

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MORRISON FINANCIAL MORTGAGE CORPORATION

Applicant

and

1817955 ONTARIO LIMITED, KIMBERLEY GAIL HILL  
and ANDREW TERENCE HILL

Respondents

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

**APPLICANT'S FACTUM**  
(Appointment of Receiver)

April 4, 2025

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**THE SERVICE LIST**  
**(as at April 2, 2025)**

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Respondent

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Lawyers for Proposed Receiver

**SECURED CREDITORS**

**INTACT INSURANCE COMPANY**

700 University Avenue  
Toronto, ON M5G 0A1

**THE TORONTO-DOMINION BANK (No. 34762)**

723 Goderich Street  
Port Elgin, ON N0H 2C3

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## PART I - OVERVIEW

1. The Applicant (“**Morrison**”) seeks an order (the “**Appointment Order**”) appointing msi Spergel Inc. (“**Spergel**”) as receiver and manager (in such capacity, the “**Receiver**”) pursuant to section 243 of the *Bankruptcy and Insolvency Act*<sup>1</sup> (the “**BIA**”) and section 101 of the *Courts of Justice Act*<sup>2</sup> (the “**CJA**”) without security, over all property, assets and undertakings of 1817955 Ontario Limited (“**181**”) and Kimberley Gail Hill (“**Kimberley**”) (collectively be referred to as the “**Debtors**”), acquired for or used in relation to all of the Debtors’ right, title and interest in and to all of the lands more particularly described at **Schedule “A” of the Appointment Order** (the “**Properties**”). The scope of the receivership is limited to the Properties.

2. As of February 27, 2025, the aggregate indebtedness due and owing by the Debtors to Morrison in addition to ongoing accrual of interest at the rates specified for Facility 1 excluding additional legal fees, disbursements and HST is \$7,621,723.65.<sup>3</sup>

## PART II - FACTS

### I. THE PARTIES

3. Morrison is a company that provides mortgage financing to builders and developers.<sup>4</sup>

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<sup>1</sup> [\*Bankruptcy and Insolvency Act\*](#), RSC 1985, c B-3, [“**BIA**”] [Section 243](#)

<sup>2</sup> [\*Courts of Justice Act\*](#), RSO 1990, c C43, [“**CJA**”], [Section 101](#)

<sup>3</sup> **Warsi Affidavit**, para 76

<sup>4</sup> **Warsi Affidavit**, para 3

4. 181 is a company that develops and renovates commercial and residential properties (the “**Business**”). 181 was incorporated pursuant to the laws of Ontario, with a registered office in Kincardine, Ontario.<sup>5</sup>

5. Andrew Terence Hill (“**Andrew**”) is the principal of 181 and is an officer and director of 181 holding the position of President.<sup>6</sup> Andrew provided a limited guarantee of certain credit facilities, described below (the “**Guarantor**” or “**Covenantor**”), issued by Morrison to 181.<sup>7</sup> Andrew is named in the Application to facilitate cooperation with the Receiver, once appointed.

6. Kimberley is the spouse of Andrew and is an officer of 181 holding the positions of Secretary and Treasurer.<sup>8</sup> Kimberley was added as a co-borrower and also provided a limited guarantee of certain credit facilities, described below (the “**Guarantor**” or “**Covenantor**”), pursuant to the Fifth Amendment Letter (as described below) issued by Morrison to 181.<sup>9</sup>

7. 181 was developing a project located at 1020 Goderich Street, Port Elgin, Ontario (the “**Property**”). 181 required financing in order to demolish an existing structure on the Property and subsequently construct a mixed-use condominium building with a 3-storey commercial space and a 4-storey 12-unit residential condominium complimented by underground parking and surface level parking (the “**Project**”).<sup>10</sup>

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<sup>5</sup> Warsi Affidavit, para 4; **Corporate Profile**, Exhibit 1 to the Warsi Affidavit

<sup>6</sup> Warsi Affidavit, para 5; **Corporate Profile**, Exhibit 1 to the Warsi Affidavit

<sup>7</sup> Warsi Affidavit, para 12; **Guarantee**, Exhibit 12 to the Warsi Affidavit

<sup>8</sup> Warsi Affidavit, para 6; **Corporate Profile**, Exhibit 1 to the Warsi Affidavit

<sup>9</sup> Warsi Affidavit, para 37; **Guarantee**, Exhibit 39 to the Warsi Affidavit

<sup>10</sup> Warsi Affidavit, para 7

## II. CREDIT FACILITIES

8. Morrison (as lender), 181 (as borrower), and Andrew (as guarantor) entered into a commitment letter dated October 26, 2021 (the “**Commitment Letter**” or the “**Loan Agreement**”).<sup>11</sup>

9. Pursuant to the Loan Agreement, Morrison advanced:

- (a) for the purposes of the Morrison Loan, the total principal amount of \$7,313,179.00 (“**Facility 1**”), for a term of twenty-four (24) months from the interest adjustment date, which is the first day of the month immediately after the month in which the first advance is made together with interest floating at a greater of 9% per annum and the Bank of Nova Scotia Posted Bank Prime Rate of Interest as adjusted from time to time plus 6.55% per annum, interest only, calculated daily, compounded and due monthly;
- (b) for the purposes of a Morrison Mezzanine Loan, the total principal amount of \$320,058.00 (“**Facility 2**”) for a term of twelve (12) months together with interest floating at a greater of 10% per annum and the Bank of Nova Scotia Posted Bank Prime Rate of Interest as adjusted from time to time plus 7.55% per annum, interest only, calculated daily, compounded and due monthly;

collectively Facility 1 and Facility 2 shall be referred to as the “**Loan**”.<sup>12</sup>

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<sup>11</sup> Warsi Affidavit, para 9; **Loan Agreement**, Exhibit 2 to the Warsi Affidavit

<sup>12</sup> Warsi Affidavit, para 9; **Loan Agreement**, Exhibit 2 to the Warsi Affidavit

### III. THE SECURITY DOCUMENTS

#### Security

10. Morrison holds a perfected security interest in all of the personal property of 181. Among others, Morrison holds the following security against 181:

- (a) a General Security Agreement in respect of all of the personal property of 181 dated November 18, 2021 (the “**GSA**”) with the grant of security being stipulated in paragraphs 1 (a) to (j) and the definition of “Collateral” set out at paragraph 1 of the GSA. Paragraph 9 of the GSA provides for the appointment of a receiver upon the occurrence of an event of default as set out in paragraph 6 of the GSA;<sup>13</sup>
- (b) an Assignment of Insurance in respect of insurance policies together with all proceeds and other amounts payable in respect of the policies;<sup>14</sup>
- (c) an Assignment of Contracts in respect of all of 181’s interest in all municipal approvals and agreements and all construction and other contracts, plans, specifications, working drawings, budgets and schedules for the provision of materials, equipment and services to the Property in connection with the construction of a mixed use condominium comprising a three storey commercial office tower and a four storey 12 unit residential tower

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<sup>13</sup> **Warsi Affidavit**, para 10(a); **GSA**, Exhibit 3 to the Warsi Affidavit

<sup>14</sup> **Warsi Affidavit**, para10(b); **Assignment of Insurance**, Exhibit 4 to the Warsi Affidavit

complimented by underground parking and surface level parking in accordance with the Loan Agreement;<sup>15</sup>

- (d) an Assignment of Agreements of Purchase and Sale with respect to the commercial or residential condominium units 181 is in the process of constructing for third party purchasers;<sup>16</sup>
- (e) a Deficiency and Cost Overrun Agreement in respect of a budget shortfall amount to complete the construction of the project;<sup>17</sup>
- (f) an Assignment of Interest in Letters of Credit in respect of letters of credit 181 enters into with municipal authorities and agencies in the Town of Port Elgin, Ontario in connection with the construction project;<sup>18</sup>
- (g) Covenants in respect of equity maintenance, use of proceeds and performance of covenants;<sup>19</sup>
- (h) an Assignment of Condominium Voting Rights with respect to the Commercial Condominium Corporation and the Residential Condominium and/or the Condominium Units of either corporation;<sup>20</sup>
- (i) an Environmental Indemnity for matters in respect of the Property. <sup>21</sup>

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<sup>15</sup> **Warsi Affidavit**, para 10(c); **Assignment of Contracts**, Exhibit 5 to the Warsi Affidavit

<sup>16</sup> **Warsi Affidavit**, para 10(d); **Assignment of Agreements of Purchase and Sale**; Exhibit 6 to the Warsi Affidavit

<sup>17</sup> **Warsi Affidavit**, para 10(e); **Deficiency and Cost Overrun Agreement**, Exhibit 7 to the Warsi Affidavit

<sup>18</sup> **Warsi Affidavit**, para 10(f); **Assignment of Interest in Letters of Credit**, Exhibit 8 to the Warsi Affidavit

<sup>19</sup> **Warsi Affidavit**, para 10(g); **Covenants**, Exhibit 9 to the Warsi Affidavit

<sup>20</sup> **Warsi Affidavit**, para 10(h); **Assignment of Condominium Voting Rights**, Exhibit 10 to the Warsi Affidavit

<sup>21</sup> **Warsi Affidavit**, para 10(i); **Environmental Indemnity**; Exhibit 11 to the Warsi Affidavit

11. The personal property security of Morrison was perfected on November 16, 2021 by registration against 181 as related to the applicable personal property of 181 in the provincial registry maintained under the *Personal Property Security Act (Ontario)*, R.S.O. 1990, c P.10 (the “**PPSA**”) under File No. 778263966 and Registration No. 20211116 1304 1902 5461.<sup>22</sup>

### **The Guarantee**

12. Andrew provided a personal guarantee in favour of Morrison dated November 18, 2021 for all present and future debts, liabilities and obligations together with interest, plus costs and expenses in respect of all indebtedness, liabilities and obligations of 181 (the “**Guarantee**”).<sup>23</sup>

13. The personal property security of Morrison was perfected on November 16, 2021 by registration against Andrew as related to Andrew’s personal property in the provincial registry maintained under the PPSA under File No. 778261788 and Registration No. 20211116 1250 1901 1420.<sup>24</sup>

### **Charge/Mortgage and Assignment of Rents**

14. A first Charge/Mortgage in the principal amount of \$9,541,546.25 was registered on November 24, 2021 as Instrument No. BR176854 (“the **Charge**”) against the Property in favour of Morrison. Andrew is listed as a Guarantor.<sup>25</sup>

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<sup>22</sup> **Warsi Affidavit**, para 11; **PPSA re 181**, Exhibit 12 and Exhibit 46 to the Warsi Affidavit

<sup>23</sup> **Warsi Affidavit**, para 13; **Guarantee**, Exhibit 13 to the Warsi Affidavit

<sup>24</sup> **Warsi Affidavit**, para 13; **PPSA re Andrew**, Exhibit 12 and Exhibit 47 to the Warsi Affidavit

<sup>25</sup> **Warsi Affidavit**, para 14; **Charge**, Exhibit 15 to the Warsi Affidavit; **Parcel Register**, Exhibit 24 to the Warsi Affidavit

15. A Notice of Assignment of Rents was registered on November 24, 2021 as Instrument No. BR176855 against the Property in favour of Morrison (“the **Assignment of Rents**”).<sup>26</sup>

16. Andrew on behalf of 181 and personally as Guarantor signed an Authorization allowing the law firm of Ruderman Shaw or Lori C. MacIntosh to insert certain dates and registration numbers which were left blank in certain security documents and related Loan documents as appropriate.<sup>27</sup>

17. Andrew on behalf of 181 signed an Acknowledgement with respect to receipt of the Standard Charge Terms.<sup>28</sup>

18. Andrew on behalf of 181 and personally as Guarantor signed a Non-Merger Acknowledgement in respect of the registered Charge, the Loan Documents and the Loan Agreement.<sup>29</sup>

### **Priority of Morrison Charge/Mortgage and PPSA Registrations**

19. A charge/mortgage in favour of The Guarantee Company of North America for the principal amount of \$890,000.00 had been registered as Instrument No. BR163052 on December 9, 2020. A Notice of Application to Change Name from The Guarantee Company of North America to Intact Insurance Company (“**Intact**”) was registered as Instrument No. BR176790 on November 23, 2021 with respect to this charge/mortgage.<sup>30</sup>

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<sup>26</sup> **Warsi Affidavit**, para 15; **Assignment of Rents**, Exhibit 17 to the Warsi Affidavit; **Parcel Register**, Exhibit 24 to the Warsi Affidavit

<sup>27</sup> **Warsi Affidavit**, para 16; **Authorization**, Exhibit 18 to the Warsi Affidavit

<sup>28</sup> **Warsi Affidavit**, para 17; **Acknowledgement**, Exhibit 19 to the Warsi Affidavit

<sup>29</sup> **Warsi Affidavit**, para 18; **Non-Merger Acknowledgement**, Exhibit 20 to the Warsi Affidavit

<sup>30</sup> **Warsi Affidavit**, para 19; **Parcel Register**, Exhibit 24 to the Warsi Affidavit

20. Intact agreed to postpone its charge/mortgage in favour of Morrison's Charge and Morrison's Notice of Assignment of Rents. The Postponement of Interest was registered as Instrument No. BR176879 on November 25, 2021.<sup>31</sup>

21. An Agreement Amending [the Intact] Charge/Mortgage of Land was entered into between 181 and Intact wherein the principal amount of the mortgage was increased from \$890,000.00 to \$1,100,000.00. This agreement was registered on title as Instrument No. BR176980 on November 26, 2021.<sup>32</sup>

22. Intact and Morrison entered into a Priority Agreement dated November 24, 2021 in respect of the priority of the respective mortgages and PPSA registrations in which Intact will at all times postpone and rank subordinate to Morrison, except for the deposit monies received from purchasers of dwelling units in the Project held in a designated trust account.<sup>33</sup>

#### **IV. FINANCIAL DIFFICULTIES OF 181**

##### **Amendments to Commitment Letter**

23. On March 2, 2022, Morrison attended a site visit at the Property at which time Morrison was informed of an approximate \$800,000.00 cost overrun for the Project.<sup>34</sup>

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<sup>31</sup> **Warsi Affidavit**, para 20; **Postponement of Interest**, Exhibit 21 to the Warsi Affidavit; **Parcel Register**, Exhibit 24 to the Warsi Affidavit

<sup>32</sup> **Warsi Affidavit**, para 21; **Agreement Amending Intact Charge**, Exhibit 22 to the Warsi Affidavit; **Parcel Register**, Exhibit 24 to the Warsi Affidavit

<sup>33</sup> **Warsi Affidavit**, para 22; **Priority Agreement**, Exhibit 23 to the Warsi Affidavit

<sup>34</sup> **Warsi Affidavit**, para 24

24. The Commitment Letter was amended by letter agreement dated March 23, 2022 (**"First Amendment Letter"**) as follows:

- (a) increase the Loan amount pursuant to a new Loan facility (**"Facility 3"**) of \$605,728.00 to account for a portion of the cost overrun;
- (b) Morrison agreed to allocate \$150,000.00 of project contingency to the cost overrun;
- (c) total Loan amount was amended from \$7,633,237.00 to \$8,238,965.00;
- (d) Facility 3 would be for a term of twenty-one (21) months from the interest adjustment date, but in no event would the term of Facility 3 exceed the term of Facility 1;
- (e) interest floating at a greater of 11% per annum and the Bank of Nova Scotia Posted Bank Prime Rate of Interest as adjusted from time to time plus 8.55% per annum, interest only, calculated daily, compounded and due monthly
- (f) amendments to the provisions of Interest Reserve, Partial Discharges and Advances were also included;
- (g) a commitment fee in the amount of \$18,172 was immediately due and payable and was advanced under Facility 3; and

- (h) 181 agreed to provide an assignment of sale proceeds of 137 Elgin Street, Unit 204, Port Elgin in the minimum amount of \$150,000.00 which was scheduled to close on April 28, 2022.<sup>35</sup>

25. The Commitment Letter was further amended by letter agreement dated June 21, 2022 ("**Second Amendment Letter**") with respect to adding a Facility 4 to the Loan for purposes of an advance of \$74,775 in cash to Westario Power Inc. or to a Canadian chartered bank as security for a letter of credit in favour of Westario Power Inc., or a combination thereof ("**Facility 4**"). Facility 4 shall bear the same rate of interest as Facility 1. A commitment fee in the amount of \$1,634.00 was added to the Loan amount. Amendments to the Partial Discharges provisions were also included.<sup>36</sup>

26. The Commitment Letter was further amended by letter agreement dated November 23, 2022 ("**Third Amendment Letter**") with respect to extending the term of Facility 2 by twelve (12) months to November 30, 2023, increasing the interest reserve of Facility 2 by \$51,804.01 to \$82,066.01, Facility 2 shall be subject to an extension fee of \$7,216.46 payable upon acceptance and added to the outstanding Loan balance of Facility 2, and the Facility 2 Loan amount shall be increased to \$412,369.22 from \$320,058.00.<sup>37</sup>

27. The Commitment Letter was further amended by letter agreement dated February 17, 2023 ("**Fourth Amendment Letter**") with respect to the term of Facility 4 for a period

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<sup>35</sup> **Warsi Affidavit**, para 25; **First Amendment Letter**, Exhibit 25 to the Warsi Affidavit; **Direction re Funds**, Exhibit 26 to the Warsi Affidavit

<sup>36</sup> **Warsi Affidavit**, para 26; **Second Amendment Letter**, Exhibit 27 to the Warsi Affidavit

<sup>37</sup> **Warsi Affidavit**, para 27; **Third Amendment Letter**, Exhibit 28 to the Warsi Affidavit

of twenty-four (24) months from the interest adjustment date, but in no event would the term of Facility 4 exceed the term of Facility 1.<sup>38</sup>

28. On March 31, 2023, 181 reported to Morrison that it was nearing completion/occupancy of the commercial building and had started the foundations for the residential building on the Property. Delays and complications resulting from the COVID-19 pandemic resulted in cost overruns to the Project expected to total \$780,000.00, as represented by 181. To accommodate these changes, 181 agreed to provide Morrison collateral security in additional properties and Morrison agreed to fund the first cost overrun of \$162,446.00.<sup>39</sup>

29. The Commitment Letter was further amended by letter agreement dated March 31, 2023 ("**Fifth Amendment Letter**") whereby:

- (a) Kimberley shall be added as a co-borrower to the Loan in support of the additional security being provided against matrimonial homes located at 1632 Concession Road 12, Kincardine, Ontario and legally described as LT F CON 13 Bruce; Kincardine, being PIN 33277-0054 LT ("**1632 Conc 12**") in an amount equal to \$800,000.00 and 137 Elgin Street, Unit 202, Port Elgin, Ontario and legally described as Unit 2, Level 2 Bruce Standard Condominium Plan No. 34 and its appurtenant interest; Town of Saugeen Shores, being PIN 33834-0002 LT ("**202-137 Elgin**") in an amount equal to \$300,000.00;

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<sup>38</sup> Warsi Affidavit, para 28; **Fourth Amendment Letter**, Exhibit 29 to the Warsi Affidavit

<sup>39</sup> Warsi Affidavit, para 29

- (b) the Loan amount shall be increased from \$8,413,001.00 to \$8,575,467.00 with the increase being applicable to Facility 3 and increasing Facility 3 from \$605,728.00 to \$768,194.00;
- (c) an additional commitment fee of \$3,250.00 associated with the increased Loan amount on account of the cost overrun and shall be funded under Facility 3; and
- (d) amendments related to the ranking of security and discharge of security against 1632 Conc 12 and 202-137 Elgin were also included.<sup>40</sup>

## **V. CHARGES REGISTERED ON 1632 CONC 12 AND 202-137 ELGIN**

### **Charge/Mortgage**

30. A second Charge/Mortgage in the principal amount of \$800,000.00 was registered on May 18, 2023 as Instrument No. BR194348 against 1632 Conc 12 in favour of Morrison (the “**1632 Conc 12 Charge**”).<sup>41</sup>

31. A second Charge/Mortgage in the principal amount of \$300,000.00 was registered on May 18, 2023 as Instrument No. BR194349 against 202-137 Elgin in favour of Morrison (the “**202-137 Elgin Charge**”).<sup>42</sup>

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<sup>40</sup> **Warsi Affidavit**, para 30; **Fifth Amendment Letter**, Exhibit 30 to the Warsi Affidavit

<sup>41</sup> **Warsi Affidavit**, para 31; **1632 Conc 12 Charge**, Exhibit 32 to the Warsi Affidavit; **1632 Conc 12 Parcel Register**, Exhibit 33 to the Warsi Affidavit

<sup>42</sup> **Warsi Affidavit**, para 33; **202-137 Elgin Charge**, Exhibit 35 to the Warsi Affidavit; **202-137 Elgin Parcel Register**, Exhibit 36 to the Warsi Affidavit

32. Andrew and Kimberley signed an Acknowledgement with respect to receipt of the Standard Charge Terms.<sup>43</sup>

### **Security**

33. The personal property security of Morrison was re-registered against 181 on April 21, 2023 under File No. 792570753 and Registration No. 20230421 1022 1901 0073.<sup>44</sup>

### **The Guarantee**

34. Kimberley provided a personal guarantee in favour of Morrison dated May 4, 2023 for all present and future debts, liabilities and obligations together with interest, plus costs and expenses in respect of all indebtedness, liabilities and obligations of 181 (the “**Guarantee**”).<sup>45</sup>

35. The personal property security of Morrison was perfected on April 21, 2023 by registration against Andrew and Kimberley as related to Andrew and Kimberley’s personal property in the provincial registry maintained under the PPSA under File No. 792571005 and Registration No. 20230421 1032 1901 0075.<sup>46</sup>

### **Independent Legal Advice Provided to Kimberley**

36. Prior to executing the above documentation, Kimberley received independent legal advice from Judy Maria Rich with respect to the mortgage on the Property and being

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<sup>43</sup> **Warsi Affidavit**, para 35; **Acknowledgement**, Exhibit 37 to the Warsi Affidavit

<sup>44</sup> **Warsi Affidavit**, para 36; **PPSA re 181**, Exhibit 38 and Exhibit 46 to the Warsi Affidavit

<sup>45</sup> **Warsi Affidavit**, para 39; **Guarantee**, Exhibit 39 to the Warsi Affidavit

<sup>46</sup> **Warsi Affidavit**, para 40, **PPSA re Andrew and Kimberley**, Exhibit 38, Exhibit 47 and Exhibit 48 to the Warsi Affidavit

added as a co-borrower and guarantor to the Loan in favour of Morrison and in support of the additional security being provided against 1632 Conc 12 and 202-137 Elgin.<sup>47</sup>

## **VI. CHANGE IN BUSINESS PLAN OF 181**

37. In June 2023, 181 advised Morrison that it had changed its Business Plan with the intention to alter and/or upgrade parts of the commercial building to prepare it for use in support of a shared use office space business to be sold to a separate legal entity owned by Andrew. As a result of this change in Business Plan and complications arising from the COVID-19 pandemic, 181 informed Morrison of a budget increase representing a cost overrun of approximately \$1,470,000.00 to be funded by 181. Despite this change in Business Plan being neither presented nor approved, Morrison agreed to an increase in the Loan amount of \$190,454.00 to cover the current component of the cost overrun.<sup>48</sup>

38. The Commitment Letter was amended by letter agreement dated June 26, 2023 (“**Sixth Amendment Letter**”) as follows:

- (a) Loan amount shall be increased from \$8,575,467.00 to \$8,765,921.00 with the increase being applicable to Facility 3 and increasing Facility 3 from \$768,194.00 to \$958,648.00; and
- (b) an additional commitment fee of \$3,734.00 associated with the increased Loan amount on account of the cost overrun and shall be funded under Facility 3.<sup>49</sup>

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<sup>47</sup> **Warsi Affidavit**, para 39, **Certificate of ILA**, Exhibit 40 to the Warsi Affidavit

<sup>48</sup> **Warsi Affidavit**, para 40

<sup>49</sup> **Warsi Affidavit**, para 41; **Sixth Amendment Letter**, Exhibit 41 to the Warsi Affidavit

39. 181 submitted an updated Project budget on August 2, 2023. 181 continued to develop its strategy and provide Business Plan updates to Morrison on an ongoing basis. Despite 181's current Business Plan which resulted in cost overruns which are events of default under the Loan, Morrison was prepared to amend the Commitment Letter further by letter agreement dated August 11, 2023 ("**Seventh Amendment Letter**") as follows:

- (a) on August 1, 2023, the balances outstanding under the current Facilities 1, 2, 3 and 4 of the Loan shall all be consolidated into Facility 1, its balance shall equal \$4,608,831.10 and Facilities 2, 3 and 4 shall be extinguished.  
To accommodate the increased budget, the total Loan amount maximum shall be increased from \$8,765,921.00 to \$10,187,447.00;
- (b) commencing August 1, 2023, the interest rate applicable to Facility 1 shall be floating at the greater of 14.00% per annum and the Royal Bank of Canada Prime Rate of Interest as set by Royal Bank of Canada from time to time plus 6.80% per annum, interest only, calculated daily, compounded and due monthly;
- (c) an additional commitment fee of \$6,302.10 associated with the increased Loan amount shall be advanced under Facility 1;
- (d) the current Charge registered against the Property shall be amended to increase the security registration from \$9,541,546.25 to \$12,000,000.00;  
and

- (e) additional amendments to the Interest Reserve and Partial Discharges were also included.<sup>50</sup>

## VII. AMENDMENT TO CHARGE

40. In order to facilitate the amendment of the Charge registered against the Property, the following documents were signed:

- (a) an Assignment of Insurance in respect of insurance policies together with all proceeds and other amounts payable in respect of the policies;<sup>51</sup> and
- (b) a Deficiency and Cost Overrun Agreement in respect of a budget shortfall amount to complete the construction of the project.<sup>52</sup>

41. The PPSA registration was amended against 181 on September 7, 2023 when the Loan amount was increased to \$12,000,000.00 under File No. 792570753 and Registration No. 20230907 1645 5064 8022.<sup>53</sup>

42. The PPSA registration was amended against Andrew and Kimberley on September 11, 2023 when the Loan amount was increased to \$12,000,000.00 under File No. 792571005 and Registration No. 20230911 1118 5064 8092.<sup>54</sup>

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<sup>50</sup> Warsi Affidavit, para 41; **Seventh Amendment Letter**, Exhibit 42 to the Warsi Affidavit

<sup>51</sup> Warsi Affidavit, para 43(a); **Assignment of Insurance**, Exhibit 43 to the Warsi Affidavit

<sup>52</sup> Warsi Affidavit, para 43(b); **Deficiency and Cost Overrun Agreement**, Exhibit 44 to the Warsi Affidavit

<sup>53</sup> Warsi Affidavit, para 44; **PPSA re 181**, Exhibit 45 and Exhibit 46 to the Warsi Affidavit

<sup>54</sup> Warsi Affidavit, para 45; **PPSA re Andrew and Kimberley**, Exhibit 45, Exhibit 47 and Exhibit 48 to the Warsi Affidavit

### **Amended Charge/Mortgage and Assignment of Rents**

43. The parties entered into an Agreement dated August 1, 2023 formally amending the provisions of the Charge. This Agreement was registered as a Notice on title to the Property on October 13, 2023 as Instrument No. BR198964 (the “**Amended Charge Notice**”).<sup>55</sup>

44. A Notice of Assignment of Rents was registered on October 13, 2023 as Instrument No. BR198965 against the Property in favour of Morrison (the “**Amended Assignment of Rents**”).<sup>56</sup>

45. Andrew on behalf of 181 and personally as Guarantor and Kimberley as Guarantor signed an Authorization allowing the law firm of Ruderman Shaw or Tina Blair to insert certain dates and registration numbers which were left blank in certain security documents and related documents as appropriate.<sup>57</sup>

46. Andrew on behalf of 181 and personally as Guarantor and Kimberley signed a Non-Merger Acknowledgement in respect of the registered Charge, the Loan Documents and the Loan Agreement.<sup>58</sup>

### **Priority of Morrison Amended Charge/Mortgage and PPSA Registrations**

47. Intact again agreed to postpone its charge/mortgage in favour of Morrison’s Amended Charge Notice and Morrison’s Amended Assignment of Rents. The

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<sup>55</sup> **Warsi Affidavit**, para 49; **Amended Charge Notice**, Exhibit 50 to the Warsi Affidavit; **Parcel Register**, Exhibit 24 to the Warsi Affidavit

<sup>56</sup> **Warsi Affidavit**, para 50; **Amended Assignment of Rents**, Exhibit 52 to the Warsi Affidavit; **Parcel Register**, Exhibit 24 to the Warsi Affidavit

<sup>57</sup> **Warsi Affidavit**, para 51; **Authorization**, Exhibit 53 to the Warsi Affidavit

<sup>58</sup> **Warsi Affidavit**, para 52; **Non-Merger Acknowledgement**, Exhibit 54 to the Warsi Affidavit

Postponement of Interest was registered as Instrument No. BR198966 on October 13, 2023.<sup>59</sup>

48. Intact and Morrison entered into a further Priority Agreement dated October 13, 2023 in respect of the priority of the respective mortgages and PPSA registrations in which Intact will at all times postpone and rank subordinate to Morrison, except for the deposit monies received from purchasers of dwelling units in the Project held in a designated trust account.<sup>60</sup>

#### **VIII. EXPIRY OF LOAN TERM**

49. The Loan term expired on December 1, 2023 at which time 181 was required to pay the full amount outstanding. Due to the Project not being completed, 181 requested that the term be extended. Morrison agreed to amend the Commitment Letter by letter agreement dated December 12, 2023 ("**Eighth Amendment Letter**") with respect to the following:

- (a) advances under the Loan will be paused, with the exception of Draw 13, during which time 181 will work to obtain proceeds from conveyance of commercial unit presale of the Project. 181 represents that the occupancy of the commercial building will begin towards the end of January 2024 with closings expected to commence March 2024. Upon Morrison being satisfied

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<sup>59</sup> **Warsi Affidavit**, para 53; **Postponement of Interest**, Exhibit 55 to the Warsi Affidavit; **Parcel Register**, Exhibit 24 to the Warsi Affidavit

<sup>60</sup> **Warsi Affidavit**, para 54; **Priority Agreement**, Exhibit 56 to the Warsi Affidavit

with certain thresholds as set out in the Eighth Amendment Letter, it will consider resuming Loan advances in support of the Project;

- (b) the term of Facility 1 shall be extended by twelve (12) months and the end of term date shall be amended from December 1, 2023 to December 1, 2024;
- (c) an extension fee of \$110,412.00 shall be advanced under Facility 1 and bear interest from December 1, 2023; and
- (d) the Loan amount shall be increased from \$10,187,447.00 to \$11,041,204.00.<sup>61</sup>

50. One of the conditions of the Eighth Amendment Letter was for 181 to provide an updated cost to complete the Project provided by a new cost consultant confirming the ongoing viability of the residential component of the Business Plan. It is Morrison's understanding that 181's cost consultant (Abacus Construction Consulting Inc.) had resigned due to disagreements with Andrew and changes to 181's budget.<sup>62</sup>

#### **IX. SALE OF 1632 CONC 12**

51. On May 2, 2024, Andrew and Kimberley closed the sale of their residence located at 1632 Conc 12 at which time the 1632 Conc 12 Charge in favour of Morrison was discharged. Morrison received the sum of \$169,852.44 of which \$500.00 was for the

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<sup>61</sup> Warsi Affidavit, para 55; Eighth Amendment Letter, Exhibit 57 to the Warsi Affidavit

<sup>62</sup> Warsi Affidavit, para 56; Eighth Amendment Letter, Exhibit 57 to the Warsi Affidavit

discharge fee and the balance of \$169,352.44 was applied to the principal owing under the Loan.<sup>63</sup>

**X. CORRESPONDENCE WITH 181/ANDREW**

52. On February 8, 2024, Andrew emailed Graham Banks (Senior Vice President of Morrison), Matthew Solda (Vice President of Morrison) and Fahad Warsi seeking a further draw on the Loan. Mr. Banks responded to Andrew the same day to indicate that due to incorrect and misleading information received directly from Andrew, Morrison would consider financing only those items which form part of the critical path to completing the commercial space and generating revenue from its sale. If Morrison agreed to do so, it would likely make payments directly to suppliers. Morrison also requested a number of items to be considered by its credit committee as follows:

1. A list and copy of all reports and other information which are required by the City or other government entities prior to their issuance of occupancy certificates.
2. A copy of the contract with Stubbe's Precast Inc. along with a narrative as to where the contract currently stands.
3. Updated site photos showing work in place and to complete prior to closing commercial sales.
4. A photograph of the sign ordered from Cora Computers Inc. and a description of its intended use.
5. Details of your objectives for the event planned for February 20 along with a list of who you anticipate will be attending. We are eager to substantiate your claims that there is significant market demand for your end product. If our attendance at this gathering will lend credence to your assertions that sale revenues are forthcoming promptly, then we will welcome an invitation to attend.

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53. On February 12, 2024, Andrew provided Fahad Warsi with the following by email:

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<sup>63</sup> Warsi Affidavit, para 56; Incoming Wire Transfer, Exhibit 58 to the Warsi Affidavit

<sup>64</sup> Warsi Affidavit, para 58; Email dated Feb 8, 2024, Exhibit 59 to the Warsi Affidavit

- (a) Stubbe's quotation dated October 23, 2020, proposed change order dated January 13, 2021 and statement of values dated November 20, 2023;
- (b) A spreadsheet of income and expenses for the digital sign;
- (c) A spreadsheet of current payables and draw 14 breakdown as of February 12, 2024; and
- (d) A budget summary spreadsheet for 2024.<sup>65</sup>

54. Morrison began paying all suppliers directly since March 2024.<sup>66</sup>

55. 181 failed to provide an updated cost to complete the Project provided by a new cost consultant confirming the ongoing viability of the residential component of the Business Plan.<sup>67</sup>

56. On March 14, 2024, Robyn Player ("**Robyn**") of BTY Global, a new cost consultant engaged on behalf of 181, advised there was "an overage of \$1,679,618 which will be required to be injected with additional equity. Based on the equity requirement and costs incurred to date, you are \$1,310,344 away from being within a draw position (provided the equity is injected)".<sup>68</sup>

57. On July 22, 2024, Andrew replied to Robyn indicating:

[F]irst off, my apologies for the long delayed communication. The Powerlink project has been proceeding at a much slower pace than we would have liked but the commercial portion of the build is now complete. We have struggled to make an

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<sup>65</sup> Warsi Affidavit, para 59; Email dated Feb 12, 2024, Exhibit 59 to the Warsi Affidavit

<sup>66</sup> Warsi Affidavit, para 60

<sup>67</sup> Warsi Affidavit, para 61

<sup>68</sup> Warsi Affidavit, para 62; Email dated Mar 14, 2024, Exhibit 60 to the Warsi Affidavit

economic case for the residential build but believe we have found a solution which involves expanding the 12-suite design to 18 suites by inserting an additional floor. We had proposed this to the Municipality originally but scaled back to 12 suites when we had some local objections. We have a site plan approval for the 18 suites and have the Architectural almost complete. We are reviewing the mechanical and electrical and calling for revised quotes. We will need BTY to review the revised budget which will be a standalone review for the residential component of the build. Many items as already reviewed by you will remain relatively unchanged. I would appreciate you reactivating the file and standing by for the updated figures so we can satisfy the request from the lender for an updated cost consultant review of the budget. In addition we would look to you to assist in the preparation of a cash flow analysis.<sup>69</sup>

58. Robyn responded that she would stand by for the information and prepare an update to the report.<sup>70</sup>

59. After July 22, 2024, Morrison is not aware of any additional communication. Additionally, Morrison requires a report from the cost consultant for every draw/advance. Since the commercial building was close to completion when the previous cost consultant resigned, Andrew stated that he could not find a new cost consultant to take over the draw reports for the commercial portion but draw reports would be forthcoming when the residential building began. This did not occur nor was an updated budget provided by a cost consultant.<sup>71</sup>

60. On August 6, 2024, Andrew emailed Mr. Banks seeking approval for ordering the “icf block” (insulated concrete forms) to complete the next level. Mr. Banks responded that, “we do not have credit in place to proceed past the installation of steel in parking garage and its capping precast concrete as previously agreed”. Andrew and Mr. Banks continued to exchange emails and Mr. Banks indicated that the Project should be paused

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<sup>69</sup> Warsi Affidavit, para 63; Email from Andrew dated Jul 22, 2024, Exhibit 60 to the Warsi Affidavit

<sup>70</sup> Warsi Affidavit, para 64; Email from Robyn dated Jul 22, 2024, Exhibit 60 to the Warsi Affidavit

<sup>71</sup> Warsi Affidavit, para 65

to allow for the residential plan revision to 18 units to be incorporated into the Business Plan.<sup>72</sup>

61. On November 23, 2024, Andrew provided a spreadsheet with respect to the costs to construct for the residential budget. On November 25, 2024, Fahad Warsi requested Andrew to provide the rationale for his hard cost numbers as they related to the residential building. Andrew did not provide his rationale, but did respond to my email.<sup>73</sup>

62. On December 10, 2024, Mr. Banks emailed Andrew with respect to the anticipated closing sales of the pre-sold commercial units and the partial discharges. He also indicated to Andrew that the Loan is in default because 181 is not following the Business Plan as laid out in the Loan Agreement. Mr. Banks set out a number of conditions for the partial discharges and suggested a third party expert to devise a plan to move the Project forward. Andrew was not receptive.<sup>74</sup>

63. On January 24, 2025, Andrew emailed David Morrison (CEO of Morrison), Mr. Banks, Alenna Emer (CFO of Morrison) and Fahad Warsi advising that he had architectural drawings for the 12 new residential suites; however, he did not intend to move any further with the redevelopment of the residential portion of the building until a mutually acceptable agreement was reached.<sup>75</sup>

64. On January 30, 2025, Andrew emailed Mr. Morrison and indicated that a buyer had requested a release of their deposit due to the extended delays. Andrew advised that

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<sup>72</sup> Warsi Affidavit, para 66; Email exchange dated Aug 6, 2024, Exhibit 61 to the Warsi Affidavit

<sup>73</sup> Warsi Affidavit, para 67; Email exchange dated Nov 23-26, 2024, Exhibit 62 to the Warsi Affidavit

<sup>74</sup> Warsi Affidavit, para 68; Email exchange dated Dec 10-13, 2024, Exhibit 63 to the Warsi Affidavit

<sup>75</sup> Warsi Affidavit, para 69; Email dated Jan 24, 2025, Exhibit 64 to the Warsi Affidavit

181 had insufficient funds in trust to return the deposit. Andrew and Mr. Morrison exchanged further emails regarding sales and marketing of the commercial units and the residential suites. In the January 30, 2025 email sent at 8:34 a.m., Mr. Morrison indicated to Andrew that Morrison “intend[s] to commence action under our mortgage enforcement remedies and put in place a receiver”.<sup>76</sup>

65. On February 10, 2025, Morrison provided funds direct to 181’s insurance broker to pay the premiums to maintain the insurance policy(s) in place.<sup>77</sup>

66. Between February 20, 2025 and February 23, 2025 Andrew and Mr. Morrison exchanged emails with respect to the market for commercial and residential units.<sup>78</sup>

#### **XI. DEFAULTS, DEMANDS, AND NOTICE OF INTENTION TO ENFORCE**

67. Following the execution of the Second Amendment Letter, Third Amendment Letter, Fourth Amendment Letter, Fifth Amendment Letter, Sixth Amendment Letter, Seventh Amendment Letter, and Eighth Amendment Letter (collectively, the “**Amendment Letters**”), numerous events of default under the Loan have occurred.<sup>79</sup>

68. 181 and Kimberley’s defaults are existing and continuing, including, but not limited to the defaults described below:

- (a) 181 and Kimberley have failed to make prompt payment of the amounts due under Facility 1;

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<sup>76</sup> Warsi Affidavit, para 70; Email exchange dated Jan 30-Feb 5, 2025, Exhibit 65 to the Warsi Affidavit

<sup>77</sup> Warsi Affidavit, para 71

<sup>78</sup> Warsi Affidavit, para 72; Email exchange dated Feb 20-23, 2025, Exhibit 66 to the Warsi Affidavit

<sup>79</sup> Warsi Affidavit, para 73

- (b) 181 and Kimberley failed to repay the Charge in accordance with the provisions of the Eighth Letter of Amendment;
- (c) 181 has incurred cost overruns in relation to the Project;
- (d) 181 is not following the Business Plan as laid out in the Loan Agreement;
- (e) 181 has provided incorrect and misleading information to Morrison; and
- (f) 181 has failed to provide an updated cost to complete the Project provided by a new cost consultant confirming the ongoing viability of the residential component of the Business Plan.<sup>80</sup>

69. On March 4, 2025, Gowling WLG (Canada) LLP (“**Gowlings**”) acting on behalf of Morrison issued the following to 181 and Kimberley (as borrowers) and Andrew and Kimberley as the Guarantors:

- (a) A demand for payment (the “**Demand Letter**”) of the total indebtedness owing as of February 27, 2025 plus interest and legal costs to Morrison as set out in Schedule “B” to the Demand Letter by the deadline of March 15, 2025; and
- (b) a Notice of Intention to Enforce Security on the property of 181 pursuant to section 244(1) of the BIA (the “**BIA 244 Notice**”).<sup>81</sup>

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<sup>80</sup> Warsi Affidavit, para 74

<sup>81</sup> Warsi Affidavit, para 75; **Demand Letter and BIA 244 Notice**, Exhibit 67 to the Warsi Affidavit

## **XII. NEED FOR A RECEIVER**

70. As of February 27, 2025, the aggregate indebtedness of 181 and Kimberley due and owing to Morrison under the Loan was \$7,621,723.65 in addition to ongoing accrual of interest at the rates specified for Facility 1 excluding additional legal fees, disbursements and HST (the “**Indebtedness**”).<sup>82</sup>

71. Neither 181 nor Kimberley are able to pay the Indebtedness owing.<sup>83</sup>

72. The statutory notice periods provided for under the Demand Letter and BIA 244 Notice have all expired.<sup>84</sup>

73. Morrison has lost confidence in the management of 181 for all of the reasons detailed in the affidavit.<sup>85</sup>

74. 181 has no ability to fund ongoing construction of the Project and this is eroding the value of Morrison’s security position due to the accrual of the Indebtedness without meaningful repayment of the Loan.<sup>86</sup>

75. Morrison has suffered and is expected to continue to suffer substantial prejudice as a result of 181’s failure to properly advance the Project. The appointment of the Receiver is necessary to preserve the value of the Project and Morrison’s collateral.<sup>87</sup>

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<sup>82</sup> Warsi Affidavit, para 76

<sup>83</sup> Warsi Affidavit, para 77

<sup>84</sup> Warsi Affidavit, para 78; Demand Letter and BIA 244 Notice, Exhibit 67 to the Warsi Affidavit

<sup>85</sup> Warsi Affidavit, para 79

<sup>86</sup> Warsi Affidavit, para 80

<sup>87</sup> Warsi Affidavit, para 81

76. Upon appointment, the Receiver will assess the state of the Project and determine a strategy for recovery for the benefit of all stakeholders, including communicating directly with all affected parties.<sup>88</sup>

77. The Loan Agreement at paragraph 10 of Schedule A<sup>89</sup> states:

**10. Events of Default:** Notwithstanding the terms set out herein, forthwith upon the occurrence of any of the following events the full amount due and owing to the Lender, whether as advances, fees interest, costs or otherwise, shall be accelerated and become immediately due and payable in full:

- (a) The Borrower, after seven (7) days' written notice, continues to be in default in payment of any amount due from time to time or of any fee or other sum due;
- (b) The discovery by the Lender that the Borrower, or anyone acting on its behalf, has made a material false representation upon which the Lender actually relied or was reasonably entitled to rely in granting or continuing this facility;
- (c) Any default by the Borrower in the observance or performance of any of the other covenants or agreements on its part to be observed or performed hereunder, and the failure to cure such default within fifteen (15) days after written notice thereof is given by the Lender;
- (d) The Borrower or any Guarantor shall fail to perform or observe any covenant, condition, or provision to be performed or observed by either of them under the terms of this facility, the security, or any other agreement in writing, after receipt of fifteen (15) days' notice;
- (e) Any insurance policies to be provided by the Borrower pursuant hereto shall be or become cancelled or invalidated or altered below stated requirements for any reason before such policy is replaced with another which complies with the provisions hereof;
- (f) The Borrower shall fail to maintain reasonable currency with respect to government priority payables;
- (g) The Borrower or any Covenantor(s).
  - (i) Shall suspend or discontinue its business;
  - (ii) Shall become insolvent (however such insolvency may be evidenced), bankrupt, or commit an act of bankruptcy;
  - (iii) Shall make an assignment for the benefit of creditors, or shall be unable or admit in writing its inability to pay its debts as they mature, or if bankruptcy, reorganization, arrangement, insolvency, or similar proceedings for relief of financially distressed debtors shall be instituted against them;
  - (iv) Shall petition for or there shall be appointed for them, or for a substantial part of their assets, a trustee, receiver, or liquidator; or
  - (v) Shall take any action for the purpose of effecting any of the foregoing.

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<sup>88</sup> Warsi Affidavit, para 82

<sup>89</sup> Warsi Affidavit, para 83; Loan Agreement (para 10 of Sch A); Exhibit 2 to the Warsi Affidavit

78. Paragraph 9 of the GSA<sup>90</sup> allows for the appointment of the Receiver:

9. If, pursuant to paragraph 6 hereof, the Secured Party declares that the Obligations secured by this Agreement shall immediately become due and payable in full, the Secured Party may (in addition to any other rights or remedies provided by statute or other law or provided by this Agreement) take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term shall include a receiver and manager) of the Collateral or of any part thereof or may by instrument in writing appoint any person to be a receiver of the Collateral or of any part thereof and may remove any receiver so appointed by the Secured Party and appoint another in his stead; and any such receiver appointed by instrument in writing shall have power

- (a) to take possession of the Collateral or any part thereof,
- (b) to carry on the business of the Debtor,
- (c) to borrow money required for the maintenance, preservation, or protection of the Collateral or any part thereof or for the carrying on of the business of the Debtor, and
- (d) to sell, lease, or otherwise dispose of the whole or any part of the Collateral at public auction, by public tender, or by private sale, either for cash or upon credit, at such time and upon such terms and conditions as the receiver may determine; provided that any such receiver shall be deemed the agent of the Debtor and the Secured Party shall not be in any way responsible for any misconduct or negligence of any such receiver.

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<sup>90</sup> Warsi Affidavit, para 84; GSA (para 9); Exhibit 3 to the Warsi Affidavit

### **PART III - ISSUES**

79. Is it just and convenient to appoint Spergel as Receiver over 181 and Kimberley?

### **PART IV - THE LAW AND ANALYSIS**

#### **A. The Court's Authority to Appoint a Receiver**

80. Courts can appoint a receiver over a debtor upon application by a secured creditor pursuant to subsection 243(1) of the BIA<sup>91</sup> and/or subsection 101 of the CJA.<sup>92</sup> In the case of the BIA, the secured creditor must bring an application under section 243 of the BIA, and satisfy certain conditions, including:

- (a) Issuing a notice of intention to enforce security and allowing the 10 day statutory notice period to expire before obtaining an order to appoint a receiver pursuant to section 243(1.1) of the BIA;
- (b) Putting forward a qualified person to act as a receiver and providing evidence that the qualified person has consented to act in that capacity (s. 243(4) of the BIA); and
- (c) Satisfying the court that the locality of the debtor against whom the receivership order is being sought is Ontario (s. 243(5) of the BIA).

81. In the case of both the BIA and CJA, the court may grant an order appointing a receiver when it is "just and convenient" to do so.

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<sup>91</sup> BIA, [Section 243\(1\)](#)

<sup>92</sup> CJA, [Section 101\(1\)](#)

**B. The Technical Requirements to Appoint a Receiver Under the BIA Have Been Met**

82. As of February 27, 2025, the aggregate indebtedness of 181 and Kimberley due and owing to Morrison was \$7,621,723.65 in addition to ongoing accrual of interest at the rates specified for Facility 1 excluding additional legal fees, disbursements and HST (the “**Indebtedness**”).<sup>93</sup>

83. Morrison has satisfied the technical requirements for the appointment of a receiver under the BIA. Morrison is a secured creditor of 181 and Kimberley in respect of the Property and is therefore entitled to bring the Application under s. 243 of the BIA. As required under s. 243(1.1) of the BIA, Morrison issued the BIA 244 Notice and the notice period has expired without repayment of the Indebtedness.<sup>94</sup>

84. Spergel is qualified to act as Receiver in accordance with the requirements of s. 243(4) of the BIA and has consented to serving as Receiver in these proceedings.<sup>95</sup>

85. 181 is an Ontario corporation with a registered head office in Kincardine, Ontario.<sup>96</sup> Kimberley is an individual who resides in Port Elgin, Ontario.<sup>97</sup> 181 and Kimberley hold commercial and residential Properties that are the subject to the proposed receivership and are located in Port Elgin, Ontario.<sup>98</sup> This Application is properly brought before the Court, as the locality of the Debtors is Ontario, as required under s. 243(5) of the BIA.<sup>99</sup>

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<sup>93</sup> Warsi Affidavit, para 76

<sup>94</sup> BIA, [Section 244](#); Warsi Affidavit, para 75; BIA 244 Notice, Exhibit 67 to the Warsi Affidavit

<sup>95</sup> BIA, [Section 243\(4\)](#); Warsi Affidavit, para 85, Spergel’s Consent to Act, Exhibit 68 to the Warsi Affidavit

<sup>96</sup> Warsi Affidavit, para 4; Corporate Profile, Exhibit 1 to the Warsi Affidavit

<sup>97</sup> Warsi Affidavit, para 30(a)

<sup>98</sup> Warsi Affidavit, para 7 and para 30(a); Parcel Registers, Exhibit 24 and Exhibit 36 to the Warsi Affidavit

<sup>99</sup> BIA, [Section 243\(5\)](#)

**C. Considerations in Respect of the Appointment of a Receiver & Application to the Facts**

86. In [Freure Village](#), Justice Blair (as he then was) stated that, in deciding if the appointment of a receiver is just or convenient, the Court must have regard to, *inter alia*, the nature of the property and the rights and interest of all parties in relation thereto, which includes a secured creditor under its security.<sup>100</sup>

87. Among other things, the following is a list of factors which Courts have historically considered in determining whether or not it is just or convenient to appoint a receiver:

- (a) whether irreparable harm might be caused if no order is made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed, particularly where the appointment of a receiver is authorized by the security documentation;
- (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- (c) the nature of the property;
- (d) the apprehended or actual waste of the debtor's assets;
- (e) the preservation and protection of the property pending judicial resolution;
- (f) the balance of convenience to the parties;
- (g) the fact that the creditor has a right to appointment under the loan documentation;
- (h) the enforcement of rights under a security instrument where the security security-holder encounters or expects to encounter difficulties with the debtors;
- (i) the principle that the appointment of a receiver should be granted cautiously;

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<sup>100</sup> [Metropolitan Partners Group Administration, LLC v International Credit Experts Inc.](#), 2024 ONSC 4601 at [para 21](#) [["Metropolitan Partners"](#)]; [Bank of Nova Scotia v Freure Village on Clair Creek](#), 1996 CanLII 8258 (Commercial List), [paras 12-13](#) [["Freure Village"](#)]

- (j) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- (k) the effect of the order upon the parties;
- (l) the conduct of the parties;
- (m) the length of time that a receiver may be in place;
- (n) the cost to the parties;
- (o) the likelihood of maximizing return to the parties; and
- (p) the goal of facilitating the duties of the receiver.<sup>101</sup>

88. While the appointment of a receiver is normally “an extraordinary remedy”, in a case such as this where the secured creditor is seeking the appointment of a receiver and its credit documents specifically afford it the right to appoint a receiver, the appointment of a receiver is not an “extraordinary remedy”. The rationale for this relaxed standard is that, in such circumstances, as Justice Morawetz (as he then was) remarked in [Elleway](#): “the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties”.<sup>102</sup>

89. Commercial certainty requires that parties should expect courts to hold them to their agreements. More recently, in [JBT Transport](#), the Court held that this expectation particularly arises where a creditor has allowed the debtor the opportunity to explore other options.<sup>103</sup>

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<sup>101</sup> [Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited](#), 2022 ONSC 6186 at [para 25](#); [Maple Trade Finance Inc. v CY Oriental Holdings Ltd.](#), 2009 BCSC 1527 at [para 25](#).

<sup>102</sup> [Elleway Acquisitions Limited v The Cruise Professionals Limited](#), 2013 ONSC 6866 (Commercial List), [para 27](#) [“*Elleway*”]; [Metropolitan Partners](#), *supra* note 49, [para 22](#)

<sup>103</sup> [Re JBT Transport Inc.](#), 2025 ONSC 1436 at [para 53-54](#) [“*JBT Transport*”]; [ATB Financial v Mayfield Investments Ltd.](#), 2024 ABKB 635 at [para 40](#)

90. Morrison is also not required to establish that it will suffer irreparable harm or that a situation is urgent. Instead, evidence suggesting that a creditor's attempts to privately enforce its security will be delayed or otherwise fail can warrant receivership appointment.<sup>104</sup>

91. The appointment of the Receiver will also allow any assets of the Debtors to be preserved and placed under the stewardship of a court-appointed officer while the parties' rights are being determined.<sup>105</sup>

92. In accordance with the test and factors outlined above, it is both just and convenient to appoint Spergel as Receiver because:

- (a) Morrison has lost faith in 181's management regarding the Project and it is apparent that the Debtors will not be able to repay the Indebtedness. Accordingly, Morrison bears an economic interest in the Debtors' insolvency.<sup>106</sup>
- (b) 181 has no ability to fund ongoing construction of the Project and this is eroding the value of Morrison's security position due to the accrual of the Indebtedness without meaningful repayment of the Loan.<sup>107</sup>
- (c) Morrison has suffered and is expected to continue to suffer substantial prejudice as a result of the Debtors' failure to properly advance the Project.

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<sup>104</sup> [\*Business Development Bank of Canada v 170 Willowdale Investments Corp.\*](#), 2023 ONSC 3230 at [para 53](#); [\*Bank of Montreal v Carnival National Leasing Ltd.\*](#), 2011 ONSC 1007 at paras [24](#), [28-29](#).

<sup>105</sup> *Warsi Affidavit*, para 77 and para 81

<sup>106</sup> *Warsi Affidavit*, para 79; [\*Rose-Isli Corp. v Smith\*](#), 2023 ONCA 548 at [para 9](#).

<sup>107</sup> *Warsi Affidavit*, para 80

The appointment of the Receiver is necessary to preserve the value of the businesses and the Morrison's collateral.<sup>108</sup>

93. Upon appointment, the Receiver will assess the state of the Properties and determine a strategy for recovery for the benefit of all stakeholders, including communicating directly with all affected parties.<sup>109</sup>

#### **PART V - RELIEF SOUGHT**

94. Morrison requests that the Court grant the Appointment Order substantially in the form included at Tab C of the Application Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 4<sup>th</sup> day of April, 2025.



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<sup>108</sup> Warsi Affidavit, para 81

<sup>109</sup> Warsi Affidavit, para 82

## SCHEDULE "A"

### LIST OF AUTHORITIES

1. [ATB Financial v Mayfield Investments Ltd.](#), 2024 ABKB 635
2. [Bank of Montreal v Carnival National Leasing Ltd.](#), 2011 ONSC 1007
3. [Bank of Nova Scotia v Freure Village on Clair Creek et al](#), 1996 CanLII 8258 (Commercial List)
4. [Business Development Bank of Canada v 170 Willowdale Investments Corp.](#), 2023 ONSC 3230
5. [Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited](#), 2022 ONSC 6186
6. [Elleway Acquisitions Ltd. v The Cruise Professionals Ltd.](#), 2013 ONSC 6866 (Commercial List)
7. [Metropolitan Partners Group Administration, LLC v International Credit Experts Inc.](#), 2024 ONSC 4601 (Commercial List)
8. [Re JBT Transport Inc.](#), 2025 ONSC 1436
9. [Rose-Isli Corp. v Smith](#), 2023 ONCA 548

I certify that I am satisfied as to the authenticity of every authority.

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

Date April 4, 2025



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Bart Sarsh

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY - LAWS**

#### **Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3**

##### **Court may appoint receiver**

**243 (1)** Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

##### **Restriction on appointment of receiver**

**243 (1.1)** In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

##### **Definition of receiver**

**243 (2)** Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the

inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

### **Definition of receiver — subsection 248(2)**

**243 (3)** For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

### **Trustee to be appointed**

**243 (4)** Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

### **Place of filing**

**243 (5)** The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

### **Orders respecting fees and disbursements**

**243(6)** If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

### **Meaning of disbursements**

**243 (7)** In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

### **Advance notice**

**244 (1)** A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

### **Period of notice**

**(2)** Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

### **No advance consent**

**(2.1)** For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

### **Exception**

**(3)** This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection

69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

### **Idem**

**(4)** This section does not apply where there is a receiver in respect of the insolvent person.

### **Courts of Justice Act S.O. 1990, c. C.43**

#### **Injunctions and receivers**

**101 (1)** In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

#### **Terms**

**101 (2)** An order under subsection (1) may include such terms as are considered just.

MORRISON FINANCIAL MORTGAGE CORPORATION

- and -

Court File No. CV-25-00089667-0000  
1817955 ONTARIO LIMITED, KIMBERLEY GAIL HILL  
and ANDREW TERENCE HILL

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON

**APPLICANT'S FACTUM**  
(Appointment of Receiver)

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