

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

**MOTION RECORD
(returnable October 12, 2018)**

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.

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

INDEX

TAB	DOCUMENT	PAGE NO.
1	Notice of motion (returnable October 12, 2018)	1-42
2	Affidavit of Christopher Statham sworn October 9, 2018	43-44
A	Exhibit "A" - Approval and vesting order dated May 16, 2018	45-55
B	Exhibit "B" - Endorsement of Justice Dunphy dated May 16, 2018	56-58
C	Exhibit "C" - First Receiver's Report	59-93
D	Exhibit "D" - Supplementary First Receiver's Report	94-99
E	Exhibit "E" - Claims Procedure Order dated May 16, 2018	100-137
F	Exhibit "F" - Ancillary Order dated May 16, 2018	138-142
G	Exhibit "G" - Fresh as Amended Deposit Claims Procedure Order dated August 29, 2018	143-180
H	Exhibit "H" - Proposed Further Fresh as Amended Deposit Claims Procedure Order	181-218

TAB 1

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

DUCA FINANCIAL SERVICES CREDIT LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

NOTICE OF MOTION
(returnable October 12, 2018)

THE RECEIVER, msi Spergel Inc. (the “Receiver” or “Spergel”), will make a motion to the court on October 12, 2018, at 9:30 a.m., or as soon after that time as the motion can be heard, at the Superior Court of Justice, Commercial List, 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 as well as for leave for this motion to be heard at a 9:30 appointment.
2. An order amending the Claims Procedure Order essentially in the form attached as Schedule “A” (with the proposed amendments trackchanged) as a further fresh as amended order, something necessitated by the change in circumstances since it was made on May 16, 2018.
3. Costs if this motion is 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 granted a receivership order in respect of the respondent, 2203284 Ontario Inc. (“220 Ontario” or the “respondent”).
2. 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 and to the condominium property, including a Vesting Order, authorizing the sale of the Property, and a Deposit Claims Procedure Order, governing the repayment of deposits to those parties which had entered into agreements of purchase and sale for units.
4. At the time, the sale of the Property was scheduled to close on June 5, 2018.
5. The closing date was initially extended, at the request of the purchaser, to September 6, 2018.
6. As a result of the extension, the timelines in the Deposit Claims Procedure Order were no longer practical and could not be met.
7. The Receiver sought an order amending the Deposit Claims Procedure Order to account for the change in circumstances as well as to permit some other minor modifications to it.
8. The Deposit Claims Procedure Order was amended on August 29, 2018, as a Fresh as Amended Deposit Claims Procedure Order.
9. The closing date was then extended to October 3, 2018, about four weeks after the September 6, 2018, closing date which had been anticipated when the Fresh as Amended Deposit Claims Procedure Order was made.
10. The sale has closed.

11. The dates in the Fresh as Amended Claim Procedure Order are no longer practical.

12. The Receiver seeks an order amending the Fresh as Amended Claims Procedure Order, principally to move dates back about four weeks.

13. The motion is not expected to be opposed.

14. 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 affidavit of Christopher Statham sworn October 9, 2018, and the exhibits attached thereto; and,

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

October 9, 2018

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

LAWRENCE HANSEN
LSUC #41098W

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

Lawyers for the receiver
msi Spergel Inc.

TO: THE SERVICE LIST

(see attached)

SERVICE LIST

<p>MOLDAVER BARRISTERS 365 Bloor Street East, Suite 1608 Toronto, Ontario M4W 3L4</p> <p>BRETT MOLDAVER Tel.: 416-238-4123 Fax: 416-929-9604 Email: brett@moldaverbarristers.com</p> <p>Lawyers for the respondent 2203284 Ontario Inc. and Mary Lou Santaguida (Forth and Fifth Mortgagee)</p>	<p>TORYS LLP 79 Wellington Street West, Suite 3000 Toronto, Ontario M5K 1N2</p> <p>ADAM SLAVENS Tel.: 416-865-7333 Fax: 416-865-7380 Email: aslavens@torys.com</p> <p>Lawyers for Tarion Warranty Corporation</p>
<p>BORDEN LADNER GERVAIS LLP Barristers & Solicitors Bay Adelaide Centre, East Tower 22 Adelaide Street West Toronto, Ontario MH 4E3</p> <p>ALEX MACFARLANE Tel.: 416-367-6305 Fax: 416-367-6749 Email: amacfarlane@blg.com</p> <p>Lawyers for the Second Mortgagee The Guarantee Company of North America</p>	

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

ONTARIO

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

THE HONOURABLE	) WEDNESDAY , <u>FRIDAY</u> , THE
)
JUSTICE	) 29TH <u>12TH</u> DAY OF AUGUST <u>OCTOBER</u> ,
	) 2018

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

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**”), as well as the Motion Record of August 17, 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 Sara Mosadeq sworn May 4, 2018, and the affidavit of Carmen Yuen sworn August 17, 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 ~~October 31, 2018~~ November 30, 2018, or such later date as may be ordered by the Court;
- (f) **“Claims Package”** means the document package to be sent by the Receiver to all Purchasers which shall include a copy of a Deposit Claim Form, and such other materials and notices as the Receiver may consider necessary or appropriate and which will direct Purchasers to the Website for a copy of this Deposit Claims Procedure Order;
- (g) **“Condominium Act”** means the *Condominium Act* (Ontario), R.S.O. 1998, c. 19, as amended;

- (h) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (i) **“Deposit”** means any monies including, without limitation, deposit monies and monies on account of extras and upgrades paid by a Purchaser pursuant to a Purchase Agreement for a Unit at the Project;
- (j) **“Deposit Claim”** means a claim by a Purchaser in respect of a Deposit, and any other amounts claimed by a Purchaser including claims pursuant to the ONHWP, the Condominium Act;
- (k) **“Deposit Claim Form”** means the claim form attached as **Schedule “D”** herein;
- (l) **“Deposit Claim Payment”** means a payment to a Purchaser in respect of a Proven Deposit Claim;
- (m) **“Deposit Claims Procedure”** means the deposit claims procedure attached as **Schedule “B”** herein;
- (n) **“Deposit Claims Procedure Order”** means this 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 ~~ten (10)~~ 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 ~~November 19~~December 17, 2018, 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 ~~November 19~~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 the Deposit Payment Protocol shall be of no force and effect.

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

33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, as may be necessary or desirable to give effect to this Order or to assist the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, in carrying out the terms of this Order.

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, and further amended on October 12, 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 ~~October 31~~ November 30, 2018** (the "**Claims Bar Date**"), in accordance with the Deposit Claims Procedure Order. The Receiver's contact information is below:

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

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

Please review the provisions of the Deposit Claims Procedure Order relating to payments

made in respect of a Deposit Trust Claim. Note that the Receiver will require the delivery of an executed Certificate and Receipt prior to the release of funds on account of a Deposit Trust Claim.

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

SCHEDULE “B”
Deposit Claims Procedure

Notice of Deposit Claims Procedure

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

Filing of Deposit Claim Form and Determination

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

- (a) the agreement of purchase and sale entered into between 220 and the Purchaser;
- (b) the proof of deposit payment(s) provided by the Purchaser;

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

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

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

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

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

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

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

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

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

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

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

Return of Deposit Monies / Claim

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

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

SCHEDULE "C"
Newspaper Notice

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

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

On May 16, 2018, the Court granted a further Order, amended on August 29, 2018, and further amended on October 12, 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 ~~October 31~~ November 30, 2018** (the "**Claims Bar Date**"), in accordance with the Deposit Claims Procedure Order.

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

SCHEDULE "D"
Deposit Claim Form

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

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

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

Telephone Number: (____) ____ - ____

Email address: _____

Attention (Contact Person): _____

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

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

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

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

OR

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

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

5. The Purchaser states that it has delivered a Deposit Claim to 220 in the total sum of \$ (CDN) as evidenced by the proof of the deposit amount(s) paid attached as **Schedule "B"** herein (by way of a cancelled cheque, or other form of proof from a financial institution to confirm that a deposit was paid by the Purchaser named on the Purchase Agreement) and the other proof attached hereto.
6. The Purchaser acknowledges and agrees that in each case where the Receiver makes a payment in relation to a Proven Deposit Claim in accordance with the Deposit Claims Procedure, the Purchaser (including its heirs, executors and assigns) shall be: (a) deemed to absolutely and unconditionally remise, release, acquit and forever discharge 220, Tarion and the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) for any Deposit Claims, claims for return of Deposit or other claims or funds paid on account of the purchase of a Unit in the Project, including interest thereon; and (b) forever barred, estopped and enjoined from making, asserting or enforcing any such claim for a Deposit Claim or other funds paid to SR Law on account of the purchase of a Unit in the Project including interest thereon against 220, Tarion or the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) and all such claims shall be forever extinguished as against all such parties.
7. All capitalized terms not defined herein have the meaning given to such terms in the Deposit Claims Procedure Order.
8. This Deposit Claim Form must be received by the Receiver **by no later than 5:00 p.m. (Toronto Time) on ~~October 31~~ November 30, 2018** by either registered mail, personal delivery, courier, email (in PDF format) or facsimile transmission at the following address:

The Receiver:

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

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

Name of Purchaser:

Witness
Signature

Per:

Name
:

Title:

(Please Print)

SCHEDULE "E"
Notice of Revision or Disallowance

TO: _____ (the "Purchaser")

DATE:

DEPOSIT CLAIM NO.

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

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

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, and further amended on October 12, 2018, the Purchaser hereby gives notice that it disputes the Notice of Revision or Disallowance dated _____, 2018, issued by the Receiver.

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

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

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

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

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

Pursuant to the Deposit Claims Procedure:

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

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

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

DATED this _____ day of _____, 2018

 Witness

Per: _____

(Name of Purchaser)

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

Name: _____

Title: _____

SCHEDULE "G"
Acknowledgement of Receipt of Funds

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

AND TO: THE GUARANTEE COMPANY OF NORTH AMERICA

AND TO: TARION WARRANTY CORPORATION

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

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

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

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

DATED _____, 2018

SIGNED, SEALED AND DELIVERED

Signature

Name (Please Print)

SCHEDULE "H"
Purchaser Certificate of Identity

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

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

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

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

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

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

ID Type: _____ ID No. _____

AND

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

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

ID Type: _____ ID No. _____

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED

Purchaser's Signature

Purchaser's Name (Please Print)

SCHEDULE "I"**Consent**

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

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

Project: *The Connolly*

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

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

DATED the _____ day of _____ 2018

**THE GUARANTEE COMPANY
OF NORTH AMERICA**

Per: _____

"I have authority to bind the Company"

SCHEDULE "J"

Deposit Payment Protocol

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

- 1) Capitalized terms not otherwise defined herein shall have the meanings ascribed to them pursuant to the Deposit Claims Procedure Order. This Protocol shall only become effective upon filing by the Receiver of a Sufficient Funds Certificate by ~~November 19~~December 17, 2018 or such other date as agreed to by the Receiver, Tarion and the Guarantee Co. In the event that a Sufficient Funds Certificate is not filed by such date, then this Protocol shall be of no force or effect.

- 2) The Receiver will provide the Receiver's Certificate, in the form attached as **Attachment "1"**, to Tarion Warranty Corporation ("**Tarion**"). The Receiver's counsel will request that the principal of 220 provide the Statutory Declaration in the form attached as **Attachment "2"**. The failure by the principal of 220 to provide the aforementioned Statutory Declaration will not prevent the payment of Proven Deposit Claims to Purchasers.

- 3) The Receiver will provide Tarion with copies of the following documentation in its possession: (a) all Purchase Agreements, together with any amendments or letter agreements relating to such Purchase Agreements; (b) forms, notices, and related documents and other correspondence with respect to the termination of the Purchase Agreements by 220; (c) forms, notices, receipts, acknowledgments and related documents and other correspondence with respect to any revisions, disallowances, disputes or ongoing communications with Purchasers regarding revised and disallowed Deposit Claims in accordance with the Deposit Claims Procedure Order; (d) a claim determination summary at the completion of the Deposit Claims Procedure that, *inter alia*, sets out the reasons for any revisions, disallowances or disputes; and (e) a summary of all claims barred pursuant to the Deposit Claims Procedure Order that, *inter alia*, sets out the reasons for the barring of all such claims (all such documents referred to in this paragraph, together with the Statutory Declarations referred to in paragraph 2 hereof, collectively, the "**Deposit Claims Procedure Documentation**"). The Deposit Claims Procedure Documentation will be provided in an electronic format and organized on a unit-by-unit basis, where applicable, and as soon as reasonably practicable.

- 4) The Receiver will provide Tarion with a Receiver's Certificate in the form attached as **Attachment "3"** once every two weeks, which Receiver's Certificate will attach copies of: (a) the consents executed and delivered by The Guarantee Company of North America (the "**Guarantee Co.**") to the Receiver in respect of Proven Deposit Claims in accordance with the Deposit Claims Procedure; (b) the corresponding Certificates; and (c) the corresponding Receipts, and which Receiver's Certificate will deal with payments made to Purchasers in the preceding two week period. It is understood by the Parties that the Receiver may, in its sole discretion and based on the number of such payments made during some portion of the initial two week period, provide Tarion with the first such Receiver's Certificate on a date that is before the date that is two weeks from the date hereof.

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

- 34 -

Attachment "1"

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

ONTARIO

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

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

RECEIVER'S CERTIFICATE

THE RECEIVER CERTIFIES the following:

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

- 35 -

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

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

THIS CERTIFICATE was delivered by the Receiver on _____, 2018

MSI SPERGEL INC., in its capacity as Receiver

Per: _____

Name:

Title:

- 36 -

Attachment "2"**STATUTORY DECLARATION**

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

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

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

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

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

A COMMISSIONER, ETC.

NAME: _____
TITLE: _____

- 37 -

Attachment "3"

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

ONTARIO

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

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

RECEIVER'S CERTIFICATE

THE RECEIVER CERTIFIES the following:

1. I am a • of msi Spergel Inc., which has been appointed as the receiver of the Property pursuant to the *Bankruptcy and Insolvency Act* (in such capacity, the **"Receiver"**).
2. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them pursuant to the Deposit Claims Procedure Order dated May 16, 2018, and amended on August 29, 2018, and further amended on October 12, 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

FURTHER FRESH AS AMENDED DEPOSIT
CLAIMS PROCEDURE ORDER

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

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

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

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

Lawyers for the receiver msi Spergel Inc.

TAB 2

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

DUCA FINANCIAL SERVICES CREDIT LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

AFFIDAVIT OF CHRISTOPHER STATHAM

I, CHRISTOPHER STATHAM, of the City of Toronto, in the Province of Ontario, lawyer, MAKE OATH AND SAY:

1. I am a member of Devry Smith Frank *LLP*, lawyers for msi Spergel Inc. (the “Receiver” or “Spergel”), receiver of the respondent 2203284 Ontario Inc. (“220 Ontario”). As such, I have personal knowledge of the matters set out in this affidavit. To the extent that anything below is not within my personal knowledge, it constitutes information derived from the sources identified or Lawrence Hansen. I believe all such information to be true.

2. I swear this affidavit in support of a motion for an order amending the Deposit Claims Procedure Order.

3. On May 16, 2018, the court granted a Vesting Order authorizing the Receiver to complete the sale of the property known municipally as 98 James Street South, Hamilton (the “Property”) to Hue Developments & Investments Canada Inc. (“Purchaser”). A true copy of it is attached to this my affidavit and marked Exhibit “A”. A true copy of the endorsement is attached to this my affidavit and marked Exhibit “B”. True copies of the Receiver’s reports (without schedules) are attached to this my affidavit and marked Exhibits “C” and “D”.

4. A multi-story condominium project was to be built at the Property. As set out in the Receiver’s reports, agreements of purchase and sale were entered into by the Respondent, and deposits were paid by unit purchasers.

5. On May 16, 2018, the court made a Deposit Claims Procedure Order which provides the mechanism for purchaser's claims on deposits after the closing of the sale. A true copy of it is attached to this my affidavit and marked Exhibit "E". A true copy of an ancillary order is attached to this my affidavit and marked Exhibit "F".

6. At the time, the closing of the sale of the Property was set for June 5, 2018.

7. The Purchaser was unable to close on the original closing date.

8. The closing was extended such that it became September 6, 2018.

9. As a result, the dates in the original Deposit Claims Procedure Order could no longer be followed, including the Claims Bar Date (as defined in the order).

10. On August 29, 2018, the court amended the order in the form of a Fresh as Amended Claims Procedure Order. A true copy of the Fresh as Amended Deposit Claims Procedure Order is attached to this my affidavit and marked Exhibit "G".


11. The closing date was extended to October 3, 2018, about four weeks after the September 6, 2018, date which was anticipated when the Fresh as Amended Deposit Claims Procedure Order was made.

12. The sale has now closed.

13. Because of the additional extension, the dates in the Fresh as Amended Deposit Claims Procedure Order are no longer practical.

14. The Receiver proposes to amend the order accordingly, essentially moving the dates back about four weeks and providing a few additional days to provide notice to purchasers. A true copy of the proposed Further Fresh as Amended Deposit Claims Procedure Order is attached to this my affidavit and marked Exhibit "H".

Sworn before me, at the City of Toronto, in the Province of Ontario, on this 9th day of October, 2018.


A Commissioner etc.


CHRISTOPHER STATHAM

TAB A

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

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE
JUSTICE *DUNPHY*

)
)
)

WEDNESDAY, THE 16th
DAY OF MAY, 2018

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

APPROVAL AND VESTING ORDER

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

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

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

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

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

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

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

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

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

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

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

8. THIS COURT ORDERS that, notwithstanding:

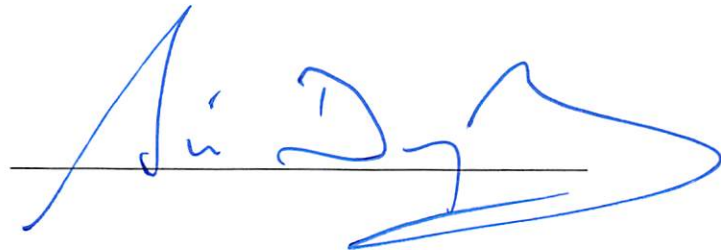
(a) the pendency of these proceedings;

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

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

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

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



Schedule A – Form of Receiver's Certificate

Court File No. 17-11827-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2203284 ONTARIO INC.

Respondent

RECEIVER'S CERTIFICATE**RECITALS**

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

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

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

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

THE RECEIVER CERTIFIES the following:

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

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

Per: _____

Name:

Title:

Schedule B – Real Property

LRO: 62
PIN: 17171-0009 (LT)
Description: PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON;
PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON
(BTN HUNTER ST. MACNAB ST. JACKSON ST & JAMES ST) AS IN HA59712;
CITY OF HAMILTON

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

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

(unaffected by the Vesting Order)

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

A. GENERAL

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

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

B. SPECIFIC

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

and

2203284 ONTARIO LTD.
Respondent

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

ONTARIO

SUPERIOR COURT OF JUSTICE
Proceeding commenced at

TORONTO

APPROVAL AND VESTING ORDER

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

LAWRENCE HANSEN
LSUC No. 41098W

SARA MOSADEQ
LSUC No. 67864K

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

Lawyers for the receiver msi Spergel Inc.

TAB B

EXHIBIT "B"
COUNSEL SLIP

10:00 AM

056

COURT FILE NO CV-17-011827-CL

DATE MAY 16, 2018

NO ON LIST (5)

TITLE OF
PROCEEDING

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
VS.
2203284 ONTARIO INC ET AL

COUNSEL FOR:
PLAINTIFF(S)
APPLICANT(S)
PETITIONER(S)

LAWRENCE HANSEN, for the Receiver
Deborah Hornbostel
Receiver
T: 416-446-5097 PHONE & FAX NOS
F: 416-449-7071 Email:
lawrence.hansen@clerrykw.ca

COUNSEL FOR:
DEFENDANT(S)
RESPONDENT(S)

ADAM SLAVENS
FOR TORYS WARRANTY
CORPORATION

T 416 865 7333
F 416 865 7380

PHONE & FAX NOS
Email:
aslavens@
torys.com

BEVAN BROCKSBANK

GUARANTEE COMPANY OF

NORTH AMERICA

T - 416 367 6604

b6-b7-b7-c

F - 416 367 6749

b1,1

DOM MICHAUD

for

Diversified

Capital Inc.

T 416 360-3755
F 416 868 0706

SP. DUNPHY

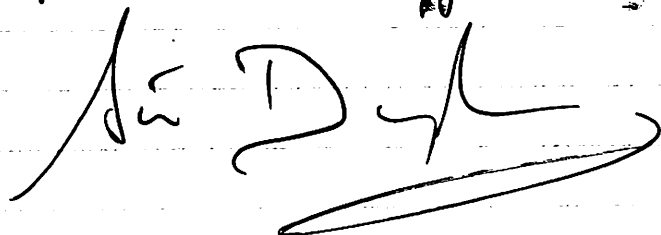
I am and was concerned by the failure to disclose the purchase price on this the most substantial (if not sole material) asset of the estate. This is all the more troubling

when the consenting creditors (DCA and Guarantors) have no shortfall in prospect. On the other hand, the Receiver advises that the Report has been on the website and no affected creditors have complained (and were did before now). Mr Santaguida via counsel did approach the Receiver and was briefed on the sale price. While the process is less than perfect, I am satisfied the process leading to the sale itself was a good one and the best offer reasonably obtainable is before me. It shall be approved. The Ancillary Order + Deposit Claims Order as well as the Approval and Vesting Order are approved and signed. The appendix to this endorsement signed by me is also approved.

A. D.

Then to the agreement to extend the
 September 17, 2018, deadline as set in
 paragraph 1 of The Deposit Payment Protocol
 and Schedule "J" of The Deposit Claims Procedure
 Order, The Receiver will ~~consult~~^{consult} with
 Querified and May Lu Sotgiu in ~~respect~~^{respect}
 of the proposed extended deadline. If
 Querified and Mr. Sotgiu do not ~~agree~~^{agree}
 to the proposed extended deadline, The Receiver will
 attend at ~~at~~^{at} 9:30 appointment to speak ^{to} the
 matter.

Above is a negotiated
 Supplement to my endorsement
 of May 16 as approved by
 me.



TAB C



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

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

BETWEEN

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

-AND-

2203284 ONTARIO INC.

Respondent

FIRST REPORT OF THE RECEIVER

May 4, 2018

TABLE OF CONTENTS

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

LIST OF APPENDICES

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

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

LIST OF CONFIDENTIAL APPENDICES

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

I. INTRODUCTION AND BACKGROUND

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

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

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

PIN: 17171-0009LT

Description: PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON;
PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON
(BTN HUNTER ST. MACNAB ST. JACKSON ST & JAMES ST) AS IN HA59712;
CITY OF HAMILTON

Hereinafter referred to as the "**Property**".

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

5. The Property was acquired by the Debtor on June 4, 2013, at which time it consisted of a historical church. The Debtor subsequently demolished the church, with the exception of its façade and obtained conditional site plan approval from the City of Hamilton to construct a 30

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

6. Sales to unit purchasers of the Project commenced in November, 2014. At the date of the Receivership Order, 185 of the units were sold pursuant to Agreements of Purchase and Sale (the "**Prebuild Agreements**"). The deposits paid with respect to those Prebuild Agreements are held in trust by the law firm Schneider Ruggiero LLP ("**SR Law**"), (the "**Deposits**").

7. The registered office address of the Debtor is 93 Skyway Avenue, Unit 210, Toronto, M9W 6N6, (the "**Office Premises**").

II. PURPOSE OF THIS REPORT

8. The purpose of this Report dated May 3 2018 (the "**First Report**") is to provide information to the Court with respect to:

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

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

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

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

III. Disclaimer

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

10. Except as otherwise described in this report:

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

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

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

IV. Taking Possession

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

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

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

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

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

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

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

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

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

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

V. Review of Books & Records

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

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

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

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

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

Santerra & Marylou Santaguida

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

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

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

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

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

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

Bank of Montreal

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

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

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

Zimmerman

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

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

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

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

Project Development & Site Plan Status

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

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

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

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

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

Prebuild Agreements and Deposits

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

VI. Sales Process

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

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

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

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

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

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

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

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

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

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

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

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

53. None of them made an offer.

54. COR did not make an offer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VIII. Prebuild Agreements and Related Deposits

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

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

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

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

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

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

IX Deposit Claims Procedure Order

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

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

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

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

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

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

78. The Receiver is of the view that it is just, appropriate and in the best interest of the administration of the receivership estate to establish a procedure to identify and determine the Deposit claims of Purchasers as soon as possible following the closing of the Hue APS.
79. The Deposit Claims Procedure Order, attached herein as **Appendix "P"**, is necessary to enable the Receiver, in conjunction with the Guarantee Co. to: (i) determine proven Deposit claims and to facilitate the return of amounts payable in respect of Deposit claims to Purchasers, and (ii) assist the Receiver and the Guarantee Co. in quantifying the Guarantee Co.'s secured claim pursuant to its loan and security documentation (the **"Guarantee Co. Security"**).
80. As previously mentioned in this report, the Receiver is also seeking an Order directing SR Law to deliver the Deposit Funds to the Receiver. The Receiver will maintain the Deposit Funds in a separate account held by the Receiver and will coordinate the return of the Deposit Funds to those Purchasers having a specific claim to those Deposit Funds, in accordance with the Deposit Claims Procedure Order.

Summary of Deposit Claims Procedure

81. Capitalized terms not otherwise defined in this section are as defined in the Deposit Claims Procedure Order.
82. Notice of the Deposit Claims Procedure would include the following activities:
- (a) the Receiver will deliver a Claims Package to each Purchaser within 10 days following the successful closing of the Hue APS.
 - (b) the Receiver will post the Newspaper Notice within 10 days following the successful closing of the Hue APS; and,
 - (c) The Receiver will post the Claims Package on the Website within 10 days following the successful closing of the Hue APS.

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

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

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

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

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

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

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

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

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

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

X. Secured Creditors

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

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

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

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

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

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

Construction Lien

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

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

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

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

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

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

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

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

XI. Interim Distribution

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

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

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

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

XII. Administrative Matters

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

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

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

XIII. RECEIPTS AND DISBURSEMENTS

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

XIV. FEES AND DISBURSEMENTS

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

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

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

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

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

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

XV. CONCLUSION AND RECOMMENDATIONS

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

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

113. The Receiver seeks an Order of the Court:

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

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

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

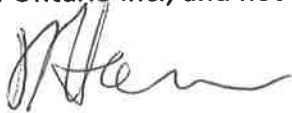
This Report is respectfully submitted this 4th day of May, 2018

msi Spergel Inc.,

In its capacity as Court Appointed Receiver of

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

Per:



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

TAB D



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 REPORT TO FIRST REPORT OF THE RECEIVER

May 16, 2018

TABLE OF CONTENTS

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

LIST OF APPENDICES

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

I. INTRODUCTION AND PURPOSE

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

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

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

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

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

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

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

III. THE UPDATED CLAIMS PROCEDURE ORDER

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

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

IV. THE CITY OF HAMILTON

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

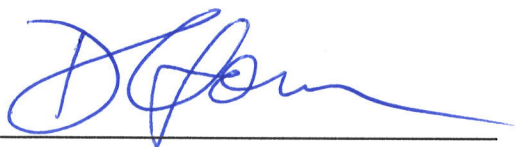
This Report is respectfully submitted this 16th day of May, 2018

msi Spergel Inc.,

In its capacity as Court Appointed Receiver of

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

Per:



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

TAB E

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

ONTARIO

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

THE HONOURABLE

JUSTICE *DUNPHY*

)
)
)

WEDNESDAY, THE

16th DAY OF MAY, 2018

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent



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 __, 2018 and the First Report of the Receiver dated May 4, 2018 (the “**First Report**”), 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 Sara Mosadeq sworn May 4, 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 August 31, 2018, 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 this Deposit Claims Procedure Order, a Deposit Claim Form, and such other materials and notices as the Receiver may consider necessary or appropriate;
- (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 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 ten (10) 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.

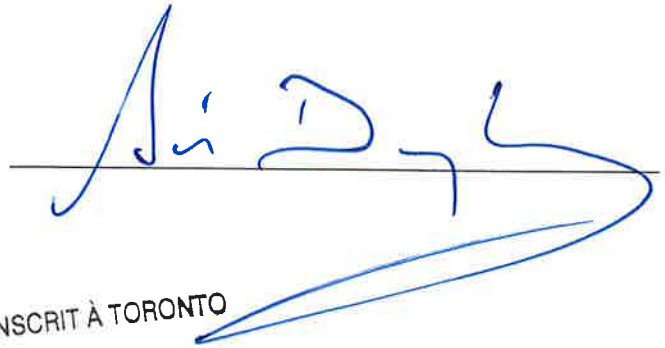
29. **THIS COURT ORDERS** that if the Deposit Trust Funds and the Net Sale Proceeds (collectively, the “**Deposit Funds**”) are sufficient in amount to enable the Receiver to pay all of the Proven Deposit Claims in full as at the Claims Bar Date, the Receiver shall be authorized and directed to complete the Deposit Claims Payments to Purchasers beginning on September 17, 2018, 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 September 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 the Deposit Payment Protocol shall be of no force and effect.

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

33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, as may be necessary or desirable to give effect to this Order or to assist the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, in carrying out the terms of this Order.



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

MAY 18 2018

PER / PAR:



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, prescribing the process by which the identity and status of all deposit claims of purchasers, with a valid and enforceable agreement of purchase and sale for the purchase of a condominium unit from 220, is established for the purposes of the receivership proceedings (the "**Deposit Claims Procedure Order**"). A copy of the Deposit Claims Procedure Order may be accessed online at <http://www.spergelcorporate.ca/active-files-list/2203284-ontario-inc/>

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

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

You are requested to submit your Deposit Claim Form to the Receiver as soon as possible and **no later than on or before 5:00 PM (Toronto Time) on August 31, 2018** (the "**Claims Bar Date**"), in accordance with the Deposit Claims Procedure Order. The Receiver's contact information is below:

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

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

Please review the provisions of the Deposit Claims Procedure Order relating to payments made in respect of a Deposit Trust Claim. Note that the Receiver will require the delivery of

an executed Certificate and Receipt prior to the release of funds on account of a Deposit Trust Claim.

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

SCHEDULE "B"
Deposit Claims Procedure

Notice of Deposit Claims Procedure

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

Filing of Deposit Claim Form and Determination

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

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

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

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

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

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

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

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

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

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

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

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

Return of Deposit Monies / Claim

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

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

SCHEDULE "C"

Newspaper Notice

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

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

On May 16, 2018, the Court granted a further Order, 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 August 31, 2018** (the "**Claims Bar Date**"), in accordance with the Deposit Claims Procedure Order.

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

SCHEDULE "D"
Deposit Claim Form

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

Regarding the claim of _____ (the "Purchaser")

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

Telephone Number: (____) ____ - ____

Email address: _____

Attention (Contact Person): _____

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

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

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

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

OR

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

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

5. The Purchaser states that it has delivered a Deposit Claim to 220 in the total sum of \$ (CDN) as evidenced by the proof of the deposit amount(s) paid attached as **Schedule "B"** herein (by way of a cancelled cheque, or other form of proof from a financial institution to confirm that a deposit was paid by the Purchaser named on the Purchase Agreement) and the other proof attached hereto.
6. The Purchaser acknowledges and agrees that in each case where the Receiver makes a payment in relation to a Proven Deposit Claim in accordance with the Deposit Claims Procedure, the Purchaser (including its heirs, executors and assigns) shall be: (a) deemed to absolutely and unconditionally remise, release, acquit and forever discharge 220, Tarion and the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) for any Deposit Claims, claims for return of Deposit or other claims or funds paid on account of the purchase of a Unit in the Project, including interest thereon; and (b) forever barred, estopped and enjoined from making, asserting or enforcing any such claim for a Deposit Claim or other funds paid to SR Law on account of the purchase of a Unit in the Project including interest thereon against 220, Tarion or the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) and all such claims shall be forever extinguished as against all such parties.
7. All capitalized terms not defined herein have the meaning given to such terms in the Deposit Claims Procedure Order.
8. This Deposit Claim Form must be received by the Receiver **by no later than 5:00 p.m. (Toronto Time) on August 31, 2018** by either registered mail, personal delivery, courier, email (in PDF format) or facsimile transmission at the following address:

The Receiver:

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

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

Name of Purchaser:

Witness
Signature

Per:

Name

:

Title:

(Please Print)

SCHEDULE "E"
Notice of Revision or Disallowance

TO: _____ (the "Purchaser")

DATE:

DEPOSIT CLAIM NO.

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

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

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

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

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

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

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

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

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

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

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

DATED the ____ day of _____, 2018

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

Per: _____

SCHEDULE "F"
Notice of Dispute

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

DATE:

PROOF OF CLAIM NO.:

CLAIMANT: _____ (the "Purchaser")

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

Pursuant to the Deposit Claims Procedure Order dated May 16, 2018, the Purchaser hereby gives notice that it disputes the Notice of Revision or Disallowance dated _____, 2018, issued by the Receiver.

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

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

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

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

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

Pursuant to the Deposit Claims Procedure:

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

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

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

DATED this _____ day of _____, 2018

Witness

Per: _____

(Name of Purchaser)

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

Name: _____

Title: _____

SCHEDULE "G"
Acknowledgement of Receipt of Funds

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

AND TO: THE GUARANTEE COMPANY OF NORTH AMERICA

AND TO: TARION WARRANTY CORPORATION

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

THE UNDERSIGNED HEREBY ACKNOWLEDGES 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.

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

The undersigned acknowledges and agrees that where the Receiver makes a payment in
relation to a Proven Deposit Claim in accordance with the Deposit Claims Procedure, the
undersigned (including its heirs, executors and assigns) shall be: (a) deemed to absolutely
and unconditionally remise, release, acquit and forever discharge 220, Tarion and the
Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount
of the Proven Deposit Claim) for any Deposit Claims, claims for return of a Deposit or other
claims or funds paid on account of the purchase of a Unit in the Project, including interest
thereon; and (b) forever barred, estopped and enjoined from making, asserting or enforcing
any such claim for a Deposit Claim or other funds paid to SR Law on account of the
purchase of a Unit in the Project including interest thereon against 220, Tarion or the
Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount
of the Proven Deposit Claim) and all such claims shall be forever extinguished as against all
such parties.

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

DATED _____, 2018

SIGNED, SEALED AND DELIVERED

Signature

Name (Please Print)

SCHEDULE "H"
Purchaser Certificate of Identity

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

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

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

RE: Return of Deposit Monies in the amount of\$ **[INSERT DEPOSIT AMOUNT]** (the "**Deposit Monies**"). Execution of the Acknowledgement of Receipt of Funds (the "**Receipt**")

Purchaser: **[INSERT NAME OF PURCHASER(S)]** (the "**Purchaser**")

Project: *The Connolly*

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

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

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

ID Type: _____ ID No. _____

AND

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

- a. has the first name and surname that matches the first name and surname of the Purchaser as contained in the Purchase Agreement; and

- b. that provides the Purchaser's current address.

ID Type: _____ ID No. _____

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

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

This Certificate is delivered pursuant to the Deposit Claims Procedure set out in the Order of the Ontario Superior Court of Justice dated May 16, 2018 in Court File No. CV-17-11827-00CL.

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

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

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

SIGNED, SEALED AND DELIVERED

Purchaser's Signature

Purchaser's Name (Please Print)

SCHEDULE "I"

Consent

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

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

Project: *The Connolly*

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

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

DATED the _____ day of _____ 2018

**THE GUARANTEE COMPANY
OF NORTH AMERICA**

Per: _____

"I have authority to bind the Company"

SCHEDULE "J"

Deposit Payment Protocol

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

- 1) Capitalized terms not otherwise defined herein shall have the meanings ascribed to them pursuant to the Deposit Claims Procedure Order. This Protocol shall only become effective upon filing by the Receiver of a Sufficient Funds Certificate by September 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.

Attachment "1"

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

ONTARIO

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

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

RECEIVER'S CERTIFICATE

THE RECEIVER CERTIFIES the following:

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

(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:

Attachment "2"

STATUTORY DECLARATION

CANADA) IN THE MATTER OF the proposed
PROVINCE OF ONTARIO) 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")
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:

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.
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

DEPOSIT CLAIMS PROCEDURE ORDER

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

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

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

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

Lawyers for the receiver msi Spergel Inc.

TAB F

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**

A to the present order.

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

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

MAY 18 2018

PER / PAR:

NB

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
LSUC No. 41098W

SARA MOSADEQ
LSUC No. 67864K

Tel.: 416-449-1400

Fax: 416-449-7071

Lawyers for the receiver msi Spergel Inc.

TAB G

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

ONTARIO

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



) WEDNESDAY, THE
)
) 29TH DAY OF AUGUST, 2018

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

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**”), as well as the Motion Record of August 17, 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 Sara Mosadeq sworn May 4, 2018, and the affidavit of Carmen Yuen sworn August 17, 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 October 31, 2018, or such later date as may be ordered by the Court;
- (f) **"Claims Package"** means the document package to be sent by the Receiver to all Purchasers which shall include a copy of a Deposit Claim Form, and such other materials and notices as the Receiver may consider necessary or appropriate and which will direct Purchasers to the Website for a copy of this Deposit Claims Procedure Order;
- (g) **"Condominium Act"** means the *Condominium Act* (Ontario), R.S.O. 1998, c. 19, as amended;

- (h) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (i) **“Deposit”** means any monies including, without limitation, deposit monies and monies on account of extras and upgrades paid by a Purchaser pursuant to a Purchase Agreement for a Unit at the Project;
- (j) **“Deposit Claim”** means a claim by a Purchaser in respect of a Deposit, and any other amounts claimed by a Purchaser including claims pursuant to the ONHWP, the Condominium Act;
- (k) **“Deposit Claim Form”** means the claim form attached as **Schedule “D”** herein;
- (l) **“Deposit Claim Payment”** means a payment to a Purchaser in respect of a Proven Deposit Claim;
- (m) **“Deposit Claims Procedure”** means the deposit claims procedure attached as **Schedule “B”** herein;
- (n) **“Deposit Claims Procedure Order”** means this 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 ten (10) 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.

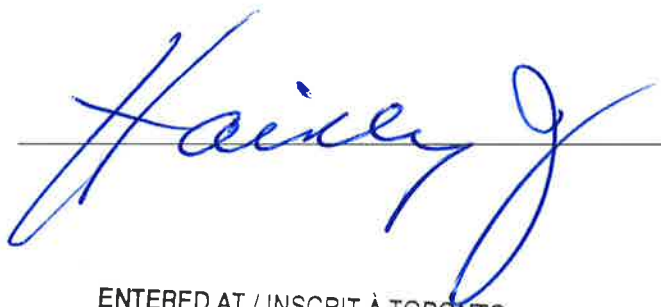
29. **THIS COURT ORDERS** that if the Deposit Trust Funds and the Net Sale Proceeds (collectively, the “**Deposit Funds**”) are sufficient in amount to enable the Receiver to pay all of the Proven Deposit Claims in full as at the Claims Bar Date, the Receiver shall be authorized and directed to complete the Deposit Claims Payments to Purchasers beginning on November 19, 2018, 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 November 19, 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 the Deposit Payment Protocol shall be of no force and effect.

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

33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, as may be necessary or desirable to give effect to this Order or to assist the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, in carrying out the terms of this Order.

A handwritten signature in blue ink, appearing to read "Hainey", is written over a horizontal line.

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

AUG 31 2018

PER / PAR:

Handwritten initials in blue ink, possibly "PL", are written next to the "PER / PAR:" label.

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, prescribing the process by which the identity and status of all deposit claims of purchasers, with a valid and enforceable agreement of purchase and sale for the purchase of a condominium unit from 220, is established for the purposes of the receivership proceedings (the "**Deposit Claims Procedure Order**"). A copy of the Deposit Claims Procedure Order may be accessed online at <http://www.spergelcorporate.ca/active-files-list/2203284-ontario-inc/>

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

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

You are requested to submit your Deposit Claim Form to the Receiver as soon as possible and **no later than on or before 5:00 PM (Toronto Time) on October 31, 2018** (the "**Claims Bar Date**"), in accordance with the Deposit Claims Procedure Order. The Receiver's contact information is below:

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

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

Please review the provisions of the Deposit Claims Procedure Order relating to payments made in respect of a Deposit Trust Claim. Note that the Receiver will require the delivery of

an executed Certificate and Receipt prior to the release of funds on account of a Deposit Trust Claim.

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

SCHEDULE "B"
Deposit Claims Procedure

Notice of Deposit Claims Procedure

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

Filing of Deposit Claim Form and Determination

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

- (a) the agreement of purchase and sale entered into between 220 and the Purchaser;
- (b) the proof of deposit payment(s) provided by the Purchaser;

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

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

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

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

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

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

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

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

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

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

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

Return of Deposit Monies / Claim

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

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

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

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

On May 16, 2018, the Court granted a further Order, amended on August 29, 2018, 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 October 31, , 2018** (the "**Claims Bar Date**"), in accordance with the Deposit Claims Procedure Order.

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

SCHEDULE "D"
Deposit Claim Form

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

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

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

Telephone Number: (____) _____ - _____

Email address: _____

Attention (Contact Person): _____

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

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

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

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

OR

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

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

5. The Purchaser states that it has delivered a Deposit Claim to 220 in the total sum of \$ (CDN) as evidenced by the proof of the deposit amount(s) paid attached as **Schedule "B"** herein (by way of a cancelled cheque, or other form of proof from a financial institution to confirm that a deposit was paid by the Purchaser named on the Purchase Agreement) and the other proof attached hereto.
6. The Purchaser acknowledges and agrees that in each case where the Receiver makes a payment in relation to a Proven Deposit Claim in accordance with the Deposit Claims Procedure, the Purchaser (including its heirs, executors and assigns) shall be: (a) deemed to absolutely and unconditionally remise, release, acquit and forever discharge 220, Tarion and the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) for any Deposit Claims, claims for return of Deposit or other claims or funds paid on account of the purchase of a Unit in the Project, including interest thereon; and (b) forever barred, estopped and enjoined from making, asserting or enforcing any such claim for a Deposit Claim or other funds paid to SR Law on account of the purchase of a Unit in the Project including interest thereon against 220, Tarion or the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) and all such claims shall be forever extinguished as against all such parties.
7. All capitalized terms not defined herein have the meaning given to such terms in the Deposit Claims Procedure Order.
8. This Deposit Claim Form must be received by the Receiver **by no later than 5:00 p.m. (Toronto Time) on October 31, 2018** by either registered mail, personal delivery, courier, email (in PDF format) or facsimile transmission at the following address:

The Receiver:

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

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

Name of Purchaser:

Witness
Signature

Per:

Name
:

Title:

(Please Print)

SCHEDULE "E"
Notice of Revision or Disallowance

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

DATE:

DEPOSIT CLAIM NO.

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

Take notice that msi Spergel Inc., in its capacity as court-appointed receiver of 220 (the "**Receiver**") and the Guarantee Co. have reviewed the Deposit Claim in respect of the above- named Purchaser, and has assessed the Deposit Claim Form in accordance with the order of the Superior Court of Ontario (Commercial List) issued on May 16, 2018, amended on August 28, 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: _____

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, the Purchaser hereby gives notice that it disputes the Notice of Revision or Disallowance dated _____, 2018, issued by the Receiver.

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

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

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

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

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

Pursuant to the Deposit Claims Procedure:

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

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

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

DATED this _____ day of _____, 2018

 Witness

Per: _____

(Name of Purchaser)

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

Name: _____

Title: _____

SCHEDULE "G"
Acknowledgement of Receipt of Funds

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

AND TO: THE GUARANTEE COMPANY OF NORTH AMERICA

AND TO: TARION WARRANTY CORPORATION

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

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

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

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

DATED _____, 2018

SIGNED, SEALED AND DELIVERED

Signature

Name (Please Print)

SCHEDULE "H"
Purchaser Certificate of Identity

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

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

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

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

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

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

ID Type: _____ ID No. _____

AND

- 2) One piece of Canadian government issued identification (that is valid, current and not-expired) that:
 - a. has the first name and surname that matches the first name and surname of the Purchaser as contained in the Purchase Agreement; and
 - b. that provides the Purchaser's current address.

ID Type: _____ ID No. _____

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED

Purchaser's Signature

Purchaser's Name (Please Print)

SCHEDULE "I"**Consent**

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

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

Project: *The Connolly*

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

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

DATED the _____ day of _____ 2018

**THE GUARANTEE COMPANY
OF NORTH AMERICA**

Per: _____

"I have authority to bind the Company"

SCHEDULE "J"

Deposit Payment Protocol

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

- 1) Capitalized terms not otherwise defined herein shall have the meanings ascribed to them pursuant to the Deposit Claims Procedure Order. This Protocol shall only become effective upon filing by the Receiver of a Sufficient Funds Certificate by November 19, 2018 or such other date as agreed to by the Receiver, Tarion and the Guarantee Co. In the event that a Sufficient Funds Certificate is not filed by such date, then this Protocol shall be of no force or effect.
- 2) The Receiver will provide the Receiver's Certificate, in the form attached as **Attachment "1"**, to Tarion Warranty Corporation ("**Tarion**"). The Receiver's counsel will request that the principal of 220 provide the Statutory Declaration in the form attached as **Attachment "2"**. The failure by the principal of 220 to provide the aforementioned Statutory Declaration will not prevent the payment of Proven Deposit Claims to Purchasers.
- 3) The Receiver will provide Tarion with copies of the following documentation in its possession: (a) all Purchase Agreements, together with any amendments or letter agreements relating to such Purchase Agreements; (b) forms, notices, and related documents and other correspondence with respect to the termination of the Purchase Agreements by 220; (c) forms, notices, receipts, acknowledgments and related documents and other correspondence with respect to any revisions, disallowances, disputes or ongoing communications with Purchasers regarding revised and disallowed Deposit Claims in accordance with the Deposit Claims Procedure Order; (d) a claim determination summary at the completion of the Deposit Claims Procedure that, *inter alia*, sets out the reasons for any revisions, disallowances or disputes; and (e) a summary of all claims barred pursuant to the Deposit Claims Procedure Order that, *inter alia*, sets out the reasons for the barring of all such claims (all such documents referred to in this paragraph, together with the Statutory Declarations referred to in paragraph 2 hereof, collectively, the "**Deposit Claims Procedure Documentation**"). The Deposit Claims Procedure Documentation will be provided in an electronic format and organized on a unit-by-unit basis, where applicable, and as soon as reasonably practicable.
- 4) The Receiver will provide Tarion with a Receiver's Certificate in the form attached as **Attachment "3"** once every two weeks, which Receiver's Certificate will attach copies of: (a) the consents executed and delivered by The Guarantee Company of North America (the "**Guarantee Co.**") to the Receiver in respect of Proven Deposit Claims in accordance with the Deposit Claims Procedure; (b) the corresponding Certificates; and (c) the corresponding Receipts, and which Receiver's Certificate will deal with payments made to Purchasers in the preceding two week period. It is understood by the Parties that the Receiver may, in its sole discretion and based on the number of such payments made during some portion of the initial two week period, provide Tarion with the first such Receiver's Certificate on a date that is before the date that is two weeks from the date hereof.

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

- 34 -

Attachment "1"

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

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

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

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

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

- 35 -

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

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

THIS CERTIFICATE was delivered by the Receiver on _____, 2018

MSI SPERGEL INC., in its capacity as Receiver

Per: _____

Name:

Title:

- 36 -

Attachment "2"**STATUTORY DECLARATION**

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

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

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

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

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

A COMMISSIONER, ETC.

NAME:
TITLE:

- 37 -

Attachment "3"

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

ONTARIO

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

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

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

1. I am a • of msi Spergel Inc., which has been appointed as the receiver of the Property pursuant to the *Bankruptcy and Insolvency Act* (in such capacity, the "**Receiver**").
2. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them pursuant to the Deposit Claims Procedure Order dated May 16, 2018, and amended on August 29, 2018.
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

**FRESH AS AMENDED DEPOSIT CLAIMS
PROCEDURE ORDER**

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

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

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

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

Lawyers for the receiver msi Spergel Inc.

TAB H

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

ONTARIO

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

THE HONOURABLE) ~~WEDNESDAY, FRIDAY, THE~~
JUSTICE)
) ~~29TH 12TH DAY OF AUGUST~~ OCTOBER,
) 2018

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

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**”), as well as the Motion Record of August 17, 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 Sara Mosadeq sworn May 4, 2018, and the affidavit of Carmen Yuen sworn August 17, 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 ~~October 31, 2018~~ November 30, 2018, or such later date as may be ordered by the Court;
- (f) **“Claims Package”** means the document package to be sent by the Receiver to all Purchasers which shall include a copy of a Deposit Claim Form, and such other materials and notices as the Receiver may consider necessary or appropriate and which will direct Purchasers to the Website for a copy of this Deposit Claims Procedure Order;
- (g) **“Condominium Act”** means the *Condominium Act* (Ontario), R.S.O. 1998, c. 19, as amended;

- (h) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (i) **“Deposit”** means any monies including, without limitation, deposit monies and monies on account of extras and upgrades paid by a Purchaser pursuant to a Purchase Agreement for a Unit at the Project;
- (j) **“Deposit Claim”** means a claim by a Purchaser in respect of a Deposit, and any other amounts claimed by a Purchaser including claims pursuant to the ONHWP, the Condominium Act;
- (k) **“Deposit Claim Form”** means the claim form attached as **Schedule “D”** herein;
- (l) **“Deposit Claim Payment”** means a payment to a Purchaser in respect of a Proven Deposit Claim;
- (m) **“Deposit Claims Procedure”** means the deposit claims procedure attached as **Schedule “B”** herein;
- (n) **“Deposit Claims Procedure Order”** means this 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 ~~ten (10)~~ 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 ~~November 19~~December 17, 2018, 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 ~~November 19~~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 the Deposit Payment Protocol shall be of no force and effect.

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

33. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada to give effect to this Order and to assist the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, as may be necessary or desirable to give effect to this Order or to assist the Receiver, 220, the Guarantee Co. and Tarion, and their respective agents, in carrying out the terms of this Order.

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, and further amended on October 12, 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 ~~October 31~~ November 30, 2018** (the "**Claims Bar Date**"), in accordance with the Deposit Claims Procedure Order. The Receiver's contact information is below:

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

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

Please review the provisions of the Deposit Claims Procedure Order relating to payments

made in respect of a Deposit Trust Claim. Note that the Receiver will require the delivery of an executed Certificate and Receipt prior to the release of funds on account of a Deposit Trust Claim.

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

SCHEDULE “B”
Deposit Claims Procedure

Notice of Deposit Claims Procedure

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

Filing of Deposit Claim Form and Determination

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

- (a) the agreement of purchase and sale entered into between 220 and the Purchaser;
- (b) the proof of deposit payment(s) provided by the Purchaser;

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

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

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

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

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

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

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

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

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

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

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

Return of Deposit Monies / Claim

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

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

SCHEDULE "C"
Newspaper Notice

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

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

On May 16, 2018, the Court granted a further Order, amended on August 29, 2018, and further amended on October 12, 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 ~~October 31~~ November 30, 2018** (the "**Claims Bar Date**"), in accordance with the Deposit Claims Procedure Order.

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

SCHEDULE "D"
Deposit Claim Form

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

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

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

Telephone Number: (____) ____ - ____

Email address: _____

Attention (Contact Person): _____

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

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

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

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

OR

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

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

5. The Purchaser states that it has delivered a Deposit Claim to 220 in the total sum of \$ (CDN) as evidenced by the proof of the deposit amount(s) paid attached as **Schedule "B"** herein (by way of a cancelled cheque, or other form of proof from a financial institution to confirm that a deposit was paid by the Purchaser named on the Purchase Agreement) and the other proof attached hereto.
6. The Purchaser acknowledges and agrees that in each case where the Receiver makes a payment in relation to a Proven Deposit Claim in accordance with the Deposit Claims Procedure, the Purchaser (including its heirs, executors and assigns) shall be: (a) deemed to absolutely and unconditionally remise, release, acquit and forever discharge 220, Tarion and the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) for any Deposit Claims, claims for return of Deposit or other claims or funds paid on account of the purchase of a Unit in the Project, including interest thereon; and (b) forever barred, estopped and enjoined from making, asserting or enforcing any such claim for a Deposit Claim or other funds paid to SR Law on account of the purchase of a Unit in the Project including interest thereon against 220, Tarion or the Guarantee Co. (in the case of Tarion, only to the extent that such payment is in the full amount of the Proven Deposit Claim) and all such claims shall be forever extinguished as against all such parties.
7. All capitalized terms not defined herein have the meaning given to such terms in the Deposit Claims Procedure Order.
8. This Deposit Claim Form must be received by the Receiver **by no later than 5:00 p.m. (Toronto Time) on ~~October 31~~ November 30, 2018** by either registered mail, personal delivery, courier, email (in PDF format) or facsimile transmission at the following address:

The Receiver:

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

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

Name of Purchaser:

Witness
Signature

Per:

Name
:

Title:

(Please Print)

SCHEDULE "E"
Notice of Revision or Disallowance

TO: _____ (the "Purchaser")

DATE:

DEPOSIT CLAIM NO.

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

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

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, and further amended on October 12, 2018, the Purchaser hereby gives notice that it disputes the Notice of Revision or Disallowance dated _____, 2018, issued by the Receiver.

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

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

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

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

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

Pursuant to the Deposit Claims Procedure:

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

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

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

DATED this _____ day of _____, 2018

 Witness

Per: _____

(Name of Purchaser)

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

Name: _____

Title: _____

SCHEDULE "G"
Acknowledgement of Receipt of Funds

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

AND TO: THE GUARANTEE COMPANY OF NORTH AMERICA

AND TO: TARION WARRANTY CORPORATION

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

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

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

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

DATED _____, 2018

SIGNED, SEALED AND DELIVERED

Signature

Name (Please Print)

SCHEDULE "H"
Purchaser Certificate of Identity

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

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

AND TO: TARION WARRANTY CORPORATION ("Tarion")

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

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

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

ID Type: _____ ID No. _____

AND

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

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

ID Type: _____ ID No. _____

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED

Purchaser's Signature

Purchaser's Name (Please Print)

SCHEDULE "I"**Consent**

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

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

Project: *The Connolly*

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

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

DATED the _____ day of _____ 2018

**THE GUARANTEE COMPANY
OF NORTH AMERICA**

Per: _____

"I have authority to bind the Company"

SCHEDULE "J"

Deposit Payment Protocol

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

- 1) Capitalized terms not otherwise defined herein shall have the meanings ascribed to them pursuant to the Deposit Claims Procedure Order. This Protocol shall only become effective upon filing by the Receiver of a Sufficient Funds Certificate by ~~November 19~~December 17, 2018 or such other date as agreed to by the Receiver, Tarion and the Guarantee Co. In the event that a Sufficient Funds Certificate is not filed by such date, then this Protocol shall be of no force or effect.
- 2) The Receiver will provide the Receiver's Certificate, in the form attached as **Attachment "1"**, to Tarion Warranty Corporation ("**Tarion**"). The Receiver's counsel will request that the principal of 220 provide the Statutory Declaration in the form attached as **Attachment "2"**. The failure by the principal of 220 to provide the aforementioned Statutory Declaration will not prevent the payment of Proven Deposit Claims to Purchasers.
- 3) The Receiver will provide Tarion with copies of the following documentation in its possession: (a) all Purchase Agreements, together with any amendments or letter agreements relating to such Purchase Agreements; (b) forms, notices, and related documents and other correspondence with respect to the termination of the Purchase Agreements by 220; (c) forms, notices, receipts, acknowledgments and related documents and other correspondence with respect to any revisions, disallowances, disputes or ongoing communications with Purchasers regarding revised and disallowed Deposit Claims in accordance with the Deposit Claims Procedure Order; (d) a claim determination summary at the completion of the Deposit Claims Procedure that, *inter alia*, sets out the reasons for any revisions, disallowances or disputes; and (e) a summary of all claims barred pursuant to the Deposit Claims Procedure Order that, *inter alia*, sets out the reasons for the barring of all such claims (all such documents referred to in this paragraph, together with the Statutory Declarations referred to in paragraph 2 hereof, collectively, the "**Deposit Claims Procedure Documentation**"). The Deposit Claims Procedure Documentation will be provided in an electronic format and organized on a unit-by-unit basis, where applicable, and as soon as reasonably practicable.
- 4) The Receiver will provide Tarion with a Receiver's Certificate in the form attached as **Attachment "3"** once every two weeks, which Receiver's Certificate will attach copies of: (a) the consents executed and delivered by The Guarantee Company of North America (the "**Guarantee Co.**") to the Receiver in respect of Proven Deposit Claims in accordance with the Deposit Claims Procedure; (b) the corresponding Certificates; and (c) the corresponding Receipts, and which Receiver's Certificate will deal with payments made to Purchasers in the preceding two week period. It is understood by the Parties that the Receiver may, in its sole discretion and based on the number of such payments made during some portion of the initial two week period, provide Tarion with the first such Receiver's Certificate on a date that is before the date that is two weeks from the date hereof.

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

- 34 -

Attachment "1"

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

ONTARIO

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

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

RECEIVER'S CERTIFICATE

THE RECEIVER CERTIFIES the following:

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

- 35 -

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

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

THIS CERTIFICATE was delivered by the Receiver on _____, 2018

MSI SPERGEL INC., in its capacity as Receiver

Per: _____

Name:

Title:

- 36 -

Attachment "2"**STATUTORY DECLARATION**

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

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

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

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

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

A COMMISSIONER, ETC.

NAME:
TITLE:

- 37 -

Attachment "3"

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

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

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

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

1. I am a • of msi Spergel Inc., which has been appointed as the receiver of the Property pursuant to the *Bankruptcy and Insolvency Act* (in such capacity, the **"Receiver"**).
2. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them pursuant to the Deposit Claims Procedure Order dated May 16, 2018, and amended on August 29, 2018, and further amended on October 12, 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

FURTHER FRESH AS AMENDED DEPOSIT
CLAIMS PROCEDURE ORDER

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

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

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

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

Lawyers for the receiver msi Spergel Inc.

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

and

2203284 ONTARIO LTD.
Respondent

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

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at

TORONTO

MOTION RECORD
(returnable October 12, 2018)

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.