

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

BETWEEN:

**FIRSTONTARIO CREDIT UNION LIMITED**

Applicant

- and -

**54 SHEPHERD ROAD INC. AND 60 SHEPHERD ROAD INC.**

Respondents

---

**MOTION RECORD OF THE CORPORATION OF THE TOWN OF  
OAKVILLE**

---

Date: November 1, 2019

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**HER MAJESTY THE QUEEN IN THE RIGHT OF  
THE PROVINCE OF ONTARIO AS REPRESENTED  
BY THE MINISTRY OF FINANCE**

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TAB A

Court File No. CV-19-00628680-00CL

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

BETWEEN:

**FIRSTONTARIO CREDIT UNION LIMITED**

Applicant

- and -

**54 SHEPHERD ROAD INC. AND 60 SHEPHERD ROAD INC.**

Respondents

**APPLICATION UNDER** Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

**NOTICE OF MOTION  
(returnable November 5, 2019)**

**THE CORPORATION OF THE TOWN OF OAKVILLE** (the “Town”) will make a motion to a judge presiding over the Commercial List on Tuesday, the 5<sup>th</sup> day of November 2019 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:** An order that:

1. notice of this motion is abridged and validated and further service be dispensed with;

2. the stay of proceedings pursuant to the Order of Justice Patillo dated October 24, 2019 (the “**Appointment Order**”) does not operate in respect of the emergency order #2019-111642 issued by the Town on September 27, 2019 (the “**Emergency Order**”), any related emergency order and any related proceedings to be commenced by the Town pursuant to the *Building Code Act, 1992*, S.O. 1992, c. 23 (the “**Building Code**”);

3. Such further and other relief as counsel may advise and this Honourable Court may permit;

**THE GROUNDS FOR THE MOTION ARE:**

1. The Town is a municipal corporation in the Regional Municipality of Halton and is a “municipality” within the meaning of the Building Code;

2. The Respondent, 54 Shepherd Road Inc. (“**54 Shepherd**”), is the registered owner of the property municipally known as 58-62 Shepherd Road, Oakville and legally described as PT LT 16, CON 3 TRAF SDS; PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608 AS IN 702148 DESIGNATED AS PT 1 20R20836 TOWN OF OAKVILLE (the “**Property**”);

3. The Property is an excavated construction site with shoring, which shoring was installed in or about 2015-2016;

4. The Property’s condition has not substantially changed since the shoring was installed;



5. The Town's property standards officer conducted an inspection of the Property and was satisfied that there was doubt as to the structural condition of the shoring structure within the meaning of section 6.2.1 of the Town's By-Law Number 2017-007 (the "**By-Law**");

6. The nature of the non-conformity with the By-Law is of such an extent that it poses an immediate danger to the health and safety of persons using Shepherd Road and on the adjacent properties;

7. As a result, on or about September 26, 2019 the Town closed access to the affected part of Shepherd Road, and issued the Emergency Order pursuant to section 15.7 of the Building Code;

8. The Emergency Order ordered that the following work be carried out:

- (a) retention of a professional engineer to identify deficiencies and adverse impact or effects as a result of the structural system, and setting out recommended remedial work; and,
- (b) performing all work as recommended by the engineer's report to address all deficiencies and immediately terminate the danger;

9. Following the issuance and service of the Emergency Order, the Town retained AJW Engineering ("**AJW**"), a professional engineer, to assess the shoring system on the Property as required by the Emergency Order;

10. On October 10, 2019, AJW issued its report (the “**Report**”) to the Town and stated that “sudden local or global failure [of the shoring system] is highly probable” and that “backfilling the excavation ... commence imminently”;

11. Following receipt of the Report, the Town consulted with AJW to determine the specifications required for the remediation work in order to solicit contractors capable of performing the remediation work;

12. The Town solicited quotes for the remedial work and arranged for appropriate bonds and insurance to comply with its emergency work procedures;

13. Before the Town had completed all of the preliminary steps to commence the remedial work, on October 24, 2019, Justice Pattillo issued the Appointment Order which provided for a stay of proceedings;

14. The Town requires the stay of proceedings to be lifted so that it can continue with carrying out the remedial work, including issuing a further order particularizing the remedial work required as recommended by AJW, entering onto the Property for the purpose of carrying out the remedial work, applying to the Court for an order confirming the Emergency Order, and any subsequent emergency order, and to add any amount determined by the Court to be recoverable to the tax roll against the Property;

15. If this Honourable Court does not lift the stay of proceedings, the Town will not be able to carry out the remedial work to terminate the danger created by the deficient shoring system which poses a real risk of harm to persons in the area, and potentially greater loss or damage to neighbouring properties and to the estate;

16. The Town also seeks to preserve its right to assert a priority lien against the Property pursuant to the provisions of the Building Code and the *Municipal Act, 2001*, S.O. 2001, c. 25;
17. The Town will suffer real prejudice if the stay of proceedings continues insofar as it will not be able to rectify a dangerous state of affairs and preserve its rights in doing so;
18. No other person will suffer any prejudice if the stay of proceedings is lifted because the remedial work must be carried out in any event – whether by the Receiver, the Respondents or any purchaser of the Property;
19. The continuation of the stay of proceedings as against the Town in these circumstances is not just or convenient;
20. Section 106 of the *Courts of Justice Act*;
21. Rules 1.04, 2.03, 3.02, 16.04 and Rule 37 of the *Rules of Civil Procedure*;
22. Section 15.7 of the *Building Code Act*; and,
23. Such further and other grounds as counsel may advise and this Court may permit.

Date: November 1, 2019

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**HER MAJESTY THE QUEEN IN THE RIGHT OF THE PROVINCE OF ONTARIO AS  
REPRESENTED BY THE MINISTRY OF FINANCE**

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**FIRSTONTARIO CREDIT UNION LIMITED**  
Applicant

**54 SHEPHERD ROAD INC. et. al.**  
Respondents

and

Court File No. CV-19-00628680-00CL

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

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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**Lawyers for**  
**the Corporation of the Town of Oakville**

TAB B



Court File No. CV-19-00628680-00CL

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

BETWEEN:

**FIRSTONTARIO CREDIT UNION LIMITED**

Applicant

- and -

**54 SHEPHERD ROAD INC. AND 60 SHEPHERD ROAD INC.**

Respondents

**APPLICATION UNDER** Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

**AFFIDAVIT OF DENNIS PERLIN**

I, **Dennis Perlin**, of the Town of Halton Hills, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a solicitor with the Town of Oakville (the “**Town**”). I have supervised the Town’s dealings with the respondents in relation to the Property (as defined below) and, as such, I have knowledge of these matters. Where the knowledge is based on information or belief, I have stated the source of such knowledge and believe it to be true.

2. On October 24, 2019, the applicant, FirstOntario Credit Union Limited, commenced the application bearing Court File No. CV-19-00628680-00CL for the appointment of a receiver of the respondents, 54 Shepherd Road Inc. (“**54 Shepherd**”) and 60 Shepherd Road Inc. Justice Patillo issued an appointment order on October 24, 2019 appointing msi Spergel Inc. as receiver of 54 Shepherd and 60 Shepherd Road Inc. (the “**Appointment Order**”). A copy of the Appointment Order is attached as **Exhibit “1”**.

3. In support of its application, FirstOntario Credit Union Limited filed the affidavit of Virginia Selemidis sworn October 4, 2019. A copy of the affidavit without exhibits is attached as **Exhibit “2”**.

4. The Town is a municipal corporation located within the Regional Municipality of Halton in Ontario.

5. The Respondent 54 Shepherd is the registered owner of the property municipally known as 58-62 Shepherd Road, Oakville and legally known as PT LT 16, CON 3 TRAF SDS; PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608 AS IN 702148 DESIGNATED AS PT 1 20R20836 TOWN OF OAKVILLE (the “**Property**”). A copy of the parcel register for the Property is attached as **Exhibit “3”**.

6. The Property is an excavated construction site at present. The excavation is supported by temporary shoring that was constructed when the Property was excavated in or around 2015 and 2016. From appearances, the Property’s condition has not substantially changed since the shoring was installed. Copies of photographs of the Property taken by the Town in October 2019 are attached as **Exhibit “4”**.

7. On or about September 26, 2019, Raj Vemulapalli, a Property Standards Officer with the Town (“**Mr. Vemulapalli**”), conducted an inspection of the Property. I am advised by Mr. Vemulapalli and verily believe that based on his inspection, he was satisfied that there was doubt as to the structural condition of the shoring system, that the Property posed an immediate danger to the health and safety of persons using Shepherd Road and persons on the adjacent properties and, as such, the Property was not in compliance with the Town of Oakville Property Standards By-law 2017-007 (the “**By-law**”). A copy of the By-law is attached as **Exhibit “5”**.

8. I am advised by Jim Barry, Director of Municipal Enforcement Services at the Town, (“**Mr. Barry**”) and verily believe that on or about September 26, 2019, he had a conversation with Shahram Heidari (“**Mr. Heidari**”) of Tarra Engineering Structural Consultants Inc. (“**Tarra**”), the engineering firm that originally designed the shoring system on the Property. During this conversation, Mr. Heidari advised that because the shoring system on the Property was designed to be temporary, with a life expectancy of approximately two years, it was unlikely

that the shoring system would remain safe through another winter and that the excavated area of the Property should be backfilled before this coming winter. Attached hereto and marked as **Exhibit “6”** is a copy of an email Mr. Heidari sent to Mr. Barry on September 30, 2019 confirming their September 26 conversation.

9. Of significance in Mr. Heidari’s email is the following:

Further to our earlier conversation we would like to bring to your attention our concerns as relates to the existing site condition at the above noted location.

The construction of the excavation shoring structure of the site has been completed over three years ago since then this site has been left dormant through number of winter cycles.

We have brought to the attention of the developer and construction manager at various times the fact that the temporary shoring structures are temporary in nature and various element of the shoring would deteriorate overtime. The life expectancy of the these temporary structures are up to 2 years and are generally no longer in use as the construction of the underground structure is completed within that time frame.

In case of this site the [sic] are various areas of concern most importantly erosion of the exposed rock surface, decay of the some of the lagging boards and proximity of the excavation shoring to some of the underground utilities.

It is in our opinion critical that if the construction of the below grade structure is not going to start in immediate future that the site should be back filled to a depth that the shoring walls are no longer support the adjacent ground/ street and neighboring property.

This backfill must be completed before the turn of the weather as it is unlikely the shoring structure and exposed rock will remain safe upon another winter cycle.

10. On September 26, 2019 at approximately 3:00 p.m., the Town closed Shepherd Road to vehicle and pedestrian traffic because the Town was concerned about the condition of the shoring on the Property and the safety of persons using Shepherd Road.

11. On September 27, 2019, pursuant to section 15.7 of the *Building Code Act, 1992*, S.O. 1992, c. 23 (the “**Building Code Act**”), the Town issued Emergency Order # 2019-111642

(the “**Emergency Order**”) to 54 Shepherd. Pursuant to the Emergency Order, 54 Shepherd was required to immediately bring the Property into conformity with the Town of Oakville Bylaw 2017-007 and immediately carry out the following work to terminate the danger:

ITEM NUMBER	DEFECT	LOCATION	NECESSARY REPAIR	BY-LAW SECTION
1.	Deteriorating structural condition of the Shoring, or parts thereof given the length of time the temporary shoring has remained in position.	Temporary shoring support of vertical excavation see site below	Retention of a professional engineer licensed to practice in Ontario with expertise in shoring to assessing the structural integrity of the temporary excavation support (shoring), identifying any deficiencies with the integrity of the structural system, identifying any adverse impacts or effects on neighbouring streets and properties and setting out any recommended remedial work including any necessary drawings therefor and provide to the Town's Director of Enforcement Services an Engineer's Report containing that information	Section 6.2.1 Section 6.3
2.	Deteriorating structural condition of the Shoring, or parts thereof.	Temporary shoring support of vertical excavation	Perform all work as recommended in the Engineer's Report in 1. above to address all deficiencies and immediately terminate the danger.  Note: Obtain any required permits from the Chief Building Official and any other authorities.	Section 6.2.1 Section 5.5.6

A copy of the Emergency Order is attached as **Exhibit “7”**.

12. The Town served the Emergency Order on 54 Shepherd on the day it was issued, September 27, 2019.

13. The Town received correspondence from 54 Shepherd's lawyer expressly indicating that it disagreed with the issuance of the Emergency Order and was not prepared to comply. To date, 54 Shepherd has failed or refused to comply with the Emergency Order.

14. As a result, due to the nature of the imminent risk of danger posed by the condition of the shoring system, as permitted by the Building Code, the Town could not wait for 54 Shepherd to agree to carry out the work, and began to take the steps required under the Emergency Order to terminate the danger posed by the Property, which is described below.

15. On or about September 30, 2019, the Town retained AJW Engineering to assess the shoring system on the Property and prepare a report, as required under Item 1 of the Emergency Order and on October 1, 2019, AJW Engineering conducted a site inspection of the Property for the purpose of preparing its report.

16. On October 18, 2019, AJW Engineering issued its report (the “**Report**”) to the Town. Among other things, the Report stated the following:

Due to the severity of corrosion (and subsequent section reduction) of the piles as well as continued weathering of the exposed shale (in regions where shotcrete is not applied), sudden local or global failure is highly probable. Therefore, AJW Engineering recommends that backfilling the excavation as outlined above commence imminently.

A copy of the Report is attached as **Exhibit “8”**.

17. After receiving the Report, the Town solicited quotes from contractors for the remedial work and arranged for appropriate bonds and insurance to perform the remedial work recommended by AJW Engineering in the Report.

18. On October 25, 2019, before the Town could complete all of the preliminary steps to commence the remedial work, the Town received a copy of the Appointment Order. Among other things, Justice Patillo ordered that all rights and remedies against 54 Shepherd, or affecting the Property, are stayed and suspended except with written consent of the receiver or leave of the Court.

19. At the time the Appointment Order was issued, the Town was in the process of preparing a second emergency order particularizing the remedial work to be performed on the Property as recommended by AJW Engineering in the Report. In addition, the Town had nearly finalized the steps to retain a contractor to begin the remedial work.

20. As I understand from the Town’s lawyers, the stay of proceedings in the Appointment Order prevents the Town from issuing a further emergency order regarding remedial work on the Property, carrying out the remedial work to terminate the danger on the Property under section 15.7(3) of the *Building Code Act* and commencing an application for an

order confirming the Emergency Order, and any subsequent emergency order, under section 15.7(7) of the *Building Code Act*.


21. The Town is greatly concerned about the risk of a sudden failure of the shoring system and the potential loss or damage that may result, including injury to persons. In addition, the proximity to the winter season is another factor in the Town not wanting any further delay in commencing the remedial work.


22. 54 Shepherd is in receivership proceedings, and as I understand, is likely insolvent and therefore, unable to carry out the necessary remedial work. Because the Receiver was only recently appointed, it is not in the best position to carry out the remedial work. The Town is ready to carry out the necessary remedial work to address the danger and bring the Property back into a safe condition.

23. However, in carrying out the remedial work, it is appropriate in the circumstances to permit the Town to preserve and protect its rights granted under the Building Code Act and the *Municipal Act, 2001*, including, but not limited to applying to the Ontario Superior Court of Justice for an order confirming the Emergency Order and any related emergency order, and to add the amounts approved by the court to be recoverable to the tax roll against the Property.

24. If the stay of proceedings is not lifted to permit the Town to carry out the remedial work, then there is a great chance of significant loss or damage to the Property, to Shepherd Road which is a major road and transit route, to the neighbouring properties, and potential injury to persons. In addition, to the extent the Town has carried out preliminary steps, and may carry out additional remedial work, the Town will be deprived of its usual rights of recovery for the costs of the work if the stay of proceedings is not lifted.

25. On the other hand, it does not appear that any other person will be seriously prejudiced by lifting the stay of proceedings because the effect of the Town's actions will enhance the value of the Property and minimize the chance of further loss or damage that will only diminish the value of the estate of 54 Shepherd.

  
Commissioner For Taking Affidavits  
Ryan Maynard

  
DENNIS PERLIN

TAB 1



This is **Exhibit "1"** referred to in the  
Affidavit of Dennis Perlin  
sworn before me  
this 1<sup>st</sup> day of November, 2019

  
A COMMISSIONER, ETC.  
Ryan Maynard

Court File No. CV-19-00628680-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 24<sup>TH</sup>

JUSTICE

*Pattillo*

)

)

DAY OF OCTOBER, 2019

**FIRSTONTARIO CREDIT UNION LIMITED****Applicant****-AND-****54 SHEPHERD ROAD INC. AND 60 SHEPHERD ROAD INC.****Respondents**

**ORDER  
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing msi Spergel Inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 54 Shepherd Road Inc. and 60 Shepherd Road Inc. (collectively the "Debtor"), acquired for, or used in relation to a business carried on by the Debtor, including, without limitation, the real property municipally known as 54 and 60 Shepherd Road, Oakville, Ontario and more particularly described as:

PIN	24813 – 0401 LT
DESCRIPTION	PT LT 16, CON 3 TRAF SDS; PT LT 16, CON 3 TRANS SDS, PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608 AS IN 702148 DESIGNATED AS PT 1 20R20836; TOWN OF OAKVILLE

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Virginia Selemidis sworn October 4, 2019 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, no one appearing for the Debtor or for any other person on the service list, although duly served as appears from the affidavits of service and on reading the consent of msi Spergel Inc. to act as the Receiver,

## **SERVICE**

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

## **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, msi Spergel Inc. s hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, including, without limitation, the real property municipally known as 54 and 60 Shepherd Road, Oakville, Ontario and more particularly described as

PIN	24813 – 0401 LT
DESCRIPTION	PT LT 16, CON 3 TRAF SDS; PT LT 16, CON 3 TRANS SDS, PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608 AS IN 702148 DESIGNATED AS PT 1 20R20836; TOWN OF OAKVILLE

(collectively hereinafter referred to as the "Property").

## **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and

authorized to do any of the following where the Receiver considers it necessary or desirable:

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

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

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, [or section 31 of the Ontario *Mortgages Act*, as the case may be,] shall not be required, and in each case the *Retail Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this

Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver

with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

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

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

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



**CONTINUATION OF SERVICES**

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

**RECEIVER TO HOLD FUNDS**

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

**EMPLOYEES**

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in

section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

#### **PIPEDA**

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

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the

Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

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

#### **RECEIVER'S ACCOUNTS**

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

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

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at

the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

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

## **SERVICE AND NOTICE**

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL [www.spergel.ca/54and60ShepherdRoadInc](http://www.spergel.ca/54and60ShepherdRoadInc).

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

## **GENERAL**

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

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

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms

of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that the Plaintiff shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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



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

OCT 24 2019

PER / PAR:



**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that msi Spergel Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 54 Shepherd Road Inc. and 60 Shepherd Road Inc. (collectively the "Debtor") acquired for, or used in relation to a business carried on by the Debtor including all proceeds thereof, including, without limitation, the real property municipally known as 54 and 60 Shepherd Road, Oakville, Ontario and more particularly described as:

PIN	24813 – 0401 LT
DESCRIPTION	PT LT 16, CON 3 TRAF SDS; PT LT 16, CON 3 TRANS SDS, PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608 AS IN 702148 DESIGNATED AS PT 1 20R20836; TOWN OF OAKVILLE

(collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 24<sup>th</sup> day of October, 2019 (the "Order") made in an application having Court file number CV-19-00628680-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver

pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

msi Spergel Inc., solely in its capacity  
as Receiver of the Property of 54 Shepherd  
Road Inc. and 60 Shepherd Road Inc., and  
not in its personal capacity

Per: \_\_\_\_\_

Name: Trevor Pringle

Title: Senior Vice-President



**FIRSTONTARIO CREDIT UNION LIMITED**  
Applicant

- AND -

**54 SHEPHERD ROAD INC. ET AL**  
Respondents

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

PROCEEDINGS COMMENCED AT TORONTO

**ORDER**  
**(appointing Receiver)**

**SimpsonWigle LAW LLP**  
1 Hunter Street East  
Suite 200  
P.O. Box 990  
Hamilton, Ontario, L8N 3R1

**DAVID J. H. JACKSON**  
**LSUC NO. AO15656-R**

Tel: (905) 528-8411  
Fax: (905) 528-9008

Lawyers for the Applicant

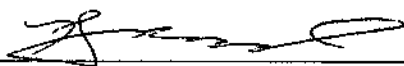
TAB 2

This is **Exhibit "2"** referred to in the

Affidavit of Dennis Perlin

sworn before me

this 1<sup>st</sup> day of November, 2019

A handwritten signature in black ink, appearing to read "Ryan Maynard", is written over a horizontal line.

A COMMISSIONER, ETC.

Ryan Maynard

Court File No. CV-19-00628680-00CL

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

BETWEEN

**FIRSTONTARIO CREDIT UNION LIMITED**

**Applicant**

**-AND-**

**54 SHEPHERD ROAD INC. AND 60 SHEPHERD ROAD INC.**

**Respondents**

**APPLICATION UNDER** Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

**AFFIDAVIT OF VIRGINIA SELEMIDIS**

I, **VIRGINIA SELEMIDIS**, of the City of Burlington, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am Senior Portfolio Manager, Commercial Services for the Applicant, FirstOntario Credit Union Limited ("FirstOntario").
2. FirstOntario is a secured creditor of the Respondents, 54 Shepherd Road Inc. and 60 Shepherd Road Inc. (collectively the "Debtor") and I am responsible for FirstOntario's recovery initiatives relating to the Debtor. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

## THE PURPOSE OF THE APPLICATION

3. The Affidavit is made in support of an application by FirstOntario for an order, among other things, appointing msi Spergel Inc. ("Spergel") (21 King Street West, Suite 1602, Hamilton, Ontario, attention Mr. Trevor Pringle), a licensed bankruptcy trustee, as receiver ("Receiver") pursuant to Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and/or Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended, without security, of all of the assets, undertakings and properties of the Debtor, including, without limitation, the real property municipally known as 54 and 60 Shepherd Road, Oakville, Ontario (the "Real Property") and more particularly described as:

PIN	24813 – 0401 LT
DESCRIPTION	PT LT 16, CON 3 TRAF SDS; PT LT 16, CON 3 TRANS SDS, PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608 AS IN 702148 DESIGNATED AS PT 1 20R20836; TOWN OF OAKVILLE

4. The Real Property was previously:

PIN	24813 – 0286 LT
DESCRIPTION	PT LT 16, CON 3 TRAF SDS; PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608; AS IN 702148; TOWN OF OAKVILLE
ADDRESS	54 SHEPHERD ROAD OAKVILLE

PIN	24813 – 0245 LT
DESCRIPTION	PT LT 16, CON 3 TRAF SDS; AS IN 732417; TOWN OF OAKVILLE
ADDRESS	60 SHEPHERD ROAD OAKVILLE

## BACKGROUND

5. FirstOntario is a Credit Union incorporated pursuant to the laws of the Province of Ontario with a commercial branch at 4021 Upper Middle Road, Burlington, Ontario, L7R 3X5.
6. 60 Shepherd Road Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario with offices located at 170 University Avenue, Suite 903, Toronto, Ontario and 200 Adelaide Street West, Suite 401, Toronto, Ontario. The sole shareholder of the company is Neilas Inc. and its sole office and director is Jim Neilas also known as Dimitrios Neilas. Attached hereto and marked collectively as **Exhibit "A"** to this my Affidavit is a copy of the Certificate and Articles of Incorporation and Articles of Amendment of 60 Shepherd Road Inc. and also a Certificate of Incumbency with respect to the corporation.
7. 54 Shepherd Road Inc. is a corporation incorporated pursuant to the laws of the Province of Ontario with offices located at 170 University Avenue, Suite 903, Toronto, Ontario and 200 Adelaide Street West, Suite 401, Toronto, Ontario. The sole shareholder of the company is Neilas Inc. and its sole office and director is Jim Neilas also known as Dimitrios Neilas. Attached hereto and marked collectively as **Exhibit "B"** to this my Affidavit is a copy of the Certificate and Articles of Incorporation and Articles of Amendment of 54 Shepherd Road Inc. and also a Certificate of Incumbency with respect to the corporation.

## LOAN FACILITIES

8. 54 Shepherd Road Inc. and 60 Shepherd Road Inc. are currently indebted to FirstOntario with respect to a loan facility in the principal amount of \$2,500,000.00 ("Mortgage Loan"), made pursuant to a Commitment Letter dated February 17, 2015 as renewed (collectively "Commitment Letter"). The maturity date of the Mortgage Loan is October 17, 2019. Attached hereto and marked collectively as **Exhibit "C"** to this my Affidavit is a copy of the Commitment Letter.

9. The Mortgage Loan was for the purpose of refinancing an existing loan against the Property.
10. The Mortgage Loan required monthly installment payments of interest only.

## SECURITY

11. As security for its obligations to FirstOntario, including, without limitation, its obligations with respect to the Mortgage Loan, the Debtor provided security in favour of FirstOntario (collectively, the "Security") including:
  - (a) a Charge/Mortgage from the Debtor registered against the Real Property on April 7, 2017 as Instrument No HR1257414. Attached hereto and marked collectively as **Exhibit "D"** to this my Affidavit are copies of the Charge/Mortgage Instrument No HR1257414, Standard Charge Terms and Acknowledgement of Acceptance of Standard Charge Terms ("FirstOntario's Mortgage").
  - (b) a Business Loan General Security Agreement dated March 19, 2015 between FirstOntario and 60 Shepherd Road Inc. Attached hereto and marked as **Exhibit "E"** to this my Affidavit is a copy of the Business Loan General Security Agreement dated March 19, 2015 between FirstOntario and 60 Shepherd Road Inc.
  - (c) an Assignment of Rents – General from 60 Shepherd Road Inc. registered against the Real Property on April 7, 2015 as Instrument No. HR1257416. Attached hereto and marked as **Exhibit "F"** to this my Affidavit is a copy of the Assignment of Rents – General from 60 Shepherd Road Inc. registered as Instrument No. HR1257416.

- (d) a Business Loan General Security Agreement dated March 19, 2015 between FirstOntario and 54 Shepherd Road Inc. Attached hereto and marked as **Exhibit "G"** to this my Affidavit is a copy of the Business Loan General Security Agreement dated March 19, 2015 between FirstOntario and 60 Shepherd Road Inc.
  - (e) an Assignment of Rents – General from 54 Shepherd Road Inc. registered against the Real Property on April 7, 2015 as Instrument No. HR1257415. Attached hereto and marked as **Exhibit "H"** to this my Affidavit is a copy of the Assignment of Rents – General from 54 Shepherd Road Inc. registered as Instrument No. HR1257415.
12. The obligations of the Debtor to FirstOntario, including with respect to the Mortgage Loan were guaranteed respectively by Neilas Inc. and Jim Neilas. Attached hereto and marked collectively as **Exhibit "I"** to this my Affidavit are copies of the aforesaid Guarantees dated March 19, 2015.

#### **DESCRIPTION OF THE REAL PROPERTY, DEBTOR AND ITS BUSINESS**

13. Based upon credit information in the files of FirstOntario which I understand was completed from information provided to FirstOntario by Jim Neilas, and based upon my review of appraisal information, I believe that the Real Property has a site area of approximately 1.374 acres, consists of two parcels of lands (54 and 60 Shepherd Road) and the Debtor proposed to develop the Real Property with a high-rise, mixed residential/commercial use property also having condominium ownership. The commercial component, which was to be on the first floor, was to contain an area of approximately 5,468 to 6,082 square feet. The residential component was to consist of two 10 story structures containing approximately 201 units. Parking was to accommodate 273 vehicles with 261 parking spaces below grade and 12 parking spaces at grade level.



14. Based upon the same information as described in paragraph 14, I believe that the Real Property has been the subject of various environmental assessments. With respect to its proposed development, the Real Property required substantial environmental remediation. The Real Property remains vacant property but with substantial below grade excavation having been concluded. FirstOntario is not aware of the environmental remediation concluded to date, and additional work that may be required, from an environmental perspective, with respect to the Real Property being suitable for its proposed purposes.
15. Based upon the same information as described in paragraph 14 and also based upon information provided to me from Jim Neilas, I believe that the Debtor intends to deliver a new site plan to the Municipality to increase the density at the Real Property to allow for an increase in the number of condominium units to be built. This is expected to take 18 to 24 months and thereafter construction would begin. At one point, the Debtor was considering transitioning from condominium units to rental units.

#### **EVENTS OF DEFAULT**

16. The Debtor is in breach of the terms and conditions of the Commitment Letter.
17. Pursuant to the Mortgage Instrument No HR1257414 and its Standard Charge Terms, the Debtor was to:
  - (a) pay outstanding accrued interest on the 7<sup>th</sup> day of each and every month; and
  - (b) was to pay municipal property taxes as they fell due.
18. The Debtor last made a monthly interest payment on April 7, 2019.

19. The Debtor is in breach of payment of municipal property taxes with respect to each of 54 and 60 Shepherd Road, Oakville, Ontario including arrears for 2017, 2018 and 2019. Attached hereto and marked collectively as **Exhibit "J"** to this my Affidavit are copies of Tax Certificates issued August 28, 2019 with respect to 60 Shepherd Road, Oakville, Ontario and 54 Shepherd Road, Oakville, Ontario (incorrectly shown to be 62 and 58 Shepherd Road) indicating arrears of taxes respectively in the amount of \$132,986.05 and \$145,682.08.
20. By reason of the nonpayment of monthly installment interest payments and the nonpayment of property taxes, the Debtor is in breach of the Mortgage Loan and FirstOntario is entitled to enforce its Security.
21. On September 12, 2019, FirstOntario caused its lawyers, SimpsonWigle LAW LLP, to make due demand upon the Debtor for payment of the outstanding Mortgage Loan. Attached hereto and marked as **Exhibit "K"** to this my Affidavit is a copy of the September 12, 2019 demand letter.
22. On September 12, 2019, the Mortgage Loan was outstanding as follows:

Principal	\$2,500,000.00
Accrued interest to September 12, 2019	73,792.43
Administrative fee for nonpayment of monthly installment (4 x \$40.00)	160.00
Administrative collection fee	250.00
Account Overdraft	20.77
Legal Enforcement Expense (inclusive of disbursements and HST)	7,340.00
<b>TOTAL</b>	<b>\$2,581,563.20</b>

Interest continues to accrue from September 12, 2019 on the aforesaid principal amount and legal enforcement expense at FirstOntario Credit Union Prime Rate

of Interest plus 3% per annum, as it varies from time to time (presently 6.95% per annum, calculated monthly), to the date of payment.

23. I am also advised by David John Hopkins Jackson, partner in the law firm of SimpsonWigle LAW LLP, and do verily believe, that on September 12, 2019, SimpsonWigle LAW LLP delivered Notice of Intention to Enforce Security to each of 54 Shepherd Road Inc. and 60 Shepherd Road Inc. pursuant to Section 244 of the *Bankruptcy and Insolvency Act*. Attached hereto and marked collectively as **Exhibit "L"** to this my Affidavit are copies of the said Section 244 BIA Notices delivered by SimpsonWigle LAW LLP to 54 Shepherd Road Inc. and 60 Shepherd Road Inc.

#### **OTHER REGISTERED SECURED CREDITORS**

24. A copy of the *Personal Property Security Act* search results for 54 Shepherd Road Inc., with currency to October 2, 2019 is attached as **Exhibit "M"** to this my Affidavit. The search result shows only a registration against 54 Shepherd Road Inc. in favour of FirstOntario.
25. A copy of the *Personal Property Security Act* search results for 60 Shepherd Road Inc., with currency to October 2, 2019 is attached as **Exhibit "N"** to this my Affidavit. The search result shows only a registration against 60 Shepherd Road Inc. in favour of FirstOntario.
26. Regardless of existing registrations, I also attach herewith "Acknowledgements and Subordination re PPSA" agreements from Hi-Rise Capital Ltd. in favour of FirstOntario wherein it subordinated and postponed all of its rights, title and interest in and to any personal property of 54 Shepherd Road Inc. and 60 Shepherd Road Inc. to the General Security Agreements of FirstOntario. Attached hereto and

marked collectively as **Exhibit "O"** to this my Affidavit are copies of the Acknowledgement and Subordination re PPSA agreements.

27. A copy of the Parcel Registry with respect to the Real Property that is subject to the mortgage of FirstOntario is attached as **Exhibit "P"** to this my Affidavit. The Parcel Registry reflects that only FirstOntario on the one hand and Hi-Rise Capital Ltd. and Community Trust Company on the other hand are registered mortgagees with respect of the Real Property. The mortgages held by Hi-Rise Capital Ltd. and Community Trust Company were transferred to them by Hi-Rise Capital Ltd.
28. The hereinafter described mortgages initially held by Hi-Rise Capital Ltd. (now held by Hi-Rise Capital Ltd. and Community Trust Company) predated FirstOntario's Mortgage:
  - (a) Instrument No. HR1080407 registered February 5, 2013 in the amount of \$15,000,000.00;
  - (b) Instrument No. HR1100541 registered May 16, 2013 in the amount of \$8,000,000.00.
29. The aforesaid Hi-Rise Capital Ltd. mortgage (\$15,000,000.00) registered as Instrument No. HR1080407 and Hi-Rise Capital Ltd. mortgage (\$8,000,000.00) registered as Instrument No. HR1100541 were by Subordination and Standstill agreements between FirstOntario and Hi-Rise Capital Ltd. dated March 19, 2015, subordinated and postponed to the Mortgage Loan and FirstOntario's Mortgage. Attached hereto and marked collectively as **Exhibit "Q"** to this my Affidavit are copies of the aforesaid Subordination and Standstill agreements, Postponement of Interest registered April 7, 2015 as Instrument No. HR1257436 and April 7, 2015 as Instrument HR1257437.

**HI-RISE CAPITAL LTD. AND COMMUNITY TRUST COMPANY**

30. I caused SimpsonWigle LAW LLP to conclude corporate searches with the Ministry of Government Services, Province of Ontario with respect to Hi-Rise Capital Ltd. and Community Trust Company. Attached hereto and marked collectively as **Exhibit "R"** to this my Affidavit are copies of the aforesaid searches issued respectively September 11, 2019 and September 30, 2019.
31. I am advised by David John Hopkins Jackson and do verily believe that it appears from the Parcel Register of the Real Property and from registered Notices that the principal amount of mortgage registered February 5, 2013 as Instrument No. HR1080407 in favour of Hi-Rise Capital Ltd. was increased from time to time and is presently in the principal amount of \$35,000,000.00 as appears from Notice registered as Instrument No. HR1316802 on November 20, 2015. It appears that mortgage in favour of Hi-Rise Capital Ltd. registered May 16, 2013 as Instrument No. HR1100541 was decreased from the principal amount of \$8,000,000.00 to the principal amount of \$3,500,000.00.
32. It appears that Hi-Rise Capital Ltd. mortgage registered February 5, 2013 as Instrument No. HR1080408 was transferred from time to time between Hi-Rise Capital Ltd. and Community Trust Company to amend their respective proportionate share of the subject mortgage. It appears that the last transfer in that regard was registered on May 24, 2017 as Instrument No. HR1456616 and that such transfer discloses that Hi-Rise Capital Ltd. holds a proportionate share of 47.228% with respect to the mortgage and Community Trust Company holds 52.772% with respect to the mortgage.
33. I am advised by David John Hopkins Jackson and do verily believe, that it is apparent from instrument registered against the aforesaid parcel that Community Trust Company holds its proportionate share of mortgage Instrument No. HR1100541 for the benefit of various and numerous RSP plans, RIF plans and LIRA plans.

34. It appears to me from my communications with Jim Neilas and from a review of the internal documents of FirstOntario that mortgage Instrument No. HR1100541 held by Hi-Rise Capital Ltd. and Community Trust Company secures repayment of funds borrowed or invested to pay expenses which have been incurred to date with respect to the Development including predevelopment costs and soft costs for consultants and architects relating to such things as zoning and environmental and in this instance with respect to environmental remediation at the property.
35. I also understand from my communications from Jim Neilas that all or a portion of the aforesaid expenses were funded by numerous unrelated individual investors (Syndicated Investors) and that Community Trust Company holds its proportionate share in mortgage Instrument No. HR1100541 as Trustee and Mortgage Administrator for the benefit of the Syndicated Investors.

#### **FORBEARANCE**

36. Commencing at or about the end of April, beginning of May 2019, I have been in communication, from time to time, with Jim Neilas and in some instances in conjunction with his lawyer.
37. My communications with Mr. Neilas were with, among other things, the Debtor's breach of the Mortgage Loan and security by reason of the nonpayment of monthly interest installments and property taxes.
38. Mr. Neilas proposed a forbearance arrangement which would not provide for the immediate payment of arrears of interest or property taxes but rather the potential delivery of additional collateral security to secure payment of the same.
39. Mr. Neilas advised me that by reason of the registered interest of the Syndicated Investors and the nature of the Syndicated Investors that the Debtor was unable to obtain additional financing including construction financing with respect to the development of the Real Property (the "Development").

40. Mr. Neilas advised me that the Debtor proposed to restructure the Syndicated Investors' financing on a basis which would allow the Debtor to obtain further financing. Mr. Neilas advised that the proposed restructuring would be in the best interest of the Syndicated Investors as opposed to FirstOntario realizing on its Security.
41. Mr. Neilas advised me that a development company related to the Debtor, namely Adelaide Street Loft Inc. ("Adelaide Street") was, with respect to a real estate development on Adelaide Street in Toronto, encountering similar development/financing issues as the Debtor by reason of Adelaide Street having similarly financed its development through Syndicated Investors who were of the nature that had provided financing to the Debtor.
42. Mr. Neilas advised that Adelaide Street had made application to Court pursuant to the *Trustee Act* with respect to it restructuring its Syndicated Investors' financing and in that regard FirstOntario was provided with a copy of the Order of Justice Hailey dated March 21, 2019 in Ontario Superior Court of Justice (Commercial List) Court File No. CV-19-616261-00CL. Attached hereto and marked as **Exhibit "S"** to this my Affidavit is a copy of the Order of Justice Hailey dated March 21, 2019.
43. Jim Neilas requested FirstOntario to forbear from enforcing its Security to allow the Debtor to commence and conclude a similar restructuring as with respect to Adelaide Street; however, Mr. Neilas advised that the Debtor would not be bringing such restructuring application until it was satisfied that the Adelaide Street property would be restructured further to a positive vote in that regard by its Syndicated Investors.
44. The Debtor's proposal that FirstOntario forbear on the basis that the Debtor provide additional collateral security to secure payment of the Mortgage Loan was not acceptable to FirstOntario. By letter dated July 3, 2019, SimpsonWigle LAW LLP, lawyers for FirstOntario, advised the Debtor's lawyers, McCarthy Tetrault LLP

(attention Geoff R. Hall), FirstOntario advised the Debtor that it required property taxes and arrears of interest to be placed in good standing by August 19, 2019 as otherwise FirstOntario would proceed to make demand on the Mortgage Loan and proceed to enforce its security. FirstOntario further advised that if property taxes and arrears of interest were paid as aforesaid, it would consider renewing the Mortgage Loan for a period beyond its maturity date of October 7, 2019.

45. By August 19, 2019 no payments have been made by the Debtor on account of arrears of interest or property taxes.
46. By email dated August 20, 2019, lawyer Hall advised that the Adelaide Street restructuring proceeding was delayed but was progressing and that a vote by its Syndicated Investors, relative to the restructuring, would take place no later than September 30, 2019.
47. By letter dated August 29, 2019, David John Hopkins Jackson advised Mr. Hall of the terms and conditions upon which FirstOntario was prepared to forbear, which terms and conditions, included among other things, the immediate payment of 2017 and 2018 property taxes upon the execution of a forbearance agreement, with 2019 arrears of property taxes to be paid on a monthly basis in order to be brought into good standing by March 31, 2020. FirstOntario further indicated that if all other terms and conditions of the forbearance agreement were complied with, it would extend the maturity date of the Mortgage Loan to October 7, 2020. FirstOntario required agreement from the Debtor with respect to the terms and conditions of the proposed forbearance agreement by September 5, 2019.
48. On September 5, 2019, Mr. Hall advised that the Debtor was not prepared to agree to the terms and conditions of the forbearance agreement proposed by FirstOntario including payment of arrears of property taxes and arrears of interest and requested that FirstOntario wait until the completion of a vote with respect to the restructuring of the Adelaide Street project which vote was apparently to be held on September 25, 2019 and then further consider its position.



49. Mr. Hall's request on behalf of the Debtor was not acceptable to FirstOntario and as set out above at paragraphs 21 and 22, FirstOntario made due demand on the Debtor for payment of the Mortgage Loan and issued notices pursuant to Section 244 of the BIA on September 12, 2019.
50. I have no knowledge if the vote on the restructuring of the Adelaide Street property has been held.

#### **APPOINTMENT OF A RECEIVER**

51. FirstOntario has been attempting for an extended period of time to have the Mortgage Loan brought into good standing by way of payment of arrears of property taxes and interest. This has not occurred. FirstOntario is not prepared to delay further and is not prepared to renew the Mortgage Loan beyond its maturity date of October 7, 2019.
52. As at October 4, 2019, the Debtor is indebted to FirstOntario with respect to the Mortgage Loan as follows:

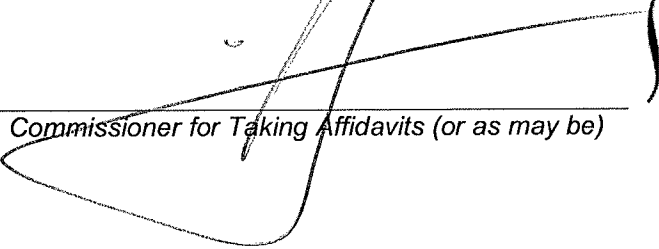
Principal	\$2,500,000.00
Accrued interest to October 4, 2019	84,264.65
Administrative fee for nonpayment of monthly installment (4 x \$40.00 and 1 x \$50.00)	210.00
Administrative collection fee	250.00
<b>TOTAL</b>	<b>\$2,584,724.65</b>

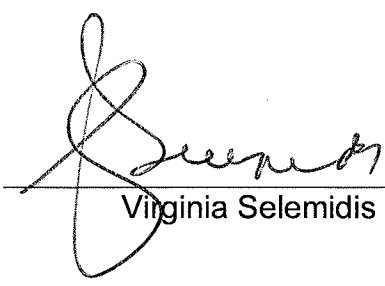
Interest continues to accrue from October 4, 2019 on the aforesaid principal amount at FirstOntario Credit Union Prime Rate of Interest plus 3% per annum, as it varies from time to time (presently 6.95% per annum, calculated monthly), to the date of payment.

53. As of October 2, 2019, FirstOntario has incurred legal expense in the amount of \$15,087.33, inclusive of HST and disbursements, with respect to the enforcement of the Mortgage Loan. Pursuant to the terms of its Security, FirstOntario is entitled to be fully indemnified by the Debtor with respect to payment of the aforesaid legal expense.
54. Pursuant to its mortgage security and general security agreements, FirstOntario is entitled to appoint a receiver if there has been breached in terms and conditions of the Mortgage Loan and Security. FirstOntario considers it reasonable and prudent to begin the enforcement of its security in order to recover the Mortgage Loan and it is within FirstOntario's rights under its Security to do so.
55. A receiver is necessary for the protection of the Debtor's estate, interest of FirstOntario, the Syndicated Investors and potentially other stakeholders. FirstOntario believes the appointment of a receiver would enhance the prospect of recovery by FirstOntario and the protection of stakeholders.
56. A Court-Appointed Receiver would be best placed to realize upon the Real Property that is the subject of FirstOntario's Security.
57. In the circumstances, I believe that it is just and equitable that a receiver be appointed.
58. FirstOntario proposes that msi Spergel Inc. ("Spergel") be appointed as receiver of the assets, undertaking and properties of the Debtor, including the Real Property.
59. Spergel is an experienced, licensed Trustee in Bankruptcy and has consented to act as receiver, without security, of the assets, undertaking and properties of the Debtor, including the Real Property, and all proceeds thereof. Attached hereto and marked as **Exhibit "T"** to this my Affidavit is a copy of the Consent of Spergel.

60. I make this Affidavit in support of the relief sought in the within Application and for no other or improper purpose.

AFFIRM BEFORE ME at the City  
of Hamilton, in the Province of  
Ontario, this 4<sup>th</sup> day of October, 2019.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits (or as may be)

  
\_\_\_\_\_  
Virginia Selemidis


TAB 3

This is **Exhibit "3"** referred to in the

Affidavit of Dennis Perlin

sworn before me

this 1<sup>st</sup> day of November, 2019

A handwritten signature in black ink, appearing to read "Ryan Maynard", written over a horizontal line.

A COMMISSIONER, ETC.

Ryan Maynard

LAND  
REGISTRY  
OFFICE #20

24813-0401 (LT)

PAGE 1 OF 7  
PREPARED FOR mjessup1  
ON 2019/10/07 AT 10:07:32

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

PROPERTY DESCRIPTION:

PT LT 16, CON 3 TRAF SDS; PT LT 16, CON 3 TRAF SDS; PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608 AS IN 702148 DESIGNATED AS PT 1 20R20836; TOWN OF OAKVILLE

PROPERTY REMARKS:

FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2017 07 14.

ESTATE/QUALIFIER:

FEE SIMPLE  
LT ABSOLUTE PLUS

RECENTLY:

RE-ENTRY FROM 24813-0398

PIN CREATION DATE:

2017/07/14

OWNERS' NAMES

54 SHEPHERD ROAD INC.

CAPACITY

SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
HR711878	2008/10/28	TRANSFER	\$1,444,000	914809 ONTARIO INC.	NEILAS (54 SHEPHERD ROAD) INC.	C
HR711886	2008/10/28	TRANSFER	\$1,183,333	2113520 ONTARIO LIMITED	NEILAS (60 SHEPHERD ROAD) INC.	C
HR1074420	2013/01/07	APL CH NAME OWNER		NEILAS (54 SHEPHERD ROAD) INC.	54 SHEPHERD ROAD INC.	C
HR1074421	2013/01/07	APL CH NAME OWNER		NEILAS (60 SHEPHERD ROAD) INC.	60 SHEPHERD ROAD INC.	C
HR1080407	2013/02/05	CHARGE	\$15,000,000	54 SHEPHERD ROAD INC. 60 SHEPHERD ROAD INC.	HI-RISE CAPITAL LTD.	C
HR1080408	2013/02/05	NO ASSGN RENT GEN REMARKS: HR1080407.		54 SHEPHERD ROAD INC.	HI-RISE CAPITAL LTD.	C
HR1080409	2013/02/05	NO ASSGN RENT GEN REMARKS: HR1080407.		60 SHEPHERD ROAD INC.	HI-RISE CAPITAL LTD.	C
HR1100541	2013/05/16	CHARGE	\$8,000,000	60 SHEPHERD ROAD INC. 54 SHEPHERD ROAD INC.	HI-RISE CAPITAL LTD.	C
HR1100542	2013/05/16	NO ASSGN RENT GEN REMARKS: HR1100541.		54 SHEPHERD ROAD INC.	HI-RISE CAPITAL LTD.	C
HR1100543	2013/05/16	NO ASSGN RENT GEN REMARKS: HR1100541.		60 SHEPHERD ROAD INC.	HI-RISE CAPITAL LTD.	C
HR1249497	2015/02/25	NOTICE		54 SHEPHERD ROAD INC.	HI-RISE CAPITAL LTD.	C

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
		REMARKS: HR1080407		60 SHEPHERD ROAD INC.		
HR1249499	2015/02/25	POSTPONEMENT		HI-RISE CAPITAL LTD.	HI-RISE CAPITAL LTD.	C
		REMARKS: HR1100541 TO HR1080407				
HR1257414	2015/04/07	CHARGE	\$2,500,000	54 SHEPHERD ROAD INC. 60 SHEPHERD ROAD INC.	FIRSTONTARIO CREDIT UNION LIMITED	C
HR1257415	2015/04/07	NO ASSGN RENT GEN		54 SHEPHERD ROAD INC.	FIRSTONTARIO CREDIT UNION LIMITED	C
		REMARKS: HR1257414				
HR1257416	2015/04/07	NO ASSGN RENT GEN		60 SHEPHERD ROAD INC.	FIRSTONTARIO CREDIT UNION LIMITED	C
		REMARKS: HR1257414				
HR1257436	2015/04/07	POSTPONEMENT		HI-RISE CAPITAL LTD.	FIRSTONTARIO CREDIT UNION LIMITED	C
		REMARKS: HR1080407 TO HR1257414				
HR1257437	2015/04/07	POSTPONEMENT		HI-RISE CAPITAL LTD.	FIRSTONTARIO CREDIT UNION LIMITED	C
		REMARKS: HR1100541 TO HR1257414				
HR1259511	2015/04/16	NOTICE		54 SHEPHERD ROAD INC. 60 SHEPHERD ROAD INC.	HI-RISE CAPITAL LTD.	C
		REMARKS: HR1100541				
HR1281150	2015/07/10	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD.	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407.				
HR1281157	2015/07/10	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD.	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407				
HR1281158	2015/07/10	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD.	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407				
HR1283559	2015/07/20	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407.				
HR1283563	2015/07/20	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
		REMARKS: HR1080407				
HR1283564	2015/07/20	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407				
HR1287487	2015/07/31	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407. HR108407				
HR1287494	2015/07/31	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407				
HR1287495	2015/07/31	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407				
HR1311337	2015/10/30	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1287487.				
HR1311343	2015/10/30	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: ASSIGNS HR1080408				
HR1311344	2015/10/30	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: ASSIGNS HR1080409				
HR1314846	2015/11/12	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1311337. HR1311337				
HR1314851	2015/11/12	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407.				
HR1314852	2015/11/12	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407.				
HR1316802	2015/11/20	NOTICE		54 SHEPHERD ROAD INC.	HI-RISE CAPITAL LTD.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
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LAND  
REGISTRY  
OFFICE #20

24813-0401 (LT)

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

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
HR1316804	2015/11/20	POSTPONEMENT		60 SHEPHERD ROAD INC.  HI-RISE CAPITAL LTD.	COMMUNITY TRUST COMPANY  HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1100541 TO HR1080407						
HR1320743	2015/12/04	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1080407.						
HR1320744	2015/12/04	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
HR1320745	2015/12/04	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
HR1324647	2015/12/18	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1320743.						
HR1324648	2015/12/18	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1080407.						
HR1324649	2015/12/18	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1080407.						
HR1337536	2016/02/18	NOTICE		54 SHEPHERD ROAD INC. 60 SHEPHERD ROAD INC.	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1080407						
HR1337539	2016/02/18	POSTPONEMENT		HI-RISE CAPITAL LTD.	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1100541 TO HR1080407, HR1080408, HR1080409						
HR1337548	2016/02/18	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1324647						
HR1337552	2016/02/18	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1080407.						

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NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
HR1337553	2016/02/18	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1080407.						
HR1352117	2016/04/26	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1337548. HR1283559.HR1283563.HR1283564						
HR1352119	2016/04/26	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1080407. HR1337548.HR1337552.HR1337553						
HR1352120	2016/04/26	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1080407.						
HR1355821	2016/05/10	NOTICE		THE CORPORATION OF THE TOWN OF OAKVILLE		C
HR1383260	2016/08/15	POSTPONEMENT		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	THE CORPORATION OF THE TOWN OF OAKVILLE	C
REMARKS: HR1080407 TO HR1355821						
HR1383261	2016/08/15	POSTPONEMENT		HI-RISE CAPITAL LTD.	THE CORPORATION OF THE TOWN OF OAKVILLE	C
REMARKS: HR1100541 TO HR1355821						
HR1383262	2016/08/15	POSTPONEMENT		FIRSTONTARIO CREDIT UNION LIMITED	THE CORPORATION OF THE TOWN OF OAKVILLE	C
REMARKS: HR1257414 TO HR1355821						
HR1383263	2016/08/15	POSTPONEMENT		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	THE CORPORATION OF THE TOWN OF OAKVILLE	C
REMARKS: HR1080407 TO HR1355821						
HR1383264	2016/08/15	POSTPONEMENT		HI-RISE CAPITAL LTD.	THE CORPORATION OF THE TOWN OF OAKVILLE	C
REMARKS: HR1100541 TO HR1355821						
HR1383265	2016/08/15	POSTPONEMENT		FIRSTONTARIO CREDIT UNION LIMITED	THE CORPORATION OF THE TOWN OF OAKVILLE	C
REMARKS: HR1257414 TO HR1355821						
HR1396948	2016/09/28	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
REMARKS: HR1352117.						

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HR1396949	2016/09/28	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407				
HR1396950	2016/09/28	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407				
HR1404265	2016/10/24	APL CH NAME OWNER		60 SHEPHERD ROAD INC.	54 SHEPHERD ROAD INC.	C
HR1411524	2016/11/21	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407. HR1396948				
HR1411525	2016/11/21	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407				
HR1411526	2016/11/21	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407				
HR1427701	2017/01/26	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1411524.				
HR1427702	2017/01/26	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407				
HR1427703	2017/01/26	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407				
HR1445239	2017/04/06	NOTICE		THE CORPORATION OF THE TOWN OF OAKVILLE		C
HR1445240	2017/04/06	POSTPONEMENT		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	THE CORPORATION OF THE TOWN OF OAKVILLE	C
		REMARKS: HR1080407 TO HR1445239				
HR1445241	2017/04/06	POSTPONEMENT		HI-RISE CAPITAL LTD.	THE CORPORATION OF THE TOWN OF OAKVILLE	C
		REMARKS: HR1100541 TO HR1445239				

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HR1445242	2017/04/06	POSTPONEMENT		FIRSTONTARIO CREDIT UNION LIMITED	THE CORPORATION OF THE TOWN OF OAKVILLE	C
		REMARKS: HR1257414 TO HR1445239				
HR1447063	2017/04/18	NOTICE	\$2	54 SHEPHERD ROAD INC.	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407				
HR1448715	2017/04/24	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407.				
HR1448716	2017/04/24	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407.				
HR1448717	2017/04/24	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407. SAME AS HR1448716				
HR1456616	2017/05/24	TRANSFER OF CHARGE		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1448715. HR1448715				
HR1456617	2017/05/24	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407.				
HR1456618	2017/05/24	NO ASSGN RENT GEN		HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	HI-RISE CAPITAL LTD. COMMUNITY TRUST COMPANY	C
		REMARKS: HR1080407.				
20R20836	2017/07/14	PLAN REFERENCE				C
HR1472323	2017/07/14	APL ABSOLUTE TITLE		54 SHEPHERD ROAD INC.		C

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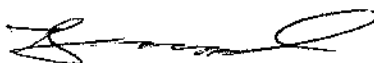
TAB 4

This is **Exhibit "4"** referred to in the

Affidavit of Dennis Perlin

sworn before me

this 1<sup>st</sup> day of November, 2019

A handwritten signature in black ink, appearing to read "Ryan Maynard", written over a horizontal line.

A COMMISSIONER, ETC.

Ryan Maynard





























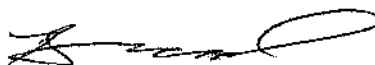
TAB 5

This is **Exhibit "5"** referred to in the

Affidavit of Dennis Perlin

sworn before me

this 1<sup>st</sup> day of November, 2019

A handwritten signature in black ink, appearing to read "Ryan Maynard", is written over a horizontal line.

A COMMISSIONER, ETC.

Ryan Maynard



## THE CORPORATION OF THE TOWN OF OAKVILLE

### BY-LAW NUMBER 2017-007

A by-law to prescribe standards for the maintenance and occupancy of property within the Town of Oakville

**WHEREAS** under s. 15.1(3) of the *Building Code Act*, 1992, S.O. 1992, c. 23 a by-law may be passed by the Council of a municipality prescribing standards for the maintenance and occupancy of property within a municipality; prohibiting the occupancy or use of such property that does not conform with the standards to be repaired and maintained to conform with the standards, providing that the official plan for the municipality includes provisions relating to the property conditions;

**WHEREAS** the Official Plan of The Corporation of the Town of Oakville includes provisions relating to Property conditions;

**WHEREAS** under subsection 45.1 of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended, Council may, by by-law, prescribe minimum standards for the maintenance of the heritage attributes of property situated in a designated heritage conservation district; and require property situated in a designated heritage conservation district that does not comply with the standards to be repaired and maintained to conform with the standards;

**WHEREAS** the Council of The Corporation of the Town of Oakville deems it desirable to enact a by-law for prescribing minimum standards for the maintenance and occupancy of property within the Town of Oakville;

**WHEREAS** the Council of The Corporation of the Town of Oakville deems it desirable to enact a by-law for prescribing the minimum standards for the maintenance of the heritage attributes of designated properties or properties situated in a designated heritage conservation district;

### **COUNCIL ENACTS AS FOLLOWS:**

#### **PART 1**

#### **Definitions**

“**Act**” means the *Building Code Act*, 1992, S.O. 1992, c. 223, as amended;



**“Accessory building”** means a subordinate building or structure, on the same lot as the main building or a part of the main building devoted exclusively to a use naturally and normally incidental to, subordinate to, and devoted exclusively to the main use of the property;

**“Adverse effect”** means one or more of,

- a) impairment of the quality of the natural environment for any use that can be made of it,
- b) injury or damage to property or to plant or animal life,
- c) harm or material discomfort to any person,
- d) an adverse effect on the health of any person,
- e) impairment of the safety of any person,
- f) rendering any property or plant or animal life unfit for human use,
- g) loss of enjoyment of normal use of property, and
- h) interference with the normal conduct of business;

**“Air”** means open air not enclosed in a building, structure, machine, chimney, stack or flue; (“air”)

**“Basement”** means that portion of a building below the first storey;

**“Building”** means:

- a) A structure occupying an area greater than ten square metres consisting of a wall, roof and floor or any of them or a structure system serving the function thereof including all plumbing, works, fixtures and service systems appurtenant thereto;
- b) A structure occupying an area of ten square metres or less that contains plumbing, including the plumbing appurtenant thereto;
- c) Plumbing not located in a structure
- d) Sewage system; or,
- e) Structures designated in the *Building Code*.

**“Building Code”** means the Ontario Regulation 350/06, as amended, or other regulations made under section 34 of the Act;

**“Certificate of Compliance”** means a certificate issued by an Officer if he/she is of the opinion that the property, for which the certificate has been requested, is in compliance with the standards established by this by-law;

**“Chief Building Official”** means the chief building official for the Town of Oakville appointed or constituted under section 3 or 4 of the Act or his or her designate;

**“Construction Fence”** means a temporary fence erected on or around a Property or a portion of a Property to protect a site where construction or demolition is occurring or is contemplated to occur, **“Hoarding”** shall have the same meaning;

**“Contaminant”** means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect; (“contaminant”)

**“Council”** means the Council of the Town;

**“Demolish”** means to do anything in the removal of a building or any material part thereof and “demolition” has a corresponding meaning;

**“Dwelling”** means a building or structure or any part of which is, or is intended to be, used for the purpose of human habitation and includes a building that is or would be intended to be used for such purposes except for its state of disrepair;

**“Dwelling Unit or Rental Dwelling Unit”** means a room, or suite of rooms, operated as a single housekeeping unit in a building, used or intended to be used as a domicile by one or more persons and usually contains cooking, eating, living, sleeping and sanitary facilities and approved as a permitted use by the Town’s zoning by-law, as amended;

**“Fence”** means a fence as defined in the Fence By-law;

**“Fence By-law”** means the Town of Oakville Fence By-law as amended or replaced from time to time;

**“Floor area”** means the aggregate area of a building contained within the exterior walls, but does not include attic or basement space;

**“Grade”** means the average level of proposed or finished ground adjoining a building at all exterior walls;

**“Ground cover”** means organic or non-organic material applied to prevent soil erosion such as concrete, flagstone, gravel, asphalt, grass or other landscaping;

**“Guard”** means a protective barrier around openings in floors or at the open sides of stairs, landings, balconies, mezzanines, galleries, raised walkways or other locations to prevent accidental falls from one level to another;

**“Heritage attributes”** means, in relation to heritage properties, the attributes of the property, buildings and structures that contribute to their cultural heritage value or

interest, and which are defined or described in a by-law passed by the Town or a Minister's order made under, pursuant to or in accordance with the *Ontario Heritage Act*;

**"Heritage property"** means a real property, and includes all buildings and structures thereon, in the Town that:

- a) Has been designated by the Town under section 29 of the *Ontario Heritage Act* or by the appropriate Minister under section 34.5 of the *Ontario Heritage Act*; or,
- b) Is within a heritage conservation district pursuant to Part V of the *Ontario Heritage Act*;

**"Highway Traffic Act"** means the *Highway Traffic Act*, R.S.O. 1990 c. H.8, as amended;

**"Landlord"** includes:

- a) The owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit; and,
- b) The heirs, assigns, personal representatives and successors in title of a person referred to in clause (a)

**"Municipal Act, 2001"** means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

**"Non-residential property"** means property not occupied, in whole or in part, for the purpose of human habitation;

**"Occupant"** means any person or persons over the age of eighteen (18) years occupying a property;

**"Officer"** means any person authorized by the Town to enforce by-laws and includes Municipal Law Enforcement Officers, property standards officers and provincial offences officers;

**"Ontario Heritage Act"** means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended;

**"Owner"** includes:

- a) The registered owner of the property;

- b) The person for the time being managing or receiving the rent of the property, whether on the person's own account or as agent or trustee of any person, or who would receive the rent if the property were let; and,
- c) A lessee or occupant of the property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance and occupancy of property as set out in this by-law;

**"Part IV Heritage Property"** means property designated under section 29 or 34.5 of the Ontario Heritage Act;

**"Part V Heritage Property"** means property designated under section 41 of the Ontario Heritage Act;

**"Person"** means an individual, corporation, unincorporated association or partnership;

**"Pests"** means rodents, vermin or insects;

**"Property"** means a building or structure, or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile structures, outbuildings, fences and erections thereon, whether heretofore or hereafter erected and includes properties listed under Part IV or Part V of the *Ontario Heritage Act* as well as vacant land;

**"Recyclable material"** includes, but is not limited to, the following material:

- a) Glass, including bottles and jars, but not broken glass, light bulbs, mirrors, plate glass or ceramics;
- b) Tin and aluminum cans;
- c) Plastic soft drink bottles;
- d) Newspapers; and,
- e) Corrugated cardboard;

**"Refuse"** means any article or thing that:

- a) Has been cast aside, discarded or abandoned, whether of any value or not;
- b) Has been used up, in whole or in part, whether of any value or not;
- c) Has been expended or worn out, in whole or in part, whether of any value or not;

**"Region"** means the Regional Municipality of Halton;

**"Rental Unit"** means a dwelling unit used, or intended to be used, as a residential rental property;

**“Repair”** includes the provision of facilities, the making of additions or alterations or the taking of any other action that may be required to ensure that a property conforms with the standards established in this by-law;

**“Residential rental property”** includes a rental unit and the yards;

**“Sewage system”** means the Region’s sanitary sewer system or a private sewage disposal system Approved by the Town or the Ministry of the Environment;

**“Sign”** means any surface, structure and other component parts, which is used or capable of being used as a visual medium or display to attract attention to a specific subject matter for identification, information or advertising purposes and includes an advertising device;

**“State of good repair”** means;

- a) In conformity with the *Act* and the *Building Code*;
- b) Structurally sound;
- c) Not broken, rusted, rotten or in a hazardous condition;
- d) Not unsightly to the extent that it would be deleterious to abutting property owners or the neighbourhood;
- e) In proper working order;
- f) Adequately protected by weather-resistant material, if applicable;

**“Tenant”** means a person who pays rent or is required to pay rent in return for a right to occupy a rental unit;

**“Town”** means the Corporation of the Town of Oakville;

**“Undesirable material”** includes:

- a) Refuse, rubbish, garbage, brush, waste, litter, debris;
- b) Injurious insects, termites, rodents, vermin and other pests;
- c) Growth of grass in excess of 20.33 cm (8”)
- d) Giant hogweed (*Heracleum mantegazzianum*);
- e) Ragweed (*Ambrosia spp.*);
- f) Poison ivy (*Rhus radicans L.*);
- g) Ground cover, hedges and bushes which overhang the sidewalk, impede pedestrian or vehicular traffic or cause a site obstruction;
- h) Dead, decayed or damaged trees or other natural growth and the branches and limbs thereof;
- i) Wrecked, dismantled, inoperative, discarded, unused or unlicensed motor vehicles or trailers, except in an establishment licensed and zoned to conduct or operate a wrecking business;

- j) Stagnant water which provides a breeding place for mosquitoes or other health hazards;
- k) Machinery or parts thereof, or other objects or parts thereof, or accumulation of material;
- l) All furniture used for exterior use that becomes dilapidated; or
- m) All furniture designed for interior use;

**“Yard”** means any open, uncovered, unoccupied space appurtenant to a building;

**“Zoning By-law”** means a by-law passed by Council under the provisions of s. 34 of the *Planning Act*, R.S.O., 1990, c. P.13, as amended.

## **PART 2**

### **2.1 APPLICATION AND INTERPRETATION**

- 2.1.1 This by-law applies to all Property in the Town.
- 2.1.2 For the purpose of this by-law, unless otherwise stated to the contrary, the provisions prescribed shall be held to be the minimum standards for the promotion of the public health, safety, comfort, convenience and general welfare and are not intended to derogate from the standards found in any other applicable by-laws or legislation.
- 2.1.3 Subject to 2.1.4, the Owner of Property which does not conform to the standards prescribed in this by-law shall Repair and maintain the Property to conform to the standards or the Property shall be cleared of all buildings, structures, debris or refuse and left in a graded and leveled condition.
- 2.1.4 Notwithstanding 2.1.3 above, in the case of buildings and structures located on Property that has been designated under the *Ontario Heritage Act*, shall not be cleared of buildings and structures that do not conform to the standards.

## **PART 3 PROHIBITIONS**

### **3.1 PROHIBITIONS**

- 3.1.1 No person shall use or occupy, or permit the use or occupancy, or acquiesce in the use or occupation of any Property that does not conform to the standards prescribed in this by-law.

3.1.2 No Owner shall fail to maintain their property in conformity with the standards prescribed in this by-law.

3.1.3 No Owner shall fail to comply with an Order issued under this by-law.

## **PART 4 GENERAL**

### **4.1 GENERAL**

### **4.2 Air Quality**

4.2.1 All buildings, or portions thereof, shall be kept free from accumulations of airborne contaminants that may cause an Adverse affect to any person.

4.2.2 No person shall occupy, or permit the occupancy of a building or portion thereof, where a high concentration of airborne contaminants exist which may cause an Adverse affect to any person who occupies the building, or portion thereof.

4.2.3 Notwithstanding any other section of this by-law, section 4.2.1 and 4.2.2 shall not apply if, in the opinion of an Officer, the presence of airborne contaminants is minor in nature and relates to general maintenance and/or lifestyle.

### **4.3 Mold**

4.3.1 Any extensive accumulation of mold shall be immediately cleaned and removed by the owner of a building.

4.3.2 No person shall occupy, or permit the occupancy of a building, or portion thereof, where an extensive accumulation of mold exists which could pose a health concern to any person who occupies the building, or portion thereof.

4.3.3 Any condition in a building, including but not limited to water penetration, humidity or inadequate ventilation, which relate to the creation and growth of mold, shall be repaired or removed by the owner of the building.

4.3.3.1 Notwithstanding any other provision of this by-law, section 4.2.1 and 4.2.2 shall not apply if, in the opinion of an Officer, the presence of mold is minor in nature and relates to general maintenance and/or lifestyle.

## **PART 5 ENVIRONMENT**

### **5.1 DRIVEWAYS, RAMPS, ETC.**

- 5.1.1 Driveways, ramps, parking areas, paths, outside stairs and landings shall:
- a) Provide a uniform surface for pedestrian or vehicular use;
  - b) Be surface treated with asphalt, concrete, interlocking brick, similar hardscaped surface, or other material sufficient to provide stability, prevent erosion, be usable in all seasons, and allow infiltration of surface water; and,
  - c) Be provided markings or islands to indicate parking spaces, ingress and egress and snow piling areas.

### **5.2 LIGHTING**

- 5.2.1 Lighting fixtures, lamps and their supports and connections shall be maintained in a safe and complete condition, without visible deterioration and in working order.
- 5.2.2 All exterior lights shall not cause light to trespass on to adjacent properties that would likely disturb the inhabitants or shine directly into a dwelling unit.
- 5.2.3 Sensor activated lighting shall not be triggered by activity off the property.
- 5.2.4 Lighting as required by the Building Code shall provide and be maintained to allow for an adequate level of lighting so that the use normally carried out in such areas can be undertaken safely.

### **5.3 ACCESSORY BUILDINGS**

- 5.3.1 Accessory buildings, other than farm out-buildings, shall be
- a) Protected by paint, preservative or other weather-resistant material;
  - b) Structurally sound and plumb, unless specifically designed to be other than vertical;
  - c) Maintained in a state of good repair and free of accident hazards; and,
  - d) So as not to present an unsightly appearance.

### **5.4 FENCES**

- 5.4.1 All fences shall be:



- a) Reasonably uniform in height and appearance;
- b) Maintained in a state of good repair;
- c) Protected from deterioration by the application of paint or other suitable protective material of uniform colour and construction using a material that is inherently resistant to such deterioration and compatible with surrounding finishes; and,
- d) Constructed using suitable materials and designed and erected in a workmanlike manner and maintained so as to not appear unsightly.
- e) Free of any condition rendering the fence unsightly or dangerous

## **5.5 CONSTRUCTION FENCES**

5.5.1 Unless granted an exemption under 5.5.5, a person issued a building or demolition permit under the *Building Code*, for any work except internal work contained within a building in the Town, shall erect and maintain a construction fence to enclose the construction or demolition site, including any areas where equipment is operated or equipment or material is stored.

5.5.2 All construction fencing used on a property shall be maintained in a structurally secure manner and neatly painted or otherwise treated.

5.5.3 Construction fence shall be kept free from posters, signs, notice and advertising material, words, pictures or drawings, except as permitted under the Town Sign By-law, as amended from time to time or replaced from time to time.

5.5.4 Construction fence shall be kept free from graffiti or other defacements.

5.5.5 The Chief Building Official is authorized to grant an exemption from the requirements in 5.6.1 to erect a fence if the Chief Building Official is satisfied that conditions at a site would not present a particular hazard to the public after having regard to:

- a) The proximity of the site to occupied dwellings;
- b) The proximity of the site to places frequented by the public, including streets, parks, businesses and workplaces;
- c) The effectiveness of any existing fencing adjacent to the site;
- d) Any proposed security measures to deter entry to the site;
- e) The hazard presented by the activity occurring and materials used on the site;
- f) The expected duration of the hazard; and,
- g) Any other safety considerations.

5.5.6 Where work on a construction or demolition site is substantially suspended or abandoned, the Chief Building Official may revoke an exemption granted under 5.5.5 by serving written notice of the revocation on the permit holder.

5.5.7 General requirements of every fence required by 5.5 shall:

- a) Be erected at the perimeter of the site to fully enclose the site;
- b) Be constructed so that the side and rear yard portions of the construction fence are built of wood, plastic mesh or other material that can be shown to provide performance and safety equivalent to these fence types and provide a visual barrier between the construction site and neighboring properties;
- c) Be built to deter entry by unauthorized persons or vehicles;
- d) Have no rails, other horizontal or diagonal bracing, attachments or pattern of openings on the outside that would facilitate climbing;
- e) Contain no opening more than 100 millimeters (3.9 in.) wide except where required for access to and from the site;
- f) At any access opening, be equipped with gates that shall:
  - I. Contain wire mesh or similar material sufficient to provide visibility for traffic entering or exiting the site;
  - II. Open inward towards the construction site;
  - III. Be built to specifications that provide performance and safety at least equivalent to the fence; and,
  - IV. Deter entry by unauthorized persons;
- g) Be maintained:
  - I. In good repair with no gaps larger than 100 millimeters (3.9 in.) below the fencing and be free of graffiti and posters;
  - II. Free from health, fire and accident hazards; and,
  - III. So that any access opening is closed and locked or securely reinstalled when the site is unattended.
- h) Be removed at the request of an officer or no later than 30 days after completion of the construction or demolition work.

5.5.8 Height of a fence required by 5.5 shall:

- a) Have a height of not less than 1.8 metres (5.9 ft.) above the grade outside the enclosed area.

5.5.9 A construction fence shall be built to the following minimum standards:

- a) If built of wood, the outside face shall be smooth exterior grade plywood or wafer board 12.5 millimeters (.5 in.) thick that is closed-boarded, securely nailed or screwed to 89 millimeter (3.5 in.) vertical posts spaced at 2.4 metre (7.9 ft.) centres and

embedded sufficiently deep into the ground to provide a rigid support , and securely nailed or screwed to 39 millimeter (1.5 in.) by 89 millimeter (3.5 in.) horizontal rails secured to the vertical posts at the top, bottom and intermediate locations at 600 millimeter (2 ft.) centres;

- b) If built with plastic mesh, the fencing shall be fastened securely at 200 millimeter (7.9 in.) centres to steel T or 50 millimeter (2 in.) wide U posts, spaced at not more than 1.2 metre (4 ft.) centres and embedded at least 600 millimeters (2 ft.) into the ground and to top and bottom horizontal steel rails or 9-gauge steel wire;
- c) If built of chain link, the mesh shall have openings no larger than 50 millimeters (2 in.) and shall be fastened securely both to vertical steel posts, spaced at not more than 2.4 metre (7.9 ft.) centres and embedded at least 600 millimeters (2 ft.) into the ground, and on top and bottom horizontal steel rails or 9-gauge steel wire;
- d) Any hoarding, canopy or similar protective barrier required under provincial law may form part of the fence; and,
- e) The construction fence may be a combination of the fence types specified in 5.5 or may be built of other materials if the fence can be shown to provide performance and safety equivalent to fence types specified.

## **5.6 RETAINING WALLS**

5.6.1 Retaining walls shall be maintained in a state of good repair

5.6.2 Where a retaining wall is in excess of 0.6m (2 feet) in height and forms part of, or is adjacent to, a means of egress, a guard shall be provided unless access is restricted to the retaining wall.

## **5.7 SIGN INSTALLATION AND MAINTENANCE STANDARDS**

5.7.1 A sign shall be:

- a) Maintained in a state of good repair and without any visible deterioration; and,
- b) Installed and maintained in a reasonably vertical plane, unless otherwise approved by the town.

5.7.2 Any unused, not cared for or discarded signs shall be removed from the property or shall be stored within a building.

## **5.8 SWIMMING POOLS**

- 5.8.1 All wading pools, ponds and any appurtenances thereto, including fences and gates, shall be maintained in a state of good repair.
- 5.8.2 All swimming pools shall be kept clean and maintained in a good repair and free from leaks, mechanical or structural disrepair, or any other defect so as to prevent visual blight, the entrance of elements, and/or the infestation of pests or insects, accumulations of stagnant water, or any safety or health hazard.
- 5.8.3 Section 5.9.1 does not apply to storm water management ponds.

## **5.9 MISCELLANEOUS**

- 5.9.1 Storm water run-off shall be drained from the grounds of a property, and any area below exterior grade, so as to prevent excessive ponding, erosion or the entrance of water into a building or structure.
- 5.9.2 Unprotected wells, holes or cavities over one metre in depth shall be filled or safely covered.
- 5.9.3 Sump pump discharge lines shall be designed, provided and maintained to prevent discharge water run-off from ponding on the town's road allowance.

# **PART 6 BUILDINGS**

## **6.1 STRUCTURAL SYSTEM**

- 6.1.1 A building, and every structural system or component serving a part thereof, shall be capable of sustaining its own weight together with the loads that may be imposed by the use and occupancy therein and by natural causes such as snow and winds.

## **6.2 DOUBT AS TO STRUCTURAL CONDITION**

- 6.2.1 If, in the opinion of an Officer, there is doubt as to the structural condition of a building or structure or parts thereof, an Officer may issue an Order that such a building or structure, or parts thereof, be examined by a professional engineer licensed to practice in Ontario, at the owner's sole expense, and

that a written report, which may include drawings for any recommended remedial work, be provided to an Officer.

### **6.3 ENGINEERS REPORT ACCEPTANCE**

- 6.3.1 An Officer may accept the findings contained in the engineer's report pursuant to subsection 6.2.1, provided that the Officer is satisfied that all deficiencies have been identified and appropriately dealt with by the report.
- 6.3.2 Upon completion of all of the work required by the engineers report, a further report prepared by the professional engineer shall be submitted to the Officer certifying that all of the work proposed in the written report has been completed and is in accordance with all applicable legislation.
- 6.3.3 No structural element may be added, removed, repaired or modified in any manner until a required permit has been obtained from the Chief Building Official.

### **6.4 FOUNDATIONS, WALLS, ETC.**

- 6.4.1 The foundations, walls, columns, beams, floor and roof slabs of a building, including ancillary structures such as parking garages, shall be maintained in a state of good repair.
- 6.4.2 A foundation wall, basement, cellar or crawl space floor, slab on grade, exterior wall and roof shall be structurally sound, weather tight and damp-proofed and shall be maintained so as to protect against deterioration caused by the elements, fungus, mold, dry rot, rodents, vermin or insects.
- 6.4.3 The foundations, walls, columns, beams, floors, roof slabs and balconies of all buildings, including parking garages and accessory buildings, shall be maintained:
  - a) In a state of good repair;
  - b) Free from decayed, damaged or weakened sills, beams, piers, posts or other supports;
  - c) In a manner so as to prevent the entry of moisture into the building; and,
  - d) In a manner so as to prevent settlement of the building.
- 6.4.4 The exterior walls of all buildings shall be maintained in a state of good repair and in a manner to prevent deterioration caused by the elements or pests and free from:
  - a) Cracked or broken masonry;

- b) Defective or deteriorated wood or metal siding or trim;
- c) Cracked, broken or loose stucco; or,
- d) Loose or unsecured objects.

- 6.4.5 Where the masonry units formed an exterior wall, or part of an exterior wall, of any building are faced with a glazed or other decorative surface, all of those units from which the surface has spalled or broken shall be removed and replaced with units having a facing similar to that of the original wall so that the wall presents a uniform and neat appearance or is finished with other materials approved by an Officer.
- 6.4.6 All exterior surfaces which have been previously covered with paint or other protective or decorative materials shall be maintained in a state of good repair and the covering renewed when it becomes damaged or deteriorated.
- 6.4.7 Metal eaves troughs, roof gutters, rainwater pipes, downspouts, flashings and all exterior metal ducts shall be maintained in good repair, kept free from rust by application of a suitable protective material such as paint, and shall be renewed or replaced when such application deteriorates or becomes ineffective.
- 6.4.8 The cladding on the exterior walls of all buildings shall consist of masonry, stucco, plywood, metal or other materials of equivalent strength, durability and fire endurance approved by an Officer.
- 6.4.9 Balconies, porches, canopies, marquees, awnings, screens, grilles, stairways, fire escapes, pipes, ducts, air conditioners and all other similar equipment, attachments, extensions and their supporting members shall be:
- a) Maintained in a state of good repair;
  - b) Free from refuse, undesirable material and recyclable material;
  - c) Properly and safely anchored;
  - d) Protected against deterioration and decay; and,
  - e) Free from broken or missing glass.
- 6.4.10 Exterior doors, windows, skylights, basement hatchways, including storm and screen doors and storm windows, shall be maintained in a state of good repair and weather tight.
- 6.4.11 An owner shall repair or replace defective, damaged or missing hardware or locking devices on a building.
- 6.4.12 Openings in exterior walls, other than doors and windows, shall be effectively protected by suitable materials to prevent entry of rodents, vermin and

insects unless it can be shown, to the satisfaction of the Officer, that the implementation of this section would adversely affect the normal operations in a non-residential property.

- 6.4.13 Dilapidated, collapsed or unfinished structures and all accumulations of refuse, undesirable material, recycling material, wood or other objects on a property that create an unsafe or unsightly condition shall be removed by an owner.

## **6.5 AIR CONDITIONERS AND WATER COOLED EQUIPMENT**

- 6.5.1 Air conditions shall be equipped with adequate devices for the prevention of condensation drainage on to entrance areas, sidewalks or pathways or onto a neighbouring property or road allowance.
- 6.5.2 Cooling water from water-cooled equipment shall be discharged directly to a property drainage system which complies with all applicable governmental regulations.

## **6.6 ROOF STRUCTURES**

- 6.6.1 All roofs including, but not limited to, chimneys, stacks, masts, lightning arrestors, or antennae shall be maintained in a state of good repair.
- 6.6.2 No roof drainage shall be discharged on an entranceway, walkway or stair or discharged directly onto a neighbouring property, or onto any road allowance or in such a manner that it will penetrate or damage a building or structure.

## **6.7 STAIRS, HANDRAILS AND GUARDS**

- 6.7.1 All stairs, porches, decks, landings, treads, risers or other similar structures shall have guards or handrails which shall be maintained in a state of good repair and shall be capable of supporting all loads to which they might reasonably be subjected.
- 6.7.2 All guards and handrails shall be installed and maintained in accordance with the *Building Code* so as to afford reasonable protection against accident or injury to any person in or on a property.

## **6.8 FLOORS**

6.8.1 Floors and floor coverings in all buildings shall be maintained in a state of good repair, and free from all warped or decayed boards, large cracks, depressions, protrusions, deterioration or other defects.

6.8.2 The floors of rooms in which plumbing fixtures are installed shall be maintained reasonably impervious to water and in such a condition as to permit easy cleaning.

## **6.9 FIRE PROTECTION**

6.9.1 Wall, floor, ceiling and roof construction, fire protective closures, sprinkler systems and other means of fire protection shall be maintained in such a manner so as to afford the fire protective properties required by all relevant governmental regulations.

## **6.10 HEATING, VENTILATION AND MECHANICAL**

6.10.1 Heating equipment, vent pipes, exhaust hoods, chimneys, smoke stakes, flues, ducts and similar equipment shall be constructed, installed and maintained in a state of good repair and shall comply with all applicable governmental regulations.

6.10.2 Where a heating system, heating equipment or an auxiliary heating unit burns solid or liquid fuel, a receptacle for such fuel shall be provided and maintained in a state of good repair and in a location so as to be free from fire or accident hazards.

6.10.3 All piping for gas or oil fuel and all electrical connections to a heating system shall be installed and maintained in a state of good repair and in accordance with the requirements of all applicable governmental regulations.

6.10.4 Fuel burning heating equipment shall be effectively connected to a chimney or flue which leads to the exterior of the building in which the equipment is installed and shall be furnished with an adequate supply of air to ensure proper combustion of the fuel.

6.10.5 Every chimney, smoke-pipe, flue and gas vent in use or available for use in a building shall:

- a) Installed and maintained so as to prevent the escape of smoke or gasses into the building;
- b) Clear of obstructions;
- c) Free from open joints;
- d) Free from broken and loose masonry;



- e) Maintained in a state of good repair; and,
- f) Plumb.

6.10.6 A prefabricated chimney or flue shall be of a type suitable for the appliance for which it is being used and shall be kept in a state of good repair, properly secured and free from fire, health and accident hazards.

6.10.7 Mechanical ventilating equipment and the supports for such equipment shall be maintained in a state of good repair and in safe mechanical condition.

#### **6.11 SEWAGE DISCHARGE**

6.11.1 Sewage shall be discharged into a sewage system.

#### **6.12 PARKING GARAGES**

6.12.1 Parking garages shall be maintained so as to prevent the accumulations of toxic fumes or the escape of toxic fumes into a building dwelling units.

### **PART 7 SUPPLEMENTARY STANDARDS FOR VACANT PROPERTY**

#### **7.1 GENERAL**

- 7.1.1 The following additional standards shall apply to vacant property:
- a) The owner shall protect the property against the risk of fire, accident or other danger;
  - b) The owner shall effectively prevent the entrance of any unauthorized persons.
  - c) All materials used for boarding up vacant property shall be covered and maintained with a preservative which is similar in colour to the exterior finish of the building; and,
  - d) Where a building remains vacant for a period of more than ninety (90) days, the owner shall ensure that all utilities serving the building are properly disconnected or otherwise secured to prevent accidental or malicious damage to the building or adjacent property, unless the aforementioned utilities are necessary for the safety or security of the building.

#### **7.2 SUPPLEMENTARY STANDARDS FOR UNFINISHED BUILDINGS OR STRUCTURES**

- 7.2.1 All buildings or structures, or parts thereof that are unfinished shall be finished in an acceptable manner within a reasonable amount of time and, where applicable, in accordance with all relevant legislation and by-laws.

## **PART 8**

### **SUPPLEMENTARY STANDARDS FOR NON-RESIDENTIAL PROPERTIES**

#### **8.1 GENERAL**

- 8.1.1 The following additional standards shall apply to non-residential property:

- a) Every owner or occupant of a non-residential property shall maintain the property:
  - i. In a sanitary and safe condition free from litter, refuse and debris and shall provide containers for the disposal of such litter or refuse;
  - ii. Free from objects or conditions which are health, fire or accident hazards; and,
  - iii. Free from rodents, vermin and injurious insects.

- 8.1.2 In a multi-tenant building, no owner or occupant or anyone acting on behalf of an owner or occupant, shall disconnect or cause to be disconnected, any service or utility providing light, heat, refrigeration, water or cooking facilities to a tenant or lessee, except for such reasonable period of time as may be required for the purpose of repairing, replacing or altering such service or utility.

- 8.1.3 A person liable for rates for gas, water, steam, electric power, fuel oil or other service utility, who fails to pay such rates with the result that the gas, water, steam, electric power, fuel, oil or other service or utility is disconnected or shut off, removed or discontinued, shall be deemed to have caused or permitted such disconnection, shutting off, removal or discontinuance.

#### **8.2 MEANS OF EGRESS**

- 8.2.1 All means of egress for non-residential property shall be maintained free from all obstructions or impediments and provided with clean, clear, unobstructed and readily visible exit signs for every exit.

#### **8.3 INTERIOR WALLS, CEILINGS AND FLOORS**

- 8.3.1 Interior walls, floors and ceilings of a non-residential property shall be maintained:
- a) Free from health, fire and accident hazards;

- b) In a state of good repair and free from holes, large cracks, broken plaster and loose or broken masonry;
  - c) In a clean and sanitary condition which is reasonable considering the use or operation; and,
  - d) Free from cracked and broken glass in door panels, glass screens and windows.
- 8.3.2 Cracked broken glass in door panels, glass screens and windows as outlined in section 8.3.1(d) shall be replaced with glass or other material approved by an Officer.
- 8.3.3 Plaster repairs made to the walls and ceilings of non-residential properties shall be completed in a workmanlike manner and each repair shall be finished to match the existing wall or ceiling.
- 8.3.4 Glazed doors, windows and other transparent surfaces shall be kept in a reasonably clean condition.
- 8.3.5 Interior doors and door frames including automatic door closers and all necessary hardware shall be maintained in a state of good repair to ensure the proper operation and integrity of the door.
- 8.3.6 Plumbing fixtures shall be provided and maintained in accordance with the requirements of all applicable governmental regulations.
- 8.3.7 All plumbing, drain pipes, water pipes and plumbing fixtures and every connecting line to the sewage system shall:
  - a) Be maintained in a state of good repair; and,
  - b) Be free from leaks and defects.
- 8.3.8 All water pipes, drain pipes and appurtenances thereto shall be protected from freezing.

## **PART 9**

### **SUPPLEMENTARY STANDARDS FOR RESIDENTIAL RENTAL PROPERTIES**

#### **9.1 GENERAL**

- 9.1.1 The following additional standards shall apply to any residential rental property:
  - a) Subject to the tenant's responsibility for ordinary cleanliness of the residential rental property, the landlord shall provide such

facilities and take such action to ensure that the residential rental property is:

- I. Safe
  - II. Clean
  - III. In a state of good repair
  - IV. Fit for habitation; and,
  - V. Free from accumulations of snow and ice
- b) The landlord shall maintain, in a state of good repair and in a clean, safe condition, any facilities supplied by the landlord and all common areas intended for the use of tenants.

9.1.2 All repairs and maintenance of property required by the standards prescribed in this part shall be carried out in a manner accepted as good craftsmanship in the trade concerned and with materials suitable and sufficient for the purpose.

9.1.3 Unless otherwise specified, the landlord, and not the tenant, shall be responsible for ensuring that all of the provisions of this part are being complied with.

## **9.2 LIGHT AND VENTALATION**

9.2.1 An opening in the exterior surface of a building designed for a door, window or skylight shall be equipped with a door, window or skylight capable of performing the intended function and the landlord shall:

- a) Ensure that the doors, windows and skylights are weather tight;
- b) Refit, replace, renew, caulk and weather-strip any damaged, decaying defective or missing doors, windows, frames, sashes, casings, hatchways or screens;
- c) Fit the door, window or skylight with locking devices;
- d) Replace any broken or missing glass; and,
- e) Replace any defective missing hardware.

9.2.2 Exterior doors, windows, skylights, basement hatchways, including storm and screen doors and storm windows, shall be:

- a) Maintained in a state of good repair by the landlord and weather tight;
- b) Free from rotted or defective members;
- c) Free from defective or missing hardware;
- d) Free from torn, damaged or, where supplied, missing screens;
- e) Free from defective or missing weather-stripping or caulking;
- f) Free from defective storm or screen doors; and,
- g) Free from broken or missing glass.

- 9.2.3 A window or natural ventilation is not required in a kitchen or washroom if electrical lighting and mechanical means of ventilation is provided.
- 9.2.4 A window is not required in habitable space, other than a bedroom or dining room, if there is an opening in a dividing wall to an adjoining room and the adjoining room has a minimum of 5 percent window area of the combined floor areas, and if the required ventilation is provided.
- 9.2.5 All bedrooms, living rooms and dining rooms shall have a window or a door which contains a window that faces directly to the outside of the building.
- 9.2.6 All habitable space shall have natural or mechanical means of ventilation.
- 9.2.7 At the request of a tenant, each window in a rental unit that is located above the storey that has its floor closest to grade and that has its ceiling more than 1.8 metres above grade, shall be equipped with a safety device to prevent any part of the window from opening so as to admit a sphere greater than 100 millimeters in diameter, except that the window must be capable of being opened by an adult tenant in an emergency without the use of tools.
- 9.2.8 Artificial lighting shall be provided and maintained by the landlord in all habitable space and interior common areas of a residential rental property to permit safe use and passage, in accordance with the *Building Code*.

### 9.3 INTERIOR WALLS

- 9.3.1 Interior claddings and finishes of walls and ceilings, including elevator cars, shall be maintained by the landlord in a safe and sanitary condition, in a state of good repair free from holes, mold, loose and broken boards, torn, damaged, decayed, leaks, deteriorating or missing materials.
- 9.3.2 All interior walls must be painted or finished in a manner similar to other interior walls in the building.

### 9.4 FUEL SUPPLY

- 9.4.1 Unless required to be provided by the tenant, a landlord shall ensure a continuous and adequate supply of fuel, service or utility which provides light, heat, refrigeration, water or cooking facilities for a rental unit occupied by a tenant, except for such reasonable period of time as may be required for the purpose of repair or replacement of the fuel service or utility.

## **9.5 HEATING, VENTILATION, MECHANICAL**

- 9.5.1 Heating, ventilating and mechanical systems, including stoves, heating appliances, fireplaces, chimneys, fans, air conditioners, pumps, filtration and other equipment provided to supply heat, air conditioning, ventilation or other services shall be properly maintained by the landlord and capable of being operated.
- 9.5.2 A space that contains a fuel-fired heating appliance shall have a natural or mechanical means of supplying the required combustion air.
- 9.5.3 Every residential rental property shall have heating facilities capable of being maintained at 21 degrees Celsius at outside design temperature of -18 degrees Celsius.
- 9.5.4 A rental unit shall not be equipped with a portable heating appliance as a primary source of heat.
- 9.5.5 Only heating appliances approved for use by a recognized standards testing authority shall be provided in a room used or intended for use for sleeping purposes.

## **9.6 ELECTRICAL**

- 9.6.1 A supply of electrical power, wiring and receptacles acceptable to the Electrical Safety Authority shall be provided and properly maintained by the landlord to all habitable space and interior common areas in a residential rental property.
- 9.6.2 If the landlord supplies a meter for electricity for the purpose of billing the tenants individually, it shall be properly maintained by the landlord and kept accessible to tenants.
- 9.6.3 A kitchen shall be supplied with electrical power and shall have outlets suitable for a refrigerator and cooking appliances.

## **9.7 SAFETY AND SECURITY**

- 9.7.1 Every residential rental property shall have a safe, continuous and unobstructed passage from every part of the interior to an exterior open space at street or grade level.

- 9.7.2 All windows and exterior doors which are intended to be opened and which are accessible from outside a rental unit or a residential rental property shall have hardware that makes them capable of being secured.
- 9.7.3 At least one entrance door in a rental unit shall be capable of being both secured from inside and locked from the outside of the rental unit.
- 9.7.4 Where provided, a vestibule door locking release and the rental unit-vestibule communications system shall be properly maintained by the landlord.
- 9.7.5 Parking areas that are intended to be secured, shared locker rooms and shared storage rooms shall be provided with a door equipped with a security device which prevents access to persons other than the landlord and tenants.
- 9.7.6 A mail delivery slot and other openings for deliveries that directly enter into a rental unit shall:
- a) Be located and maintained to prevent access to the lock on the entry door or any adjacent window; or,
  - b) Be sealed, if other facilities for delivery have been made.
- 9.7.7 Mail boxes provided by the landlord shall be properly maintained and be capable of being secured.
- 9.8 INDOOR STORAGE OF REFUSE AND RECYCLABLE MATERIAL**
- 9.8.1 Every residential rental property shall have one or more suitable containers or compactors shall be provided by the landlord for refuse and recyclable material and shall either be stored or regularly disposed of so as not to cause a risk to the health or safety of any person.
- 9.8.2 The container shall be maintained by the landlord in a clean and sanitary condition, accessible to tenants and shall not obstruct an emergency route, driveway or walkway.
- 9.9 OUTDOOR STORAGE OF REFUSE AND RECYCLABLE MATERIAL**
- 9.9.1 Where refuse or recyclable material is stored for disposal outside of the enclosed walls of a building, the refuse or recyclable material shall be blocked from view if it is stored less than 60m (196 ft) from a public highway, street, walkway, park or residential property so as not to be visible from such locations or as required under an approved site plan.

9.9.2 In addition to the conditions outlined in section 9.9.1, the storage of refuse or recyclable material permitted by an owner shall be blocked from view and the aforesaid visual blockage shall:

- a) Extend from grade to a height of 0.3m (1ft) above the height of the storage container(s);
- b) Consist of a continuous opaque visual barrier; and,
- c) Be maintained in a clean, sanitary and odour controlled condition.

## 9.10 PEST PREVENTION

9.10.1 Every residential rental property shall be kept free of rodents, vermin and insects at all times, and methods used for exterminating rodents and insects shall be in accordance with any applicable legislation.

9.10.2 Openings and holes in a building containing rental units, including chimneys, windows, doors, vents, holes for pipes and electrical fixtures, cracks and floor drains, that might permit the entry of rodents, vermin, insects, birds or other pests, shall be screened or sealed as appropriate.

## 9.11 MISCELLANEOUS

9.11.1 Every rental unit shall contain at least the following:

- a) A toilet;
- b) A kitchen sink;
- c) A washbasin; and,
- d) A bathtub or shower or a combination thereof.

9.11.2 A washroom in a rental unit shall be an enclosed space and shall have:

- a) A water-resistant floor;
- b) Water resistant walls in a tub surround and a shower;
- c) A door which can be secured from the inside and can be opened from the outside in an emergency; and,
- d) An artificial light fixture which is maintained.

9.11.3 No toilet or urinal shall be located in a room used for or intended to be used for sleeping or preparing or consuming or storing food.

9.11.4 Hot water shall be provided to a sink, basin, bathtub and shower by safe equipment operated to provide water at a temperature of not less than 43 degrees Celsius and not more than 49 degrees Celsius.

9.11.5 An adequate and safe supply of potable water shall be provided at all times.



- 9.11.6 A residential rental property shall be insulated to minimize heat loss, air infiltration and moisture condensation on the interior surfaces of the walls, ceilings and floors.
- 9.11.7 Piped plumbing and drainage systems and appurtenances in a residential rental property shall be maintained free from leaks, defects or obstructions and adequately protected from freezing.
- 9.11.8 All appliances such as refrigerators or cooking stoves supplied by the landlord shall be maintained in a state of good repair and good working order by the landlord.
- 9.11.9 Locker and storage rooms shall be kept free of dampness, mold or mildew by the landlord.
- 9.11.10 Elevators intended for use by the tenant shall be properly maintained by the landlord in accordance with the regulations under *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16, as amended, and kept in operation except for such reasonable time as may be required to repair or replace them.

## **PART 10 HERITAGE PROPERTIES**

### **10.1 GENERAL**

- 10.1.1 In addition to the minimum standards for the maintenance and occupancy of property set out elsewhere in this by-law, the Owner or Occupant of a Part IV or Part V Heritage Property shall:
- a) Maintain, preserve and protect the heritage attributes of the Part IV or Part V Heritage Property so as to maintain its heritage character as well as its visual and structural heritage integrity;
  - b) Maintain the Part IV or Part V Heritage Property in a manner that will ensure the protection and preservation of its heritage values and attributes; and,
  - c) Obtain a heritage permit from Council prior to performing work or causing any work to be performed under this section of the by-law.

### **10.2 REPAIR OF HERITAGE ATTRIBUTES**

10.2.1 Despite any other provisions of this by-law, where a heritage attribute of a Part IV or Part V Heritage Property can be repaired, the heritage attribute shall not be replaced and shall be repaired:

- a) In such a manner that minimizes damage to the heritage values and attributes and maintains the design, colour, texture, grain or other distinctive features of the heritage attribute;
- b) Using the same types of materials as the original and in keeping with the design, colour, texture, grain and any other distinctive features of the original; and,
- c) Where the same types of materials as the original are no longer available, alternative types of materials that replicate the design, colour, texture, grain or other distinctive features and appearance of the original material may be used, if approved by Council.

### 10.3 REPLACEMENT OF HERITAGE ATTRIBUTES

10.3.1 Despite any other provisions of this by-law, where a heritage attribute of a Part IV or Part V Heritage Property cannot be repaired, the heritage attribute shall be replaced:

- a) In such a manner as to replicate the design, colour, texture, grain and other distinctive features and appearance of the heritage attribute, using the same types of material as the original; and,
- b) Where the same types of material as the original are no longer available, alternative types of material that replicate the design, colour, texture, grain or other distinctive features and appearance of the original may be used.

### 10.4 CLEARING AND LEVELING OF HERITAGE PROPERTIES

10.4.1 Despite any other provision of this by-law or the *Act*, no building or structure located on a Part IV or Part V Heritage Property may be altered, demolished, removed, or relocated except in accordance with the *Ontario Heritage Act*.

### 10.5 VACANT HERITAGE PROPERTIES

10.5.1 Notwithstanding Part 7 of this by-law:

- a) Where a Part IV or Part V Heritage Property remains vacant for a period of ninety (90) days or more, the Owner shall ensure that appropriate utilities serving the building are connected as required in order to provide, maintain and monitor proper heating and ventilation to prevent damage to the heritage attributes.

- b) The Owner of a vacant Part IV or Part V Heritage Property shall protect the building and property against the risk of fire, storm, neglect, intentional damage or damage by other causes by effectively preventing the entrance of the elements, unauthorized persons or the infestation of pests by boarding up and securing any openings of the building in the following manner:
- I. All boards shall be installed from the exterior and shall be fitted in a watertight manner and so that all exterior trim and cladding remains uncovered and undamaged by the boarding;
  - II. All boards shall be fastened securely in a manner that minimizes damage to the heritage attributes;
  - III. All boards used shall be painted in a manner to reflect the panes of glass, frames and muntins that were or are found on the opening that is being boarded over or the panes of glass shall be painted in matt black and the window frames and muntins shall be painted in a colour which matches that of the original opening; and,
  - IV. All boards not located in a window or door opening shall be painted or otherwise treated so that the colour blends with the exterior of the building or structure.

## **PART 11 DEMOLITION**

### **11.1 DEMOLITION**

- 11.1.1 Where a building, accessory building or other structure is being demolished, every reasonable precaution shall be taken to protect adjoining property and members of the public, which may include the erection of fences, barricades, covered ways for pedestrians and all other means of protection necessary for the purpose.
- 11.1.2 Where a building, accessory building, fence or other structure on a property is demolished, the site shall be cleared of all undesirable material brush, recyclable material and unsightly storage and left in a graded and levelled condition within thirty (30) days.

## **PART 12 DAMAGE BY FIRE, STORM OR OTHER CAUSES**

### **12.1 DAMAGE BY FIRE, STORM OR OTHER CAUSES**

12.1.1 Subject to the provisions of Part 10 of this by-law, if a building or structure is damaged by fire, storm or by other causes:

- a) Immediate steps shall be taken to prevent or remove a condition which might endanger persons in, on or near the property, building or structure;
- b) The aforesaid building or structure shall be properly supported and barricaded until the necessary demolition or repair can be carried out; and,
- c) The aforesaid building or structure shall be demolished or repaired.

### **PART 13 ENFORCEMENT**

13.1 An Officer may, upon producing proper identification, enter upon any property at any reasonable times without a warrant for the purpose of inspecting the property to determine:

- a) Whether the property conforms with the standards prescribed in this by-law; or,
- b) Whether an Order made under the *Act* has been complied with.

13.1.2 For the purposes of an inspection, and in accordance with s. 15.8 of the *Act*, an Officer may:

- a) Require the production for inspection of documents or things, including drawings or specifications, that may be relevant to the property or any part thereof;
- b) Inspect and remove documents or things relevant to the property or any part thereof for the purpose of making copies or extracts;
- c) Require information from any person concerning a matter related to a property or part thereof;
- d) Be accompanied by a person who has special or expert knowledge in relation to a property or part thereof;
- e) Alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purpose of the inspection; and,
- f) Order the owner of the property to take and supply, at the owners expense, such tests and samples as specified in the Order.

13.1.3 The Town may charge the owner of a property a fee or charge pursuant to the Towns Fee Schedule to conduct an inspection, including increased fees for multiple inspections.

13.1.4 Where an Officer has reasonable grounds to believe that an offence has been committed by a person, the Officer may require the name, address and proof of identity of that person, and the person shall supply the required information.

#### **14.1 PROPERTY STANDARDS COMMITTEE**

14.1.1 A Property Standards Committee shall be established in accordance with section 15.6 of the Building Code, as amended and the Terms of Reference passed by Council from time to time, to hear appeals of orders issued under this by-law, and shall consist of no less than three members.

#### **15.1 ORDERS**

15.2.1 An Officer who finds that a property does not conform to any of the standards prescribed in this by-law may make an order:

- a) Stating the municipal address or the legal description of the property;
- b) Giving reasonable particulars of the repairs to be made or stating that the site is to be cleared of all buildings, structures, debris or refuse and left in a graded and levelled condition;
- c) Indicating the time for complying with the terms and conditions of the order and giving notice that, if the repair or clearance is not carried out within that time, the municipality may carry out the repair or clearance at the owner's expense; and,
- d) Indicating the final date for giving notice of appeal from the order (an "Order").

15.2.2 An Order shall be served on the owner of the property and such other persons affected by it, as the Officer determines, and a copy of the Order may be posted on the property.

15.2.3 An Order may be registered in the proper land registry office and, upon such registration, any person acquiring any interest in the land subsequent to the registration of the Order shall be deemed to have been served with the Order on the day on which the Order was served and, when the requirements of the Order have been satisfied, the Clerk of the Town shall forthwith register in the proper land registry office a certificate that such requirements have been satisfied, which shall operate as a discharge of the Order.

## **16.1 APPEALS**

16.2.1 When the Owner upon whom an order has been served is not satisfied with the terms and conditions of the order, he or she may appeal to the Property Standards Committee by sending a notice of appeal by registered mail to the Town Clerk within fourteen (14) days of the service of the order.

16.2.2 An appeal fee of \$200.00, payable to the Town must accompany the notice of appeal.

16.2.3 In the event that no appeal is made within such fourteen (14) days, the order shall be deemed confirmed and shall be final and binding.

16.2.4 Where an appeal has been made, the Property Standards Committee shall hear the appeal and shall have all the powers and functions of the Officer and may confirm the Order or may modify or rescind it, or may extend this time for complying with the Order provided that in the opinion of the Property Standards Committee, the general intent and purpose of this by-law is maintained.

## **17.1 POWER OF MUNICIPALITY IF ORDER NOT COMPLIED WITH**

17.1.1 If an Order under this by-law is not complied with in accordance with the order as deemed confirmed or as confirmed or modified by the Property Standards Committee or a judge, the municipality, in addition to all other available remedies, may cause the Property to be repaired or demolished accordingly.

17.1.2 A municipal corporation or Person acting on its behalf is not liable to compensate the Owner, Occupant or any other Person by reason of anything done by or on behalf of the municipality in the reasonable exercise of its powers under 14.4.1.

17.1.3 The municipality shall have a lien on the land for the amount spent on the Repair or demolition under 14.4.1 and the amount shall be deemed to be taxes due upon the land under section 349 of the *Municipal Act, 2001*, as amended and may be collected in the same manner as municipal taxes.

## **18.1 EMERGENCY PROVISIONS**

18.1.1 If upon inspection of a Property, the Officer is satisfied there is non-conformity with the standards prescribed in this by-law to such extent so as to

pose an immediate danger to the health or safety of any person, the Officer may make an Order in accordance with section 15.7 of the *Building Code Act, 1992*, as amended, containing particulars of the non-conformity and requiring remedial Repairs or the work to be carried out immediately to terminate the danger.

## **19.1 CERTIFICATE OF COMPLIANCE**

19.1.1 An Officer who, after inspecting a property, is of the opinion that the property is in compliance with the standards established by this by-law, may issue a Certificate of Compliance to an owner who requests one and who pays the applicable fee.

## **20.1 ENFORCEMENT**

20.1.1 Employees of the Town who are authorized to enforce by-laws within the town are authorized to enforce this by-law.

## **21.1 OFFENCES AND PENALTIES**

21.1.1 Every person who contravenes any of the provisions of this by-law is guilty of an offence and pursuant to section 429 of the *Municipal Act* all contraventions of this by-law are designated as continuing offences.

21.1.2 Every person who is convicted of an offence is liable to a fine of not more than \$50,000 for a first offence and to a fine of not more than \$100,000 for a subsequent offence.

21.1.3 Every corporation who is convicted of an offence is liable to a fine of not more than \$50,000 for the first offence and to a fine of not more than \$100,000 for a subsequent offence.

21.1.4 An offence is a subsequent offence if there has been a previous conviction under the *Building Code Act, 1992*, as amended.

21.1.5 If this by-law is contravened and a conviction is entered, in addition to any other remedy and to any penalty imposed by the by-law, the court, which the conviction is entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

## **22.1 SEVERABILITY**

22.1.1 If any section, clause or provision of this by-law hereto, is for any reason declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the by-law as a whole or any part thereof, other than the section, clause or provision so declared to be invalid, and it is hereby declared to be the intent that the remaining sections, clauses or provisions of the by-law shall remain in full force and effect.

## **23.1 CONFLICTING BY-LAWS**

23.1.1 Where a provision of this by-law conflicts with a provision of any other by-law in force in the Town or regulation in force in the Province of Ontario, the provision that establishes the higher standard to protect the health, safety and welfare of the general public prevails.

## **24.1 SHORT TITLE**

24.1.1 This By-law may be cited as the PROPERTY STANDARDS BY-LAW.

## **25.1 REPEAL**

25.1.1 By-law 2007-100 and all amendments thereto are hereby repealed.

25.1.2 All Orders issued pursuant to By-law 2007-100 shall remain in full force and effect, notwithstanding that By-law 2007-100 is hereby repealed, and all such Orders may be enforced or acted upon by the Town as if the Order was made under 14.3 of this by-law.

## **26.1 COMING INTO FORCE**

26.1.1 This by-law shall come into force and effect the day it is passed by Council.

PASSED this 12th day of June, 2017

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Rob Burton

Mayor

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Kathy Patrick

Acting Town Clerk



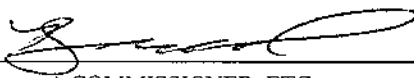
TAB 6

This is **Exhibit "6"** referred to in the

Affidavit of Dennis Perlin

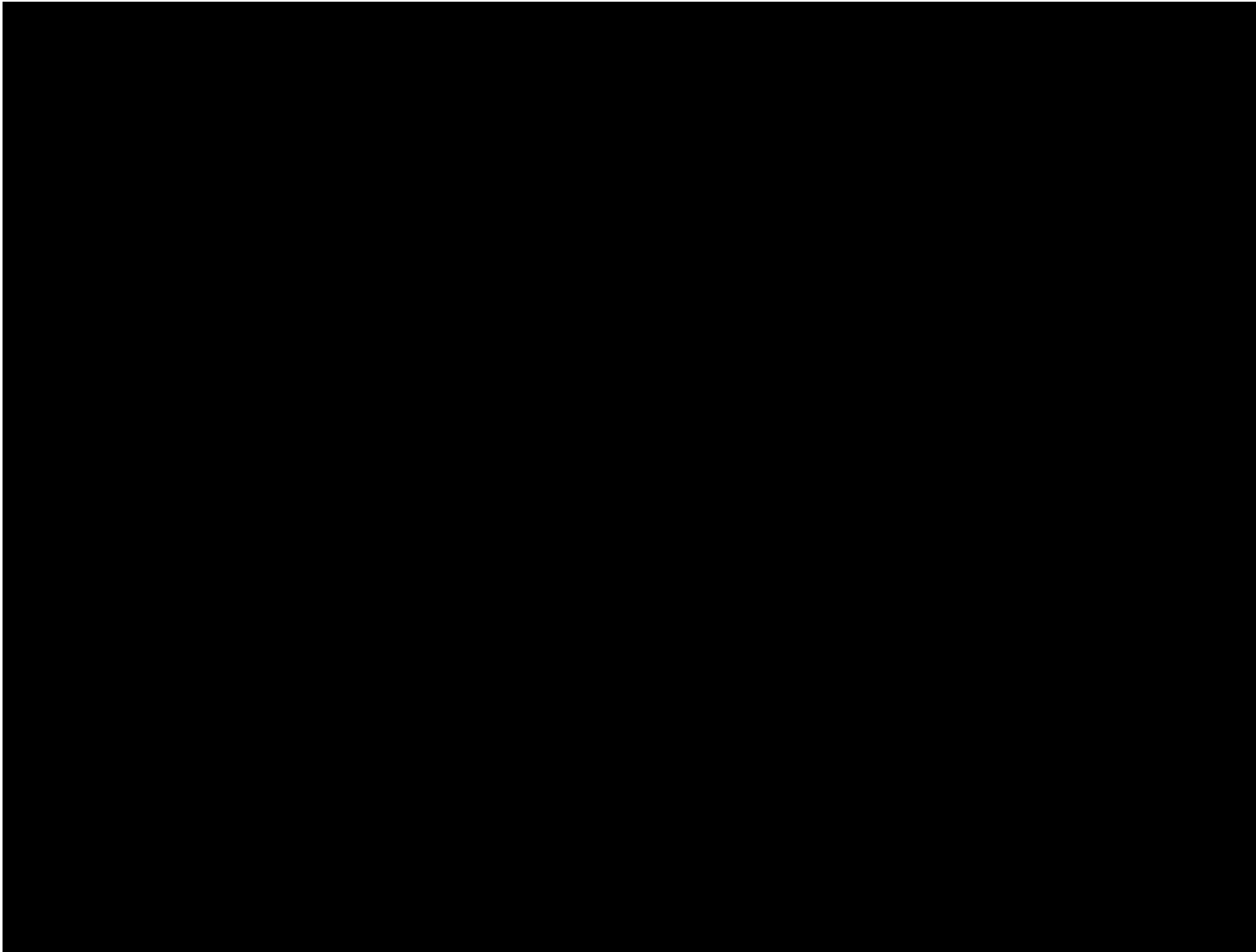
sworn before me

this 1<sup>st</sup> day of November, 2019

A handwritten signature in black ink, appearing to read "Ryan Maynard", is written over a horizontal line.

A COMMISSIONER, ETC.

Ryan Maynard



---

**From:** Shahram Heidari <[shahram@tarraeng.com](mailto:shahram@tarraeng.com)>  
**Sent:** September 30, 2019 9:39 AM  
**To:** Jim Barry <[jim.barry@oakville.ca](mailto:jim.barry@oakville.ca)>  
**Subject:** OpArt Condominium- 54-60 Shepherd Rd ,Oakville

Hello Jim

Further to our earlier conversation we would like to bring to your attention our concerns as relates to the existing site condition at the above noted location.

The construction of the excavation shoring structure of the site has been completed over three years ago since then this site has been left dormant through number of winter cycles.

We have brought to the attention of the developer and construction manager at various times the fact that the temporary shoring structures are temporary in nature and various element of the shoring would deteriorate overtime. The life expectancy of the these temporary structures are up to 2 years and are generally no longer in use as the construction of the underground structure is completed within that time frame.

In case of this site there are various areas of concern most importantly erosion of the exposed rock surface, decay of the some of the lagging boards and proximity of the excavation shoring to some of the underground utilities.

It is in our opinion critical that if the construction of the below grade structure is not going to start in immediate future that the site should be back filled to a depth that the shoring walls are no longer support the adjacent ground/ street and neighboring property.

This backfill must be completed before the turn of the weather as it is unlikely the shoring structure and exposed rock will remain safe upon another winter cycle.

If you have any question or comment please do not hesitate to contact us.

Regards,

**Shahram Heidari, M.A.Sc., P. Eng.**  
Principal

**Tarra Engineering Structural Consultants Inc.**

2800 14th Ave., Suite 300

Markham, ON, L3R 0E4

T: 905-470-6952

F: 905-470-5126

E: [shahram@tarraeng.com](mailto:shahram@tarraeng.com)

Website: [www.tarraeng.com](http://www.tarraeng.com)



*Please consider the environment before printing this e-mail and/or its attachments*

---

**From:** Jim Barry [<mailto:jim.barry@oakville.ca>]

**Sent:** Thursday, September 26, 2019 9:21 AM

**To:** 'Shahram Heidari'

**Subject:** RE: my email

Thank you for speaking with me.

Regards,

Jim

**Jim Barry, MLEO(c), CMM III**

**Director**

**Municipal Enforcement Services**

Town of Oakville | 905-845-6601, ext.3093 | [www.oakville.ca](http://www.oakville.ca)

**Vision: To be the most livable town in Canada**

Please consider the environment before printing this email.

<http://www.oakville.ca/privacy.html>

---

**From:** Shahram Heidari <[shahram@tarraeng.com](mailto:shahram@tarraeng.com)>

**Sent:** September 26, 2019 9:20 AM

**To:** Jim Barry <[jim.barry@oakville.ca](mailto:jim.barry@oakville.ca)>

**Subject:** my email

If you have any question or comment please do not hesitate to contact us.

**Regards,**

**Shahram Heidari, M.A.Sc., P. Eng.  
Principal**

**Tarra Engineering Structural Consultants Inc.**

2800 14th Ave., Suite 300

Markham, ON, L3R 0E4

**T:** 905-470-6952

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**E:** [shahram@tarraeng.com](mailto:shahram@tarraeng.com)

**Website:** [www.tarraeng.com](http://www.tarraeng.com)



*Please consider the environment before printing this e-mail and/or its attachments*

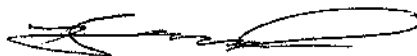
**TAB 7**

This is **Exhibit "7"** referred to in the

Affidavit of Dennis Perlin

sworn before me

this 1<sup>st</sup> day of November, 2019

A handwritten signature in black ink, appearing to read "Ryan Maynard", positioned above a horizontal line.

A COMMISSIONER, ETC.

Ryan Maynard

**CORPORATION OF THE TOWN OF OAKVILLE**

IN THE MATTER OF SECTION 15.7 OF THE *BUILDING CODE ACT* FOR THE PROVINCE OF ONTARIO, as amended;

IN THE MATTER OF BY-LAW 2017-007 for the Corporation of the TOWN OF OAKVILLE being a By-Law to provide the standards for the maintenance and occupancy of property in the TOWN OF OAKVILLE; and

IN THE MATTER OF lands and premises known municipally as,  
**58-62 SHEPHERD ROAD, OAKVILLE ONTARIO L6K 2G5, LEGAL DESCRIPTION: PT LT 16, CON 3 TRAF SDS; PT LT 16, CON 3 TRAF SDS; PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608 AS IN 702148 DESIGNATED AS PT 1 20R20836 TOWN OF OAKVILLE**

**EMERGENCY ORDER # 2019-111642 TO 54 SHEPHERD ROAD INC.**

**WHEREAS** you are the owner of the property known municipally as, **58-62 SHEPHERD ROAD, OAKVILLE ONTARIO L6K 2G5, LEGAL DESCRIPTION: PT LT 16, CON 3 TRAF SDS; PT LT 16, CON 3 TRAF SDS; PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608 AS IN 702148 DESIGNATED AS PT 1 20R20836 TOWN OF OAKVILLE** (hereinafter called "the property");

**WHEREAS** the property is presently an excavated construction site with shoring for the purpose of developing a high density residential building(s) which excavation and shoring was put in place around 2015-2016 and has been left in that condition since without the construction of the proposed residential building (s);

**WHEREAS** after an inspection of the property, the Property Standards Officer. for the Town of Oakville (hereinafter called "the town") is satisfied that there is doubt as to the structural condition of the shoring structure and therefore nonconformity with the standard under Part 6, Section 6.2.1 under the standards for the maintenance and occupancy of property prescribed in TOWN OF OAKVILLE BY-LAW 2017-007( hereinafter called "the bylaw") to such extent as to pose an immediate danger to the safety of persons using the adjacent street (Shepherd Rd.) and/or the persons occupying adjacent properties;

**WHEREAS** the town has also been informed by the design engineer of the shoring concerned that the shoring was designed to be in place for a much more limited time than the three years or so that the shoring has been in place such that the shoring may not be safe further confirming nonconformity with the standard under Part 6, Section 6.2.1 of the bylaw to such extent as to pose an immediate danger to the safety of persons using the adjacent street (Shepherd Rd.) and/or the persons occupying adjacent properties;

**WHEREAS** therefore the shoring and excavated construction site must be examined by a professional engineer licensed to practice in Ontario to examine the integrity of the structural system, identify any deficiencies with the integrity of the structural system, identify any adverse impacts or effects on neighbouring streets and properties and set out any recommended remedial work including any necessary drawings therefor particulars of are set out in SCHEDULE "B" annexed hereto; and

**WHEREAS** as a result of the doubt as to the structural condition of the shoring an order is required under section 15.7 of the Building Code Act, as amended, for work to be carried out immediately to terminate the danger;

**I HEREBY ORDER THAT** the property known municipally as **58-62 SHEPHERD ROAD, OAKVILLE ONTARIO L6K 2G5, LEGAL DESCRIPTION: PT LT 16, CON 3 TRAF SDS; PT LT 16, CON 3 TRAF SDS; PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608 AS IN 702148 DESIGNATED AS PT 1 20R20836 TOWN OF OAKVILLE** being in the TOWN OF OAKVILLE, in the Regional Municipality of Halton and more particularly described in SCHEDULE "A" annexed hereto be brought into conformity with the said By-law **IMMEDIATELY and to that end the work described in Schedule "B" annexed hereto be carried out IMMEDIATELY to terminate the danger .**

**AND FURTHER TAKE NOTICE** that either before or after this Order is issued by the Officer below, the Officer may take or cause to be taken any measures set out in Schedule "B" annexed hereto that the Officer considers necessary to terminate the danger, and for the purpose, the municipality has the right through its employees, servants and agents to enter in and upon the property in respect of which the Order was made at any time without a warrant.

**FURTHER TAKE NOTICE THAT** pursuant to THE BUILDING CODE ACT FOR THE PROVINCE OF ONTARIO, as amended, and the by-law this Order may be registered in the appropriate land registry office for Halton; and



**FURTHER TAKE NOTICE** that the persons served with a copy of the Order in accordance with SECTION 15.7(2) OF THE BUILDING CODE ACT FOR THE PROVINCE OF ONTARIO as amended, are set out in SCHEDULE "C" annexed hereto.

DATED AT OAKVILLE, ONTARIO THIS **SEPTEMBER 27<sup>th</sup>**, 2019.



**Raj Vemulapalli**

Property Standards Officer

THE CORPORATION OF THE TOWN OF OAKVILLE

1225 Trafalgar Road, Oakville, Ontario L6H 0H3 (905) 845-6601, Extension 3252

**SCHEDULE "A"**

**DESCRIPTION OF LANDS**

**ALL AND SINGULAR** that certain parcel or tract of land and premises situate, lying and being in the Town of Oakville, in the Region of Halton and being described as follows:

**LOCATION**

**PT LT 16, CON 3 TRAF SDS; PT LT 16, CON 3 TRAF SDS; PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608 AS IN 702148 DESIGNATED AS PT 1 20R20836 TOWN OF OAKVILLE**

**SCHEDULE "B"**  
**PARTICULARS OF NON-CONFORMITY**

ITEM NUMBER	DEFECT	LOCATION	NECESSARY REPAIR	BY-LAW SECTION
1.	Deteriorating structural condition of the Shoring, or parts thereof given the length of time the temporary shoring has remained in position.	Temporary shoring support of vertical excavation see site below	Retention of a professional engineer licensed to practice in Ontario with expertise in shoring to assessing the structural integrity of the temporary excavation support (shoring), identifying any deficiencies with the integrity of the structural system , identifying any adverse impacts or effects on neighbouring streets and properties and setting out any recommended remedial work including any necessary drawings therefor and provide to the Town's Director of Enforcement Services an Engineer's Report containing that information	Section 6.2.1 Section 6.3
2.	Deteriorating structural condition of the Shoring, or parts thereof.	Temporary shoring support of vertical excavation	Perform all work as recommended in the Engineer's Report in 1. above to address all deficiencies and immediately terminate the danger.  Note: Obtain any required permits from the Chief Building Official and any other authorities.	Section 6.2.1 Section 5.5.6



SCHEDULE "C"

PERSONS SERVED WITH THIS NOTICE

NAME AND ADDRESS OF PERSON SERVED

54 SHEPHERD ROAD INC  
Attn.: IOANNIS (JOHN) NEILAS  
263 ADELAIDE STREET WEST, SUITE 320  
TORONTO, ONTARIO, M5H 1Y2

IOANNIS (JOHN) NEILAS  
55 MCGILLIVRAY AVENUE  
TORONTO, ONTARIO M5M 2Y3

If you require any further information and/or clarification please contact officer name, property standards officer at 905-845-6601 extension 3252

A copy of the Property Standards By-Law may be accessed on Town of Oakville website [www.oakville.ca](http://www.oakville.ca) under By-laws.

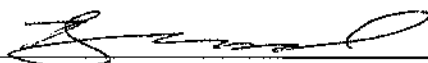
# TAB 8

This is **Exhibit "8"** referred to in the

Affidavit of Dennis Perlin

sworn before me

this 1<sup>st</sup> day of November, 2019

A handwritten signature in black ink, appearing to read "Ryan Maynard", is written over a horizontal line.

A COMMISSIONER, ETC.

Ryan Maynard





Town of Oakville

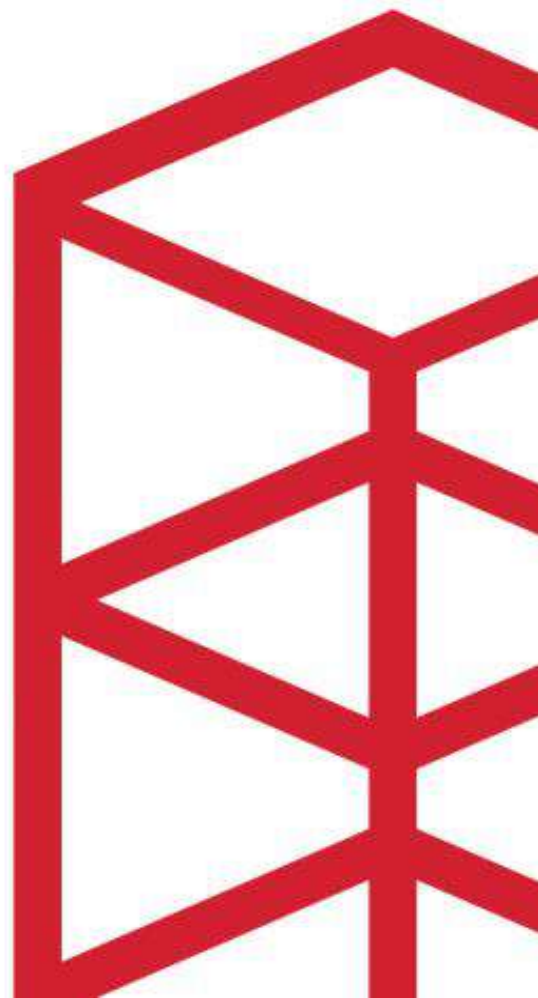
**Attn:**  
Raj Vamulapalli

## Analysis & Retrofit Design Report

58-62 Shepherd Rd., Oakville, ON L6K 2G5

October 18, 2019

**Project Number:**  
19-11060.19645





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## 1. INTRODUCTION

AJW Engineering (AJW) has been retained by the Town of Oakville (ToO) to conduct a site inspection – and subsequently, analysis – of what was intended to be a temporary soil retaining structure at the subject location. The analysis is understood to have been requested because, due to the length of time for which this retaining structure has been allowed to remain, its structural integrity for an extended period of time is required to be verified and retrofitted as necessary. AJW Engineering herein presents its findings on the integrity of the shoring wall (retaining wall).

## 2. LIST OF AVAILABLE DOCUMENTS

Town of Oakville provided AJW with all available documents pertaining to the preconstruction investigation, nearby utilities/relevant structures, as well as the shoring design. The list of documents provided by Town of Oakville include:

1. Permanent Drainage & Pump Sizing [Dated March 13, 2014] - Prepared by McClymont & Rak Engineers.
2. Revised Geotechnical Report [Dated January 2015] - Prepared by McClymont & Rak.
3. Proj. No. 10217 Shoring Design Drawings [Dated December 05, 2014] – Prepared by Tarra Engineering & Structural Consultants (Tarra).
4. Utility Report [Dated 10/04/2011] – Issued by Union Gas.
5. Shoring Monitoring Report [Dated September 25, 2019] – Prepared by Terraprobe.

In addition to the documents provided by Town of Oakville, AJW was able to contact Tarra and obtain the latest revision of the shoring design drawings which are believed to have been the basis for construction.

1. Proj. No. 15164 Shoring Design Drawings [Dated October 26, 2016] – Prepared by Tarra Engineering & Structural Consultants.

AJW was also on site on October 2, 2019 to gather information of the current as built and site conditions and has used this information to further assess structural reliability of the retaining wall.

## 3. GENERAL DESCRIPTION

The latest revision of drawings obtained from Tarra (APPENDIX A) were found to most closely match the as built conditions observed during the site visit; this was used as the analysis basis.

All walls are understood to consist of 75 mm thick SPF No. 1 lumber lagging for approximately the top half the excavation. Piles are supported through a combination of rakers, walers and tieback tendons and rock bolts. Due to a variation in the ground level elevation, the lengths of piles, and as a result, the depth of excavation from ground level varies between 6.5 to 7.5 m. However, piles are on average 1000 mm embedded below the bottom of the excavation.

### 3.1. North Wall

The north face of the structure consists of W410x39 piles spaced at 3050 mm c/c from pile N3 to N29; N1 to N3 are spaced at approx. 2000 mm c/c. The larger of the spacings was used for analysis.





Each pile is equipped with one tieback consisting of two 7-strand prestressing tendons. The wall is adjacent and parallel to a local road (Shepherd Rd.) currently out of commission until otherwise declared safe for use.

### 3.2. East Wall

The east face consists of W360x33 for all piles, with all the piles spaced at 3050 mm c/c. NO tieback is installed on this face; a continuous stubbed W460x60 waler supported on W250x73 rakers every second pile provide lateral support for the structure. The wall is adjacent to a one-story dwelling on its north portion.

### 3.3. South Wall

The south face consists of W360x33 for S1-S6 and S19-S22, W310x39 for S7-S18 and S29, and W360x45 for S23-S28. Piles S1-S23 are spaced at 3050 mm c/c while S23-S29 are spaced at approx. 2400 mm c/c. The larger of the spacings was used for analysis. Each pile is equipped with one tieback consisting of 7-strand prestressing tendons. The wall is adjacent to a ground level parking lot.

### 3.4. West Wall

The west face consists of what is understood to be existing piles, P1 to P20, spaced at 3050 mm c/c. The piles are pinned and supported to allow for a deeper excavation with the use of W200x52 rakers supported on 900 mm X 900 mm X 900 mm concrete pads. The rakers have been installed at every third pile. Tieback rock bolts (rock anchors) have been installed at the existing piles for piles P1 and P6-P18; however, conservatively, and because the exact size of the tieback is not known, the ones located between P1 and P15 have been ignored. For the region in which an historic building exists (P16-P18), a 20M rock bolt has been assumed for analysis. P19, which also falls within this region, has no rock bolt. But because it is supported with a corner strut, it is assumed to be structurally sound. In addition to the historic building, this wall is adjacent to an existing four-level underground condo parking.

## 4. REVIEW OF DESIGN BY TERRA

The design parameters outlined in the latest shoring drawings from 2016 are different from those of the geotechnical engineering report from 2015. It is apparent that a previous geotechnical report prepared by Chih S. Huang & Associates in 2010 was used as the basis for design. The main differences are presented in Table 1 below:

	<b>Per Latest Design Drawing [2016] Based on 2010 Geotech.</b>	<b>Per Latest Geotech. Report [2015]</b>
Active Earth Pressure Coefficient, $K_a$	0.36	0.45
Passive Earth Pressure coefficient, $K_p$	5	4
Natural Unit Weight of Soil, $\gamma$	21.0 kN/m <sup>3</sup>	21.7 kN/m <sup>3</sup>

Table 1 – Design Parameter Comparison

Analysis of the structure prior to any retrofit design was performed on DeepEX for the different sections of wall. The findings and analysis method are presented below.





#### 4.1. Analysis to Verify Original Design (Temporary Excavation Assumption)

To verify that the initial design is sound, AJW has analyzed the existing structure based on the design parameters from the 2010 geotechnical report in which Terra employed.

**Surcharge Load:** Load due the various uses (buildings, road, parking, etc.) of regions adjacent to the structure assumes Boussinesq surcharge assumptions. Compared to the “Direct Method” in which one is obliged to assume that the surface live load is evenly distributed for an infinite distance beyond the excavation, Boussinesq method allows for a more realistic approach whereby superimposed loads can be distributed as required.

**Active Earth Lateral Pressure:** Analysis of the stage prior to lateral support installation, i.e. before installation of tiebacks and/or rakers, the piles behave as vertically cantilevered sections. This assumes a triangular distribution of active lateral pressure where maximum occurs at the bottom; prior to installation of the lateral support, excavation would only have been completed up to a level in which only sufficient room for installation will be present. Therefore, the cantilevered portion is minimum. After installation of lateral support, lateral pressure distribution is assumed to be trapezoidal.

**Ground Water Table:** Hydrostatic pressure due to the presence of ground water for active soil is noted as being at EL 98. Where adjacent structures occur, it has been assumed to be just below the foundation of the structure. After excavation, water level is assumed to be 1 m below the base of excavation.

**Factor of Safety:** Based on acceptable engineering practice for temporary structures employs an overall factor-of-safety (FS) of 1.2 may be employed as a minimum for all cases. Seven sections, corresponding to 1/SH2 to 7/SH2 in the reference drawing presented in **APPENDIX A** have been considered. The factors of safety for the different sections at locations considered to be critical are presented in **Table 2** below.

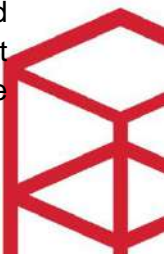
Section No.	Location	FS
1/SH2	North Face	1.57
2/SH2	East Face (Near North)	3.15
3/SH2	East Face (Near South)	3.16
4/SH2	South Face	1.47
5/SH2	South Face (Near West)	1.48
6/SH2	West Face	1.27
7/SH2	West Face (Near North)	1.27

Table 2 – Factors of Safety: Temporary Assumption

Based on the assumptions discussed above, as outlined in Table 2, the design of the shoring walls has been found to be sufficient for use as a temporary structure.

#### 4.2. Analysis with (Semi)Permanent Excavation Assumption

Having analyzed the design with the assumption that the structure will only be required temporarily, AJW also analyzed the structure for long-term use. Although there does not exist an explicit distinction definition for the difference between a temporary and a permanent structure, it is reasonable





to assume that the design guidelines outlined in the 4<sup>th</sup> edition of Canadian Foundation Engineering Manual (CFEM), shall, as a minimum be met for this structure; particularly due to its (semi)permanent nature. The CFEM states that any retaining structure supported by one level of horizontal support in the form of rakers and/or anchors, the factor of safety shall be 2.0 as a minimum.

For long term analysis, the latest available geotechnical report parameters (2016) were used. All assumptions discussed in section 4.1 are assumed to apply with one addition; long term exposure of the structure to potential seismic effects have been taken into consideration. A seismic lateral pressure for Peak Ground Acceleration (PGA) of 0.18 has been used; this causes a reduction of the passive earth pressure coefficient and applies a lateral pressure which is calculated Wood's method.

Passive soil resistance shall be neglected for a depth equal to 4' (approx. 1.2 m) from the top of exposed soil (freezing depth). However, as only 1 m of passive soil exists, we cannot ignore this soil because due to software limitations, the system will be unstable.

The factors of safety for the different sections presented in section 4.1 at locations considered to be critical are presented in Table 3 below.

Section No.	Location	FS
1/SH2	North Face	0.19
2/SH2	East Face (Near North)	0.20
3/SH2	East Face (Near South)	0.20
4/SH2	South Face	0.11
5/SH2	South Face (Near West)	0.11
6/SH2	West Face	0.67
7/SH2	West Face (Near North)	1.11

Table 3 – Factors of Safety: (Semi)Permanent Assumption

The factors of safety are all significantly below 1.0. Therefore, the design is not adequate and retrofitting the existing structure to meet minimum FS=2.0 will be required. The design of retrofitting is presented in the following section.

## 5. RETROFIT DESIGN

The use of additional rakers and/or tiebacks was not considered as a retrofitting option because most of the piles were found to be corroded with significant reductions of their cross section. As a result, this option was ruled out. The preferred and most feasible method was determined to be backfilling the passive soil up to a certain level such that the structural integrity can be upheld and allowed to remain for an extended period of time. This backfill level has been determined for the different sections.

Because it is impractical to backfill with similar material (with similar parameters) as that which exists, a practical backfill material (with its associated parameters) has been chosen. But, because the software only allows you to define one set of properties of material for any given vertical layer, passive lateral earth pressure coefficient for the layer up to the maximum backfill height has to be reduced. The basis for this reduction is shown below:





	Description	Unit Weight, $\gamma$	$K_p$	Reduction Calculation	Reduction Factor for $K_p$
Existing	Weathered Shale	21	4	$\left(\frac{21.7}{18}\right) * \left(\frac{4}{3}\right)$	1.6
New	Backfill Material	18	3		

Table 4 – Reduction of Passive Lateral Earth Pressure After Backfill

In addition to seismic effect consideration, the top 1.2 m of passive soil has been neglected and deemed an ineffective passive soil to account for frost and thaw.

After excavation, the water table is assumed to be the same for active soil, and for the excavated side, as observed during the site visit in the raker pad trenches, water level is assumed to be at the base of excavation.

Prior to backfilling, the existing active soil pressure was assumed to be trapezoidal. However, following backfill, The Federal Highway Administration (FHWA) apparent pressure has been used. All other assumptions stated in 4.1 are considered to be true for this case.

During the site visit conducted on October 01, 2019, significant corrosion and ultimately, section reduction of the existing piles was noted. This degradation was particularly prominent for pile sections below approx. EL. 98.5. Because this is practically the level at which the original pre-excavation ground water table was found to be, it can be reasonably assumed that either through poor drainage or lack of dewatering of the excavation, the pile up to this elevation has been compromised. Therefore, pile capacity below this level has been assumed to be two-thirds of the uncompromised section.

Based on the assumptions and limitations outlined herein, the required backfill depths for each section have been determined. The backfill elevations satisfy all conditions including minimum factor of safety of 2.0, pile capacity reduction to 2/3 of capacity below EL. 98.5, waler capacity, and raker capacity. Minimum required backfill depths are shown in Table 5 below. The backfill shall be placed flat for 5 m horizontally and then sloped at 1:1 towards the existing bottom of excavation. The backfill material should be compacted to 95% standard Proctor compaction. Details are shown in APPENDIX C.

Section No.	Location	Backfill Elevation
1/SH2	North Face	98.15
2/SH2	East Face (Near North)	97.50
3/SH2	East Face (Near South)	97.50
4/SH2	South Face	98.00
5/SH2	South Face (Near West)	98.00
6/SH2	West Face	99.17
7/SH2	West Face (Near North)	99.17

Table 5 – New Design Backfill Elevations

Based on the minimum backfill elevations established to ensure that all the safety conditions are satisfied, the new long-term factors of safety are as shown in Table 6 below.







Section No.	Location	FS
1/SH2	North Face	2.03
2/SH2	East Face (Near North)	2.35
3/SH2	East Face (Near South)	2.35
4/SH2	South Face	2.51
5/SH2	South Face (Near West)	2.51
6/SH2	West Face	2.13
7/SH2	West Face (Near North)	2.13

Table 6 – Factors of Safety: Retrofitted (Semi)Permanent

## 6. RISK ANALYSIS OF EXISTING UTILITIES AND ADJOINING STRUCTURES

To predict the long-term effects of the open excavation to adjoining infrastructure, AJW has identified adjacent buildings and utilities from the documents provided. The probable vertical and lateral displacements of the utilities and buildings which fall within 6 m radius away from the shoring walls have been presented.

The utilities and structures identified as falling within 6 m radius, the source of information from which they have been identified to be within this region, and their locations with respect to the shoring walls are presented in **Table 7** below.

No.	Utility/Infrastructure	Lateral Offset	Elevation/Depth	Source of Info
<b>North</b>				
1	Gas Main	< 2m	1.2 m B.G.L.*	1/SH2 of shoring drawings
2	Ex. 300mm Water Main	>3.8 m	EL. 99.5	1/SH2 of shoring drawings
3	300mm Water Main	~6 m	EL. 98	Halton Region feeder main drawing, based on trench cut
4	900mm Feeder Main	~6 m	EL. 96.5-97.5	Halton Region feeder main drawing, based on trench cut
5	Distribution transformer	2.5 m	1.2 m B.G.L.*	Oakville Hydro Service Location Report
6	Primary underground Conductor Cable B	2.5 m	1.2 m B.G.L.*	Oakville Hydro Service Location Report
7	Primary underground Conductor Cable R	2.5 m	1.2 m B.G.L.*	Oakville Hydro Service Location Report
<b>East</b>				
8	Existing building (north corner)	~6 m	1.2 m B.G.L.*	Site Observations
<b>South</b>				
9	Existing building (west corner)	~2.5 m	EL. 100.3	5/SH2 of shoring drawings, Site
10	Underground parking (centre)	>3.8 m	EL. 98.5	Building management (site inspection)
<b>West</b>				
11	Existing building (north corner)	~2.5 m	EL. 99.17	7/SH2 of shoring drawings, Site
12	Existing parking (centre to south)	~2.5 m	EL. 88	6/SH2 of shoring drawings
13	Gas Main	>2.5 m	EL 100.9	6&7/SH2 of shoring drawings

Table 7 – Summary of Existing Utility/Infrastructure





The information presented in the table has been extracted from the documents provided and may not necessarily be exhaustive of all the utilities presented. Elevations, and lateral offsets are estimated based on the available sources. The footing depths (marked with asterisks) are estimates based on minimum freezing depth embedment; actual depth may be different. The lateral and vertical displacements for each utility/infrastructure have been determined for the three stages/assumptions discussed in section 4 and 5 above: temporary assumption as designed (Temp), permanent assumption as designed without seismic effects (Perm No Seismic), permanent assumption a designed with seismic effects (Perm Seismic), and permanent retrofitted with seismic effects (Perm Retro Seismic). Vertical displacements have been determined to be insignificant (<5 mm). The lateral displacement outputs from DeepEX (in mm & rounded to the nearest mm) are presented in **Table 8** below.

No.	Temp	Perm No Seismic	Perm Seismic	Perm Retro Seismic
1	3	13	25	1
2	6	80	140	2
3	10	230	>1000	2
4	17	350	>1000	2
5	3	13	25	1
6	3	13	25	1
7	3	13	25	1
8	1.5	6	10	1
9	11	160	270	2
10	30	580	>1000	2
11	30	580	>1000	2
12	4	4	10	3
13	4	4	10	3

Table 8 – Summary of Lateral and Vertical Displacements

From this, it can be observed that maximum anticipated lateral displacement for temporary shoring does not exceed 30 mm; this is consistent with the shoring monitoring report prepared by Terraprobe. However, assuming the structure is required to be semi-permanent (and ignoring the effects of seismic loading), the deflection is significantly increased, with the footing on the south side of the building exhibiting probable lateral displacement of up to 580 mm. This value exceeds 1000 mm when seismic effects are taken into place. It should be noted that for any lateral displacement in excess of 200 mm, the system is unstable because of lack of required embedment of soldier piles. Lastly, analysis of the retrofitted structure predicts additional lateral displacements in the range of 0-3 mm. With a retrofitted structure, therefore, the risk of compromising the structural integrity of nearby utility and infrastructure is practically eliminated.

## 7. DISCUSSIONS & RECOMMENDATIONS

When steel is subjected to a cycle in which it alternates between submersion in water allowing moisture to penetrate and then exposure to air where it is allowed to oxidize, corrosion is accelerated. Although structurally required backfill levels have been shown for different sections, AJW Recommends a backfill up to EL 98.5 for the north, east and south walls, and EL. 99.17 for the west wall. If backfilled as recommended, it is estimated that approximately 10,000 m<sup>3</sup> of backfill material will be required.





According to Hanscomb Yardsticks for Costing (2018), Div 31 22 00 Grading (fill with imported granular material not exceeding 15 km machine operation) and Div 21 23 23 Backfill (excavated materials, place and compact for grading), the estimated cost for retrofit is \$550,000.00+HST. In order to fill the entire excavated site, a further 33,600 m<sup>3</sup> is estimated to be required for an approximate total cost of \$2,450,000.00+HST. The backfill material shall have a unit weight of 18 kN/m<sup>3</sup>, friction angle of 30° (granular A per OPSS 1010) and shall be compacted to 95% standard Proctor. Further, it shall be clean and sampled to ensure no contamination.

Due to the severity of corrosion (and subsequent section reduction) of the piles as well as continued weathering of the exposed shale (in regions where shotcrete is not applied), sudden local or global failure is highly probable. Therefore, AJW Engineering recommends that backfilling the excavation as outlined above commence imminently.

For maintenance, AJW recommends that the water level kept at the base of the excavation at all times by means of dewatering. AJW also recommends that the excavation is inspected seasonally for a minimum of two times: at least one inspection after winter when soil has thawed, and at least one other time (particularly if flooding occurs or if water level rises above the base for a significant period). AJW received a survey recently conducted by Terraprobe containing displacement data from June 22, July 13, Aug 03, Aug 24 and Sep 21 of 2019 during which no significant variation in lateral displacement has been observed. AJW recommends continued monitoring of the piles.

## 8. CONCLUSION

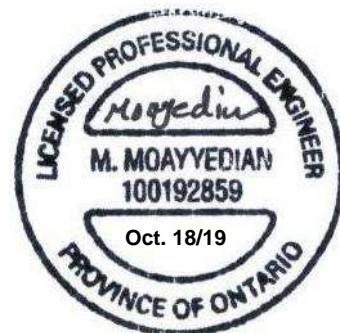
In summary, a design prepared by Tarra with the assumption that the structure was to be used for a temporary duration using geotechnical report prepared in 2010 was adequate and satisfied a factor of safety of 1.2. Using the same parameters with additional constraints for (semi)permanent conditions, the structure was deemed to be unfit with factors of safety well below 2.0, practically failing.

Following retrofit design, with backfill of soil around the perimeter of the excavations to ensure that no component of the of the excavation retention structure is compromised, the factors of safety have been found to be in the range of 2.03 to 2.51. This means that it meets acceptable engineering practices and standards.

AJW Engineering trusts that this report is sufficient for your purposes at this time. Should you have any questions or concerns, please do not hesitate to contact our office at your earliest convenience.

Sincerely,

Saeed Moayyedien, P.Eng.  
AJW Engineering Ltd./AEG  
Ref: 11060.19645 - (2019-10-18)





TAB C

Court File No. CV-19-00628680-00CL

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

THE HONOURABLE	)	_____ DAY THE ____ DAY
	)	
JUSTICE	)	OF NOVEMBER 2019
	)	

BETWEEN:

**FIRST ONTARIO CREDIT UNION LIMITED**

Applicant

- and -

**54 SHEPHERD ROAD INC. AND 60 SHEPHERD ROAD INC.**

Respondents

**APPLICATION UNDER** Subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended, Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*

**ORDER**  
(lifting stay)

THIS MOTION made by the Corporation of the Town of Oakville (the “**Town**”) for an order declaring that the stay of proceedings pursuant to the Order of Justice Patillo dated October 24, 2019 (the “**Appointment Order**”) does not operate in respect of in respect of the emergency order #2019-111642 issued by the Town on September 27, 2019 (the “**Emergency Order**”), any related emergency order and any related proceedings to be commenced by the Town pursuant to the *Building Code Act, 1992*, S.O. 1992, c. 23 (the “**Building Code**”) was heard this day at 330 University Avenue, Toronto, Ontario.

UPON READING the Notice of Motion, the Affidavit of Dennis Perlin sworn on November 1, 2019, AND UPON HEARING the submissions of the lawyers for the Town, the lawyers for the Receiver, no other person appearing for any other party on the service list although duly served as appears from the Affidavit of Service of \*\* sworn on November 1, 2019, filed,

1. THIS COURT ORDERS that the time for service of the Motion Record for the within motion be and is hereby abridged such that this motion is properly returnable today and that further service of the motion be and is hereby dispensed with.

2. THIS COURT ORDERS and declares that the stay of proceedings pursuant to the Appointment Order shall no longer operate in respect of the Emergency Order, any related emergency order and any related proceedings to be commenced by the Town pursuant to s. 15.7 of the Building Code, and the Town be and is hereby authorized to take any measures necessary to bring the property legally known as PT LT 16, CON 3 TRAF SDS; PT RDAL BTN LTS 15 & 16, CON 3 TRAF SDS, AS CLOSED BY BYLAW 608 AS IN 702148 DESIGNATED AS PT 1 20R20836 TOWN OF OAKVILLE (the “**Property**”) into conformity with Part 6, Section 6.2.1 under Town of Oakville By-Law 2017-007 (the “**By-Law**”).

3. THIS COURT ORDERS that without limiting the generality of the foregoing, the Town, including its employees and agents, is authorized but not required to:

- (a) make further orders pursuant to s. 15.7 of the Building Code as may be required to set out the particulars of non-conformity and to require remedial repairs or other work to bring the Property into conformity with the By-Law;

- (b) enter upon the Property carry to out such remedial work and other work to bring the Property into conformity with the By-Law;
  - (c) apply to a judge of the Superior Court of Justice pursuant to subsection 15.7(7) of the Building Code for a confirmation hearing (the “**Confirmation Hearing**”), on notice to the service list in this proceeding; and,
  - (d) add any amount determined at the Confirmation Hearing to be recoverable by the Town to the tax roll against the Property pursuant to section 1(2.1) of the *Municipal Act, 2001*.
-

**THE CORPORATION OF THE TOWN OF OAKVILLE**  
Applicant

**54 SHEPHERD ROAD INC. et. al.**  
Respondents

and

Court File No. CV-19-00628680-00CL

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

Proceeding commenced at Toronto

**ORDER**

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**FIRSTONTARIO CREDIT UNION LIMITED**  
Applicant

**54 SHEPHERD ROAD INC. et. al.**  
Respondents  
and

Court File No. CV-19-00628680-00CL

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

Proceeding commenced at Toronto

**MOTION RECORD**

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