

ONTARIO

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

THE HONOURABLE) THURSDAY, THE 29TH DAY
JUSTICE *MCLEWEN*) OF NOVEMBER, 2018

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

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

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

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

SERVICE

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

INTERPRETATION

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

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

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

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

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

CONDITIONAL TERMINATION OF PURCHASE AGREEMENT

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

DEPOSIT FUNDS HELD IN TRUST

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

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

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

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

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

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

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

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

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

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

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

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

DEPOSIT CLAIMS PROCEDURE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



SCHEDULE "A"
Deposit Trust Claim Correspondence

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

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

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

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

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

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

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

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

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

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

SCHEDULE "B"
Deposit Claims Procedure

Notice of Deposit Claims Procedure

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

Filing of Deposit Claim Form and Determination

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

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

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

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

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

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

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

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

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

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

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

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

Return of Deposit Monies / Claim

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

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

SCHEDULE "C"
Newspaper Notice

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

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

On May 16, 2018, the Court granted a further order, amended on August 29, 2018, further amended on October 12, 2018, and second further amended on November 29, 2018, prescribing the process by which the identity and status of all deposit claims of purchasers, with a valid and enforceable agreement of purchase and sale for the purchase of a condominium unit from 220. A copy of the Deposit Claims Procedure Order may be accessed online at:

<http://www.spergelcorporate.ca/active-files-list/2203284-ontario-inc/>

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

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

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

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

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

SCHEDULE "D"
Deposit Claim Form

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

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

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

Telephone Number: (____) ____ - ____

Email address: _____

Attention (Contact Person): _____

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

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

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

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

OR

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

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

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

The Receiver:

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

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

Name of Purchaser:

Witness
Signature

Per:

Name
:

Title:

(Please Print)

SCHEDULE "E"
Notice of Revision or Disallowance

TO: _____ (the "Purchaser")

DATE:

DEPOSIT CLAIM NO.

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

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

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

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

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

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

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

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

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

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

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

DATED the ____ day of _____, 2018

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

Per: _____

SCHEDULE "F"
Notice of Dispute

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

DATE:

PROOF OF CLAIM NO.:

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

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

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

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

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

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

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

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

Pursuant to the Deposit Claims Procedure:

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

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

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

DATED this ____ day of _____, 2018

Witness

Per: _____

(Name of Purchaser)

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

Name: _____

Title: _____

SCHEDULE "G"
Acknowledgement of Receipt of Funds

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

AND TO: THE GUARANTEE COMPANY OF NORTH AMERICA

AND TO: TARION WARRANTY CORPORATION

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

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

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

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

DATED _____, 2018

SIGNED, SEALED AND DELIVERED

Signature

Name (Please Print)

SCHEDULE "H"
Purchaser Certificate of Identity

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

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

AND TO: TARION WARRANTY CORPORATION ("Tarion")

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

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

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

ID Type: _____ ID No. _____

AND

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

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

ID Type: _____ ID No. _____

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

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

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

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

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

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

SIGNED, SEALED AND DELIVERED

Purchaser's Signature

Purchaser's Name (Please Print)

SCHEDULE "I"

Consent

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

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

Project: *The Connolly*

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

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

DATED the _____ day of _____ 2018

**THE GUARANTEE COMPANY
OF NORTH AMERICA**

Per: _____

"I have authority to bind the Company"

SCHEDULE "J"

Deposit Payment Protocol

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

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

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

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
	)	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:

Attachment "3"

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

ONTARIO

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

BETWEEN:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

and

2203284 ONTARIO INC.

Respondent

RECEIVER'S CERTIFICATE

THE RECEIVER CERTIFIES the following:

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

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

Per: _____

Name:

Title:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Applicant

and

2203284 ONTARIO INC.
Respondent

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

ONTARIO

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

Proceeding commenced at
TORONTO

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

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

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

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

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

Lawyers for the receiver msi Spergel Inc.