

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

MOTION RECORD
(returnable November 20, 2019)

VOLUME 1 OF 3

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

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ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

NOTICE OF MOTION
(returnable November 20, 2019)

THE RECEIVER will make a motion to the court on November 20, 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 the materials which accompany it.
2. An order for the following:
 - a. approving the activities and conduct of the Receiver as described in the Receiver's Fourth Report;
 - b. approving the Receiver's Interim Statement of Receipts and Disbursements as at October 7, 2019 and its Projection of Funds Available for Distribution as set out in its Fourth Report;
 - c. approving and authorizing payment of the fees and disbursements of the Receiver and its legal counsel as set out in its Fourth Report;
 - d. authorizing and directing the Receiver to pay the claims of the Proven Unsecured Creditors;

- e. authorizing and directing the Receiver to pay the Remaining Funds to the Debtor, Mrs. Santaguida, the spouse of the Debtor's principal, or as the court otherwise directs;
 - f. to provide directions, if necessary, with respect to the following:
 - i. examinations of Mr. Santaguida, the Debtor's principal, and Mrs. Santaguida;
 - ii. their failure to provide information and documents to the Receiver in respect of \$3,457,025.19 which was transferred from the Debtor;
 - iii. the failure of Mrs. Santaguida and her corporation, Santerra Asset Management and Development Inc. ("Santerra"), to account for the \$3,457,025.19; and
 - iv. recovery of the \$3,457,025.19;
 - g. effective upon the filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, discharging Spergel as the Receiver and releasing Spergel from any and all liability that Spergel has or, may hereafter, have by reasons of, or in any way arising out of, the acts or omissions of Spergel while acting in its capacity as Receiver, including, without limitation, any and all dealings with the Property, save and except for any gross negligence or wilful misconduct on the Receiver's part;
 - h. orders, if possible, necessary for the orderly termination of the Receivership; and
 - i. any further orders necessary to give effect to the foregoing.
3. Costs of this motion on a substantial-indemnity basis, if opposed.
4. 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 deposits of purchasers of units in the condominium project have been repaid in accordance with the Deposit Claims Procedure Order.

6. The Tarion Bond which had been issued in respect of the condominium project has been terminated and an order for cash collateral in respect of the foregoing has been made.

7. The claim under security registered in favour of Guarantee Company of North America has been paid in accordance with an order made on June 6.

8. Tax filings have been completed, and tax has been paid.

9. The Receiver has completed an unsecured creditor claims process in accordance with the June 6 order of this court.

10. It recommends that the claims of the Proven Unsecured Creditors, amounting to a little more than \$190,000, be paid, and that whatever surplus funds remain, be paid to the Debtor, Santerra, Mrs. Santaguida, or as the court otherwise directs.

11. Mrs. Santaguida, a related party, has security.

12. Santerra, which is described as Mrs. Santaguida’s corporation, has received approximately \$3.5 million dollars from 220 Ontario, for which no accounting or explanation has ever been fully provided.

13. There is at least one entry in the Debtor's books which seem to suggest that the transfers may be related to a loan involving Ms. Santaguida.

14. In spite of court orders, including the original Receivership Order, which require it, neither Santerra nor Mrs. Santaguida have accounted for the net transfer of \$3.5 million from 220 Ontario.

15. Neither Santerra nor Mrs. Santaguida have repaid the \$3.5 million.

16. If they were to repay the effectively unexplained transfer of \$3.5 million, there would more than enough money to pay the claims of the Proven Unsecured Creditors.

17. If the claims of the Proven Unsecured Creditors are paid, there will likely be over \$1 million to pay to Santerra, Mrs. Santaguida, the Debtor or as the court directs, and the transfer of \$3.5 million to Santerra and/or to Ms. Santaguida will essentially become irrelevant.

18. Should the funds not be repaid and Ms. Santaguida were to seek payment in accordance with the discharge statements she has provided for her security, it is likely that there will be insufficient funds to pay the claims of the Proven Unsecured Creditors, there will be an issue with respect to set off with respect to claims made by Ms. Santaguida, and it will be necessary to pursue an accounting and recovery of the \$3.5 million, something which will prolong the Receivership, incur further expense, and reduce any amount available to distribute to unsecured creditors, the Debtor, and Mrs. Santaguida.

19. The recommendations made by the Receiver are fair, in the interests of justice, seek to balance the interests of the various stakeholders and constitute an efficient and cost-effective means of bringing the Receivership to a conclusion.

20. 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 October 9, 2019, including the appendices attached to it.

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

October 11, 2019

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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

FOURTH REPORT OF THE RECEIVER

October 9, 2019

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WW. Affidavit Of Christopher Statham Sworn October 9, 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 employees. Cooperation from Mr. Santaguida has been minimal and challenging throughout the receivership proceedings.

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. After gaining access to the Debtor's offices, something which required a motion (more about this below), the Receiver commenced a sales process for the Property which included, among other things, the following:
 - i. the solicitation of marketing proposals from real estate brokers;
 - ii. obtaining an opinion on the estimated market value of the Property;
 - iii. the listing of the Property both domestically and internationally;
 - iv. the receipt of four offers by a deadline of September 15, 2017;
 - v. further negotiation with offerors;
 - vi. the execution of an agreement of purchase and sale which subsequently did not close;
 - vii. the re-marketing of the Property, beginning in December, 2017;
 - viii. the execution of a new agreement of purchase and sale (described below).
8. 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.
9. On May 16, 2018, the Honourable Mr. Justice Dunphy issued an Approval and Vesting Order approving the 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"**.

10. 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 Marylou Santaguida , also known as Mary Lou Santaguida ("**Mrs. Santaguida**"), the spouse of Mr. Santaguida, provide the Receiver with a complete explanation and accounting of all funds, which includes transfers from the Debtor of \$3,457,025.19, to Santerra Asset Management and Development Inc. ("**Santerra**"), a corporation which she owns and controls, including supporting documentation to substantiate the value of services and work performed by Santerra, if any;
- ii. That Ms. Santaguida attend examination for that purpose;
- iii. That Mr. Santaguida attend at an examination before the Receiver;
- iv. That the Receiver's Interim Statement of Receipts and Disbursements as set out in the First Report be approved;
- v. That the actions and activities of the Receiver as set out in the First Report be approved;
- vi. That the fees and expenses of the Receiver and its counsel, Devry Smith Frank *LLP* ("**DSF**"), 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.

11. 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.

12. In accordance with the Ancillary Order, the indebtedness owing to DUCA was paid in full by the Receiver on October 10, 2018.
13. 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.
14. 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**”).
15. 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 the Honourable 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**”).
16. 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.
17. 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.

18. On November 29, 2018, the Honourable Mr. Justice McEwen 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"**.

19. On April 17, 2019, the Receiver issued its third report to the Court (the **"Third Report"**), a copy of which is attached hereto as **Appendix "G"**, excluding appendices. A supplementary report to the Third Report was issued on May 10, 2019 and a second supplementary report to the Third Report was issued on May 31, 2019, copies of which are attached hereto as **Appendices "H"** and **"I"**, respectively. A copy of the responding motion material filed by the Debtor as well as Mr. Santaguida and Mrs. Santaguida is attached hereto as **Appendix "J"**.

20. The Receiver's reports provided information to the Court with respect to:

- i. The completion 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 the Debtor;
- v. The reserve requested by Tarion Warranty Corporation (**"Tarion"**) in respect of amounts secured by the Tarion Bond;
- vi. The costs and expenses of the Guarantee Company of North America (**"GCNA"**);

- vii. The corporate tax liability of the Debtor as a result of the taxable income generated by the sale of assets during the receivership proceedings, the tax return filing and the necessity of a re-filing because of erroneous information reported by the Debtor;
- viii. The related implications to the Receiver's previous proposed distribution to creditors as a result of the reserve requested by Tarion and the corporate tax liability; and,
- ix. The Receiver's response to the Responding Motion Record of the Debtor filed on May 27, 2019, and in particular, the affidavit of Mr. Santaguida sworn May 27, 2019.

21. On June 6, 2019, the Honourable Mr. Justice Penny issued an Order, attached hereto as **Appendix "K"** which, among other things, ordered the following:

- i. The Receiver to transfer the remaining Deposit Trust Funds to the general receivership trust account;
- ii. The Receiver to conduct a claims process for unsecured creditors in accordance with stipulated terms (the **"Unsecured Claims Process"**), including a claims bar date of August 16, 2019 (the **"Claims Bar Date"**);
- iii. That any claims by the Receiver against the Debtor or Mrs. Santaguida be tolled until further order of the Court;
- iv. That the approval of the Receiver's Interim Statement of Receipts and Disbursements as set out in the Third Report be adjourned;
- v. That the actions and activities of the Receiver be approved; and
- vi. The Receiver to pay the corporate tax liability of the Debtor as assessed by Canada Revenue Agency (**"CRA"**).

22. On June 6, 2019, Mr. Justice Penny also issued an Order, attached hereto as **Appendix "L"** and referred to as the **"Tarion Cash Collateral Procedure Order"**, which among other items, ordered the following:

- i. The Receiver to pay \$200,000 to Tarion (the **"Tarion Cash Collateral"**) within five business days;
- ii. Tarion to deliver to GCNA the Tarion Bond No. TM5120099 (**"Tarion Bond"**) for immediate cancellation upon receipt of the Tarion Cash Collateral;

- iii. The Receiver to pay up to \$165,709 to GCNA in full and final satisfaction of all amounts owing to it by the Debtor, including for outstanding bond premiums (the “**GCNA Distribution**”);
 - iv. A procedure for dealing with potential Tarion claims and the distribution of any of the remaining Tarion Cash Collateral after March 1, 2022.
23. At the June 6, 2019 hearing, Mrs. Santaguida sought an interim distribution of \$500,000.00 before an unsecured claims process could be commenced and completed.
24. Mrs. Santaguida did so in spite of court orders, including the Receivership Order, and more than one request that she account for the almost \$3.5 million ostensibly transferred to Santerra.
25. Mr. Justice Penny declined to grant Mrs. Santaguida’s request, observing as follows:

Whether an issue needs to be made of the \$3.5 M loan to Santerra on 220’s books cannot be resolved until it is known whether the unsecured creditors are paid.

In my view, given the lengthy history of delay and lack of cooperation from Mr. and Mrs. S[antaguida], it is not too much to say that the claims process and tax re-filings shall be completed before any funds are paid out under Ms. S[antaguida] mortgage.

A copy of His Honour’s endorsement is attached hereto as **Appendix “M”**.

II. PURPOSE OF THIS REPORT

26. The purpose of this report dated October 9, 2019 (the “**Fourth Report**”), is to:
- A. Provide information to the Court with respect to:
 - i. The status of the Unsecured Claims Procedure and the Receiver’s recommendation for payments to claimants;
 - ii. The Receiver’s activities with respect to Tarion, GCNA, CRA and Santerra; and,

- iii. The remaining receivership funds and the Receiver's recommendations for distribution of those funds; and,

B. To seek the Order of the Court:

- i. Approving the Receiver's conduct and actions to date;
- ii. Approving the Receiver's Interim Statement of Receipts & Disbursements as at October 7, 2019 and its Projection of Funds Available For Distribution;
- iii. Approving the fees and disbursements of the Receiver and the Receiver's counsel, DSF, including the estimated accrual described in this Fourth Report for fees and disbursements to be incurred to the completion of these proceedings;
- iv. Authorizing and directing the Receiver to pay the claims of the proven unsecured creditors as defined later in this Fourth Report;
- v. Authorizing and directing the Receiver to pay the remaining receivership funds to the Debtor or to Mrs. Santaguida or as the Court otherwise directs;
- vi. To provide directions, if necessary, with respect to the following:
 - a. examinations of Mr. Santaguida and Mrs. Santaguida;
 - b. their failure to provide information and documents to the Receiver in respect of an unaccounted for \$3,457,025.19;
 - c. the failure of Mrs. Santaguida and her corporation, Santerra, to account for the \$3,457,025.19;
 - d. recovery of the \$3,457,025.19;
- vii. Effective upon the filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, discharging Spergel as the Receiver and releasing Spergel from any and all liability that Spergel has or, may hereafter, have by reasons of, or in any way arising out of, the acts or omissions of Spergel while acting in its capacity as Receiver, including, without limitation, any and all dealings with the Property, save and except for any gross negligence or wilful misconduct on the Receiver's part;
- viii. orders necessary for the orderly termination of the Receivership; and,

- ix. such further and other relief as counsel may advise and this Court may permit.

III. TARION & GCNA

27. On June 10, 2019, the Receiver issued payment of \$200,000 to Tarion pursuant to the Tarion Cash Collateral Order.

28. The Tarion Bonds were thereafter cancelled, and on June 28, 2019, the Receiver issued payment in the amount of \$165,694.51 in accordance with the approved GCNA Distribution set out in the Tarion Cash Collateral Order.

IV. CANADA REVENUE AGENCY

29. As previously reported to the Court, the Receiver filed corporate tax returns for the fiscal years 2017, 2018 and 2019 based on shareholder information from the 2015 and 2016 fiscal tax returns that had been filed by the Debtor indicating that Mrs. Santaguida was the sole shareholder and based on the general ledger records of the Debtor. The improper shareholder information could have impacted the liability due to CRA based on the allocation of the small business deduction and the associated reduced tax rate.

30. Since the Receiver's last report to the Court, the Receiver obtained information from Mr. Santaguida with respect to the allocation of the small business deduction for the years 2017, 2018 and 2019 and filed amended returns with CRA in accordance with those allocations. The Receiver also obtained records from the Debtor's accountant which purported to support the general ledger entries for the period prior to the receivership.

31. CRA filed a claim in the amount of \$433,466.22 with respect to corporate income taxes, net of offsetting an HST refund payable to the Receiver. The Receiver issued payment of that claim on June 28, 2019, in accordance with the Court Order issued by Mr. Justice Penny on June 6, 2019.

The Receiver does not anticipate any amended claims as a result of the subsequently amended corporate tax returns filed to correct the shareholder information and the allocation of the small business deduction.

32. The Receiver is not aware of any other amounts owing to CRA.

V. UNSECURED CLAIMS PROCESS

33. Pursuant to the Unsecured Claims Procedure Order, the Receiver mailed a notice to 23 known potential unsecured creditors on June 12, 2019, and also emailed a copy of the notice to Mr. Santaguida's solicitor on June 17, 2019. On July 17, 2019, the Receiver mailed a second notice to 17 of those creditors who had still not filed claims with the Receiver. Copies of the affidavits of mailing are attached hereto as **Appendix "N"** (the "**Affidavits of Mailing**"). A copy of the email to Mr. Santaguida's solicitor including the claim form is also attached as **Appendix "O"**.

34. The Receiver advertised the claims process in the *Toronto Star* on June 19, 2019. A copy of the newspaper advertisement is attached as **Appendix "P"**.

35. The Receiver also posted the notice and claim form on its website at: <https://www.spergelcorporate.ca/engagements/2203284-ontario-inc/>

36. On August 30, 2019, while reviewing the Affidavits of Mailing, the Receiver noticed that Bell Canada had inadvertently been missed on the mailings. On that same day the Receiver contacted the insolvency unit of Bell Canada to provide them with the receivership claim form and notice to file a claim.

37. On September 17, 2019, Bell Canada submitted a claim for \$127.45. In consideration of the circumstances resulting in the delayed filing of the claim by Bell Canada after the claims bar date, the Receiver recommends that it be accepted.

38. The following summarizes the claims filed to date and not paid (the “**Proven Unsecured Claims**”) out of the \$899,747.7 showing in the Debtor’s financial records

<i>Creditor Name</i>	<i>Amount Filed Filed</i>	<i>Amount Recommended For Payment</i>	<i>Appendix Reference</i>
Bell Canada	\$ 127.45	\$ 127.45	R
Collaborative Structures Limited	5,424.00	5,424.00	S
GSP Group Inc.	10,805.19	10,805.19	T
Kaiser Lachance Communications Inc.	4,713.52	1,235.94	U
Krcmar Surveyors Ltd.	9,866.77	9,866.77	V
McCallum Sathers Architects Inc.	30,233.79	30,233.79	W
Paradigm Transportation Solutions Limited	4,825.10	4,825.10	X
Pelican Woodcliff Inc.	11,300.00	11,300.00	Y
Terraprobe Inc.	31,828.16	31,828.16	Z
Tarion Warranty Corporation	85,154.31	85,154.31	AA
	<u>\$194,278.29</u>	<u>\$190,800.71</u>	

A copy of the list of unsecured creditors showing in the Debtor’s records is attached hereto as **Appendix “Q”**. Copies of all of the claims submitted are attached hereto as **Appendices “R”, “S”, “T”, “U”, “V”, “W”, “X”, “Y”, “Z” and “AA”**.

39. Copies of each of the Proven Deposit Claims, with the exception of the Bell Canada claim, were provided to the solicitor for the Debtor and Mr. Santaguida and Mrs. Santaguida on August 22, 2019. A copy of the relevant correspondence, without attachments, is attached hereto as **Appendix “BB”**.

40. The message to their lawyer specifically asked the following in respect of the claims:

Please ask your clients to review them. If there is any disagreement or issue with the attached, please send it to us, setting out the details which support their position.

41. Several weeks later, and on the eve of the 9:30 appointment to set the date for the Receiver’s motion, their lawyer sent a letter and a message about this to the Receiver’s lawyers.

Copies of the letter (redacted) and the email message are attached hereto as **Appendices “CC” and “DD”**.

42. The email reads, in part, as follows:

As to the unsecured claimants we also wanted to advise that several of them are claiming despite the fact that their relationship was not with 220. For example: McCallum, Kaiser (work on larger invoice is for another project) and Paradigm. These three claims alone total about \$40,000.

43. The Receiver once again reviewed the claims referred to above and observes as follows:

- i. Kaiser Lachance Communications Inc.: Two invoices were provided as part of the claims submission. One of them (\$3,477.58) was unacceptable, as it did not relate to the Connolly project. The other invoice (\$1,235.94) issued to the Debtor clearly identified the work as pertaining to The Connolly project.
- ii. McCallum Sathers Architects Inc. (“**McCallum**”): Three invoices and detailed unbilled WIP were claimed by McCallum. The three invoices were issued to the Debtor (i.e., 2203284 Ontario Inc.) referencing James Street Baptist Church. The “contract” was for services of \$320,000 + HST re James Street Baptist Church condo. The Receiver has evidence of seven cheques totaling \$112,025.78 issued to McCallum from the Debtor with respect to that contract and a Purchase Order from the Debtor to McCallum signed by L. Santaguida on June 10, 2014 in the amount of \$320,000 + HST. There is no evidence that these invoices should be attributed to any other entity. Copies of the contract, the seven cheques and the purchase order are attached hereto as **Appendices “EE”, “FF” and “GG”**.
- iii. Paradigm Transportation Solutions Limited (“**Paradigm**”): The claim consists of two invoices totaling \$4,825.10 invoiced to Stanton Renaissance 2203284 Ontario re The Connolly 98 James St. S. Hamilton. The invoices relate to a Parking Study related to The Connolly. The related service agreement signed by Luis Correia, Director of Development, indicated the firm is Stanton Renaissance and the Registered Name is 2203284 Ontario Inc, the Debtor. A copy of the service agreement is attached hereto as **Appendix “HH”**.

44. The Debtor's lawyer also appears to take issue as to the validity of Tarion's unsecured claim. Copies of the correspondence relating to that and the matter are attached hereto as **Appendices "CC" and "II"**.

45. All other claims were submitted with appropriate supporting documentation.

46. The Receiver recommends that the Court authorize the Receiver to pay the Proven Unsecured Claims in the total amount of \$190,800.71 and order that any and all other unsecured claims against the Debtor are now statute barred.

VI. THE OVERALL PROJECTION OF FUNDS, THE UNEXPLAINED \$3.5M TRANSFER, MRS. SANTAGUIDA AND SANTERRA

47. The following summarizes the Receiver's overall projection of funds, before consideration of any payments to related parties, including Mrs. Santaguida, the spouse of the Debtor's principal:

Funds On Hand As At October 9, 2019	\$ 1,417,519	
Less:		
Outstanding and Accrued Receiver's Fees for Completion	20,000	Note 1
Outstanding and Accrued Legal Fees for Completion	18,500	Note 1
Unsecured Claims	190,801	
Contingency	10,000	
	<u>239,301</u>	
Estimated Funds Available For Distribution	<u>\$1,178,218</u>	
Note 1: Amounts are exclusive of HST as the Receiver will apply for HST refunds		

48. Other than as explained below, there are no remaining claims by secured creditors.

49. Mrs. Santguida, the spouse of the Debtor's principal, has submitted mortgage discharge statements as at January 31, 2019, for \$1,520,723 and for \$974, 882.53 (although the latter seems

to be for another corporation), for two mortgages registered in her name. Copies of the statements are attached hereto as **Appendices "CC" and "JJ"**.

50. Ms. Santaguida has also now provided evidence of \$1,115,500 of advances. Copies of the correspondence with respect to this is attached hereto as **Appendix "LL"**.

51. The following is also the case :

- (a) there were no mortgage liabilities to Mrs. Santaguida reflected in the financial records provided by the Debtor to the Receiver on July 25, 2017, or on the March 31, 2015, Balance Sheet of Debtor which was issued and approved by Mr. Santaguida in his capacity as the sole Director of the Debtor;
- (b) the Debtor's financial records appear to indicate that any amounts due to Mrs. Santaguida are unsecured shareholder loans.

A copy of the Debtor's relevant financial records is attached hereto as **Appendix "MM"**.

52. Further, Mrs. Santaguida appears as the sole director and the owner of Santerra, the entity to which \$3,457,025.19 has been transferred. A copy of the corporation profile for Santerra is attached hereto as **Appendix "NN"**.

53. In this respect, DUCA advanced \$5 million to the Debtor for what Mr. Santaguida has stated is the following: to finance an equity take out with the funds to be used for development of the Project; for a one-year interest reserve; and to pay lender's costs.

54. After the DUCA advance, the Debtor immediately transferred \$2,581,543.11 to Santerra.

55. There were several other transfers involving Santerra.

56. These transfers appear on the ledger, obtained from the Debtor. A copy of it is attached hereto as **Appendix "OO"**.

57. The net payments to Santerra total \$3,457,025.19.
58. One of the transfers from the Debtor to Santerra is recorded by the Debtor in its records (it was not recorded by the Receiver) as relating to a loan to Ms. Santaguida.
59. If the \$3,457,025.19 were to be repaid, it appears that all creditors, including unsecured creditors, could be paid.
60. The Santaguidas agree that any “monies owing by [the Debtor] to [Mrs. Santaguida] would be reduced from any monies owing to 220 by Santerra”. A copy of the letter from their lawyer which sets this out is attached hereto as **Appendix “PP”**.
61. In spite of requests made since August, 2017, and a court order on May 16, 2018, Santerra, the Debtor and the Santaguidas have not provided an accounting for the net transfer of the sum of \$3,457,025.19; they have also not made arrangements to repay the sum to the estate. Copies of relevant letters are attached as **Appendices “QQ”, “RR” and “SS”**.
62. As previously reported to the Court, particularly in the Third Report, the Receiver has several concerns regarding the validity of the purported secured claims of Mrs. Santaguida and the lack of repayment of \$3,457,025.19 advanced to Santerra, of which Mrs. Santaguida is the sole director.
63. Pursuant to the Court Order of Mr. Justice Penny dated June 6, 2019, any claims by the Receiver against the Debtor or Mrs. Santaguida were to be tolled until further order of the Court.
64. There was no tolling provision for claims against Santerra and the lawyer acting for Mr. and Mrs. Santaguida and Santerra did not respond in a timely manner to requests that a tolling agreement be executed on behalf of Santerra.

65. As a result, a Statement of Claim was issued. A copy of it is attached hereto as **Appendix "TT"**. The claim has not been served and the Receiver intends to abandon the action if the issue of the unexplained \$3.5 million transfer and payment of the unsecured claims can be resolved.

VII. RECEIPTS AND DISBURSEMENTS

66. Attached at **Appendix "UU"** is the Receiver's Interim Statement of Receipts and Disbursements as at October 9, 2019.

67. As set out above, the following summarizes the Receiver's Projection of Funds Available for Distribution (the **"Remaining Funds"**) assuming that the Court approves the payment of the Proven Unsecured Claims and professional fees:

Funds On Hand As At October 9, 2019	\$ 1,417,519	
Less:		
Outstanding and Accrued Receiver's Fees for Completion	20,000	Note 1
Outstanding and Accrued Legal Fees for Completion	18,500	Note 1
Unsecured Claims	190,801	
Contingency	10,000	
	<u>239,301</u>	
Estimated Funds Available For Distribution	<u>\$1,178,218</u>	
Note 1: Amounts are exclusive of HST as the Receiver will apply for HST refunds		

68. The Receiver recommends that the Remaining Funds be remitted to the Debtor or Mrs. Santaguida after payment of the Proven Unsecured Claims and professional fees.

VIII. 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 on October 7, 2019. A copy of that affidavit is attached hereto as **Appendix “VV”**.

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 Christopher Statham sworn on October 9, 2019 and the exhibits attached thereto. A copy of that affidavit is attached hereto as **Appendix “WW”**.

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 accounts from May 1, 2018, to and including September 30, 2019 in the amount of \$373,960.75, plus applicable HST of \$48,614.90 as well as an accrual for completion of the administration of the estate up to \$15,000 plus applicable HST.

74. The Receiver also requests that the Court approve the accounts of its legal counsel for the period from April 30, 2018, to September 26, 2019, in the amount of \$85,218.23 for fees and disbursements, plus applicable HST of \$11,323.43 as well as an accrual for completion of the administration of the estate up to \$7,500 plus applicable HST.

IX. CONCLUSIONS AND RECOMMENDATIONS

75. The Receiver is of the view that the Unsecured Claims Process was properly conducted and that the Proven Unsecured Claims should be paid prior to any distribution to the Debtor or Mrs. Santaguida in accordance with the position taken by the Debtor, Mr. Santaguida and Mrs. Santaguida.

76. In this respect, the Receiver notes that the unsecured claims process was undertaken at the suggestion of counsel for the Debtor and Mr. & Mrs. Santaguida as a procedure to overcome the issue of the lack of repayment of \$3,457,025.19 of unpaid advances made to Santerra and the Receiver's concerns regarding the security registrations of Mrs. Santaguida against the Debtor.

77. The Receiver seeks an order of this Court:

- (a) Approving the activities and conduct of the Receiver as described this Fourth Report;
- (b) Approving the Receiver's Interim Statement of Receipts and Disbursements as at October 7, 2019 and its Projection of Funds Available for Distribution as set out in this Fourth Report;
- (c) Approving and authorizing payment of the fees and disbursements of the Receiver and its legal counsel, DSF, as set out in this Fourth Report;
- (d) Authorizing and directing the Receiver to pay the claims of the Proven Unsecured Creditors;
- (e) Authorizing and directing the Receiver to pay the Remaining Funds to the Debtor, Mrs. Santaguida, or as the Court otherwise directs;
- (f) To provide directions, if necessary, with respect to the following:
 - i. examinations of Mr. Santaguida and Mrs. Santaguida;
 - ii. their failure to provide information and documents to the Receiver in respect of an unaccounted for \$3,457,025.19;

- iii. the failure of Mrs. Santaguida and her corporation, Santerra, to account for the \$3,457,025.19; and,
- iv. recovery of the \$3,457,025.19;
- (g) Effective upon the filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receiverships of the Debtor have been completed to the satisfaction of the Receiver, discharging Spergel as the Receiver and releasing Spergel from any and all liability that Spergel has or, may hereafter, have by reasons of, or in any way arising out of, the acts or omissions of Spergel while acting in its capacity as Receiver, including, without limitation, any and all dealings with the Property, save and except for any gross negligence or wilful misconduct on the Receiver's part;
- (h) Orders necessary for the orderly termination of the Receivership and,
- (i) Such further and other relief as counsel may advise and this Court may permit.

This Report is respectfully submitted this 9th day of October, 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

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:

- 3 -

- (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.

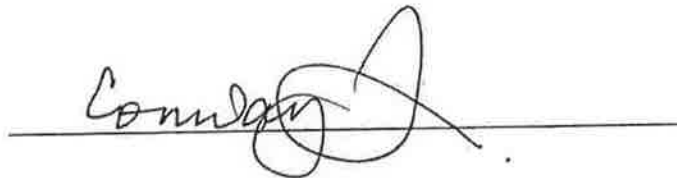
30. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized 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

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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

Appendix “B”

**SPERGEL****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**

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- 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
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- 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:

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- (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

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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
Terrasan 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 ("**Terrasan 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

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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;

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(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 arriving 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;

- 35 -

- (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.

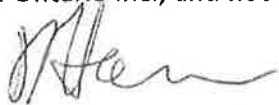
This Report is respectfully submitted this 4th day of May, 2018

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

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

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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:

A handwritten signature in black ink, appearing to read 'D. Hornbostel', is written over a horizontal line.

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

Appendix “C”

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

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE

)

WEDNESDAY, THE 16th

JUSTICE 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:

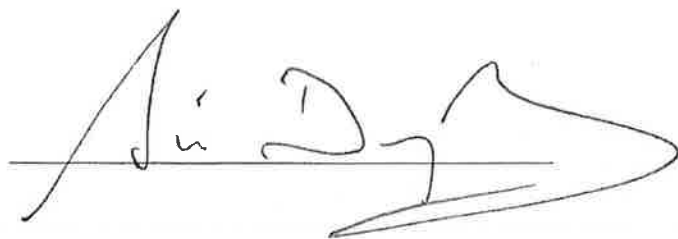
(a) the pendency of these proceedings;

- (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.

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

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.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(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.

Appendix “D”

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

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE

)

WEDNESDAY, THE 16th

JUSTICE 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

PTD A to the present order with exception of the Agreement of Purchase and Sale (Confidential App. D) which is not sealed.

A handwritten signature in black ink, appearing to be "J. D. L.", written over a horizontal line.

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.

Appendix “E”

**SPERGEL**

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**

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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

Appendix “F”

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

ONTARIO

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

THE HONOURABLE

)

THURSDAY, THE 29TH DAYJUSTICE *MCLEWEN*

)

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 ONHWPA, 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) **"ONHWPA"** 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.

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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 'M. J. S.', 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 or mark in black 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 Trust records, to have a specific claim to the Deposit Trust Funds. According to the Deposit Trust 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.

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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;

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- (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.

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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.

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Name of Purchaser: _____

Witness
Signature

Per: _____

Name
: _____

Title: _____

(Please Print)

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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 be 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: _____

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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:

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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

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SIGNED, SEALED AND DELIVERED

Signature

Name (Please Print)

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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.

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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)

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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.

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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*.
- I. 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

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(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:

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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:

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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
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Toronto, Ontario M3C 3E9

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

Lawyers for the receiver msi Spergel Inc.

Appendix “G”



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

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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;

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- 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.

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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.

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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

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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.

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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.

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- 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:

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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;

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- 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;

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- 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

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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

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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.

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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.

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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

Appendix ~~"G"~~ H



SPERGEL

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 THIRD REPORT OF THE RECEIVER

May 10, 2019

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- A.** Fiscal 2017 Corporate Tax Return
- B.** Fiscal 2018 Corporate Tax Return
- C.** Fiscal 2019 Corporate Tax Return
- D.** Court Order dated July 27, 2017
- E.** Correspondence to Brett Moldaver dated January 31, 2019
- F.** Correspondence to Brett Moldaver dated February 6, 2019
- G.** Correspondence to Brett Moldaver dated February 13, 2019

I. INTRODUCTION AND PURPOSE

1. This Supplementary Third 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 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. This Supplementary Third Report is in addition to the Receiver's Third Report of April 17, 2019. Its purpose is to provide the Court with updated information with respect to:

- i. The reserve requested by Tarion Warranty Corporation (**"Tarion"**) in respect of amounts secured by the Tarion Bond;
- ii. The costs and expenses of the Guarantee Company of North America (**"GCNA"**);
- iii. The corporate tax liability of the Debtor as a result of the taxable income generated by the sale of assets during the receivership proceedings; and,
- iv. The related implications to the Receiver's previous proposed distribution to creditors as a result of the Tarion reserve requested and the corporate tax liability.

3. This Supplementary Third Report should be read with the Receiver's Third Report of April 17, 2019. The disclaimer, limitations and qualifications set out in the Third Report apply to and are incorporated into the current document.

II. TARION RESERVE

4. The Tarion Bond was issued on September 22, 2014 in the amount of \$5,180,000 based on \$20,000 of coverage per unit for 259 potential units at an annual cost of \$38,850.

5. In accordance with the Second Further Fresh As Amended Deposit Claims Procedure Order issued by the Honourable Mr. Justice McEwen on November 29, 2018 (**the "Deposit Claims Procedure Order"**), *"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".

6. Pursuant to the deposit claims process, the Receiver returned deposits in the total amount of \$6,207,640.66 to 173 proven deposit claimants. According to the Debtor's records and the records of the Schneider Ruggerio LLP ("**SR Law**"), the solicitors who maintained the deposit trust funds prior to the receivership and for approximately one year subsequent to the Receivership Order, there were 185 units sold and the deposits paid with respect to the remaining 12 unit purchasers who did not file claims (the "**Unfiled Claimants**") was \$1,000 each, for a total amount of \$12,000. Pursuant to the Deposit Claims Procedure Order, the claims of the Unfiled Claimants and any other potential claimants are now barred.

7. The Receiver notes that all claims received during the deposit claims process agreed with the Debtor's records and the records of SR Law and that accordingly, there were no disputed claims. The Receiver believes that it is unlikely that there are any further Unfiled Claimants.

8. Given that the Receiver has paid the claims of 173 unit purchasers and that the Tarion Bond was issued with respect to coverage for 259 units, it is understood that the maximum remaining exposure to Tarion is 86 units which, in the Receiver's view, should result in a reduction of the Tarion Bond to something around the amount of \$1,720,000, in a worst case scenario. The premium should be reduced accordingly.

9. Tarion has advised the Receiver that Tarion usually holds a Reserve for a period ending approximately one year after the latest known *outside occupancy date* found in the Agreements of Purchase and Sale. The Receiver notes that the latest *outside occupancy date* found in the 185 agreements which it reviewed was February 28, 2022.

10. In lieu of continuing the Tarion Bond, Tarion has indicated that it is prepared to accept cash collateral of \$200,000 to be held by it until March 1, 2023 as the Reserve.

11. The Receiver recommends that Tarion be authorized to receive and hold the Reserve until March 1, 2023 (the "**Reserve Termination Date**") in order to avoid the annual premium charges

and hold up the administration and discharge of the Receiver, if the Receiver is otherwise able to be discharged.

12. Furthermore, should the Receiver be discharged prior to Reserve Termination Date, the Receiver recommends that any remaining Reserve should be paid to the Debtor, or as the court otherwise directs, immediately following the Reserve Termination Date.

III. GUARANTEE COMPANY OF NORTH AMERICA

13. As explained in the Third Report, GCNA is a secured creditor in support of its guarantee of the Tarion Bond as well as its own expenses. GCNA is represented by Borden Ladner Gervais LLP ("**BLG**"). To date, expenses claimed pursuant to GCNA's security are as follows:

BLG	\$ 33,536
GCNA (Tara Wishart)	21,810
Tarion Bond Premiums	<u>103,600</u> (To June 30, 2019)
Total	<u>\$ 155,709</u>

14. The Receiver has received redacted versions of the accounts of BLG and a detailed accounting of the time spent by Tara Wishart of GCNA with respect to reviewing the deposit claims and has satisfied itself that the amounts incurred are fair and reasonable. The Receiver recommends payment of these expenses as well as reasonable final costs of GCNA and its legal counsel to be submitted in this matter, currently estimated at \$10,000.

III. CORPORATE TAX LIABILITY

15. The Debtor's fiscal year end is March 31st. Prior to the receivership proceedings the corporate tax returns had only been filed to March 31, 2016.

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16. To date, the Debtor has provided the electronic accounting entries contained in the Debtor's QuickBooks accounting software. The Debtor has not yet provided the Receiver with the supporting documentation such as banking records and invoices for expenditures.

17. Based on the QuickBooks records to June 21, 2017, the previous corporate tax returns filed and the Receiver's receivership records, the Receiver completed and filed the corporate tax returns for the fiscal years ending March 31, 2017, March 31, 2018 and March 31, 2019. To date, the returns have not yet been assessed by Canada Revenue Agency ("CRA"). Copies of those returns are attached hereto as **Appendices "A", "B" and "C"**.

18. As a result of the tax filings, the balance calculated as owing to CRA is \$434,456, an amount that was not taken into consideration in the Third Report. Significant taxable income was derived during the receivership period as a result of the sale of the land under development.

19. There is a risk that the CRA may assess the amount of tax owing as different than what is set out in the income tax returns and, should there be an audit, documentation supporting the entries in the Debtor's accounting system will be required.

IV. PROPOSED CLAIMS PROCESS AND DISTRIBUTION

20. As indicated in the Third Report, there is a flow of funds from the Debtor to Santerra Asset Management and Development Inc. ("**Santerra**") that resulted in a balance due to the Debtor of \$3,457,025.19. Neither Santerra, nor Mr. and Mrs. Santaguida, have provided adequate information to the Receiver with respect to the reasons for these transactions or to address the repayment of the outstanding balance due to the Debtor.

21. If the amount shown in the Debtor's records as owing by Santerra were repaid, it would appear that there would be sufficient funds to pay all of the Debtor's creditors.

22. The transactions came to the attention of the receiver almost two years ago, after the court issued the Receivership Order on June 22, 2017, and the further order of July 21, 2017,

which required Mr. Santaguida and others to cooperate with the Receiver so that it could gain access to the Debtor's premises and records. Attached as **Appendix "D"** is a copy of the order of July 21, 2017. (The Receivership Order is attached as Appendix "A" to the Third Report.)

23. As set out in the Third Report, the Receiver wrote about the outstanding balance to Santerra on August 4, 2017. It subsequently wrote directly to Mrs. Santaguida on October 26, 2017, and then on April 23, 2018, as well as part of a broader correspondence with the Santaguidas' lawyer on January 31, February 6 and February 13, 2019. Attached as **Appendices "E", "F" and "G"** are the three most recent letters referred to in the foregoing. (The other relevant letters are attached as Appendix "M", "N" and "O" to the Third Report.)

24. The Receiver notes that while reviewing the previously filed corporate tax returns which it obtained from CRA, it discovered that the Debtor had reported that its shares are owned by Mrs. Santaguida. The relationship between Mr. and Mrs. Santaguida, the Debtor and Santerra is clearly non-arms length.

25. In the Third Report, the Receiver recommended an interim distribution to Mrs. Santaguida. It did so on the basis that there may be sufficient funds to pay the Debtor's creditors without attempting to pursue the collection of the amount which appears to be owed by Santerra and, possibly, Mrs. Santaguida.

26. At the date of the Third Report, the tax liability had not been taken into consideration and Tarion had not finalized its position. With the tax liability taken into consideration, there may not be sufficient funds to pay all of the Debtor's creditors and there may be an issue with respect to the transfers to Santerra.

27. The following summarizes the Receiver's current projection of funds available for distribution assuming that the Tarion Bond is discharged by June 30, 2019, that the Tarion Reserve of \$200,000 for a certain period is approved, and before consideration of any payments

on account of the First Santaguida Mortgage and the Second Santaguida Mortgage as defined in the Third Report:

Funds on Hand at April 8, 2019	\$ 2,322,039
Estimated Corporate Tax Liability	(435,000)
Estimated final costs of GCNA	(166,000)
Estimated reserve for Tarion Bond	(200,000)
Estimated potential Unsecured Creditors ¹	(540,000)
Estimated professional fees for completion	(100,000)
	<u>(1,441,000)</u>
Estimated funds available for further distribution	<u>\$ 881,039</u>

28. As a result of the reduction in funds available for distribution due to the corporate tax liability and the lack of supporting documentation with respect to the Debtor's financial records, the Receiver recommends that no distribution be made to Mrs. Santaguida until:

- I. the completion of the proposed claims process for unsecured creditors;
- II. receipt of the financial records previously requested from Mrs. Santaguida and the Debtor;
- III. the Receiver is able to review the requested financial records of the Debtor to substantiate the amounts recorded in the books and records of the Debtor that were used to file the corporate tax returns;
- IV. the Receiver receives satisfactory Notices of Assessment from CRA with respect to corporate tax filings for the 2017, 2018 and 2019 fiscal year ends; and
- V. there be a tolling of any limitation period in respect of any potential claim related to the amounts transferred to Santerra or that an action be commenced to protect against the expiry of any limitation period in order to permit the foregoing to be completed.

29. In all other respects, the Receiver seeks an order as set out in the Third Report, particularly paragraph 77 of it.

¹ This amount includes, in addition to what is set out in the Third Report, an estimate of \$75,000 for potential unsecured claim for Tarion set out at paragraph 60 of the Third Report as well as the potential claim of CORfinancial Corp. described at paragraph 62 of the same document.

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This Report is respectfully submitted this 10th day of May, 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

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

SECOND SUPPLEMENTARY THIRD REPORT OF THE RECEIVER

May 31, 2019

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- I. Introduction and Purpose
- II. Response to Affidavit of Luigi Santaguida

LIST OF APPENDICES**A. Financial Statements of 2203284 Ontario Inc. for fiscal 2014 and 2015**

I. INTRODUCTION AND PURPOSE

1. This Second Supplementary Third 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 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. This Second Supplementary Third Report is in addition to the Receiver's Third Report of April 17, 2019 and its Supplementary Third Report dated May 10, 2019. Its purpose is to reply to the Responding Motion Record of the Debtor filed on May 27, 2019 and in particular, the affidavit of Mr. Luigi Santaguida sworn May 27, 2019 and contained therein, which deals, among other things, with the following:

- i. The reserve requested by Tarion Warranty Corporation ("**Tarion**") in respect of amounts secured by the Tarion Bond;
- ii. The costs and expenses of the Guarantee Company of North America ("**GCNA**");

II. RESPONSE TO AFFIDAVIT OF LUIGI SANTAGUIDA

3. The Receiver has a desire to conclude the receivership proceedings as efficiently and cost effectively as possible; however, the Court appointed Receiver has a duty to realize on all of the assets of the Debtor in order to maximize the recovery for all creditors. Given the fact the unexplained net transfer of \$3.5 million to Santerra Asset Management Inc. ("**Santerra**"), a company which appears to be owned by Mrs. Santaguida, and the concerns that the Receiver has raised with respect to the two mortgage registrations of MaryLou Santaguida in its previous reports to the Court, the Receiver has proposed a solution to the Court that would allow for all other creditors to be paid in full without pursuing a legal action to try to collect the \$3.5 million. It appears that, in principle, the Santaguidas and the Debtor are onside with the proposal, subject to the amounts to be paid.

4. As previously reported to the Court, cooperation from the Santaguidas and the Debtor has been minimal since the outset of the receivership. The lack of response to the Receiver's demands for books and records has been documented in its previous reports to the Court, commencing with its July 21, 2017 motion to the Court which led to the issuance of an Order from the Honourable Madam Justice Conway to, amongst other things, Order Mr. Santaguida to comply with the Receivership Order and, in particular, to do the following:

- a) forthwith to advise the Receiver of the existence and location of Property, and to provide to the Receiver all information he has in respect of the Respondent;
- b) forthwith to provide full access to Property which is within his possession, power or control; and,
- c) forthwith to permit the Receiver to remove Property or, at its option and where possible, to make copies of Property".

5. Madam Justice Conway also ordered Mr. Santaguida to pay costs to the Receiver in the sum of \$1,000 within 30 days as a result of the July 21, 2017 motion. The Receiver did not receive payment of that cost award from Mr. Santaguida until May 22, 2018.

6. In the First Report of The Receiver dated May 4, 2018 (the "**First Report**"), attached as Appendix "B" to the Third Report, the Receiver advised the Court of the limited information that was turned over to the Receiver by the Debtor's bookkeeper. It also reported to the Court that "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".

7. Also contained in the First Report is a summary of the initial issues relating to Santerra and Mrs. Santaguida, the spouse of Luigi Santaguida, and the lack of any response from Mr. or Mrs. Santaguida with respect to the Receiver's requests for information relating to transactions involving Santerra and Mrs. Santaguida.

8. In response to the Receiver's motion and its First Report, the Honourable Mr. Justice Dunphy issued an Order for both Mr. and Mrs. Santaguida to attend to examinations before the Receiver and for Mrs. Santaguida to "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".

9. Pursuant to correspondence dated April 23, 2018, the Receiver's counsel wrote to the counsel for the Debtor and Mr. and Mrs. Santaguida, attached as Appendix "O" to the Third Report. It was agreed that the examinations would take place shortly after the requested information was supplied to the Receiver so that the Receiver could have time to review the information and conduct a meaningful examination.

10. Counsel for the Debtor and the Santaguida's did not deliver any documentation to the Receiver until January 29, 2019. Following the Receiver's review of that information and request for further information, counsel for the Debtor and the Santaguida's delivered further information on February 8, 2019. Attempts were made to schedule examinations thereafter but due to scheduling difficulties by the Santaguidas, no examinations have taken place. It is the Receiver's understanding that their counsel was planning to bring a motion to Court on the various issues, which ultimately did not happen, and for that reason the Receiver did not continue to try to arrange examination dates. The Receiver subsequently filed its Third Report to the Court which included a motion to seek directions from the Court with respect to the issues involving the Santaguidas and Santerra.

11. The Receiver has reviewed the affidavit of Mr. Santaguida and points out the following:

- **Paragraph 2** – This is the first provision of documentation to the Receiver from Mr. Santaguida with respect to the ownership of the shares of the Debtor. For the purpose of filing tax returns, the Receiver had obtained and relied on shareholder information from the 2015 and 2016 annual tax returns that had been filed by the Debtor with the Canada Revenue Agency ("**CRA**") indicating that the sole shareholder of the Debtor was Mrs. Santaguida. As a result of this disclosure, all tax returns that the Receiver has reviewed and filed will have to be corrected, something which may have implications on the amount of tax owing if Mr. Santaguida controlled other taxable corporations during the years 2015 through 2019. The Receiver has requested details from Mr. Santaguida's

accountant as to the sharing of the small business deduction among Mr. Santaguida's corporations during those years in order to file amended tax returns.

- **Paragraph 3** – As explained in the Third Report, the documentation provided to the Receiver with respect to the purchase and funding of 98 James Street South, Hamilton (the “**Property**”) indicated that it was purchased and funded by 2274889 Ontario Inc. (“**227**”) and not Mrs. Santaguida. The Discharge Statement dated January 15, 2019 and provided to the Receiver on January 29, 2019 was issued by 227 rather than Mrs. Santaguida. Accordingly, Mrs. Santaguida does not appear to hold a mortgage for the initial purchase funding of the Property.
- **Paragraph 7** – The issues with respect to the mortgages registered by Mrs. Santaguida have been explained in the Third Report.
- **Paragraph 8** – The Receiver did not prepare “financial statements” but did provide its internal working papers consisting of an excel schedule used for the preparation of the 2017, 2018 and 2019 corporate tax returns. The interest charge used by the Receiver was pursuant to the schedule presented as Appendix “X” in the Third Report and was capitalized as interest on the “Shareholder Loan” on the balance sheet in the working papers, consistent with the categorization used by the Debtor, not the Receiver, in its financial statements of prior years. Attached as **Appendix “A”** are copies of the annual statements of the Debtor for fiscal 2014 and 2015 that indicate a “Loan Payable” but no “Mortgage Payable”, presumably relating to the purported mortgages of Mrs. Santaguida. The Receiver has already acknowledged that Mrs. Santaguida advanced \$1,115,500 to the Debtor and interest would accrue regardless if it was a loan or mortgage.
- **Paragraph 8** – The meeting was initiated by Mr. Luna. As previously noted, the Debtor had never provided the Receiver with the supporting documentation for the general ledger entries. The Receiver requested the records to support the tax return filings that the Receiver prepared based on the Debtor's general ledger. The Receiver attended at Mr. Luna's office on May 27 to retrieve two boxes of records and answer any questions with respect to the corporate tax returns filed by the Receiver. Mr. Luna had no questions. The Receiver asked for the minute book but was told by Mr. Luna that he did

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not have it. The Receiver was advised by Mr. Luna today that the minute book will be provided by counsel for the Santaguidas.

- Paragraph 9** – The information therein speaks to the complexity, intertwining, and poor record keeping of the operations of the various corporations owned by the Santaguidas. The opinion on the registration of a mortgage is one issue but the claiming of an amount secured by that mortgage is another. The second Charge states that it was “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 Limen Group Ltd. from the property described in PIN 07617-0050 LT”. There is a bond in the responding record as Exhibit B, but it is not issued by Mrs. Santaguida and there is nothing in it that links it to an amount owing to Mrs. Santaguida, except that the amount is the same. The Bond was issued by GCNA to the Accountant of the Ontario Court. The Principal is Terrasan 327 Royal York Road Ltd. No evidence has been provided to indicate that Mrs. Santaguida advanced \$701,583 to 220 with respect to the vacating of a lien for Terrasan 327 Royal York Rd. Limited (“**Terrasan**”). Furthermore, Mr. Santaguida appears to provide contradictory statements within this paragraph stating firstly that Mrs. Santaguida “advanced monies to another company- Terrasan” and then later that “she advanced those funds to 220”.
- Paragraph 15** – The successful closing of the sales transaction was questionable and difficult, requiring three extensions of the closing date, as detailed in the Second and Third Reports of the Receiver. The Receiver was not certain that the transaction would close until it actually did in October, 2018 and the Receiver was not in a position to consider any further distribution to creditors until the completion of the claims process in February, 2019, with respect to the unit purchasers. During that time, the Receiver was still waiting for the Santaguidas to provide the requested information with respect to Santerra and Mrs. Santaguida’s purported mortgages and attempting to schedule a date for their examinations.
- Paragraph 16** – The examinations were requested because of a lack of cooperation and response by the Santaguidas in providing information. As previously mentioned herein,

their counsel agreed to provide the Receiver with the requested information in April, 2018 but did not do so until January 31, 2019 and February 8, 2019. Subsequent efforts to arrange dates of examination did not work out and accordingly, the Receiver filed its Third Report to the Court to seek directions based on the information it has received and reviewed.

- **Paragraph 19 and 20** –Mrs. Santaguida and therefore the amount payable is an unsecured liability due to 227.
- **Paragraph 24** –Based on the evidence provided and reported, the payment was made by 227.
- **Paragraph 26 and 27** –The Receiver notes that information on the advances of Mrs. Santaguida were not provided until January 31, 2019 and February 8, 2019 and that Mr. Santaguida provided the bank statements that were in his possession on May 27, 2019. Although there remains one advance in the amount of \$80,000 that has not been supported with proof of deposit into the Debtor's bank account, the Receiver is satisfied on the balance of probabilities that the advance was likely deposited in the Debtor's account.
- **Paragraph 33** – The Receiver also desires an efficient process to address the residual matters in the receivership and for that reason has sought an order from the Court with respect to a claims process for the unsecured creditors.
- **Paragraph 34** – The Receiver has relied on the books and records of the Debtor. The Receiver has not been provided with complete tax returns filed by the Debtor prior to the receivership and is therefore unaware how long the incorrect shareholder information has been provided to CRA. The Receiver requires further information from Mr. Santaguida in order to amend the corporate tax filings, as previously explained herein.
- **Paragraph 39** – Presumably Mr. Santaguida is referring to the entry recorded in the Debtor's general ledger account of Santerra which was provided as Appendix "L" in the Third Report. The Receiver did not record anything inaccurately, as stated by Mr. Santaguida. The Receiver merely reported to the Court how the transaction was recorded in the books and records of the Debtor, which by Mr. Santaguida's own admissions were

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not well kept. These records show a payment from the Debtor to Santerra as related to a loan to Mrs. Santaguida.

- **Paragraph 42, 43 and 44** – The Receiver recommended the implementation of the reserve by way of cash collateral rather than continuation of the Tarion bond in order to avoid the cost of the annual bond premiums; thereby resulting in more funds available for final distribution to creditors or to the Debtor.
- **Paragraph 45 and 46** – The Receiver has reviewed GNCA's legal fee invoices and has found them to be reasonable. There is no requirement for those fees to be taxed by the Court.
- **Paragraph 49** – The Receiver proposes a claims process by which unsecured creditors, including CORfinancial Corp., are provided the opportunity to prove their alleged claims, something particularly important given Mr. Santaguida's evidence with respect to poor record keeping. Until that process is complete, it is prudent to include the amount as a reserve.
- **Paragraph 52** – The Receiver agrees with the concept in general but not the amounts. The Receiver agrees that the tax liability should be paid but cautions that the amount may increase as a result of the change in shareholder information and depending on the information we are awaiting from Mr. Santaguida and his related corporations. The issue of Santerra is not moot as Mr. Santaguida states. It only becomes moot if all other creditors of the Debtor are paid in full.

This Report is respectfully submitted this 31st day of May, 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

Appendix “J”

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

RESPONDING MOTION RECORD

MOLDAVER BARRISTERS
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Toronto, Ontario, M4W 3L4

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Date: May 27, 2019

Lawyers for the Respondent

TO: **DEVRY SMITH FRANK LLP**
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Lawyers for the receiver msi Spergel Inc.

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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

AFFIDAVIT OF LUIGI SANTAGUIDA

I, **LUIGI SANTAGUIDA**, of the City of Toronto, in the Province of Ontario, hereby MAKE OATH AND SAY:

Overview and Background

1. I am the owner and director of 2203284 Ontario Inc. (**220**) and as such I have knowledge of the matters herein after deposed. This affidavit is filed in connection with the Receivership of 220, and on behalf of my wife MaryLou Santaguida (**MLS**), Santerra Asset Management (**Santerra**), and me.
2. I own 220. I attach as **Exhibit A** hereto a true copy of 220's Corporate Information Sheet as prepared by 220's then lawyer Leor Marguilies along with a true copy of the share certificate for 220 evidencing my ownership of 100 (all) shares of 220. I am the sole Director, I am the President and Secretary and the sole shareholder of 220. Santerra is a project management company owned by MLS that she used for her various investments or developments undertaken

by her and my companies. MLS, Santerra, 220 and I want this Receivership to be at end and to recover monies due to MLS as soon as possible.

3. MLS is owed monies by 220. MLS advanced to 220 under the terms of the MAA a total \$1,592,514 as at March 31, 2019 (inclusive of interest). This amount is based on the following analysis as per the Receiver (I note this excludes the initial MLS advance to purchase of \$624,000 for the Property which is included in the discharge statements MLS will send to the Receiver):

Note 3 - Calculation of interest on Santiguada mortgage

Balance as at December 31, 2016	\$ 1,334,421
Interest for next three months	\$ 26,867
Balance as at March 31, 2017	\$ 1,361,288
Interest for fiscal 2018	\$ 111,081
Balance as at March 31, 2018	\$ 1,472,369
Interest for fiscal 2019	\$ 120,145
Balance as at March 31, 2019	\$ 1,592,514

Note:

FV = (8%/12,3,, -1334421,1) - 1,334,421.00

4. By way of background, Spergel was appointed Receiver over 220's property – the 98 James Street South, Hamilton property (**Property**). The Property was purchased by 2274889 Ontario Inc. (227) a company owned by MLS. The purchase was later assigned to 220 a company controlled by me.

5. MLS funded 220's closing of the purchase of the property. In connection with this assignment/purchase MLS secured a charge against title to the property in the amount of \$1,500,000.00 (June 6, 2013). The initial advance was made up of the deposit on the purchase of the property (\$25,000) along with a further \$599,000 on closing.

6. MLS registered a charge against title to the Property on June 13, 2013 as Instrument WE903381 in the amount of \$1,500,000 with interest at 10% and subject to Standard Charge Terms 200033 (**MLS First Mortgage**).

7. MLS and 220 amended the MLS First Mortgage by way of Mortgage Amending Agreement (**MAA**) on April 1, 2015 increasing the mortgage amount to \$4,000,000 and reducing the interest rate by two *per cent*. The opinion obtained by the Receiver with respect to the First Mortgage as amended by the MAA states: “[w]e are of the opinion that the First Charge is valid and enforceable in accordance with its written terms ...” (**Opinion [page 404 of Receiver’s Motion Record]**). The Opinion further states with respect to the MAA, that it “contains the following language which we believe is sufficient to secure such advances” with respect to section 4 “Continuing Security”. The Opinion further states that “[w]e have been provided with evidence that MLS advanced \$1,115,500 to the Debtor from March 2014 to September 2016.” The Opinion notes that “we have not been provided with any evidence that monies are, in fact, owing by the Debtor to Mary Lou Santaguida with respect to such advances.” I do not agree with or accept this last statement. MLS has not been paid *any monies with respect to the First Mortgage (or the Second Mortgage)*. There is no evidence the MLS has been repaid from 220.

8. The Receiver it seems calculated the interest on the MLS First Mortgage using the terms of the MAA which in YE 2019 equalled \$120,145.30 as calculated by Melvin Luna. Upon review of Note 3 to the Financial Statements used by the Receiver in filing the tax returns for 220, the interest calculation is included as an expense as part of the real estate under development figure of \$6,033,523.15 on the costs of goods sold in order to determine the gross profit. Once you deduct other expenses you arrive at net income which is the basis for the tax payable calculation. The

MLS First Mortgage and interest thereon was used by the Receiver to determine the tax payable. As such, I do not understand how the Receiver can maintain the MLS First Mortgage is not valid, outstanding (in full) and in priority to all other claims. I note the Receiver filed returns and now seeks information from 220 to verify same. The Receiver (Ms Hornbostel) and Melvin Luna, over the course of the 23rd and 24th of May exchanged emails to set up a meeting for Ms Hornbostel to review 220's expenses and bank statements. We do not see how this makes sense considering these documents were available since the Receiver was appointed and were not sought or taken by the Receiver when they first retrieved documentation from 220.

9. MLS registered a second charge against the Property on April 4, 2016 as Instrument No. WE1111875 in the principal amount of \$701,583.00 with interest at 5 *per cent per annum* and subject to Standard Charge Terms 200033 (**MLS Second Mortgage**). The Opinion also confirms that this mortgage is "valid and enforceable". MLS advanced monies to another company – Terrasan 327 Royal York Rd. Limited (**Terrasan**) – in connection with vacating a lien registered against Terrasan's lands. Terrasan at that time was developing another project that MLS had advanced monies to; both directly indirectly through Santerra. In this regard, I attach as **Exhibit B** true copy the Order vacating the lien; we have not been able to find the cheque to date but MLS advanced these funds to 220. These monies have not been repaid by 220 to MLS and along with the interest on same remains due and payable under the MLS Second Mortgage.

10. Commencing March 2014, MLS began to advance to 220 funds and did so through to September 2016. The mortgage was increased to \$4,000,000 to reflect these advances, future advances and the increases in value of the property.

11. Thereafter, on June 22, 2015, 220 gave a mortgage to DUCA. As set out in the agreement, the loan was to be used to: (i) finance equity take-out of \$4,707,500.00, with said funds to be used for development etc. of the Connolly; (ii) for a one-year interest reserve on the DUCA loan; and (iii) to pay any lender's costs etc.

12. In July 2015, upon receipt of the advance from DUCA, 220 directed \$2,581,543.11 (from the DUCA proceeds) be transferred to Santerra. The balance was retained by 220. This transaction was recorded as an intercompany loan on 220's books and was an unsecured loan. In late September 2015 220 transferred approximately \$1,130,000.00 to Santerra on the same basis as the July 2015 loan. The total of these loans is \$3,711,543.11.

13. A further \$277,738.02 was advanced to Santerra by 220 by March 2017 while Santerra advanced \$532,255.94 to 220 over the same period. The net of these transactions is a net payable to 220 of \$254,517.92. These intercompany loans are discussed in more detail below.

14. Netting the \$3,711,543.11 against the \$254,517.92 amount totals \$3,457,025.19 owing to 220 by Santerra being the same amount the Receiver maintains was transferred by 220 to Santerra following the DUCA loan advance.

Sale of the Property

15. The Property was sold in or around October 2018 for \$8,500,000. At closing, the only secured mortgage creditors were DUCA and MLS as by July 2018 the Receiver was aware that Diversified was fully repaid. This is important on several fronts as with the sale price determined months before that, the Receiver was in a good position to determine the amount of funds available

for distribution to secured creditors and if any surplus to any unsecured creditors. At this point the only secured creditor was MLS. Apart from the distribution to MLS and any unsecured creditors the remaining material issues for the Receiver to address were the claims/positions of GNC and Tarion in conjunction with the Claims Deposit Procedure.

Examinations of MaryLou and Louie Santaguida

16. The Receiver has not examined MLS or me. We have made ourselves available and I understood a date was scheduled for said examinations and in the end the Receiver did not and has not pursued an examination of MLS or me. While we have been agreeable to being examined and certainly understand that there is Court Order so our agreement is of no moment, we did not understand there to be a benefit to such examination considering the circumstances. We have provided the Receiver with all the information sought that we are able to provide and we do not understand the Receiver's complaints in this regard.

17. We again made ourselves available for discovery – that is MLS and me – in March of 2019 but the Receiver did not pursue (again) our examination. My read of the current materials is that it still does not so seek.

18. While when examinations of MLS and me were first ordered there was a possibility that there might be a shortfall to the claimants as the sale price was not crystallized and Diversified still had a claim. By July 2018 it was clear Diversified was not a creditor of 220. Diversified's counsel advised the Receiver's counsel on July 10, 2018 that Diversified was fully repaid in July 2018.

MLS Mortgage Security, 220 and Santerra

19. 227 is owned by MLS. 227 assigned the Agreement of Purchase and Sale for the Property to 220 a company controlled and owned by me. This was done as I would be the operator of the project. As MLS wanted to secure her position in her name as she funded 227 for the deposit and ultimately funded the closing proceeds for 220 to acquire the Property.

20. MLS entered into a mortgage agreement with 220; the mortgage was registered to secure actual advances and future advances. DUCA did not contest its validity and required its postponement (rather than challenging its registration) both before and after its advance to 220 (and 220's disbursement of same).

21. The \$4 million amendment to the MLS First Mortgage was done to secure future advances that MLS would arrange in connection with the development of the Property in addition to the acquisition funds.

22. I note that the DUCA mortgage, the default of which triggered this Receivership, has been fully repaid. There are no other secured creditors save for MLS and GNC.

23. It seems a review of MLS security was only undertaken in 2019. When DUCA registered its mortgage it required a postponement of the MLS security. It did not do this because the security was invalid or otherwise unenforceable. It was on the basis the mortgage was in priority over the DUCA mortgage unless postponed.

24. The Receiver has sought granular details in cases where it is not warranted or if it is has not applied the same scrutiny to other claimants/creditors. By way of example, with respect to

MLS' first mortgage, the Receiver sought proof of the \$25,000 deposit by 227 (MLS company) for the purchase of the Property. The APS on its face that a deposit of this sum was required on acceptance. The deal closed. I had my lawyer send the Receiver a page from the bank statement for 227's account showing the cheque for the deposit. This account has been closed.

25. The Receiver's counsel wrote to our lawyer, Brett Moldaver, on April 29, 2019 seeking "missing documentation", the email from Receiver's counsel forward the Receiver's email to same which provides as follows:

The following summarizes the missing documentation:

Date	Chq. No.	Amount	Cheque Copy Or Bank Draft Provided	Proof Of Deposit Provided
19-Mar-14	51	\$ 49,000	Yes	No
30-Apr-14	203	34,500	No	No
28-Mar-15	111	7,000	No	No
14-May-15	141	80,000	Yes	No
Total		\$ 170,500		

26. As per the above chart, the Receiver maintained that there was no proof (cheque or bank draft) provided for two cheques, one for \$49,000 and another for \$80,000, and for all four no proof of deposit. The total amount of these cheques is \$170,500. The Receiver, I assume, seeks proof of same as they are part of the MLS advances secured by the MLS First Mortgage. Documentation in this regard had already been provided to the Receiver by our counsel and of course could and should have been verified by them as they had control of 220's bank account at BMO. In this regard I attach as **Exhibit C** true copies of:

- Cheque number 141 from MLS to 220 for \$80,000;

- Duplicate of Cheque number 111 from MLS to 220 for \$7,000;
- One page of 220 bank statement from BMO showing the deposit of Cheque 111 for \$7,0000;
- Cheque number 203 from MLS to 220 for \$34,500;
- One page of 220's bank statement from BMO showing a deposit of \$34,500;
- Cheque number 051 for \$49,000 from MLS to 220 for \$49,000; and
- One page of 220's BMO bank statement showing the deposit of \$49,000.

27. After this April 29, 2019 request by the Receiver I asked Melvin Luna, CPA, our accountant to attend at BMO to see if any further documentation could be sourced with respect to 220. Mr. Luna advises me and I verily believe that BMO told him that the BMO bank account for 220 was not in the system. My accountant and I do not understand why the Receiver did not verify the MLS advances to 220 over the course of its appointment. Mr. Luna advises me and I verily believe that all four of the cheques from MLS, i.e., numbers 51, 111, 141 and 203 totalling \$170,500 were all deposited at 220's BMO account and were advanced by MLS pursuant to her mortgage security.

28. With a view to clarifying any issues the Receiver may have with respect to 220's accounting records or the like I had Mr. Luna reach out to the Receiver, Deborah Hornbostel to meet and provide her with access to the records. By email of May 21, 2019 Mr. Luna communicated to the Receiver as follows:

Good Afternoon Deborah,

I am reaching out to you to make arrangements between us to provide you with the requested documents relating to 220.

I will be providing you with the following documents:

- Banking records,
- Vendor Invoices/files

Please advise when you have time next week to come by my office at 37 Racine Road, Unit 1 to pick-up the documents and I will accommodate. Thank you.

Melvin Luna, CPA

29. Ultimately Mr. Luna and Ms Hornbostel agreed to meet on Monday May 27, 2019 to review the documentation.

30. In January 2019, MLS and I had our lawyer send a list of advances or loans from MLS to 220. We sent this list with supporting documentation (including cheques or bank statements that my client has available). The advances total \$1.15M (principal advances subject to the MLS mortgage). It seems these transactions were misallocated as "shareholder loans" in 220's books and records notwithstanding MLS not being a shareholder of 220. In February 2019 we had our counsel provide further information to the Receiver.

31. As to 220 and Santerra we had our lawyer provide the Receiver with a list of transactions between 220 and Santerra.

32. We have sought a distribution to MLS and a conclusion of the Receivership or at least a more efficient process that will yield the most monies to 220's creditors and if they are satisfied in full to 220.

33. Apart from crystallizing GNC's claim, Tarion's claim and the Receiver's/counsel's fees, the only remaining non-Santaguida payable/creditor are the taxes (potential) and the unsecured creditors. We are agreeable to a process to deal with the unsecured claimants to allow the bulk of the funds to be released to MLS. However I have lost confidence in the Receiver's ability to address this matter efficiently and see no reason why a Receiver (or this one and would ask for an alternate appointee if a Receiver is required) needs to be in place for this matter

34. The liability under the MLS Mortgages were not entered into 220's records as a result of poor accounting practices of the accounting team in place at that time. These and other accounting or financial recording errors should be corrected both in the books and the filings with CRA. For example, the recording of shareholder on Schedule 50 of the T2 return which did not report accurately that I was and am the sole shareholder of 220.

35. I should point out that there was no expectation by MLS or 220 and no requirement in any event, that either of the MLS Mortgages would be paid out in whole or in part until the project was completed.

36. The Receiver, rather than argue against the facts, should have corrected the records and filed accordingly. As noted the MLS mortgage liability was not recorded in the context of 220 being my company, and MLS being my wife. So too the recording of the Santerra payments from 220. Santerra is my wife's company. This company has funded real estate ventures that I have

managed. The Property and 220 were no different. While 220 was developing the Property, MLS, our companies and I were involved in other real estate projects.

37. The relationship between the companies and the principals contributed to the informal and in some case erroneous accounting and financial recording. In effect 220 (as with other operational development companies usually owned by me) was funded by MLS (through her company 227 and personally) and might, down the road, be funded by Santerra (likely from an MLS cash injection or from another project with surplus funds). The funds transferred between the two entities does not make any mention of a repayment to MLS via Santerra and this was not the intention.

38. That being said, intercompany loans in this context is not unusual in my experience. DUCA had no issue with a significant amount of its mortgage advance to 220 being advanced by 220 to Santerra. This was done soon after the advance was made. DUCA was aware of these advances and made no objection. These intercompany loans are unsecured and were reported accordingly and accurately throughout the year 2014, 2015 and 2016. These companies were non-arms lengths and were operating as such. As a side note, the receiver's T2 filings for 2017-2019 do not distinguish between the nature of the intercompany loans but only classifies them as receivables, which is an unsecured position. I understand that if the Receiver was of the view these loans were secured (they are not) then it was obligated to report them as such in the notes to the financial statements.

39. I am advised by Melvin Luna, and do verily believe that as follows in this paragraph. The funds going from 220 to Santerra labelled as "Loan from MLS" was recorded inaccurately by the Receiver. If the Receiver is arguing that this note is evidence of repayment of the loan to MLS via Santerra than the proper

wording to use is "Loan repayment to MLS". "Loan from MLS" communicates the fact that MLS is advancing via Santerra to 220 and not accepting a repayment. Additionally, MLS had been advancing to 220 directly and there is no reasonable explanation as to why MLS would direct repayment to her via Santerra for funds she had advanced personally, to do so would be to misallocate the transaction. Proper accounting practice would be to repay to MLS that which she advanced unless she provided instructions to repay her loan back via another method.

40. Again, MLS funded 220 personally and through 227 (initially). I do not understand – as it is not the case – why the Receiver would posit that MLS would receive repayment on her mortgages through payments to Santerra. I find this surprising considering the T2 filings by the Receiver as noted earlier in my affidavit.

Unsecured Creditors

41. We had our lawyer communicate our position with respect to the unsecured creditors. According to us there is a total of \$172,818.24 owing to the unsecured claimants (items 1, 3, 7, 9, 10, 13, 15, 16, 20 and 21 from the "Schedule A" unsecured claimants list which is found at Appendix "Z" to the Third Report of the Receiver). Of this amount, \$70,804.24 is owed to me. I adopt the position and contents of my counsel's letter to the Receiver in this regard.

The continuation or discharge of the Tarion Bond

42. We do not understand why the Tarion Bond should be continued and disagree with the position. While we agree that 220 should not be paying any further premiums we do not agree that

a reserve is the price for same in the circumstances. The Claims Deposit Procedure (as amended) is complete. All purchasers eligible to submit claims have either done so or are barred due to time. The suggestion that there may be "additional purchasers" is without any foundation. This project was widely reported on in the local press. I am not aware of any sales outside of the sales for which 220's then counsel SR retained deposits. The idea that there are phantom purchasers who could look to the Bond at all and in the face of the Court Orders in this regard is not understood by me.

43. Having reviewed the Orders in this regard it seems that any Purchaser (as defined) is barred from asserting any claim against Guarantee Co. or Tarion (among others) after the Claims Bar Date. As such I do not understand how or why a Purchaser could advance a claim after the Claims Bar date (which has passed) as against Guarantee Co., Tarion or 220. As such I do not see why a reserve could be sought by Tarion or why the Receiver should agree to same. MLS or 220 will be deprived of these funds for no reason pending their return. We see this as another example of the Receiver's unfair treatment to MLS.

44. In the result the Tarion Bond is no longer required (and as such no more premiums payable).

Interim distribution to guarantee Co.

45. While we do not dispute GNC's entitlement to claim under the agreement with 220 we do dispute the quantum claimed. GNC is fully secured. There is no explanation for how GNC has expended its fees.

46. 220 has a right to scrutinize those fees and seeks an opportunity to do so. While a reserve for the maximum claim of GNC might be maintained we are of the view this claim should be dealt with outside of the Receivership or at a minimum allowing MLS and 220 to directly contest the

quantum of the fees or claim of GNC.

47. A reserve for its maximum claims could be held (without need for continuing the Receivership) and subject to a determination or agreement on same the Bond is no longer required as save for the fees there is no exposure to GNC as per the Claims Deposit Procedure (as amended).

48. We see no basis for a reserve for the unsecured creditors as the amount owing is not \$540,000 as indicated in the Receiver's report (paragraph 27). Tarion seeks, in addition to the reserve, \$75,000 for administrative costs. This amount is not supported by any documentation and we do not see how Tarion is entitled this amount in the circumstances. If a reserve is held for same, we would agree to it so as to be able to have a hearing to determine the quantum of same. We do not see how the Receiver needs to be or ought to be involved in this process.

49. The Receiver also maintains that CORfinancial Corp. has an unsecured claim for \$291,724.42 for a bridge loan in 2016. This claim is wholly without merit. No reserve should be maintained for same. No monies were advance by CORfinancial Corp. to 220 or to 220's account. CORfinancial Corp. did not submit a claim (proof of claim) to the Receiver and apart from a letter there is no evidence of any kind to support this unsecured claim.

The Receiver's fees and the Receivers counsel's fees

50. The Receiver's fees and the Receiver's counsel's fees are excessive. We want to assess same. The quantum is beyond the pale for the work the Receiver had to undertake.

51. In any event we seek to assess these fees and seek to cross-examine the Receiver with respect to same. We ask for leave of this Court to do so.

Distribution of the remaining receivership funds including surplus Deposit Claims

Procedure Funds

52. Based on the Supplementary Third Report of the Receiver dated May 10, 2019 there is \$2,322,039 available for distribution. Although we are of the view there should be more considering the excessive fees spent to date by the Receiver and its counsel, using this amount we are submit the following:

- The tax liability of \$435,000 should be paid;
- The GCNA estimate final costs of \$166,000 should be reserved subject to a determination on a proper record as to the amounts owing;
- There should be no reserve for the Tarion Bond or in the alternative a reduced amount should be in place and we would suggest no more than \$25,000 in this regard;
- A reserve of \$175,000 for unsecured claims may be set up in the alternative to a payment to the unsecured creditors as I have set out in my counsel's letter to Receiver's counsel and as I set out above;
- A reserve of \$10,000 for professional fees for completion as there is no longer a need for any further Receiver involvement save perhaps to address the unsecured claims.

This totals \$810,000 leaving \$1,550,000 (approx.) for distribution to MLS on her mortgage security. All secured creditors would be paid, and all valid unsecured claims would be paid in this scenario along with the necessary reserves to cover the GNC, Tarion and Receiver/Receiver's counsel claims. Any surplus funds would be payable to MLS on her mortgage or to 220. The issue of Santerra is moot in the circumstances or any other scenario even those of the Receiver.

53. With respect to the surplus funds from the Deposit Claims the Receiver's Third Report at paragraph 35 indicates that there is over \$212,000 available. I understand this to be included in the

\$2,322,039 that is available for distribution according the Receiver. These monies (less a reserve to Tarion that we contest but if Ordered) should be immediately payable to MLS on her mortgage in any event or be paid to 220's credit for payment to its creditors. This situation further supports the termination of the Receivership immediately or in short order following a narrowing of its mandate (i.e. to address the GNC, Tarion and Receiver fee issues along with perhaps any unsecured creditor issues).

Conclusion

54. 220/MLS anticipate that the remaining proceeds of sale would be applied to cover the MLS charges, GNC's claim (subject to any reduction), and the Receiver/counsel's fees (subject to any reduction) with any surplus to be paid out to unsecured creditors. Alternatively there would be no surplus proceeds but in either case the Receivership should be concluded.

SWORN before me at the City
of Toronto, in the Province of
Ontario this 27th day of March
2019.

A Commissioner for taking affidavits.


LUIGI SANTAGUIDA

This is Exhibit A referred to in the
affidavit of Luisi Senhous
sworn before me, this 22nd
day of May 2019.


A COMMISSIONER FOR TAKING AFFIDAVITS

Corporate Information Sheet as of: November 9, 2009

File No: C006864
Lawyer: Leor Margulies**2203284 ONTARIO INC.**

INCORPORATION:	April 14, 2009	Corporation Number:	2203284
JURISDICTION:	Ontario	Fiscal Year End:	
REGISTERED OFFICE ADDRESS:	94 Brockport Drive, Toronto, ON M9W 5C5		
MAILING OFFICE ADDRESS:	Toronto, ON M9W 5C5		
EXECUTION OF DOCUMENTS:	any one director or officer		
CORPORATION CONTACT:	Luigi Santaguida		
	Tel: 416 201-9982	Fax:	

ACCOUNTANT:**ACCOUNTANT CONTACT:****BANK:****AUTHORIZED CAPITAL:****TO BE ADVISED**

unlimited

Common

Voting

DIRECTORS:

Quorum: Majority

Board Details: minimum 1 - maximum 10

Fixed at: 1

Luigi Santaguida

14 St. Margarets D, Toronto, ON Canada M4N 3E5 (Home)

94 Brockport Drive, Toronto, ON Canada M9W 5C5 (Address for Service)

OFFICERS:

President

Luigi Santaguida

14 St. Margarets D, Toronto, ON Canada M4N 3E5 (Home)

94 Brockport Drive, Toronto, ON Canada M9W 5C5 (Address for Service)

Secretary

Luigi Santaguida

14 St. Margarets D, Toronto, ON Canada M4N 3E5 (Home)

94 Brockport Drive, Toronto, ON Canada M9W 5C5 (Address for Service)

SHAREHOLDERS:

Quorum: 51%

Luigi Santaguida

Common

100

SHAREHOLDERS AGREEMENT: NO**INVENTORY:** 3 hole letter**LAST ANNUALS:****NOTES:** [TS] PREPARER'S INITIALS

NO. C-1

(100) COMMON SHARES

2203284 ONTARIO INC.

SUBJECT TO THE ONTARIO BUSINESS CORPORATIONS ACT

This is to Certify that
is the registered holder of
Common Shares of

LOUIE SANTAGUIDA
ONE HUNDRED (100)
2203284 ONTARIO INC.

The class or series of shares represented by this Certificate has rights, privileges, restrictions or conditions attached thereto and the corporation will furnish to the holder, on demand and without charge, a full copy of the text of:

- (i) the rights, privileges, restrictions and conditions attached to the said shares and to each class authorized to be issued and to each series insofar as the same have been fixed by the directors, and
- (ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series, if applicable.

LIEN ON SHARES. The Corporation has a lien on the shares represented by this Certificate for any debt of the Shareholder to the Corporation.

RESTRICTIONS ON TRANSFER. There are restrictions on the right to transfer the shares represented by this Certificate.

IN WITNESS WHEREOF the Corporation has caused this Certificate to be signed by its duly authorized officers
this 14th day of April, 2009.

Louie Santaguida - President

Louie Santaguida - Secretary

This is Exhibit B referred to in the
affidavit of Luis SANTASOLIN
sworn before me, this 27th
day of May 2019.

A COMMISSIONER FOR TAKING AFFIDAVITS

LIEN BONDBond Number **TS5191079****\$700,631.40**

The surety of this bond is **THE GUARANTEE COMPANY OF NORTH AMERICA** an insurer licensed under the Insurance Act to write surety and fidelity insurance.

The principal of this bond is **TERRASAN 327 Royal York Rd. Limited**

The obligee of this bond is the Accountant of the Ontario Court (Accountant of the Superior Court of Justice).

WHEREAS **Limen Group Ltd.** have registered (or where the lien does not attach to the premises, have preserved the liens by giving to the appropriate office) claims for lien with respect to an improvement to the premises described in Schedule "A" to this bond.

AND WHEREAS **Limen Group Ltd.** and others may prove liens with respect to the improvement to the premises.

AND WHEREAS this bond is being posted pursuant to section 44 of the Construction Lien Act.

THEREFORE, subject to the conditions contained in this bond, the surety and the principal bind themselves, their heirs, executors, successors and assigns, jointly and severally, to the obligee as follows:

1. The principal shall on or before the date specified in the judgment, order or report of the court, in any action to enforce lien claims arising from the improvement, pay to the obligee the amounts for lien(s) and costs as is directed by the court, unless in the meantime an appeal has been taken from the judgment, order or report in which case payment is not required until the final disposition of the appeal.
2. The surety, in default of payment by the principal, shall pay to the obligee within such further time as is specified by the court, the amount of any deficiency in the payment by the principal but the surety is not liable to pay more than a total maximum amount of **\$700,631.40**. The surety shall make the payment upon the written demand of the obligee without the right to question the merit of the demand and despite any objection by the principal.

This bond is subject to the following conditions:

1. The total amount of this bond shall be reduced by and to the extent of any payment made under the bond pursuant to an order, report or judgment of the court.
2. The surety shall be entitled to an assignment of the rights of any person who receives a payment or benefit from the proceeds of this bond, to the extent of the payment or benefit received.


Signed and sealed by the principal and the surety on the 4TH day of APRIL, 2016

SIGNED AND SEALED in the presence of:

THE GUARANTEE COMPANY OF
NORTH AMERICA


Kathy Ness Attorney-in-fact

TERRASAN 327 Royal York Rd. Limited


By: Luigi Santaguida.

SCHEDULE A

PIN 07617-0050 LT

LTS 159, 160 & 161, PL 164; ETOBICOKE, CITY OF TORONTO, SUBJECT
TO AN EASEMENT AS IN AT3989173

327 Royal York Road
Etobicoke

Court File No.: CV 606550631-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
IN THE MATTER OF the Construction Lien Act, R.S.O. 1990, c.C.30

MASTER

ALBERT

)
)
)MONDAY THE 11th DAY

OF APRIL, 2016

BETWEEN:



LIMEN GROUP LTD.

Lien Claimant

-and-

TERRASAN 327 ROYAL YORK RD. LIMITED

Owner

ORDER
(Motion to post monies in to Court)

THIS MOTION, brought without notice, by the Owner, Terrasan 327 Royal York Rd. Limited ("327"), for an Order vacating the registration of the Claim for Lien (the "Lien") registered by the above Lien Claimant against the lands and premises described in Schedule "A" hereto as Instrument No. AT4183314, by payment of funds into Court to the credit of this Lien, pursuant to section 44 of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended, was heard this day at the Court House at 393 University Avenue, Toronto, Ontario.

UPON READING the Affidavit of Kelsey Aprile, filed, and upon the Owners having paid into Court to the credit of this Lien the sum of \$650,631.40, together with ^{CH ✓} ~~potential~~ costs of ^{CH ✓} \$50,000.00 for a total of \$700,631.40, as Accountant's Account No. 540621: ^{CH ✓}

1. **THIS COURT ORDERS** that the registration of the Claim for Lien of Limen Group Ltd. electronically registered April 4, 2016, as Instrument No. AT418331, in the amount of \$650,631.40, in the land Registry Office for the Land Titles Division of Toronto (No. 80), at Toronto, Ontario, against the lands and premises referred to in Schedule "A" annexed hereto, be vacated.
2. **THIS COURT ORDERS** that the Land Registrar accept the registration of this Order as an Application to ~~amend~~ *delete* and not record it as a discharge of lien against the abstract of title for the title lands and premises described herein.
3. **THIS COURT ORDERS** that a copy of this order be sent to the lawyers for Claimant by facsimile, forthwith after entry.



Master

MASTER C. A. ALBERT

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
APR 11 2016

PER / PAR: 

SCHEDULE "A"

Court File No.:

ONTARIO**SUPERIOR COURT OF JUSTICE****IN THE MATTER OF** the Construction Lien Act, R.S.O. 1990, c.C.30**BETWEEN:****LIMEN GROUP LTD.**

Lien Claimant

-and-

TERRASAN 327 ROYAL YORK RD. LIMITED

Owner

PIN	07617-0050 LT
Description	LTS 159, 160 & 161, PL 164 ; ETOBICOKE, CITY OF TORONTO
Address	327 Royal York Road Toronto, Ontario (the "Lands")



LIMEN GROUP LTD.
Claimant

-and-

TERRASAN 327 ROYAL YORK RD. LIMITED
Owner

Court File No. **CV 1606550651-0000**

ONTARIO
SUPERIOR COURT OF JUSTICE
In the matter of the *Construction Lien Act*

Proceeding commenced at TORONTO

ORDER

MOLDAVER BARRISTERS
365 Bloor Street East, Suite 1608
Toronto, Ontario
M4W 3L4

Tel. (416) 238-4123
Fax (416) 929-9604

Brett D. Moldaver (44191E)
brett@moldaverbarristers.com
Lawyers for the Defendant

LRO # 80 Application to Delete Construction Lien

Received as AT4190935 on 2016 04 12 at 13:21

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

yyyy mm dd Page 1 of 1

Properties

PIN 07617 - 0050 LT
Description LTS 159, 160 & 161, PL 164 ; ETOBICOKE, CITY OF TORONTO; SUBJECT TO AN EASEMENT AS IN AT3988173
Address 327 ROYAL YORK RD
ETOBICOKE

Source Instruments

Registration No.	Date	Type of Instrument
AT4183314	2016 04 04	Construction Lien

Applicant(s)

The applicant applies to delete the selected lien and/or certificate of action.

Name TERRASAN 327 ROYAL YORK RD. LIMITED
Address for Service 93 Skyway Avenue, Suite 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.

Statements

The application is based on a court order See Schedules, discharging/releasing/vacating the certificate of action. The court order is still in full force and effect.

The lien is released and no certificate of action has been registered.

Signed By

Tara Welat	2600-120 Adelaide St. West Toronto M5H 1T1	acting for Applicant(s)	Signed	2016 04 12
Tel	416-868-1080			
Fax	416-868-0306			

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

Submitted By

ROBINS APPLEBY LLP	2600-120 Adelaide St. West Toronto M5H 1T1	2016 04 12
Tel	416-868-1080	
Fax	416-868-0306	

Fees/Taxes/Payment

Statutory Registration Fee	\$62.85
Total Paid	\$62.85

Court File No.: CV-16-00550631-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
 IN THE MATTER OF the Construction Lien Act, R.S.O. 1990, c.C.30

MASTER **ALBERT**

) **MONDAY THE 11th DAY**
)
) **OF APRIL, 2016**

BETWEEN:

LIMEN GROUP LTD.

Lien Claimant

-and-

TERRASAN 327 ROYAL YORK RD. LIMITED

Owner



ORDER

THIS MOTION, brought without notice, by the Owner, Terrasan 327 Royal York Rd. Limited ("327"), for an Order amending the Order of Master Albert dated Monday, the 11th day of April, 2016 (the "**Order of Master Albert**"), which is attached hereto as Schedule "A", was heard this day at the Court House at 393 University Avenue, Toronto, Ontario.

UPON READING the Affidavit of Kelsey Aprille, filed, and upon the Owners having paid into Court to the credit of this Lien the sum of \$650,631.40, together with costs of \$50,000.00 for a total of \$700,631.40, as Accountant's Account No. 540621:

1. **THIS COURT ORDERS** that paragraph 1 of the Order of Master Albert be amended to read as follows:

1 (one) ✓

THIS COURT ORDERS that the registration of the Claim for Lien of Limen Group Ltd. electronically registered April 4, 2016, as Instrument No. AT4183314, in the amount of \$650,631.40, in the land Registry Office for the Land Titles Division of Toronto (No. 80), at Toronto, Ontario, against the lands and premises referred to in Schedule "B" annexed hereto, be vacated.

2. **THIS COURT ORDERS** that the Land Registrar accept the registration of this Order as an Application to delete and not record it as a discharge of lien against the abstract of title for the title lands and premises described herein.
3. **THIS COURT ORDERS** that a copy of this order be sent to the lawyers for Claimant by facsimile, forthwith after entry.

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

APR 11 2016

PER / PAR:



Master

C. Albert, M.

Schedule "A"

Court File No.: CV 60055 0651-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
 IN THE MATTER OF the Construction Lien Act, R.S.O. 1990, c.C.30

MASTER

ALBERT

)
)
)MONDAY THE 11th DAY

OF APRIL, 2016

BETWEEN



LIMEN GROUP LTD.

Lien Claimant

-and-

TERRASAN 327 ROYAL YORK RD. LIMITED

Owner

ORDER

(Motion to post monies in to Court)

THIS MOTION, brought without notice, by the Owner, Terrasan 327 Royal York Rd. Limited ("327"), for an Order vacating the registration of the Claim for Lien (the "Lien") registered by the above Lien Claimant against the lands and premises described in Schedule "A" hereto as Instrument No. AT4183314, by payment of funds into Court to the credit of this Lien, pursuant to section 44 of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended, was heard this day at the Court House at 393 University Avenue, Toronto, Ontario.

UPON READING the Affidavit of Kelsey Aprile, filed, and upon the Owners having paid into Court to the credit of this Lien the sum of \$650,631.40, together with potential costs of \$50,000.00 for a total of \$700,631.40, as Accountant's Account No. 540621:

1. **THIS COURT ORDERS** that the registration of the Claim for Lien of Limen Group Ltd. electronically registered April 4, 2016, as Instrument No. A/T418331, in the amount of \$650,631.40, in the land Registry Office for the Land Titles Division of Toronto (No. 80), at Toronto, Ontario, against the lands and premises referred to in Schedule "A" annexed hereto, be vacated.

2. **THIS COURT ORDERS** that the Land Registrar accept the registration of this Order as ~~an Application to amend~~ *at delete* and not record it as a discharge of lien against the abstract of title for the title lands and premises described herein.

3. **THIS COURT ORDERS** that a copy of this order be sent to the lawyers for Claimant by facsimile, forthwith after entry.



Master:
MASTER C. A. ALBERT

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:
APR 11 2016

PER / PAR:



3

SCHEDULE "A"

Court File No.:

ONTARIO**SUPERIOR COURT OF JUSTICE****IN THE MATTER OF the Construction Lien Act, R.S.O. 1990, c.C.30****BETWEEN:****LIMEN GROUP LTD.**

Lien Claimant

-and-

TERRASAN 327 ROYAL YORK RD. LIMITED

Owner

PIN	07617-0050 LT
Description	LTS 159, 160 & 161, PL 164 ; ETOBICOKE, CITY OF TORONTO
Address	327 Royal York Road Toronto, Ontario (the "Lands")



LIMEN GROUP LTD.
Claimant

-and-

TERRASAN 327 ROYAL YORK RD. LIMITED
Owner

Court File No. CV 1600550631-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
In the matter of the *Construction Lien Act*

Proceeding commenced at: TORONTO

ORDER

MOLDAVER BARRISTERS
365 Bloor Street East, Suite 1608
Toronto, Ontario
M4W 3L4

Tel. (416) 238-4123
Fax (416) 929-9604

Brett D. Moldaver (44191E)
brett@moldaverbarristers.com
Lawyers for the Defendant

SCHEDULE "B"

Court File No.: CV-16-00550631-0000

ONTARIO**SUPERIOR COURT OF JUSTICE****IN THE MATTER OF the Construction Lien Act, R.S.O. 1990, c.C.30****BETWEEN:****LIMEN GROUP LTD.****Lien Claimant****-and-****TERRASAN 327 ROYAL YORK RD. LIMITED****Owner**

PIN	07617-0050 LT
Description	LTS 159, 160 & 161, PL 164 ; ETOBICOKE, CITY OF TORONTO
Address	327 Royal York Road Toronto, Ontario (the "Lands")

LIMEN GROUP LTD.
Claimant

-and-

TERRASAN 327 ROYAL YORK RD. LIMITED
Owner

Court File No. CV-16-00550631-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
In the matter of the Construction Lien Act

Proceeding commenced at TORONTO

ORDER

MOLDAVER BARRISTERS
365 Bloor Street East, Suite 1608
Toronto, Ontario
M4W 3L4

Tel. (416) 238-4123
Fax (416) 929-9604

Brett D. Moldaver (44191E)
brett@moldaverbarristers.com
Lawyers for the Owner

This is Exhibit C referred to in the
affidavit of L. SANTAGUIDA
sworn before me, this 27th
day of May 2019


A COMMISSIONER FOR TAKING AFFIDAVITS 

MARY LOU SANTAGUIDA

141

DATE 2015-05-23
Y Y Y Y M M D D

PAY TO THE ORDER OF 2203244 Ontario Inc \$80,000.00

Eighty thousand 00/100 DOLLARS

Canada Trust
220 BLOOR ST. W.
TORONTO, ON M5S 1N6



MD Santaguida

513692060

00000000000000000000

RECEIVED MAY 12 2015

MARY LOU SANTAGUIDA

NON-NEGOTIABLE DUPLICATE OF CHEQUE

225



Canada Trust

BLOOR & RUNNYMEDE
2220 BLOOR ST. W.
TORONTO, ON M6S 1N6BALANCE
FORWARD

THIS CHEQUE

BALANCE

DEPOSIT

BALANCE
FORWARD

⑈ 225⑈ ⑆03752⑈004⑆ 513692⑈6⑈

NON-NEGOTIABLE DUPLICATE OF CHEQUE

111

MARY LOU SANTAGUIDA



Canada Trust

BLOOR & RUNNYMEDE
2220 BLOOR ST. W.
TORONTO, ON M6S 1N6BALANCE
FORWARD

THIS CHEQUE

BALANCE

DEPOSIT

BALANCE
FORWARD

⑈ 225⑈ ⑆03752⑈004⑆

513692⑈6⑈

details (continued)

Description	Amounts debited from your account (\$)	Amounts credited to your account (\$)	Balance (\$)
Value Plan Deposit Account # 2416 1997-354			(continued)
Mar 18 Cheque, NO.241	621.50		24,060.90
Mar 19 Cheque, NO.248	2,212.99		21,847.91
Mar 20 Cheque, NO.254	9,040.01		12,807.90
Mar 20 Cheque, NO.252	3,150.00		9,657.90
Mar 26 Deposit		7,000.00	16,657.90
Mar 30 Cheque, NO.246	2,260.00		14,397.90
Mar 30 Cheque, NO.257	2,566.76		11,831.14
Mar 31 Plan Fee	9.50		11,821.64
Mar 31 Plan Fee		9.50	11,831.14
Mar 31 Branch Transaction Fee, EXCESS ITEMS 02 AT \$1.00	2.00		11,829.14
Mar 31 Closing totals	33,768.56	7,102.50	

Number of items processed 18 3

Number of cheques or related items enclosed in your statement..... 15

Please check this statement and report any errors or omissions within 30 days of delivery.

Trade-marks

™/® Trade-marks / registered trade-marks of Bank of Montreal.

®† Trademarks of AIR MILES International Trading B.V. Used under license by LoyaltyOneInc. and Bank of Montreal.

®* Registered trademark of MasterCard International Incorporated.

®" ADP is a registered trade-mark of ADP North America, Inc.

NOTE: ADP Services referred to above are provided by ADP. ADP is not a member of BMO Financial Group.

®... Moneris, and the Moneris Solutions logo are registered trade-marks of Moneris Solutions Corporation.

Registration numbers

GST - R100390095 QST - 1000042494

A member of BMO Financial Group 5001816 (08/03)

Important Notice for Trustees

Do you have a Canadian Dollar Business Banking deposit account or a term investment (e.g. a GIC) that you hold in trust for two or more beneficiaries? If so, we would like to remind you of your annual responsibility to tell us how the money in the trust deposit is to be divided amongst the beneficiaries. Updating the information ensures that the deposited monies, if eligible for deposit insurance, will be covered by Canada Deposit Insurance Corporation (CDIC) up to a maximum of \$100,000 per beneficiary, not only \$100,000 in total.

The CDIC Act requires you to provide us, by May 30th every year, the details of the balance attributed to each beneficiary (actual amount or percentage of the entire deposit) as of April 30th.

Please visit your branch by May 30, 2015 to confirm or update this information or if you have questions, please call 1-877-262-5907. For more information about what types of deposits are eligible for CDIC coverage, please visit www.cdic.ca

Bank of Montreal

MARY LOU SANTAGUIDA

203

DATE 2014-04-29
Y Y Y Y M M D D

PAY TO THE ORDER OF 2263294 Ontario, Inc. \$34,500.00

Thirty-four thousand five hundred and 00/100 DOLLARS

Canada Trust
8008 B. RUSSELL
2222 BLOOR ST. W.
TORONTO, ON M6S 1W6

MEMO

M. Santaguida

⑈ 203⑈ ⑆03752⑈004⑆

513692⑈6⑈

13/5/2014

BMO Bank of Montreal Online Banking

Chequing

2416 1997-354

The current balance shown is as of today's date. Please report any items that do not match your records.

Account No: 1997-354

Financial Institution No: 001

Branch Transit No: 24162

Account Balance: \$21,569.29

Available Funds: \$21,569.29

Funds on Hold: \$0.00

Transaction History

View transactions by selecting a time period or date range, or filter your results by entering a description.

View: April 2014

or show from:

MM/DD/YYYY

to:

MM/DD/YYYY

Filter description:

Submit

Transaction Date	Code	Description	Debit	Credit	Balance
		Balance Forward			\$2,635.36
Apr 2, 2014	CD			\$45,000.00	\$47,635.36
Apr 3, 2014	CK	NO.55	\$7,910.00		\$39,725.36
Apr 4, 2014	CK	NO.53	\$138.18		\$39,587.18
Apr 4, 2014	CK	NO.57	\$3,383.03		\$36,204.15
Apr 4, 2014	CK	NO.52	\$5,650.00		\$30,554.15
Apr 7, 2014	CK	NO.58	\$193.02		\$30,361.13
Apr 7, 2014	CK	NO.56	\$196.79		\$30,164.34
Apr 7, 2014	CK	NO.51	\$3,762.90		\$26,401.44
Apr 8, 2014	CK	NO.54	\$565.00		\$25,836.44
Apr 15, 2014	CK	NO.50	\$21,269.83		\$4,566.61
Apr 17, 2014	CD			\$11,000.00	\$15,566.61
Apr 21, 2014	CK	NO.60	\$7,910.00		\$7,656.61
Apr 25, 2014	CK	NO.61	\$661.17		\$6,995.44
Apr 25, 2014	CK	NO.59	\$367.12		\$6,628.32
Apr 30, 2014	SC	PLAN FEE	\$9.50		\$6,618.82
Apr 30, 2014	CD			\$34,500.00	\$41,118.82

WARY LOU SANTAGUIDA

051

DATE 2014-03-19
Y Y Y M M D D

PAY TO THE ORDER OF 2203284 Ontario Inc. \$49,000.00

forty-nine thousand → 00/100 DOLLARS



Canada Trust
BANK OF CANADA
2200 BLOOR ST. W.
TORONTO, ON M5S 1N6



Wary Lou Santaguida

⑈051⑈ 1:03 P52⑈001⑈

513692⑈E⑈

ENTERED MAR 19 2014

1/4/2014

BMO Bank of Montreal Online Banking

Chequing

2416 1997-354

98 Jam

The current balance shown is as of today's date. Please report any items that do not match your records.

Account No: 1997-354

Financial Institution No: 001

Branch Transit No: 24162

Account Balance: \$2,635.36

Available Funds: \$2,635.36

Funds on Hold: \$0.00

Transaction History

View transactions by selecting a time period or date range, or filter your results by entering a description.

View: March 2014

or show from:

To:

MM/DD/YYYY

MM/DD/YYYY

Filter description:

Submit

Transaction Date	Code	Description	Debit	Credit	Balance
		Balance Forward			\$2,872.47
Mar 3, 2014	CK	NO.41	\$2,090.50	HST Refund CHA	\$781.97
Mar 7, 2014	CD			\$1,753.81	\$2,535.78
Mar 17, 2014	CK	NO.47	\$35.20		\$2,500.58
Mar 18, 2014	CK	NO.45	\$293.16		\$2,207.42
Mar 19, 2014	CD			\$49,000.00	\$51,207.42
Mar 19, 2014	CC	NO. 46	\$48,364.00		\$2,843.42
Mar 19, 2014	DC	CERTIFIED CHEQUE FEE	\$15.00		\$2,828.42
Mar 25, 2014	CK	NO.44	\$183.56		\$2,644.86
Mar 31, 2014	SC	PLAN FEE	\$9.50		\$2,635.36

ck# 50

51

52

54

55

21,269.83

3762.90

5650

565

31,300

7910

Funds
require

39 200

53

48

(138.18)

(310.30)

(31,970.8)

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

2203284 ONTARIO INC.
Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at
TORONTO

AFFIDAVIT OF LUIGI
SANTAGUIDA

MOLDAVER BARRISTERS
365 Bloor Street East, Suite 1608
Toronto, Ontario
M4W 3L4

Brett D. Moldaver
LSUC Registration #44191E

Tel. (416) 238-4123
Fax (416) 929-9604

Lawyers for the Respondent

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

2203284 ONTARIO INC.
Respondent
Court File No. CV-17-11827-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at
TORONTO

RESPONDING MOTION
RECORD

MOLDAVER BARRISTERS
365 Bloor Street East, Suite 1608
Toronto, Ontario
M4W 3L4

Brett D. Moldaver
LSUC Registration #44191E

Tel. (416) 238-4123
Fax (416) 929-9604

Lawyers for the Respondent

Appendix “K”

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

ONTARIO

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

THE HONOURABLE
MR JUSTICE PENNY

) THURSDAY, THE 6TH DAY
) OF JUNE, 2019

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

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 Superior Court of Justice, 330 University Avenue, Toronto, Ontario.

ON READING the notice of motion, motion records, which include the Third Report of the Receiver, the Supplementary Third Report of the Receiver, the Second Supplementary Report of the Receiver (referred collectively as the "Reports" or individually) as well as the factum of the Receiver, the responding motion record, the factum of the Receiver and the responding factum of Tarion Warranty Corporation, filed, and on hearing the submissions of counsel whose names appear on the counsel slip,

1. THIS COURT ORDERS that that the time for service of the notice of motion and the motion records are hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT FURTHER ORDERS that the Receiver shall transfer the Remaining Deposit Trust Funds, as that term is used in the Third Report, to the general receivership trust account.

- 2 -

3. THIS COURT FURTHER ORDERS that the Receiver shall conduct an unsecured claims procedure as follows:

- (a) on or before June 19, 2019, the Receiver shall mail a Proof of Claim, substantially in the form attached as Schedule "A", to all known unsecured creditors of 220, including those who appear as creditors in the books and records of the Debtor;
- (b) the Proof of Claim shall be accompanied with such other materials and notices (collectively, the "Claims Package") as the Receiver may consider necessary or appropriate and which will direct unsecured creditors to the Receiver's web site for information about the Receivership, including to the Receiver's various reports;
- (c) included with the Claims Package shall be a letter, substantially in the same form as Schedule "B", which sets out the Claims Process and which states that the Proof of Claim must be received by 5:00 pm, August 16, 2019 ("Claims Bar Date"), or it will otherwise be barred;
- (d) the Receiver shall give notice by way of a newspaper advertisement as to the Claims Process;
- (e) the Receiver shall review the unsecured claims and prepare a report to the court setting out what it recommends in respect of them;
- (f) the Receiver shall return to court as soon as possible after the Claims Bar Date to seek the court's direction in respect of the unsecured creditor's claims;
- (g) the Receiver shall give notice of the return to court in (f), above, to all parties as well as to those unsecured creditors who have submitted a Proof of Claim; and
- (h) the Receiver is authorized to give notice in (g), above, by way of email transmission.

4. THIS COURT FURTHER ORDERS that the Receiver is authorized to commence any proceeding necessary to protect the expiry of any limitation period, pursuant to the powers granted to it under paragraph 3(i) of the Receivership Order of June 22, 2017, but no steps beyond issuance of an originating process shall be taken without further order of the court.

on consent of 220 and Marilyn Santaguida, that any and all claims against them are killed, from today, until further order of this court, and that without prejudice to the rights or positions of the parties,

including with respect to the validity, enforceability or quantum of said ~~claim~~ ^{unresolved} claims
-3-

5. THIS COURT FURTHER ORDERS that the Receiver's Interim Statement of Receipts and Disbursements set out in the Third Report is approved.

6. THIS COURT FURTHER ORDERS that the actions and activities of the Receiver as set out in the Reports are approved.

7. THIS COURT FURTHER ORDERS that the fees and expenses from April 30, 2018, to March 25, 2019, of counsel for the Receiver in the amount of \$58,812.83 plus HST in the amount of \$6,690.31 is approved.

8. THIS COURT FURTHER ORDERS that the fees of the Receiver from May 1, 2018, to March 31, 2019, in the amount of \$276,747.00 plus HST in the amount of \$35,977.11 is approved.

9. THIS COURT FURTHER ORDERS costs be paid

10. THIS COURT FURTHER ORDERS

that 220's tax liability as set out in The Receiver's Report shall be paid, as assessed by Canada Revenue Agency. MAP

The approval of the fees and disbursements of the Receiver and its counsel is approved

SCHEDULE "A"

PROOF OF CLAIM FORM

FOR UNSECURED CLAIMS AGAINST 2203284 ONTARIO INC.

NOTE: CLAIMANTS ARE STRONGLY ENCOURAGED TO COMPLETE AND SUBMIT THEIR PROOF OF CLAIM BY SENDING IT AS SOON AS POSSIBLE TO THECONNOLLY@SPERGEL.CA

ALL OF THE INFORMATION BELOW IS REQUIRED IN ORDER TO PROCESS YOUR CLAIM.

1. PARTICULARS OF CLAIMANT

FULL LEGAL NAME OF CLAIMANT:

FULL MAILING ADDRESS OF CLAIMANT:

TELEPHONE NO. OF CLAIMANT:

FACSIMILE NO. OF THE CLAIMANT:

EMAIL ADDRESS OF CLAIMANT:

ATTENTION (CONTACT PERSON):

2. AMOUNT AND TYPE OF CLAIM

THE DEBTOR WAS AND STILL IS INDEBTED TO THE CLAIMANT AS FOLLOWS:

CURRENCY:	AMOUNT OF CLAIM
	\$
	\$
	\$
	\$

3. DOCUMENTATION

PROVIDE ALL PARTICULARS OF THE CLAIM AND SUPPORTING DOCUMENTATION, INCLUDING AMOUNT, AND DESCRIPTION OF TRANSACTION(S) OR AGREEMENT(S), OR LEGAL BREACH(ES) GIVING RISE TO THE CLAIM, INCLUDING ANY CLAIMS ASSIGNMENTS/TRANSFER AGREEMENT OR SIMILAR DOCUMENT, IF APPLICABLE, AND AMOUNT OF INVOICES, PARTICULARS OF ALL CREDITS, DISCOUNTS,

ETC. CLAIMED, DESCRIPTION OF THE SECURITY, IF ANY, GRANTED BY THE AFFECTED DEBTOR TO THE CLAIMANT AND ESTIMATED VALUE OF SUCH SECURITY.

4. CERTIFICATION

I HEREBY CERTIFY THAT:

- (a) I AM A CLAIMANT OR AUTHORIZED REPRESENTATIVE OF THE CLAIMANT;
- (b) I HAVE KNOWLEDGE OF ALL OF THE CIRCUMSTANCES CONNECTED WITH THIS CLAIM;
- (c) THE CLAIMANT ASSERTS THIS CLAIM AGAINST THE DEBTOR AS SET OUT ABOVE; AND
- (d) COMPLETE DOCUMENTATION IN SUPPORT OF THIS CLAIM IS ATTACHED.

SIGNATURE: _____ **WITNESS:** _____

SIGNATURE

NAME:

NAME: _____

PRINTED

TITLE

DATED AT: _____ **THIS** **DAY OF** _____, **2019**

SCHEDULE "B"

Correspondence

TO: (Insert Potential Unsecured Creditor Contact Information)
RE: Notice to Potential Unsecured Creditor

On June 22, 2017, the 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**"), upon which 220 was to develop the condominium project known as "*The Connolly*" (the "**Project**").

On June 6, 2019, the Court granted a further order in respect of the claims of 220's unsecured creditors. A copy of the order may be accessed online at <http://www.spergelcorporate.ca/active-files-list/2203284-ontario-inc/>

If you have an unsecured claim against 220, you are requested to submit a Proof of Claim, a blank copy of which is attached, as soon as possible and **no later than 5:00 PM (Toronto Time), August 16, 2019** (the "**Claims Bar Date**"), in accordance with the 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 creditor with an unsecured claim and do not submit a Proof of Claim by the Claims Bar Date, your claim may be forever barred and extinguished.

After receipt and review of the Proofs of Claim, the Receiver will be making a recommendation to the Court, on notice to all those who have submitted Proofs of Claim, as to any payments to be made to unsecured creditors.

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD. and
Applicant

2203284 ONTARIO LTD.
Respondent

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

ONTARIO

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

Proceeding commenced at

TORONTO

ORDER

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.

Appendix “L”

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

ONTARIO

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

THE HONOURABLE
MR JUSTICE PENNY

) THURSDAY, THE 6TH DAY
) OF JUNE, 2019

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

-and-

2203284 ONTARIO INC.

Respondent

**ORDER
(Tarion Cash Collateral Procedure Order)**

THIS MOTION, made by msi Spergel Inc., in its capacity as Court-appointed receiver and manager (in such capacity, the "Receiver") of the assets, undertakings and properties of 2203284 Ontario Inc. ("220", and such assets, undertakings and properties, the "Property") for an order approving the Tarion Cash Collateral Procedure (as defined herein) was heard this day in Toronto, Ontario.

ON READING the notice of motion dated April 17, 2019, the motion records which include the Third Report of the Receiver, the Supplementary Third Report of the Receiver, the Second Report of the Receiver, the responding motion record, the factum of the Receiver and the responding factum of Tarion Warranty Corporation, filed, and on hearing the submissions of counsel for the Receiver, 220 as well as Luigi Santaguida and Marylou Santaguida, Tarion Warranty Corporation ("Tarion"), The Guarantee Company of North America ("The Guarantee Company"), and the counsel whose names appear on the counsel slip,

SERVICE

1. THIS COURT ORDERS that the time for service of the notice of motion and the motion records are hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

INTERPRETATION

2. THIS COURT ORDERS that, for the purposes of this Order, the following terms shall have the following meanings:

- (a) "Business Day" means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (b) "Claimant" means a Person asserting a Taron Claim;
- (c) "Court" means the Ontario Superior Court of Justice (Commercial List);
- (d) "Encumbrances" has the meaning ascribed thereto in paragraph 6(b);
- (e) "ONHWPA" means the Ontario New Home Warranties Plan Act (Ontario), R.S.O. 1990, c. O.31, as amended, and the regulations promulgated thereunder;
- (f) "Order" means this Order;
- (g) "Outside Date" means March 1, ²⁰²²~~2023~~; MAR
- (h) "Person" 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;
- (i) "Project" means all phases and parts of the contemplated, but not completed, residential condominium development located at 98 James Street South, Hamilton, Ontario, and sometimes known as "The Connolly";
- (j) "Property" has the meaning ascribed thereto in the preamble to this Order;

- 3 -

- (k) "Receiver" has the meaning ascribed thereto in the preamble to this Order;
- (l) "Tarion" has the meaning ascribed thereto in the preamble to this Order;
- (m) "Tarion Bond" means bond no. TM5120099 issued by The Guarantee Company in favour of Tarion;
- (n) "Tarion Cash Collateral" has the meaning ascribed thereto in paragraph 4;
- (o) "Tarion Cash Collateral Balance" has the meaning ascribed thereto in paragraph 6(c);
- (p) "Tarion Cash Collateral Charge" has the meaning ascribed thereto in paragraph 12;
- (q) "Tarion Cash Collateral Claims" means amounts claimed in respect of accepted Tarion Claims, administration fees, legal fees, interest and other fees and costs paid or incurred by Tarion in connection with the administration of the Tarion Cash Collateral Procedure and any other amounts to which Tarion is entitled pursuant to the Tarion Bonds;
- (r) "Tarion Cash Collateral Procedure" means the procedures outlined in this Order, including, without limitation, in connection with the payment, holding, administration, and release of the Tarion Cash Collateral;
- (s) "Tarion Claim" means any right or claim of any Person against Tarion under the ONHWPA in respect of the Project;
- (t) "220" has the meaning ascribed thereto in the preamble to this Order;
- (u) "The Guarantee Company" has the meaning ascribed thereto in the preamble to this Order; and
- (v) "The Guarantee Distribution" has the meaning ascribed thereto in paragraph 7.

3. THIS COURT ORDERS that all references to the word "including" shall mean "including without limitation", all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

TARION CASH COLLATERAL

4. THIS COURT ORDERS that the Receiver shall pay, within five (5) Business Days of the granting of this Order, the amount of \$200,000.00 to Tarion (the "Tarion Cash Collateral"), against which amount Tarion may make, and process payments in respect of, Tarion Cash Collateral Claims in accordance with this Order.

5. THIS COURT ORDERS that upon Tarion's receipt of the Tarion Cash Collateral pursuant to paragraph 4, Tarion shall deliver to The Guarantee Company the Tarion Bonds for immediate cancellation and neither Tarion nor The Guarantee Company shall have any further obligations or liability whatsoever in respect of the Tarion Bonds, the Property or the Project (in the case of Tarion, subject only to any Tarion Claims that are to be dealt with pursuant to paragraph 6.

TARION CLAIMS

6. THIS COURT ORDERS that:

(a) Tarion shall:

- (i) review any Tarion Claim filed prior to the Outside Date and not already satisfied as of the date hereof, and accept, revise or reject them in accordance with Tarion's ordinary claims review procedures provided, however, that Tarion shall have the right, but not the obligation, to consult with the Receiver during its review of a Tarion Claim;
- (ii) advise the Receiver, if it has not been discharged, as well as 220 or its designate, of the particulars of the payment of any Tarion Claim within ten (10) days after the payment of any such Tarion Claim, and
- (iii) provide a report to the Receiver, if it has not been discharged, as well as 220 or its designate, as to the Tarion Claims received, Tarion Claims and Tarion Cash Collateral Claims paid and the amount of Tarion Cash Collateral remaining as at the date of such report, with such reports due on December 6, 2019, June 6, 2020, December 6, 2020, June 6, 2021,

and in any event

MAP

and February 5 -
20, 2022

December 6, 2021

as described in this subparagraph,
Tarion shall return any such
balance of the Tarion Cash Collateral
to the party specified, and on the
terms set out in
subparagraph (c).

- (b) Tarion shall be entitled to utilize the Tarion Cash Collateral and process payments therefrom on account of accepted Tarion Claims and Tarion Cash Collateral Claims 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, rights of distraint, 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, "Encumbrances"), and without further authorization from any Person or this Court;
- (c) the balance of the Tarion Cash Collateral (the "Tarion Cash Collateral Balance"), if any, shall be paid by Tarion to the Receiver, if it has not been discharged, or to 220 or its designate, or on further order the Court, within ten (10) Business Days following the later of:
- (i) the Outside Date;
 - (ii) the completion of the review by Tarion of all Tarion Claims filed prior to the Outside Date;
 - (iii) in the event that Tarion revises or rejects any Tarion Claim, the resolution of such Tarion Claim in accordance with the procedures provided for in the ONHWPA; and
 - (iv) the processing and payment by Tarion of any Tarion Claims and Tarion Cash Collateral Claims from the Tarion Cash Collateral; and
- (d) Tarion shall have no further obligations or liability whatsoever in respect of the Tarion Cash Collateral Balance following Tarion's payment of the Tarion Cash Collateral Balance to the Receiver, if it has not been discharged, or to 220 or its designate.

THE GUARANTEE COMPANY DISTRIBUTION

7. THIS COURT ORDERS that the Receiver is authorized and directed to make a distribution to The Guarantee Company of up to \$165,709.00 in full and final satisfaction of all

(e) in the event that a Tarion Claim is made prior to the Outside Date, but has not been finally determined in accordance with the procedures provided for in the ONHWPA, the amount of Tarion Cash Collateral to be retained past the Outside Date shall be equal to the amount of the claim that Tarion would have been entitled to claim under the Tarion Bond had it not been cancelled in respect

- 6 -

amounts owing by 220 to The Guarantee Company (such distribution, "The Guarantee Distribution").

8. THIS COURT ORDERS that upon payment of The Guarantee Distribution and the delivery of the Tarion Bond to The Guarantee Company for immediate cancellation, The Guarantee Company and its successors, assigns and agents shall not have any:

- (a) further right whatsoever to claim any further amount derived from or related to the Project; and
- (b) remaining interest whatsoever in the Property.

THE GUARANTEE COMPANY, TARION AND THE RECEIVER

9. THIS COURT ORDERS that none of The Guarantee Company, Tarion or the Receiver shall incur any liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of any gross negligence or wilful misconduct on their respective parts, and that no proceeding or process in any court or tribunal shall be commenced or continued against any of The Guarantee Company, Tarion or the Receiver in connection with the carrying out of the provisions of this Order except with the written consent of The Guarantee Company, Tarion or the Receiver, as applicable, or with leave of this Court on seven (7) Business Days' notice to The Guarantee Company, Tarion or the Receiver, as applicable. This Order is without prejudice to any other limitation of liability or protection afforded to The Guarantee Company, Tarion or the Receiver by order of the Court or otherwise.

10. THIS COURT ORDERS that, subject to paragraphs 12 - 14 of this Order, and in connection with the payment or receipt of any funds described herein, the Person receiving such funds shall do so free and clear of and from any and all Encumbrances.

11. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings; and
- (b) any assignment in bankruptcy made in respect of 220, the Property or the Project,

the Tarion Cash Collateral Procedure and its implementation pursuant to this Order shall be binding on any trustee in bankruptcy, receiver, receiver and manager or interim receiver of 220, the Property or the Project and shall not be void or voidable by creditors, 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*, R.S.C., 1985, c. B-3, as amended, 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.

TARION CASH COLLATERAL CHARGE

12. THIS COURT ORDERS that Tarion shall be entitled to the benefit of, and is hereby granted, a fixed and specific charge and security interest (the "Tarion Cash Collateral Charge") in the Tarion Cash Collateral.

13. THIS COURT ORDERS that the Tarion Cash Collateral Charge shall rank in priority to all Encumbrances against the Tarion Cash Collateral from time to time.

14. THIS COURT ORDERS that the filing, registration, recording or perfection of the Tarion Cash Collateral Charge shall not be required and that the Tarion Cash Collateral Charge shall be valid and enforceable for all purposes including, without limitation, as against any Encumbrances filed, registered, recorded or perfected subsequent to the Tarion Cash Collateral Charge coming into existence notwithstanding any failure to file, register, record or perfect the Tarion Cash Collateral Charge. The Tarion Cash Collateral Charge may be enforced by Tarion upon the terms and conditions as may be agreed to between the Receiver and Tarion.

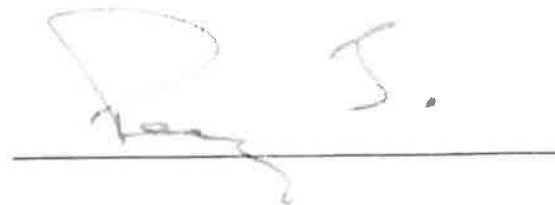
MISCELLANEOUS

15. THIS COURT ORDERS that each of Tarion and 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.

16. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States to

- 8 -

give effect to this Order and to assist Tarion, the Receiver 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 Tarion, the Receiver and their respective agents, as may be necessary or desirable to give effect to this Order or to assist Tarion, the Receiver and their respective agents, in carrying out the terms of this Order.

A handwritten signature, appearing to be "D. J.", is written over a horizontal line. The signature is in dark ink and is somewhat stylized.

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

and

2203284 ONTARIO LTD.
Respondent
Court File No.: CV-17-11827-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at
TORONTO

ORDER

(Tarion Cash Collateral Procedure Order)

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Lawyers for the receiver insi Spergel Inc.

Appendix “M”

Court File Number: CV-17-11827-CLSuperior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

DUCA Financial

Plaintiff(s)

AND

2203284 Ontario Inc.

Defendant(s)

Case Management ☐ Yes ☐ No by Judge: _____

Counsel	Telephone No:	Facsimile No:

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- ☐ Adjourned to: _____
☐ Time Table approved (as follows):

This is a motion by The Receiver for a number of orders which will ~~be~~ bring this receivership closer to completion. The parties have agreed to all issues except for the question of an interim liquidation to Mrs. Santaguida, who holds a mfg of about \$1.5M on the

June 6, 2019

Date

Judge's Signature

☐ Additional Pages _____

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

Subject property.

I am satisfied that the orders sought which are on consent are appropriate in the circumstances and those orders in the form attached, as amended, shall issue.

Mr. Aldover seeks release of \$500,000 of the \$2.3 M on hand on account of Ms. S mortgage.

He argues that she is the sole remaining secured creditor.

The unsecured creditors are almost certain to be less than the \$540,000 estimate.

And, it is unlikely that the re-filing of 220's tax returns

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

are ^{going} ~~likely~~ to result in any material change to the Tax liabilities.

The Receiver, supported by Taxon, argues that a process is in place to resolve the outstanding creditor claims expeditiously and to complete the filing of the 220 tax returns right away.

The R will likely be in a position to know how much there is to distribute by late August/early September. The R ~~recommends~~ deferring any decision on interim distribution until then.

I agree.

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

~~Signature~~ ^{NAP}

Virtually all of the uncertainty ~~the~~ surrounding the outstanding liabilities (including the asset of a \$3.5 M loan by 220 to Santana, M.S. company) arising from the incomplete, incorrect ~~and~~ and generally unreliable accounting records of The Debtor.

Whether an issue needs to be made of the \$3.5 M loan to Santana or 220, looks cannot be resolved until it is known whether the unsecured creditors are paid.

The tax liability cannot be known until the 220 returns

Court File Number: _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

are refilled. The need for
refilling is the result of
220 having done it wrong the
first time.

The ^{list of} ~~unsecured~~ creditors logically
comes from the creditors shown
on 220 & looks - creditors 220
now insist are owed no
money.

In my view, given the lengthy
history of delays and lack
of co-operation from Mr and
Mrs S, it is not too much
to say that the claims
process and the tax p.-filing
shall be completed before any
funds are paid out under
Mrs. S mortgage.

Page 5 of 6

Judges Initials

MAP

Court File Number. _____

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

I Therefore make no order regarding any interim distribution. That request is dismissed. This is without prejudice to Mr S returning to court following the claims process to resolve this issue.

Page 6 of 6Judges Initials MAP.