedure Order to Purchasers by forwarding copies thereof by ordinary mail, courier, personal delivery, facsimile or e-mail (in PDF format) to such Purchaser at the address last shown on the books and records of 220, and that any such service or notice by courier, personal delivery, facsimile or e-mail (in PDF format) 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 fifth Business Day after mailing.

16. **THIS COURT ORDERS** that where a Purchaser is represented by counsel, the Receiver may serve or deliver any notice of communication on such counsel in any manner permitted by this Deposit Claims Procedure Order, and service of a notice of communication on counsel shall constitute service on the Purchaser.

17. **THIS COURT ORDERS** that any notice or other communication to be given under this Deposit Claims Procedure Order by a Purchaser to the Receiver shall be in writing in substantially the form (if any) provided for in this Deposit Claims Procedure Order and will be sufficiently given only if delivered by registered mail, courier, personal delivery, facsimile or e-mail (in PDF format) addressed to:

msi Spergel Inc., Court appointed receiver of 2203284 Ontario Inc.
505 Consumers Road, Suite 200
Toronto, ON M2J 4V8
Fax No.: 416-494-7199
Email: Theconnolly@spergel.ca

18. **THIS COURT ORDERS** that the Receiver is hereby authorized to use reasonable discretion as to the adequacy of compliance with respect to the manner in which Deposit Claim Forms are completed and executed and may, if it is satisfied that a Deposit Claim has been adequately proven, waive strict compliance with the requirements of this Deposit Claims Procedure and this Deposit Claims Procedure Order.

19. **THIS COURT ORDERS** that the Receiver, in addition to its prescribed powers and duties under the Receivership Order, and under any statute, is authorized and directed to take such other actions and fulfill such other roles as are contemplated by the Deposit Claims Procedure and this Deposit Claims Procedure Order.

20. **THIS COURT ORDERS** that the Receiver, Tarion and the Guarantee Co. shall be entitled to assume and rely upon, without independent investigation, confirmation or verification, the accuracy, truth, veracity, authenticity, validity and genuineness of: (i) the identification or any other information provided by a Purchaser to the Receiver or the Guarantee Co. pursuant to this Order, and (ii) the signatures applied to a Certificate and / or Receipt by a Purchaser.

21. **THIS COURT ORDERS** that: (i) the Receiver, Tarion and the Guarantee Co. shall have no liability to any person for a payment made to a Purchaser pursuant to a Proven Deposit Claim where the identification provided to the Receiver was bogus, forged, tampered with, altered, falsified or counterfeit, and (ii) the Receiver, Tarion and the Guarantee Co. shall have no liability to any person for a payment made to a Purchaser pursuant to a Proven Deposit Claim where the signature applied to a Certificate and / or Receipt was forged or falsified.

22. **THIS COURT ORDERS** that: (i) if a Purchaser does not present two pieces of original current (and not expired) Canadian or provincial government issued identification to the Receiver and / or the Guarantee Co. (as applicable) in accordance with this Deposit Claims Procedure Order, (ii) the Purchaser does not execute a Certificate or Receipt, or (iii) for any reason, the Receiver or the Guarantee Co. is not satisfied with the identification of a

Purchaser, the Receiver is entitled to refuse to pay a Deposit Claim to the Purchaser which shall be addressed pursuant to a further Order of this Court.

23. THIS COURT ORDERS that, in each case where the Receiver makes a payment in relation to a Proven Deposit Claim in accordance with the Deposit Claims Procedure, the Purchaser (including its heirs, executors and assigns) shall be:

- (a) deemed to absolutely and unconditionally remise, release, acquit and forever discharge 220, Tarion, the Guarantee Co. and the Deposit Trustee (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) for any Deposit Claims or other claims or funds paid on account of the purchase of a Unit in the Project, including interest thereon, other than in respect of any claims arising from gross negligence or wilful misconduct; and
- (b) forever barred, estopped and enjoined from making, asserting or enforcing any such claim for a Deposit Claim or other funds paid to the Deposit Trustee on account of the purchase of a Unit in the Project including interest thereon against 220, Tarion, the Guarantee Co. or the Deposit Trustee and all such claims shall be forever extinguished as against all such parties (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim), other than in respect of any claims arising from gross negligence or wilful misconduct.

24. THIS COURT ORDERS that neither the Receiver, 220, Tarion nor the Guarantee Co. shall incur any liability or obligation as a result of the carrying out of the provisions of this Order, including, without limitation, in respect of Deposit Trust Payments or the refusal to deliver Deposit Trust Payments pursuant to a Deposit Trust Claim, the return of Deposits,

or refusal to return Deposits pursuant to a Deposit Claim, other than in respect of any gross negligence or wilful misconduct on its part, and that no proceeding shall be commenced or continued against the Receiver, 220, Tarion or the Guarantee Co. in connection with the carrying out of the provisions of this Deposit Claims Procedure Order except with the written consent of the Receiver, 220, Tarion or the Guarantee Co., as applicable, or with leave of this Court on seven (7) days' notice to the Receiver, 220, Tarion or the Guarantee Co., as applicable.

25. **THIS COURT ORDERS** that nothing in this Order shall in any way: (a) affect, or derogate from the rights and obligations of the parties to the Tarion Warranty Corporation Bond, being bond number TM5120099 dated October 22, 2014 issued by the Guarantee Co. in favour of Tarion, or (b) detract from or in any way alter the limitation of Tarion's liability contained in the ONHWPA.

26. **THIS COURT ORDERS** that all payments made in relation to a Proven Deposit Claim in accordance with the Claims Deposit Procedure shall be deemed to be in full and final satisfaction of any Deposit Claim the Purchaser may have in respect of the return of a Deposit Claim, and that Tarion shall have no further liability or obligation in respect of such claim pursuant to the ONHWPA (only to the extent that any such payment is in the full amount of the Proven Deposit Claim).

27. **THIS COURT ORDERS** that the Receiver, 220, Tarion and the Guarantee Co. are hereby authorized and directed to cooperate and share information with each respective party, including information with respect to Purchasers, Deposit Claims and Deposit Trust Claims, to assist in the administration and processing of Deposit Claims, Deposit Trust Claims and any other claims asserted pursuant to the Deposit Claims Procedure.

28. **THIS COURT ORDERS** that once the Receiver, in conjunction with the Guarantee Co., has determined a Proven Deposit Claim pursuant to this Deposit Claims Procedure Order, the Guarantee Co. shall provide the Receiver with a consent, substantially in the form attached as **Schedule "I"** herein, wherein it shall provide its consent to the Receiver to pay

out such Proven Deposit Claim on behalf of the Guarantee Co. from the receivership estate to the applicable Purchaser.

29. **THIS COURT ORDERS** that if the Deposit Trust Funds and the Net Sale Proceeds (collectively, the “**Deposit Funds**”) are sufficient in amount to enable the Receiver to pay all of the Proven Deposit Claims in full as at the Claims Bar Date, the Receiver shall be authorized and directed to complete the Deposit Claims Payments to Purchasers beginning on ~~December 17, 2018~~ ^{February 18, 2019}, or such other date as the Court may order or as agreed by the Receiver, Tarion and the Guarantee Co. Upon the Receiver determining that the Deposit Funds are sufficient in amount to enable the Receiver to pay all of the Proven Deposit Claims in full as at the Claims Bar Date, the Receiver shall file with the Court a certificate certifying the same (a “**Sufficient Funds Certificate**”).

30. **THIS COURT ORDERS** that if the Deposit Funds are insufficient in amount to enable the Receiver to pay all of the Proven Deposit Claims in full as at the Claims Bar Date, the Receiver shall obtain a further Order of this Court authorizing and directing the Receiver to complete Deposit Claim Payments to Purchasers. Upon the Receiver determining that the Deposit Funds are insufficient in amount to enable the Receiver to pay all of the Proven Deposit Claims in full as at the Claims Bar Date, the Receiver shall file with the Court a certificate certifying the same.

31. **THIS COURT ORDERS** that the Deposit Payment Protocol attached as **Schedule “J”** herein, is hereby approved and the Receiver is hereby authorized to implement it, in conjunction with the Guarantee Co. and Tarion, in respect of the payment of Proven Deposit Claims to Purchasers pursuant to paragraph 29 hereof; provided, however, that the Deposit Payment Protocol shall only become effective upon the filing by the Receiver of a Sufficient Funds Certificate by ~~December 17, 2018~~ ^{February 18, 2019} or such other date as agreed to by the Receiver, Tarion and the Guarantee Co. In the event that a Sufficient Funds Certificate is not filed by such date, then the Deposit Payment Protocol shall be of no force and effect.

32. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in respect of the terms of this Order and in carrying out the terms of this Order.

33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver, 220, the Guarantee Co. and Tarion, and their respective 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, 220, the Guarantee Co. and Tarion, and their respective agents, as may be necessary or desirable to give effect to this Order or to assist the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to be 'McIntosh', written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 05 2018

PER / PAR:

A small, stylized handwritten signature in blue ink.

SCHEDULE "A"
Deposit Trust Claim Correspondence

TO: (Insert Purchaser Contact Information)
RE: **Notice to Purchaser of Condominium Unit at *The Connolly* re: Deposit Funds Held in Trust**

On June 22, 2017, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") appointed msi Spergel Inc. as receiver (the "**Receiver**") of all the assets, undertakings and properties of 2203284 Ontario Inc. ("**220**"), including the lands municipally known as 98 James Street South, Hamilton, Ontario (the "**Lands**"), **whereupon** 220 was to develop the condominium project known as "*The Connolly*" (the "**Project**").

On May 16, 2018, the Court granted a further order, amended on August 29, 2018, further amended on October 12, 2018, and second further amended on November 29, 2018 prescribing the process by which the identity and status of all deposit claims of purchasers, with a valid and enforceable agreement of purchase and sale for the purchase of a condominium unit from 220, is established for the purposes of the receivership proceedings (the "**Deposit Claims Procedure Order**"). A copy of the Deposit Claims Procedure Order may be accessed online at <http://www.spergelcorporate.ca/active-files-list/2203284-ontario-inc/>

Capitalized terms not defined herein have the meaning given to those terms in the Deposit Claims Procedure Order.

Pursuant to paragraph 5 of the Deposit Claims Procedure Order, the Receiver has identified you, upon review of the Deposit Trustee records, to have a specific claim to the Deposit Trust Funds. According to the Deposit Trustee records, the Receiver is notifying you that the amount of \$_____ is currently forming part of the Deposit Trust Funds to your credit and that you are entitled to the return of those funds pursuant to your Deposit Trust Claim.

You are requested to submit your Deposit Claim Form to the Receiver as soon as possible and **no later than on or before 5:00 PM (Toronto Time) on January 31, 2019** (the "**Claims Bar Date**"), in accordance with the Deposit Claims Procedure Order. The Receiver's contact information is below:

msi Spergel Inc., Court appointed receiver of 2203284 Ontario Inc.
505 Consumers Road, Suite 200
Toronto, ON M2J 4V8
Fax No.: 416-494-7199
Email: Theconnolly@spergel.ca

If you are a Purchaser, and you do not submit a Deposit Claim Form to the Receiver on or before the Claims Bar Date, your Deposit Trust Claim will be forever barred and extinguished.

Please review the provisions of the Deposit Claims Procedure Order relating to payments made in respect of a Deposit Trust Claim. Note that the Receiver will require the delivery of an executed Certificate and Receipt prior to the release of funds on account of a Deposit Trust Claim.

If you have any questions or concerns, please do not hesitate to contact the Receiver attention: Frieda Kanaris at (416) 498-4309.

SCHEDULE "B"
Deposit Claims Procedure

Notice of Deposit Claims Procedure

1. The Receiver shall cause a Claims Package to be sent to each known Purchaser, to the last known address or contact information contained in the 220 records, by regular mail, fax, courier or email (in PDF format) within 20 days of the closing of the Hue Sales Transaction;
2. The Receiver shall cause the Newspaper Notice to be published in the Toronto Star and the Hamilton Spectator within 20 days of the closing of the Hue Sales Transaction;
3. The Receiver shall post the Claims Package on the Website within 20 days of the closing of the Hue Sales Transaction;
4. The Receiver shall send a Claims Package to any person requesting such material as soon as reasonably practicable on receipt of a written request for a Claims Package from such person;

Filing of Deposit Claim Form and Determination

5. Every Purchaser asserting a Deposit Claim pursuant to this Deposit Claims Procedure shall set out its aggregate Deposit Claim in a written Deposit Claim Form, and shall deliver that Deposit Claim Form so that it is received by the Receiver no later than the Claims Bar Date, failing which such Purchaser shall stand forever barred, estopped, and enjoined from asserting or enforcing any Deposit Claim against 220, Tarion and the Guarantee Co., and such claim shall be forever extinguished, subject to the terms of the Deposit Claims Procedure Order.
6. The Receiver shall send a copy of each and every completed Deposit Claim Form to the Guarantee Co. for the review and evaluation of the Deposit Claim asserted by the Purchaser pursuant to this Deposit Claims Procedure. The Receiver, in consultation with the Guarantee Co., shall accept, revise or disallow the claim set out in such Deposit Claim Form. As part of the Receiver's evaluation of a Deposit Claim Form, the Receiver may consider, without limitation, the following materials:
 - (a) the agreement of purchase and sale entered into between 220 and the Purchaser;
 - (b) the proof of deposit payment(s) provided by the Purchaser;

- (c) the records of the Deposit Trustee;
- (d) the identification provided by the Purchaser; and
- (e) all documentation attached to the Deposit Claim Form in support of the amounts claimed by the Purchaser.

7. The Receiver shall provide notification to the Guarantee Co. of the Receiver's determination of a Deposit Claim, as soon as reasonably practical.

8. The Receiver, in consultation with the Guarantee Co., may attempt to resolve the amount of a Deposit Claim submitted pursuant to this Deposit Claims Procedure through negotiations with the Purchaser in respect of such claim, either before or after accepting, revising or disallowing such Deposit Claim.

9. If the Receiver accepts a Deposit Claim as set forth in a Deposit Claim Form submitted to the Receiver in accordance with this Deposit Claims Procedure, that Deposit Claim shall be a Proven Deposit Claim.

10. If the Receiver, in consultation with the Guarantee Co., chooses to revise or disallow a Deposit Claim as set forth in a Deposit Claim Form, the Receiver shall advise the Purchaser asserting such Deposit Claim of the determination by sending a Notice of Revision or Disallowance to such Purchaser.

11. Any Purchaser who disputes the amount of its Deposit Claim as set forth in a Notice of Revision or Disallowance, shall deliver a Notice of Dispute to the Receiver by 5:00 p.m. (Toronto time) on the day that is fifteen (15) Calendar Days after the date of the Notice of Revision or Disallowance.

12. Any Purchaser who fails to deliver a Notice of Dispute by the deadline set forth in paragraph 11 shall be deemed to accept the amount of its Deposit Claim as set out in the Notice of Revision or Disallowance and such Deposit Claim as set out in the Notice of Revision or Disallowance shall constitute a Proven Deposit Claim.

13. Upon receipt of a Notice of Dispute, the Receiver shall send a copy to the Guarantee Co., as soon as reasonably practicable, and the Receiver, in consultation with the Guarantee Co., may attempt to resolve the amount of the disputed Deposit Claim with the Purchaser on a consensual basis.

14. If a Deposit Claim is resolved by consent between the Receiver, the Guarantee Co. and the Purchaser, the Receiver may accept a revised Deposit Claim Form setting forth the

agreed amount of the Deposit Claim, and such settled Deposit Claim shall be a Proven Deposit Claim. In the event the Receiver, the Guarantee Co. and the Purchaser are not able to resolve the Deposit Claim amount and matters arising pursuant to the Notice of Dispute, the Purchaser shall schedule a motion before the Court, supported by an Affidavit setting out the basis for the Purchaser's Deposit Claim and dispute, to be heard not later than 30 Calendar Days following the delivery of the Notice of Dispute by the Purchaser to the Receiver. The Purchaser must serve the motion materials upon the Receiver and the Guarantee Co.

15. In the event the Purchaser fails to schedule the motion by the aforementioned deadline, the Purchaser shall be deemed to accept the amount of the Deposit Claim as set out in the Notice of Revision and Disallowance.

Return of Deposit Monies / Claim

16. Upon a Deposit Claim Form being determined a Proven Deposit Claim, the Guarantee Co. shall execute a consent, substantially in the form attached as **Schedule "I"**, consenting to the Receiver paying out such Proven Deposit Claim on behalf of the Guarantee Co. to the applicable Purchaser (subject to further Order of the Court), upon receipt of the following:

- (a) proof of the Purchaser's identity by providing a fully and properly completed Certificate; and
- (b) an executed Receipt.

SCHEDULE "C"
Newspaper Notice

**NOTICE OF DEPOSIT CLAIMS PROCEDURE IN THE
RECEIVERSHIP OF
2203284 Ontario Inc. ("220")**

On June 22, 2017, the Ontario Superior Court of Justice (Commercial List) (the "**Court**") appointed msi Spergel Inc. as receiver (the "**Receiver**") of all the assets, undertakings and properties of 220, including the lands municipally known as 98 James Street South, Hamilton, Ontario, whereupon 220 was to develop the condominium project known as *"The Connolly"*.

On May 16, 2018, the Court granted a further order, amended on August 29, 2018, further amended on October 12, 2018, and second further amended on November 29, 2018, prescribing the process by which the identity and status of all deposit claims of purchasers, with a valid and enforceable agreement of purchase and sale for the purchase of a condominium unit from 220. A copy of the Deposit Claims Procedure Order may be accessed online at:
<http://www.spergelcorporate.ca/active-files-list/2203284-ontario-inc/>

Pursuant to the Deposit Claims Procedure Order, the Receiver is required to send a Claims Package to each known Purchaser, with instructions regarding a deposit claims procedure whereby a Purchaser can submit and prove a Deposit Claim Form. In addition, the Deposit Claims Procedure Order requires the Receiver to publish this notice, in order to give notice of this proceeding to all Purchasers.

If you wish to assert a Deposit Claim, you may request a Claims Package by submitting a request in writing to the Receiver at the following address:

msi Spergel Inc., Court appointed receiver of 2203284 Ontario Inc.
505 Consumers Road, Suite 200
Toronto, ON M2J 4V8
Fax No.: 416-494-7199
Email: Theconnolly@spergel.ca

All Purchasers who wish to assert a Deposit Claim must submit a completed Deposit Claim Form to the Receiver at the above address **on or before 5:00 PM (Toronto Time) on January 31, 2019** (the "**Claims Bar Date**"), in accordance with the Deposit Claims Procedure Order.

If you are a Purchaser, and you do not submit a Deposit Claim Form to the Receiver on or before the Claims Bar Date, your Deposit Claim will be forever barred and extinguished.

SCHEDULE "D"
Deposit Claim Form

IN THE MATTER OF THE RECEIVERSHIP OF 2203284 ONTARIO INC. ("220")

Regarding the claim of _____ (the "**Purchaser**")

All notices or correspondence regarding this claim are to be forwarded to the Purchaser at the following address:

Telephone Number: (____) ____ - ____

Email address: _____

Attention (Contact Person): _____

(All future correspondence will be delivered to the designated email address unless the Purchaser specifically requests hard copies by checking the circle below)

☐ Please provide hard copies of correspondence to the address above.

I, _____ (name of Purchaser), of _____
(City, Province or State), do hereby certify that:

1. The Purchaser has received a Claims Package from the Receiver, and wishes to assert a Deposit Claim.
2. I am the Purchaser.

OR

I am _____ (position/title) of the Purchaser:

3. I have knowledge of all the circumstances connected with the Deposit Claim referred to in this Deposit Claim Form.
4. A copy of the agreement of purchase and sale, including all amendments, exhibits, addendums or modifications, entered into between the Purchaser and 220 is attached as **Schedule "A"** herein (the "**Purchase Agreement**").

5. The Purchaser states that it has delivered a Deposit Claim to 220 in the total sum of \$ (CDN) as evidenced by the proof of the deposit amount(s) paid attached as **Schedule "B"** herein (by way of a cancelled cheque, or other form of proof from a financial institution to confirm that a deposit was paid by the Purchaser named on the Purchase Agreement) and the other proof attached hereto.
6. The Purchaser acknowledges and agrees that in each case where the Receiver makes a payment in relation to a Proven Deposit Claim in accordance with the Deposit Claims Procedure, the Purchaser (including its heirs, executors and assigns) shall be: (a) deemed to absolutely and unconditionally remise, release, acquit and forever discharge 220, Tarion and the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) for any Deposit Claims, claims for return of Deposit or other claims or funds paid on account of the purchase of a Unit in the Project, including interest thereon; and (b) forever barred, estopped and enjoined from making, asserting or enforcing any such claim for a Deposit Claim or other funds paid to SR Law on account of the purchase of a Unit in the Project including interest thereon against 220, Tarion or the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) and all such claims shall be forever extinguished as against all such parties.
7. All capitalized terms not defined herein have the meaning given to such terms in the Deposit Claims Procedure Order.
8. This Deposit Claim Form must be received by the Receiver **by no later than 5:00 p.m. (Toronto Time) on January 31, 2019** by either registered mail, personal delivery, courier, email (in PDF format) or facsimile transmission at the following address:

The Receiver:

msi Spergel Inc., Court appointed receiver of 2203284 Ontario Inc.
505 Consumers Road, Suite 200
Toronto, ON M2J 4V8
Fax No.: 416-494-7199
Email: Theconnolly@spergel.ca

Failure to file your Deposit Claim Form and required documentation as directed above will result in your Deposit Claim being forever barred and you will be prohibited from making or enforcing a Deposit Claim against 220, Tarion and the Guarantee Co. and shall not be entitled to further notice or distribution, if any, and shall not be entitled to participate in these proceedings.

Name of Purchaser:

Witness
Signature

Per:

Name
:

Title:

(Please Print)

SCHEDULE "E"
Notice of Revision or Disallowance

TO: _____ (the "Purchaser")

DATE:

DEPOSIT CLAIM NO.

IN THE MATTER OF THE RECEIVERSHIP OF 2203284 ONTARIO INC. ("220")

Take notice that msi Spergel Inc., in its capacity as court-appointed receiver of 220 (the "**Receiver**") and the Guarantee Co. have reviewed the Deposit Claim in respect of the above- named Purchaser, and has assessed the Deposit Claim Form in accordance with the order of the Superior Court of Ontario (Commercial List) issued on May 16, 2018, amended on August 29, 2018, further amended on October 12, 2018, and second further amended on November 29, 2018 (the "**Deposit Claims Procedure Order**").

All capitalized terms not defined herein have the meaning given to such terms in the Deposit Claims Procedure Order.

The Receiver and the Guarantee Co. have reviewed your Deposit Claim Form in accordance with the Deposit Claims Procedure Order, and the Receiver has revised or disallowed your Deposit Claim, for the following reason(s):

Subject to further dispute by you in accordance with the Deposit Claims Procedure Order, your Deposit Claim will be allowed as follows:

Name of Purchaser	Claim Amount per Deposit Claim Form	Amount of Deposit Claim revised / disallowed
	\$	\$

IF YOU WISH TO DISPUTE THE REVISION OR DISALLOWANCE OF YOUR DEPOSIT CLAIM AS SET FORTH HEREIN YOU MUST TAKE THE STEPS OUTLINED BELOW

The Deposit Claims Procedure Order provides that if you disagree with the revision or disallowance of your claim as set forth herein, you must:

1. before 5:00 P.M. on the fifteenth (15th) Calendar Day after your receipt of this Notice of Revision or Disallowance, whichever is earlier, deliver to the Receiver a completed Notice of Dispute; and
2. file an application with the Court, with copies to be sent to the Receiver immediately after filing, with such application to be:
 1. supported by an affidavit setting out the basis for disputing this Notice of Revision or Disallowance; and
 11. returnable within thirty (30) Calendar Days of the date on which the Receiver receives your completed Notice of Dispute.

If you do not dispute the revision or disallowance of your Deposit Claim in accordance with the above instructions and the Deposit Claims Procedure Order, the amount of your Deposit Claim will deemed to be accepted, and the Deposit Claim shall be a Proven Deposit Claim in the amount set forth herein.

If you have any questions or concerns regarding the Deposit Claims Procedure, please contact the Receiver directly.

DATED the ___ day of _____, 2018

MSI SPERGEL INC, in its capacity as Receiver of 2203284 Ontario Inc.

Per: _____

SCHEDULE "F"
Notice of Dispute

TO: msi Spergel Inc., in its capacity as Court-Appointed Receiver of 2203284 Ontario Inc.
 (the "**Receiver**")

DATE:

PROOF OF CLAIM NO.:

CLAIMANT: _____ (the "**Purchaser**")

IN THE MATTER OF THE RECEIVERSHIP OF 2203284 ONTARIO INC. ("220")

Pursuant to the Deposit Claims Procedure Order dated May 16, 2018, and amended on August 29, 2018, further amended on October 12, 2018, and second further amended on November 29, 2018 the Purchaser hereby gives notice that it disputes the Notice of Revision or Disallowance dated _____, 2018, issued by the Receiver.

The Purchaser disputes the Deposit Claim as revised or disallowed in the said Notice of Revision or Disallowance as follows:

Amount of Revised Deposit Claim accepted by Receiver	Amount of Revised Deposit Claim as disputed
\$	\$

Reason for the dispute *(attach copies of any supporting documentation)*

Address for service of Notice of Dispute of Revision or Disallowance:

msi Spergel Inc., Court appointed receiver of 2203284 Ontario Inc.
 505 Consumers Road, Suite 200
 Toronto, ON M2J 4V8
 Fax No.: 416-494-7199
 Email: Theconnolly@spergel.ca

Pursuant to the Deposit Claims Procedure:

1. the Purchaser has commenced an application with the Court to resolve the dispute over its Deposit Claim as set forth herein, and will serve the Receiver with application materials under separate cover; and
2. The return date for the Purchaser's application is _____ 2018.

All capitalized terms not defined herein have the meaning given to such terms in the Deposit Claims Procedure Order.

THIS FORM AND ANY REQUIRED SUPPORTING DOCUMENTATION MUST BE RETURNED TO THE RECEIVER BY REGISTERED MAIL, PERSONAL SERVICE, EMAIL (IN PDF FORMAT), FACSIMILE OR COURIER TO THE ABOVE-NOTED ADDRESS, AND MUST BE RECEIVED BY THE RECEIVER BEFORE 5:00 PM ON THE THIRTIETH (30) CALENDAR DAY AFTER THE DATE OF THE NOTICE OF REVISION OR DISALLOWANCE.

DATED this _____ day of _____, 2018

 Witness

Per: _____

(Name of Purchaser)

(if Purchaser is not an individual print name and titled of authorized signatory)

Name: _____

Title: _____

SCHEDULE "G"
Acknowledgement of Receipt of Funds

TO: MSI SPERGEL INC., in its capacity as Court appointed receiver of
 2203284 Ontario Inc. ("220")

AND TO: THE GUARANTEE COMPANY OF NORTH AMERICA

AND TO: TARION WARRANTY CORPORATION

RE: **Purchaser:** [INSERT NAME OF PURCHASER(S)]
Project: *The Connolly*
Property: Unit [INSERT UNIT#], Level [INSERT LEVEL#] being
 Residential Dwelling Suite [INSERT SUITE#]

All capitalized terms not defined herein have the meaning given to such terms in the Deposit Claims Procedure Order.

THE UNDERSIGNED HEREBY ACKNOWLEDGES THAT UPON RECEIPT of the Deposit Monies in the total amount of \$ [INSERT AMOUNT OF CHEQUE] by way of cheque from msi Spergel Inc., in its capacity as Court appointed receiver of 220, dated _____, 2018 in relation to a Proven Deposit Claim in accordance with the Deposit Claims Procedure, the undersigned (including its heirs, executors and assigns) shall be: (a) deemed to absolutely and unconditionally remise, release, acquit and forever discharge 220, Tarion and the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) for any Deposit Claims, claims for return of a Deposit or other claims or funds paid on account of the purchase of a Unit in the Project, including interest thereon; and (b) forever barred, estopped and enjoined from making, asserting or enforcing any such claim for a Deposit Claim or other funds paid to SR Law on account of the purchase of a Unit in the Project including interest thereon against 220, Tarion or the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) and all such claims shall be forever extinguished as against all such parties.

This Receipt may be signed and transmitted by facsimile transmission, similar system reproducing the original, or electronic mail, provided that all such documents have been properly executed by the appropriate parties. The party transmitting any such document(s) shall also provide the original executed version(s) of same to the recipient within 2 Business Days upon the recipient's request.

DATED _____, 2018

SIGNED, SEALED AND DELIVERED

Signature

Name (Please Print)

SCHEDULE "H"
Purchaser Certificate of Identity

TO: **MSI SPERGEL INC., in its capacity as Court appointed receiver of 2203284 Ontario Inc.**

AND TO: **THE GUARANTEE COMPANY OF NORTH AMERICA (the "Guarantee Co.")**

AND TO: **TARION WARRANTY CORPORATION ("Tarion")**

RE: Return of Deposit Monies in the amount of \$ **[INSERT DEPOSIT AMOUNT]** (the "**Deposit Monies**"). Execution of the Acknowledgement of Receipt of Funds (the "**Receipt**")
Purchaser: **[INSERT NAME OF PURCHASER(S)]** (the "**Purchaser**")
Project: *The Connolly*
Property: Unit **[INSERT UNIT #]**, Level **[INSERT LEVEL #]** being Residential Dwelling Suite **[INSERT SUITE #]**

I _____ on the ____ day of _____, 2018 hereby provide the following documentation to prove my identity:

- 1) Insert the information for one piece of Canadian government issued **photo identification** (that is valid, current and not-expired) that has the first name and surname that matches the first name and surname of the Purchaser as contained in the Purchase Agreement:

ID Type: _____ ID No. _____

AND

- 2) One piece of Canadian government issued identification (that is valid, current and not-expired) that:

- a. has the first name and surname that matches the first name and surname of the Purchaser as contained in the Purchase Agreement; and
- b. that provides the Purchaser's current address.

ID Type: _____ ID No. _____

Copies of the above noted pieces of identification are attached hereto.

I warrant and represent that the above noted pieces of identification are not bogus, forged, tampered with, altered, falsified or counterfeit and confirm that I am one and the same person that has executed the Receipt.

This Certificate is delivered pursuant to the Deposit Claims Procedure set out in the Order of the Ontario Superior Court of Justice dated May 16, 2018, amended on August 29, 2018, further amended on October 12, 2018, and second further amended on November 29, 2018 in Court File No. CV-17-11827- 00CL.

I understand that, upon receipt of the payment from the Receiver pursuant to the Proven Deposit Claim, the Purchaser (including its heirs, executors and assigns) shall be:

1. deemed to absolutely and unconditionally remise, release, acquit and forever discharge 220, Tarion and the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) in respect of a Deposit Claim; and
2. be forever barred, estoppel and enjoined from making, asserting or enforcing any such Deposit Claim against 220, Tarion or the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) and all such claims shall be forever extinguished as against all such parties.

All capitalized terms not defined herein have the meaning given to such terms in the Deposit Claims Procedure Order.

SIGNED, SEALED AND DELIVERED

Purchaser's Signature

Purchaser's Name (Please Print)

SCHEDULE "I"

Consent

**TO: MSI SPERGEL INC., in its capacity as Court appointed receiver 2203284
Ontario Inc. (the "Receiver")**

**RE: Consent and authorization of the undersigned regarding payment by the Receiver to
[INSERT NAME OF PURCHASER(S)] (the "Purchaser") in the amount of
\$[INSERT PROVEN DEPOSIT CLAIM AMOUNT] (the "Proven Deposit Claim")**

Project: *The Connolly*

**Property: Unit [INSERT UNIT#], Level [INSERT LEVEL#] being Residential
Dwelling Suite [INSERT SUITE #]**

The undersigned hereby consents to the Receiver to pay the amount of the Proven Deposit
Claim to the Purchaser.

DATED the _____ day of _____ 2018

**THE GUARANTEE COMPANY
OF NORTH AMERICA**

Per: _____

"I have authority to bind the Company"

SCHEDULE "J"

Deposit Payment Protocol

Residential Condominium Project that was to have been located
at 98 James Street South, Hamilton, ON, and that was to have been
known as "The Connolly" (the "Project")
May 16, 2018 (the "Protocol")

- 1) Capitalized terms not otherwise defined herein shall have the meanings ascribed to them pursuant to the Deposit Claims Procedure Order. This Protocol shall only become effective upon filing by the Receiver of a Sufficient Funds Certificate by December 17, 2018 or such other date as agreed to by the Receiver, Tarion and the Guarantee Co. In the event that a Sufficient Funds Certificate is not filed by such date, then this Protocol shall be of no force or effect.
- 2) The Receiver will provide the Receiver's Certificate, in the form attached as **Attachment "1"**, to Tarion Warranty Corporation ("**Tarion**"). The Receiver's counsel will request that the principal of 220 provide the Statutory Declaration in the form attached as **Attachment "2"**. The failure by the principal of 220 to provide the aforementioned Statutory Declaration will not prevent the payment of Proven Deposit Claims to Purchasers.
- 3) The Receiver will provide Tarion with copies of the following documentation in its possession: (a) all Purchase Agreements, together with any amendments or letter agreements relating to such Purchase Agreements; (b) forms, notices, and related documents and other correspondence with respect to the termination of the Purchase Agreements by 220; (c) forms, notices, receipts, acknowledgments and related documents and other correspondence with respect to any revisions, disallowances, disputes or ongoing communications with Purchasers regarding revised and disallowed Deposit Claims in accordance with the Deposit Claims Procedure Order; (d) a claim determination summary at the completion of the Deposit Claims Procedure that, *inter alia*, sets out the reasons for any revisions, disallowances or disputes; and (e) a summary of all claims barred pursuant to the Deposit Claims Procedure Order that, *inter alia*, sets out the reasons for the barring of all such claims (all such documents referred to in this paragraph, together with the Statutory Declarations referred to in paragraph 2 hereof, collectively, the "**Deposit Claims Procedure Documentation**"). The Deposit Claims Procedure Documentation will be provided in an electronic format and organized on a unit-by-unit basis, where applicable, and as soon as reasonably practicable.
- 4) The Receiver will provide Tarion with a Receiver's Certificate in the form attached as **Attachment "3"** once every two weeks, which Receiver's Certificate will attach copies of: (a) the consents executed and delivered by The Guarantee Company of North America (the "**Guarantee Co.**") to the Receiver in respect of Proven Deposit Claims in accordance with the Deposit Claims Procedure; (b) the corresponding Certificates; and (c) the corresponding Receipts, and which Receiver's Certificate will deal with payments made to Purchasers in the preceding two week period. It is understood by the Parties that the Receiver may, in its sole discretion and based on the number of such payments made during some portion of the initial two week period, provide Tarion with the first such Receiver's Certificate on a date that is before the date that is two weeks from the date hereof.

- 5) Once every two weeks, the Receiver will provide Tarion and Guarantee Co. with: (a) a ledger of the Proven Deposit Claims and/or Deposit Trust Claims paid and the Proven Deposit Claims and/or Deposit Trust Claims not paid (if any); and (b) a claim determination summary outlining the proven, revised and disallowed claims pursuant to the Deposit Claims Procedure Order (if applicable).
- 6) Subject to the parties' compliance with this Protocol, following receipt of all relevant Deposit Claims Procedure Documentation and a Receiver's Certificate referenced in paragraph 4, and upon being satisfied that its liability to the relevant Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will provide confirmation to Guarantee Co. once every two weeks that Tarion Bond No. TM5120099 issued by the Guarantee Co. (the "**Tarion Bond**") is reduced: (a) by the amount of a Deposit Trust Claim once paid by the Receiver; (b) by the amount of a Proven Deposit Claim once paid by the Receiver; (c) by the amount of a disallowed claim (once finally disallowed pursuant to the Deposit Claims Procedure) (a "**Disallowed Claim**"); and, (d) by the amount of any barred claim (as barred pursuant to the Deposit Claims Procedure) (a "**Barred Claim**"), to a maximum of \$20,000 for each Deposit Trust Claim, Proven Deposit Claim, Disallowed Claim or Barred Claim; provided, however, that Tarion shall at all times be entitled to retain a sufficient portion of the Tarion Bond or a reserve (the "**Reserve**"), as determined by Tarion acting reasonably, to cover Tarion's liabilities in respect of amounts secured by the Tarion Bond that have not been extinguished to the satisfaction of Tarion at the time of any reduction. Subject to the foregoing and with the Receiver's consent, such a Reserve may be established by the Receiver on terms satisfactory to Tarion acting reasonably, and upon the establishment of any such Reserve, Tarion will return the Tarion Bond to the Guarantee Co. for cancellation.
- 7) Upon being satisfied that its liability in respect of amounts secured by the Tarion Bond has been extinguished, or upon the establishment of a Reserve pursuant to paragraph 6, Tarion will return the Tarion Bond to the Guarantee Co. for cancellation. Following the establishment of a Reserve or upon the extinguishment of Tarion's liability in respect of amounts secured by the Tarion Bond, the Receiver shall seek a distribution order that provides for a distribution from the proceeds of sale to the Guarantee Co. for final reimbursement of all its reasonable fees and expenses, together with any other amounts that may be claimed by the Guarantee Co., related to the Tarion Bond and the Indemnity Agreement dated October 22, 2014, among 220, Marylou Santaguida and the Guarantee Co.
- 8) Once the Guarantee Co. receives the return of the Tarion Bond and the payment of the final reimbursement amount from the Receiver in accordance with this Protocol, the Guarantee Co. shall have no further interest in the assets, undertakings and properties of 220.

- 34 -

Attachment "1"

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

RECEIVER'S CERTIFICATE**THE RECEIVER CERTIFIES** the following:

- I. I am a • of msi Spergel Inc., which has been appointed as the receiver (in such capacity, the "**Receiver**") of the proposed development of a condominium project (the "**Project**") by 2203284 Ontario Inc. (the "**Vendor**") situated in the City of Hamilton on those lands and premises owned by the Vendor, set out in PINs • and located at 98 James Street South, Hamilton, Ontario (the "**Property**") pursuant to the *Bankruptcy and Insolvency Act*.
1. Based on a review of the Vendor's books and records in the Receiver's possession and to the best of my knowledge and belief:
 - (a) the Vendor was the registered owner of the Property prior to it being sold in the Vendor's receivership proceedings;
 - (b) the Project, being known as "*The Connolly*", that was proposed to be constructed by the Vendor on the Property is not proceeding as a result of, among other things, the aforementioned sale of the Property;
 - (c) it appears the Vendor entered into one-hundred and eighty-five (185) agreements of purchase and sale with respect to units sold in the Project (collectively, the "**Condominium Sales Agreements**") and the Receiver has not entered into any other agreements of purchase and sale in respect of the Project or the Property

- 35 -

(other than the agreement of purchase and sale that effected the sale of the Property in the Vendor's receivership proceedings); and

- (d) no other information has come to the Receiver's attention that would lead the Receiver to believe that there were any sales of additional units in the Project other than pursuant to the Condominium Sales Agreements.

THIS CERTIFICATE was delivered by the Receiver on _____, 2018

MSI SPERGEL INC., in its capacity as Receiver

Per: _____

Name:

Title:

- 36 -

Attachment "2"**STATUTORY DECLARATION**

CANADA	)	IN THE MATTER OF the proposed
	)	development of a condominium project (the
PROVINCE OF ONTARIO	)	"Project") by 2203284 Ontario Inc. (the
	)	"Vendor") situated in the City of Hamilton,
	)	on those lands and premises owned by the
	)	Vendor, set out in PINs • and located at
	)	98 James Street South, Hamilton , Ontario (the
	)	"Property")
TO WIT:)	

I, •, of the City of •, DO SOLEMNLY DECLARE THAT:

2. I am the • of the Vendor, and as such have knowledge of the matters hereinafter declared.
3. The Project being known as "The Connolly" to be constructed by the Vendor on the Property has been cancelled.
4. The Vendor has provided all deposits it received in respect of the sale of condominium units in the Project to Schneider Ruggerio LLP, the escrow agent for the Vendor.
5. The Vendor entered into only one-hundred and eighty-five (185) agreements of purchase and sale for condominium units in the Project and did not enter into any other agreements of purchase and sale for the condominium units in the Project.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME in
City of Toronto, in the Province of Ontario,
this * day of *, 2018

A COMMISSIONER, ETC.

NAME: _____
TITLE: _____

- 37 -

Attachment "3"

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

RECEIVER'S CERTIFICATE**THE RECEIVER CERTIFIES** the following:

1. I am a • of msi Spergel Inc., which has been appointed as the receiver of the Property pursuant to the *Bankruptcy and Insolvency Act* (in such capacity, the "**Receiver**").
2. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them pursuant to the Deposit Claims Procedure Order dated May 16, 2018, and amended on August 29, 2018, further amended on October 12, 2018, and second further amended on November 29, 2018.
3. The Receiver has delivered payments to Purchasers on account of Proven Deposit Claims and/or Deposit Trust Claims, as set forth in **Schedule "A"** attached herein;
4. Attached as **Schedule "B"** herein are copies of the corresponding: (i) consents, (ii) Certificates, and (iii) Receipts.

THIS CERTIFICATE was delivered by the Receiver on _____, 2018
msi Spergel Inc., in its capacity as Receiver

Per: _____

Name:

Title:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

and

2203284 ONTARIO INC.
Respondent

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

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at
TORONTO

**SECOND FURTHER FRESH AS AMENDED
DEPOSIT CLAIMS PROCEDURE ORDER**

DEVRY SMITH FRANK *LLP*
Lawyers & Mediators
95 Barber Greene Road, Suite 100
Toronto, Ontario M3C 3E9

LAWRENCE HANSEN (LSUC # 41098W)
lawrence.hansen@devrylaw.ca

SARA MOSADEQ (LSUC #67864K)
sara.mosadeq@devrylaw.ca

Tel.: 416-449-1400
Fax: 416-449-7071

Lawyers for the receiver msi Spergel Inc.

TAB G

Appendix “G”

**msi Spergel Inc., Receiver of
2203284 Ontario Inc. o/a The Connolly
Claims Determination Summary**

	Unit Purchasers	Unit	Level	Suite	Claim Status	Amount Filed & Admitted
1.	Jeff Harris	3	2	203	Admitted	10,000.00
2.	Yevgeny Frenkel	3	3	303	Admitted	5,000.00
3.	Michael J. Casalanguida and Tanya Casalanguida	6	3	306	Admitted	34,425.00
4.	Karen Bernyak-Bouwman and Herman Bouwman	7	3	307	Admitted	30,000.00
5.	Vyacheslav Shelepin	8	3	308	Admitted	5,000.00
6.	Dave Roberts	3	4	403	Admitted	33,900.00
7.	Ratib Okal	7	4	407	Admitted	44,925.00
8.	Adam Karpinski and Maria Karpinski	9	4	409	Admitted	30,000.00
9.	Salvatore Caruso and Cathleen Caruso	10	4	410	Admitted	44,100.00
10.	Shelly Hoffner	7	5	507	Admitted	40,500.00
11.	Jeffrey Michael Andrusyk	9	5	509	Admitted	30,075.00
12.	Patrick Zicari	10	5	510	Admitted	10,000.00
13.	Roland Kerl and Christine Kerl	4	6	604	Admitted	38,550.00
14.	Antonio Petrasso and Giovanna Petrasso	7	6	607	Admitted	43,575.00
15.	Emiljano Shehaj	8	6	608	Admitted	47,625.00
16.	Shelly Hoffner	9	6	609	Admitted	30,150.00
17.	Shaoyan He	10	6	610	Admitted	43,550.00
18.	Yvonne MacPherson	2	7	702	Admitted	53,400.00
19.	Shakuntala Pathak	6	7	706	Admitted	53,700.00
20.	Monta Investments	8	7	708	Admitted	49,500.00
21.	Gianpaul Granata	9	7	709	Admitted	30,225.00
22.	Amer Abdulla T. Bahaa, Syed Ali Muqeeth and Mohamed Aly Elbagoury	3	8	803	Admitted	38,700.00
23.	Barbara Kubilius and Mark Dineen	4	8	804	Admitted	38,700.00
24.	Daniel Rinaldo	5	8	805	Admitted	39,300.00
25.	Xujia Ni	8	8	808	Admitted	47,775.00
26.	Robert Cekan	9	8	809	Admitted	34,800.00
27.	Natassha McDonald	10	8	810	Admitted	1,000.00
28.	Jessica Caruso	1	9	901	Admitted	48,600.00
29.	1914887 Ontario Incorporated	2	9	902	Admitted	51,825.00
30.	Paolo Antonio Grisafi	4	9	904	Admitted	37,350.00
31.	Roy Yates	5	9	905	Admitted	38,850.00
32.	1445488 Ontario Inc.	6	9	906	Admitted	49,425.00
33.	Ivan Young	8	9	908	Admitted	43,425.00
34.	Antoine Joseph Mallia, Alfonso Guido Bozzelli and Domenico Bozzelli	9	9	909	Admitted	30,450.00
35.	Andriana Lukich	10	9	910	Admitted	46,350.00
36.	Alina Matsis	1	10	1001	Admitted	48,750.00
37.	Glen Khan and Cynthia Lapp	2	10	1002	Admitted	51,975.00
38.	Yaroslav Kazymyrsky	6	10	1006	Admitted	5,000.00
39.	Christopher Verticchio	7	10	1007	Admitted	45,525.00
40.	Mark Krueger	8	10	1008	Admitted	49,875.00

	Unit Purchasers	Unit	Level	Suite	Claim Status	Amount Filed & Admitted
41.	Jenny Mazur Mouskos	9	10	1009	Admitted	32,100.00
42.	Xiaorong Wang and Yong Zhang	10	10	1010	Admitted	40,200.00
43.	Francesca Giampapa	2	11	1102	Admitted	52,125.00
44.	Stephanie Zourtos	3	11	1103	Admitted	34,750.00
45.	Elzbieta Garbowicz	4	11	1104	Admitted	34,650.00
46.	Salvatore Difalco	5	11	1105	Admitted	35,250.00
47.	Domenic F. Ionno	6	11	1106	Admitted	49,725.00
48.	Marisa Rose Mercanti	7	11	1107	Admitted	42,675.00
49.	Feng Chen and Rui Cai	8	11	1108	Admitted	43,725.00
50.	Chespan Holdings Inc.	9	11	1109	Admitted	33,750.00
51.	David Coren and Lee Anne Coren	10	11	1110	Admitted	40,350.00
52.	Gordan Kenneth Green	1	12	1201	Admitted	49,050.00
53.	Kim Elaine Elliott	2	12	1202	Admitted	52,275.00
54.	Vanessa Fraelic	3	12	1203	Admitted	34,800.00
55.	Chris Galindo and Shannon Galindo	4	12	1204	Admitted	34,800.00
56.	Dumitru Burnusus	5	12	1205	Admitted	5,000.00
57.	Celine George	6	12	1206	Admitted	50,375.00
58.	Jun Wei Mai, Al Qing Mai, Yu-Ping Zheng and Al Wen Li	7	12	1207	Admitted	45,825.00
59.	Andrew McDonald	8	12	1208	Admitted	1,000.00
60.	Paolo Antonio Grisafi	9	12	1209	Admitted	33,900.00
61.	Jonathan Rodriguez and Joseph Young	10	12	1210	Admitted	40,500.00
62.	Elizabeth Newell	2	13	1302	Admitted	51,424.00
63.	Roy Yates	5	13	1305	Admitted	39,450.00
64.	Darryl Fozard	6	13	1306	Admitted	54,525.00
65.	Robert Frank Gerald Gamble	7	13	1307	Admitted	45,975.00
66.	Mike De Jesus Frade	8	13	1308	Admitted	48,525.00
67.	John Morley	9	13	1309	Admitted	31,050.00
68.	Peter T. Matesic and Christina Matesic	10	13	1310	Admitted	40,650.00
69.	Rita Italiano	2	14	1402	Admitted	52,575.00
70.	John Wilson	3	14	1403	Admitted	35,100.00
71.	Barbara Wilson	4	14	1404	Admitted	35,100.00
72.	Neil Green	5	14	1405	Admitted	20,000.00
73.	Anthony Kaounis	6	14	1406	Admitted	5,000.00
74.	Hao Xiang Lai	8	14	1408	Admitted	44,175.00
75.	John Pacheco and Jacqueline Pacheco	9	14	1409	Admitted	35,700.00
76.	Kenneth Herbolich and Jesse Herbolich	10	14	1410	Admitted	40,800.00
77.	Carlo Citrigno	2	15	1502	Admitted	52,725.00
78.	Monica Guido and Danielle Guido	3	15	1503	Admitted	35,250.00
79.	Maureen Mabasa and Siphathiso Mabasa	4	15	1504	Admitted	39,750.00
80.	Luigi N. Ruffolo and Nadia Ruffolo	6	15	1506	Admitted	35,000.00
81.	Benjamin Eng and Kimberley Eng	8	15	1508	Admitted	48,825.00
82.	Olga Moskalonova	10	15	1510	Admitted	5,000.00
83.	Tracy Bradt	1	16	1601	Admitted	45,150.00
84.	Dan Spencer	2	16	1602	Admitted	1,000.00
85.	Adriano Diadamo	3	16	1603	Admitted	35,400.00
86.	Rujin Liu	5	16	1605	Admitted	42,300.00
87.	Chris Peattie	6	16	1606	Admitted	5,000.00
88.	Curran Parks, Tara-Leigh Marcellin and John Parks	8	16	1608	Admitted	44,475.00
89.	Jamie Balardo	9	16	1609	Admitted	34,500.00

	Unit Purchasers	Unit	Level	Suite	Claim Status	Amount Filed & Admitted
90.	Alaimo Losardo and Alfonso Losardo	4	17	1704	Admitted	35,550.00
91.	Wolfgang Spillner	6	17	1706	Admitted	5,000.00
92.	Yuexing Han	8	17	1708	Admitted	39,625.00
93.	Randall V. Clarke	9	17	1709	Admitted	31,650.00
94.	Melvin Seed	10	17	1710	Admitted	41,250.00
95.	Daniel Leclair	3	18	1803	Admitted	40,200.00
96.	Andrew Ottay and Maxim Johnson	6	18	1806	Admitted	57,075.00
97.	Alfonsa Pirrera and Robert Sorgini	9	18	1809	Admitted	38,100.00
98.	Danielle Murphy	10	18	1810	Admitted	45,900.00
99.	Xiaorong Wang and Yong Zhang	2	19	1902	Admitted	48,825.00
100.	Yousif Sworesho	3	19	1903	Admitted	35,850.00
101.	Virgilio Ventura	4	19	1904	Admitted	35,850.00
102.	Ray Edison Flores	5	19	1905	Admitted	55,950.00
103.	Jozef Bzowski and Barbara Wiktoria Bzowski	6	19	1906	Admitted	50,924.94
104.	Klodjan Xhemalaj	7	19	1907	Admitted	46,875.00
105.	Shi Yan and Yan Wang	8	19	1908	Admitted	44,925.00
106.	Jae Hong Min and Myung Song	9	19	1909	Admitted	31,950.00
107.	David Christopher Tofano	10	19	1910	Admitted	41,549.97
108.	Shariq Haider	1	20	2001	Admitted	20,000.00
109.	Dai Ma	2	20	2002	Admitted	48,975.00
110.	Lucy A. Hall	3	20	2003	Admitted	36,000.00
111.	Ravinder Toor	4	20	2004	Admitted	40,500.00
112.	Michael Anthony Power	6	20	2006	Admitted	51,075.00
113.	Yue Li Liang and Hong Zhang	8	20	2008	Admitted	45,075.00
114.	Xiao Qun Xu	10	20	2010	Admitted	46,200.00
115.	Ted Szpak and Diana Belasis	2	21	2101	Admitted	20,000.00
116.	Joanne McCallum	2	21	2102	Admitted	5,000.00
117.	Rui Cai and Feng Chen	3	21	2103	Admitted	36,150.00
118.	William Yu Kay Tam	4	21	2104	Admitted	40,650.00
119.	Valery Lobanov	6	21	2106	Admitted	5,000.00
120.	Dixin Ji	8	21	2108	Admitted	45,225.00
121.	Li Ma	9	21	2109	Admitted	35,250.00
122.	Vcal Investment Corp	10	21	2110	Admitted	41,850.00
123.	James Cornish and Cettina Cornish	2	22	2202	Admitted	53,925.00
124.	Dimple Kaur Singh	3	22	2203	Admitted	28,500.00
125.	Monmohan Singh and Baldev Kaur Singh	5	22	2205	Admitted	28,900.00
126.	Luigi N. Ruffolo and Nadia Ruffolo	6	22	2206	Admitted	35,000.00
127.	Ying Liu	8	22	2208	Admitted	45,525.00
128.	Anita J. Finnerty and C.P. Finnerty	10	22	2210	Admitted	42,150.00
129.	Sean Morley St Cyr	1	23	2301	Admitted	51,000.00
130.	Drew Hauser and Rachael Hauser	2	23	2302	Admitted	5,000.00
131.	Peter Simpson and Kathleen L. Reynolds	3	23	2303	Admitted	36,750.00
132.	Andrea Cutulle	4	23	2304	Admitted	41,250.00
133.	Larysa Kazymyrska	5	23	2305	Admitted	5,000.00
134.	Yuri Goldshtein	6	23	2306	Admitted	5,000.00
135.	Zhongyu Ma	7	23	2307	Admitted	46,275.00
136.	Chen Shi	8	23	2308	Admitted	45,825.00
137.	Liu Zhou and Xin Ma	9	23	2309	Admitted	32,850.00
138.	Rathai Ponniah Jeyarajah	10	23	2310	Admitted	42,450.00

	Unit Purchasers	Unit	Level	Suite	Claim Status	Amount Filed & Admitted
139.	Maya Helwani	2	24	2402	Admitted	50,025.00
140.	Parsia Hassannia and Curtis Coburn	3	24	2403	Admitted	5,000.00
141.	James Lavell	5	24	2405	Admitted	42,150.00
142.	Samuel Komsky	6	24	2406	Admitted	5,000.00
143.	Charles Macphee	7	24	2407	Admitted	48,375.00
144.	Sadisha Galoppatti	8	24	2408	Admitted	1,000.00
145.	Christina Karney	9	24	2409	Admitted	33,150.00
146.	Marrium Qureshi	10	24	2410	Admitted	42,750.00
147.	Piyumi Galappatti	1	25	2501	Admitted	1,000.00
148.	Margarita Komsky	2	25	2502	Admitted	5,000.00
149.	Mihaela Ileana Toma and Raymond P. Makenbach	3	25	2503	Admitted	37,350.00
150.	Anna-Maria Almonte	4	25	2504	Admitted	20,000.00
151.	Charles Azulay and Rodel R. San Miguel	5	25	2505	Admitted	20,000.00
152.	Dmitry Barabanov	6	25	2506	Admitted	5,000.00
153.	Rao V. Kancherla	8	25	2508	Admitted	50,925.00
154.	Ryan Baker and Dione Baker	9	25	2509	Admitted	33,450.00
155.	David Gill	10	25	2510	Admitted	43,050.00
156.	Xiaomin Tang	2	26	2602	Admitted	50,625.00
157.	Jinghong Jie and Frank Farbas	3	26	2603	Admitted	37,650.00
158.	Wahida Yusuf and Salim Yusuf	4	26	2604	Admitted	42,150.00
159.	Mathew Moxness	5	26	2605	Admitted	10,000.00
160.	John Brayford	6	26	2606	Admitted	5,000.00
161.	Justin Coddington	7	26	2607	Admitted	48,675.00
162.	Xiaomin Tang	8	26	2608	Admitted	46,725.00
163.	Anthony J. Balardo Insurance Agency Ltd.	9	26	2609	Admitted	33,750.00
164.	Jeyarajah Sinnadurai	10	26	2610	Admitted	43,350.00
165.	Arnold Hoffmann	2	27	2702	Admitted	55,425.00
166.	David Balardo	9	27	2709	Admitted	34,050.00
167.	Terry Crellin and Nielson Crellin	10	27	2710	Admitted	43,650.00
168.	Bryan Varrasso and Carolyn Varrasso	2	28	2802	Admitted	28,355.00
169.	James Douketis	8	28	2808	Admitted	72,706.50
170.	Ivan Dario Rodriguez Gomez	2	29	2902	Admitted	5,000.00
171.	Derek Edward Da Costa	3	29	2903	Admitted	56,443.50
172.	Dan Ardila and Susan Naylor	6	29	2906	Admitted	76,698.75
173.	James Boyd and Thressa Loewen	5	30	3005	Admitted	37,638.00
						<u>6,207,640.66</u>

TAB H

Appendix “H”

**msi Spergel Inc., Receiver of
2203284 Ontario Inc. o/a The Connolly
Summary of Claims Barred**

					<i>Reason For Barring Claim</i>	<i>Anticipated Claim Amount</i>
	Unit Purchasers	Unit	Level	Suite		
1.	Mark Purai	7	7	707	Not Filed	1,000.00
2.	Marion Bekoe	10	7	710	Not Filed	1,000.00
3	Angela Magill and Mark Purai	7	9	907	Not Filed	1,000.00
4.	Onkar Ramroop	7	14	1407	Not Filed	1,000.00
5.	Odit Surujdai	7	15	1507	Not Filed	1,000.00
6.	Lakera Sukhdeo and Mark Purai	10	16	1610	Not Filed	1,000.00
7.	Rick Narasa and Peter Poonai	2	18	1802	Not Filed	1,000.00
8.	Himanshu Handa and Adnan Khan	8	18	1808	Not Filed	1,000.00
9.	Balraj Etwaroo and Rick Narasa	1	19	1901	Not Filed	1,000.00
10.	Dave Samuels	7	20	2007	Not Filed	1,000.00
11.	Peter Poonai	7	25	2507	Not Filed	1,000.00
12.	Bindradat Bhawandin and Mark Purai	8	27	2708	Not Filed	1,000.00

TAB I

Appendix “I”

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

SUFFICIENT FUNDS CERTIFICATE

THE RECEIVER CERTIFIES that it has sufficient Deposit Trust Funds to pay Proven Deposit Claims in accordance with the Second Further Fresh as Amended Deposit Claims Procedure Order of November 29, 2018.

THIS CERTIFICATE was delivered by the Receiver on February 6, 2019.

MSI SPERGEL INC., in its capacity as Receiver of
2203284 ONTARIO INC.

Per:



Name: Deborah Hornbostel

Title: Senior Principal

TAB J

Appendix “J”

**In the Matter of the Receiverships of
2203284 Ontario Inc.
Receiver's Interim Statement of Receipts and Disbursements
As at April 8, 2019**

	General Receivership	Deposit Trust	Total
<u>Receipts</u>			
Sale of Property	\$ 8,500,000		\$ 8,500,000
SR Law Trust Funds		\$ 6,327,557	6,327,557
Property Tax Recoveries	106,396		106,396
HST Recoveries	72,141		72,141
Closing Penalties From Hue	45,000		45,000
Recoveries From L. Zimmerman	11,750		11,750
Interest Earned	6,701	80,885	87,586
Costs Awarded Pursuant to Court Order	3,000		3,000
Cash on Hand	645		645
Total Receipts	<u>8,745,633</u>	<u>6,408,441</u>	<u>15,154,075</u>
			-
<u>Disbursements</u>			-
Deposit Claims		6,207,741	6,207,741
Payment To DUCA	5,669,019		5,669,019
Realty Commission	255,000		255,000
Receiver Fees	416,255		416,255
Legal Fee's and Disbursements	88,794		88,794
HST Paid on Disbursements	102,172	36	102,208
Property Taxes	61,735		61,735
Appraisal Fees	9,900		9,900
Repairs and Maintenance	5,368		5,368
Advertising	4,823		4,823
Insurance	3,216		3,216
Structural Consultant	1,700		1,700
Site Approval Extension Fee	1,555		1,555
Photocopies and Postage	1,360		1,360
Locksmith Costs and Security	865		865
Courier and Travel	638		638
Utilities and Computer Services	715		715
Searches and Record Retrieval	368		368
Filing Fee, License Fee, Bank Charges	502	275	777
Total Disbursements	<u>6,623,984</u>	<u>6,208,051</u>	<u>12,832,035</u>
Total Receipts less Disbursements	<u>\$ 2,121,650</u>	<u>\$ 200,390</u>	<u>\$ 2,322,039</u>

TAB K

Appendix “K”



DEVRY SMITH FRANK *LLP*
Lawyers & Mediators

oren.chaimovitch@devrylaw.ca
416.446.3342

SENT VIA EMAIL

April 16, 2019

MSI Spergel Inc.
200 - 205 Consumers Road
Toronto, ON
M2J 4V8

Attention: Trevor Pringle and Deborah Hornbostel

Dear Sirs/Mesdames:

Re: Receivership of 2203284 Ontario Inc.
98 James Street South, Hamilton ON (the “Property”)
Our File No.: MSISP011

We take this opportunity to report to you in connection with the security (the “**Security**”) granted by 2203284 Ontario Inc. (the “**Debtor**”) to The Guarantee Company of North America (“**GCNA**” and sometimes referred to as the “**Secured Creditor**”).

We have obtained from our search of title to the Property the following:

1. A Charge granted by GCNA to the Debtor in the principal amount of \$5,180,000 registered October 30, 2014 as Instrument No. WE998973 over the Property (the “**Charge**” or the “**Security Agreement**”)

In connection with the opinions hereinafter expressed, we have reviewed the photocopies of the Secured Creditor’s security provided to us by you, assume the genuineness of all signatures therein and that valuable consideration therefor was given and that all corporate authorities were in place at the time of the execution of any loan agreements and/or the granting of any security granted by the Debtor. We have also reviewed such searches as we considered necessary and desirable. We express no opinion with respect to priority or ownership of the collateral. Subject to the foregoing, we are pleased to advise you as follows:

Corporate Search

A Corporate Profile Report conducted on the Debtor dated February 3, 2017, revealed that the Debtor was incorporated pursuant to the laws of the Province of Ontario on March 14, 2009, with a corporate address of 93 Skyway Avenue, Suite 210, Toronto, ON M9W 6N6, showing

Louie Santaguida and Luigi Santaguida as the only Officer and Director, with the last document filing being shown as the change notice filed on October 6, 2016.

We cannot express our opinion as to whether all corporate and other action has been taken to authorize the Debtor to enter into the Security Agreement. However, unless the Secured Creditor had knowledge that the representatives executing the Security Agreement did not have authority to bind the Debtor, the Secured Creditor may rely on those signatures. In other words, if the Secured Creditor was given a Certificate of Status/Incumbency/Signing Authority indicating different officers and directors than appear on the Security Agreements, the documentation may be unenforceable. However, counter to that argument is the fact that in carrying out its terms, the Debtor can be said to have ratified the terms of the Security Agreement and is bound by them.

Review of Documents:

We have reviewed copies of the following documentation and comment as follows:

A) Real Property Encumbrances

1. A Charge granted by GCNA to the Debtor in the principal amount of \$5,180,000 registered October 30, 2014 as Instrument No. WE998973 over the Property (the "Charge" or the "Security Agreement")

A copy of the Charge is attached hereto.

In electronic registration, documents are signed and registered electronically by lawyers based on authority given to them by their clients. An Acknowledgment and Direction is a form produced by the electronic registration system or prepared by the lawyer which summarizes the contents of the document to be registered and contains written instructions from the client to the lawyer authorizing the lawyer to deliver and register the document. For the purpose of this opinion, we have assumed that the lawyer registering the Charge obtained the required Authorization and Directions.

We are of the opinion that the Charge is valid and enforceable in accordance with its written terms except as enforcement may be limited by applicable bankruptcy, insolvency and other laws of general application limiting the enforceability of creditors rights.

The Charge, contains the following language:

"Re: Indemnity Agreement entered into and effective as of October 22, 2014, between the Chargor, the Chargee and others (the "Indemnity Agreement")

COLLATERAL SECURITY AS TO DEBT AND NOMINAL INTEREST RATE

1. (a) FOR VALUE RECEIVED, the Chargor hereby acknowledges and agrees that this Charge is given as continuing collateral security for the payment of all amounts from time to time payable by the Chargor to the Chargee under the Indemnity Agreement (which sums are hereinafter referred to as the "Indebtedness" or the "Principal Sum"). This Charge is given in addition to and not in substitution for any other security held by

the Chargee for the Indebtedness. The said Principal Sum shall become due and payable on demand by the Chargee at the Chargee's office as designated in paragraph 20 and the Chargor shall pay interest on the Principal Sum both before and after default as well as before and after judgment at the rate of eighteen (18%) per centum per annum, calculated semi-annually and payable monthly with interest on overdue interest payable in the same manner and at the same rate until such time as the Principal Sum is paid in full.

(b) in addition to paragraph 1 (a) above, this Charge is given as continuing collateral security for the payment of monies and the performance of obligations of and by the Chargor under a commitment letter dated September 16, 2014, and accepted by the Chargor on October 16, 2014 (the "Commitment Letter"). The provisions of the Commitment Letter are incorporated herein and form part hereof. In the event of any inconsistency or contradiction between the Commitment Letter and this Charge, the applicable provision of the Commitment Letter shall prevail..."

Copies of the Commitment Letter and the Indemnity Agreement are attached. The Commitment Letter requires the Debtor to pay GNCA the premiums for the bond issued and all costs with respect to preserving GNCA's rights under its mortgage security. The Indemnity Agreement, amongst other things

- (a) also requires the Debtor to pay GNCA the premiums for the bond issued,
- (b) requires the Debtor to indemnify GNCA for any losses GNCA suffers from the Debtor's failure to perform its obligations under the Tarion Warranty Program; and
- (c) that the liabilities and obligations of the Debtor arising under the Indemnity Agreement shall terminate only when all bonds issued by GNCA on behalf of the Debtor are returned or released to GNCA for cancellation, and the entire outstanding indebtedness and/or liabilities of the Debtor to GNCA have been fully repaid and/or satisfied, including
 - i) the amount paid out by GCNA in respect of the Debtor's failure to perform the Debtor's obligations, or in respect of anything done or omitted to be done by the Debtor, including all legal fees and disbursements incurred by GCNA to enforce any of the obligations of the Debtor;
 - ii) an administration fee of fifteen (15%) per cent; and
 - iii) interest at the rate of eighteen (18%) per cent per annum

In expressing our opinion above, we have assumed that monies are, in fact, owing by the Debtor to GCNA as of the date hereof under the Indemnity Agreement and/or the Commitment Letter, as defined in the Charge; however, we express no opinion as to the quantum of the claim or claims of the Secured Creditor under the Charge.

Additional Searches

We have caused the following additional searches to be conducted with respect to the Debtor:

- (a) Bankruptcy – (current to November 2, 2017) – clear, attached
- (b) Corporate Profile Report – (current to February 3, 2017) – attached
- (c) Parcel Register for the Property – (current to September 21, 2017) – attached

Assumptions

For the purposes of rendering the opinion expressed herein we have assumed that:

1. The entering into, execution and delivery of the Security to GCNA and subsequently have been duly authorized by all necessary resolutions and other corporate actions on the part of the Debtor.
2. The Security has been executed and delivered to GCNA by a director and/or officer of the Debtor duly authorized, executed and delivered those documents and the signatures on the copies of the Security examined by us is that of the duly authorized director and/or officer of the Debtor.
3. The Security has not been assigned, released or discharged or otherwise impaired either in whole or in part.
4. The Debtor is indebted to GCNA and received adequate consideration for the grant of the Security.
5. The genuineness of all signatures and the legal capacity of all natural persons whose signatures appear on behalf of GCNA and the Debtor and the conformity of the original documents of all documents submitted to us as photostatic copies.
6. There are no other agreements or extraneous facts not disclosed in the Security that would or might affect the validity or enforceability of the Security.
7. All facts as set out in official public records and other documents supplied by public officials or otherwise conveyed to us by public officials are complete, true and accurate.
8. We have relied upon certificates of public offices as to matters of fact not stated herein to have been assumed or independently verified or established by us.
9. We have assumed the accuracy and currency of the indices and filing systems maintained at the public officers where we have searched or inquired or have caused such searches or inquiries to be conducted.
10. We have assumed that the Debtor has no legal defence against GCNA for, without limitation, absence of legal capacity, fraud by or to the knowledge of GCNA, misrepresentation, undue influence or duress.

Qualifications

In addition to any qualifications made within the context of the within correspondence, we have assumed that:

1. The signatures contained in the Security are genuine;
2. That valuable consideration was given;
3. That all necessary corporate approvals were obtained;
4. Where we have reviewed photocopies of various documents, the copies conform to the original documents;
5. The respective parties had the legal capacity to execute and deliver the documents on behalf of the Debtor

We express no opinion with respect to:

1. The priority of the claim or claims of the Secured Creditor in relation to other secured creditors;
2. Possible trust claims under federal or provincial legislation ranking in priority to the claim or claims of the Secured Creditor;

General Comments

You will note that we have made reference in this correspondence to various executions of documents that were executed, but either not under seal or not witnessed. We are of the opinion that the absence of a corporate seal or absence of a seal generally, or the failure to have a document witnessed, if required, may be viewed an irregularity in form only which will not affect the validity or enforceability of a document so long as it can be shown that sufficient consideration was given and that there exists no issue with respect to the fact of the signature being made or the genuineness thereof.

We would be pleased to review any additional documentation in your file or any additional documentation that you may deem appropriate. If we can be of any further service with respect to this opinion or otherwise, please do not hesitate to contact me.

Best regards,

DEVRY SMITH FRANK LLP



Oren Chaimovitch
Lawyer

Properties

PIN 17171 0009 LT *Interest/Estate* Fee Simple
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

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name 2203284 ONTARIO INC.
Address for Service 93 Skyway Avenue
Unit 104
Toronto, ON M9W 6N6

I, Luigi Santaguida, President, have the authority to bind the corporation.

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

Chargee(s)*Capacity**Share*

Name THE GUARANTEE COMPANY OF NORTH AMERICA
Address for Service 4950 Yonge Street
Suite 1400, Madison Centre
Toronto, ON M2N 6K1

Statements

Schedule: See Schedules

Provisions

Principal \$5,180,000.00 *Currency* CDN
Calculation Period See Schedule
Balance Due Date See Schedule
Interest Rate See Schedule
Payments
Interest Adjustment Date
Payment Date
First Payment Date
Last Payment Date
Standard Charge Terms
Insurance Amount full insurable value
Guarantor

Additional Provisions

Tarion Warranty Corporation Bond Facility

Signed By

Kevin Bruce Milburn 1000 120 Adelaide St. W. acting for Chargor Signed 2014 10 30
Toronto (s)
M5H 3V1

Tel 416 363 2211

Fax 416 363 0645

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

Submitted By

SCHNEIDER RUGGIERO LLP

1000 120 Adelaide St. W.
Toronto
M5H 3V1

2014 10 30

Tel 416 363 2211

Fax 416 363 0645

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

File Number

Chargee Client File Number : 37393/LS

SCHEDULE "2"

COLLATERAL MORTGAGE

In pursuance of the *Short Form of Mortgages Act*

Dated: October 29, 2014

Chargor: 2203284 Ontario Inc.

Chargee: The Guarantee Company of North America

Principal Sum: Five Million, One Hundred and Eighty Thousand DOLLARS (\$5,180,000.00)

Re: Indemnity Agreement entered into and effective as of October 22, 2014, between the Chargor, the Chargee and others (the "Indemnity Agreement")

COLLATERAL SECURITY AS TO DEBT AND NOMINAL INTEREST RATE

1. (a) FOR VALUE RECEIVED, the Chargor hereby acknowledges and agrees that this Charge is given as continuing collateral security for the payment of all amounts from time to time payable by the Chargor to the Chargee under the Indemnity Agreement (which sums are hereinafter referred to as the "Indebtedness" or the "Principal Sum"). This Charge is given in addition to and not in substitution for any other security held by the Chargee for the Indebtedness. The said Principal Sum shall become due and payable on demand by the Chargee at the Chargee's office as designated in paragraph 20 and the Chargor shall pay interest on the Principal Sum both before and after default as well as before and after judgment at the rate of eighteen (18%) per centum per annum, calculated semi-annually and payable monthly with interest on overdue interest payable in the same manner and at the same rate until such time as the Principal Sum is paid in full.
- (b) In addition to paragraph 1 (a) above, this Charge is given as continuing collateral security for the payment of monies and the performance of obligations of and by the Chargor under a commitment letter dated September 16, 2014, and accepted by the Chargor on October 16, 2014 (the "Commitment Letter"). The provisions of the Commitment Letter are incorporated herein and form part hereof. In the event of any inconsistency or contradiction between the Commitment Letter and this Charge, the applicable provision of the Commitment Letter shall prevail.

SECURITY

2. As security for the due payment of all monies payable hereunder, the Chargor hereby:
 - (a) mortgages and charges as and by way of a fixed and specific mortgage and charge to and in favour of the Chargee, its successors and assigns its interest in the lands and premises now owned by the Chargor and described or referred to on Page 1 of this Charge to which this Schedule "2" is attached (the "Property"), including all appurtenances, buildings and fixtures now or hereafter situate thereon;
 - (b) mortgages and charges in favour of the Chargee, its successors and assigns its interest in the agreements to lease and leases, both present and future (the "Leases") relating to the Property, including all rents and monies payable under the Property and any extensions or renewals thereof (the "Rents") and including the benefit of all covenants, stipulations and provisions contained in the Leases;

all of such mortgages and charges hereby constituted being sometimes collectively called the "Security" and the subject matter of the Security being sometimes called the "Charged Premises".

TERM AND DEFEASANCE:

3. This Charge is to be void upon the payment of the sum of the Principal Sum, in lawful money of Canada, and all of such other sums as the Chargee may be entitled to by virtue of these presents; and is payable on demand; and all taxes and performance of statute labour, and observance and performance of all covenants, provisos and conditions herein contained.

FURTHER ASSURANCES

4. The Chargor hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, pledges, deeds, mortgages, hypothecs, transfers, assignments and assurances in law or equity as the Chargee may reasonably require for the better assuring, mortgaging, hypothecating, charging, transferring, assigning and confirming unto the Chargee and for perfecting the security interests hereby created in the undertaking, property and assets hereby mortgaged and charged or intended so to be or which the Chargor may hereafter become bound to mortgage, hypothecate, transfer, assign and charge in favour of the Chargee and for the better accomplishing and effectuating of this Charge.

CHARGOR'S COVENANTS

5. The Chargor covenants and agrees with the Chargee that:

- (a) The Chargor shall keep the Property in good condition and repair such that the value of the Property is not materially adversely affected in any way.
- (b) The Chargor shall pay the principal, interest and all other monies properly due and owing under the Indemnity Agreement and secured by this Charge and will pay or cause to be paid as they fall due all taxes, rates and assessments, municipal, local, parliamentary and otherwise, which now are or may hereafter be imposed, charged, or levied upon the Property and further, to deliver to Chargee on an annual basis, evidence of payment of realty taxes by the Chargee.
- (c) The Chargor shall comply with all governmental, statutory or regulatory requirements and any permitted encumbrances related to the Property.
- (d) The Chargor shall permit the Chargee, whenever the Chargee deems it necessary, by its agent to enter upon and inspect the Property.
- (e) The Chargor will at its own expense forthwith insure, if not already so insured, and during the continuance of this Charge keep insured in the name of the Chargor, with loss payable to the Chargee as its interest may appear, the Property and each and every building, structure, erection, improvement, fixture or replacement thereof, including without limiting the generality of the foregoing, all plant, equipment, apparatus, machinery and fixtures of every kind and nature whatsoever now on the Property but which may hereafter be erected thereon, both during erection and thereafter (all of the foregoing being collectively the "Premises") in such amounts as the Chargee may from time to time specify but in any event in an amount not less than the full insurable replacement value thereof on a completed value basis, in lawful money of Canada, with a company or companies and by a policy or policies of insurance approved by the Chargee, against all risks of direct physical loss with only such exclusion as the Chargee may approve and, in addition, without limiting the generality of the foregoing, the Chargor shall maintain rental insurance, boiler insurance and insurance against liability imposed for damages, loss or injury to or death of persons or for damage to or loss of property of any person, in such amounts as will in the opinion of the Chargee reasonably protect the Chargor against such losses. If the Property has no insurable structures thereon such insurance will not be required. Such insurance shall, during the course of construction, be in builders "all risk" course of construction form. Such insurance policy shall either be without co-insurance or have a stated or stipulated amount co-insurance clause for an amount equal to the principal amount secured pursuant to this Charge, together with the principal amount of any permitted prior encumbrances. All policies of insurance required hereby shall contain "mortgage clauses" in favour of the Chargee in a form approved by the Chargee acting reasonably.
- (f) The Chargor shall maintain its corporate existence, and further shall promptly provide written notice to the Chargee of any default respecting any obligations or liabilities of the Chargor.
- (g) The Chargor shall promptly pay the full amount of:
 - (i) all liens, charges and encumbrances upon the Charged Premises;
 - (ii) all reasonable charges or expenses of the Chargee in inspecting, protecting or valuating the property at any time after realization proceedings have been commenced; and
 - (iii) all costs, fees and disbursements secured by this charge.
- (h) The Chargor will pay or cause to be paid as soon as the same are due all claims and demands of contractors and materialmen and all wages, salaries, holiday pay, Worker's Compensation assessments or other charges of any nature or kind (collectively the "Claims"), which could in the circumstances constitute a lien or charge having priority over this Charge or any future advance to be secured by this Charge and the Chargor will from time to time on demand provide the Chargee with such books, payrolls, or other records, receipts, certificates and declarations as the Chargee may deem necessary to satisfy itself that the Claims have been paid as soon as the same are due.
- (i) The Chargor shall forthwith on the happening of any loss or damage, furnish at its own expense all necessary proofs and do all necessary acts to enable the Chargee to obtain payment of the insurance monies; and any insurance monies received may, at the option of the Chargee, be applied in rebuilding, reinstating or repairing the Charged Premises or be paid to the Chargor or any other person appearing by the registered title to be or to have been the owner of the said Charged Premises or to be applied or paid partly in one way and partly in another, or may be applied, in the sole discretion of the Chargee, in whole or in part, on the principal and interest or other monies owing under this Charge then due, or any part thereof, whether due or not then due, notwithstanding any law, equity or statute to the contrary, all rights and benefits of the Chargor thereunder being hereby expressly waived.
- (j) The Chargor, immediately upon obtaining knowledge of the institution of any proceedings for the expropriation of the Charged Premises, or any part thereof, will notify the Chargee of such proceedings. If the Charged Premises, or any part thereof is taken or damaged in or by such expropriation proceedings or otherwise, the award or compensation payable to the Chargor shall be paid and is hereby assigned to the Chargee.
- (k) The Chargor, within ten (10) days after receipt of the request to do so, shall certify to the Chargee or any person designated by the Chargee the amount of principal then due hereunder, the date to which interest is paid, that it has no right of set-off against the monies due hereunder, or if it has such a right of set-off, the amount thereof, and that there have been no amendments hereto or, if there has been any such amendment, specifying it. The Chargee shall, upon request, provide mortgage statements to the Chargor within ten (10) days after receipt of such request.

- (l) The Chargor shall obey or cause to be obeyed all laws, rules, regulations and by-laws, whether federal, provincial or municipal, which in any way relate to the Charged Premises or the use thereof.
- (m) All representations and warranties herein shall remain true and of full force and effect throughout the entire term of this Charge.
- (n) The Chargor shall keep the Charged Premises in good condition and repair according to the nature and description thereof respectively, and that the Chargee may, whenever it deems it necessary, by its agent enter upon and inspect the Property and the Charged Premises and make such repairs as it deems necessary, and the reasonable cost of such inspection and repairs with interest at the rate or rates aforesaid shall be added to the monies secured by this Charge and be payable forthwith and be a charge upon the Property prior to all claims thereon subsequent to these presents. If the Chargor shall neglect to keep the Charged Premises in good condition and repair, or commit or permit any acts of waste on the Charged Premises (as to which the Chargee shall be sole judge) or make default as to any of the covenants, provisos, agreements or conditions contained in this Charge or in any mortgage to which this Charge is subject, all monies hereby secured shall at the option of the Chargee forthwith become due and payable, and in default of payment of same with interest as in the case of payment before maturity the powers of entering upon and leasing or selling hereby given and all other remedies herein contained may be exercised forthwith.
- (o) The Chargor shall not further encumber the Property without the Chargee's prior written consent, such consent not to be unreasonably withheld or unduly delayed.
- (p) The Chargor shall keep the Permitted Encumbrances as defined herein in good standing. "Permitted Encumbrances" are defined in Schedule "A" hereto.
- (q) In the event that the Chargor commits an act of default pursuant to the provisions contained in any encumbrance on the Charged Premises ranking equally with or in priority to this Charge, the Chargor shall be deemed to have committed an event of default hereunder and the Chargee shall be entitled to exercise any and all remedies herein contained.

PROVISOS

- 6. Neither the preparation, execution nor registration of this indenture shall bind the Chargee to advance the money hereby secured, nor shall the advance of a part of the monies hereby secured bind the Chargee to advance any unadvanced portion thereof, but nevertheless the estate hereby conveyed shall take effect forthwith upon the execution and delivery of these presents by the Chargor, and the expenses of the examination of the title and of this Charge and of valuation are to be secured hereby in the event of the whole or any balance of the principal sum not being advanced, the same to be a charge hereby upon the Property, and shall be without demand therefor, payable forthwith with interest at the rate or rates provided for in this Charge, and in default, the Chargee's power of sale hereby given, and all other remedies hereunder shall be exercisable.

OUTSTANDING TAXES

- 7. The Chargee may, at its option, deduct from any advance of the monies secured by this Charge an amount sufficient to pay any taxes which have become due and payable as at the date of such advance. The Chargor shall transmit to the Chargee the copies of the tax bills and other notices affecting the imposition of taxes forthwith after the receipt of same by the Chargor.

ASSIGNMENT OF CHARGE BY CHARGE

- 8. The Chargee, without the consent of the Chargor, may assign in whole or in part, this Charge and the benefit of all covenants of the Chargor as therein and herein contained, provided that the security and obligations to which this Charge is collateral is also assigned.

DISCRETION OF CHARGE RESPECTING TERMS UNDER CHARGE

- 9. The Chargee, in its discretion and with the consent of the Chargor, may enter into an agreement with the Chargor or with anyone who has assumed this Charge to grant an extension of time; or to change the rate of interest; or to alter in any way the terms of payment of this Charge; or take any additional security, or waive the performance of any covenant herein; and may compound with or release the Chargor or anyone claiming under the Chargor or any other person or persons liable hereunder; or surrender, release or abandon or omit to perfect or enforce any security, remedy or proceeding which the Chargee may now or hereafter hold or have; and may take, acquire or discharge either with or without payment part or all of the said Property and may apply all monies received from the Chargor or others or from any security upon such part of the monies hereby secured as the Chargee may think best, without prejudice to or in any way limiting or lessening the liability of the Chargor, any guarantor or any other person liable for payment. The Chargee shall incur no liability to any person by reason of anything aforesaid, and any agreement or liability aforesaid shall continue in full force as long as any money remains unpaid on this Charge, but the Chargee shall not be bound to exhaust its recourses against the Chargor or other parties, or the security it may hold, before being entitled to payment from any guarantor of the amounts secured hereby.

REAL ESTATE COVENANTS

- 10. (a) The implied covenants deemed to be included in the mortgage under sub-section 7(1) of the Land Registration Reform Act, 1984 shall be and are hereby expressly excluded and replaced by the schedule which are covenants by the Chargor and the Chargor's successors with the Chargee and the Chargee's successors and assigns.
- (b) The Chargor covenants that it has good registered title in fee simple to the Property and has the right to charge the Property to the Chargee as herein provided.

- (c) On default the Chargee shall have quiet possession of the Property free from all encumbrances, except as disclosed by the records of the land registry office.
- (d) The Chargor has done no act to further encumber the Property, except as disclosed by the records of the land registry office.

DISTRESS

11. The Chargee may distrain for arrears of interest. The Chargee may distrain for arrears of principal in the same manner as if the same were arrears of interest.

SECURITY WITH RESPECT TO LEASES AND RENTS

- 12. (a) Nothing herein contained shall be deemed to have the effect of making the Chargee responsible for the collection of the Rents or any part thereof or for the performance of any covenants, terms and conditions either by the lessor or by the lessee contained in the Leases and the Chargee shall not by virtue of these presents be deemed a mortgagee in possession of the Property or any of them and that this mortgage shall not of itself create the relationship of landlord and tenant between the Chargee and any lessee.
- (b) The Chargee shall be liable to account for only such monies as shall actually come into its hands by virtue of these presents and that such monies when received by the Chargee shall be applied on account of the monies from time to time due under the primary instruments of indebtedness.
- (c) Nothing herein contained shall be deemed to be a consent on the part of the Chargee to the payment of rent in advance by the lessees or to an alteration of the terms of the Leases without the consent of the Chargee, whether or not a demand has occurred provided that the Chargor is acting in the normal course of its business.
- (d) The Chargee may waive any default or breach of covenant herein and shall not be bound to serve any notice upon the lessees upon the happening of any default or breach of covenant but any such waiver shall not extend to any subsequent default or breach of covenant.
- (e) Until default, the Chargor shall be entitled to receive the Rents and shall not be liable to account therefor to the Chargee; provided, however, after such demand the Chargee shall be entitled to collect all rents falling due subsequent to the date of service of the notice of demand.

DEFAULT

- 13. (a) If default shall be made in payment of any sum to become due for interest at any time appointed for payment thereof as aforesaid, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate or rates aforesaid, and in case the interest and compound interest are not paid within one month from the date of default, a rest shall be made and compound interest at the rate or rates aforesaid shall be payable on the aggregate amount then due, as well after as before a maturity and so on from time to time, and all such interest and compound interest shall be a charge upon the Property.
- (b) On default of payment for at least fifteen (15) days, the Chargee may on at least thirty-five (35) days' notice enter on and lease the Property or on default of payment for at least fifteen (15) days may on at least thirty-five (35) days' notice sell the Property. Such notice shall be given to such persons and in such manner and form and within such time as provided in the Mortgages Act (Ontario), as amended, and in accordance with paragraph 15 hereof. Provided further, without prejudice to the statutory powers of the Chargee under the foregoing, that in case default be made in the payment of the said principal or interest or any part thereof and such default continues for two (2) months after any payment of either falls due, then the Chargee may exercise the foregoing powers of entering, leasing or selling or any of them without any notice, it being understood and agreed, however, that if the giving of notice by the Chargee shall be required by law, then notice shall be given to such persons and in such manner and form and within such time as is so required by law. The whole or any part or parts of the Property may be sold by public auction or private contract or partly one or partly the other, and the proceeds of any sale hereunder may be applied in payment of any costs, charges and expenses incurred in taking, recovering or keeping possession of the Property or by reason of non-payment or procuring payment of monies secured hereby or otherwise. The Chargee may sell the Property or any part thereof on such terms as to credit and otherwise as shall appear to it most advantageous and for such prices as can reasonably be obtained therefor and make any stipulations as to title or evidence or commencement of title or otherwise which it shall deem proper, and may buy in or rescind or vary and contract for the sale of the whole or any part of the Property and resell without being answerable for loss occasioned thereby, and in the case of a sale on credit, the Chargee shall be bound to pay the Chargor only such monies as have been actually received from purchasers after the satisfaction of the claims of the Chargee and for any of the said purposes may make and execute all agreements and assurances as it shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease or be affected by express notice that any sale or lease is improper and no want of notice or publication when required hereby shall invalidate any sale or lease hereunder.

RECEIVER

14. The Chargee may by writing under the hand of any solicitor or agent authorized on its behalf, upon any default whatsoever on the part of the Chargor in payment of any principal, interest or any other monies owing hereunder, or in the observance of any of the covenants and conditions herein contained, appoint a Receiver or Manager, or Receiver and Manager, or Receiver-Manager (the "Receiver") of the Property or any portion thereof, and every such Receiver shall be deemed the agent of the Chargor, and the Chargor shall be solely responsible for the acts

or defaults of the Receiver save and except for fraud and wilful misconduct and the Receiver shall have power to demand, recover and receive all the income of the Property of which he may be appointed Receiver, by action, distress or otherwise, either in the name of the Chargor or the Chargee, and may give effectual receipts therefor.

Every such Receiver may in writing at the discretion of the Chargee complete the construction of any uncompleted structure substantially in accordance with the Chargor's plans and specifications respecting the Property or carry on the business of the Chargor relating to the said Property or any part thereof and may exercise all the powers conferred upon the Chargee hereunder. The Receiver may be removed in which case and if any Receiver dies or refuses to act or becomes incapable of acting, a new Receiver may be appointed from time to time by the Chargee by writing under the hand of any authorized solicitor or agent as aforesaid. The Chargee may from time to time fix the remuneration of every such Receiver and may recompense every such Receiver for his disbursements properly incurred in carrying out his duties, and his fees and such payments shall be a charge upon the Property, shall be payable on demand and shall bear interest at the rate or rates hereunder.

The Chargee shall not be deemed to be a mortgagee in possession and shall not be accountable except for the monies actually received by it, and the person paying money to or in any way dealing with the Receiver shall not be concerned to enquire whether any cause has happened to authorize the Receiver to act. Subject to the retention of his remuneration and disbursements as aforesaid, the Receiver shall apply all monies received by him in such of the following modes and in such order or priority as the Chargee may from time to time at its option direct in writing, namely, in discharge of all rents, taxes, assessments and outgoings whatsoever affecting the said Property; and in payment of any amounts due under any mortgage or lien; and in payment of any premiums on fire or other insurance, if any, properly payable under this Charge, payment of which is directed or confirmed in writing by the Chargee; and in payment of the costs of executing necessary or proper repairs to the said Property or any part hereof, directed or confirmed in writing by the Chargee; and in payment of the costs of carrying out or executing any of the powers, duties or discretions which vest in or may be vested in the Receiver by reason of the provisions contained in this sub-paragraph; and in payment of the interest accruing due under this Charge, and in or towards the discharge of the principal money or any instalments under this Charge, if and to the extent directed in writing by the Chargee; and shall pay the residue, if any, out of the money received by him to the person who but for the possession of the Receiver would have been entitled to receive the income of which he is appointed Receiver.

REMEDIES CUMULATIVE

15. No remedy herein conferred upon or reserved to the Chargee is intended to be exclusive of any other remedy or remedies hereunder or under any security collateral hereto, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given by this Charge or any other security collateral hereto or now or hereafter existing at law or in equity or by statute. Every power and remedy given by this Charge to the Chargee may be exercised from time to time as often as may be deemed expedient by the Chargee.

DISCHARGE

16. Upon full satisfaction of all principal, interest and other monies secured hereby and the due performance of all covenants herein by the Chargor, the Chargee shall, within a reasonable time thereafter, execute a discharge of this Charge. All legal and other expenses for the preparation, execution and registration of such discharge shall be borne by the Chargor.

SEVERABILITY

17. If any one or more of the provisions contained in this Charge shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any or all other provisions of this Charge, and this Charge shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

DUE ON SALE, TRANSFER

18. In the event the Chargor sells, conveys, transfers or assigns the Property to a purchaser, transferee or an assignee, without first obtaining the consent of the Chargee in writing, at the option of the Chargee all monies secured by the within Charge shall become due and payable upon demand. A sale to an arms length purchaser of a unit to be constructed on the Property is not deemed to be a transfer or assignment within the meaning of this provision.

NO FURTHER CHARGE/ENCUMBRANCE

19. In the event that the Chargor further charges, mortgages or encumbers the Property in any way without first obtaining the written consent of the Chargee, then at the option of the Chargee all monies secured by this Charge shall become due and payable on demand.

NOTICE

20. Any and all written notices or written communications given or required to be given to a party hereunder may be delivered or, provided postal services shall not be interrupted, mailed by registered mail or sent by telegraph, telex or similar telecommunication device, and shall be deemed: (i) in the case of delivery to such party to have been duly given when the same is personally delivered to an officer of such party; (ii) if addressed to such party at its address for service as set forth on the first page of this document.

(a) in the case of dispatch by registered mail, to have been duly given at 5:00 in the afternoon (local time of the sender) on the second day after the day the same was deposited with the post office (or the first business day thereafter if such second day is a holiday or other non-business day); and

(b) in the case of dispatch by telegraph, telex or similar telecommunication device, to have been given the day after the day on which it is deposited for dispatch in a public office for organization of such telegram, telex or

similar telecommunication device or the business day after the day on which it is dispatched if dispatched by means of private telex or other telecommunication device.

For the purposes of the foregoing, the address for notice of each of the parties hereto shall, until changed by notice in writing by such party to the other parties, be as set out on the first page of the Charge to which this Schedule is attached.

NON-MERGER

21. It is agreed that the taking of this security shall not operate as a merger of the remedies of the Chargee for payment of the Indebtedness of the Borrower or of the remedies of the Chargee under the Commitment Letter, and notwithstanding these presents and anything herein contained the said remedies shall remain intact and be capable of enforcement against the Chargor and all other persons liable in respect thereof in the same manner and to the same extent as if these presents had not been executed, and that these presents are and shall be a continuing security to the Chargee for the amount of the Indebtedness and interest thereon, and that this Charge shall be deemed to be taken as security for the ultimate balance of the Indebtedness.

APPLICATION OF PROCEEDS

22. And it is further agreed that any and all payments made in respect of any monies hereby secured and the monies or other proceeds realized from any securities held therefor (including this Charge) may be applied, and re-applied notwithstanding any previous application, on such part or parts of the said liability under the Commitment Letter as the Chargee may see fit.

PARTIAL DISCHARGES

23. Provided that this Charge is in good standing, the Chargor shall have the privilege of obtaining from the Chargee, without payment therefor, partial discharge (s) of part or parts of the Property as set out and for the purposes stated in Schedule "B" hereto.

PLANNING ACT COMPLIANCE

24. Provided that the Chargee may at its discretion, subject to the provisions of the Planning Act, R.S.O.1990, Chapter P.13, at all times release any part or parts of the said lands either with or without any sufficient consideration therefor, without responsibility therefor and without thereby releasing any other part of the said lands or any person from this Charge or from any of the covenants herein contained and without being accountable to the Chargor for the value thereof or for any money except that actually received by the Chargee; it being expressly agreed that every part or lot into which the charged lands are or may hereafter be divided does and shall stand charged with the whole money secured; and that the Chargee may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any and all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Chargor and all other persons and securities as the Chargee may see fit without prejudicing the rights of the Chargee under this Charge.

SALE OF EQUITY OF REDEMPTION

25. Provided that no sale or other dealing by the Chargor with the equity of redemption in the said lands or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any other person liable for payment of money hereby secured.

QUIET POSSESSION PRIOR TO DEFAULT

26. Provided that until default the Chargor shall have quiet possession of the Property.

INTERPRETATION

27. In construing these presents the word "Chargor" and the personal pronoun "he" or "his" relating thereto and used therewith, shall be read and construed as "Chargor" or "Chargors", "he", "she", "it" or "they" and "his", "her", "its" or "their" respectively, as the number and gender of the person or persons referred to in each case require, and the number of the verb agreeing therewith shall be construed as agreeing with the said word or pronoun so substituted; all rights, advantages, privileges, immunities, powers and things hereby secured to the Chargee shall be equally binding upon the Chargor's heirs, executors, administrators and assigns or successor and assigns as the case may be; all such covenants, liabilities and obligations shall be joint and several; time shall be of the essence hereof; the headings herein shall not be a guide to the interpretation of this Charge and shall not define, restrict or limit any term or provision hereof; and all provisions hereof shall have effect notwithstanding any statute to the contrary.

SHORT FORM OF MORTGAGES ACT

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

RECEIPT

29. The Chargor acknowledges having received a true copy of this Charge.

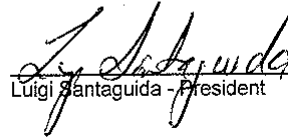
HEADINGS

30. The headings of the paragraphs hereof are inserted for convenience of reference only and shall not affect the interpretation or construction of this Charge.

IN WITNESS WHEREOF the Chargor has caused this Charge to be executed under its corporate seal by its duly authorized officers in that behalf on the date noted on page one of Schedule "2" hereof.

2203284 ONTARIO INC.

Per: _____


Luigi Santaguida - President

I have the authority to bind the corporation.

SCHEDULE "A"

PERMITTED ENCUMBRANCES

<u>Instrument No.</u>	<u>Date</u>	<u>Instrument</u>
VM60787	September 7, 1990	Historical Easement Agreement between The Trustees of James Street Baptist Church and The Corporation of the City of Hamilton.
VM111553	February 17, 1992	Notice of Claim in favour of The Trustees of The James Street Baptist Church re easement for light.
WE903381	June 13, 2013	Charge from the Chargor to and in favour of Mary Lou Santaguida (the "Santaguida Charge"). The Santaguida Charge is permitted provided that it and all related security is fully postponed to and in favour of this Charge.

SCHEDULE "B"

Provided that the Chargor when not in default hereunder shall have the privilege of obtaining from the Chargee upon ten (10) business days' notice therefor, the consent in writing of the Chargee or, where applicable, (1) partial discharges of this Charge or such portions of the lands described hereunder as are required by the Chargor to be dedicated or conveyed to any municipal or governmental authority or agency including road or park dedications; and (2) all documents which may be reasonably required by the Chargor for the purposes of servicing and development of the subject lands including, postponements of this Charge, easements, rights of way, subdivision and development agreements, Planning Act proceedings, provided:

1. That the partial discharge(s) and documents referred to herein are in compliance with the part lot control and subdivision control provisions of the Planning Act; and
2. That such partial discharge(s) and consent(s) will not, in the reasonable opinion of the Chargee's counsel or the Chargee, materially or adversely affect this Charge or the value of the lands charged hereunder; and
3. That the Chargee does not incur any liability thereunder; and
4. That any execution of any such partial discharge or other document by the Chargee is to the extent only of its interest in this Charge;
5. That any consideration payable to the Chargor for such partial discharge or other document shall be paid to the Chargee in reduction of the principal and interest owing hereunder.

IF APPLICABLE, WITH RESPECT TO A PROPERTY BEING DEVELOPED AS A CONDOMINIUM:

Provided that the Chargor when not in default hereunder shall have the privilege, upon thirty (30) days' notice to the Chargee or obtaining a partial discharge of each proposed unit and ancillary parking and locker units, if any, comprising the subject lands (and each actual unit and ancillary parking and locker units as and when the lands are registered under the Condominium Act) without payment of account of principal provided that the following conditions are all complied with, namely:

1. That the partial discharge(s) referred to herein are in compliance with the part lot control and subdivision control provisions of the Planning Act; and
2. That the subject lands are registered as a condominium under the Condominium Act; and
3. That the Chargor delivers or causes to be delivered to a purchaser of such unit(s) a registrable transfer and conveyance of such unit(s); and
4. That the said purchaser registers or causes to be registered on title such transfer and conveyance; and
5. That the Chargee is furnished with a photocopy of the duplicate registered copy of such transfer and conveyance.

A partial discharge from this Charge of any unit or other lands shall automatically constitute and be a discharge from all security documents (excluding guarantees) as may be registered on the title to the charged lands or as recorded under the Personal Property Security Act.



September 16, 2014

2203284 Ontario Inc.
104-93 Skyway Avenue
Toronto, Ontario
M9W 6N6

Attention: Mr. Louie Santaguida

Dear Sir:

Re: Tarion Warranty Corporation Bond Facility
For: 2203284 Ontario Inc.
Project: Located at 98 James Street South, Hamilton, Ontario
and known as "The Connolly"

The Guarantee Company of North America ("The Guarantee") has reviewed your application for a Tarion Bond Facility and is prepared to support your project subject to your acceptance of all terms and conditions outlined in this Commitment Letter.

ENTITY BONDED:

The entity named on the Bond will be **2203284 Ontario Inc.** (hereinafter referred to as the "**Principal**"), which entity shall also be the Vendor and Declarant of this condominium project.

BOND FACILITY:

To assist with the registration of the Principal and the project with Tarion Warranty Corporation ("Tarion"), The Guarantee will provide a Tarion Bond ("**Bond**") in the amount of **\$5,180,000 (\$20,000 x 259 units)**.

PROJECT DESCRIPTION:

A 30 storey, 259 unit residential condominium building with 3 levels of underground parking, 98 parking spaces, located at 98 James Street South in Hamilton, Ontario, and known as "The Connolly" (hereinafter referred to as the "**Project**").

BROKER:

Marsh Canada Limited

Page 1 of 8

Excellence, Expertise, Experience ... Every time

The Guarantee Company of North America
4950 Yonge Street, Suite 1400, Madison Centre
Toronto, ON M2N 6K1
Tel 416-223-9580 • Fax 416-223-6577 • 1-800-268-6617
gcn.com

FEES AND PREMIUMS:***Commitment Fee:***

A non-refundable commitment fee of **\$2,500** shall be due and payable and deemed earned upon acceptance of this Commitment Letter.

Premium:

The premium charged for the Bond will be based on the annual rate of **0.75%**. The premium for this Bond is **\$38,850** ($\$5,180,000 \times 0.75\%$) and will be payable on or prior to the date the Bond is released to the Principal for delivery to Tarion. All future premiums will be billed at this rate, unless stipulated otherwise and will be payable as of the invoice date.

After condominium registration and at the expiry of the next bond invoice term, The Guarantee will entertain reducing the premium term to a minimum of three (3) month term. Should any further reductions in the Bond take place during the reduced terms, adjustments will be considered at the next premium term renewal.

The minimum premium on any invoice will be \$250.

THE GUARANTEE'S LEGAL WORK:

The Principal acknowledges and accepts that the law firm selected to act for The Guarantee with respect to registration of its security and other matters shall be Mr. David Spencer of Schneider Ruggiero LLP. The Guarantee reserves the right to appoint another solicitor as a replacement for or successor to Mr. Spencer.

The Principal shall be responsible for full payment of all legal fees and disbursements when invoiced by this firm. The Principal shall pay all costs with respect to preserving The Guarantee's rights under its mortgage security including all defense costs of any construction lien actions incurred by or on behalf of The Guarantee.

DEPOSIT TRUSTEE:

The Principal has advised that Schneider Ruggiero LLP (hereinafter referred to as "Deposit Trustee") shall hold in trust all amounts paid on account of the purchase price under a condominium agreement of purchase and sale with respect to the Project ("Deposits") in accordance with a Deposit Trust Agreement ("DTA") between The Guarantee, the Principal and the Deposit Trustee, as well as the law firm acting as Deposit Trustee is not to be changed without prior written notice to and consent of The Guarantee and the Condominium Act, S.O. 1998 c.19, as amended, and the regulations made thereunder (hereinafter referred to as the "Act") and any other applicable legislation.

THE GUARANTEE SECURITY:

As evidence of and general continuing collateral security for the payment of present and future indebtedness, obligations and liabilities of the Principal to The Guarantee, the following security (hereinafter referred to as "**Security Documents**") shall be provided to The Guarantee.

Indemnity Agreement:

The Principal consents to provide the unlimited, joint and several indemnities of the Corporations and people as noted below in The Guarantee's standard form, along with other resolutions, etc. deemed necessary by The Guarantee's solicitor.

- 2203284 Ontario Inc.
- *Marylou Santaguida

*Marylou Santaguida will be released and replaced by Luigi Santaguida once the judgement by Bank of Montreal in the approximate amount of \$239,000 has been released and The Guarantee has confirmed that there is no other change in the financial status of Luigi Santaguida that would affect his ability to act as indemnitor.

Deposit Trust Agreement:

The Principal shall execute a Deposit Trust Agreement in The Guarantee's standard form which outlines the control and operation of the trust account into which all deposits will be held.

The Guarantee shall require a first charge and security interest over the trust account and in those deposits contained with that trust account and will require a Financing Statement under the Personal Property Security Act (hereinafter referred to as "PPSA") registered in first position for a term not less than 10 years.

Should prior PPSA registrations exist, The Guarantee shall receive from those parties with prior registrations a postponement and subordination of their position to the The Guarantee security interest in the deposits in a form satisfactory to The Guarantee.

Collateral Mortgage:

The Principal consents to providing The Guarantee with a collateral **second** mortgage on the subject project in the amount of **\$5,180,000**. The Guarantee will require an opinion from its solicitor that it has a valid and enforceable charge over the property relating to the Project.

The Guarantee shall fully postpone and subordinate its mortgage to the Construction Lender. The Principal shall not further encumber the Project other than all municipal agreements and easements that may be required in connection with the Project unless approval is given in writing by The Guarantee.

The Principal shall provide evidence of all risk insurance including course of construction, business interruption, earthquake and flood. The policy(s) shall provide for a full replacement cost on all buildings, equipment, and inventory owned by the Principal and located at the project or located elsewhere and reasonably necessary for the effective implementation, management and administration of the project. Insurance is to include public liability coverage at least equal in scope to commercial general liability form as well as a soft cost endorsement. The Certificate of Insurance evidencing both Builder's Risk and Wrap-up Liability shall note the Construction Lender as First Mortgagee and loss payee, then The Guarantee as Second Mortgagee and loss payee as per The Guarantee's collateral mortgage document.

The Guarantee will discharge its collateral mortgage upon the final closing of units and the discharge will be provided at no charge to the Principal, other than legal fees associated with the preparation and discharge of The Guarantee's mortgage, payment of which shall be the Principal's responsibility. The Guarantee shall require evidence of transfer of title from the Principal/Declarant to purchasers as a condition of discharge.

Upon full payment of any prior encumbrances to The Guarantee's mortgage, and at The Guarantee's sole discretion, The Guarantee may require as a condition of executing further partial discharges of additional sold and/or unsold units, the sale revenues from those units to be retained in trust as added security for any outstanding bonds and/or policies.

Prior to the execution of a partial discharge for any units in the Project after the full payment of any prior encumbrances to The Guarantee's mortgage, The Guarantee will require payment in an amount sufficient to bring the trust account balance equal to the face amount of the Tarion Bond. All amounts retained by The Guarantee shall be held as security against any warranty obligations under the Tarion Bond and shall be returned to the Principal upon return of the Tarion Bond to The Guarantee for cancellation, less any costs incurred by The Guarantee on behalf of the Principal.

Additional Security:

The Principal consents to provide The Guarantee with all such other certificates, documents and opinion as The Guarantee or its solicitors shall reasonably require.

PURCHASERS' DEPOSITS RELEASE TERMS:

All purchaser deposits to remain in the Trust Account.

GENERAL CONDITIONS:

The Principal agrees to fulfil and satisfy the following conditions:

Additional Underwriting Information:

The Principal shall provide The Guarantee with the additional underwriting information outlined in Schedule A to this letter, as well as any additional underwriting information that is subsequently deemed required by The Guarantee. Receipt of such information is a condition precedent to the finalization of this agreement, and the underwriting information is to be satisfactory to The Guarantee in its sole discretion.

The Condominium Act:

The Principal covenants and agrees to comply at all times with the provisions and requirements of the Condominium Act, S.O. 1998 c.19, as amended, and the regulations made thereunder.

Tarion Warranty Corporation:

The Principal shall provide The Guarantee with a copy of its Builder Registration Certificate once the Bond has been given to Tarion.

The Principal shall continue to maintain registration with Tarion so long as there are unsold units and it shall comply with all aspects of the Ontario New Home Warranties Plan Act, its regulations and bulletins issued pursuant thereto until such time Tarion returns the Bond to The Guarantee.

If the Project is governed under Tarion Builder Bulletin No.19, the Principal undertakes and agrees to authorize the Field Review Consultant to provide The Guarantee with copies of all reports.

Should the risk assessment determined by Tarion for the Principal change during the period of time the Bond is outstanding, the Principal undertakes to notify The Guarantee immediately of the new risk assessment. The Guarantee reserves the right to increase its security accordingly.

The Principal and/or solicitor agree to provide upon final closings of sales, information to Tarion to facilitate the release/reduction of the Bond in accordance with Tarion Builder Bulletin No. 19 and No. 28.

The Principal undertakes to provide The Guarantee with any information or notices required under Tarion Builder Bulletin No. 47.

Tarion's Authorization to provide Project Information:

The Principal shall execute an Authorization directing Tarion to provide The Guarantee with any information that may alter The Guarantee's exposure under the Bond.

Purchaser Release, Assignment and/or Default:

The Principal, when allowing a purchaser to cancel a purchase and sale agreement, shall require the purchaser to execute a Mutual Release and Termination Agreement in The Guarantee's prescribed format as a condition of requesting the deposit to be released from the Trust Account. Should the purchaser's deposit be already insured and released from trust to the Principal, the Principal shall be solely responsible for paying the deposit refund and shall supply The Guarantee with a copy of the negotiated refund cheque.

For purchasers of units who are in default, the Principal shall notify The Guarantee of the default and request permission to remarket the unit. All deposits from the defaulting party shall remain in trust until The Guarantee is satisfied the dispute has been settled. If the deposit monies from the defaulting purchaser have been released to the Principal, deposit monies from new purchasers shall remain in trust until The Guarantee is satisfied the dispute has been settled with the original purchaser.

Should the Principal permit the assignment of a purchase and sale agreement to another party, the Principal agrees to obtain a release in favour of Tarion and The Guarantee and provide details of the assignment to The Guarantee as a condition of insuring the new party's deposit. Additional premium shall be charged should the new deposit be insured and released from trust.

Project Financing:

The Principal shall provide The Guarantee with copies of all discussion papers and the final accepted construction loan financing commitment. The terms of those commitments and the selection of the Construction Lender for the project shall be satisfactory to The Guarantee and permit the project to be completed in a timely manner. If the terms of the said commitment do not contemplate the facility provided by The Guarantee or do not compliment the facility provided by The Guarantee, all terms in this facility shall either be re-negotiated or terminated.

Project Construction and Bonding of Major Trades:

The Principal shall notify The Guarantee of any key construction staff changes and/or changes in the plans regarding the retention of a General Contractor or Construction Manager from those that were contemplated and revealed to The Guarantee prior to these terms being offered.

The Principal has advised that the Project will be built by YYZed Project Management who is the registered Builder with Tarion (No.37614).

The Principal acknowledges that under its Tarion Builder Agreement, it shall indemnify Tarion for all claims relating to the building envelope, mechanical and electrical systems for two years after condominium registration. The Guarantee strongly recommends that any major trades involved in these areas provide the Principal contract performance and labour and material payment bonds with a two year maintenance period to offset any liability for deficiencies which may be determined in the first year of condominium performance audit.

The Guarantee reserves the right to request the Bond be replaced by an alternate standard security as prescribed by Tarion at the commencement of the construction phase.

Project Monitoring:

The Principal agrees to authorize the cost consultant to provide copies of all reports to The Guarantee as and when provided to the Construction Lender. Both the cost consultant firm and the content of the report shall be acceptable to The Guarantee for the purposes of fulfilling its obligations under this bonding facility.

Occasionally, The Guarantee may request its own project status report, which is to be completed with basic sales, closing and construction information. The Principal undertakes to complete and return those reports on a timely basis.

Representatives of The Guarantee shall be entitled to, subject to reasonable prior notice, attend and inspect the bonded project.

The Principal also undertakes and agrees to provide The Guarantee with a copy of professional liability coverage of all architects/engineers, the amount and form of which is to be approved by The Guarantee.

Financial Reporting:

The Principal and each of the corporate Indemnitors listed in the Indemnity Section above, agree to provide The Guarantee with year end financial statements as they are produced but not later than 180 days after their fiscal year end. If applicable, personal Indemnitors shall arrange to supply The Guarantee with updated net worth statements annually.

Material Change:

If at any time prior to the execution and/or release of any Bond or policy or release of deposits from trust, The Guarantee determines there is a material adverse change or implication to the information that the Principal had previously supplied to The Guarantee, including, but not limited to, project viability, ownership of the project or financial ability of the Principal and/or the Indemnitors, The Guarantee may suspend the issuance of bonds or policies, releases of monies from trust or the discharge or termination of The Guarantee's Security Documents until the matter is resolved to the satisfaction of The Guarantee.

Consent and Acknowledgement to Collection, Use and Disclosure of Information:

The Principal and all Indemnitors consent to The Guarantee obtaining from any person or company, including Credit Reporting Agencies, any information, including personal information, that The Guarantee may require at any time to facilitate the delivery of bonds and policies contemplated under this surety facility. The Principal and all Indemnitors further consents to the disclosure of this information to any credit grantor or reinsurer by The Guarantee if The Guarantee is requested to do so.

Electronic Execution of Documents:

Each of the parties hereto further acknowledges and agrees that this Commitment Letter may be executed in any number of counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Counterparts may be executed and delivered by facsimile or other form of electronic transmission and shall have the same legally binding effect as if they were an original; provided, however that any party providing its signature in such manner shall promptly forward to the other parties an original of the executed copy of this Agreement which was so faxed or electronically transmitted.

All of the above terms and conditions are strictly confidential and neither the Principal nor any Indemnitor shall disclose the contents hereof without the prior written consent of The Guarantee. Failure to observe this condition may result in either The Guarantee withdrawing or altering this Commitment Letter.

If above terms and conditions are satisfactory, kindly signify your acceptance by executing a copy of this letter and returning it together with the Commitment Fee payable to The Guarantee Company of North America.

THE GUARANTEE COMPANY OF NORTH AMERICA



Per: Pamela Martin
Manager, Developer Surety

Accepted this 16th October day of ~~September~~, 2014.

2203284 ONTARIO INC.

Per:

Name:

Title:

Luigi Santaguida

Per:

Name:

Title President

I / We have the authority to bind the Corporation

Acknowledged and Accepted by the Indemnitor/Guarantor.

M. Santaguida
Marylou Santaguida

Oct. 15, 2014
Date

Schedule "A" - Additional Underwriting Information Required

1. A copy of the Agreement of Purchase and Sale for the project including the Tarion Addendum - Statement of Critical Dates;
2. A copy of the Disclosure Statement;
3. Detailed Project budget;
4. Financial statements or opening trial balance (if new company) for 2203284 Ontario Inc.
5. Confirmation as to will be the registered builder with Tarion and construction manager for the project;
6. Updated personal net worth statement with supporting documentation for Marylou Santaguida

INDEMNITY AGREEMENT

This Indemnity Agreement entered into and effective this **22nd** day of **October, 2014**.

By and From:

2203284 ONTARIO INC.

(hereinafter collectively referred to as the "Principal")

And By and From:

MARYLOU SANTAGUIDA

(hereinafter individually referred to as an "Indemnitor" or as the "Indemnitor", and collectively referred to as the "Indemnitors")

To and in Favour of:

THE GUARANTEE COMPANY OF NORTH AMERICA

(hereinafter referred to as the "Surety")

WHEREAS:

- A. The Principal, in its own name, or as a partner, co-tenant or joint venturer with others, is the beneficial owner of one or more housing sites being developed and constructed as one or more condominium and/or non-condominium projects (hereinafter collectively referred to as the "Project");
- B. The Principal has applied (or may hereafter apply) to the Surety for one or more bonds and/or deposit insurance policies in connection with the Project (all of which bonds and/or deposit insurance policies hereinbefore or hereafter issued by the Surety on behalf of the Principal from time to time, whether in connection with the Project or otherwise, are hereinafter collectively referred to as the "Bonds"); and
- C. The Surety has agreed to issue the Bonds upon certain terms and conditions, one of which is the execution and delivery of this Indemnity Agreement by the Principal and each of the Indemnitors (hereinafter collectively referred to as the "Undersigned"), in order to secure the due performance and fulfillment of all obligations and liabilities of the Undersigned to the Surety arising or outstanding from time to time;

NOW THEREFORE THESE PRESENTS WITNESSETH that for good and valuable consideration and the sum of Two (\$2.00) Dollars of lawful money of Canada paid by the Surety to each of the Undersigned (the receipt and sufficiency of which is hereby expressly acknowledged), each of the Undersigned hereby confirms the veracity and accuracy of the foregoing recitals, and further:

- | | | |
|-------------------------------|-----|--|
| <i>Payment of Premium</i> | (a) | Agrees to pay to the Surety the initial premium for each of the Bonds issued by the Surety (or intended to be issued), in advance of such issuance, as well as the annual renewal premium therefor, in accordance with the premium rate(s) and charge(s) established by the Surety from time to time in connection therewith, with such payment obligation to continue until such time as the Surety is furnished with written evidence (in form and substance satisfactory to the Surety in its sole and unfettered discretion) confirming that the Surety has been finally discharged and released from all obligations and liabilities under each of the Bonds so issued, including any renewals or extensions thereof; |
| <i>Satisfy Bond Condition</i> | (b) | Agrees to satisfy and fulfill all of the terms and conditions of each of the Bonds issued by the Surety from time to time, including any renewals or extensions thereof and/or any alterations or modifications with respect thereto, on the express understanding that despite the execution of this Indemnity Agreement by all parties hereto, the Surety may nevertheless decline to execute and/or provide any Bonds applied for by the Principal, without the Surety incurring any liability whatsoever to the Undersigned as a result thereof, and without affecting the liability of the Undersigned to the Surety hereunder; |

Reserves

- (c) Acknowledges and agrees that if, for any reason, the Surety deems it necessary to establish one or more reserves (the amount or amounts of which shall be in the sole and unfettered discretion of the Surety) to cover any possible indemnity, loss, liability and/or claim arising under any of the Bonds, or to increase any existing reserve(s), then the Undersigned shall deposit or deliver with the Surety, immediately upon demand, cash or collateral security satisfactory to the Surety in an amount equal to such desired reserve(s), or necessary to increase any existing reserve(s) to the limit stipulated by the Surety from time to time, on the express understanding that:
- i) The Surety may hold and retain all cash deposits so received, in such form as the Surety may deem appropriate, and shall have no obligation to invest (or provide any income or return on) any such deposits;
 - ii) the Surety may use all or any part of such deposits (and/or any income earned or accrued thereon) in payment or compromise of any indemnity, loss, liability and/or claim arising under any of the Bonds; and
 - iii) the Undersigned shall be entitled to the return of any unused portion of said deposits, together with the income (if any) earned or accrued on the balance of the deposits outstanding from time to time (to the extent such income has not been used in payment or compromise of any indemnity, loss, liability and/or claim, and provided that the Surety's calculation of the income attributable to any such deposits shall be final and binding on the Undersigned), upon the termination of all liabilities and obligations of the Surety in respect of the Bonds, and the performance by the Undersigned of all obligations to the Surety under the terms of this Agreement;

General Indemnity

- (d) Unconditionally and irrevocably agrees to indemnify, defend, protect and save the Surety harmless from and against all losses, costs, claims, damages and/or liabilities whatsoever suffered or incurred by the Surety in connection with (or arising out of) any of the Bonds issued by the Surety on behalf of the Principal from time to time, and/or any or all of the following, namely:
- i) the failure of the Undersigned to fully perform or comply with the terms and provisions of this Agreement, and any other agreement(s) heretofore or hereafter entered into between the Principal and the Surety, as well as the terms and conditions of each of the Bonds issued by the Surety from time to time, including any renewals or extensions thereof and/or any alterations or modifications with respect thereto;
 - ii) the enforcement by the Surety of any covenant(s) or obligation(s) of any or all of the Undersigned arising under this Agreement, and/or any covenant(s) or obligation(s) of the Principal arising under any other agreement(s) heretofore or hereafter entered into between the Principal and the Surety;
 - iii) the bankruptcy or insolvency of any of the Undersigned, or any assignment made for the benefit of any of the Undersigned's creditors, or the taking of any benefit of (or the initiation of any proceedings under) any statute relating to bankrupt or insolvent debtors by (or in respect of) any of the Undersigned [including without limitation, the Bankruptcy and Insolvency Act (Canada) and the Companies' Creditors Arrangement Act (Canada)], or any appointment of a receiver (or a receiver/manager) under any debt or security instrument against (or with respect to) any of the Undersigned, or any receiving order made against (or with respect to) any of the Undersigned;
 - iv) the failure of the Principal to perform and fulfill its obligations to the Tarion Warranty Program ("Tarion") arising under the Ontario New Home Warranties Plan Act R.S.O. 1990, as amended from time to time (hereinafter referred to as the "ONHWP Act"), the Condominium Act 1998, S.O. 1998 C.19, as amended from time to time (hereinafter referred to as the "Condominium Act"), the regulations enacted under either of the foregoing legislation, any agreement(s) heretofore or hereafter entered into between Tarion and the Principal, and/or any builder bulletin(s) issued by Tarion from time to time which may be applicable to the Principal; and/or
 - v) any breach or default under any material contract, credit facility, loan agreement or security document (whether directly related to the Project or otherwise) which, in the Surety's unchallenged opinion, may adversely impair the ability of the Principal to complete the Project, or may have a material negative impact on the ability of any of the Undersigned to perform their respective obligations under this Agreement, or may otherwise significantly prejudice the interests of the Surety in respect of its outstanding liabilities under any of the Bonds;

Surety's Authority to Reduce its Liability Exposure under the Bonds

- (e) Acknowledges and agrees that if there is any breach or default by any of the Undersigned of their respective obligations under this Agreement, then regardless of whether any claim or demand has been made or is outstanding under any of the Bonds, the Surety shall be entitled to take all reasonable steps and measures (including the expenditure of monies for the account of the Undersigned) in order to reduce the Surety's potential liability exposure under the Bonds, and each of the Undersigned shall be correspondingly obliged (on a joint and several basis) to reimburse the Surety, forthwith upon demand, for all monies so expended and for all costs so incurred by the Surety in connection therewith, without questioning or challenging the amount and/or the manner in which such monies have been expended (or such costs have been incurred, as the case may be) by the Surety;

<i>Surety's Authority to Settle or Compromise</i>	(f)	Acknowledges and agrees that the Surety shall have the sole right and unfettered discretion to pay, settle or compromise any expense, claim, demand, judgment or charge made under (or in connection with) any of the Bonds, without any obligation whatsoever on the part of the Surety to divide, allocate or apportion any such expense, claim, demand, judgement or charge equally, proportionately or in any other manner amongst the Undersigned (as each of the Undersigned hereby specifically waives the benefit of division, and confirms that their respective obligations to the Surety is joint and several), and without any obligation whatsoever on the part of the Surety to notify any of the Undersigned with respect to any such payment, settlement or compromise, or to obtain the consent or approval of any of the Undersigned to same, and any such payment, settlement or compromise shall be binding upon each of the Undersigned, on the express understanding that any settlement or compromise hereafter made by the Surety with any one or more of the Undersigned (including the release of any one or more of the Undersigned), without notice or reference to (or without the concurrence of) any of the other parties hereto, shall not affect, restrict, limit or negate the liability of any of the other parties hereto, and such last-mentioned parties hereby expressly waive the right to consent to any such settlement or compromise, as well as the right to be discharged and released by reason of any of the foregoing;
<i>Settlement with Principal and/or Other Parties</i>	(g)	Agrees that the Surety may, without notice to (and without the consent of any of the Indemnitors), make any settlement with the Principal (and/or with any other party or parties whomsoever) without releasing or diminishing the liabilities or obligations of any of the Indemnitors to the Surety arising under this Indemnity Agreement;
<i>Postponement and Subordination of Claims by Indemnitors</i>	(h)	Acknowledges and agrees that all present and future debts, obligations and liabilities of the Principal to any or all of the Indemnitors are hereby postponed and subordinated to and in favour of the present and future debts, obligations and liabilities of the Principal to the Surety;
<i>Release or Diminution of Liability</i>	(i)	Agrees that the liabilities and obligations of the Undersigned under this Indemnity Agreement may only be released or diminished by a written instrument executed by the Surety;
<i>Providing Information to the Surety</i>	(j)	Agrees to provide the Surety with such information as the Surety may request, from time to time, concerning the financial condition of any or all of the Undersigned, the payment of obligations incurred by the Principal in connection with the Project, and/or the status of compliance of all outstanding agreements heretofore or hereafter entered into between the Principal and any other party or parties relative to the Project;
<i>Enforcement of Indemnity Agreement</i>	(k)	Agrees that the Surety shall not be obliged to proceed against the Principal before proceeding to enforce the obligations of any or all of the Indemnitors under this Indemnity Agreement, it being expressly understood that the Surety need not pursue or exhaust its rights, remedies, or recourse against (or in respect of) the Principal and/or any guarantees, indemnities or securities posted in connection with the Principal's obligations, prior to the Surety proceeding against the Indemnitors;
<i>Other Indemnities or Security</i>	(l)	Agrees that this Indemnity Agreement is in addition to (and supplemental to), but expressly not in lieu of, all other indemnities, guarantees or securities held in connection with the Principal's obligations, or which may hereafter be held or taken by the Surety;
<i>Entire Agreement</i>	(m)	Agrees that there are no representations, warranties, collateral agreements or conditions with respect to this Indemnity Agreement (or which may have induced any of the Undersigned to execute this Indemnity Agreement), or affecting the liabilities or obligations of the Undersigned to the Surety arising under this Indemnity Agreement, other than as expressly set forth herein;
<i>Indemnity Joint and Several</i>	(n)	Agrees that, in the case where more than one person is liable to the Surety in respect of the obligations or liabilities of the Principal (in whole or in part), whether as guarantor, indemnitor, surety, principal debtor, or otherwise, the liabilities of each of the Undersigned under this Indemnity Agreement shall be joint and several, and the Surety may, without notice to (and without the consent of) any or all of the Undersigned, do any one or more of the following acts or things, without releasing or diminishing the liabilities or obligations of any of the Undersigned to the Surety arising under this Indemnity Agreement, namely:
<i>Release, Reduction, Discharge of Liability of Undersigned</i>	i)	release, reduce or discharge (in whole or in part), the liabilities and obligations of any one or more of the aforementioned persons so liable to the Surety in respect of the obligations or liabilities of the Principal;
<i>Revision of Nature, Extent or Quantum of Principal's Liability</i>	ii)	increase, decrease, or otherwise revise the Bonds and/or the nature, extent or quantum of the obligations and liabilities of the Principal to the Surety;
<i>Extension or Renewal of Principal's Obligations</i>	iii)	extend or renew the Bonds and/or any of the obligations of the Principal to the Surety;
<i>Release, Reduction, Discharge of Other Security</i>	iv)	release, reduce or discharge (in whole or in part) any mortgage(s), charge(s), debenture(s) or other security posted with or held by the Surety in connection with the Principal's obligations; and/or
<i>Other Indulgences, Extensions, etc.</i>	v)	grant any indulgences, extensions of time, rectification periods and/or waivers of default, to or for the benefit of the Principal;

<i>No Change in Liability due to Bankruptcy or Other Changes Associated with Principal</i>	(o)	Agrees that the liabilities and obligations of the Undersigned under this Indemnity Agreement shall not be released or diminished by reason of the death, loss of capacity or bankruptcy of the Principal, nor by reason of any change in the officers, directors, shareholders, co-tenants or joint venture members or partners of the Principal, nor by reason of the expiry or revocation of the registration of the Principal under the ONHWP Act, nor by reason of any amendment, alteration or modification of the ONHWP Act and/or the Condominium Act, the regulations promulgated under either of the foregoing legislation, any agreement between Tarion and the Principal and/or any applicable builder bulletins, until such time as the entire outstanding indebtedness and/or liabilities of the Principal to the Surety have been fully paid and/or satisfied;
<i>Waiver of Technical Defenses</i>	(p)	Waives any defense arising by reason of any incapacity, disability and/or lack of power (or limitation with respect to the status or power) of the Principal (or of the directors, officers, partners, co-tenants, joint venturers or agents of the Principal), or by reason of any irregularity, defect or informality in the entering into or execution of any agreement between the Surety and the Principal and/or any agreement between Tarion and the Principal, or any other defense(s) adopted or relied upon by the Principal (including, without limitation, the defense that the Principal may not be a legal entity, or any defense arising by reason of the release, reduction or cessation, from any cause or source whatsoever, of the liabilities or obligations owing to the Surety by the Principal, in whole or in part);
<i>Effect of Other Agreements</i>	(q)	Agrees that each of the Undersigned shall be and remain bound to perform the obligations and liabilities of the Undersigned arising under this Indemnity Agreement, notwithstanding the contents or provisions of any agreement(s) heretofore or hereafter entered into between the Principal and the Surety, and notwithstanding that any such agreement(s) may be void or voidable as against the Principal or any of the creditors of the Principal (including a trustee in bankruptcy), and notwithstanding that any of the Undersigned may not have received or reviewed any such agreement(s);
<i>Termination of Liability of the Undersigned</i>	(r)	Agrees that the liabilities and obligations of the Undersigned arising under this Indemnity Agreement shall terminate only when all Bonds issued by the Surety on behalf of the Principal are returned or released to the Surety for cancellation, and the entire outstanding indebtedness and/or liabilities of the Principal to the Surety have been fully repaid and/or satisfied, and where the Surety has paid out monies in respect of the Principal's failure to perform the Principal's obligations, the Undersigned shall forthwith reimburse the Surety, by way of a certified cheque, for an amount equal to the aggregate of:
<i>Reimbursement to the Surety</i>	(s)	<ul style="list-style-type: none"> i) the amount paid out by the Surety (the "Amount") in respect of the Principal's failure to perform the Principal's obligations, or in respect of anything done or omitted to be done by the Principal, including all legal fees and disbursements (on a solicitor and his/her own client scale) incurred by the Surety to enforce any of the obligations of the Undersigned hereunder; ii) an administration fee of fifteen (15%) per cent of the Amount; and iii) interest accruing on the Amount, at the rate of eighteen (18%) per cent per annum, calculated and accruing from and after the respective date(s) that any Amount is so due or owing to the Surety, to and until the date that all such Amounts (together with all interest accrued thereon as aforesaid) have been fully paid or remitted to the Surety, on the express understanding that the Surety's claim for such interest shall not merge in any judgment obtained against any of the Undersigned, and that any such judgment shall bear interest at the aforementioned rate until full payment is made to the Surety;
<i>Waiver of Notice and Demand</i>	(t)	Waives any notice of any neglect or failure on the part of the Principal to perform any or all of the Principal's obligations, or to pay any or all of the liabilities incurred or owing by the Principal to the Surety, and further waives any notice or demand for performance or payment;
<i>Applicable Law</i>	(u)	Agrees that this Indemnity Agreement:
<i>Enurement Clause</i>		<ul style="list-style-type: none"> i) shall be construed in accordance with (and be governed by) the laws of the Province of Ontario and the laws of Canada applicable thereto; and ii) shall extend and enure to the benefit of the successors and assigns of the Surety, and shall correspondingly be binding upon each of the Undersigned and the respective heirs, estate trustees, legal representatives and successors of each of the Undersigned;
<i>Jurisdiction of legal proceedings</i>	(v)	Agrees to attorn to the jurisdiction of the courts of the Province of Ontario, and agrees that any legal proceeding in respect of this Indemnity Agreement shall be tried at Toronto (or at such other venue as is proposed by the Surety in any application or originating process initiated by the Surety in respect of this Indemnity Agreement);
<i>Validity of Indemnity Agreement</i>	(w)	Intends and agrees that this Indemnity Agreement shall be valid, binding and enforceable, whether or not any agreement between the Surety and the Principal exists as of the date that this Indemnity Agreement is executed, or comes into existence after such date, and further acknowledges and agrees that this Indemnity Agreement shall remain in full force and effect and shall continue to bind each of the Indemnitors even if any or all of the Indemnitors never had (or no longer continue to have) any direct or indirect interest in the Principal;

<i>Credit and Other Information</i>	(x)	Irrevocably authorizes the Surety to procure, utilize and/or exchange, from time to time, credit and other information concerning the financial status, business affairs and ongoing operations of each of the Undersigned (and with respect to any outstanding transactions between or amongst any of the Undersigned involving any banks, trust companies, bond/surety providers, quantity surveyors, cost consultants, Tarion, construction lenders, credit reporting agencies, trustees in bankruptcy, receivers and/or receiver/managers, each of whom are hereby expressly instructed by the Undersigned to furnish such information to the Surety), and further authorizes the Surety to deliver or transmit a copy of this Indemnity Agreement to any of the foregoing parties, and expressly agrees not to institute or pursue any action, claim or proceeding in respect of any damages incurred by any of the Undersigned as a consequence thereof;
<i>Advising of Change of Name and/or Merger</i>	(y)	Agrees to notify the Surety immediately of any change in the name of any of the Undersigned, or of any merger, amalgamation, consolidation or reorganization of any of the Undersigned, or of any sale, transfer or lease of all (or substantially all) of the property, assets and/or undertaking of any of the Undersigned, or of any change in the beneficial ownership of the Project (or any portion thereof), or of any change in the voting control of any of the Undersigned, on the express understanding that where the Principal is a partnership, the Surety shall be immediately notified of any change in the constitution of the partnership (including without limitation, the death, winding-up, retirement or addition of any partner);
<i>Providing Surety with Notice of Claims</i>	(z)	Agrees to notify the Surety immediately of: <ul style="list-style-type: none"> i) any claim, demand, notice or proceeding of which any of the Undersigned becomes aware, and which may ultimately result in any loss or liability to the Surety under any of the Bonds issued by the Surety on behalf of the Principal; and ii) any default committed by (or alleged against) any of the Undersigned under any outstanding loan agreement, mortgage, charge, debenture or other security document or instrument heretofore or hereafter executed by any of the Undersigned in connection with the procurement of any financing for the development and/or construction of the Project (or any portion thereof);
<i>Obtaining Release of Bonds</i>	(aa)	Agrees to use the Undersigned's best efforts to procure the release of the Bonds, and the corresponding discharge of the Surety from all of its obligations and liabilities in connection therewith, forthwith following the substantial completion of the Project, on the express understanding that nothing contained herein shall limit or restrict the ability of the Surety to take all such steps and/or actions, on its own, as the Surety may deem necessary, proper or expedient, in order to obtain the release of the Bonds and its complete discharge from all obligations and liabilities thereunder, forthwith following the substantial completion of the Project;
<i>Gender and Number & Marginal Notes</i>	(bb)	Agrees that this Indemnity Agreement shall be read and construed with all changes in gender and/or number as may be required by the context, and that the marginal notes contained herein shall not affect the meaning or interpretation of this Agreement, but rather are inserted for convenience of reference purposes only;
<i>Condition Precedent</i>	(cc)	Acknowledges and agrees that without executing and delivering this Indemnity Agreement to and in favour of the Surety, the Surety will not issue any of the Bonds;
<i>Notices</i>	(dd)	Acknowledges and agrees that any notice desired or required to be given by the Surety to each of the Undersigned shall be conclusively deemed to have been sufficiently given if delivered by hand/courier to the respective addresses hereinafter set out, or by telefax at the respective telefax numbers hereinafter set out, only on business days (excluding Saturdays, Sundays and statutory holidays), and shall be deemed to have been respectively received by each of the Undersigned on the day that same has been so delivered or telefaxed, on the express understanding that any notice delivered or telefaxed after 4:30 p.m. shall be deemed to have been received on the next business day following the date of such delivery or telefax transmission (as the case may be), and provided further that if telefaxed, a confirmation of such telefax transmission must be received by the Surety at the time of such transmission, otherwise same shall be deemed not to have been properly or sufficiently telefaxed to the Undersigned;
<i>Delivery of Certain Documents to the Surety</i>	(ee)	Acknowledges and agrees that so long as the Surety has any potential liability under the Bonds, each of the Undersigned shall deliver to the Surety copies of the following documents, forthwith upon their respective receipt of same, namely: <ul style="list-style-type: none"> i) the annual or interim financial statements of each of the Undersigned; ii) any petition for a receiving order, petition in bankruptcy, or notice of any proposal or proceeding with respect to the arrangement of creditors, involving any of the Undersigned; and iii) any notice of default or commencement of civil proceedings against any of the Undersigned which could result in a claim under the Bonds;
<i>Further Assurances</i>	(ff)	Agrees to give and execute such further documents and assurances, and to do and perform (or cause to be done and performed) such further and other acts and things as may be necessary in order to give full effect and force to the terms and provisions of this Indemnity Agreement; and

*Independent Legal Advice
&
Receipt of True Copy
of Indemnity Agreement*

(gg) Acknowledges having received INDEPENDENT LEGAL ADVICE with respect to this Indemnity Agreement and confirms having read and understood the terms and provisions hereof before having executed this Indemnity Agreement, and further confirms that no other agreement or understanding exists which in any way could lessen or modify the obligations set forth herein, and expressly acknowledges having received a true and completed copy of this Indemnity Agreement.

IN WITNESS WHEREOF the corporate Principal and Indemnitors have hereunto executed these presents as of the date first above-mentioned (which date shall, for all purposes, be deemed and construed as the effective date of this Indemnity Agreement, regardless of the date on which same has, in fact, been executed), attested to by the hand(s) of their respective authorized officer(s) duly authorized in this regard.

Name of Corporation: 2203284 Ontario Inc.

Address of Corporation: 93 SKYWAY AVENUE, UNIT 104, TORONTO, ONTARIO, M9W 6N6

Name in block letters (Authorized Officer) – Title

LUIGI SANTAGUIDA, PRESIDENT

Name in block letters (Authorized Officer) – Title

Signature of Authorized Officer

Signature of Authorized Officer _____

I/We have authority to bind the Corporation

IN WITNESS WHEREOF each of the individual Indemnitors has hereunto executed these presents as of the date first above-mentioned (which date shall, for all purposes, be deemed and construed as the effective date of this Indemnity Agreement, regardless of the date on which same has, in fact, been executed), and by so executing these presents has adopted the word ("seal") noted below as his or her personal seal.

SIGNED, SEALED AND DELIVERED

in the presence of:

Witness: Plenitor

Witness:

Paula Santos

Print Name: _____

93 Skyway Ave #104

Print Address:

Toronto, ON

)))))))))

Marylou Santaguida (seal)



Government
of Canada

Gouvernement
du Canada

**Bankruptcy and Insolvency Records Search (BIA) search results |
Résultats de la recherche dans le Registre des dossiers de faillite et d'insolvabilité
(LFI)**

2017-11-02

Search Criteria | Critères de recherche :
Reference | Référence :

Name | Nom = 2203284 Ontario Inc.
MSISP011

A search of the Office of the Superintendent of Bankruptcy records has revealed the following information, for the period 1978 to 2017-10-31, based on the search criteria above-mentioned.

Une recherche dans les dossiers du Bureau du surintendant des faillites a permis de trouver l'information suivante, pour la période allant de 1978 à 2017-10-31, selon les critères de recherche susmentionnés.

BIA Estate Number | Numéro du dossier en vertu de la LFI :	32-158974
BIA Estate Name | Nom du dossier en vertu de la LFI :	2203284 ONTARIO INC.
Birth Date | Date de naissance :	
Province :	Ontario | Ontario
Address | Adresse :	98 JAMES STRET SOUTH, HAMILTON, Ontario, L8P2Z2
Estate Type | Type de dossier :	RECEIVERSHIP | MISE SOUS SÉQUESTRE
Date of Proceeding | Date de la procédure :	2017-06-22
Total Liabilities* | Total du passif* :	\$0
Total Assets* | Total de l'actif* :	\$0
First Meeting of Creditors | Première assemblée des créanciers :	
Discharge Status | Statut de la libération :	
Effective Date | Date d'entrée en vigueur :	
Court Number | Numéro de cour :	

* As declared by debtor | Tel que déclaré par le débiteur

Appointed Licensed Insolvency Trustee or Administrator | Syndic autorisé en insolvabilité ou administrateur nommé :	MSI SPERGEL INC
Responsible Person | Personne responsable :	PRINGLE, TREVOR BICKFORD
Address | Adresse :	21 King St West, Suite 1602, Hamilton, Ontario, Canada, L8P4W7
Telephone | Téléphone :	905-527-2227
Fax | Télécopieur :	905-527-6670
Licensed Insolvency Trustee or Administrator's Discharge Date | Date de la libération du syndic autorisé en insolvabilité ou de l'administrateur :	

Canada



Protecting the
Integrity of the
Insolvency System

Protéger l'intégrité
du système
d'insolvabilité

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
		EP Licence Term.Date
		NOT APPLICABLE
		Date Commenced in Ontario
		NOT APPLICABLE
		Date Ceased in Ontario
		NOT APPLICABLE
Activity Classification	Number of Directors Minimum Maximum	
NOT AVAILABLE	00001 00010	

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: 2

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
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: 3

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

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: 4

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

Request ID: 019879724
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Province of Ontario
Ministry of Government Services

Date Report Produced: 2017/02/03
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Page: 5

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

Request ID: 019879724
Transaction ID: 63482513
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Province of Ontario
Ministry of Government Services

Date Report Produced: 2017/02/03
Time Report Produced: 12:08:28
Page: 6

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
Page: 1

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.



Ontario

ServiceOntario

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND

REGISTRY
OFFICE #62

17171-0009 (LT)

PAGE 1 OF 3

PREPARED FOR Cynen001
ON 2017/09/21 AT 15:26:36

PROPERTY 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

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE

LT CONVERSION QUALIFIED

OWNERS' NAMES

2203284 ONTARIO INC.

RECENTLY:

RE-ENTRY FROM 17171-0141

CAPACITY SHARE

PIN CREATION DATE:

2008/09/22

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2008/09/19 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
**	SUBSECTION 44 (1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70 (2) OF THE REGISTRY ACT APPLIES.					
**DATE OF CONVERSION TO LAND TITLES: 2008/09/22 **						
HA59712	1895/07/30	TRANSFER		*** DELETED AGAINST THIS PROPERTY ***	TRUSTEES OF THE JAMES STREET BAPTIST CHURCH	C
VM36576	1990/02/16	BYLAW				
VM60787	1990/09/07	AGREEMENT			THE CORPORATION OF THE CITY OF HAMILTON	C
REMARKS: HISTORICAL EASEMENT						
VM111553	1992/02/17	NOTICE OF CLAIM		*** DELETED AGAINST THIS PROPERTY ***		
VM241393	1998/02/24	CHARGE		TRUSTEES OF THE JAMES STREET BAPTIST CHURCH		
WE813380	2012/02/10	DISCH OF CHARGE		*** COMPLETELY DELETED ***	BAPTIST CONVENTION OF ONTARIO AND QUEBEC	C
REMARKS: VM241393.						
WE901635	2013/06/04	TRANS RLIGIOUS ORG	\$610,000	TRUSTEES OF THE JAMES STREET BAPTIST CHURCH	2203284 ONTARIO INC.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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OFFICE #62

PAGE 2 OF 3
PREPARED FOR Cynen001
ON 2017/09/21 AT 15:26:36

17171-0009 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
WE903381	2013/06/13	CHARGE	\$1,500,000	2203284 ONTARIO INC.	SANTAGUIDA, MARY LOU	C
WE998973	2014/10/30	CHARGE	\$5,180,000	2203284 ONTARIO INC.	THE GUARANTEE COMPANY OF NORTH AMERICA	C
WE998974 REMARKS: WE903381 TO WE998973	2014/10/30	POSTPONEMENT		SANTAGUIDA, MARY LOU	THE GUARANTEE COMPANY OF NORTH AMERICA	C
WE1029640 REMARKS: WE903381	2015/04/10	NOTICE	\$2	2203284 ONTARIO INC.	SANTAGUIDA, MARY LOU	C
WE1048981	2015/07/08	CHARGE	\$5,000,000	2203284 ONTARIO INC.	DUCA FINANCIAL SERVICES CREDIT UNION LTD.	C
WE1048982 REMARKS: WE1048981	2015/07/08	NO ASSGN RENT GEN		2203284 ONTARIO INC.	DUCA FINANCIAL SERVICES CREDIT UNION LTD.	C
WE1048988 REMARKS: WE998973 TO WE1048982	2015/07/08	POSTPONEMENT		THE GUARANTEE COMPANY OF NORTH AMERICA	DUCA FINANCIAL SERVICES CREDIT UNION LTD.	C
WE1048989 REMARKS: WE903381 WE1048981	2015/07/08	POSTPONEMENT		SANTAGUIDA, MARY LOU	DUCA FINANCIAL SERVICES CREDIT UNION LTD.	C
WE1111875	2016/04/11	CHARGE	\$701,583	2203284 ONTARIO INC.	SANTAGUIDA, MARYLOU	C
WE1141288	2016/08/12	CHARGE	\$3,000,000	2203284 ONTARIO INC.	DIVERSIFIED CAPITAL INC.	C
WE1141293 REMARKS: WE903381 & WE1029640 TO WE1141288	2016/08/12	POSTPONEMENT		SANTAGUIDA, MARY LOU	DIVERSIFIED CAPITAL INC.	C
WE1141294 REMARKS: WE1111875 TO WE1141288	2016/08/12	POSTPONEMENT		SANTAGUIDA, MARYLOU	DIVERSIFIED CAPITAL INC.	C
WE1141393	2016/08/12	CHARGE	*** COMPLETELY DELETED *** 2203284 ONTARIO INC.	*** COMPLETELY DELETED *** 2203284 ONTARIO INC.	1220356 ONTARIO LIMITED TARAGAR HOLDINGS LIMITED HOWIECO ENTERTAINMENT INC APPEL, AUBRIE APPEL, GAIL	
WE1153428	2016/09/30	DISCH OF CHARGE	*** COMPLETELY DELETED *** 1220356 ONTARIO LIMITED TARAGAR HOLDINGS LIMITED HOWIECO ENTERTAINMENT INC	*** COMPLETELY DELETED *** 1220356 ONTARIO LIMITED TARAGAR HOLDINGS LIMITED HOWIECO ENTERTAINMENT INC		

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Ontario
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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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OFFICE #62

PAGE 3 OF 3
PREPARED FOR Cynen001
ON 2017/09/21 AT 15:26:36

17171-0009 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
WE1231330	2017/08/24	CONSTRUCTION LIEN	\$30,234	APPEL, AUBRIE APPEL, GAIL MCCALLUM SATHER ARCHITECTS INC.		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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TAB L

Appendix “L”

(c)

Type	Date	Num	Name	Memo	Clr	Split	Amount	Balance	Audit No	Comments
1155 - Santerra Asset Management & Dev										
General Jor	2015-07-08	GJ-036								
Cheque	2015-09-30	383	Santerra Asset Management & Dev, Inc.	VOID:	✓	Trust Account - Minden Gros	2,581,543.11	2,581,543.11	1	
Cheque	2015-09-30	384	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	0.00	2,581,543.11	2	
Cheque	2015-10-06	393	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	1,130,000.00	3,711,543.11	3	
Cheque	2015-10-11	395	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	110,000.00	3,821,543.11	4	
Deposit	2015-12-03	371	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	150,000.00	3,971,543.11	5	
Deposit	2016-02-09	409	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-140,000.00	3,831,543.11	6	
Deposit	2016-03-30	446	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-40,000.00	3,791,543.11	7	
Deposit	2016-04-08	455	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-6,000.00	3,785,543.11	8	
Deposit	2016-04-28	467	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-50,000.00	3,735,543.11	9	
Transfer	2016-07-05			Funds Transfer - ck#522		1101 - Bank of Montreal-1997-354	-28,000.00	3,707,543.11	10	
Transfer	2016-07-28			Funds Transfer - CK # 537		1101 - Bank of Montreal-1997-354	-3,500.00	3,704,043.11	11	
Deposit	2016-08-29	557	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-34,000.00	3,670,043.11	12	Missing, could not find
General Jor	2016-09-01	GJ-049		Cyberbahn Inv's 115039367 D/D 8/314/16		5102 - Office & General	-25,000.00	3,645,043.11	13	Missing, could not find
Deposit	2016-09-14	563	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-71.75	3,644,971.36	14	
Deposit	2016-09-29	569	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-11,600.00	3,633,371.36	15	
Deposit	2016-09-30	573	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-34,900.00	3,598,471.36	16	
Cheque	2016-10-28	557	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-30,518.00	3,567,953.36	17	
Deposit	2016-11-14	598	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	2,238.02	3,570,191.38	18	
Deposit	2016-11-30	605	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-6,700.00	3,563,491.38	19	
Deposit	2016-12-20	617	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-1,000.00	3,562,491.38	20	
Deposit	2017-01-12	626	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-30,000.00	3,532,491.38	21	
Deposit	2017-01-25	628	Santerra Asset Management & Dev, Inc.			1101 - Bank of Montreal-1997-354	-30,000.00	3,502,491.38	22	
General Jor	2017-02-14	GJ-050		Intercompany loan from Santerra		1101 - Bank of Montreal-1997-354	-30,300.00	3,472,191.38	23	
Cheque	2017-02-08	GJ-050	Santerra Asset Management & Dev, Inc.	Intercompany payment (Payroll, Rent)		1101 - Bank of Montreal-1997-354	-26,000.00	3,446,191.38	24	
General Jor	2017-03-31	GJ-060		Rent allocation - Jan/Feb 2017		1400 - Real Estate Under Development	15,500.00	3,461,691.38	25	Rent Allocation
TOTAL							-2,666.19	3,457,025.19		
							3,457,025.19	3,457,025.19		
Santerra Asset Management - Balance										
							3,454,591.10			
Variance							2,331.09			
Missing April 2017 Rent Allocation							2,331.09			
Unexplained Variance							0.00			

TAB M

Appendix “M”



Deborah Hornbostel, CPA, CA, CIRP, LIT, CFE

Direct Phone & Fax: 416 498 4308

deborah@spergel.ca

August 4, 2017

Via Mail & Hand Delivery

Santerra Asset Management and Development Inc.
93 Skyway Avenue
Suite 104
Toronto, ON M9W 6N6

Attention: Ms. Marylou Santaguida

Dear Sirs:

Re: 2203284 Ontario Inc. (the "Debtor")

On June 22, 2017, msi Spergel Inc. was appointed as the Receiver of the Debtor pursuant to a Court Order issued by Justice Conway (the "**Order**"). During the course of our review of the Debtor's books and records we have determined that Santerra Asset Management and Development Inc. ("**Santerra**") received \$3,457,025.19 from the Debtor. We request that Santerra provide an accounting to the Receiver forthwith for the funds received.

Yours very truly,

msi Spergel Inc.

Per:

Deborah Hornbostel CPA, CA, CIRP, LIT, CFE

msi Spergel inc. Licensed Insolvency Trustees 505 Consumers Road, Suite 200, Toronto, ON M2J 4V8 • Tel 416 497 1660 • Fax 416 494 7199

• Barrie 705 722 5090 • Hamilton 905 527 2227 • Mississauga 905 602 4143 • Oshawa 905 721 8251 • Toronto-Central 416 778 8813
• Brampton 905 874 4905 • London 519 902 2772 • Peterborough 705 748 3333 • Scarborough 416 642 1363 • Saskatchewan 306 341 1660

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and Restructuring Practitioners

www.spergel.ca

Member **ICIN** The Independent Canadian Insolvency Network

TAB N

Appendix “N”



Deborah Hornbostel, CPA, CA, CIRP, LIT, CFE

Direct Phone & Fax: 416 498 4308

deborah@spergel.ca

October 26, 2017

Via Mail

Ms. Marylou Santaguida
14 St. Margaret's Drive
Toronto, ON M4N 3E5

Dear Ms. Santaguida

Re: 2203284 Ontario Inc. (the "Debtor")

Please see the attached correspondence dated August 4, 2017 that was sent to Santerra Asset Management and Development Inc. ("**Santerra**") at its registered office address which we obtained from the Ontario Ministry of Government Services. We understand that you are the sole director of Santerra. To date, no response has been received. Accordingly we request that you attend to this matter in your capacity as the sole director forthwith.

In addition, we also understand that you have registered two mortgages against the property of the Debtor located at 98 James Street South, Hamilton Ontario. We request that you provide us with copies of the mortgage documents and documentation in support of the advances made pursuant to those mortgages at your earliest convenience.

Yours very truly,

msi Spergel Inc.

Per:

Deborah Hornbostel CPA, CA, CIRP, LIT, CFE

TAB O

Appendix “O”



DEVRY SMITH FRANK *LLP*
Lawyers & Mediators

lawrence.hansen@devrylaw.ca
416.446.5097

BY EMAIL

April 23, 2018

Brett Moldaver
Moldaver Barristers
365 Bloor Street East, Suite 1608
Toronto, Ontario M4W 3L4
Email address: brett@moldaverbarristers.com

Dear Mr. Moldaver:

Re: Receivership of 2203284 Ontario Inc.
Court File No.: CV-17-11827-00CL
Our File No.: MSISP011

It was a pleasure meeting you at the 9:30 appointment.

Attached please find letters from the receiver to Ms. Santaguida. Please arrange for the requested documents/information to be provided.

The receiver would propose to examine, on consent, Ms. Santaguida and Mr. Santaguida once what has been requested has been provided in respect of the matters raised in the attached letters. Please let me know what range of dates over the next short while that they are available for that.

Thank you.

Yours very truly,

DEVRY SMITH FRANK *LLP*

Lawrence Hansen
LH/cy

Atts.



SPERGEL

Deborah Hornbostel, CPA, CA, CIRP, LIT, CFE
 Direct Phone & Fax: 416 498 4308
deborah@spergel.ca

August 4, 2017

Via Mail & Hand Delivery

Santerra Asset Management and Development Inc.
 93 Skyway Avenue
 Suite 104
 Toronto, ON M9W 6N6

Attention: Ms. Marylou Santaguida

Dear Sirs:

Re: 2203284 Ontario Inc. (the "Debtor")

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Yours very truly,

msi Spergel Inc.

Per:

Deborah Hornbostel CPA, CA, CIRP, LIT, CFE

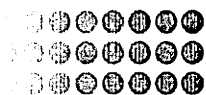
msi Spergel inc. Licensed Insolvency Trustees 505 Consumers Road, Suite 200, Toronto, ON M2J 4V8 • Tel 416 497 1660 • Fax 416 494 7199

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SPERGEL

Deborah Hornbostel, CPA, CA, CIRP, LIT, CFE

Direct Phone & Fax: 416 498 4308

deborah@spergel.ca

October 26, 2017

Via Mail

Ms. Marylou Santaguida
14 St. Margaret's Drive
Toronto, ON M4N 3E5

Dear Ms. Santaguida

Re: 2203284 Ontario Inc. (the "Debtor")

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Yours very truly,

msi Spergel Inc.

Per:

Deborah Hornbostel CPA, CA, CIRP, LIT, CFE

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DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

and

2203284 ONTARIO LTD.
Respondent

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

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at

TORONTO

MOTION RECORD
(returnable April 30, 2019)

VOLUME 1 of 2

DEVRY SMITH FRANK *LLP*
Lawyers & Mediators
95 Barber Greene Road, Suite 100
Toronto, ON M3C 3E9

LAWRENCE HANSEN
LSO #41098W

SARA MOSADEQ
LSO #67864K

Tel.: 416-449-1400
Fax: 416-449-7071

Lawyers for the receiver msi Spergel Inc.