

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

THE HONOURABLE) TUESDAY, the 21st DAY
JUSTICE HAINEY) OF JANUARY, 2020

BETWEEN:



FIRST ONTARIO CREDIT UNION LIMITED

Applicant

- and -

54 SHEPHERD ROAD INC. and 60 SHEPHERD ROAD INC.

Respondents

**REPRESENTATIVE COUNSEL ORDER
(Syndicated Investors)**

THIS MOTION, made by the individual investors listed at **Schedule "A"** attached hereto (the "**Moving Parties**"), in the proceedings of the Applicant pursuant to section 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., c. C.43, as amended, and Rule 14.05(3)(g) and (h) of the *Rules of Civil Procedure*, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Jacques Emond sworn January 17th, 2020, together with the Exhibits thereto, and on hearing submissions of counsel for the Moving Parties and such other counsel as were present, no one appearing for any other person on the Service List, although properly served as appears from the affidavit of Rebecca Flint, sworn January 20, 2020.

1. **THIS COURT ORDERS** that for the purposes of this Representative Counsel Order and the Schedules attached hereto, all capitalized terms not otherwise defined in this Representative Counsel Order shall have the definitions set out in the Honourable Justice Pattillo Order dated October 24, 2019 (the “**Initial Order**”).
2. **THIS COURT ORDERS** that the time and manner of service of the Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and dispenses with further service thereof.
3. **THIS COURT ORDERS** that DS Lawyers Canada LLP is hereby appointed as representative counsel (in such capacity, “**Representative Counsel**”) in these proceedings (the “**Proceedings**”) to represent the interests of all individuals or entities (the “**Syndicated Investors**”) that have invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. (“**Hi-Rise**”) in respect of a proposed real estate development on or at properties owned by the Respondents 54 Shepherd Road Inc. and 60 Shepherd Road Inc. (the “**Debtors**”), except for those Syndicated Investors that provide written notice to Representative Counsel that such Syndicated Investor does not wish to be presented by Representative Counsel (the “**Opt-Out Investors**”).
4. **THIS COURT ORDERS** that Representative Counsel shall act in the best interests of the Syndicated Investors as a whole and shall take such necessary and appropriate actions as Representative Counsel deems fit from time to time.
5. **THIS COURT ORDERS** that Jacques Emond, Marco Arquilla, Max Neiman, Ron Smeathers and Dale Rabbie (collectively, the “**Investor Representatives**”) are hereby appointed as representatives of all Syndicated Investors (excluding the Opt-Out Investors, if any) in the Proceedings, to act in the overall best interests of the Syndicated Investors.
6. **THIS COURT ORDERS** that Representative Counsel shall have no obligation to consult with, follow the instructions of, or provide an opinion to, any individual Syndicated Investor in connection with the discharge of its duties under this Order, provided, however, that

Representative Counsel shall be entitled to consult with and seek advice from the Investor Representatives in connection with the fulfillment of its duties in carrying out the provisions of this Order.

7. **THIS COURT ORDERS** that in respect of any decision made by the Investor Representatives, the will of the majority of the Investor Representatives will govern, but no decision made by the Investor Representatives shall be binding upon the receiver of the Debtors, msi Spergel Inc. (the “**Receiver**”).

8. **THIS COURT ORDERS** that the mandate of the Investor Representatives and Representative Counsel is limited to advancing the interests of the Syndicated Investors as a group in the Proceedings and in particular:

- a. Representative Counsel and the Chairperson (as defined herein) may, on a confidential basis, review offers to purchase the Property as submitted by prospective purchasers in accordance with the Receiver’s sale process, and provide the Receiver with comments and or concerns regarding the substance or terms of the offers to purchase the Property for the Receiver’s consideration in formulating its recommendation to the court for sale approval;
- b. Reviewing the findings and conclusions of the Receiver regarding the affairs of the Respondents and suggesting further work for the Receiver to reasonably undertake;
- c. Representing Syndicated Investors and taking a position on behalf of them at relevant motions in the Proceedings;
- d. Where reasonably necessary, preparing and sending communications to Syndicated Investors to supplement the reporting of the Receiver; and

- e. Where necessary or required, executing any and all documents on behalf of the Syndicated Investors in connection with these Proceedings, including documents related to the sale of the Property.

9. **THIS COURT ORDERS** that Representative Counsel shall be given notice of all motions to which the Syndicated Investors are entitled to receive notice in the Proceedings and that it shall be entitled to represent those on whose behalf it is hereby appointed in all such motions.

10. **THIS COURT ORDERS** that Representative Counsel may rely upon the advice, information and instructions received from the Investor Representatives in carrying out the mandate of Representative Counsel without further communications with or instructions from the Syndicated Investors, except as may be recommended by Representative Counsel or ordered by this Court.

11. **THIS COURT ORDERS** that, with the exception of the Opt-Out Investors, (a) the Investor Representatives and Representative Counsel shall represent all Syndicated Investors on a collective basis in the Proceedings; and (b) the Syndicated Investors shall be bound by the actions and decisions of the Investor Representatives and Representative Counsel in the Proceedings.

12. **THIS COURT ORDERS** that Jacques Emond be named chairperson (the “**Chairperson**”), of the Investor Representatives.

13. **THIS COURT ORDERS** that the Receiver, in its discretion, is entitled to limit dissemination of commercially sensitive and or confidential information to the Chairperson and Representative Counsel, who shall be bound by a non-disclosure agreement in a form satisfactory to the Receiver, and who shall not, directly or indirectly, disclose any such information to the any person, including but not limited to the Syndicated Investors and the other Investor Representatives.

14. **THIS COURT ORDERS** that any of the Investor Representatives may resign or be replaced by Representative Counsel at any time and that, in the event of resignation or replacement,

Representative Counsel may appoint another Syndicated Investor as an Investor Representative in consultation with the Receiver.

15. **THIS COURT ORDERS** that Representative Counsel shall have no right or obligation to investigate or pursue litigation claims or any potential litigation claims in connection with the investment of monies in the Debtors by the Syndicated Investors.

16. **THIS COURT ORDERS** that Representative Counsel shall be at liberty and is hereby authorized, at any time, to apply to this Court for advice and directions in respect of its appointment, carrying out its duties as Representative Counsel, or varying the powers and duties of Representative Counsel, which shall be brought on notice to the Receiver and other interested parties, unless otherwise ordered by the Court.

17. **THIS COURT ORDERS** that the Investor Representatives shall incur no liability or obligations in respect of the performance of their duties or in carrying out the provisions of this Order; and that Representative Counsel shall incur no liability or obligations in respect of the performance of its duties or in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or willful misconduct.

18. **THIS COURT ORDERS** that no action or other proceeding may be commenced against Representative Counsel or the Investor Representatives in respect of the performance of their duties under this Order without prior leave of the Court on at least seven (7) days' notice to Representative Counsel, the Receiver, and any other interested parties.

19. **THIS COURT ORDERS** that, Representative Counsel on behalf of the Syndicated Investors, is hereby authorized to instruct Community Trust Company ("**Community Trust**") to execute any and all documents as may be necessary or required in connection with these Proceedings, including documents related to the sale of the Property, distribution of sale proceeds, if any, and postponement or subordination of the mortgage held by Community Trust in trust for its clients that are Syndicated Investors.

20. **THIS COURT ORDERS** that Community Trust, in its capacity as a registered account trustee for its clients that are Syndicated Investors, is hereby authorized to rely on instructions given to it by the Representative Counsel in accordance with paragraph 19.

21. **THIS COURT ORDERS** that Representative Counsel shall be paid its reasonable fees from January 10, 2020 onward from the proceeds of the sale of the assets of the Debtors, up to a maximum of \$75,000.00 plus applicable disbursements and taxes (the “**Fee Allowance**”). Representative Counsel shall be paid by the Debtors in a timely manner for fulfilling its mandate in accordance with this Order, on the delivery of invoices to the Receiver, subject to such redactions to the invoices as are necessary to maintain solicitor-client privilege between Representative Counsel and the Syndicated Investors, following approval of such invoices from the Court. Representative Counsel shall seek the approval of its fees and disbursements by this Court. The Fee Allowance is intended to pay all of Representative Counsel’s fees and disbursements through to the conclusion of the Proceedings, however Representative Counsel shall be entitled to apply to this Court for an increase in the Fee Allowance, if required and necessary to fulfill its mandate.

22. **THIS COURT ORDERS** that, as security for payment of Representative Counsel’s reasonable fees and disbursements incurred from January 10, 2020 onward, such fees and disbursements shall be secured by a charge (the “**Representative Counsel’s Charge**”) on the assets of the Debtors, both before and after the making of this Order in respect of these Proceedings. The Representative Counsel’s Charge shall form a charge on the assets of the Debtors ranking subordinate to: i) any encumbrances or charges created by the Initial Order; ii) the mortgage held by the Applicant and any other security held by the Applicant to secure payment of the obligations and indebtedness owed to the Applicant by the Respondents including the Business Loan General Security Agreements dated March 19, 2015 and assignment of rent agreements; iii) any amounts awarded pursuant to the application being commenced by the Corporation of the Town of Oakville (the “**Town**”) pursuant to the *Building Code Act* to confirm emergency orders issued by the Town pursuant to the *Building Code Act* and/or amounts added to the tax rolls against the Property, including without limitation amounts given priority lien status on account of remedial work performed by the Town on the Property as contemplated by the

Emergency Order issued by the Town on September 27, 2019 (the “**Emergency Order**”) and Order of the Honourable Justice McEwan dated November 5, 2019; and iv) any and/or all statutory liens, trust claims, charges or encumbrances arising under the *Income Tax Act*, *Excise Tax Act* and *Municipal Act, 2001*. The Representative Counsel’s Charge shall form a charge on the assets of the Debtors in priority to all other security interests, mortgages, liens, charges, trusts and in particular the Hi-Rise and/or Community Trust mortgages registered against the Property as Instrument Nos. HR1080407 and HR1100541.

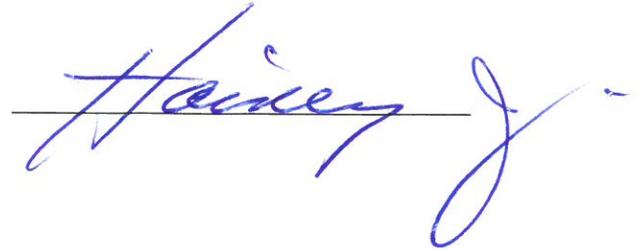
23. **THIS COURT ORDERS** that Representative Counsel shall pass its accounts from time to time, and for this purpose the accounts of Representative Counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

24. **THIS COURT ORDERS** that prior to the passing of Representative Counsel’s accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against the fees and disbursements of Representative Counsel, incurred at their standard rates and charges, and such amounts shall constitute advances against Representative Counsel’s remuneration and disbursements when and as approved by this Court.

25. **THIS COURT ORDERS** that, subject to any further Order of this Court, and without limitation to any other right or protection in favour of Representative Counsel: (i) Representative Counsel shall not be required to take any step or action if it reasonably believes that there will not be sufficient funds available under the Fee Allowance to complete such step or action; and (ii) Representative Counsel may apply to be discharged from its role at any time if Representative Counsel no longer wishes to continue in its role as such, including, without limitation, on the basis that Representative Counsel reasonably believes that there are insufficient funds available under the Fee Allowance to carry out the terms of this Order.

26. **THIS COURT ORDERS** that Representative Counsel shall mail a copy of this Order to the last known address of each Syndicated Investor within 10 days of the date of this Order or where a Syndicated Investor’s email address is known, the Order may be instead be sent by email.

27. **THIS COURT ORDERS** that in addition to paragraph 26 above, the Receiver shall post a copy of this Order on the website maintained by the Receiver with the following URL <https://www.spergelcorporate.ca/engagements/54-shepherd-road-inc-and-60-shepherd-road-inc/>.

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

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

JAN 21 2020

PER / PAR: 

SCHEDULE "A"
Moving Parties

SCHEDULE "A"

List of individual investors (273) represented by DS Lawyers Canada LLP as of January 20, 2020:

1. Amanda Lewis
2. Brooke Rabbie
3. Dale Rabbie
4. Denys Vermette
5. Donna Craig
6. Graham Webb
7. James (Jake) Zink
8. Louise Roy
9. Marilyn Stimac
10. Nikola (Nick) Stimac
11. Nelson Viegas
12. Pierre Secretain
13. Rafal Ksiezopolski
14. Sally Leon
15. Wayne French
16. Willy Heidebrecht
17. Susie Ho Soon Kang
18. Doug Hicks
19. Richard (Rick) Gill
20. Sabah Sahib Muhsin
21. Cathy Coplea
22. Zoraida (Julia) Paton
23. Deborah (Debbie) Rocano
24. Rosemary Heneghan
25. Greg Moore
26. Michael (Mike) D. Moore
27. Kathleen Moore
28. Trevor Holliday
29. Dale Holliday
30. Margaret (Lynn) McLean
31. Mario Laplante
32. Laurie Grundy
33. Ron Smeathers
34. Grace Tian
35. Weitai Tan
36. Zhiying Wu
37. Brian Campagnola
38. Max Neiman
39. Robert Murdock

40. Brian Gilman
41. George Findlay
42. Luc Bedard
43. Suzanne Bedard
44. Tanya Bedard
45. Eric Bedard
46. Gina Alderson
47. Gerard (Gerry) Chenier
48. Robert Barrow
49. Rachel O'Neil
50. William McGahern
51. Gary White
52. Marc Trudeau
53. Hazel Bennett
54. AMTEL Ltd c/o Alexander Chryssoulis
55. Jaroslaw Schabowski
56. Therese Michel-Mansour
57. Kamal Mansour
58. Mark Mansour
59. Regina Ksiezopolska
60. Jerzy (Jerry) Ksiezopolska
61. Jacques Gagnon
62. George Brisson
63. Peter Hyde
64. Beverley Hyde
65. James Farrell
66. Ronald (Ron) Brownrigg
67. Timothy Brownrigg
68. Blake Cushing
69. David Graham
70. Catherine James
71. Stewart James
72. Kenneth Cunningham
73. Barbara Cunningham
74. Liviu Sabou
75. Ross Hadwen
76. Eric West
77. Lutz Tischendorf
78. Zbigniew Pronski
79. Karin (Liz) Hytonen
80. Bruce Bonaney
81. Arlene Mercer
82. Kenneth Frey

83. Kathleen Smith-Blair
84. Michael Blaire
85. Adolfo Proietti
86. Rosemary Henry
87. Peter Nooyen
88. Frank Mio
89. George Vlahos
90. Diane Thauvette
91. Keith Running
92. Michael Lawson
93. Marie-Josée Krose
94. Barry Krose
95. Elise Kauder
96. Diane Hillary
97. Paul Toogood
98. 1248673 Ontario Inc c/o Jacques Emond
99. Stanley Smith
100. Marilyn Logan c/o Gail Deacon
101. Jerzy Malarski
102. Lyne Desjardins
103. Mary Lynn Smendziuk
104. Ritchie Smendziuk
105. Gordon Hutcheson
106. Francoise Hutcheson
107. Sheryle Braaten
108. Katherine Phelps
109. Jonathan Johnson
110. Robert Nicholls
111. Jean-Marc Cusson
112. Krystyna Młodzianowska
113. Danny (Dan) Gracey
114. Jacek Kupinski
115. Urszula Kupinska
116. Roman Ploski
117. Zbigniew Wysoczanski
118. Randy Cooper
119. Jozef Luczka
120. Howard Fruitman
121. 1248677 Ontario Inc c/o George Rontiris
122. Marie-Helene Taillon
123. Patrick Taillon
124. David Michael
125. Ekke Wigboldus

126. Andrzej Pokora
127. Andrzej Siemianowski
128. Randy Miller
129. Sunil Lathia
130. Michael McGahern
131. Franco Papaloni
132. Eric Crane
133. Jan Szoltysek
134. Gerald Rellinger
135. Mary Megan Lewis
136. International Arts Investments Inc. c/o William Bethel
137. John Landolfi
138. Carolyn Musselman
139. Elaine Chin
140. Craig Allen
141. Ryzard Gizara
142. Judith Hicks
143. Andres Gonzalez
144. Josette d'Entremont
145. Mike McGahern
146. Steven Hill
147. Jamie Purvis
148. Vicki Purvis
149. Sina Muscati
150. John Devries
151. Phil Chouinard
152. France Chouinard
153. Martin McNeil
154. Jeff Stal
155. Bruno Belfiglio
156. Carl Boswick
157. Nadia Ruffolo
158. Marius Kimel
159. Susanne Loerius
160. Angela Bugden-Saunders
161. Ann Boswick
162. Barbara Buchanan
163. Carole L'ecuyer
164. Robert Tremblay
165. Carolyn Briggs
166. Cherry Flemming-LaFleur
167. Elizabeth MacKay
168. Eric Murphy

169. Gerard Lessard
170. Gordon MacKenzie
171. Jason Timms
172. John Randles
173. Judi Randles
174. Karen Seguin
175. Kathy Powers
176. Kim Mussa
177. Linda White
178. Mahad Mussa
179. Martin MacNeil
180. Mary Sullivan-Surette
181. Norman Gosse
182. Paul Pugh
183. Joanne Pugh
184. Renda Bouzayen
185. Mistral Physician Inc.
186. Robert Logan
187. Roger Surette
188. Roy Velemirovich
189. Steve McMullin
190. Trevor Stienburg
191. Steven Rotiroti
192. Connie MacLaren
193. Clare Foster
194. Peter Phillips
195. Danik Ouimet
196. Heidi Oeschger
197. Linus Oeschger
198. Celine Dagenais
199. Denis Larocque
200. Laura-Lee Guilbeault
201. William Guilbeault
202. Susan Heidebrecht
203. Lucien Martel
204. Murielle Martel
205. Janie Greenberg
206. Georgette Patenaude
207. Rose Dardis
208. Beverley McAllister
209. Michael McAllister
210. Agnes Cruz
211. Aaron Zanger

212. Cedric Inglis
213. Malcom Gould
214. Vincenza Jenny Gould
215. Tony Blom
216. Helena Mampe
217. Carol Wambolt
218. Jean Hibbs
219. Barbara Fraughton
220. Diana Johnson
221. Neil Tramble
222. Paul Teitelman
223. Roger Moryoussef
224. William Stubbins
225. 2366626 Ontario Inc
226. Elaine Spriel
227. Joanne Argall
228. Kenneth James Boldt
229. Larry Boldt
230. Martin Donnelly
231. Ronald Temple
232. Zachary Rinaldo
233. Philip Oliveira
234. George Merke
235. Karen Becker
236. Theresa Hawley
237. Michael Steirman Medicine Professional Corporation
238. Kathryn Tucker
239. Mathieu Quesnel
240. John Bray
241. Sheridan Custom Installations Ltd
242. Scott Johnson
243. Chantal Richer
244. Simon Ford
245. Hugo Koch
246. Brett Lewington
247. Linda Cooper
248. Robin Valadares
249. Dana Clark
250. Teymur Mammadov
251. Elizabeth Malemo
252. Shannon Shedden
253. Jason Shedden
254. Stephanie Sharer

- 255. Paul Teitelman
- 256. Bert Rebelo
- 257. Lilia Rebelo
- 258. Doreen Rebelo
- 259. Jonathan Rebelo
- 260. Nicole Strampel
- 261. JT Strampel
- 262. Brien Meikle
- 263. Michael Fronteddu
- 264. Onofrio Ragu
- 265. Anna Walaszek
- 266. Farhana Haji
- 267. Naz Bhanji
- 268. Ed Raymond
- 269. Stuart Graham
- 270. Lucien Martel
- 271. Sonia Racine
- 272. Rob Cameron
- 273. Louise Samson

SCHEDULE "B"

OPT-OUT NOTICE

**IN THE MATTER OF THE RECEIVERSHIP OF 54 SHEPHERD ROAD
INC. AND 60 SHEPHERD ROAD INC.
COURT FILE NO. CV-19-00628680 (the "Proceedings")**

**TO: msi Spergel Inc. in its capacity as Court-appointed Receiver of 54 Shepherd
Inc. and 60 Shepherd Inc. (the "Receiver")**

Suite 1602 - 21 King Street W
Hamilton, ON L8P 4W7

email - tpringle@spergel.ca
fax - F (905) 527-6670

AND TO: DS Lawyers Canada LLP

1804 - 8 King Street E.
Toronto, ON M5C 1B5
c/o Jason Dutrizac

Email – jdutrizac@dsavocats.ca
Fax – (416) 214-1374

I HEREBY provide written notice that I do not wish to be represented in the Proceedings by DS Lawyers Canada LLP, representative counsel ("**Representative Counsel**") for the individuals who invested funds in a syndicated mortgage investment administered by Hi-Rise Capital Ltd. ("**Hi-Rise**") in respect of a proposed real estate development owned by the Respondents 54 Shepherd Road Inc. and 60 Shepherd Road Inc. (the "**Debtors**"). I understand that, by opting out of representation, if I wish to take part in the Proceedings, I will need to do so as an independent party. I am responsible for retaining my own legal counsel should I choose to do so, and that I would be personally liable for the costs of my own legal representation. I understand that unless I notify the Receiver in writing that I wish to be added to the service list in the Proceedings, I will not be entitled to any further notice in connection with the Proceedings.

Date

Signature

Name (print): _____

Witness

FIRSTONTARIO CREDIT UNION LIMITED v. 54 SHEPHERD ROAD INC. et al
Applicant **Respondents**

ONTARIO
SUPERIOR COURT OF JUSTICE --
COMMERCIAL LIST

PROCEEDING COMMENCED AT
TORONTO

ORDER

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Proposed Representative Counsel