

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

**98 JAMES SOUTH (2022) INC. and 98 JAMES SOUTH (2022) LIMITED
PARTNERSHIP**

Respondents

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

**APPLICATION RECORD
(Returnable April 15, 2024
Appointment of a Receiver)**

March 27, 2024

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

Laura Culleton (LSO No. 82428R)

Tel: (416) 218-1128

Email: laurac@chaitons.com

Lawyers for the Applicant

TO: **SERVICE LIST**

SERVICE LIST

<p>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9</p> <p>Maya Poliak Tel: (416) 218-1161 Email: maya@chaitons.com</p> <p>Laura Culleton Tel: (416) 218-1128 Email: laurac@chaitons.com</p> <p>Lawyers for MarshallZehr Group Inc.</p>	<p>98 JAMES SOUTH (2022) INC. and 98 JAMES SOUTH (2022) LIMITED PARTNERSHIP 385 Madison Avenue, Toronto, ON M4V 2W7</p> <p>Email: hunter@milborne.com mgillam@gillamgroup.com</p>
<p>KSV RESTRUCTURING INC. 220 Bay Street, 13th Floor Toronto, ON M5J 2W4</p> <p>Noah Goldstein Tel: (416) 932-6207 Email: ngoldstein@ksvadvisory.com</p> <p>Proposed Receiver</p>	<p>HUE DEVELOPMENTS & INVESTMENTS CANADA INC. 100 Consillium Place, 200 Toronto, ON M1H 3E3</p>
<p>DEPARTMENT OF JUSTICE Tax Law Services Division 120 Adelaide Street West, Suite 400 Toronto, Ontario M5H 1T1</p> <p>Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</p> <p>Lawyers for Canada Revenue Agency</p>	<p>HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO AS REPRESENTED BY THE MINISTER OF FINANCE Insolvency Unit 33 King Street West, 6th floor Oshawa, Ontario L1H 8H5</p> <p>Email: insolvency.unit@ontario.ca</p>

Email Service List:

Maya@chaitons.com
laurac@chaitons.com
hunter@milborne.com
mgillam@gillamgroup.com
ngoldstein@ksvadvisory.com
AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca
insolvency.unit@ontario.ca

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Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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MARSHALLZEHR GROUP INC.

Applicant

- and -

**98 JAMES SOUTH (2022) INC. and 98 JAMES SOUTH (2022) LIMITED
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NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing

- In writing
- In person
- By telephone conference
- By video conference

on **Monday, April 15, 2024, at 10:30 a.m.**

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of

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appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date March 21, 2024 Issued by Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto, Ontario M5G 1R7

TO: **98 JAMES SOUTH (2022) INC.**
385 Madison Avenue,
Toronto, ON M4V 2W7

AND TO: **98 JAMES SOUTH (2022) LIMITED
PARTNERSHIP**
385 Madison Avenue,
Toronto, ON M4V 2W7

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APPLICATION

1. The Applicant, MarshallZehr Group Inc. (the “**Lender**”), makes application for:
 - (a) if necessary, an order validating service of this Notice of Application and the Application Record in the manner effected, abridging the time for service thereof, and dispensing with service thereof on any party other than the parties served;
 - (b) an order appointing KSV Restructuring Inc. (“**KSV**”) as receiver (“**Receiver**”) of the property, assets and undertaking of the respondents, 98 James South (2022) Inc. and 98 James South (2022) Limited Partnership (the “**Respondents**”) pursuant to Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3 (the “**BIA**”), and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”); and
 - (c) such further and other relief as this Honourable Court may deem just.

2. The grounds for the application are:

The Debtor and the Property

- (a) 98 James South (2022) Inc. (“**98 James Inc.**”) is a corporation governed by the *Business Corporations Act* (Ontario) and has its registered office located in Toronto, Ontario. The sole listed officer and director of 98 James Inc. is Michael Budovitch.

- (b) 98 James South (2022) Limited Partnership (“**98 James LP**”) is an Ontario limited partnership established pursuant to the Limited Partnerships Act (Ontario) and has

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its principal place of business in Toronto, Ontario. 98 James Inc. is the general partner to 98 James LP.

- (c) 98 James Inc. is the registered owner of real property municipally known as 98 James Street South, Hamilton, Ontario (the “**Real Property**”).
- (d) 98 James Inc. is in the process of developing the Real Property into a 30-storey high-density mixed-use building with 315 residential condominium units and 2,885 square feet for commercial area (the “**Project**”).
- (e) 98 James Inc. purchased the Real Property from Hue Developments & Investments Canada Inc. (“**Hue Developments**”) in 2022. The sale transaction was funded by a vendor take-back mortgage from Hue Developments and a loan made by the Lender.

Loan and Security

- (f) Pursuant to a commitment letter dated August 19, 2022, as amended (the “**Commitment Letter**”), the Lender made available to 98 James Inc. a loan in the principal amount of \$12.0 million to 98 James Inc. (the “**Loan**”) for the purpose of, among other things, acquiring the Real Property and to provide pre-construction financing. Interest was to be paid monthly, on the first day of each month, in arrears.
- (g) As security for the Loan, 98 James Inc. granted, among other things, the following:

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- (i) (a) a first ranking Charge/Mortgage registered on title to the Real Property on September 9, 2022 in the principal amount of \$13.2 million as Instrument No. WE1632777 (the “**Lender’s Charge**”);
 - (ii) a Notice of Assignment of Rents – General registered on title to the Real Property on September 9, 2022 as Instrument No. WE1632778;
 - (iii) a General Security Agreement dated September 9, 2022 (the “**GSA**”, together with the Lender’s Charge, the “**Security**”).
- (h) Pursuant to the terms of the Lender’s Charge and the GSA, failure by 98 James Inc. to pay principal or interest when due is an event of default. 98 James Inc. has also agreed that, upon default, the Lender is entitled to appoint a receiver in writing and/or make an application for the court appointment of a receiver.

Default and Demand

- (i) 98 James Inc. failed to make the interest payments that were due on November 1, 2023 and December 1, 2023.
- (j) As a result, on December 4, 2023, the Lender demanded payment of 98 James Inc.’s indebtedness in the amount of \$12,265,947.24 and delivered a notice of intention to enforce security under section 244 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”).

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Just and Convenient to Appoint a Receiver

- (k) The Lender has received no payments from the Respondents since demand was made.
- (l) 98 James Inc. owes in excess of \$12.0 million to the Lender.
- (m) No further payments have been made to the Lender since the date of demand.
- (n) 98 James Inc. does not currently have the means to advance construction on the Real Property and the Real Property has remained at the site plan approval stage since it was sold to 98 James Inc. in 2022.
- (o) It is in the best interests of the Lender and 98 James Inc.'s creditors generally, and is just and convenient, to appoint a Receiver to take control and realize on the Real Property.
- (p) KSV has agreed to accept the appointment as Receiver.

Statutory and Other Grounds

- (q) Section 243 of the *BIA*, and Section 101 of the *CJA*.
- (r) Rules 1.04(1), 1.05, 2.01, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*.
- (s) Such further and other grounds as counsel may advise and this Honourable Court permits.

3. The following documentary evidence will be used at the hearing of the application:

- 7 -

- (a) the affidavit of Cecil Hayes sworn February 28, 2024 and the exhibits thereto; and
- (b) such further and other evidence as counsel may advise and this Honourable Court may permit.

March 21, 2024

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

Laura Culleton (LSO No. 82428R)

Tel: (416) 218-1128

Email: laurac@chaitons.com

Lawyers for the Applicant

MARSHALLZEHR GROUP INC.
Applicant

-and-

98 JAMES SOUTH (2022) INC. ET AL.
Respondents

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF APPLICATION

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

Laura Culleton (LSO No. 82428R)

Tel: (416) 218-1128

Email: laurac@chaitons.com

Lawyers for the Applicant

TAB 2

Court File No.

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AFFIDAVIT OF CECIL HAYES

(sworn February 28, 2024)

I, Cecil Hayes, of the City of Waterloo, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of the Applicant, MarshallZehr Group Inc. (the “**Lender**”). The facts below are within my personal knowledge or determined from the face of the documents attached as exhibits and from information and advice provided to me by others. When matters are based upon information and advice received from others, I have identified the source of the information and advice and believe it to be true.
2. This affidavit is sworn in support of the application by the Lender for the appointment of KSV Restructuring Inc. (“**KSV**”) as receiver (“**Receiver**”) of the property, assets and undertakings

of the respondents, 98 James South (2022) Inc. and 98 James South (2022) Limited Partnership (the “**Respondents**”).

THE PARTIES

3. 98 James South (2022) Inc. (“**98 James Inc.**”) is a corporation governed by the *Business Corporations Act* (Ontario) and has its registered office located in Toronto, Ontario. 98 James Inc. was incorporated on August 23, 2022. The sole listed officer and director of 98 James Inc. is Michael Budovitch. A copy of the Profile Report for 98 James Inc. is attached as **Exhibit “A”** to this affidavit.

4. 98 James South (2022) Limited Partnership (“**98 James LP**”) is an Ontario limited partnership established pursuant to the *Limited Partnerships Act* (Ontario) and has its principal place of business in Toronto, Ontario. 98 James Inc. is the general partner to 98 James LP. A copy of the Profile Report for 98 James LP is attached as **Exhibit “B”** to this affidavit.

5. 98 James Inc. is the registered owner of real property municipally known as 98 James Street South, Hamilton, Ontario (the “**Real Property**”). A copy of the parcel register for the Real Property is attached as **Exhibit “C”** to this affidavit.

6. The Lender is an Ontario corporation that syndicates construction and development financing to commercial borrowers. The financing is sourced from institutional and private lenders. The Lender is also a licensed mortgage brokerage and mortgage administrator.

FINANCING FOR 98 JAMES INC.

7. 98 James Inc. is in the process of developing the Real Property into a 30-storey high-density mixed-use building with 315 residential condominium units and 2,885 square feet for commercial area (the “**Project**”).

8. 98 James Inc. purchased the Real Property from Hue Developments & Investments Canada Inc. (“**Hue Developments**”) in 2022. The sale transaction was funded by a vendor take-back mortgage from Hue Developments and a loan made by the Lender.

9. Pursuant to a commitment letter dated August 19, 2022, as amended (the “**Commitment Letter**”), the Lender made available to 98 James Inc. a loan in the principal amount of \$12.0 million to 98 James Inc. (the “**Loan**”) for the purpose of, among other things, acquiring the Real Property and to provide pre-construction financing. Interest was to be paid monthly, on the first day of each month, in arrears. A copy of the Commitment Letter is attached as **Exhibit “D”** to this affidavit.

Security

10. As security for the Loan, 98 James Inc. granted, among other things, the following security documents in favour of the Lender (collectively, the “**Lender’s Security**”):

- (a) a first ranking Charge/Mortgage registered on title to the Real Property on September 9, 2022 in the principal amount of \$13.2 million as Instrument No. WE1632777 (the “**Lender’s Charge**”), a copy of which is attached as **Exhibit “E”** to this affidavit;

- (b) a Notice of Assignment of Rents – General registered on title to the Real Property on September 9, 2022 as Instrument No. WE1632778, a copy of which is attached as **Exhibit “F”** to this affidavit; and
- (c) a General Security Agreement dated September 9, 2022 (the “**GSA**”), a copy of which is attached as **Exhibit “G”** to this affidavit.

11. Pursuant to the terms of the Lender’s Charge and the GSA, failure by 98 James Inc. to pay principal or interest when due is an event of default. 98 James Inc. has also agreed that, upon default, the Lender is entitled to appoint a receiver in writing and/or make an application for the court appointment of a receiver.

OTHER CREDITORS

Real Property Charges

12. In addition to the Lender’s Charge, a \$14.0 million charge/mortgage (the vendor take-back mortgage) in favour of Hue Developments was registered against title to the Real Property on September 9, 2022 as Instrument No. WE1632779 (the “**Hue Developments Charge**”), a copy of which is attached as **Exhibit “H”** to this affidavit. The Hue Developments Charge is subordinate to the Lender.

PPSA

13. I am advised by Chaitons that the only financing statement registered against 98 James Inc. under the *Personal Property Security Act* (Ontario) (the “**PPSA**”) as of January 28, 2024 was registered by the Lender on September 8, 2022 for collateral classified as “accounts” and “other”. A copy of the *PPSA* search result for 98 James Inc. current as of January 28, 2024 is attached as **Exhibit “I”** to this affidavit.

14. I am further advised by Chaitons that the only financing statement registered against 98 James LP under the *Personal Property Security Act* (Ontario) (the “**PPSA**”) as of January 28, 2024 was registered by the Lender on September 8, 2022 for collateral classified as “accounts” and “other”. A copy of the *PPSA* search result for 98 James LP current as of January 28, 2024 is attached as **Exhibit “J”** to this affidavit.

DEMAND

15. 98 James Inc. failed to make the interest payments that were due on November 1, 2023 and December 1, 2023. As a result, on December 4, 2023, the Lender demanded payment of 98 James Inc.’s indebtedness in the amount of \$12,265,947.24 and delivered a notice of intention to enforce security under section 244 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”). A copy of the demand letter and the 244 BIA Notice is attached as **Exhibit “K”** to this affidavit.

16. As of the date of the swearing of this affidavit, the Lender has received no payment from the Respondents since demand was made.

JUST AND CONVENIENT TO APPOINT A RECEIVER

17. 98 James Inc. owes in excess of \$12.0 million to the Lender.

18. No further payments have been made to the Lender since the date of demand.

19. I have had communications with representatives for 98 James Inc. and was advised that 98 James Inc. does not currently have the means to advance construction on the Real Property and the Real Property has remained at the site plan approval stage since it was sold to 98 James Inc. in 2022.

20. In these circumstances, I believe it is in the best interests of the Lender and the Respondents' stakeholders generally that a receiver be appointed to take control over and realize on the Real Property and the Respondents' other property and assets through an open and transparent process.

21. The Lender proposes that KSV be appointed as Receiver.

SWORN BEFORE ME over videoconference on this 28 day of February, 2024. The affiant was located in the City of Las Vegas in the State of Nevada and the commissioner was located in the City of Toronto, in the Province of Ontario. This affidavit was commissioned remotely in accordance O. Reg. 431/20, Administering Oath or Declaration Remotely



22.

Laura Culleton

Commissioner for Taking Affidavits
(or as may be)

DocuSigned by:

6697E6642B774AE...

CECIL HAYES

This is Exhibit "A" referred to in the
affidavit of Cecil Hayes sworn February 28, 2024

A handwritten signature in blue ink, appearing to be "A. Hayes", written in a cursive style.

A Commissioner for the Taking of Affidavits



Profile Report

98 JAMES SOUTH (2022) INC. as of January 29, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	98 JAMES SOUTH (2022) INC.
Ontario Corporation Number (OCN)	1000292542
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	August 23, 2022
Registered or Head Office Address	385 Madison Avenue, Toronto, Ontario, Canada, M4V 2W7

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name MICHAEL BUDOVITCH
Address for Service 4003 Bayview Avenue, Suite 610, Toronto, Ontario, Canada,
M2M 3Z8
Resident Canadian No
Date Began September 16, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Active Officer(s)

Name

MICHAEL BUDOVITCH

Position

President

Address for Service

4003 Bayview Avenue, Suite 610, Toronto, Ontario, Canada,
M2M 3Z8

Date Began

September 16, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Corporate Name History

Name

98 JAMES SOUTH (2022) INC.

Effective Date

August 23, 2022

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V. Quintanilla W.

Director/Registrar

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Active Business Names

This corporation does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

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V. Quintanilla W.

Director/Registrar

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Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: DAVID CHAPMAN	December 19, 2022
CIA - Notice of Change PAF: David CHAPMAN	October 03, 2022
CIA - Initial Return PAF: David CHAPMAN	August 23, 2022
BCA - Articles of Incorporation	August 23, 2022

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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This is Exhibit "B" referred to in the
affidavit of Cecil Hayes sworn February ²⁸, 2024



A Commissioner for the Taking of Affidavits



Profile Report

98 JAMES SOUTH (2022) LIMITED PARTNERSHIP as of January 29, 2024

Act	Limited Partnerships Act
Type	Ontario Limited Partnership
Firm Name	98 JAMES SOUTH (2022) LIMITED PARTNERSHIP
Business Identification Number (BIN)	1000299658
Declaration Status	Active
Declaration Date	August 30, 2022
Expiry Date	August 29, 2027
Principal Place of Business	385 Madison Avenue, Toronto, Ontario, Canada, M4V 2W6
Activity (NAICS Code)	551 - Management of companies and enterprises

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

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General Partners

Number of General Partners 1

Partners

Partner 1

Name	98 JAMES SOUTH (2022) INC.
Ontario Corporation Number (OCN)	1000292542
Entity Type	Ontario Business Corporation
Registered or Head Office Address	385 Madison Avenue, Toronto, Ontario, Canada, M4V 2W7

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Firm Name History

Name

98 JAMES SOUTH (2022) LIMITED PARTNERSHIP

Effective Date

August 30, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report.

Additional historical information may exist in paper or microfiche format.

Active Business Names

This entity does not have any active business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Expired or Cancelled Business Names

This entity does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

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Document List

Filing Name	Effective Date
LPA - File a Declaration of an Ontario Limited Partnership	August 30, 2022

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

V. Quintanilla W.

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

This is Exhibit "C" referred to in the
affidavit of Cecil Hayes sworn February 28, 2024

A handwritten signature in blue ink, appearing to be "A. Williams", written in a cursive style.

A Commissioner for the Taking of Affidavits

LAND
REGISTRY
OFFICE #62

17171-0260 (LT)

PAGE 1 OF 3
PREPARED FOR DePinto1
ON 2024/01/29 AT 09:58:59

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

PROPERTY DESCRIPTION: PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; EXCEPT PT 1, 62R21103; CITY OF HAMILTON

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:

DIVISION FROM 17171-0009

PIN CREATION DATE:

2019/04/25

OWNERS' NAMES

98 JAMES SOUTH (2022) INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2019/04/25 **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 2008/09/22 **						
NOTE: THE NO DEALINGS INDICATOR IS IN EFFECT ON THIS PROPERTY						
VM36576	1990/02/16	BYLAW				C
VM60787	1990/09/07	AGREEMENT			THE CORPORATION OF THE CITY OF HAMILTON	C
REMARKS: HISTORICAL EASEMENT						
VM111553	1992/02/17	NOTICE OF CLAIM				C
WE1313543	2018/10/05	APL VESTING ORDER	\$8,500,000	ONTARIO SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST	HUE DEVELOPMENTS & INVESTMENTS CANADA INC.	C
REMARKS: DELETES WE903381, WE998973, WE998974, WE1029640, WE1048981, WE1048982, WE1048988, WE1048989, WE1111875, WE1141288, WE114L293, WE1141294, WE1231330, WE1242330 AND WE1244869						
WE1313566	2018/10/05	CHARGE		*** DELETED AGAINST THIS PROPERTY *** HUE DEVELOPMENTS & INVESTMENTS CANADA INC.	368230 ONTARIO LIMITED	
WE1313571	2018/10/05	NO ASSGN RENT GEN		*** DELETED AGAINST THIS PROPERTY *** HUE DEVELOPMENTS & INVESTMENTS CANADA INC.	368230 ONTARIO LIMITED	

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
<i>REMARKS: WE1313566.</i>						
62R21103	2019/02/22	PLAN REFERENCE				C
WE1365529	2019/07/05	CHARGE		*** COMPLETELY DELETED *** HUE DEVELOPMENTS & INVESTMENTS CANADA INC.	ALLDANN INC.	
WE1369352	2019/07/24	NOTICE	\$2	HUE DEVELOPMENTS & INVESTMENTS CANADA INC.		C
WE1387918	2019/10/17	NOTICE		*** COMPLETELY DELETED *** HUE DEVELOPMENTS & INVESTMENTS CANADA INC.	ALLDANN INC.	
<i>REMARKS: AMENDS WE1365529</i>						
WE1390888	2019/10/30	NOTICE		*** COMPLETELY DELETED *** HUE DEVELOPEMENTS & INVESTMENTS CANADA INC.	368230 ONTARIO LIMITED	
<i>REMARKS: AMENDS WE1313566</i>						
WE1408764	2020/01/17	NOTICE		*** COMPLETELY DELETED *** HUE DEVELOPMENTS & INVESTMENTS CANADA INC.	ALLDANN INC.	
<i>REMARKS: WE1365529</i>						
WE1442356	2020/07/17	NOTICE		*** COMPLETELY DELETED *** HUE DEVELOPMENTS & INVESTMENTS CANADA INC.	ALLDANN INC.	
WE1487508	2021/02/01	CHARGE		*** COMPLETELY DELETED *** HUE DEVELOPMENTS & INVESTMENTS CANADA INC.	2810056 ONTARIO LIMITED PIZZARDI, GABRIELE COELHO, LUCIANO COELHO, IRENE AMOND MANAGEMENT INC.	
WE1487509	2021/02/01	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** HUE DEVELOPMENTS & INVESTMENTS CANADA INC.	2810056 ONTARIO LIMITED PIZZARDI, GABRIELE COELHO, IRENE COELHO, LUCIANO AMOND MANAGEMENT INC.	
<i>REMARKS: WE1487508</i>						
WE1487511	2021/02/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** ALLDANN INC.		
<i>REMARKS: WE1365529. WE1387918, WE1408764, WE1442356</i>						

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
WE1487717	2021/02/01	DISCH OF CHARGE		*** COMPLETELY DELETED *** 368230 ONTARIO LIMITED		
	REMARKS: WE1313566. WE1313571, WE1390888					
WE1559865	2021/11/09	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** MCCALLUM SATHER ARCHITECTS INC.		
WE1581344	2022/02/08	APL DEL CONST LIEN		*** COMPLETELY DELETED *** MCCALLUM SATHER ARCHITECTS INC.		
	REMARKS: WE1559865.					
WE1587705	2022/03/03	NOTICE		*** COMPLETELY DELETED *** LCH DEVELOPMENTS - 98 JAMES STREET INC.		
WE1632774	2022/09/09	TRANSFER	\$24,000,000	HUE DEVELOPMENTS & INVESTMENTS CANADA INC.	98 JAMES SOUTH (2022) INC.	C
	REMARKS: PLANNING ACT STATEMENTS.					
WE1632775	2022/09/09	DISCH OF CHARGE		*** COMPLETELY DELETED *** 2810056 ONTARIO LIMITED PIZZARDI, GABRIELE COELHO, LUCIANO COELHO, IRENE AMOND MANAGEMENT INC.		
	REMARKS: WE1487508.					
WE1632776	2022/09/09	APL (GENERAL)		*** COMPLETELY DELETED *** LCH DEVELOPMENTS - 98 JAMES STREET INC.		
	REMARKS: DELETE WE1587705					
WE1632777	2022/09/09	CHARGE	\$13,200,000	98 JAMES SOUTH (2022) INC.	MARSHALLZEHR GROUP INC.	C
WE1632778	2022/09/09	NO ASSGN RENT GEN		98 JAMES SOUTH (2022) INC.	MARSHALLZEHR GROUP INC.	C
	REMARKS: WE1632777					
WE1632779	2022/09/09	CHARGE	\$14,000,000	98 JAMES SOUTH (2022) INC.	HUE DEVELOPMENTS & INVESTMENTS CANADA INC.	C
WE1632780	2022/09/09	RESTRICTION-LAND		98 JAMES SOUTH (2022) INC.		C
	REMARKS: NO CHARGE WITHOUT THE CONSENT OF MARSHALLZEHR GROUP INC.					

This is Exhibit "D" referred to in the
affidavit of Cecil Hayes sworn February 28, 2024

A handwritten signature in blue ink, appearing to be "J. Hayes", written in a cursive style.

A Commissioner for the Taking of Affidavits



Friday, August 19, 2022

Hunter Milborne, Michael Budovitch and Marcus Gillam in Trust for a Corporation to be Incorporated
Address to be Confirmed

Attention: Michael Budovitch

Dear Michael Budovitch,

RE: Land Acquisition for 98 James Street South, Hamilton, ON

Project Name: 98 James Street S. – MZGI 485

This commitment letter confirms that MarshallZehr Group Inc. is prepared to provide financing as detailed in the document herein, conditional on the terms and conditions contained in this letter agreement (this "Commitment"). Upon execution by the Lender and the Obligors, this Commitment will constitute an agreement which shall bind each of them, subject to and in accordance with the terms hereinafter set out. All capitalized terms not otherwise defined in this Commitment shall have the meanings ascribed thereto in Appendix B.

A. LOAN

1. Borrower:

~~Hunter Milborne, Michael Budovitch and Marcus Gillam in Trust for a Corporation to be Incorporated~~
(the "Borrower").
98 JAMES SOUTH (2022) INC. ^{DS} ^{DS}
and 98 James South (2022) Limited Partnership ^{DS} ^{DS}

2. Guarantors:

Hunter Milborne, Marcus Gillam, together with such other related parties as the Lender may deem advisable, in its sole discretion (collectively, the "Guarantors").

3. Obligors:

Means, collectively, the Borrower and the Guarantors (collectively, the "Obligors" and each, an "Obligor").

4. Lender:

MarshallZehr Group Inc. and/or such other assignees or lenders as MarshallZehr Group Inc. may arrange to participate in the Loan (the "Lender").

5. Project Description

Those lands and premises together with all fixtures and improvements now or hereafter situate thereon municipally known as 98 James Street South, Hamilton, ON and legally described in Appendix A (the "Property").

The Project is to consist of the development of a 30-storey high-density mixed-use development consisting of 315 residential condominium units and 2,885 square feet for commercial area. The total gross floor area is 265,567 square feet on 0.323 acres of land (collectively, the "Project"). Additionally, the Lender understands that the Project has received the necessary Zoning and Site Plan Approval.

6. Loan Amount

\$12,000,000 (the "Loan" or "Loan Amount")

7. Interest Rate:

The Loan shall bear interest at the following rates (collectively, the "Interest Rate"):

Facility/Tranche	Interest Rate	Floor Rate
MZ Loan	Prime + 6.30% per annum	11.00%

Interest shall accrue commencing on the date of each Advance to the Lender's trust account and shall be calculated daily (365 days/year), compounded and payable monthly, in arrears and due and payable



on the first (1st) day of each month, both before and after the Maturity Date, Default, demand and judgment. Interest only payments in respect of the Loan shall be paid from the a) Interest Reserve, if applicable, or b) Borrower Draws up to the budgeted amount set out in the Sources and Uses of Funds herein. Once the budgeted amount has been utilized, interest payments shall be made from the Obligor's own cash resources.

Prime shall be defined as the Bank of Montreal Prime Business Rate of Interest (the "**Prime Rate**" or "**Prime**"). For the purpose of determining the Interest Rate, the Prime Rate on the first (1st) day of each month will be used as the rate for that entire month.

8. Fees:

The Borrower shall pay the following fees (collectively, the "**Fees**") to the Lender and the transaction mortgage broker, to the extent applicable:

Fee:	Amount
Good Faith Deposit	\$ 25,000
Lender Fee	\$ 240,000
Administration Fee	\$ 5,000
Final Discharge Fee	\$ 1,000
Pre-Payment Fee (per pre-payment)	\$ 1,000

The Lender Fee and Administration Fee shall each be deemed to be fully earned by the Lender and/or broker, as applicable, and non-refundable to the Borrower upon written notification by the Lender to the Borrower of the successful syndication as described in **Article A. 22.1**. The Lender Fee and Administration Fee, less the Good Faith Deposit, shall be deducted from the Initial Advance.

Notwithstanding **Article A. 22.1**, in the event that the Initial Advance does not occur on or prior to the Outside Date for any reason whatsoever, the (i) balance of the Lender Fee and Administration Fee shall immediately become due and payable by the Obligor to the Lender and (ii) Obligor shall be responsible for all expenses incurred by the Lender to date in connection with this Commitment, including, without limitation, the cost of any third party reports issued and/or in process and all legal fees and disbursements in connection with the Loan and/or the recovery of any portion of the balance of the unpaid Lender Fee and Administration Fee, to the extent applicable.

All applicable Fees are further detailed in Appendix G. The Borrower hereby acknowledges and agrees that the Fees set out above and in Appendix G herein are a genuine pre-estimate of the value of the services performed by the Lender and/or its Affiliates for same and are not a penalty or additional interest under the Loan.

9. Term:

The Loan shall mature (the "**Term**") and any outstanding balance shall become due and payable in full on the date (the "**Maturity Date**") that is the earlier of a) Nineteen (19) months commencing from the Interest Adjustment Date and b) the date on which the Lender demands repayment of the Loan.

10. Extension:

[Intentionally Deleted – N/A]

11. Wrap-Up Period

Commencing the final month (the "**Wrap-Up Period**") of the Term, or the Extension Term, as applicable, interest shall accrue at twice the Interest Rate (the "**Wrap-Up Rate of Interest**"). If there are multiple facilities or tranches, interest shall accrue at the Wrap-Up Rate of Interest and be calculated, compounded, and payable in the same manner as prior to entering the Wrap-Up Period for each applicable facility or tranche.

**12. Expenses**

All reasonable expenses of the Lender and the Borrower shall be paid by the Borrower including (but not limited to), the cost of any third-party reports, all legal costs regardless of whether the Borrower proceeds with the Loan, and any cost recovery of unpaid amounts, if required. Upon request by the Borrower, the Lender shall provide an estimate of the legal fees to be incurred by the Lender in connection with the preparation of the Security and the Initial Advance. Upon execution by the Borrower of this Commitment, the Obligors shall be responsible for all reasonable legal fees actually incurred by the Lender in connection herewith.

13. Demand and Cancellation

The Lender may, on demand, require immediate payment of all amounts outstanding or accrued in connection with this Commitment and the Loan. The Lender may at any time, for any reason, and without notice, cancel the undrawn portion of the Loan.

14. Purpose

The Loan shall at all times be used for the following purposes and for no other purpose without the prior written consent of the Lender:

Facility/Tranche	Description
MZ Loan	To acquire the Property located at 98 James Street South, Hamilton and provide pre-construction working capital

15. Sources and Uses of Funds

Uses	
Land Costs	\$ 25,600,000
Financing Costs	\$ 1,700,000
Total	\$ 27,300,000

Sources	
MZ Loan	\$ 12,000,000
Vendor Take-Back (VTB) Note	\$ 14,000,000
Cash Equity	\$ 1,300,000
Total	\$ 27,300,000

16. Initial Advance and Draw

The first advance and draw (the "Initial Advance" and "Draw 1", respectively) shall be advanced upon satisfaction of the conditions contained herein, including without limitation, **Articles B. 1.** thereof. The Initial Advance and Draw 1 is expected to be advanced as follows:

Use of Funds	Amount
Land Acquisition	\$ 9,000,000
Land – Working Capital	\$ 1,000,000
Land Transfer Taxes	\$ 300,000
Interest Reserve	\$ 1,440,000
Lender Fee	\$ 240,000
Legal & Admin Costs	\$ 20,000
Initial Advance Amount	\$ 12,000,000



17. Order of Advances [Intentionally Deleted -N/A]

18. Interest Reserve and Cost Reserve At the time of an Advance, the Lender may, at its sole discretion, hold back sufficient funds to fund ongoing interest (the "Interest Reserve") and/or Project Costs (the "Cost Reserve"), in each case, during the Term.

The Interest Reserve and the Cost Reserve (collectively, the "Reserves") shall be held in the Lender's trust account and shall be deemed to be principal advanced. Interest shall accrue at the Interest Rate on those funds held in the Reserves as if they had been paid directly to the Borrower. The Reserves, together with any interest earned thereon will be pledged by the Borrower to the Lender as security for the Loan. In the Event of Default under this Commitment and/or the Security, the Lender may apply, in its sole discretion, all or any part of the Reserves for payment of any principal, interest, fees, costs or other amounts payable under the Security.

In consideration of each Advance by the Lender to the Borrower, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Borrower, the Borrower hereby irrevocably authorizes and directs the Lender to:

- a) hold back sufficient funds from each Advance, as it may determine in its sole discretion, to fund the Reserves;
b) automatically debit the Interest Reserve for all payments of interest required hereunder; and
c) automatically debit the Cost Reserve for all payments of Project Costs required hereunder, including without limitation, payment of due and owing realty taxes in respect of the Property,

and this shall be the Lender's good, sufficient and irrevocable authority for so doing.

19. Partial Discharges and Mandatory Repayment [Intentionally Deleted - N/A]

20. Voluntary Pre-Payment The Loan may be prepaid in whole or in part at any time or times on the following terms:

- a) upon at least 60 days' prior written notice by the Borrower to the Lender in a form specified by the Lender;
b) in an amount not less than \$100,000 (the "Pre-Payment Proceeds") or, if a lesser amount, upon the Lender's prior written consent; and
c) payment by the Borrower to the Lender of the Pre-Payment Fee together with its solicitors' reasonable legal fees in respect thereof.

DocuSigned by HM Carr 6697E6642B7

20.1 - The Borrower can Payout the entirety of the Loan at any time during the 18th month of the Term on 3 Days' notice Any payments received by the Lender pursuant to this Article A. 20 shall be applied towards repayment of the Loan in the order set out in Article A. 21 below.

21. Allocation of Proceeds The Net Sale Proceeds and/or Pre-Payment Proceeds, as the case may be, shall be applied in the following order:

- a) as repayment of all accrued and unpaid interest due under the Loan; then

Without bonus, or Pre-Payment fee.



- b) as repayment of the outstanding principal balance due under the Loan

22. Special Provisions

The following special provisions shall apply to the Loan:

22.1. Syndication of the Loan

It is the Lender’s intention to syndicate all or a portion of the Loan on the terms and conditions satisfactory to it, in its sole discretion. All obligations of the Lender in connection with any such syndication aforesaid are conditional to the Lender. The Obligors hereby acknowledge and agree that the Lender may disclose confidential information relating to each of them, the Loan and/or the Security, including without limitation, any financial information provided by any of the Obligors to the Lender at any time or otherwise relating to the Property and the Project together with any and all plans, drawings or other documentation or information regarding the Property and the Project, including without limitation the Project Documents and the Project Plans. The Lender shall notify the Borrower in writing once all Initial Funding Conditions as specified in **Article B. 1.**, excluding **B 1.1 Security to Be Delivered**, have been met, in the Lender’s sole discretion. Upon receipt of notification that the Initial Funding Conditions have been met, the Lender shall, within fifteen (15) Business Days, notify the Borrower that the Loan has been successfully syndicated.

Notwithstanding anything contained in this Commitment to the contrary, in the event that the Lender is unable to syndicate the Loan:

- a) on the terms and conditions satisfactory to it, in its sole discretion, then this Commitment shall be null and void and the Lender shall have no obligation to advance the Loan to the Borrower. In such event, the Lender shall return to the Borrower all Fees, less the Good Faith Deposit and due diligence costs and legal fees incurred by the Lender up to such date as the Lender determines that it is unable to syndicate the Loan; or
- b) as a result of the Borrower’s Default, then this Commitment shall be null and void and the Lender shall have no obligation to advance the Loan to the Borrower. In such event, the Lender shall retain the Good Faith Deposit and the (i) balance of the Lender Fee and Administration Fee shall immediately become due and payable by the Obligors to the Lender and (ii) Obligors shall be responsible for all expenses incurred by the Lender to date in connection with this Commitment, including, without limitation, the cost of any third party reports issued and/or in process and all legal fees and disbursements in connection with the Loan and/or the recovery of any portion of the balance of the unpaid Lender Fee and Administration Fee, to the extent applicable.

22.2. Permitted Encumbrances

The Lender hereby acknowledges and consents to the following prior ranking charges/mortgages of land that have been or will be registered against title to the Property as of the date of the Initial Advance (collectively, the “Permitted Encumbrances”):


- a) A \$14,000,000 2nd priority vendor take-back mortgage registered on the Property by Hue Developments & Investments Canada Inc.

The particulars of the Permitted Encumbrances are set out in Appendix A.

The Borrower shall not enter into any further financing of the Property and/or the Project subsequent to the Loan, secured or unsecured, without the prior written consent of the Lender, which consent shall be in the Lender’s sole discretion.

~~22.3. Standby Interest~~ ~~The Initial Advance and Draw 1 shall be completed on the date (the “Standby Date”) that is not less than (3) business days following the later of:~~

Intentionally Deleted

DocuSigned by:  DS
 6697E6642B774AE...



~~a) notification by the Lender to the Borrower that the Loan has been successfully syndicated; or.~~

DS
HM

~~b) Receipt by the Lender of the Borrower's executed advance requests in the forms provided by the Lender.~~

DocuSigned by:
Curtis Hays
6697E6642B774AE

~~In the event that the Initial Advance and Draw 1 has not been fully advanced to the Borrower by the Standby Date, for any reason other than a default by the Lender, interest will commence on the Standby Date (the "Standby Interest") on any unadvanced portion of Draw 1 and will become due and payable monthly at a rate equal to the applicable Interest Rate set out herein until the earlier of Draw 1 being fully advanced and the termination of this Commitment without Draw 1 having been made. Any accrued and unpaid Standby Interest shall be payable at the time that Draw 1 is fully advanced by the Lender to the Borrower and shall be deducted therefrom.~~

~~In the event that this Commitment is terminated prior to the advance of Draw 1, the amount of Standby Interest shall immediately become due and payable by the Obligors in addition to any other rights and/or remedies which the Lender may have against the Obligors hereunder, at law or otherwise. The Obligors hereby acknowledge and agree that the Standby Interest is a reasonable estimate of the fees to be incurred by the Lender, which amount is deemed not to be a penalty.~~ *Intentionally Deleted*

22.4. Other Terms

The definitions, terms and conditions set out in Appendices attached to this Commitment shall form a part hereof as if incorporated herein.

[This space intentionally left blank]



B. TERMS AND CONDITIONS

The Loan terms and conditions shall be such terms and conditions as the Lender may from time to time require and shall include, but not be limited, to the following:

- 1. Initial Funding Conditions** The Lender shall not be required to advance any funds prior to the Borrower having fulfilled, to the Lender’s satisfaction, the following conditions:
 - 1.1. Security to Be Delivered** All the Security, ancillary loan agreements and documents, and opinions shall have been executed and delivered to the Lender or its solicitors and registered where and as required. Please refer to **Article C** herein.
 - 1.2. Financial Performance** The Lender, in its sole discretion, shall have satisfied itself with the financial performance and condition of each of the Obligor. The Obligor shall provide within ten (10) Business Days of the date of execution of this Commitment, at a minimum, the following deliverables:
 - a) Corporate Obligor shall provide externally accountant prepared Notice to Reader annual financial statements for its two most recently ended fiscal years.
 - b) Corporate Obligor shall provide corporate Notice of Assessments for its two most recently ended fiscal years.
 - c) Personal Obligor shall provide Notice of Assessments received from the Canada Revenue Agency for their two most recently ended taxation years, with respect to their income tax filings.
 - d) Personal Obligor shall provide the Lender’s form of Personal Net Worth Statement with supporting documentation.
 - e) All Obligor shall complete the Lender’s form of Mortgage Application. To facilitate the Lender’s due diligence regarding the creditworthiness of the Obligor, each of the Obligor shall authorize the Lender to conduct credit checks and authorize each of the financial institutions with which the Obligor deal to release any and all information reasonably required and requested by the Lender to adequately assess the credit worthiness of each Obligor.
- 1.3. Project Conditions** The Borrower shall deliver the following to the Lender within ten (10) Business Days of the acceptance of this Commitment for the Lender’s satisfactory review and acceptance:
 - a) A copy of the agreement of purchase and sale (and any subsequent amendments or side letters related thereto) and statement of adjustments for the purchase by the Borrower of the Property, confirming a purchase price of not less than \$24,000,000.
 - b) An appraisal(s), satisfactory to the Lender, of the Project confirming the fair market value in the following states:

Appraisal Type	
As-Is	\$20,510,000

to be prepared at the Borrower’s expense. All appraisal reports are to be prepared by a Lender approved appraiser.



Such appraisal reports must be addressed to the Lender or be accompanied by reliance letters from the appraiser(s) to the Lender and shall confirm that the Lender can rely upon such appraisals for lending purposes.

- c) *[Intentionally Deleted – N/A]*
- d) *[Intentionally Deleted – N/A]*
- e) *[Intentionally Deleted – N/A]*
- f) A soils-test/geotechnical report (load bearing capacity) by a professional engineer as is acceptable to the Lender that the proposed construction and site improvements of the Project are feasible under existing soil conditions, together with evidence that the construction specifications for the Project provide for construction in compliance with such conditions and recommendations, if any, which may be contained in such soils-test/geotechnical report. If deemed necessary by the Lender in their sole discretion, this report and the Project will be reviewed by a separate engineering professional engaged by the Lender at the Borrower's expense.
- g) Satisfactory environmental site assessment reports, environmental remediation plans, environmental risk assessments and/or Record of Site Condition, as may be required by the Lender, in their respective and sole discretion. If deemed necessary by the Lender in their sole discretion, these reports and the Project will be reviewed by a separate environmental professional engaged by the Lender at the Borrower's expense and the Borrower will provide an appropriate emergency response plan for the Project and related activities.
- h) All architectural and engineering plans, drawings and specifications upon which construction of the Project is based, including without limitation, all structural, architectural, mechanical, electrical, landscape and interior design and specifications (collectively, the "Project Plans").
- i) A survey of the Project by an Ontario licensed land surveyor showing access to the Property from public thoroughfares and indicating no encroachments, easements or rights of way, except those that do not encroach or hinder the Borrower's ability to construct the Project in accordance with the proposed Project Plans. If no survey is available at the time of the Initial Advance, the Lender, in its sole discretion, may rely upon the title insurance policy to be obtained in connection with the Loan.
- j) Evidence confirming zoning approval, development permit and partial/full building permit availability to construct and develop the Project, together with evidence satisfactory to the Lender, in its sole discretion, that the full building permit will be issued by the applicable Governmental Authority in time to meet the Project Schedule.
- k) A detailed planning letter from a third-party planner outlining the timeline for, and probability associated with, approval of the various stages and phases of the Project in accordance with the Project Plans, acceptable to the Lender. If deemed necessary by the Lender in their sole discretion, these reports and the Project will be reviewed by a separate planning professional engaged by the Lender at the Borrower's expense.
- l) *[Intentionally Deleted – N/A]*
- m) Documentation for the Permitted Encumbrances, including, but not limited to:
 - i. Commitment letters, loan amendments, and extensions (if any);



- ii. Executed Subordination and Standstill Agreement on terms satisfactory to the Lender, in its sole discretion. In the event that the Permitted Encumbrance is or will be subordinate to the Security, an unconditional postponement and permanent standstill, including a provision allowing the Permitted Encumbrance lender to cure and defaults under this Commitment or Security, in favour of the Lender will be required.
- n) A detailed pro forma budget prepared by the Borrower showing all sources of revenue and a breakdown of the estimated cost to complete the Project, to the extent that such information is not contained in the Project Budget, as may be determined by the Lender, in its sole discretion.
- o) *[Intentionally Deleted – N/A]*
- p) *Intentionally Deleted – N/A]*
- q) Proof of \$1,300,000 in invested capital in the Project and means to cover any potential closing costs, if required, satisfactory to the Lender. Such invested capital shall include cash contributions of \$1,300,000.
- r) The initial Loan to Value ratio at the time of the Initial Advance, as determined in the Lender's sole discretion, shall not be greater than 65%. For the purpose of calculating the Loan to Value ratio in the absence of current market values:
 - i. The Loan amount shall include all outstanding debt obligations including the Permitted Encumbrances, unapproved subordinate debt, and outstanding Project accounts payable.
 - ii. The Value shall be calculated by utilizing the appraised value at the time of the Initial Advance as per the appraisal provided per the initial transaction underwriting unless otherwise agreed to by the Lender.
- s) *[Intentionally Deleted – N/A]*
- t) Evidence of the existence, details, and signing authorities related to a separate Project specific bank account, through which, all Project related transactions will flow. The Borrower shall execute the Lender's form of pre-authorized debit form, which shall authorize the Lender to automatically debit the Borrower's account with the Lender for all interest payments required in connection with the Loan.
- u) Confirmation satisfactory to the Lender that all property taxes for the Property are current and have been paid.
- v) Evidence of appropriate insurance coverage in accordance with the requirements contained in Appendix C, subject to satisfactory review by the Lender and the Lender's insurance consultant.
- w) Applicable Advance Requests in the forms provided by the Lender.
- x) MarshallZehr Group Inc., or a related party, may post two MarshallZehr Group Inc. signs on the Property (on each main street).
- y) Receipt by the Lender's solicitors of completed Agent Examination of Identification Forms for each of the Obligors and any other due diligence materials required in connection therewith to permit the Lender to comply with its obligations under the *Proceeds of Crime Money Laundering and Terrorist Financing Act* (Canada).



- z) Receipt by the Lender's solicitors of the corporate documentation for all corporate Obligors which shall include, without limitation, an up to date organizational chart for each of the corporate Obligors together with copies of the articles of incorporation, by-laws and corporate minute book registers.
- aa) Such other matters as the Lender may deem appropriate and necessary to satisfy itself of the Project's viability, the Borrower's creditworthiness and the ability of the Borrower and Guarantors to fulfil their obligations herein.

1.4. Special Conditions

The Borrower shall deliver the following to the Lender within five (5) Business Days of the acceptance of this Commitment for the Lender's satisfactory review and acceptance:

- a) Delivery and execution of necessary Partnership Agreement(s) between Hunter Milborne, Michael Budovitch, and Marcus Gillam, outlining key partnership terms as agreed by the participants.

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C. SECURITY TO BE DELIVERED

The Borrower shall deliver the following security (the "Security") duly registered where applicable subject only to the Permitted Encumbrances, if any, and all in the form and on the terms acceptable to the Lender's solicitor:

1. **Mortgage** DS
CK
\$13,200,000
HM

A 1st mortgage registered on the 98 James Street S. – MZGI 485 Project Property in the amount of ~~\$14,440,000~~, plus any accrued contingent payments. The mortgage will be registered at the Wrap-Up Rate of Interest, being two times the Prime Rate plus 12.60% (Floor Rate: 22.00%).
2. **Collateral Mortgage** [Intentionally Deleted – N/A]
3. **General Security Agreement of the Borrower** A General Security Agreement of the Borrower providing a first (1st) priority security interest over all of the present and future assets and undertaking of the Borrower.
- ~~4. **General Security Agreement of the Guarantors** A General Security Agreement of the Guarantors providing a security interest over all of the present and future assets and undertaking of the Guarantors.~~ DS
MG
Intentionally Deleted
DS
HM
DS
CK
5. **Assignment of Insurance** An assignment of the Borrower's insurance policies relating to the Property.
6. **Assignment of Material Contracts** An assignment of the Borrower's construction contracts, including without limitation all the Project Documents and the Project Plans.
7. **Assignment and Pledge of Securities** An assignment and pledge of, *inter alia*, all term deposits, guaranteed investment certificates, cash collateral in respect of any Letters of Credit issued and/or the Reserves.
8. **Assignment of Leases** A general assignment of leases and rents registered on title to the Property.
9. **Assignment of Agreements of Purchase and Sale** A general assignment of all third-party purchase and sale agreements for the Units together with any other rights, interests and obligations of any kind respecting the Project and reasonably necessary for the completion of the Project as contemplated by the Lender, upon default by the Borrower.
10. **Assignment of Purchaser Deposits** An assignment of all Purchaser Deposits subject only to any prior security interest of the Deposit Insurer, to the extent applicable.
11. **Assignment of Cash Security** An assignment and pledge of all securities posted in relation to the Project and Property, including, but not limited to, cash security posted (i) directly with Tarion (ii) directly with a Governmental Authority, and/or (iii) with a financial institution as security for letters of credit for the Project. The Borrower covenants to deliver the Lender's form of executed direction to the party holding the cash security accordingly (i.e. Tarion, City/Municipality, Financial Institution, etc.) directing that all releases/reductions in the cash security are delivered to the Lender.
12. **Letter of Credit Indemnity** An indemnification agreement from the Borrower in favour of the Lender in respect of any Letter of Credit issued, to the extent applicable;
13. **Guarantees** An unlimited joint and several guarantees from each of the Guarantors.
14. **Deficiency Agreement** A joint and several cost overrun and deficiency agreement executed by the Obligors agreeing to fund costs not included or in excess of the Project Budget. This Deficiency Agreement is in addition to the Guarantee.



- 15. **Environmental** An unlimited Environmental Undertaking and Indemnity from the Obligors and Environmental Review Checklist from the Borrower. The Environmental Undertaking and Indemnity is in addition to the Guarantee.
- 16. **Security Opinion** A favourable letter of opinion from the Borrower’s solicitors containing the usual corporate opinions relating to the corporate Obligors, including, without limitation as to the enforceability of the Security.
- 17. **Insurance** Proof of appropriate insurance satisfactory to the Lender’s insurance consultant and in accordance with the requirements set out in Appendix C.
- 18. **Title Insurance** A policy of title insurance satisfactory to the Lender and its solicitors.
- 19. **Taxes** Evidence that the realty taxes relating to the Property have been paid to date.
- 20. **Postponement** A postponement, subrogation and assignment from each of the shareholders of the Borrower (and such other creditors as the Lender may require upon completion of its due diligence) of all indebtedness owed by and claims against the Borrower to and by the shareholders to the indebtedness and claims of the Lender.
- 21. **Priorities Agreements** If required, a priorities agreement in connection with any Permitted Encumbrances, satisfactory to the Lender and the Lender’s solicitors.
- 22. **Restriction on Register** An authorization from the Borrower to the Lender and its solicitors directing the Lender’s solicitors to register a notice pursuant to Section 118 of the *Land Titles Act* (Ontario) on title to the Property restricting the Borrower from further charging the Property without the prior consent of the Lender.
- 23. **Further Security** Such further security, guarantors and ancillary documents and agreements as the Lender or its solicitors may, acting reasonably, deem necessary to adequately secure the Loan obligations and complete and perfect the Security.
- 24. **General Security Agreement of 98 James South (2022) Limited Partnership** **A General Security Agreement of 98 James South (2022) Limited Partnership providing a security interest over all of the present and future assets and undertaking of 98 James South (2022) Limited Partnership.**

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DS



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D. BORROWERS COVENANTS

The Obligors hereby covenant and agree as follows:

1. **Affirmative Covenants** So long as any amount under the Loan is outstanding or available, the Borrower covenants and agrees with the Lender that unless the Lender otherwise consents in writing:
 - 1.1. **Punctual Payment** The Borrower shall duly and punctually pay the principal of all Advances made to it under the Loan, all interest thereon, and all fees and other amounts required to be paid by the Borrower hereunder in the manner specified hereunder.
 - 1.2. **Corporate Existence and Conduct of Business** The Borrower shall, and the Borrower shall cause the corporate Guarantors to, maintain their respective corporate existences in good standing and do or cause to be done all things necessary to keep in full force and effect all properties, rights, franchises, licenses and qualifications to carry on business in any jurisdiction in which it or they carry on business and the Borrowers shall, and the Borrower shall cause the corporate Guarantors to, maintain all of its or their respective properties and assets consistent with industry standards.
 - 1.3. **Compliance with Legislation** The Borrower shall do or cause to be done, and the Borrower shall cause the Guarantors to do or cause to be done, all acts necessary or desirable to comply with all material Applicable Laws, including, without limitation, all requirements of all Environmental Laws and to preserve and keep in full force and effect all franchises, licenses, rights, privileges and permits necessary to enable each of the Obligors to operate and conduct their respective businesses in accordance with standard industry practice and to advise the Lender of any anticipated changes, loss or sale of such franchises, licenses, rights, privileges and permits.
 - 1.4. **Litigation** The Borrower shall promptly give written notice to the Lender of any litigation, proceeding, or dispute affecting it or an of the other Obligors if the result might, in such Borrower's bona fide opinion, have a Material Adverse Effect on the financial condition or operations of any of the Obligors or any of their respective Affiliates and from time to time furnish to the Lender all reasonable information requested by the Lender concerning the status of any such litigation, proceeding, or dispute.
 - 1.5. **Reporting Requirements** The Borrower shall deliver, or cause to be delivered, to the Lender all items specified in Appendix F in the form and at the time specified therein.

The Lender, acting reasonably, may request such other financial information, reporting, certificates, projections of income and cash flow, and any information affecting the financial condition of the Project, the Property and/or the Obligors' business that are not directly specified in Appendix F. This list and the reporting items stated in this Commitment are not exhaustive and the Lender, acting reasonably, may also request such other qualitative information including expected pre-sales, expected closings and associated timing, closed transactions, and editorial updates including Project status, and photos showing progress at a reporting frequency prescribed at the time of request.
 - 1.6. **Rights of Inspection** At any reasonable time and from time to time upon reasonable prior notice, the Borrower shall permit and cause each of the other Obligors to permit, the Lender or any representative(s) thereof, at the expense and risk of the Borrower, to examine and make copies of and abstracts from the records and its physical and computer books of account with respect to the Project and to visit and inspect the Project and to discuss the affairs, finances and accounts of it with any of its officers, senior employees or managers (but not tenants, if applicable).
 - 1.7. **Project Specific** The Borrower shall:
 - a) comply in all relevant aspects with the provisions of the Construction Act;



- b) as and when requested by the Lender, provide the Lender complete records relating to all holdbacks, including cancelled cheques, bank statements, WSIB certificates, statutory declarations, and completion certificates, as the Lender may reasonably require;
- c) substantially complete the Project in accordance with the approved Project Plans, the Project Budget and Project Schedule;
- d) pay its taxes, protect its properties by contest of adverse claims, maintain required insurance, perform its obligations under all contracts and agreements relating to the Project, obtain all necessary approvals for construction and use of the Project, comply with all governmental rules and regulations, permit reasonable inspections, by the Lender and its agents of the Project and all records pertaining to the Project;
- e) make and ensure that all payments due to the architect, general contractor, all contractors, sub-contractors, and all other suppliers of materials and services of any kind to the Project are made when and as they become due in compliance with the terms of their respective contracts and the provisions of the Construction Act;
- f) fund all Project Costs in excess of the Project Budget from cash resources derived from outside the Loan and the Project. In this regard, the Obligors shall be jointly and severally liable to immediately cover any such excesses as soon as same arise and/or are identified by the Lender;
- g) ensure that no liens are registered against the Property or its assets. In the event that a lien aforesaid is registered, the Borrower shall cause such lien to be vacated or discharged within ten (10) days of the earlier of the date (i) of registration (ii) that the Borrower has received written notice thereof and (iii) that the Borrower has been provided written notice thereof by the Lender, with any payment being made from financial resources derived from outside of the Loan; and
- h) grant the Lender the right to approve professional services involved in the Project. Such professional reports and services include, but are not limited to, appraisals, environmental reports, geotechnical reports, quantity surveyors, and auditors.

1.8. Insurance

The Borrower shall maintain, or shall cause to be maintained, appropriate insurance coverage as agreed with the Lender or any insurance consultant engaged by the Lender to assess the required coverage during the Project. All insurance shall be in accordance with the requirements contained within Appendix C.

1.9. Notices

The Borrower shall promptly give notice to the Lender of:

- a) Any fire or other casualty or any notice of expropriation, action or proceeding materially affecting any Project;
- b) All claims, proceedings, suits, actions or litigation in respect of any Obligor or the Project (whether or not any such claim, proceeding, suit, action, or litigation is covered by insurance) which, if determined adversely could have a Material Adverse Effect;
- c) the occurrence of any Default or Event of Default; and
- d) any other matter or event that has a Material Adverse Effect.

1.10. Use of Advances

The Borrower shall use all Borrower Draws in accordance with the specific purposes set out herein and in the applicable Advance Request.



- 1.11. Payment of Taxes, etc.** The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time:
- a) Pay or cause to be paid all rents, taxes, rates, levies or assessments, ordinary or extraordinary, governmental fees or dues, lawfully levied, assessed or imposed upon any Obligor or any of the assets of any Obligor, as and when the same become due and payable;
 - b) Withhold, deduct and collect all taxes required to be withheld, deducted and collected by it, and remit such taxes to the appropriate Governmental Authority at the time and in the manner required; and
 - c) Pay and discharge all obligations incidental to any trust imposed upon it, by statute which, if unpaid, might become an encumbrance upon any of the Property, except when and so long as any such rents, taxes, rates, levies, assessments, fees, dues or obligations constitute a Permitted Encumbrance and the validity thereof is in good faith being contested by such Obligor.
- 1.12. Project Documents, Leases, and Permitted Encumbrances** The Borrower shall ensure that all Project Documents and Permitted Encumbrances are kept in good standing in all material respects and will advise the Lender forthwith after being so notified of a material breach or alleged material breach of any material documents or Permitted Encumbrances. The Borrower shall not default under any Lease related to any Property and shall advise the Lender immediately following being so notified of any breach thereof.
- 1.13. New Project Documents** The Borrower will promptly advise the Lender if any Obligor enters into any agreement which could reasonably be expected to be a Project Document and shall provide a copy of such agreement to the Lender.
- 1.14. Security** The Borrower shall, and the Borrower shall cause each of the Guarantors to, provide the Security contemplated hereunder, perfected to the satisfaction of the Lender and its solicitors, in their sole discretion.
- 1.15. Maintain Security** The Borrower will fully and effectually maintain and keep the Security valid and effective at all times during the continuance of this Agreement, and it will not permit or suffer the registration of any debt, lien, privilege or encumbrance whatsoever other than Permitted Encumbrances and the Security, whether of workmen, builders, contractors, engineers, architects or suppliers of material, on or in respect of any Property (except such liens which only affect or purport to affect a tenant's interest in the Property, if applicable).
- 1.16. Environmental Law** The Borrower shall, and the Borrower shall cause each of the Guarantors to, with respect to each Project:
- a) notify the Lender promptly of any event or occurrence that will, or is likely to, give rise to an inquiry or investigation, or any legal proceeding, relating to, or a violation of, the Requirements of Environmental Law;
 - b) provide the Lender, on request, such information, certificates or statutory declarations, and shall conduct such environmental audits or site assessments, as may be reasonably necessary to ensure the compliance with all Requirements of Environmental Law; and
 - c) execute, and cause each of the Guarantors to execute, all consents, authorizations and directions to appropriate Governmental Authorities that are required to permit the inspections mandated by Applicable Laws of the Property and the release to the Lender, or its representatives, of information relating to the assets or undertakings of each Obligor. The Obligors hereby irrevocably



constitute and appoint the Lender the true and lawful attorney of each of them, with full power of substitution, to execute any of the foregoing consents, authorizations and directions; provided however that such power of attorney shall only be exercised during the continuance of an Event of Default.

- 1.17. Operation and Repair** Except as otherwise permitted herein, the Borrower will ensure the diligent management and operation of the Property and repair and keep in repair and good order and condition, or cause to be so repaired and kept in repair and good order and condition, all buildings, structures, plant, machinery and equipment used in or in connection with the Property and which are necessary in connection with the efficient operation of such business and undertaking up to a modern standard of usage and, subject to the provisions of this Commitment, renew and replace, or cause to be renewed or replaced all and any of the same which may be worn, dilapidated, unserviceable, inconvenient or destroyed, even by a fortuitous event, fire or other cause, and at all reasonable times allow, and cause the Guarantors to allow, the Lender or its representative access to the Property in order to review the state and condition the same are in.
- 1.18. Maintain and Operate** The Borrower will diligently maintain, use and operate or will cause to be maintained, used and operated the Project, in a proper and efficient manner so as to preserve and protect the Property.
- 1.19. Payment of Preferred Claims** The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time pay or cause to be paid, all amounts related to taxes, wages, workers' compensation obligations, government royalties or pension fund obligations and any other amount which may result in an encumbrance against the assets of any Obligor arising under Applicable Law.
- 1.20. HST Filings** The Borrower shall file on a monthly basis all returns and other documents necessary to obtain the refund of HST in respect of the Project and apply the amount of any such refund to payment of Project Costs.
- 1.21. Lease Attornment** Subject to the requirements, if any, within any Leases for the Lender to execute and deliver non-disturbance agreements, the Borrower agrees, at the written request of the Lender, to use all reasonable commercial efforts to obtain from the tenants under such Leases and deliver to the Lender such instruments of attornment, postponement or subordination as the tenants under such Leases are required to provide and as the Lender may reasonably request in a form acceptable to the Lender, acting reasonably, and which is otherwise consistent with the terms of such Leases.
- 1.22. Expropriation** Any awards or payments received by an Obligor for expropriation of any portion of the Property, which are, in respect of any single payment or award, equal to or greater than \$1,000 shall, unless the Lender otherwise agrees, be forthwith paid to the Lender to repay the Loan.
- 1.23. Condominium Registration** *[Intentionally Deleted - N/A]*



2. Financial Covenants So long as any amount payable hereunder is outstanding or the Loan is available hereunder, the Obligors covenant and agree with the Lender that:

2.1. Project Net Equity The Obligors shall maintain throughout the Term a minimum combined net equity in the Project equal to \$1,300,000. For the purposes of this paragraph "Project Net Equity" shall be equal to:

	cost of the Property, as determined by the Lender (to a maximum value of \$24,00,0000).
+	cost of the Project completed to date (exclusive of Property value) as determined by the Lender
-	project payables
-	Purchaser Deposits paid into the Project
-	Holdbacks
-	unsubordinated Project financing
-	the aggregate amount of Lender Advances to date under the Loan
-	all recaptured Project expenses, including HST, previously funded by the proceeds of the Loan herein
=	Project Net Equity

2.2. Project Loan to Value Ratio (LTV) The Borrower shall, at all times, maintain a LTV ratio of less than 65%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in **Appendix F** the LTV ratio shall be calculated in accordance with the parameters defined in **Article B. 1.3(r)**.

2.3. Project Loan to Cost Ratio (LTC) *[Intentionally Deleted – N/A]*

2.4. Maximum Borrowing The Borrower shall ensure that Advances under this Commitment do not exceed the most current calculation of the Maximum Borrowing defined as the Loan Amount in **Article A. 6**.



- 3. Negative Covenants** So long as any amount payable hereunder is outstanding or the Loan is available hereunder, the Obligors covenant and agree with the Lender that, unless the Lender otherwise consents in writing:
- 3.1. Sale of Guarantors** The Borrower shall not, and shall cause every other Person with an ownership interest in a Guarantor (other than the Borrower) not to, sell, transfer, assign, convey or otherwise dispose of its ownership interest in any of the Guarantors (other than the Borrower) to any Person except another Affiliate of the Borrower (but only if such Guarantor remains a direct or indirect wholly-owned Subsidiary of the Borrower) or except with the prior written consent of the Lender, such consent not to be unreasonably withheld or delayed.
- 3.2. No Merger, Amalgamation, Etc.** Except as otherwise permitted hereunder, no Obligor shall enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other Person (whether by way of reconstruction, reorganization, recapitalization, consolidation, amalgamation, merger, transfer, sale or otherwise).
- 3.3. No Sale, etc. of Property Interests** No Obligor shall sell, transfer, assign or otherwise dispose of all or any portion of its respective interest in the Property except pursuant to a Permitted Encumbrance.
- 3.4. No Additional Encumbrances or Financing** No additional encumbrances or financing, subject to **Article A. 22.2**, will be permitted without the prior written consent of the Lender, which consent shall be in its sole discretion. In the event that the foregoing covenant is not complied with, the entire amount of outstanding principal, interest, fees and all other amounts due under the Commitment and the Security shall become immediately due and payable by the Borrower.
- In the event that the Lender consents to any such additional subordinate financing aforesaid, such consent shall be conditional upon the subordinate lender entering into an unconditional postponement, subordination and permanent standstill agreement whereby, *inter alia*, the subordinate lender shall agree to a) issue zero dollar discharges on a per Unit basis and b) execute all postponements and consents as may be required to development the Project, in each case, within two (2) Business Days immediately following request therefor by the Borrower and/or the Lender.
- 3.5. No Dissolution** No Obligor shall liquidate, dissolve or wind-up or take any steps or proceedings in connection therewith, provided, however, that a Guarantor may enter into a transaction designed to wind-up or dissolve such Guarantor into the Borrower upon the Lender's prior written consent, such consent not to be unreasonably withheld or delayed. The parties agree that the Lender's consent will not have been unreasonably withheld if, in the Lender's sole discretion, the Lender's credit risk or the Security will be adversely affected by the proposed transaction.
- 3.6. Non-Arm's Length Transactions** No Obligor shall enter into any contract relating in any manner to the Property with an Affiliate for the sale, purchase, lease or other dealing in any property other than at a consideration which is no more than the fair market value of such property or other than at a fair market rental as regards leased property.
- 3.7. Negative Pledge** Except for the Permitted Encumbrances, no Obligor shall create, issue, incur, assume or permit to exist any mortgage, charge, lien or other encumbrance against the Property without the Lender's prior written consent.
- 3.8. No Changes to Project Documents** No Obligor shall amend, surrender or terminate any Project Document without the prior written consent of the Lender, which consent is not to be unreasonably withheld or delayed.
- 3.9. No Changes to Leases** No Obligor shall terminate or accept a surrender of, or agree to any material amendment to, any Lease, without the consent of the Lender which consent is not to be unreasonably withheld or delayed. For



the sake of clarification, amendments related to the term, rent or premises to be rented shall be considered material.

3.10. Dealing with Leases

Notwithstanding the immediately preceding paragraph above, no Obligor shall enter into any new Leases or amend, renew, terminate, forfeit or cancel any existing Leases, in each case, in respect of all of portion of the Property unless:

- a) such Lease and/or amendment, extension, termination, forfeiture or cancellation are made on arm's length terms and in good faith; and
- b) such Leases and/or amendment, extension, termination, forfeiture or cancellation reflects good business practice, as determined by the Lender, in its sole discretion.

3.11. Concerning Leases Generally

Except in the ordinary course of business and provided such action is prudent in the circumstances, none of the Obligors shall accept or require payment of rent or other moneys payable by a tenant under any Lease that would result in more than three months of such rent or other moneys being prepaid under such Lease other than:

- a) prepaid rent or deposits on account of rent which represent the portion of the cost of construction of the relevant demised premises which exceeds the portion of such cost which was used as the basis for determining the basic rental otherwise payable under such Lease;
- b) amounts representing a bona fide pre-calculation of any amount (which is required to be paid under such Lease) in addition to basic rent, including amounts payable with respect to taxes and maintenance of the applicable Property and overage and percentage rents; or
- c) Lease surrender payments made by the tenant under such Lease; and/or
- d) except for any renewals or extensions of existing Leases pursuant to the terms thereof, each of the Obligors shall not hereafter enter or purport to enter into or suffer to exist any Lease in respect of any Project except if the Security shall have priority over such Lease and such Lease shall provide that it is subordinated to the Security and contain a covenant of the tenant thereunder obligating such tenant if and whenever required by the Lender to attorn to and become the tenant of the Lender or any purchaser from the Lender, for the then unexpired residue of the term of, and upon all of the terms and conditions of such Lease.

3.12. No Waiver

Except as otherwise provided pursuant to **Article F**, no Obligor shall waive, or agree to waive, any failure of any party to any Permitted Encumbrance, Project Document or Lease to perform any material obligation thereunder or suffer or permit anything allowing any party thereto to terminate any such agreement or consent to any assignment thereof by any party thereto unless the same is in the ordinary course of business, is in accordance with good business practice and the same would not have a Material Adverse Effect.

3.13. No Name Change

No Obligor shall change its name without first giving notice to the Lender of its new name and the date when such new name is to become effective.

3.14. No Change of Chief Executive Officer

No Obligor shall change its chief executive office or the location of the offices where it keeps its records respecting receivables and rents or move any of the inventory, securities or equipment from the present locations thereof without prior written notice to the Lender.

The Obligors hereby acknowledge and agree that a breach of any of the foregoing covenants contained in this **Article D** shall constitute an Event of Default, entitling the Lender to terminate this Commitment subject to and in accordance with the provisions of **Article F** hereof.



E. TERMINATION PROVISIONS

The Lender shall have the right to terminate this Commitment and its obligation to provide the Loan to the Borrower in the event that any of the following should occur:

1. **Non-Compliance with Terms** The Obligors fail or are unable or unwilling for any reason whatsoever to comply with any of the terms and conditions set out in this Commitment and/or the Security within the time indicated for such compliance.
2. **Non-Execution of Documents** The Obligors fail or refuse to execute any documentation requested by the Lender's solicitors or to deliver such documentation to them.
3. **Outside Date** The Initial Advance has not been fully advanced on or before **September 15th, 2022** (the "**Outside Date**").
4. **Non-Acceptance of Borrower Draw** The Borrower refuses to accept either the Initial Advance or a Borrower Draw when so advanced by the Lender.
5. **Default** The Borrower and/or the Guarantors commit a Default that remains uncured in accordance with **Article F** hereof.
6. **Non-Compliance with Construction Act** The Borrower has not complied with all the provisions of the Construction Act to the satisfaction of the Lender's solicitors.
7. **Non-Satisfaction of Due Diligence** The Lender's solicitors, acting reasonably, are not satisfied with the title to the Property.

If, in accordance with the foregoing, the Lender elects to terminate this Commitment prior to the advance of the entire Loan, the amounts so advanced, if any, together with interest and fees thereon shall become immediately due and payable.

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F. DEFAULT PROVISIONS

The content of this Default Provisions section shall be subject to the restrictions of any priority agreement(s) between the Lender and any other Permitted Encumbrance holders.

- 1. Events of Default** The occurrence of any one or more of the following events shall constitute an Event of Default under this Commitment (an “Event of Default” or “Default”):
- 1.1. Payment of Principal** If the Borrower defaults in the payment of the principal of any Lender Advance made under the Loan when due and payable, without any requirement by the Lender to provide notice of the same;
- 1.2. Payment of Interest and Fees** If the Borrower defaults in the payment of:
- a) any interest (including, if applicable, default interest) due on any Advance under this Commitment;
 - b) any Fees with respect to this Commitment; or
 - c) any other amount not specifically referred to herein payable by the Borrower to the Lender hereunder when due and payable;
- and such default continues for **three (3)** Business Days after notice of such default has been given by the Lender to the Borrower;
- 1.3. Covenants or Obligations** If any Obligor neglects to observe or perform any covenant or obligation contained in any Document on its part to be observed or performed (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this **Article F. 1.**) and, such Obligor shall fail (in the case of those defaults which can be rectified by such Obligor) to remedy such default within a period of **thirty (30)** days after the giving of notice, unless the Lender (having regard to the subject matter of the default) shall have agreed to a longer period and, in such event, within the period agreed to by the Lender;
- 1.4. Cross Default** If a default or an event of default as defined in any indenture or instrument evidencing, or under which, any indebtedness for borrowed money of any Obligor or of any Affiliate (as that term is defined in the Business Corporations Act (Ontario)) of any Obligor has occurred and is continuing; provided, however, that if such default or event of default under such indenture or instrument shall be remedied or cured by such Obligor or Affiliate of such Obligor or be waived by the holders of such indebtedness before any judgment or decree for the payment of the money due shall have been obtained or entered, then the Event of Default hereunder by reason thereof shall be deemed likewise to have been thereupon remedied, cured or waived without further action on the part of the Lender;
- 1.5. Priority Encumbrance Cross Default** If an event of default as defined in any indenture or instrument which is a Permitted Encumbrance on any Property in priority to the Security shall have occurred and be continuing and all applicable cure periods have expired;
- 1.6. Bankruptcy or Insolvency Order** If a decree or order of a court of competent jurisdiction is entered adjudging any Obligor a bankrupt or insolvent, or approving as properly filed a petition seeking the winding-up of such Obligor, under the Companies’ Creditors Arrangement Act (Canada), the Bankruptcy and Insolvency Act (Canada) or the Winding Up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against, or against any substantial part of the assets of any Obligor or material subsidiary or ordering the winding up or liquidation of its affairs, and any such decree or order continues unstayed and in effect for a period of **ten (10) Business Days**;



- 1.7. Insolvency** If any Obligor becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the Bankruptcy and Insolvency Act (Canada) or any comparable law, seeks relief under the Companies' Creditors Arrangement Act (Canada), the Winding Up and Restructuring Act (Canada) or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency;
- 1.8. Trustee or Receiver Appointed** If any proceedings are commenced against, or steps are taken by, any Obligor for the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of such Obligor or of all or any substantial portion of its assets, or seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights and in the case of any such proceedings commenced against such Obligor, such proceedings are not stayed or dismissed within **ten (10) days** after the commencement thereof;
- 1.9. Dissolution, Liquidation or Wind-Up Proceedings** If proceedings are commenced for the dissolution, liquidation or winding-up of any Obligor, or for the suspension of the operations of any Obligor, unless such proceedings are stayed or dismissed within **thirty (30) days** of the commencement thereof;
- 1.10. Material Provision or Agreement Null and Void** If any material provision of this Agreement or of any Material Document ceases to be in full force and effect (other than through the normal expiration of the stated term of such Material Document pursuant to the terms thereof) or is declared null and void or invalid or any breach or default shall occur under any Material Document that has a Material Adverse Effect and such breach or default is not remedied within **ten (10) Business Days** of such occurrence or such longer or shorter cure period as may be allowed the applicable Obligor pursuant to the terms of such Material Document;
- 1.11. Judgements** If a judgment or decree for payment of money due in an amount of \$5,000 or more (in any single instance or in the aggregate for all such judgments and decrees against each of the Obligors) shall have been obtained or entered against any Obligor (except in the case of any such judgment or decree in respect of which recourse is limited to property which is not subject to the Security hereunder) and such judgment or decree shall not have been, and remain, vacated, discharged or stayed ~~pending~~ appeal within the applicable appeal period;
- 1.12. ~~Incorrect~~ Misleading Representation or Warranty** If any representation or warranty made or deemed to be made by any Obligor in any Document or in any certificate or other document at any time delivered in connection with this Commitment to the Lender shall prove to have been ~~incorrect or~~ misleading in any material respect on and as of the date thereof and with respect to any such ~~incorrect or~~ misleading representation or warranty that is capable of being cured, such ~~incorrectness or~~ misleading aspect continues for a period of **ten (10) Business Days** or more;
- 1.13. Invalid Security** If any of the Security shall cease to be a valid and perfected first priority security interest as against third parties subject only to Permitted Encumbrances and such state continues for more than **two (2) Business Days**;
- 1.14. Material Adverse Effect** If the Lender determines, in their sole discretion acting reasonably, that there has been a material change in the business, assets, properties, liabilities, operations, condition (financial or otherwise) of the Obligors, individually, or its subsidiaries taken as a whole or the ability to perform its obligations under the Commitment (a "**Material Adverse Effect**");
- 1.15. Creditor Seized Property** If the property of any Obligor or a part thereof which is, in the opinion of the Lender, a substantial portion thereof, is seized or otherwise attached by creditors pursuant to any legal process, the enforcement of a secured claim or otherwise or if a distress, execution or any similar process is levied

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or enforced against any Obligor and the same is not released, bonded, satisfied, discharged, vacated or stayed within the shorter of a period of **thirty (30) days** or such shorter period as would permit any property or any part thereof to be sold thereunder;

- 1.16. Assignment, Disposition or Conveyance** If any Obligor makes or agrees to make an assignment, disposition or conveyance, whether by sale or otherwise, of all its assets (or a material portion thereof) in bulk;
- 1.17. Default Under Permitted Encumbrance or Material Document** If there is a default by any Obligor under any Permitted Encumbrance, or Material Document in respect of the Project and such default has a Material Adverse Effect and is not rectified within **five (5) Business Days**; or
- 1.18. Financial Covenant Default** If there is a default by the Borrower of any of the Financial Covenants outlined in **Article D. 2.**;
- 1.19. Merger or Amalgamation** If any transaction occurs (whether by reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale or otherwise) whereby all or substantially all of an Obligor's undertaking, property and assets, or any interest therein becomes the property of any other person, or in the case of any amalgamation, of the continuing company resulting therefrom, or if any Obligor is dissolved; or
- 1.20. Environmental** If any Obligor violates or breaches any requirements of Environmental Law applicable to the Project (or, in the case of the Guarantor, applicable to all or any material part of its property and assets) or if any Obligor violates or breaches any other Applicable Law and such breach or violation of Applicable Law has or could reasonably be expected to have a Material Adverse Effect and continues for the shorter of a period of **thirty (30) days** or **ten (10) Business Days** less than any such period as would permit the property in question to escheat to the Crown or be sold or otherwise forfeited.

For greater certainty, none of the foregoing events shall constitute an Event of Default hereunder if the default is cured or remedied within the time limited therefor pursuant to the applicable provision of this **Article F. 1.**

- 2. Acceleration and Demand** Upon the occurrence of any Event of Default that has not been cured within the timelines set out herein, the Lender by written notice to the Borrower (an "**Acceleration Notice**") shall be entitled to:
- a) declare the Loan and the right of the Borrower to apply for further Lender Advances and Borrower Draws to be terminated;
 - b) declare all Obligations (whether matured or unmatured, drawn or undrawn) of the Borrower to the Lender (including, without limitation, all unpaid fees whether or not deemed earned) to be immediately due and payable (or to be due and payable at such later time as may be stated in such notice) without further demand, presentation, protest or other notice of any kind, all of which are expressly waived by Borrower;

Upon the occurrence of an Event of Default specified in **Article F. 1.1**, the Loan shall automatically terminate and all Obligations specified in **Article A** shall automatically become due and payable, in each case without any requirement that notice be given to the Borrower;

Immediately upon the occurrence of an Event of Default specified in **Article F. 1.** or at the time stated in an Acceleration Notice, the Borrower shall pay to the Lender all amounts owing or payable in respect of all Obligations of such Borrower specified in **Article A**, failing which all rights and remedies of the Lender under the Documents, at law, in equity or otherwise shall thereupon become enforceable and shall be enforced by the Lender.



3. Appointment of Receiver

Upon any default under this Commitment or the Security, that is not cured within the time frames set out herein, the Lender may proceed to realize the Security hereby constituted and to enforce its rights by entry; or by the appointment by instrument in writing of a receiver or receivers of the subject matter of such security or any part thereof and such receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Lender or not, and the Lender may remove any receiver or receivers so appointed and appoint another or others in his or their stead; or by proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Project or any part thereof; or by any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity; and may file such proofs of claim and other documents as may be necessary or advisable in order to have its claim lodged in any bankruptcy, winding-up or other judicial proceedings relative to the Borrower. Any such receiver or receivers so appointed shall have power to take possession of the Project or any part thereof and to carry on the business of the Borrower, and to borrow money required for the maintenance, preservation or protection of the Project or any part thereof, and to further charge the Project in priority to the Security constituted by this Commitment as security for money so borrowed, and to sell, lease or otherwise dispose of the whole or any part of the Project on such terms and conditions and in such manner as he shall determine. In exercising any powers, any such receiver or receivers shall act as agent or agents for the Borrower and the Lender shall not be responsible for his or their actions.

In addition, the Lender may enter upon the applicable premises and lease or sell the whole or any part or parts of the Project. The Borrower agrees that it will be commercially reasonable to sell such part of the Project:

- a) as a whole or in various units;
- b) by a public sale or call for tenders by advertising such sale; and
- c) by private sale.

Any such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Lender in its sole discretion may seem advantageous and such sale may take place whether or not the Lender has taken possession of such property and assets.

No remedy for the realization of the security hereof or for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this letter includes a receiver and manager.

4. Application of Payments Following Demand and Acceleration

Except as otherwise agreed to by the Lender in its' sole discretion, any sum received by the Lender at any time after the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in **Article F. 1.**, which the Lender is obliged to apply in or towards the satisfaction of sums due from the Borrower under any Document shall be applied by the Lender in accordance with amounts owed to the Lender by the Borrower in respect of each category of amounts set forth below, each such application to be made in the following order with the balance remaining after application in respect of each category to be applied to the next succeeding category:

- a) in or towards payment of any expenses and fees then due and payable to the Lender hereunder and owing by the Borrower (including, without limitation, in the case of the Borrower, any such fees and expenses owing whether or not deferred or contingent);
- b) in respect of amounts due and payable by such Borrower to the Lender by way of interest and fees (including, without limitation, in the case of the Borrower, any such interest and fees owing whether or not deferred or contingent);



- c) in respect of any other amount (other than Loan) not hereinbefore referred to in this **Article F. 4** which are then due and payable by the Borrower hereunder such Borrower under any Document (including, without limitation, in the case of the Borrower, any such other amounts owing whether deferred or contingent);
- d) in or towards repayment to the Lender of the principal advanced to such Borrower then outstanding hereunder; and
- e) any remaining amounts to be released to the Borrower or as required by the loan.

For certainty, unless otherwise agreed by the Lender, all amounts owing by the Borrower in each of the above-noted categories (whether directly or indirectly by virtue of Guarantees) shall, within each category, rank pari passu and be applied pro rata to the Obligations owing by the Borrower within such category based on the respective outstanding amounts.

5. Remedies Cumulative

For greater certainty, it is expressly understood and agreed that the rights and remedies of the Lender under the Documents are cumulative and are in addition to and not in substitution for any rights or remedies provided by law; any single or partial exercise by the Lender of any right or remedy for a default or breach of any term, covenant, condition or agreement therein contained shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Lender may be lawfully entitled for the same default or breach, and any waiver by the Lender of the strict observance, performance or compliance with any term, covenant, condition or agreement therein contained, and any indulgence granted thereby, shall be deemed not to be a waiver of any subsequent default. The Lender may, to the extent permitted by Applicable Law, bring suit at law, in equity or otherwise for any available relief or purpose including but not limited to:

- a) the specific performance of any covenant or agreement contained in the Documents;
- b) enjoining a violation of any of the terms of the Documents;
- c) aiding in the exercise of any power granted by the Documents or by law; or
- d) obtaining and recovering judgment for any and all amounts due in respect of the Advances or amounts otherwise due hereunder or under the Documents.

To the extent permitted by Applicable Law, Borrower hereby waives any rights now or hereafter conferred by statute or otherwise which may limit or modify any of the Lender's rights or remedies under the Documents.

6. Set-Off

In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Lender is authorized at any time after the delivery of an Acceleration Notice or the occurrence of an Event of Default specified in **Article F. 1.** which has not theretofore been waived or rescinded by the Lender and from time to time thereafter without notice to Borrower or to any other person, any such notice being expressly waived by the Borrower, to set-off and to appropriate and to apply any and all deposits (general and special) and any other indebtedness at any time held by or owing to the Lender for the account of the Borrower against and on account of the obligations and liabilities of the such Borrower to the Lender or such Lender under this Commitment, including, without limitation, contingent or deferred obligations of the Lender.

7. Cash Collateral Accounts

Upon delivery of an Acceleration Notice or the occurrence of an Event of Default specified in **Article F. 1.** and in addition to any other rights or remedies of the Lender hereunder, the Lender shall thereafter be entitled to deposit and retain in an account to be maintained by the Lender, and which for the purposes hereof shall be considered to be the Lender's account and not the Borrower's account



bearing interest for the Borrower at the rates of interest of the Lender as may be applicable in respect of other deposits of similar amounts for similar terms, amounts which are received by the Lender from the Borrower to the extent that and for so long as such amounts either may be required to satisfy any Obligations of such Borrower or are actually used to satisfy any such Obligations; provided that if such amounts are no longer required or not so used, the Lender shall forthwith return the same together with interest accrued thereon to the Borrower.

8. Lender May Perform Covenants

If the Borrower shall fail to perform any covenant on its part herein contained, the Lender may, upon prior notice to the Borrower, perform any of the said covenants capable of being performed by the Lender and, if any such covenant requires the payment or expenditure of money, it may make such payment or expenditure with its own funds and shall be entitled to reimbursement of any such expenditure. All amounts so paid by the Lender hereunder shall be repaid by the Borrower on demand and therefore, shall bear interest at the rate set forth in **Article A. 7** from the date paid by the Lender hereunder to and including the date such amounts are repaid in full by the Borrower.

9. Administration Fee Payable in Default

In the event of a default by the Borrower or any Guarantor in their respective obligations under this Commitment, Loan or Security that is not cured within the timeframes set out herein, the Lender shall, notwithstanding anything contained herein to the contrary, be entitled to receive in addition to all other fees, charges and disbursements, an administration and management fee in the amount of \$5,000 for each month ~~or part thereof~~ that the Borrower and/or any Guarantor is in default of its obligations under the Commitment, Loan or Security. The said sum or sums are agreed to be liquidated damages to cover the Lender's administration and management costs and are not intended nor shall they be construed as a penalty. All such sums payable to the Lender shall be a charge upon the Project and its assets and interest shall accrue thereon as if they were Loan principal.

**(being a complete 30-day period)*

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G. GENERAL PROVISIONS

1. The Lender shall have no obligation to advance funds unless and until all of the above terms and conditions have been deemed by the Lender to be complete, true and otherwise in all respects satisfactory, in the Lender's sole discretion.
2. No term or requirement of this Commitment may be waived or varied orally or by any course of conduct of the Borrower or anyone acting on his behalf or by any officer, employee or agent of the Lender. Any alteration or amendment to this Commitment must be in writing and signed by a duly authorized officer of the Lender and accepted by the Borrower and Guarantors.
3. The Lender's solicitors shall be:
Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario
Attention: Robert Miller
4. The Borrower's solicitors shall be:

Bresver Grossman Chapman & Habas LLP
390 Bay Street, Suite 2900
Toronto, Ontario
Attention: Stanley Grossman
5. The Borrower shall bear any and all reasonable legal costs of the Lender.
6. Time is of the essence in this Commitment.
7. This Commitment shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.
8. The Obligors agree that if any one or more of the provisions contained in this Commitment shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any or all other provisions of this Commitment and this Commitment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
9. The waiver by the Lender of any breach or Default by the Obligors of any provisions contained herein shall not be construed as a waiver of any other or subsequent breach or Default by them. In addition, any failure by the Lender to exercise any rights or remedies hereunder or under the Security shall not constitute a waiver thereof.
10. Notwithstanding the registration of the Security or the advancement of funds, the terms of this Commitment shall not merge with the delivery and/or registration of the Security and shall remain in full force and effect. Any default under the terms of this Commitment shall be deemed a default under the Security and any default under the terms of the Security shall be deemed a default under the terms hereof. In the event of a conflict between the terms of the Security and the terms of this Commitment, the Lender, in its sole discretion may determine which shall take precedence and govern.
11. This Agreement may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.
12. From time to time, the Lender publishes advertisements or announcements of completed transactions. The advertisements or announcements include, but are not limited to, press releases, paid advertisements, internally displayed tombstones,



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** Notwithstanding the above, the Lender shall seek Borrower's approval prior to any Publication.*

social media, investor brochures or information displayed on the internet and/or the Lender's intranet. The Obligors consent to the publication of an advertisement or announcement of the transaction contemplated by this Commitment. The Obligors covenant and agree to permit the Lender to photograph or utilize existing photographs or artistic renderings (for unfinished Projects) of the Property for the possible use in internal or external marketing programs. *

- 13. Any word importing the singular or plural shall include the plural and singular, respectively. If any party is comprised of more than one entity, the obligations of each of such entities shall be joint and several. Any word incorporating persons of either gender, or firms, or corporations shall include persons of other gender, and firms, and corporations were the context so requires.
- 14. The headings and section numbering appearing in this Commitment are included only for convenience of reference and in no way define, limit, construe, or describe the scope or intent of any provision of this Commitment.

If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this letter agreement. The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied at the sole discretion of the Lender and its solicitors.

By signing this Commitment, pertaining to **98 James Street S. – MZGI 485**, the Borrower and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower and the Guarantors, including reports from other credit grantors, consumer reporting agencies, and credit bureau.

Unless this Commitment is accepted by the Borrower and all required Guarantors within **five (5) Business Days** of the date hereof by delivery of a fully executed copy to the Lender, then, at the Lender's sole option, the Commitment shall be terminated.

This Commitment is not binding until it has been approved and signed back by an officer of the Lender, MarshallZehr Group Inc.

Yours truly,

MARSHALLZEHR GROUP INC.

DocuSigned by:

Per: 6697E6642B774AE...

Name: Cecil Hayes
Title: Chief Operating Officer
8/19/2022

I have the authority to bind the Corporation



Acknowledged and agreed at _____ this _____ day of _____, 202__.

Borrower: 98 JAMES SOUTH (2022) INC.

~~Hunter Milborne, Michael Budovitch and Marcus Gillam in Trust
for a Corporation to be Incorporated~~

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DocuSigned by:

Per: _____
Name: 436E6706B5DF4A7...

Title:

Per: _____

Name:
Title:

I/we have authority to bind the Corporation

The following parties execute this Commitment in their capacities as guarantors only.

Guarantors:

DocuSigned by:

436E6706B5DF4A7... I/S
Hunter Milborne

DocuSigned by:

Michael Budovitch

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Witness:

DocuSigned by:

43244B46GFA64E0... I/S
Marcus Gillam

DocuSigned by:

Michael Budovitch

711B091F93444E6...
Witness:

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98 James South (2022) Limited Partnership

DocuSigned by:

Per: _____
Name: Hunter Milborne

Title:



APPENDIX "A"
PROPERTY AND PERMITTED ENCUMBRANCES

1. **Project Property**
 - a) PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; EXCEPT PT 1, 62R21103 CITY OF HAMILTON

PIN: 17171-0260 (LT)

2. **Permitted Encumbrances**
 - a) A \$14,000,000 2nd priority vendor take-back mortgage registered on the Property by Hue Developments & Investments Canada Inc.

[End of Appendix A]



APPENDIX "B" DEFINITIONS

1. **"Advances"** means collectively, the Initial Advance, a Lender Advance and a Borrower Draw and **"Advance"** means any one (1) of them as the context so requires.
2. **"Affiliate"** means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate and **"Affiliates"** means more than one (1) of them. A Person shall be deemed to control a Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise; and the term "controlled" shall have a similar meaning.
3. **"Applicable Laws"** means all statutes, laws, by laws, regulations, ordinances, orders, codes, rules and requirements of governmental or other public authorities having jurisdiction in force from time to time and includes all Environmental Law.
4. **"Business Day"** means any day which is not a Saturday, Sunday, or day observed as a holiday under the Applicable Laws in the province in which the Project is located.
5. **"Condominium Act"** means the *Condominium Act, 1998* (Ontario).
6. **"Construction Act"** means the *Construction Act* (Ontario).
7. **"Deposit Insurer"** means a deposit bonding and deposit insurance company acceptable to the Lender as the surety for bonds and/or excess deposit insurance issued to Tarion and/or purchasers of Units pursuant to the terms of the agreements of purchase and sale made between the Borrower and such purchasers thereunder.
8. **"Environmental Law"** means the statutes, regulations, policies, directives, orders, approvals, and other legal requirements of any Governmental Authority or the common law which affect the Project, the Property, the Borrower's and/or Guarantors' respective business, and which impose any obligations relating to protection, conservation, or restoration of the environment.
9. **"Fiscal Quarter"** means the four (4), three (3) month financial accounting periods for the Borrower, commencing on the first day immediately following the Borrower's year end, in each year.
10. **"Governmental Authority"** means any government, parliament, legislature, municipal council, or other regulatory or legislative authority, agency, commission, department or board of any government, parliament, legislature, municipal council or any political subdivision thereof, or any court or any other law, by-law, regulation or rule-making entity (including self-regulating and industry boards, associations and entities of all kinds empowered by legislation, by-law, proclamation, order, the exercise of prerogative power or regulation charged with the administration, regulation or enforcement of Applicable Laws or such board's, association's or entity's own codes, ordinances, orders, decrees, edicts, rules, by-laws, regulations policies, voluntary restraints, practices or guidelines), having jurisdiction in the relevant circumstances, or any Person acting under the authority of any of the foregoing (including any arbitrator with the authority to bind the parties at law) or any other authority, agency, commission, department, association or board charged with the administration, regulation or enforcement of Applicable Laws.
11. **"Hard Costs"** means the amounts expended or to be expended for work, services or materials done, performed, placed or furnished in connection with the construction of the Project, all as more particularly set out in the Project Budget.



- 12. "Hazardous Substance"** means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to any Environmental Law, including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law.
- 13. "Holdbacks"** means any amounts required to be retained by or on behalf of the Borrower in respect of the value of work, services and materials actually done, performed, placed or furnished on or in the Project in accordance with the Construction Act.
- 14. "HST"** means any goods and services tax, harmonized sales tax or similar value added tax exigible or applicable in the Province of Ontario pursuant to the *Excise Tax Act* (Canada) as amended from time to time and/or any successor legislation.
- 15. "Interest Adjustment Date" or "IAD"** means the date that is the first (1st) of the month following the date of the Initial Advance.
- 16. "Lease"** means any lease, sublease, agreement to lease, offer to lease, licence or right of occupation granted from time to time by or on behalf of the Borrower entitling the lessee, sublessee or grantee thereunder to use or occupy all or any part of the Property.
- 17. "Letter of Credit"** means a standby letter of credit, commercial or letter of guarantee, as applicable, issued by an Affiliate of the Lender, to the extent applicable.
- 18. "Person"** means any individual, partnership, corporation, trust, trustee or other entity or any combination of them.
- 19. "Project Budget"** means the budget of all Project Costs, which has specified on a line-by-line basis, all Project Costs, as prepared by the Borrower, and approved by the Lender, and as may be amended from time to time with the consent of the Lender, which consent shall be in the Lender's sole discretion.
- 20. "Project Costs"** means the aggregate of all Hard Costs and all Soft Costs expended or to be expended to construct the Project in accordance with the Project Documents and Project Schedule.
- 21. "Project Documents"** Means the plans and specifications (including all structural, architectural, mechanical, electrical, landscape and interior design and specifications) pertaining to the development and construction of the Project prepared by or at the direction of the Borrower and as approved by the Lender, as amended from time to time with the consent of the Lender, in its sole discretion.
- 22. "Project Schedule"** means the schedule Project activities provided to and approved by the Lender, as same may be amended from time to time with the consent of the Lender, in its sole discretion.
- 23. "Purchaser Deposits"** means the deposits paid by purchasers of Units under the agreements of purchase and sale.
- 24. "Requirements of Environmental Law"** means all requirements of Applicable Laws and of any Governmental Authority relating to environmental or occupational health and safety matters (as they relate to exposure to a Hazardous Substance) and the assets and undertaking of such Person and the intended uses thereof in connection with such matters, including all such requirements relating to: (a) the protection, preservation or remediation of the natural environment (the air, land, surface water or groundwater); (b) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (c) consumer, occupational or public safety and health (as they relate to exposure to a Hazardous Substance); and (d) Hazardous Substance or conditions.



25. **"Soft Costs"** means all amounts expended or to be expended in respect of the Project for consultants, architects, taxes, surveys, insurance, bonding costs, legal fees, promotions of the Project, financing, leasing, pre-operating costs and all other costs related to the Project, except Hard Costs and the cost of acquiring the Property.
26. **"Tarion"** means Tarion Warranty Corporation and/or its successors and assigns.
27. **"Unit"** means a "unit" (as defined in the Condominium Act) comprising part of the Project for use as a residence and/or ancillary uses together with the common elements and exclusive use interests appurtenant thereto, to the extent applicable.

[End of Appendix B]



APPENDIX "C"
INSURANCE REQUIREMENTS

- 1. General** The following shall be provided with respect to insurance on the Project:
- a) Proof of appropriate Commercial Liability insurance and an assignment of insurance. A certificate of insurance showing the Lender as additional insured and loss payee, and coverage of not less than the amount deemed adequate by the Lender's insurance consultant.
 - b) Other insurance including, but not limited to, Environmental Insurance, Pollution Insurance, and Key Persons Insurance, as the Lender's insurance consultant may deem necessary given the nature of the Project. The amount of coverage required shall be reasonably determined by the Lender's insurance consultant.
- 2. Insurance Policies** All such insurance policies shall:
- a) Name the Lender as mortgagee thereunder as its interest may appear;
 - b) Name the Lender as additional insured and loss payee;
 - c) Have attached the Insurance Bureau of Canada standard mortgage clause;
 - d) Provide that no cancellation, termination, or adverse amendment thereof shall take effect unless the insurer concerned has given the Lender not less than thirty (30) days prior written notice of such proposed action;
 - e) Provide that proceeds of all insurance for physical damage and rental losses shall be payable to the Lender or as it may direct; and
 - f) Otherwise be in such form as the Lender and/or the Lender's insurance consultant shall reasonably require.
- 3. Application of Proceeds** So long as no Event of Default has occurred and is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be, with the approval of the Lender:
- a) Applied in reduction of amounts outstanding hereunder; or
 - b) Released to the Borrower subject to compliance with such conditions as the Lender may require.
- 4. Other Conditions**
- a) If an Event of Default has occurred or is continuing, the proceeds of all insurance relating to physical damage and rental losses shall be payable to the Lender to be applied by it in reduction in the Loan Amount outstanding hereunder.
 - b) The proceeds of all insurance held by the Lender shall, unless and until the same are applied or released to the Borrower as aforesaid, constitute continuing collateral security for the Borrower's obligations and liabilities in respect of amounts outstanding hereunder.
 - c) In the event that the Lender shall not be obligated hereunder to apply the proceeds of insurance to pay for the cost of repairing the damage or destruction to or replacement of the Property in respect of which the insurance is payable and the Lender elects to apply the proceeds of insurance to the Loan Amount owing by the Borrower hereunder, each of the Borrower (on its own



behalf and on behalf of each of the Guarantors), hereby irrevocably waives any and all statutory provisions which may require that proceeds of insurance be used to restore or rebuild the Property.

d) The Borrower shall deliver or cause to be delivered to the Lender, certificates of insurance signed by the insurers, or other evidence satisfactory to the Lender, acting reasonably, of the insurance coverage required hereunder, including certificates of renewal as soon as they are available.

5. Insurance Consultant The Borrower acknowledges that all policies of insurance shall be subject to review and approval by an insurance consultant acting on behalf of the Lender and the Borrower agrees to pay for the consultant's fees in connection with such review upon registration of the Security and for each insurance renewal throughout the Term.

6. Broker Contact Information and Release Please provide the following information for our records:

Table with 2 columns and 7 rows: Insurance Broker, Brokerage Name, Contact Name, Address, City, Phone #, Email Address.

The Borrower and persons otherwise connected with this Commitment, hereby authorize the above noted insurance broker to release insurance information required by the Lender and their insurance consultant for this transaction.

The Borrower and persons otherwise connected with this Commitment, hereby authorize the Lender to release information necessary to determine insurance requirements, as needed, to the Lender's insurance consultant for the purposes of conducting an insurance review.

Borrower: 98 JAMES SOUTH (2022) INC.

~~Hunter Milborne, Michael Budovitch and Marcus Gillam in Trust for a Corporation to be incorporated.~~

DS [Signature]

DocuSigned by:

Hunter Milborne

Per. 436E6706B5DF4A7...

Name:

Title:

I/we have authority to bind the Corporation

[End of Appendix C]



**APPENDIX "D"
PROJECT PRO FORMA**

[Intentionally Deleted – N/A]



APPENDIX "E"
MINIMUM SELLING PRICES

[Intentionally Deleted – N/A]



APPENDIX "F"
REPORTING REQUIREMENTS

Annual	
1. Annual Financial Statements of the Corporate Obligor(s)	<p>As soon as available and, in any event, within ninety (90) days after the end of each of the Corporate Obligors' fiscal years, copies of such Obligors' annual Notice to Reader financial statements prepared by an external professional accountant shall be provided to the Lender.</p> <p>Statements shall be prepared on a consolidated basis and, in each case, consisting of a balance sheet, statement of profit and loss, and statement of changes in financial position for each such year, together with the notes thereto, all prepared in accordance with generally accepted accounting principles consistently applied.</p>
2. Annual Project Budget	As soon as available and, in any event, within ninety (90) days after the end of the Borrower's fiscal year, an updated Project Budget shall be provided to the Lender.
3. Annual Corporate Notice of Assessment	<p>As soon as available and, in any event, within sixty (60) days after each of the Corporate Obligors' corporate tax deadline, copies of such Obligors' Notice of Assessment shall be provided to the Lender.</p> <p>If such Notice(s) of Assessment show a balance owing, such Obligor(s) shall provide proof of payment for the balance.</p>
4. Annual Personal Notice of Assessment	<p>As soon as available and, in any event, within sixty (60) days after each of the Personal Obligors' corporate tax deadline, copies of such Obligors' Notice of Assessment shall be provided to the Lender.</p> <p>If such Notice(s) of Assessment show a balance owing, such Obligor(s) shall provide proof of payment for the balance.</p>
5. Annual Personal Net Worth Statement(s)	As soon as available and, in any event, by the anniversary of the previously received personal net worth statement, an updated personal net worth statement with supporting documentation for each of the Personal Obligors shall be provided to the Lender.
Quarterly	
1. Quarterly Compliance Certificates	As soon as available and, in any event, within thirty (30) days after the end of each of the Borrower's Fiscal Quarters, a loan compliance certificate, in a form and substance satisfactory to the Lender, shall be provided to the Lender.



Other	
1. Property Tax Information	<p>As soon as available, the Borrower shall provide a copy of the property tax bill(s) for the Project to the Lender.</p> <p>On each tax instalment date, as specified on the property tax bill(s), the Borrower shall provide proof of property tax payment to the Lender.</p>
2. Insurance	<p>As soon as available and, in any event, no later than thirty (30) days prior to the insurance expiry date(s), the Borrower will provide a certificate of insurance and policy from its insurance broker indicating that all insurance required by the Lender, as specified in Appendix C, is adequate and still in effect.</p>

[End of Appendix F]



**APPENDIX "G"
FEE DETAILS**

The Obligors hereby acknowledge (i) having received and had explained to each of them all of the possible fees and charges set forth in this Commitment, including, without limitation, the Fees in this Appendix G, which would be in addition to the principal and interest due hereunder and (ii) that all such fees and charges are reasonable and reflect a reasonable pre-estimate of Lender's actual costs with respect to same.

- 1. Good Faith Deposit** The Good Faith Deposit delivered by the Borrower to the Lender upon execution of the letter of intent shall be non-refundable to the Borrower and is deemed fully earned by the Lender upon delivery of this Commitment to the Obligors. The Obligors hereby acknowledge and agree that the Good Faith Deposit is a reasonable estimate of the fees to be incurred by the Lender in connection with the preparation of this Commitment, which amount is deemed not to be a penalty.
- 2. Lender Fee** The Lender Fee shall be earned by the Lender upon notification of successful syndication. The Lender Fee less the Good Faith Deposit shall be deducted from the Initial Advance. Failing an Initial Advance, these funds are due and payable by the Obligors. The Obligors hereby acknowledge and agree that the Lender Fee is a reasonable estimate of the fees to be incurred by Lender in connection with the due diligence and underwriting required hereunder, which amount is deemed not to be a penalty.
- 3. Administration Fee** The Administration Fee shall be earned by the Lender upon notification of successful syndication as compensation for the setup of administration files and completion of all regulatory documentation. The Administration Fee shall be deducted from the Initial Advance. Failing an Initial Advance, these funds are due and payable by the Borrower.
- 4. Final Discharge Fee** The Final Discharge Fee shall be paid to the Lender upon final discharge of the Security from the Project as compensation for administering the final discharge.
- 5. Pre-Payment Fee** The Pre-Payment Fee shall be paid to the Lender upon each and every pre-payment request.
- 6. Due Diligence Expenses and Fees** The Borrower shall be responsible for the Lender's legal and other, professional fees and out of pocket expenses in connection with the Loan.
- 7. Accrued Interest** The Obligors hereby acknowledge and agree that interest shall accrue as of the date that the Initial Advance and/or a Lender Advance is deposited into the Lender's trust account. In the event that this Commitment is terminated following the date of such deposit aforesaid, the Obligors hereby acknowledge and agree that such interest up to the date of termination shall immediately become due and payable hereunder, notwithstanding no Advance having been made to the Borrower.

[End of Appendix G]



APPENDIX "H"
OTHER TERMS

1. Maximum Rate of Return

The parties agree that notwithstanding any agreement to the contrary, no interest on the credit advanced will be payable in excess of Applicable Laws. If the effective annual rate of interest calculated in accordance with generally accepted actuarial practices and principles would exceed sixty (60%) percent (or such other rate as the Parliament of Canada may deem from time to time as The Criminal Rate) on the credit advance, then (1) the amount of any fees, bonus, commissions or like charges payable in connection therewith will be reduced to the extent necessary to eliminate such excess; (2) any remaining excess that has been paid will be credited toward prepayment of the credit advanced; and (3) any overpayment that may remain after such crediting will be returned forthwith upon demand. In this paragraph the terms "interest", "Criminal Rate" and "credit advanced" have the meaning ascribed to them in Section 347 of The Criminal Code; and "credit advanced" has the same meaning as "Loan" referred to elsewhere in this Commitment.

2. Right of First Opportunity

The Borrower shall grant to the Lender a right of first opportunity (the "**Right of First Opportunity**") with respect to providing any further financing required for the Project, including, without limitation, arranging replacement or additional financing for the Project as contemplated herein, and financing for any further development of the Project or of any improvements thereon (the "**Further Financing**"). Prior to consulting with any other lender with respect to any Further Financing, the Borrower shall provide to the Lender in writing a request for such Further Financing with all information necessary for the Lender to process the request and the Lender shall have a period of ~~sixty (60)~~ ^{* thirty (30)} days after receipt of same (the "**Opportunity Period**") to provide to the Borrower a mortgage commitment letter to provide the Further Financing. The Borrower hereby undertakes not to communicate with any other lender with respect to provision of the Further Financing during the Opportunity Period, and to fully cooperate with the Lender in good faith during the Opportunity Period to provide such further information as the Lender may require in pursuit of its Right of First Opportunity.

DS
HM

DS
CK

3. Right of First Refusal

The Borrower shall grant to the Lender a right of first opportunity (the "**Right of First Refusal**") with respect to providing any Further Financing required for the Project. Upon receipt by the Borrower of any written offer of financing received from any other party, including but not limited to term sheets, mortgage commitments, and funding agreements (the "**Third-Party Funding Offer**"), the terms of which the Borrower is prepared to accept, the Borrower shall provide to the Lender a copy of the Third-Party Funding Offer and all information relevant to it. Upon receipt of same, the Lender shall have a period of **fourteen (14) days** (the "**Matching Period**") to provide a mortgage commitment letter to the Borrower containing financing terms that are substantially the same or better as the Third-Party Funding Offer (the "**Matching Offer**"). The Borrower hereby undertakes, in the event that the Lender submits to the Borrower a Matching Offer within the Matching Period, to accept the Matching Offer and forthwith provide to the Lender such information and execute such documentation as is reasonably required by it in connection with that acceptance. In the event that the Lender fails to deliver to the Borrower a Matching Offer within the Matching Period, the Borrower shall be at liberty to accept the Third-Party Funding Offer. The Borrower hereby undertakes to fully cooperate with the Lender in good faith during the Matching Period to provide such information as the Lender may require in pursuit of its Right of First Refusal.

This is Exhibit "E" referred to in the
affidavit of Cecil Hayes sworn February 28, 2024

A handwritten signature in blue ink, appearing to be "A. [unclear]", written in a cursive style.

A Commissioner for the Taking of Affidavits

Properties

PIN 17171 - 0260 LT *Interest/Estate* Fee Simple
Description PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; EXCEPT PT 1, 62R21103; CITY OF HAMILTON
Address HAMILTON

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name 98 JAMES SOUTH (2022) INC.
Address for Service 385 Madison Avenue, Toronto, Ontario
M4V 2W7

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name MARSHALLZEHR GROUP INC.
Address for Service 412 Albert St., Suite 100, Waterloo, ON N2L 3V3

Statements

Schedule: See Schedules

Provisions

Principal \$13,200,000.00 *Currency* CDN
Calculation Period monthly, interest only
Balance Due Date 2024/05/01
Interest Rate The greater of two times the Prime Rate plus 12.60% per annum and 22% per annum

Payments

Interest Adjustment Date 2022 10 01
Payment Date 1st day of each and every month
First Payment Date 2022 10 01
Last Payment Date 2024 05 01
Standard Charge Terms 200033
Insurance Amount Full insurable value
Guarantor Hunter Milborne, Marcus Gillam and 98 James South (2022) Limited Partnership

Signed By

Wing Chiu Wu 5000 Yonge Street, 10th Floor acting for Signed 2022 09 09
Toronto
M2N 7E9 Chargor(s)

Tel 416-222-8888

Fax 416-218-1860

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

CHAITONS LLP 5000 Yonge Street, 10th Floor 2022 09 09
Toronto
M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

Fees/Taxes/Payment

Statutory Registration Fee	\$66.30
Total Paid	\$66.30

SCHEDULE - ADDITIONAL PROVISIONS

1. DEFINITIONS

In this Charge, unless the context requires otherwise:

- (a) **"Act"** means the *Condominium Act, 1998* (Ontario) as amended.
 - (b) **"Applicable Taxes"** means any goods and services tax levied under Part IV of the *Excise Tax Act* (Canada), the provincial portion of harmonized sales tax, value-added tax or any similar tax applicable thereon.
 - (c) **"Business Day"** means any day, other than a Saturday or Sunday, on which Canadian chartered banks are open for domestic and foreign exchange business in the Province of Ontario.
 - (d) **"Charge"** means this charge/mortgage of land (including the attached electronic form of charge/mortgage, this schedule and all other schedules to this charge) as it may be amended, restated or replaced from time to time.
 - (e) **"Chargee"** means MarshallZehr Group Inc.
 - (f) **"Chargor"** means the Person or Persons indicated in the applicable Computer Field.
 - (g) **"Commitment"** means the letter of commitment issued by the Chargee to the Chargor in connection with the borrowing contemplated hereby, as may be subsequently amended from time to time.
 - (h) **"Computer Field"** means a computer data entry field in the attached electronic form of charge/mortgage registered pursuant to Part 111 of the *Land Registration Reform Act* (Ontario) in which the terms and conditions of this Charge may be inserted.
 - (i) **"Condominium Corporation"** means, if applicable, the proposed condominium corporation which may be created on any portion of the Real Property upon registration of a declaration and description by the Chargor.
 - (j) **"Costs"** means all fees, costs, charges and expenses of the Chargee of and incidental to, including without limitation:
 - (i) the collection of any amounts payable hereunder, enforcement of any covenants contained herein, and the realization of the security herein contained;
 - (ii) procuring or attempting to procure payment of any portion of the outstanding principal sum secured hereunder or any other amounts due and payable hereunder, including foreclosure, power of sale or execution proceedings commenced by the Chargee or any other party;
 - (iii) the Chargee having to go into possession of the Real Property and secure, complete and equip any buildings or improvements situate thereon in any way in connection therewith;
 - (iv) the exercise of any of the powers of a Receiver contained herein; and
 - (v) all solicitor's costs, charges and expenses relating to any of the foregoing and any necessary examination of title to the Real Property.
- For greater certainty, Costs shall:
- (i) extend to and include legal costs incurred by the Chargee on a substantial indemnity basis;
 - (ii) be payable forthwith by the Chargor;
 - (iii) bear interest at the Interest Rate; and
 - (iv) be a charge on the Real Property.
- (k) **"Covenantor"** means the Person or Persons indicated in the applicable Computer Field.
 - (l) **"Governmental Authority"** means, when used with respect to any Person, any government, parliament, legislature, regulatory authority, agency, commission, tribunal, department, commission, board, administrative agency, court, arbitration board or arbitrator or other law, regulation or rule making entity having or purporting to have jurisdiction on behalf of, or pursuant to the laws of Canada or any province, municipality or district located therein.
 - (m) **"Hazardous Substance"** means any hazardous waste or substance, pollutant, contaminant, waste or other substance, whether solid, liquid or gaseous in form, which when released into the natural environment may immediately or in the future directly or indirectly cause material harm or degradation to the natural environment or to the health or welfare of any living thing and includes, without limiting the generality of the foregoing:
 - (i) any such substance as defined or designated under any applicable laws and regulations for the protection of the environment or any living thing;
 - (ii) asbestos, urea formaldehyde, poly-chlorinated biphenyl ("**PCB's**") and materials manufactured with or containing the same; and

- (iii) radioactive and toxic substances.
- (n) **"Interest Adjustment Date"** means the date indicated in the applicable Computer Field.
- (o) **"Interest Rate"** means the interest rate set out in the Commitment.
- (p) **"Loan"** means the loan extended by the Chargee to the Chargor pursuant to the terms of the Commitment.
- (q) **"Maturity Date"** means the Balance Due Date as set out in the applicable Computer Field.
- (r) **"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, and the executors, administrators or other legal representatives of an individual in such capacity.
- (s) **"Project"** means the proposed project intended to be developed by the Chargor on the Real Property, which may consist of the Units together with any ancillary amenities thereto.
- (t) **"Real Property"** means the real property described in the attached electronic form of charge/mortgage, together with all of the present and future interest of the Chargor in the Real Property including, all rights, benefits, agreements, rights-of-way, easements, privileges and right to use or occupy now or hereafter to such real property; and, all fixtures, improvements, buildings and other structures placed, installed or erected from time to time on any such real property (including all such property now or in the future owned, leased, licensed, possessed or acquired by the Chargor, or in which the Chargor now or in the future has any interest or to which the Chargor is now or may in the future become entitled).
- (u) **"Requirements of Environmental Law"** means all requirements of the common law or the statutes, regulations, by-laws, ordinances, treaties, judgments and decrees and (whether or not they have the force of law) rules, policies, guidelines, orders, approvals, notices, permits, directives and the like, of any Governmental Authority relating to environmental, health, fire or safety matters, or any of them and the Real Property and the activities carried out therein (whether in the past, present or the future), including, but not limited to, all such requirements relating to Hazardous Substances.
- (v) **"Taxes"** means all taxes, rates and assessments of whatever nature or kind and to whomever imposed, levied, collected, withheld or assessed as of the date of this Charge or at any time in the future charged or payable with respect to the Real Property by any Governmental Authority having jurisdiction, including local improvement rates and any and all interest, fines and penalties in connection therewith.
- (w) **"Term"** means the term of this Charge, to expire on the Maturity Date.
- (x) **"Unit"** means any portion of the Real Property (i) designated or intended for use as a single family residential dwelling in accordance with the *Planning Act* (Ontario) and/or (ii) consisting of an individual condominium unit created in accordance with the provisions of the Act, and **"Units"** means more than one (1) Unit.

2. **NON-MERGER**

Notwithstanding the registration of this Charge and the advance of funds secured hereunder, the Chargor hereby acknowledges that the terms, conditions, obligations, liabilities, warranties and representations contained in the Commitment shall not merge on the closing, registration and/or delivery of the Loan security, including, without limitation, this Charge, but shall remain binding and effective upon the parties hereto and in full force effect. It is understood and agreed that any default under the Commitment shall be deemed a default under this Charge. In the event of an inconsistency or conflict between any of the terms of this Charge and the terms of the Commitment, the Chargee shall determine, in its sole and unfettered discretion, which shall prevail.

3. **LOAN FACILITY EXTENDED TO THE CHARGOR AND SECURED HEREIN**

- (a) Whereas pursuant to the terms of the Commitment, the Chargee has agreed to extend a loan facility to the Chargor and the Chargor hereby charges the Real Property in favour of the Chargee with the indebtedness owing from time to time pursuant to the Loan up to the principal amount set out in the Commitment, together with interest thereon at the Interest Rate, Costs and other amounts thereon as provided for herein.
- (b) Provided this Charge to be void upon payment to the Chargee of the aggregate of the unpaid balance advanced to the Chargor by the Chargee in lawful money of Canada with interest thereon at the Interest Rate, and, which interest shall be calculated and compounded monthly not in advance as hereinafter set forth, as well after as before maturity and both before and after default and judgment.
- (c) Interest calculated daily and compounded monthly, not in advance, at the Interest Rate on the amount advanced from time to time shall become due and payable monthly on the first (1st) day of

each and every month from and including the first (1st) day of the month immediately following the Interest Adjustment Date to and including the first (1st) day of the month in which the Maturity Date takes place. The aggregate sum advanced to the Chargor by the Chargee, together with interest thereon at the Interest Rate shall become due and payable on the Maturity Date. The first payment of interest to be computed from the Interest Adjustment Date shall be due and payable on the first (1st) day of the month immediately following such date.

- (d) Costs and Taxes and performance of statute labour, and observance and performance of all covenants, provisos and conditions herein contained.

4. **COMPOUND INTEREST**

It is hereby agreed that in case default shall be made in payment of any sum in respect of the Loan to become due for interest at any time appointed for payment thereof as aforesaid, compound interest shall be payable and the sum in arrears for interest from time to time, as well after as before maturity, shall bear interest at the rate aforesaid, and in case the interest and compound interest are not paid in one (1) month from the time of default a rest shall be made, and compound interest at the Interest Rate shall be payable on the aggregate amount then due, as well after as before maturity, and so on from time to time, and all such interest and compound interest shall be a charge upon the Real Property.

5. **CAPITALIZED INTEREST**

The Chargee shall have the right at its sole option to capitalize any interest owing from time to time and to add same to the principal amount of the Loan and to treat it as part thereof and charge interest thereon. Such capitalized interest and interest thereon shall at all times be secured under the security granted by the Chargor to the Chargee pursuant to this Loan in first priority in the same manner as accrued interest. The Chargee at its sole option shall have the right to treat such capitalized interest as principal or accrued interest. Notwithstanding anything contained herein to the contrary, the principle of deemed reinvestment of interest shall not apply to any interest calculation in respect of this Charge.

6. **PREPAYMENT**

The Chargor, when not in default hereunder, the Commitment, and/or any other Additional Security, shall have the prepayment rights set out in the Commitment.

7. **PRE-AUTHORIZED DEBIT**

- (a) If so requested by the Chargee from time to time, all or a portion of the payments to be made by the Chargor to the Chargee hereunder shall be made by way of automatic monthly debit withdrawals by the Chargee from a designated bank account of the Chargor, as the Chargor may notify the Chargee in writing. In this regard, the Chargor hereby authorizes and directs the Chargee to automatically debit any bank account designated by the Chargor for amounts payable hereunder. The Chargor hereby further agrees to do, make and execute, or cause to be done, made and executed, all such documents, acts, matters and things as may be reasonably required by the Chargee to give effect to the foregoing, including, without limitation, executing the Chargee's Pre-Authorized Debit Form.
- (b) Alternatively (or in addition), if so requested by the Chargee, the Chargor shall deliver to the Chargee a series of post-dated cheques from time to time at any time during the Term following the delivery to the Chargor by the Chargee of the final advance to be made under the Loan, representing all or a portion of monthly payments on account of interest due and owing on account thereof throughout the then-remaining Term.

8. **PAYMENTS AFTER 1:00 P.M.**

Any payment received by the Chargee after 1:00 P.M. (local time) on any Business Day, shall be deemed for the purpose of calculation of interest, to have been made and received on the immediately following Business Day. For greater certainty, if funds are received (or deemed received) on a Friday after 1:00 P.M. (local time), interest shall be calculated to the following Business Day.

9. **SALE OR CHANGE OF CONTROL**

- (a) In the event that the Chargor directly or indirectly sells, conveys, transfers, assigns or exercises a power of appointment with respect to the Real Property or any portion thereof to a purchaser, transferee or assignee, other than a sale or transfer of individual Units to a purchaser thereof as contemplated by Section 15 hereof, or in the event of a change of shareholders of the Chargor which results in a change of control of the Chargor, or in the event of a change in the legal or beneficial ownership of the Real Property or any portion thereof, other than a sale or transfer of individual Units to a purchaser thereof as contemplated by Section 15 hereof, the Chargee may, at the Chargee's sole option, declare all of the sums secured by this Charge to be immediately due and payable and invoke any remedies permitted by this Charge or law, unless the written consent of the Chargee is first obtained, which consent may be arbitrarily or unreasonably withheld. The right of the Chargee pursuant to this provision shall not be affected or limited in any way by the acceptance of payments due under this Charge from the Chargor or any Person claiming through or under the

Chargor and the rights of the Chargee hereunder shall continue without diminution for any reason whatsoever until such time as the Chargee has consented in writing as required by this provision.

- (b) No sale or other dealings by the Chargor with the equity of redemption in the Real Property or any part thereof shall in any way change the liability of the Chargor for the observance, fulfilment and maintenance of all covenants, terms and provisions herein or in any way alter the rights of the Chargee as against the Chargor or any other Person liable for payment of the moneys hereby secured. No dealing between the Chargee and the Chargor or the owner of the equity of redemption, including extending or renewing this Charge, shall in any way affect, change or prejudice the liability of the Chargor for the observance, fulfilment and maintaining of all covenants, terms, provisos, conditions, agreements and stipulations in this Charge or any amendment or extension thereof or in any way alter the rights of the Chargee as against the Chargor or any other Person liable for payment of the moneys hereby secured, and the Chargor expressly waives all notice of such dealings between the Chargee with the owner of the equity of redemption, including extending or renewing this Charge.

10. **MATERIAL ADVERSE CHANGES**

In the event that at any time while any indebtedness remains outstanding pursuant to the provisions of this Charge, the Chargee discovers that there is or has been any material adverse change, discrepancy or inaccuracy in any written information, statements or representations made or furnished to the Chargee by or on behalf of the Chargor and/or any Covenantor concerning the Real Property or the financial condition and responsibility of the Chargor or any Covenantor, or in the event of default by the Chargor or any Covenantor, then, in the event of such default, or if such material change, discrepancy or inaccuracy cannot be rectified or nullified by the Chargor or such Covenantor within thirty (30) days after written notification thereof by the Chargee to the Chargor or such Covenantor, the Chargee shall be entitled forthwith to withdraw and cancel its obligations hereunder or decline to advance any further funds, as the case may be, and to declare any funds which have been advanced, together with interest, to be forthwith due and repayable in full.

11. **RESTRICTIONS ON FURTHER FINANCING**

The Chargor covenants and agrees that it will not enter into, create, incur, assume, suffer or permit to exist any other charge, pledge or other form of financing against the Real Property and/or in respect of any chattels or other equipment directly related to the Real Property, and not to further encumber same in any manner without the prior written consent of the Chargee, which approval may be unreasonably withheld by the Chargee.

12. **CONSENT TO REGISTRATION OF A PLAN OF CONDOMINIUM**

Provided that the Chargor is not in default hereunder, the Commitment, and/or any other Additional Security, the Chargee hereby agrees that it will consent to the Chargor registering a plan of condominium and declaration (the "**Condominium**") pursuant to the Act with respect to a portion of the Real Property provided that the Chargee has received and approved the draft plan of condominium and the declaration.

13. **NON-APPORTIONMENT**

Units into which the Real Property is or may hereafter be divided do and shall stand charged with the whole of the principal amount of this Charge and interest and all other amounts payable under this Charge, and no Person shall have any right to require the principal amount of this Charge or interest or such other amounts to be apportioned upon or in respect of any such Unit, other than as provided for in the Act.

14. **DEVELOPMENT PROVISIONS**

- (a) The Chargor, its agents, employees, and parties authorized by it may not conduct development and construction operations on the Real Property, including, without limitation, demolition and removal of existing structures, survey work, grading and excavation operations, installation of services, construction of a sales pavilion and all other acts incidental to the development of the Project without the prior written consent of the Chargee, in its sole and unfettered discretion. Provided that in the event that the Chargee has approved of any such construction operations on the Real Property and the Chargor is not in default hereunder, the Commitment, and/or any other Additional Security, the Chargee shall, on written request from the Chargor, execute and deliver within five (5) Business Days of written request therefore, without the requirement of payment of any principal or interest under this Charge, all plans, agreements, consents, postponements, releases and other documents so that the Chargor may develop the Real Property, including, without limitation the following:
- (i) engineering, financial, condominium, subdivision, servicing, site plan, development, cost-sharing and reciprocal agreements required by the Governmental Authorities;
 - (ii) consents or authorizations required to have the Real Property or any part thereof rezoned or divided or to comply with the provisions of the *Planning Act* (Ontario);

- (iii) consents or postponements for any easements required to be granted for any public service or other purpose including the realignment of the existing pedestrian and vehicular easement with the adjoining land owner;
 - (iv) consents or partial discharges for or relating to parts of the Real Property required by the Governmental Authorities for the purpose of granting or dedicating roads, road widenings, walkways, reserves, parklands, recreation sites, school sites, drainage areas, buffer strips or other public purposes, provided such conveyances do not negatively impact on continued access to the Real Property; and
 - (v) consents for the registration of the Condominium relating to the Real Property.
- (b) Provided, however, that the Chargee shall not be required to undertake or assume any financial or other obligation as a result thereof and provided further, that with respect to partial discharges or consents required for any of the purposes referred to herein, an amount shall be paid for a partial discharge for such portion of the Real Property equal to the amount if any, received by the Chargor from any third party for the transfer or dedication of any such lands as set out in Section 15 herein.
- (c) The Chargor hereby covenants and agrees that it will:
- (i) indemnify the Chargee and save it harmless from any losses, claims, actions or damages arising as a result of its agreement to execute any of the documentation referred to above; and
 - (ii) bear the Costs of the Chargee's solicitors and consultants in connection with the review of such documentation.

15. **PARTIAL DISCHARGE PROVISIONS**

- (a) The following provisions shall apply in respect of each and every partial discharge of this Charge from any part of the Real Property as may be requested by the Chargor and/or given by the Chargee pursuant to the terms of this Charge:
- (i) notwithstanding anything otherwise contained herein, the Chargor shall not be entitled to request or receive any partial discharge when there is any outstanding material default by the Chargor hereunder;
 - (ii) in addition to all amounts on account of principal required to be paid by the Chargor to the Chargee in respect of any part of the Real Property to be partially discharged, the Chargor shall also pay to the Chargee:
 - a. accrued and unpaid interest on such principal amounts to the date of partial discharge;
 - b. the reasonable legal and other costs incurred by the Chargee in connection with each such partial discharge; and
 - c. any and all other charges due and owing by the Chargor pursuant to the provisions of this Charge;
 - (iii) the Chargor shall not be entitled to request and the Chargee shall not be obliged to give any partial discharge if doing so and registration of the same would result in any of the following:
 - a. a violation of the *Planning Act* (Ontario);
 - b. any undischarged parts of the Real Property becoming landlocked;
 - c. the occupancy and use of any undischarged parts of the Real Property in the same manner as prior to such partial discharge to be in non-compliance with any laws, by-laws or regulations of any Governmental Authority having jurisdiction;
 - (iv) the Chargee hereby agrees to deliver to the Chargor, upon prior written request, execution copies of all instruments and other documents reasonably required to be executed by the Chargee in connection with any partial discharge(s) of this Charge (collectively, the "**Discharge Documents**") contemplated to be registered at any time during the Term, in respect of any portion of the Real Property designated or intended for use as a Unit, provided that any such Discharge Documents so delivered to the Chargor by the Chargee pursuant to this subsection (d) shall be held in escrow by the Chargor's solicitors (provided that the Chargor's solicitors are acceptable to the Chargee) pending (i) the successful sale of any such Unit to a third party purchaser for value and delivery of the applicable Net Closing Proceeds (as hereinafter defined) to the Chargee (or as it may otherwise direct) together with payment of the Chargee's reasonable administrative and legal costs incurred with respect to preparation and delivery of such partial discharge(s), and (ii) written notice

from the Chargee or its solicitors that any such Discharge Documents may be so released. Any other request for partial discharge shall be made by the Chargor upon not less than five (5) Business Days' prior written notice to the Chargee accompanied by execution copies of all Discharge Documents required to be executed by the Chargee in connection therewith; and

- (v) all monies payable to the Chargee in respect of each partial discharge shall be paid by certified cheque, in lawful money of Canada.
- (b) When and if pursuant to exercise of the partial discharge provisions set forth in this Charge, the Chargor has paid to the Chargee all amounts secured by this Charge, then the Chargee acknowledges and agrees that, notwithstanding anything otherwise contained herein, the Chargor shall be entitled to request and obtain from the Chargee one or more partial discharges of this Charge from all parts of the Real Property then remaining undischarged without further payment on account of principal, but subject always to the provisions set forth in this Section 15.
- (c) Notwithstanding the foregoing, but subject always to the provisions set forth in this Section 15(a), the Chargor shall be entitled to request and obtain from the Chargee a partial discharge of any portion of the Real Property designated or intended for use as a Unit upon payment to the Chargee for each such Unit an amount on account of principal which is equal to one hundred (100%) percent of the Net Closing Proceeds from the sale of each such Unit. For the purposes herein, "**Net Closing Proceeds**" shall mean the sale price of such Unit (which sale price shall be approved by the Chargee) less, the aggregate of:
 - (i) deposits used in the Project's financing;
 - (ii) any payments required to be made to a permitted prior lender, if any, to obtain a partial discharge of its security;
 - (iii) approved legal costs in respect of such sale;
 - (iv) approved sales commission in respect of such sale; and
 - (v) any Applicable Taxes payable in respect of the sale of such Unit.

16. **CONDOMINIUM PROVISIONS**

- (a) Provided that if all or any part of the Real Property is or becomes a Unit pursuant to the provisions of the Act, the following covenants and provisions shall apply in addition to all other covenants and provisions set forth in this Charge:
 - (i) for the purposes of all parts of the Real Property comprising one or more such Unit, all references in this Charge to the Real Property shall include the Chargor's appurtenant undivided interest in the common elements and other assets of the Condominium Corporation;
 - (ii) the Chargor shall at all times comply with the Act;
 - (iii) the Chargor shall pay, when due, all monies payable by the Chargor or with respect to the Real Property in accordance with the provisions of the Act and the declaration, by-laws and rules of the Condominium Corporation, including all required contributions to common expenses and any special levies, charges and assessments, and shall provide proof of such payment to the Chargee upon request; and if the Chargor fails to make any such payment, the Chargee may do so at its option and all amounts so paid by the Chargee shall be secured by this Charge and shall be payable by the Chargor to the Chargee forthwith upon demand, together with interest thereon as herein provided;
 - (iv) the Chargee shall not be under any obligation to vote or to consent or to protect the interests of the Chargor;
 - (v) the exercise by the Chargee of its right to vote or to consent or to abstain from doing so shall not constitute the Chargee as a mortgagee or chargee in possession and shall not give rise to any liability on the part of the Chargee;
 - (vi) the Chargor hereby authorizes and directs the Condominium Corporation to permit the Chargee to inspect the records of the Condominium Corporation at any reasonable time;
 - (vii) in addition to and notwithstanding any other provisions of this Charge, the outstanding principal amount and all accrued interest and other charges secured by this Charge shall, at the Chargee's option, become immediately due and payable without notice or demand if any of the following events or circumstances shall occur and be continuing:
 - a. the government of the Condominium Corporation or the government of the Real Property by the Condominium Corporation is terminated;

- b. a vote of the Condominium Corporation authorizes the sale of all or substantially all of its property or assets or all or any part of its common elements or all or any part of the Real Property;
 - c. the Condominium Corporation fails to comply with any provision of the Act or its declaration or any of its by-laws and rules; and/or
 - d. the Condominium Corporation fails to insure its assets, including the Real Property, in accordance with the Act and the declaration and by-laws of the Condominium Corporation, or any insurer thereof cancels or threatens cancellation of any existing obligation to insure the same;
- (viii) the Chargee is hereby irrevocably authorized and empowered to exercise all rights of the Chargor (in its capacity as an owner of any particular Unit forming a part of the condominium development (the "**Condominium**")) to vote or to consent in all matters relating to the affairs of the Condominium Corporation (collectively, the "**Rights**") provided that:
- a. the Chargee may at any time or from time to time give notice in writing to the undersigned and the Condominium Corporation that the Chargee does not intend to exercise the Rights until such time as the Chargee revokes same and the undersigned may exercise its respective Rights. Any such notice may be for an indeterminate period of time or for a limited period of time or for a specific meeting or matter; and
 - b. the Chargee shall not by virtue of the assignment to the Chargee of the Rights be under any obligation to vote or consent or to protect the interest of the undersigned;
 - c. the foregoing assignment is made pursuant to the (i) *Land Registration Reform Act*, R.S.O. 1990, Chapter L.4 and (ii) Act.

17. **ENVIRONMENTAL PROVISIONS**

- (a) The Chargor represents and warrants that:
- (i) it has not caused or permitted, and to the best of its knowledge, information and belief after making due inquiry, no other person has caused or permitted, any Hazardous Substance to be manufactured, refined, traded, transported or transformed to or from, handled, produced, processed, placed, stored, located or disposed of on, under or at the Real Property;
 - (ii) it has no knowledge that any owner or occupier of any abutting or neighbouring properties has done any one or more of the matters or things prohibited by subsection (a) hereof;
 - (iii) it and its tenants, invitees and other occupiers of the Real Property have and will at all times carry out, and to the best of their respective knowledge, information and belief after making due inquiry, all prior owners and occupiers of the Real Property have at all times carried out, all business and other activities upon the Real Property in compliance with all applicable laws intended to protect the environment including, without limitation, laws respecting the discharge, emission, spill or disposal of any Hazardous Substance;
 - (iv) no order, direction, enforcement action or other governmental or regulatory action or notice, nor any action, suit or proceeding relating to an Hazardous Substance or the environment has been issued or is otherwise threatened or pending with respect to the Real Property;
 - (v) all of the representations and warranties set out herein shall remain true and accurate in all respects until all amounts secured hereunder are paid in full; and
 - (vi) the Chargee may delay or refuse to make any advance to the Chargor if the Chargee believes that any of the representations and warranties set out herein were not true and accurate when made or at any time thereafter.
- (b) The Chargee or agent of the Chargee may, at any time, before and after default of this Charge, and for any purpose deemed necessary by the Chargee, enter upon the Real Property to inspect the Real Property and buildings thereon. Without in any way limiting the generality of the foregoing, the Chargee (or its respective agents) may enter upon the Real Property to conduct any and all tests, inspections, appraisals and environmental audits of the Real Property deemed necessary by the Chargee so as to determine and ensure compliance with the provisions of this Charge including, without limitation, the right to conduct soil tests and to review and copy any records relating to the Real Property or the businesses and other activities conducted thereon at any time and from time to time. The reasonable cost of such testing, assessment, investigation or study, as the case may be, with interest at the Interest Rate, shall be payable by the Chargor forthwith and shall be a charge upon the Real Property. The exercise of any of the powers enumerated in this clause shall not deem the Chargee or its respective agents to be in possession, management or control of the Real Property.

- (c) In consideration of the advance of funds by the Chargee, the Chargor and the Covenantor by way of separate guarantee, hereby agree that, in addition to any liability imposed on the Chargor and the Covenantor under any instrument evidencing or securing the Loan indebtedness, the Chargor and the Covenantor shall be jointly and severally liable for any and all of the costs, expenses, damages or liabilities of the Chargee, its directors and officers (including, without limitation, all reasonable legal fees) directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Real Property of any Hazardous Substances and such liability shall survive foreclosure of the security for the Loan and any other existing obligations of the Chargor and Covenantor to the Chargee in respect of the Loan and any other exercise by the Chargee of any remedies available to it for any default under the Charge.
- (d) The Chargor covenants that it will:
- (i) remedy forthwith, at its own expense, any environment damage that may occur or be discovered on the Real Property in the future;
 - (ii) comply with and monitor, on a regular basis, its compliance and the compliance of any tenant, subtenant, assignee or other occupant of the Real Property with all Requirements of Environmental Law;
 - (iii) notify the Chargee promptly of any event or occurrence that has given, or is likely to give, rise to a report, order, inquiry or investigation relating to a matter that may have an adverse effect on the financial position of the Chargor or the Real Property or any action, suit or proceeding against the Chargor or others having an interest in the Real Property relating to, or a violation of, the Requirements of Environmental Law, including any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration of Hazardous Substances into, on or under the Real Property, air and surface and ground water, and will also notify the Chargee promptly of any such above-mentioned information of which the Chargor has or receives knowledge relating to lands adjacent to the Real Property;
 - (iv) not lease or content to any sublease or assignment of any part of the Real Property to a tenant, subtenant or assignee who may engage in, nor permit any tenant, subtenant, assignee or occupant of the Real Property to engage in a business involving the generation of Hazardous Substances or the storing, handling, processing, manufacturing or disposing of Hazardous Substances in, or, under or from the Real Property save and except in accordance with the Requirements of Environmental Law, and any lease, sublease or assignment of any part of the Real Property shall preserve as against any lessee, sublessee or assignee all of the rights of the Chargee herein;
 - (v) save and except for those Hazardous Substances which are present on, in or under the Real Property in accordance with the Requirements of Environmental Law and which have been disclosed to the Chargee in writing remove, in accordance with all Requirements of Environmental Law, any Hazardous Substances from the Real Property forthwith upon their discovery and advise the Chargee forthwith in writing of the procedures taken;
 - (vi) provide to the Chargee upon request such information, certificates or statutory declarations as to compliance with the provisions hereof and all Requirements of Environmental Law and conduct such environmental audits or site assessments as may be reasonably necessary to ensure compliance with the Requirements of Environmental Law, and to provide to the Chargee copies of any environmental, soils, safety or health reports or studies in respect of the Real Property that it receives or possesses from time to time; and
 - (vii) permit the Chargee to conduct such inspections and appraisals of all of any of its records, business and property relating to the Real Property at any time and from time to time to monitor compliance with the Requirements of Environmental Law.
- (e) The Chargor and Covenantor further covenant that they will be liable for and fully indemnify and save harmless the Chargee and its officers, directors, employees, agents and shareholders from and against any and all losses, damages, costs and expenses of any and every nature and kind whatsoever (including legal fees on a substantial indemnity basis and any environmental remediation costs included by the Chargee) which at any time or from time to time may be paid or incurred by or asserted against any of them as a direct or indirect result of:
- (i) a breach of any of the representations, warranties or covenants hereinbefore set out;
 - (ii) the presence of any Hazardous Substance in, on or under the Real Property; or
 - (iii) the discharge, emission, spill or disposal of any Hazardous Substance from the Real Property into or upon any property, the atmosphere, any watercourse, body of water or wetland;

and such losses, damages, costs and expenses include, without limitation:

- (i) the costs of defending, counterclaiming or claiming over against one or more third parties in respect of any action or matter; and
- (ii) any settlement of any action or proceeding entered into by the Chargee with the consent of the Chargor (which consent shall not be unreasonably withheld);

and the provisions of all representations, warranties, covenants and indemnifications set out herein shall survive the release and discharge of this Charge and any other security held by the Chargee and repayment and satisfaction of the Loan. The provisions of this indemnity shall enure to the benefit of the Chargee and its successors and assigns including, without limitation, any assignees of this Charge.

18. **TAXES**

- (a) The Chargor covenants and agrees that in the event the Chargee does not elect to collect the realty taxes imposed for the Real Property that the Chargor shall pay all instalments as they become due and shall provide proof of payment by way of a receipt to the Chargee on or before the due date for each such payment. In the event the Chargee elects to collect the realty taxes levied for the Real Property together with the monthly interest payment hereunder, and subsequently the monthly realty tax payments collected from the Chargor are insufficient to pay any realty tax bill when due, the Chargor covenants to pay all arrears, insufficiencies and instalments to the Chargee within fourteen (14) days of written notice from the Chargee's solicitors to make such payment. In the event that the Chargor fails to provide proof of payment as set out above, the Chargor agrees that the Chargee's solicitors may obtain verbal information from the applicable Governmental Authority, or for those Governmental Authorities which do not provide verbal information pertaining to realty tax accounts, by obtaining a tax certificate, and the Chargor agrees that the cost of obtaining such information shall be borne by the Chargor plus disbursements and Applicable Taxes which cost will be determined by the Chargee and will be added to the principal amount secured by the Charge. In all other respects, the Chargor covenants and agrees with the Chargee that it will comply strictly with every requirement of any Governmental Authority including without limitation, pay all Taxes as and when they are due and deliver to the Chargee evidence of such payment.

19. **INSURANCE**

Insurance shall be provided to the Chargee in accordance with the provisions of Paragraph 16 of Standard Charge Terms 200033 and in accordance with the provisions of the Commitment and shall be subject to the review and approval of the insurance consultant of the Chargee as contemplated in the Commitment.

20. **ACKNOWLEDGEMENT ON ASSIGNMENT**

In the event that the Chargee assigns, transfers or otherwise conveys its interest hereunder, and upon the delivery of notice of same to the Chargor, the Chargor, if so requested, shall without cost, at any time and from time to time, execute an acknowledgment with respect to the terms and conditions of this Charge and the amount outstanding thereunder. Failure to execute the acknowledgment shall be deemed to be default by the Chargor hereunder.

21. **INSPECTION OF REAL PROPERTY**

- (a) The Chargee shall be entitled to inspect the Real Property periodically and/or to appoint a monitor to conduct such inspections. The Chargee and/or any monitor when so appointed shall have the power to:
 - (i) inspect physical status of the Real Property and to make or cause to be made such tests and inspections in connection therewith as it may deem advisable; and
 - (ii) review the management and financial position of the business being conducted at the Real Property, and for such purpose shall have full access to all books and records relating to same.
- (b) The Chargee will not, by virtue of the exercise of the foregoing rights, or in exercising any of the rights given to the Chargee in this Charge, be deemed to be a mortgagee-in-possession of the Real Property.

22. **EXPROPRIATION**

If the Real Property or any part of it is expropriated by any Governmental Authority having powers of expropriation, all money payable in respect of such expropriation shall be paid to the Chargee and, if received by the Chargor, shall be received in trust for the Chargee and forthwith paid over to the Chargee subject to the rights of any prior chargee pursuant to the terms of its charge provided such charge is permitted by this Charge. Such money shall, at the option of the Chargee, be applied against the obligations hereunder or such part of them as the Chargee may determine, or be held unappropriated in a collateral account as continuing security for the full payment and performance of the obligations hereunder. The

Chargor shall forthwith deliver to the Chargee a copy of any notice of expropriation or proposed expropriation received by the Chargor in respect of the Real Property.

23. **LIENS**

The Chargor shall provide such additional security, information, documentation and assurances as may be required from time to time by the Chargee during the currency of this Charge to determine and to establish and preserve, in all respects, the priority of this Charge and all advances made hereunder over any rights of lien claimants pursuant to the provisions of the *Construction Act* (Ontario). If the Chargee makes any payment, in connection with the determination, establishment or preservation of its priority, whether such payment is made to a lien claimant or other Person claiming an interest in the Real Property or is paid into court, then the amount or amounts so paid and all costs, charges and expenses incurred in connection therewith shall be forthwith payable to the Chargee by the Chargor and shall be a charge on the Real Property and shall be added to the debt hereby secured and shall bear interest at the applicable rate and, in default of payment, the powers of sale and other remedies hereunder may be exercised. It is further agreed that the Chargee shall not become a mortgagee in possession by reason only of exercising any of the rights given to it under this Section 23 or in making any payment to preserve, protect or secure the Real Property.

24. **ADDITIONAL SECURITY**

- (a) A General Assignment of Rents, General Security Agreement and other collateral security documents contemplated by the Commitment (collectively, the “**Additional Security**”) are being given as further security to this Charge, which Additional Security is being granted by the Chargor to the Chargee and any default under the Additional Security shall constitute default under this Charge and any default under this Charge shall constitute default under the Additional Security and at the option of the Chargee require the entire principal secured under this Charge, together with all accrued and unpaid interest to become due and payable. Payment under the Additional Security shall constitute payment under this Charge and payment on account of this Charge shall constitute payment under the Additional Security.
- (b) It is agreed that the Chargee’s rights hereunder shall in no way merge or be affected by any proceedings the Chargee may take under the Additional Security and the Chargee shall not be required to take proceedings under such Additional Security or any part thereof before proceeding under this Charge, and conversely, no proceedings under this Charge shall in any way affect the rights of the Chargee under such Additional Security and the Chargee shall not be required to take proceedings under this Charge before proceeding under the Additional Security or any part thereof.
- (c) Upon request from the Chargee, the Chargor agrees forthwith upon delivery from time to time of any chattels in which it has an ownership interest (including replacements thereof) relating to the Real Property, it shall promptly notify the Chargee, and its solicitors, of such delivery and shall forthwith supply the Chargee with all serial numbers and a description which shall include make and model. The Chargor agrees to provide written evidence of proof of purchase of the chattels, free of encumbrances, and of insurance of same, both in the form and content satisfactory to the Chargee.

25. **UNDERTAKINGS**

In the event the Chargor or any Covenantor default with respect to any undertakings delivered to the Chargee in consideration of the advance of funds under this Charge or with respect to any covenant contained in the terms and provisions contained in this Charge or the Additional Security, such default will be an event of default under this Charge.

26. **SALE ON TERMS**

In the event power of sale proceedings are taken, the Chargee, as vendor, may sell the Real Property on terms and if the result is that any mortgages taken back are at a rate lower than the rate for first and/or second mortgages in the industry then the Chargee shall be entitled to sell these charges at a discount and the discount shall form part of the loss incurred by the Chargee and be recoverable against the Chargor.

27. **COSTS**

It is agreed that all Costs of the Chargee incurred in endeavouring to collect any money overdue under this Charge, including all legal costs on a substantial indemnity basis, whether legal proceedings are instituted or not, shall be added to the principal and be payable forthwith by the Chargor. Furthermore, and in addition to any Costs payable by the Chargee as aforesaid, upon default under this Charge resulting in the Chargee entering into or taking possession of the Real Property or any part of it, the Chargee or any Person appointed on its behalf shall be entitled to a management fee equal to five (5%) percent of the outstanding principal indebtedness hereunder plus Applicable Taxes thereon, which fee shall be added to the mortgage indebtedness and shall bear interest at the rate herein set forth. The Chargor acknowledges and agrees that the Costs provided for herein are a genuine pre-estimate of the value of the services performed for same and are not a penalty or additional interest on the Loan secured by this Charge.

28. **MORTGAGE STATEMENT**

Any request for a mortgage statement shall be made in writing allowing the Chargee, at minimum, five (5) Business Days to respond. The Cost of any such statement shall be borne by the Chargor.

29. **EVENTS OF DEFAULT**

- (a) At the option of the Chargee, it shall constitute default hereunder if the Chargor or any Covenantor shall become insolvent or be the subject of any bankruptcy, arrangement with creditors, proposal, amalgamation or any transaction or series of transactions which results in a change in control of the Chargor (subject to Section 9), reorganization (subject to Section 9), or any liquidation, winding-up, dissolution or receivership or without the Chargee's consent, seeks continuation under the laws of any other jurisdiction. In the event of a default by the Chargor under this Charge, the Chargor will, if required by the Chargee, establish a separate bank account for the Project.
- (b) Provided and without in any way limiting anything herein contained, in the event that:
- (a) the Chargor makes default in the payment of any principal or interest or any other monies required to be paid by the Chargor hereunder;
 - (b) the Chargor fails to observe or perform any other covenant or agreement herein contained and/or the Commitment;
 - (c) any representation or warranty made herein and/or in the Commitment by the Chargor is at any time while this Charge is outstanding not true;
 - (d) any construction lien is registered against any portion of the Real Property and is not removed within ten (10) Business Days;
 - (e) an order is made or a resolution is passed for the winding up of the Chargor, or if a petition is filed for the winding up of the Chargor;
 - (f) the Chargor becomes insolvent or makes an unauthorized assignment or bulk sale of the Chargor's assets or if a bankruptcy petition is filed or presented against the Chargor;
 - (g) any proceedings with respect to the Chargor are commenced under the *Companies' Creditors Arrangement Act* (Canada) or other debtor relief legislation;
 - (h) an execution, sequestration, extent or any other process of any court becomes enforceable against the Chargor or if a distress of analogous process is levied against the Real Property or any portion thereof, provided such execution, sequestration, extent, process of court, distress or analogous process is not in good faith being disputed by the Chargor;
 - (i) the Chargor shall permit any sum which has been admitted as due by the Chargor or is not disputed to be due by the Chargor and which forms, or is capable of being made, a charge upon any portion of the Real Property in priority to or raking equally with the charge of this Charge to be or remain unpaid;
 - (j) any charge or encumbrance created or issued by the Chargor having the nature of a fixed and/or floating charge shall become enforceable, whether ranking in priority to, or *pari passu* with this Charge; and/or
 - (k) the Chargor ceases or threatens to cease to carry on its business or if the Chargor commits or threatens to commit any act of bankruptcy;

then, and in any such event, this Charge shall, at the option of the Chargee, be deemed to be in default.

30. **REMEDIES ON DEFAULT**

- (a) Upon the occurrence and during the continuance of default the Chargee may, personally or by agent, at such time or times as the Chargee in its discretion may determine to exercise any one or more of the remedies in and by this Charge or conferred by law in case of default, including the following remedies:
- (a) Possession. Entry into possession and use of the Real Property or any part or parts of it with power, among other things, to exclude the Chargor therefrom, to preserve and maintain the Real Property and to make such repairs, replacements, alterations and additions to the whole or any part of the Real Property that the Chargee may think advisable, to satisfy the whole or any part of any prior charge or any other prior claim or encumbrance then affecting the Real Property, to receive rents, income and profits of all kinds owing to the Chargor in respect of the Real Property and to pay from it all expenses of maintaining, preserving, protecting and operating the Real Property, including payments which may be due for insurance, Taxes, assessments, charges or liens prior to the charge of this Charge upon the Real Property and for the services of lawyers, agents and other Persons, and all costs, charges and expenses incurred in connection with the execution of the powers contained in

this Charge; and to enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including the power to advance its own money (with interest payable on it at the Interest Rate) and to enter into contracts and to undertake obligations for the foregoing purposes upon the security of this Charge;

- (b) Court Receiver. Proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Real Property, and removal or replacement from time to time of any such receiver;
 - (c) Private Receiver. Appointment by instrument in writing of a receiver of all or any part of the Real Property, whether before or after entry into possession of the Real Property or any part of it, and removal or replacement from time to time of any such receiver;
 - (d) Distress. The Chargee may distress for arrears of payments in respect of the principal amount of this Charge, interest or any other amount payable under this Charge;
 - (e) Sale or Lease. Sale, lease or other disposition of all or any part of the Real Property whether before or after entry into possession of the Real Property or any part of it;
 - (f) Foreclosure. Proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Real Property, with or without entry into possession of it;
 - (g) Action on Covenant. Taking any action or proceeding to enforce the performance of any covenant in favour of the Chargor contained in this Charge, whether before or after entry into possession of the Real Property or any part of it;
 - (h) Proof of Claim. Filing of proofs of claim and other documents to establish the claims of the Chargee in any proceeding relating to the Chargor; and
 - (i) Other. Any other remedy or proceeding authorized or permitted by this Charge or at law or in equity.
- (b) No right or remedy of the Chargee under this Charge or that the Chargee may have at law or in equity shall be exclusive or dependent on any other right or remedy, but any one or more of such rights and remedies may from time to time be exercised independently or in combination. The rights, remedies and powers conferred under this Charge are supplementary to and not in substitution for any of the powers that the Chargee may have or be entitled to at law, in equity or otherwise.

31. **RECEIVER**

- (a) Upon the occurrence of any one or more events of default, the Chargee may, in its discretion, by writing appoint a receiver (which term shall include a receiver and manager) (a "**Receiver**") of the Real Property or any part of it and of the rents and profits from it and may from time to time remove any Receiver and appoint another in his place, and in making any such appointment or appointments the Chargee shall be deemed to be acting as the attorney for the Chargor unless the Chargee indicates in writing a contrary intention. The following provisions shall apply in respect of the appointment of any Receiver:
- (i) such appointment may be made either before or after the Chargee shall have entered into or taken possession of the Real Property or any part of it;
 - (ii) such Receiver may, in the discretion of the Chargee, be vested with all or any of the powers and discretion of the Chargee and shall have the power to borrow on the security of the Real Property;
 - (iii) the Chargee may from time to time fix the remuneration of such Receiver and direct the payment of such remuneration from out of the proceeds of the Real Property;
 - (iv) such Receiver shall, so far as concerns the responsibility for his acts or omissions, be deemed the agent of the Chargor and in no event the agent of the Chargee and the Chargee in making or consenting to such appointment shall not incur any liability to the Receiver for his remuneration or otherwise howsoever;
 - (v) such Receiver shall from time to time have the power to collect, realize, sell or otherwise deal with the Real Property in such manner, upon such terms and conditions and at such time or times as may seem to the Receiver to be advisable and without notice to the Chargor;
 - (vi) such Receiver shall from time to time have the power to lease any portion of the Real Property which may become vacant for such term and subject to such provisions as the Receiver may deem advisable or expedient and, in so doing, such Receiver shall act as the attorney or agent for the Chargor (unless specifically appointed by the Chargee as the agent of the Chargee) and such Receiver shall have authority to execute, under seal or otherwise, any leases of any such premises in the name of and on behalf of the Chargor and the

Chargor undertakes to ratify and confirm whatever any such Receiver may do on the Real Property; and

- (vii) such Receiver shall have full power to manage, operate, amend, repair, alter or extend the Real Property or any part of it in the name of the Chargor for the purpose of securing the payment of rental from the Real Property or any part of it, including the power to:
- a. take proceedings in the name of the Chargor or otherwise and to make any arrangement or compromise;
 - b. borrow or raise money on all or any part of the Real Property in priority to this Charge or otherwise for such purposes as may be approved by the Chargee;
 - c. give any and all notices to be given by the Chargor under any leases and exercise any and all rights of the Chargor under them;
 - d. do or cause to be done any and all acts and things under any lease and adjust and settle all matters relating to such performance; and
 - e. institute and prosecute all suits, proceedings and actions which the Receiver in his opinion considers necessary for the proper protection of the Real Property, defend all suits, proceedings and actions against the Chargor or the Receiver, appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and appeal any suit, proceeding or action.

32. **APPLICATION OF PROCEEDS**

All money and other proceeds of disposition of any Real Property of the Chargor received by the Chargee or a Receiver may be applied to discharge or satisfy any expenses (including the Receiver's remuneration and other expenses of enforcing the Chargee rights against the Chargor under this Charge), encumbrances over the Real Property of the Chargor in favour of Persons other than the Chargee, borrowings, Taxes and other outgoings affecting the Real Property of the Chargor or which are considered advisable by the Chargee or the Receiver to protect, preserve, repair, process, maintain or enhance the Real Property of the Chargor or prepare it for sale, lease or other disposition, or to keep in good standing any encumbrances on the Real Property ranking in priority to the Charge from the Chargor, or to sell, lease or otherwise dispose of the Real Property of the Chargor. The balance of such proceeds, if any, may, at the sole discretion of the Chargee, be held as security for the obligations of the Chargor hereunder or be applied to such of the obligations (whether or not they are due and payable) in such manner and at such times as the Chargee considers appropriate (including in such manner as may be required to comply with any priority, subordination or security sharing arrangements between any one or more of those for whom the Chargee is the chargee) and thereafter will be accounted for as required by law.

33. **ATTORNEY OF THE CHARGOR**

- (a) Under Leases. The Chargee, as attorney or agent for the Chargor and in its name, may at any time and from time to time after default, exercise any of the rights, powers, authorities and discretion which under the terms of any of the leases could be exercised by the Chargor.
- (b) On Sale. In case of any sale under this Charge, whether by the Chargee or by a Receiver or under any judicial proceedings, the Chargor agrees that it will, forthwith upon request, execute and deliver to the purchaser such deeds, assurances, conveyances and receipts as may be necessary to transfer good title to the Real Property or any part or parts of it sold, and if in case of any such sale the Chargor shall fail to do so forthwith after request, the Chargee or such Receiver may execute and deliver to the purchaser of the Real Property or any part or parts of it such deeds, assurances, conveyances and receipts as may be necessary to transfer good and sufficient title to it, the Chargee or, if appointed, the Receiver being hereby irrevocably constituted the attorney of the Chargor for the purpose of making such sale and executing all deeds, assurances, conveyances, receipts and documents pertaining thereto.

34. **LIMITATION OF OBLIGATIONS**

The Chargee shall not, nor shall any Receiver appointed by it, be responsible or liable, otherwise than as a trustee, for any debts contracted by it or for salaries during any period during which the Chargee or such Receiver is managing the Real Property or any part or parts of it upon or after entry, as provided for in this Charge, nor shall the Chargee nor the Receiver be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss on realization or for any default or omission for which a mortgagee in possession might be liable.

35. **CHARGEES COSTS**

- (a) The Chargee may (but shall not be obliged to) pay all costs, charges and expenses (including agents' charges and solicitors' fees and disbursements on a solicitor and his own client basis) incurred from time to time in taking, recovering and keeping possession of the Real Property or in performing work in respect of the buildings, erections, structures and improvements situate on it or

in inspecting it and generally in any other proceedings taken to realize the money secured by this Charge or in protecting the security for such money, whether any action or other judicial proceeding to enforce such payment has been taken or not. Any and all amounts so paid shall be added to the obligation and shall be payable forthwith by the Chargor to the Chargee with interest at the Interest Rate from the date of payment by the Chargee.

- (b) The Chargor shall immediately pay to the Chargee all amounts paid or incurred by or on behalf of the Chargee and all costs and expenses of preparing, executing and registering the Charge and any other related instruments, inspecting, protecting, repairing, completing, insuring, taking, keeping possession of and managing all or any part of the Real Property, preparing the Real Property for sale or lease, selling or leasing the Real Property, collecting all or any part of the Principal amount of this Charge, the exercise of any of the rights of a Receiver appointed pursuant to the provisions of this Charge and such Receiver's fees and expenses, agents' costs and expenses, legal fees and disbursements on a solicitor and his own client basis, and any other costs and expenses of exercising or protecting the Chargee's rights (under this Charge or otherwise) or all or any part of the Real Property.

36. **ADDITIONAL REMEDIES**

The rights, powers, and remedies conferred herein are supplementary to and not in substitution for any of the powers which the Chargee may have or be entitled to at law or otherwise. Any one or more remedies may from time to time be exercised independently of or in combination with any of the others, as often and in such order as the Chargee considers appropriate and the remedies include, but are not limited to, the Chargee's right to commence court proceedings to foreclose the Chargor's right, title and equity of redemption to the Real Property and the Chargee's right to ask the court to order the sale of the Real Property under the court's supervision. Such rights, powers and remedies shall not be capable of being waived or varied except by virtue of an expressed waiver or variation in writing signed by an officer of the Chargee. In particular, any failure to exercise or any delay in exercising any of such rights and remedies shall not operate as a waiver or variation of that or any other such right or remedy, any defective or partial exercise of any of such rights shall not preclude any other or future exercise of that or any other such right or remedy and no act or course of conduct or negotiation on the part of the Chargee or on its behalf shall in any way preclude it from exercising any such right or remedy or constitute a suspension or variation of any such right or remedy.

37. **CONSENT TO PERSONAL INFORMATION AS PER PRIVACY POLICY**

The Chargor and each Covenantor agrees that any information, personal or otherwise, either that the Chargor and each Covenantor has provided or will provide to the Chargee or that the Chargee has on file about the Chargor and each Covenantor shall be retained and may be used as the Chargee deems necessary in its sole discretion for the mortgage placement herein, collection of any arrears or deficiencies in the event of a default and any renewals or extensions of same. The Chargor and each Covenantor also agree to any credit bureau search being carried out by the Chargee from time to time as the Chargee deems necessary in its sole and unfettered discretion. By signing this Charge, the Chargor and each Covenantor agree that the Chargee shall have the right to seek any information from any Governmental Authority at any time either before or after the registration of the Charge and before and after default including to request site inspections or any information on file about the Chargor and each Covenantor and/or the Real Property and the Chargee shall have the right to retain such information which may be used as the Chargee deems necessary in its sole and unfettered discretion. The Chargor and each Covenantor also agree that the Chargee may retain all information provided to it in accordance with the provisions of this Section 37 on file for as long as the Chargee deems appropriate.

38. **SEVERABILITY OF ANY INVALID PROVISIONS**

If in the event that any covenant, term or provision contained in this Charge is held to be invalid, illegal or unenforceable in whole or in part, then the validity, legality and enforceability of the remaining covenants, provisions and terms shall not be affected or impaired thereby, and all such remaining covenants, provisions and terms shall continue in full force and effect. All covenants, provisions and terms hereof are declared to be separate and distinct covenants, provisions or terms as the case may be.

39. **INDEMNIFICATION OF CHARGE**

In the event the Chargee shall, without fault on its part, be made a party to any litigation commenced by or against the Chargor, the Chargor shall protect and hold the Chargee harmless therefrom and shall pay all costs, expenses and solicitors' fees on a substantial indemnity basis. Such costs shall be a charge on the Real Property and may be added to the Loan.

40. **HEADINGS**

The headings herein are not to be considered part of this Charge and are included solely for the convenience of reference and are not intended to be full or accurate descriptions of the contents of the paragraphs to which they relate.

41. **BREACH OF COVENANT**

A breach of any covenant contained in this Charge shall constitute a default hereunder and at the option of the Chargee, it may avail itself of the remedies contained in this Charge or available at law.

42. **TIME OF ESSENCE**

Time shall be of the essence of this Charge in all respects.

43. **GOVERNING LAW**

This Charge shall be governed by the laws of the Province of Ontario.

44. **SUCCESSORS AND ASSIGNS**

This Charge shall enure to the benefit of and be binding on the parties and their respective successors and permitted assigns.

45. **AGREEMENTS IN WRITING**

No agreement for modification to this Charge or to any other security agreement provided to the Chargee, including any renewals hereof for extension of the time for payment of the indebtedness due hereunder shall result from, or be implied from, any payment or payments of any kind whatsoever made by the Chargor to the Chargee after the expiration of the Maturity Date, or of any subsequent term agreed to in writing between the Chargor and the Chargee, and that no modification, amendment, renewal hereof of extension of the time for payment of any indebtedness due hereunder shall result from, or be implied from, any other act, matter or thing, save only an express agreement in writing between the Chargor and the Chargee.

46. **CURRENCY REFERENCES**

All dollar amounts referred to in this Charge are stated in lawful money of Canada.

47. **CONFLICT/AMBIGUITY**

In the event of any inconsistency between the terms of this schedule to this Charge and the terms of Standard Charge Terms 200033, the terms of this schedule to this Charge shall prevail and the inclusion of any term in Standard Charge Terms 200033 that is not set out in this schedule to this Charge shall not be an inconsistency.

48. **BLANKET CHARGE**

(a) The Chargor hereby acknowledges and agrees that the indebtedness owing from time to time pursuant to the Loan shall be secured by all of the Real Property described under Properties field in the electronic form to which this Schedule is attached. For purposes hereof, each of the parcels of land comprising of the Real Property and designated by the Land Titles Office in which this Charge is registered shall hereinafter be referred to as a "**Parcel**" and collectively referred to as the "**Parcels**". The Chargor hereby further acknowledges and agrees that:

- (i) the Charge shall be registered against each of the Parcels;
- (ii) each Parcel shall be charged with the whole of the principal sum secured hereby together with interest thereon at the Interest Rate and Costs and other amounts thereon as provided herein; and
- (iii) the Chargor shall not be entitled to apportion any principal amount due under the Loan in respect of any of the Parcels.

This is Exhibit "F" referred to in the
affidavit of Cecil Hayes sworn February 28, 2024

A handwritten signature in blue ink, appearing to be "A. [unclear]", written in a cursive style.

A Commissioner for the Taking of Affidavits

Properties

PIN 17171 - 0260 LT
Description PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; EXCEPT PT 1, 62R21103; CITY OF HAMILTON
Address HAMILTON

Applicant(s)

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

Name 98 JAMES SOUTH (2022) INC.
Address for Service 385 Madison Avenue, Toronto, Ontario
M4V 2W7

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Party To(s)*Capacity**Share*

Name MARSHALLZEHR GROUP INC.
Address for Service 412 Albert St., Suite 100, Waterloo, ON N2L 3V3

Statements

The applicant applies for the entry of a notice of general assignment of rents.

This notice may be deleted by the Land Registrar when the registered instrument, WE1632777 registered on 2022/09/09 to which this notice relates is deleted

Schedule: See Schedules

Signed By

Wing Chiu Wu 5000 Yonge Street, 10th Floor acting for Signed 2022 09 09
Toronto Applicant(s)
M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

I have the authority to sign and register the document on behalf of all parties to the document.

Wing Chiu Wu 5000 Yonge Street, 10th Floor acting for Signed 2022 09 09
Toronto Party To(s)
M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

I have the authority to sign and register the document on behalf of all parties to the document.

Submitted By

CHAITONS LLP 5000 Yonge Street, 10th Floor 2022 09 09
Toronto
M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

Fees/Taxes/Payment

Statutory Registration Fee \$66.30

Total Paid \$66.30

GENERAL ASSIGNMENT OF RENTS

THIS ASSIGNMENT dated as of September 9, 2022.

BY:

98 JAMES SOUTH (2022) INC.
(hereinafter called the "**Assignor**")

IN FAVOUR OF:

MARSHALLZEHR GROUP INC.
(hereinafter called the "**Assignee**")

WHEREAS:

- A. The Assignor is the registered owner of the lands and premises more particularly described under the heading of "Properties" on Page 1 hereof (the "**Property**");
- B. The Assignor granted a charge/mortgage of land in favour of the Assignee dated as of the date hereof (the "**Charge**") and registered in the applicable Land Registry Office as the Instrument Number referred to in the Statements Section on page 1 hereof, as additional security for a loan from the Assignee to the Assignor; and
- C. The Assignor has agreed to assign to and in favour of the Assignee, all of the rents payable or to be payable under and all advantages and benefits to be derived from (collectively, the "**Rents**") all leases of premises located on the Property now or hereafter entered into by the Assignor, as landlord, including, without limitation, any specific leases referred to in Schedule "A" attached hereto (collectively, the "**Leases**") as additional security for the payment of all indebtedness owing by the Assignor to the Assignee and secured by the Charge (collectively, the "**Obligations**"), and for the performance of the covenants contained therein subject to and in accordance with the terms hereinafter set out.

NOW THEREFORE in consideration of the sum of Two (\$2.00) Dollars paid by the Assignee to the Assignor and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor hereby covenants and agrees to and in favour of the Assignee as follows:

1. The Assignor hereby irrevocably assigns, transfers and sets over unto the Assignee all Rents.
2. This Assignment and the security interest granted hereby is given as additional security for the Obligations. All amounts collected hereunder, after deducting all reasonable expenses in connection with the collection thereof (including without limitation, solicitors' fees thereon), shall be applied on account of the Obligations, or in such other manner as may be provided for in the Charge. Nothing contained herein shall be construed as constituting the Assignee as a trustee, mortgagee or chargee in possession.
3. The Assignor hereby represents and warrants to and in favour of the Assignee as follows:
 - (a) the Leases are in full force and effect and the copies delivered to the Assignee are true and correct copies thereof;
 - (b) as of the date hereof, the Assignor has not assigned or pledged the Leases or any interest therein save and except as disclosed by registered title, and that no default exists on the part of the lessees thereunder (collectively, the "**Lessees**") or the Assignor in the performance on the part of either of them, of the terms, covenants, provisions or agreements contained therein;
 - (c) other than the last month's Rents, no Rents have been paid by any of the Lessees more than thirty (30) days in advance of when same become due and payable under the terms of the Leases;
 - (d) other than has been disclosed to the Assignee, no security deposits have been made by the Lessees to the Assignor in respect of the Leases; and
 - (e) the payment of Rents has not been (e) or will not be waived, released, reduced, discounted or otherwise discharged or compromised by the Assignor directly or indirectly by assuming any of the Lessees' obligations under the Leases.
4. The Assignor hereby waives any rights of set-off against the Lessees under the Leases.
5. The Assignor hereby covenants and agrees to and in favour of that Assignee that:
 - (a) the Leases shall remain in full force and effect in accordance with the terms thereof;
 - (b) it will not transfer or convey title of any portion of the Property to any of the Lessees without
 - (i) the prior written consent of the Assignee and requiring such Lessee to, in writing,

- assume and (ii) agree to assume the Obligations subject to and in accordance with the terms covenants and conditions contained in the Charge;
- (c) the Leases, and all amendments, assignments or terminations thereof or any concessions granted by the Assignor in connection therewith, have been and shall only be entered into, made or granted by the Assignor in the ordinary course of business and upon rental rates and terms that are competitive and consistent with similar rental properties in the municipality in which the Property is situate and otherwise as would be permitted by a prudent landlord in the municipality in which the Property is situate, acting reasonably;
 - (d) it shall not deal with the Leases except in accordance with the provisions set out herein;
 - (e) except for last month's Rents, it shall not collect any Rents more than thirty (30) days in advance of the time when same become due under the terms of the Leases;
 - (f) it shall not to execute any other assignments of the Leases or any interest therein or any Rents thereunder;
 - (g) it shall perform the Assignor's covenants and agreements as landlord under the Leases in such a manner as would be performed by a prudent landlord in the municipality in which the Property is situate, acting reasonably, and in the ordinary course of its business and, in any event, in compliance with all requirements of all tenancy legislation and the laws, by-laws and regulations of all governmental authorities having jurisdiction;
 - (h) it shall promptly deliver to the Assignee complete copies of any and all notices of default issued or received by the Assignor with respect to the Leases;
 - (i) in the event of default by a Lessee, the Assignor shall enforce such Lease and all remedies available to it thereunder;
 - (j) it shall not to exercise any right of election, whether specifically set forth in any such Lease or otherwise, which would in any way diminish the Lessee's liability or have the effect of shortening the stated term of the Lease, except in the ordinary course of business, as would a prudent landlord in the municipality in which the Property is situate;
 - (k) it shall pay the costs, charges and expenses of and incidental to the taking, preparation and filing of this Assignment or any notice hereof which may be required and of every renewal related thereto;
 - (l) notwithstanding any variation of the terms of the Charge or any extension of time for payment thereunder, the Leases and Rents shall continue as additional security for the Obligations in accordance with the terms hereof; and
 - (m) none of the rights or remedies of the Assignee under the Charge shall be delayed or in any way prejudiced by this Assignment.
6. In the event that the Assignor is in breach of any of the provisions of Section 5 hereof, the Assignor shall, at the option of the Assignee, be deemed to be in default under this Assignment and the Charge.
7. Upon any vesting of title to the Property in the Assignee or any other party by court order, operation of law, or otherwise, or upon delivery of a transfer/deed of land pursuant to the Assignee's exercise of its remedies under the Charge, all right, title and interest of the Assignor in and to the Rents and the Leases shall, by virtue of this Assignment, thereupon vest in and become the absolute property of the party vested with such title or the grantee in such transfer/deed of land without any further act or assignment by the Assignor. The Assignor hereby irrevocably appoints the Assignee and its successors and assigns, as its agent and attorney in fact, to execute all instruments of assignment or further assurances in favour of such party vested with title or the grantee.
8. In the exercise of the powers herein granted to the Assignee, no liability shall be asserted or enforced against the Assignee. The Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and the Assignor hereby agrees to indemnify the Assignee for, and to save and hold it harmless of and from, any and all liability, loss or damage which it may incur under the Leases or this Assignment and from any and all claims and demands whatsoever which may be asserted against it by reason of any obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Should the Assignee incur any such liability, loss or damage under the Leases or by reason of this Assignment, or in the defence of any such claims or demands, the amount thereof, including costs, expenses and solicitors' fees, shall be secured by the Charge, and the Assignor shall reimburse the Assignee therefore immediately upon demand, failing which interest shall accrue at the rate set out in the Charge.
9. Notwithstanding anything contained herein to the contrary, the Assignee shall not exercise any of the rights or powers conferred upon it under this Assignment until an event of default has occurred hereunder and/or under the Charge. Upon any such default, the Assignee shall be entitled, upon

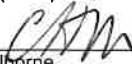
notice to the Lessees, to all Rents due and thereafter accruing, and this Assignment shall constitute an irrevocable direction to and full authority to the Lessees to pay all such amounts to the Assignee without proof of the default. The Lessees are hereby irrevocably authorized to rely upon and comply with any notice or demand by the Assignee for the payment to the Assignee of any Rents which may be or thereafter become due under the Leases regardless whether any default under the Charge has actually occurred or is then existing.

10. In the event that the Assignee collects any payment of Rents due to the Assignor as a result of the Assignor's default hereunder and/or under the Charge, the Assignee shall be entitled to receive a management fee equal to five (5%) percent of the gross receipts of such Rents. The parties hereto hereby acknowledge and agree that such management fee is a just and equitable fee having regard to the circumstances.
11. This Assignment is intended to be additional to and not in substitution for or in derogation of any assignment of Rents contained in the Charge and/or in any other document relating thereto.
12. This Assignment shall include any extensions and renewals of the Leases and any reference herein to the Leases shall be construed as including any such extensions and renewals.
13. This Assignment shall be binding upon and enure to the benefit of the respective successors and assigns of the parties hereto. The words "Assignor", "Assignee" and "Lessees", wherever used herein, and designated as such and their respective heirs, administrators, successors and assigns, and all words and phrases shall be taken to include the singular or plural and masculine, feminine or neuter gender, as may fit the case.
14. This Assignment may be signed in counterparts and by electronic transmission, each of which shall for all purposes be deemed to be an original, and all such separate counterparts shall together constitute one and the same instrument.

[remainder of this page intentionally left blank]

DATED as of the date first written above.

98 JAMES SOUTH (2022) INC.

Per: 
Name: Hunter Milborne
Title: President

I have authority to bind the Corporation.

Schedule "A" – Leases

This is Exhibit "G" referred to in the
affidavit of Cecil Hayes sworn February 28, 2024

A handwritten signature in blue ink, appearing to be "J. C. [unclear]", written in a cursive style.

A Commissioner for the Taking of Affidavits

GENERAL SECURITY AGREEMENT

THIS AGREEMENT dated as of September 9, 2022.

TO: MARSHALLZEHR GROUP INC.

WHEREAS:

- A. 98 James South (2022) Inc. (the "**Debtor**") is, or may become, indebted or liable to MarshallZehr Group Inc. (the "**Creditor**"); and
- B. To secure the payment and performance of the Liabilities (this term, and other capitalized terms used in this Agreement, have the meanings set forth in Section 1), the Debtor has agreed to grant to the Creditor security interests in respect of the Collateral in accordance with the terms of this Agreement.

For good and valuable consideration, the receipt and adequacy of which are acknowledged by the Debtor, the Debtor agrees with and in favour of the Creditor as follows:

1. Definitions. Capitalized terms used in this Agreement have the respective meanings ascribed thereto in this section:

- (a) "**Accessions**", "**Account**", "**Chattel Paper**", "**Consumer Goods**", "**Document of Title**", "**Equipment**", "**Goods**", "**Instrument**", "**Intangible**", "**Inventory**" and "**Proceeds**" have the meanings given to them in the PPSA;
- (b) "**Books and Records**" means all books, records, files, papers, disks, documents and other repositories of data recording in any form or medium, evidencing or relating to the Collateral which are at any time owned by the Debtor or to which the Debtor (or any Person on the Debtor's behalf) has access;
- (c) "**Business Day**" means any day other than a Saturday, Sunday or statutory holiday in the province referred to in the "Governing Law" section of this Agreement;
- (d) "**Collateral**" means all of the present and future undertaking, Personal Property (including any Personal Property that may be described in any Schedule to this Agreement or any schedules, documents or listings that the Debtor may from time to time sign and provide to the Creditor in connection with this Agreement) and real property (including any real property that may be described in any Schedule to this Agreement or any schedules, documents or listings that the Debtor may from time to time sign and provide to the Creditor in connection with this Agreement and including all fixtures and all buildings placed, installed or erected from time to time on any such real property) of the Debtor (including all such property at any time owned, leased or licensed by the Debtor, or in which the Debtor at any time has any interest or to which the Debtor is or may at any time become entitled) and all Proceeds thereof, wherever located;
- (e) "**Contracts**" means all contracts, licences and agreements to which the Debtor is at any time a party or pursuant to which the Debtor has at any time acquired rights, and includes (i) all rights of the Debtor to receive money due and to become due to it in connection with a contract, licence or agreement, (ii) all rights of the Debtor to damages arising out of, or for breach or default in respect of, a contract, licence or agreement, and (iii) all rights of the Debtor to perform and exercise all remedies in connection with a contract, licence or agreement;
- (f) "**Default**" means the occurrence of any of the following events or conditions:
 - (i) the Debtor does not pay any of the Liabilities when due;
 - (ii) the Debtor does not observe or perform any of the Debtor's obligations under this Agreement or any other agreement or document existing at any time between the Debtor and the Creditor;

- (iii) any representation, warranty or statement made by or on behalf of the Debtor to the Creditor, in this Agreement or otherwise, is untrue in any material respect when made;
 - (iv) the Debtor ceases or threatens to cease to carry on in the normal course all or any material part of the Debtor's business;
 - (v) the Debtor becomes insolvent or bankrupt, or makes or files a proposal, a notice of intention to make a proposal or an assignment for the benefit of creditors under the *Bankruptcy and Insolvency Act* (Canada) or comparable legislation in Canada or any other jurisdiction; a petition in bankruptcy is filed against the Debtor; or, if the Debtor is a corporation, proceedings are initiated under any legislation by or against the Debtor seeking its liquidation, winding-up, dissolution or reorganization or any arrangement or composition of its debts;
 - (vi) a Receiver, trustee, custodian or other similar official is appointed in respect of the Debtor or any of the Collateral;
 - (vii) any Person holding a Security Interest in respect of any part of the Collateral takes possession of all or any material part of the Collateral, or a distress, execution or other similar process is levied against all or any material part of the Collateral;
 - (viii) the Debtor challenges or threatens to challenge the validity or enforceability of this Agreement or the Security Interests created by this Agreement; or
 - (ix) the Creditor, acting in good faith and upon commercially reasonable grounds, believes that the prospect of payment or performance of any of the Liabilities is or is about to be impaired or that all or any material part of the Collateral is or is about to be placed in jeopardy;
- (g) **"Intellectual Property Rights"** means all industrial and intellectual property rights, including copyrights, patents, trade-marks, industrial designs, know how and trade secrets and all Contracts related to any such industrial and intellectual property rights;
- (h) **"Liabilities"** means all present and future indebtedness, liabilities and obligations of every kind, nature and description (whether direct or indirect, joint or several, absolute or contingent, matured or unmatured) of the Debtor to the Creditor, wherever and however incurred, and any unpaid balance thereof;
- (i) **"Money"** has the meaning given to it in the PPSA or, if there is no such meaning given in the PPSA, means a medium of exchange authorized or adopted by the Parliament of Canada as part of the currency of Canada, or by a foreign government as part of its currency;
- (j) **"PPSA"** means the *Personal Property Security Act* of the province referred to in the "Governing Law" section of this Agreement, as such legislation may be amended, renamed or replaced from time to time (and includes all regulations from time to time made under such legislation);
- (k) **"Permits"** means all permits, licences, authorizations, approvals, franchises, rights-of-way, easements and entitlements that the Debtor has, requires or is required to have, to own, possess or operate any of its property or to operate and carry on any part of its business;
- (l) **"Person"** will be broadly interpreted and includes an individual, a corporation, a limited liability company, a partnership, a trust, a joint venture, an association, an unincorporated organization, the government of a country or any political subdivision thereof, any agency or department of any such government, a regulatory agency or any other juridical entity and the heirs, executors, administrators or other legal representatives of an individual;
- (m) **"Personal Property"** means personal property and includes Accounts, Books and Records, Chattel Paper, Contracts, Documents of Title, Equipment, Goods, Instruments, Intangibles (including Intellectual Property Rights and Permits), Inventory, Money and Securities;
- (n) **"Receiver"** means a receiver, a manager or a receiver and manager;

- (o) **"Securities"** has the meaning given to it in the PPSA, or if there is no such meaning given in the PPSA but the PPSA defines "security" instead, it means the plural of that term; and
- (p) **"Security Interest"** means any mortgage, charge, pledge, hypothecation, lien (statutory or otherwise), assignment, finance lease, title retention agreement or arrangement, security interest or other encumbrance or adverse claim of any nature, or any other security agreement or arrangement creating in favour of any creditor a right in respect of a particular property.

2. Grant of Security Interest. As general and continuing collateral security for the due payment and performance of the Liabilities, the Debtor mortgages, charges and assigns to the Creditor, and grants to the Creditor a security interest in, the Collateral.

3. Limitations on Grant of Security Interest. If the grant of any Security Interest in respect of any Contract, Intellectual Property Right or Permit under Section 2 would result in the termination or breach of such Contract, Intellectual Property Right or Permit, then the applicable Contract, Intellectual Property Right or Permit will not be subject to any Security Interest under Section 2 but will be held in trust by the Debtor for the benefit of the Creditor and, on exercise by the Creditor of any of its rights under this Agreement following Default, assigned by the Debtor as directed by the Creditor. In addition, the Security Interests created by this Agreement do not extend to the last day of the term of any lease or agreement for lease of real property. Such last day will be held by the Debtor in trust for the Creditor and, on the exercise by the Creditor of any of its rights under this Agreement following Default, will be assigned by the Debtor as directed by the Creditor.

4. Attachment; No Obligation to Advance. The Debtor confirms that value has been given by the Creditor to the Debtor, that the Debtor has rights in the Collateral (other than after-acquired property) and that the Debtor and the Creditor have not agreed to postpone the time for attachment of the Security Interests created by this Agreement to any of the Collateral. The Security Interests created by this Agreement will have effect and be deemed to be effective whether or not the Liabilities or any part thereof are owing or in existence before or after or upon the date of this Agreement. Neither the execution of this Agreement nor any advance of funds shall oblige the Creditor to advance any funds or any additional funds.

5. Representations and Warranties. The Debtor represents and warrants to the Creditor that:

(a) Places of Business, Name, Location of Collateral. The Debtor's principal place of business and chief executive office, and the place where it keeps its Books and Records, is at the address specified on the signature page of this Agreement, and its full legal name, and any other name under which it conducts its business, is specified on the signature page of this Agreement.

(b) Title; No Other Security Interests. Except for (i) the Security Interests created by this Agreement, and (ii) any other Security Interests permitted in writing by the Creditor, the Debtor owns (or, with respect to any leased or licensed property forming part of the Collateral, holds a valid leasehold or licensed interest in) the Collateral free and clear of any Security Interests. No security agreement, financing statement or other notice with respect to any or all of the Collateral is on file or on record in any public office, except for filings in favour of, or permitted in writing by, the Creditor.

(c) Amount of Accounts. The amount represented by the Debtor to the Creditor from time to time as owing by each account debtor or by all account debtors in respect of the Accounts will at such time be the correct amount so owing by such account debtor or debtors and, unless disclosed in writing by the Debtor to the Creditor at that time, will be owed free of any dispute, set-off or counterclaim.

(d) Authority; Consents. The Debtor has full power and authority to grant to the Creditor the Security Interests created by this Agreement and to execute, deliver and perform its obligations under this Agreement, and such execution, delivery and performance does not contravene any of the Debtor's constating documents or by-laws or any agreement, instrument or restriction to which the Debtor is a party or by which the Debtor or any of the Collateral is bound. Except for any consent that has been obtained and is in full force and effect, no consent of any party (other than the Debtor) to any Contract or any obligor in respect of any Account is required, or purports to be required, for the execution, delivery and performance of this Agreement. Except as disclosed in writing by the Debtor to the Creditor, neither the Debtor nor (to

the best of the Debtor's knowledge) any other party to any Account or Contract is in default or is likely to become in default in the performance or observance of any of the terms of such Account or Contract.

(e) Execution and Delivery; Enforceability. This Agreement has been duly authorized, executed and delivered by the Debtor and is a valid and binding obligation of the Debtor enforceable against the Debtor in accordance with its terms, subject only to bankruptcy, insolvency, liquidation, reorganization, moratorium and other similar laws generally affecting the enforcement of creditors' rights, and to the fact that equitable remedies (such as specific performance and injunction) are discretionary remedies.

(f) Motor Vehicles. A description of all motor vehicles and other "serial number" goods (i.e. trailers, mobile homes, aircraft, aircraft engines and vessels) (including vehicle identification numbers) presently owned by the Debtor and classified as Equipment is set out in Schedule A to this Agreement.

(g) No Consumer Goods. The Debtor does not own any Consumer Goods which are material in value or which are material to the business, operations, property, condition or prospects (financial or otherwise) of the Debtor.

(h) Intellectual Property Rights. All Intellectual Property Rights owned by the Debtor, and all rights of the Debtor to the use of any Intellectual Property Rights, are described in Schedule A to this Agreement. To the best of the Debtor's knowledge, each such Intellectual Property Right is valid, subsisting, unexpired, enforceable and has not been abandoned. Except as set out in such Schedule, none of such Intellectual Property Rights has been licensed or franchised by the Debtor to any Person.

6. Survival of Representations and Warranties. All agreements, representations, warranties and covenants made by the Debtor in this Agreement are material, will be considered to have been relied on by the Creditor and will survive the execution and delivery of this Agreement or any investigation made at any time by or on behalf of the Creditor and any disposition or payment of the Liabilities until repayment and performance in full of the Liabilities and termination of all rights of the Debtor that, if exercised, would result in the existence of Liabilities.

7. Covenants. The Debtor covenants and agrees with the Creditor that:

(a) Further Documentation. The Debtor will from time to time, at the expense of the Debtor, promptly and duly authorize, execute and deliver such further instruments and documents, and take such further action, as the Creditor may request for the purpose of obtaining or preserving the full benefits of, and the rights and powers granted by, this Agreement (including the filing of any financing statements or financing change statements under any applicable legislation with respect to the Security Interests created by this Agreement). The Debtor acknowledges that this Agreement has been prepared based on the existing laws in the province referred to in the "Governing Law" section of this Agreement and that a change in such laws, or the laws of other jurisdictions, may require the execution and delivery of different forms of security documentation. Accordingly, the Debtor agrees that the Creditor will have the right to require that this Agreement be amended, supplemented or replaced, and that the Debtor will immediately on request by the Creditor authorize, execute and deliver any such amendment, supplement or replacement (i) to reflect any changes in such laws, whether arising as a result of statutory amendments, court decisions or otherwise, (ii) to facilitate the creation and registration of appropriate security in all appropriate jurisdictions, or (iii) if the Debtor merges or amalgamates with any other Person or enters into any corporate reorganization, in each case in order to confer on the Creditor Security Interests similar to, and having the same effect as, the Security Interests created by this Agreement.

(b) Delivery of Certain Collateral. Promptly upon request from time to time by the Creditor, the Debtor will deliver (or cause to be delivered) to the Creditor, endorsed and/or accompanied by such instruments of assignment and transfer in such form and substance as the Creditor may reasonably request, any and all Instruments, Securities, Documents of Title and Chattel Paper included in or relating to the Collateral as the Creditor may specify in its request.

(c) Payment of Expenses; Indemnification. The Debtor will pay on demand, and will indemnify and save the Creditor harmless from, any and all liabilities, costs and expenses (including legal fees and expenses on a solicitor and own client basis and any sales, goods and services or other similar taxes payable to any governmental authority with respect to any such liabilities, costs and expenses) (i) incurred by the Creditor in the preparation, registration, administration or enforcement of this Agreement, (ii) with

respect to, or resulting from, any failure or delay by the Debtor in performing or observing any of its obligations under this Agreement, or (iii) incurred by the Creditor in performing or observing any of the other covenants of the Debtor under this Agreement.

(d) Maintenance of Records. The Debtor will keep and maintain accurate and complete records of the Collateral, including a record of all payments received and all credits granted with respect to the Accounts and Contracts. At the written request of the Creditor, the Debtor will mark any Collateral specified by the Creditor to evidence the existence of the Security Interests created by this Agreement.

(e) Right of Inspection. The Creditor may, at all times during normal business hours, without charge, examine and make copies of all Books and Records, and may discuss the affairs, finances and accounts of the Debtor with its officers and accountants. The Creditor may also, without charge, enter the premises of the Debtor where any of the Collateral is located for the purpose of inspecting the Collateral, observing its use or otherwise protecting its interests in the Collateral. The Debtor, at its expense, will provide the Creditor with such clerical and other assistance as may be reasonably requested by the Creditor to exercise any of its rights under this paragraph.

(f) Limitations on Other Security Interests. The Debtor will not create, incur or permit to exist, and will defend the Collateral against, and will take such other action as is necessary to remove, any and all Security Interests in and other claims affecting the Collateral, other than the Security Interests created by this Agreement or as permitted in writing by the Creditor, and the Debtor will defend the right, title and interest of the Creditor in and to the Collateral against the claims and demands of all Persons.

(g) Limitations on Dispositions of Collateral. The Debtor will not, without the Creditor's prior written consent, sell, lease or otherwise dispose of any of the Collateral, except that Inventory may be sold, leased or otherwise disposed of, and subject to Section 17, Accounts may be collected, in the ordinary course of the Debtor's business. Following Default, all Proceeds of the Collateral (including all amounts received in respect of Accounts) received by or on behalf of the Debtor, whether or not arising in the ordinary course of the Debtor's business, will be received by the Debtor as trustee for the Creditor and will be immediately paid to the Creditor.

(h) Limitations on Modifications, Waivers, Extensions. Other than as permitted by paragraph (i) below, the Debtor will not (i) amend, modify, terminate or waive any provision of any Permit, Contract or any document giving rise to an Account in any manner which is or could reasonably be expected to be materially adverse to the Debtor or the Creditor, or (ii) fail to exercise promptly and diligently its rights under each Contract and each document giving rise to an Account if such failure is or could reasonably be expected to be materially adverse to the Debtor or the Creditor.

(i) Limitations on Discounts, Compromises, Extensions of Accounts. Other than in the ordinary course of business of the Debtor consistent with previous practices, the Debtor will not (i) grant any extension of the time for payment of any Account, (ii) compromise, compound or settle any Account for less than its full amount, (iii) release, wholly or partially, any Person liable for the payment of any Account, or (iv) allow any credit or discount of any Account.

(j) Maintenance of Collateral. The Debtor will maintain all tangible Collateral in good operating condition, ordinary wear and tear excepted, and the Debtor will provide all maintenance, service and repairs necessary for such purpose.

(k) Insurance. The Debtor will keep the Collateral insured with financially sound and reputable companies to its full insurable value against loss or damage by fire, explosion, theft and such other risks as are customarily insured against by Persons carrying on similar businesses or owning similar property within the vicinity in which the Debtor's applicable business or property is located. The applicable insurance policies will be in form and substance satisfactory to the Creditor, and will (i) contain a breach of warranty clause in favour of the Creditor, (ii) provide that no cancellation, material reduction in amount or material change in coverage will be effective until at least 30 days after receipt of written notice thereof by the Creditor, (iii) contain by way of endorsement a mortgagee clause in form and substance satisfactory to the Creditor, and (iv) name the Creditor as loss payee as its interest may appear. The Debtor will, from time to time at the Creditor's request, deliver the applicable insurance policies (or satisfactory evidence of such policies) to the Creditor. If the Debtor does not obtain or maintain such insurance, the Creditor may, but need not, do so, in which event the Debtor will immediately on demand reimburse the Creditor for all

payments made by the Creditor in connection with obtaining and maintaining such insurance, and until reimbursed any such payment will form part of the Liabilities and will be secured by the Security Interests created by this Agreement. Neither the Creditor nor its correspondents or its agents will be responsible for the character, adequacy, validity or genuineness of any insurance, the solvency of any insurer, or any other risk connected with insurance.

(l) Further Identification of Collateral. The Debtor will promptly furnish to the Creditor such statements and schedules further identifying and describing the Collateral, and such other reports in connection with the Collateral, as the Creditor may from time to time reasonably request, including an updated list of any motor vehicles or other "serial number" goods owned by the Debtor and classified as Equipment, including vehicle identification numbers.

(m) Notices. The Debtor will advise the Creditor promptly, in reasonable detail, of (i) any Security Interest (other than the Security Interests created by this Agreement and any Security Interest permitted in writing by the Creditor) on, or claim asserted against, any of the Collateral, (ii) the occurrence of any event, claim or occurrence that could reasonably be expected to have a material adverse effect on the value of the Collateral or on the Security Interests created by this Agreement, (iii) any change in the location of any place of business (including additional locations) or the chief executive office of the Debtor, (iv) any change in the location of any of the tangible Collateral (including additional locations), (v) any acquisition of real property by the Debtor, (vi) any change in the name of the Debtor, (vii) any merger or amalgamation of the Debtor with any other Person, (viii) any additional jurisdiction in which material accounts debtors of the Debtor are located, and (ix) any material loss of or damage to any of the Collateral. The Debtor agrees not to effect or permit any of the changes referred to in clauses (iii) to (viii) above unless all filings have been made and all other actions taken that are required in order for the Creditor to continue at all times following such change to have a valid and perfected Security Interest in respect of all of the Collateral.

(n) Delivery of Agreements re Intellectual Property Rights. The Debtor will promptly, following demand from time to time by the Creditor, authorize, execute and deliver any and all agreements, instruments, documents and papers that the Creditor may request to evidence the Creditor's Security Interests in any Intellectual Property Rights and, where applicable, the goodwill of the business of the Debtor connected with the use of, and symbolized by, any such Intellectual Property Rights.

(o) Limitation on Loans and Guarantees. The Debtor will not, without the Creditor's prior written consent, lend money to or guarantee the obligations of any other third party.

(p) Limitation on Investments or Acquisitions. The Debtor will not, without the Creditor's prior written consent, make any investments or acquisitions other than in the normal course of business.

8. Rights on Default. On Default, all of the Liabilities will, at the option of the Creditor, become immediately due and payable and the security constituted by this Agreement will become enforceable, and the Creditor may, personally or by agent, at such time or times as the Creditor in its discretion may determine, do any one or more of the following:

(a) Rights under PPSA, etc. Exercise all of the rights and remedies granted to secured parties under the PPSA and any other applicable statute, or otherwise available to the Creditor at law or in equity.

(b) Demand Possession. Demand possession of any or all of the Collateral, in which event the Debtor will, at the expense of the Debtor, immediately cause the Collateral designated by the Creditor to be assembled and made available and/or delivered to the Creditor at any place designated by the Creditor.

(c) Take Possession. Enter on any premises where any Collateral is located and take possession of, disable or remove such Collateral.

(d) Deal with Collateral. Hold, store and keep idle, or operate, lease or otherwise use or permit the use of, any or all of the Collateral for such time and on such terms as the Creditor may determine, and demand, collect and retain all earnings and other sums due or to become due from any Person in respect of any of the Collateral.

(e) Carry on Business. Carry on, or concur in the carrying on of, any or all of the business or undertaking of the Debtor and enter on, occupy and use (without charge by the Debtor) any of the premises, buildings, plant and undertaking of, or occupied or used by, the Debtor.

(f) Enforce Collateral. Seize, collect, receive, enforce or otherwise deal with any Collateral in such manner, on such terms and conditions and at such times as the Creditor deems advisable.

(g) Dispose of Collateral. Realize on any or all of the Collateral and sell, lease, assign, give options to purchase, or otherwise dispose of and deliver any or all of the Collateral (or contract to do any of the above), in one or more parcels at any public or private sale, at any exchange, broker's board or office of the Creditor or elsewhere, on such terms and conditions as the Creditor may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery.

(h) Court-Approved Disposition of Collateral. Apply to a court of competent jurisdiction for the sale or foreclosure of any or all of the Collateral.

(i) Purchase by Creditor. At any public sale, and to the extent permitted by law on any private sale, bid for and purchase any or all of the Collateral offered for sale and, upon compliance with the terms of such sale, hold, retain and dispose of such Collateral without any further accountability to the Debtor or any other Person with respect to such holding, retention or disposition, except as required by law. In any such sale to the Creditor, the Creditor may, for the purpose of making payment for all or any part of the Collateral so purchased, use any claim for Liabilities then due and payable to it as a credit against the purchase price.

(j) Collect Accounts. Notify the account debtors or obligors under any Accounts of the assignment of such Accounts to the Creditor and direct such account debtors or obligors to make payment of all amounts due or to become due to the Debtor in respect of such Accounts directly to the Creditor and, upon such notification and at the expense of the Debtor, enforce collection of any such Accounts, and adjust, settle or compromise the amount or payment of such Accounts, in such manner and to such extent as the Creditor deems appropriate in the circumstances.

(k) Transfer of Securities. Transfer any Securities forming part of the Collateral into the name of the Creditor or its nominee, with or without disclosing that the Securities are subject to the Security Interests arising under this Agreement.

(l) Exercise of Rights. Exercise any and all rights, privileges, entitlements and options pertaining to any Securities forming part of the Collateral as if the Creditor were the absolute owner of such Securities.

(m) Payment of Liabilities. Pay any liability secured by any Security Interest against any Collateral. The Debtor will immediately on demand reimburse the Creditor for all such payments.

(n) Borrow and Grant Security Interests. Borrow money for the maintenance, preservation or protection of any Collateral or for carrying on any of the business or undertaking of the Debtor and grant Security Interests on any Collateral (in priority to the Security Interests created by this Agreement or otherwise) as security for the money so borrowed. The Debtor will immediately on demand reimburse the Creditor for all such borrowings.

(o) Appoint Receiver. Appoint by instrument in writing one or more Receivers of the Debtor or any or all of the Collateral with such rights, powers and authority (including any or all of the rights, powers and authority of the Creditor under this Agreement) as may be provided for in the instrument of appointment or any supplemental instrument, and remove and replace any such Receiver from time to time. To the extent permitted by applicable law, any Receiver appointed by the Creditor will (for purposes relating to responsibility for the Receiver's acts or omissions) be considered to be the agent of the Debtor and not of the Creditor.

(p) **Court-Appointed Receiver.** Apply to a court of competent jurisdiction for the appointment of a Receiver of the Debtor or of any or all of the Collateral.

(q) **Consultants.** Require the Debtor to engage a consultant of the Creditor's choice, or engage a consultant on its own behalf, such consultant to receive the full cooperation and support of the Debtor and its employees, including unrestricted access to the premises, books and records of the Debtor; all reasonable fees and expenses of such consultant shall be for the account of the Debtor and the Debtor hereby authorizes any such consultant to report directly to the Creditor and to disclose to the Creditor any and all information obtained in the course of such consultant's employment.

The Creditor may exercise any or all of the foregoing rights and remedies without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except as required by applicable law) to or on the Debtor or any other Person, and the Debtor by this Agreement waives each such demand, presentment, protest, advertisement and notice to the extent permitted by applicable law. None of the above rights or remedies will be exclusive of or dependent on or merge in any other right or remedy, and one or more of such rights and remedies may be exercised independently or in combination from time to time. Without prejudice to the ability of the Creditor to dispose of the Collateral in any manner which is commercially reasonable, the Debtor acknowledges that a disposition of Collateral by the Creditor which takes place substantially in accordance with the following provisions will be deemed to be commercially reasonable:

- (i) Collateral may be disposed of in whole or in part;
- (ii) Collateral may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;
- (iii) any purchaser or lessee of Collateral may be a customer of the Creditor;
- (iv) a disposition of Collateral may be on such terms and conditions as to credit or otherwise as the Creditor, in its sole discretion, may deem advantageous; and
- (v) the Creditor may establish an upset or reserve bid or price in respect of Collateral.

9. Grant of Licence. For the purpose of enabling the Creditor to exercise its rights and remedies under Section 8 when the Creditor is entitled to exercise such rights and remedies, and for no other purpose, the Debtor grants to the Creditor an irrevocable, non-exclusive licence (exercisable without payment of royalty or other compensation to the Debtor) to use, assign or sublicense any or all of the Intellectual Property Rights, including in such licence reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout of the same.

10. Sale of Securities. The Creditor is authorized, in connection with any offer or sale of any Securities forming part of the Collateral, to comply with any limitation or restriction as it may be advised by counsel is necessary to comply with applicable law, including compliance with procedures that may restrict the number of prospective bidders and purchasers, requiring that prospective bidders and purchasers have certain qualifications, and restricting prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such Securities. The Debtor further agrees that compliance with any such limitation or restriction will not result in a sale being considered or deemed not to have been made in a commercially reasonable manner, and the Creditor will not be liable or accountable to the Debtor for any discount allowed by reason of the fact that such Securities are sold in compliance with any such limitation or restriction.

11. Application of Proceeds. All Proceeds of Collateral received by the Creditor or a Receiver may be applied to discharge or satisfy any expenses (including the Receiver's remuneration and other expenses of enforcing the Creditor's rights under this Agreement), Security Interests in favour of Persons other than the Creditor, borrowings, taxes and other outgoings affecting the Collateral or which are considered advisable by the Creditor or the Receiver to protect, preserve, repair, process, maintain or enhance the Collateral or prepare it for sale, lease or other disposition, or to keep in good standing any Security Interests on the Collateral ranking in priority to any of the Security Interests created by this Agreement, or to sell, lease or otherwise dispose of the Collateral. The balance of such Proceeds may, at the sole discretion of

the Creditor, be held as collateral security for the Liabilities or be applied to such of the Liabilities (whether or not the same are due and payable) in such manner and at such times as the Creditor considers appropriate and thereafter will be accounted for as required by law.

12. Continuing Liability of Debtor. The Debtor will remain liable for any Liabilities that are outstanding following realization of all or any part of the Collateral and the application of the Proceeds thereof.

13. Creditor's Appointment as Attorney-in-Fact. The Debtor constitutes and appoints the Creditor and any officer or agent of the Creditor, with full power of substitution, as the Debtor's true and lawful attorney-in-fact with full power and authority in the place of the Debtor and in the name of the Debtor or in its own name, from time to time in the Creditor's discretion after a Default, to take any and all appropriate action and to execute any and all documents and instruments as, in the opinion of such attorney acting reasonably, may be necessary or desirable to accomplish the purposes of this Agreement. These powers are coupled with an interest and are irrevocable until this Agreement is terminated and the Security Interests created by this Agreement are released. Nothing in this Section affects the right of the Creditor as secured party or any other Person on the Creditor's behalf, to sign and file or deliver (as applicable) all such financing statements, financing change statements, notices, verification agreements and other documents relating to the Collateral and this Agreement as the Creditor or such other Person considers appropriate.

14. Performance by Creditor of Debtor's Obligations. If the Debtor fails to perform or comply with any of the obligations of the Debtor under this Agreement, the Creditor may, but need not, perform or otherwise cause the performance or compliance of such obligation, provided that such performance or compliance will not constitute a waiver, remedy or satisfaction of such failure. The expenses of the Creditor incurred in connection with any such performance or compliance will be payable by the Debtor to the Creditor immediately on demand, and until paid, any such expenses will form part of the Liabilities and will be secured by the Security Interests created by this Agreement.

15. Interest. If any amount payable to the Creditor under this Agreement is not paid when due, the Debtor will pay to the Creditor, immediately on demand, interest on such amount from the date due until paid, at a nominal annual rate equal at all times 24%. All amounts payable by the Debtor to the Creditor under this Agreement, and all interest on all such amounts, compounded monthly on the last Business Day of each month, will form part of the Liabilities and will be secured by the Security Interests created by this Agreement.

16. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

17. Rights of Creditor; Limitations on Creditor's Obligations.

(a) **Limitations on Creditor's Liability.** The Creditor will not be liable to the Debtor or any other Person for any failure or delay in exercising any of the rights of the Debtor under this Agreement (including any failure to take possession of, collect, sell, lease or otherwise dispose of any Collateral, or to preserve rights against prior parties). Neither the Creditor, a Receiver nor any agent of the Creditor (including, in Alberta or British Columbia, any sheriff) is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Collateral in its possession. Neither the Creditor nor any Receiver will be liable for any, and the Debtor will bear the full risk of all, loss or damage to any and all of the Collateral (including any Collateral in the possession of the Creditor or any Receiver) caused for any reason other than the gross negligence or willful misconduct of the Creditor or such Receiver.

(b) **Debtor Remains Liable under Accounts and Contracts.** Notwithstanding any provision of this Agreement, the Debtor will remain liable under each of the documents giving rise to the Accounts and under each of the Contracts to observe and perform all the conditions and obligations to be observed and performed by the Debtor thereunder, all in accordance with the terms of each such document and Contract. The Creditor will have no obligation or liability under any Account (or any document giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by the Creditor of any payment relating to such Account or Contract pursuant hereto, and in particular (but without limitation), the Creditor will not

be obligated in any manner to perform any of the obligations of the Debtor under or pursuant to any Account (or any document giving rise thereto) or under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any document giving rise thereto) or under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

(c) **Collections on Accounts and Contracts.** The Creditor hereby authorizes the Debtor to collect the Accounts and payments under the Contracts in the normal course of the business of the Debtor and for the purpose of carrying on the same. If required by the Creditor at any time, any payments of Accounts or under Contracts, when collected by the Debtor, will be forthwith (and, in any event, within two Business Days) deposited by the Debtor in the exact form received, duly endorsed by the Debtor to the Creditor if required, in a special collateral account maintained by the Creditor, and until so deposited, will be held by the Debtor in trust for the Creditor, segregated from other funds of the Debtor. All such amounts while held by the Creditor (or by the Debtor in trust for the Creditor) and all income in respect thereof will continue to be collateral security for the Liabilities and will not constitute payment thereof until applied as hereinafter provided. If a Default has occurred and is continuing, the Creditor may apply all or any part of the amounts on deposit in said special collateral account on account of the Liabilities in such order as the Creditor may elect. At the Creditor's request, the Debtor will deliver to the Creditor any documents evidencing and relating to the agreements and transactions which gave rise to the Accounts and Contracts, including all original orders, invoices and shipping receipts.

(d) **Analysis of Accounts.** The Creditor will have the right to analyze and verify the Accounts in any manner and through any medium that it reasonably considers advisable, and the Debtor will furnish all such assistance and information as the Creditor may require in connection therewith. The Creditor may in its own name or in the name of others (including the Debtor) communicate with account debtors on the Accounts and parties to the Contracts to verify with them to its satisfaction the existence, status, amount and terms of any Account or any Contract. At any time and from time to time, upon the Creditor's reasonable request and at the expense of the Debtor, the Debtor will furnish to the Creditor reports showing reconciliations, aging and test verifications of, and trial balances for, the Accounts.

18. Dealings by Creditor. The Creditor will not be obliged to exhaust its recourse against the Debtor or any other Person or against any other security it may hold in respect of the Liabilities before realizing upon or otherwise dealing with the Collateral in such manner as the Creditor may consider desirable. The Creditor may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Debtor and any other Person, and with any or all of the Collateral, and with other security and sureties, as the Creditor may see fit, all without prejudice to the Liabilities or to the rights and remedies of the Creditor under this Agreement. The powers conferred on the Creditor under this Agreement are solely to protect the interests of the Creditor in the Collateral and will not impose any duty upon the Creditor to exercise any such powers.

19. Communication. Any communication required or permitted to be given under this Agreement will be in writing and will be effectively given if (i) delivered personally, (ii) sent by prepaid courier service or mail, or (iii) sent prepaid by facsimile transmission or other similar means of electronic communication, in each case to the address or facsimile number of the Debtor or Creditor set out in this Agreement. Any communication so given will be deemed to have been given and to have been received on the day of delivery if so delivered, or on the day of facsimile transmission or sending by other means of recorded electronic communication provided that such day is a Business Day and the communication is so delivered or sent prior to 4:30 p.m. (local time at the place of receipt). Otherwise, such communication will be deemed to have been given and to have been received on the following Business Day. Any communication sent by mail will be deemed to have been given and to have been received on the fifth Business Day following mailing, provided that no disruption of postal service is in effect. The Debtor and the Creditor may from time to time change their respective addresses or facsimile numbers for notice by giving notice to the other in accordance with the provisions of this Section.

20. Release of Information. The Debtor authorizes the Creditor to provide a copy of this Agreement and such other information as may be requested of the Creditor by Persons entitled thereto pursuant to any applicable legislation, and otherwise with the consent of the Debtor.

21. Waivers and Indemnity. To the extent permitted by applicable law, the Debtor unconditionally and irrevocably waives (i) all claims, damages and demands it may acquire against the Creditor arising out of the exercise by the Creditor or any Receiver of any rights or remedies under this Agreement or at law, and (ii) all of the rights, benefits and protections given by any present or future statute that imposes limitations on the rights, powers or remedies of a secured party or on the methods of, or procedures for, realization of security, including any "seize or sue" or "anti-deficiency" statute or any similar provision of any other statute. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except by a written instrument executed by the Creditor. The Creditor will not, by any act or delay, be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Creditor, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Creditor of any right or remedy hereunder on any one occasion will not be construed as a bar to any right or remedy which the Creditor would otherwise have on any future occasion. Neither the taking of any judgment nor the exercise of any power of seizure or sale will extinguish the liability of the Debtor to pay the Liabilities, nor will the same operate as a merger or any covenant contained in this Agreement or of any other liability, nor will the acceptance of any payment or other security constitute or create any novation. The Debtor agrees to indemnify the Creditor from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (except by reason of the gross negligence or willful misconduct of the Creditor or any of its agents or employees) which may be imposed on, incurred by, or asserted against the Creditor and arising by reason of any action (including any action referred to in this Agreement) or inaction or omission to do any act legally required by the Debtor. This indemnification will survive the satisfaction, release or extinguishment of the Liabilities and the Security Interests created by this Agreement.

22. Amalgamation. If the Debtor is a corporation, the Debtor acknowledges that if it amalgamates with any other corporation or corporations, then (i) the Collateral and the Security Interests created by this Agreement will extend to and include all the property and assets of the amalgamated corporation and to any property or assets of the amalgamated corporation thereafter owned or acquired, (ii) the term "Debtor", where used in this Agreement, will extend to and include the amalgamated corporation, and (iii) the term "Liabilities", where used in this Agreement, will extend to and include the Liabilities of the amalgamated corporation.

23. Governing Law; Attornment. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario. Without prejudice to the ability of the Creditor to enforce this Agreement in any other proper jurisdiction, the Debtor irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of such province. To the extent permitted by applicable law, the Debtor irrevocably waives any objection (including any claim of inconvenient forum) that it may now or hereafter have to the venue of any legal proceeding arising out of or relating to this Agreement in the courts of such Province.

24. Interpretation. Unless otherwise expressly provided in this Agreement, if any matter in this Agreement is subject to the consent or approval of the Creditor or is to be acceptable to the Creditor, such consent, approval or determination of acceptability will be in the sole discretion of the Creditor. If any provision in this Agreement refers to any action taken or to be taken by the Debtor, or which the Debtor is prohibited from taking, such provision will be interpreted to include any and all means, direct or indirect, of taking, or not taking, such action. The division of this Agreement into sections and paragraphs, and the insertion of headings, is for convenience of reference only and will not affect the construction or interpretation of this Agreement. Unless the context otherwise requires, words importing the singular include the plural and vice versa, and words importing gender include all genders. When used in this Agreement, the word "including" (or includes) means "including (or includes) without limitation". Any reference in this Agreement to a "Section" means the relevant Section of this Agreement. If more than one Debtor executes this Agreement, their obligations under this Agreement are joint and several.

25. Successors and Assigns. This Agreement will enure to the benefit of, and be binding on, the Debtor and its successors and permitted assigns, and will enure to the benefit of, and be binding on, the Creditor and its successors and assigns. The Debtor may not assign this Agreement, or any of its rights or obligations under this Agreement, without the prior written consent of the Creditor. If the Debtor or the Creditor is an individual, then the term "Debtor" or "Creditor", as applicable, will also include his or her heirs, administrators and executors.

26. Acknowledgment of Receipt/Waiver. The Debtor acknowledges receipt of an executed copy of this Agreement and, to the extent permitted by applicable law, waives the right to receive a copy of any financing statement, financing change statement or verification statement in respect of any registered financing statement or financing change statement prepared, registered or issued in connection with this Agreement.

27. Electronic Transmission. This Agreement may be signed in counterparts and by electronic transmission, each of which shall for all purposes be deemed to be an original, and all such separate counterparts shall together constitute one and the same instrument.

[remainder of this page intentionally left blank]

DATED as of the date first written above.

98 JAMES SOUTH (2022) INC.

Per: 

Name: Hunter Milborne

Title: President

I have authority to bind the Corporation.

Address: 385 Madison Avenue, Toronto, Ontario M4V 2W7

Attention: Hunter Milborne

E-mail: Hunter@milborne.com

SCHEDULE A

Locations of Collateral (Paragraph 5(a))

98 James Street South, Hamilton, Ontario

385 Madison Avenue, Toronto, Ontario

Locations of Real Property (Paragraph 5(a))

98 James Street South, Hamilton, Ontario

385 Madison Avenue, Toronto, Ontario

This is Exhibit "H" referred to in the
affidavit of Cecil Hayes sworn February 28 , 2024

A handwritten signature in blue ink, appearing to read "A. G. Williams". The signature is written in a cursive style with a large initial "A" and "G".

A Commissioner for the Taking of Affidavits

Properties

PIN 17171 - 0260 LT *Interest/Estate* Fee Simple
Description PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; EXCEPT PT 1, 62R21103; CITY OF HAMILTON
Address 98 JAMES STREET SOUTH
HAMILTON

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name 98 JAMES SOUTH (2022) INC.
Address for Service 385 Madison Avenue, Toronto, ON M4V
2W7

A person or persons with authority to bind the corporation has/have consented to the registration of this document.
This document is not authorized under Power of Attorney by this party.

Chargee(s)*Capacity**Share*

Name HUE DEVELOPMENTS & INVESTMENTS CANADA INC.
Address for Service 3 Snap Dragon Trail, Holland Landing, Ontario, L9N 0S9

Provisions

Principal \$14,000,000.00 *Currency* CDN
Calculation Period semi-annually
Balance Due Date 2024/03/08
Interest Rate 6%
Payments \$560,000.00
Interest Adjustment Date 2022 09 08
Payment Date see schedule
First Payment Date 2023 05 08
Last Payment Date 2024 03 08
Standard Charge Terms 200033
Insurance Amount Full insurable value
Guarantor

Additional Provisions

See Schedules

Signed By

Yuan Li 3585 Keele Street, Unit#12 acting for Signed 2022 09 09
Toronto
M3J 3H5
Chargor(s)

Tel 416-638-9422
Fax 416-398-8358

I have the authority to sign and register the document on behalf of the Chargor(s).

Submitted By

Nguyen Law Chambers Professional Corporation 3585 Keele Street, Unit#12 2022 09 09
Toronto
M3J 3H5

Tel 416-638-9422
Fax 416-398-8358

Fees/Taxes/Payment

Statutory Registration Fee \$66.30

Fees/Taxes/Payment

Total Paid \$66.30

File Number

Chargor Client File Number : 22-273
Chargee Client File Number : 2022-011

ADDITIONAL PROVISIONS

REPAYMENT

- (a) The amount of principal secured by this Mortgage is Fourteen Million Dollars (\$14,000,000) (the "Principal Amount"), bearing interest at the rate of six (6%) percent per annum calculated and payable semi-annually and running for a term of eighteen (18) months commencing on September 8, 2022, and ending on March 8, 2024 (the "Maturity Date");
- (b) Payments of interest shall be made as follows: i) the first payment shall be due on May 8, 2023, in the amount of Five Hundred and Sixty Thousand Dollars (\$560,000.00); ii) the second payment shall be due on January 8, 2024, in the amount of Five Hundred and Sixty Thousand Dollars (\$560,000.00) and iii) the final payment shall be due on March 8, 2024, in the amount of One Hundred and Forty Thousand Dollars (\$140,000.00); and
- (c) Payment of the Principal Amount of Fourteen Million Dollars (\$14,000,000) shall be made on the Maturity Date.
1. The Chargor, its successors and assigns, may prepay the whole or any part or parts of the principal sum hereby secured at any time or times without notice, bonus or penalty.
 2. Provided that the Chargee, together with its successors and assigns, (hereinafter collectively the "Chargee") shall at the expense of the Chargor, its successors and assigns, consent to any official or secondary plan amendments or rezoning by laws in connection with the registration of a plan or plans of subdivision or condominium, and shall execute, without remuneration except its reasonable legal costs, all documents necessary to enable registration of a plan or plans of subdivision or condominium of the whole or any part or parts of the lands herein (the "Lands"), and/or to enable registration of the Lands under the Land Titles system, provided priority of the Chargee's Charge is not affected and the Chargee does not thereby render itself liable for any expenses or costs. The Chargee shall, without remuneration, further postpone this Charge in favour of any easement or right of way necessary to service the Lands.
 3. (a) Provided that the Chargee, shall provide partial discharges for any lands without any payment on account of the Charge except its reasonable legal costs, which the Chargor is required to convey or dedicate for municipal or governmental purposes including, and without limiting the generality of the foregoing, any lands required for roads, road widenings, easements, park sites and school sites, provided that the Chargor has received no payments for the conveyance of these lands. Should payment be received by the Chargor for these lands, then one hundred (100%) percent of such payment shall be applied to obtain the partial discharges of this Charge with respect to the lands to be discharged. Notwithstanding the foregoing, the Chargor shall be entitled to free partial discharges with respect to any lands which are below the regulated regional floodplain or the top of the bank.

(b) Notwithstanding anything heretofore or hereafter written, it is understood and agreed that the Chargee shall not be required to grant a discharge of any part or parts of the Lands, if the lands then remaining undischarged would be landlocked without frontage on a public street, or would unreasonably impair the Chargee's security.
 4. Provided Section 50 of the Planning Act is complied with, the Chargor, its successors or assigns, shall be entitled to obtain a partial discharge of any parcel, or unsubdivided land, or block or lot or unit on a registered plan of subdivision upon payment of an amount on account of principal calculated according to the following formula:

(i) the amount that is equal to the principal amount of this Charge multiplied by the area of the lands being discharged, and then divided by the area of the lands then secured by this Charge.

and payment of a discharge fee of \$100.00 per Discharge plus HST.
 5. The Chargor shall have the right to alter or demolish any buildings on, or excavate, improve or service, the Lands without any further payment to the Chargee. Any such alteration, demolition, excavation, improvement or service shall not be deemed to be an act of waste hereunder.
 6. The Charge shall incorporate the Standard Charge Terms Form Number 200033, save and except for paragraph 14 which shall hereby be deemed deleted from such Standard Charge Terms.
 7. The Chargee will upon request and at the sole cost and expense of the Chargor execute and deliver to any financial institution(s) providing financing to the Chargor an acknowledgement from the Chargee as to the good standing of this Charge and confirming that notwithstanding default on the part of the Chargor, partial discharges are available upon payment of the discharge amount calculated pursuant to Section 4 above.
 8. The Chargee shall have the right, upon receipt of notice of default of the Borrower under the 1st mortgage registered on title to the Property, to rectify any such default where reasonably possible, and at its election to payout and discharge the 1st mortgage in accordance with the terms thereof.

This is Exhibit "T" referred to in the
affidavit of Cecil Hayes sworn February 28, 2024

A handwritten signature in blue ink, appearing to be "A. K. Miller", written in a cursive style.

A Commissioner for the Taking of Affidavits



PERSONAL PROPERTY SECURITY REGISTRATION
SYSTEM (ONTARIO) ENQUIRY RESULTS

Prepared for : Chaitons LLP (ADP) - Antoinette De Pinto
Reference : 74703
Docket : 74703
Search ID : 958108
Date Processed : 1/29/2024 9:37:36 AM
Report Type : PPSA Electronic Response
Search Conducted on : 98 JAMES SOUTH (2022) INC.
Search Type : Business Debtor

DISCLAIMER :

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MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT
OF THE FOLLOWING:

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 98 JAMES SOUTH (2022) INC.

FILE CURRENCY: January 28, 2024

RESPONSE CONTAINS: APPROXIMATELY 2 FAMILIES and 2 PAGES.

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS
WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME
IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE
OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT
ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

THE ABOVE REPORT HAS BEEN CREATED BASED ON THE DATA PROVIDED BY
THE PERSONAL PROPERTY REGISTRATION BRANCH, MINISTRY OF CONSUMER
AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
INTERPRETATION AND USE THAT ARE MADE OF IT.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 98 JAMES SOUTH (2022) INC.

FILE CURRENCY: January 28, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 2 ENQUIRY PAGE : 1 OF 2

SEARCH : BD : 98 JAMES SOUTH (2022) INC.

00 FILE NUMBER : 786537864 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :
REG NUM : 20220908 1605 1590 9404 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: 98 JAMES SOUTH (2022) INC.
OCN :
04 ADDRESS : 385 MADISON AVENUE
CITY : TORONTO PROV: ON POSTAL CODE: M4V 2W7
05 IND DOB : IND NAME:
06 BUS NAME:
OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
MARSHALLZEHR GROUP INC.
09 ADDRESS : 412 ALBERT ST., SUITE 100
CITY : WATERLOO PROV: ON POSTAL CODE: N2L 3V3
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X
YEAR MAKE MODEL V.I.N.

11

12

GENERAL COLLATERAL DESCRIPTION

13

14

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16 AGENT: CHAITONS LLP (GAR/JW/74703)

17 ADDRESS : 5000 YONGE STREET, 10TH FLOOR

CITY : TORONTO PROV: ON POSTAL CODE: M2N 7E9

END OF FAMILY

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 98 JAMES SOUTH (2022) INC.

FILE CURRENCY: January 28, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 2 ENQUIRY PAGE : 2 OF 2

SEARCH : BD : 98 JAMES SOUTH (2022) INC.

00 FILE NUMBER : 786537882 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :
REG NUM : 20220908 1606 1590 9405 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: 98 JAMES SOUTH (2022) INC.
OCN :
04 ADDRESS : 385 MADISON AVENUE
CITY : TORONTO PROV: ON POSTAL CODE: M4V 2W7
05 IND DOB : IND NAME:
06 BUS NAME: 98 JAMES SOUTH (2022) LIMITED PARTNRSHIP
OCN :
07 ADDRESS : 385 MADISON AVENUE
CITY : TORONTO PROV: ON POSTAL CODE: M4V 2W7

08 SECURED PARTY/LIEN CLAIMANT :
MARSHALLZEHR GROUP INC.
09 ADDRESS : 412 ALBERT ST., SUITE 100
CITY : WATERLOO PROV: ON POSTAL CODE: N2L 3V3
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

16 AGENT: CHAITONS LLP (GSA/JW/74703)
17 ADDRESS : 5000 YONGE STREET, 10TH FLOOR
CITY : TORONTO PROV: ON POSTAL CODE: M2N 7E9
LAST SCREEN

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

This is Exhibit "J" referred to in the
affidavit of Cecil Hayes sworn February 28, 2024



A Commissioner for the Taking of Affidavits



PERSONAL PROPERTY SECURITY REGISTRATION
SYSTEM (ONTARIO) ENQUIRY RESULTS

Prepared for : Chaitons LLP (ADP) - Antoinette De Pinto
Reference : 74703
Docket : 74703
Search ID : 958107
Date Processed : 1/29/2024 9:37:31 AM
Report Type : PPSA Electronic Response
Search Conducted on : 98 JAMES SOUTH (2022) LIMITED PARTNERSHIP
Search Type : Business Debtor

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MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE
CENTRAL OFFICE OF THE PERSONAL PROPERTY SECURITY SYSTEM IN RESPECT
OF THE FOLLOWING:

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 98 JAMES SOUTH (2022) LIMITED PARTNERSHIP

FILE CURRENCY: January 28, 2024

RESPONSE CONTAINS: APPROXIMATELY 1 FAMILIES and 2 PAGES.

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS
WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME
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AND BUSINESS SERVICES, GOVERNMENT OF ONTARIO. NO LIABILITY IS
UNDERTAKEN REGARDING ITS CORRECTNESS, COMPLETENESS, OR THE
INTERPRETATION AND USE THAT ARE MADE OF IT.

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 98 JAMES SOUTH (2022) LIMITED PARTNERSHIP

FILE CURRENCY: January 28, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 1 ENQUIRY PAGE : 1 OF 2

SEARCH : BD : 98 JAMES SOUTH (2022) LIMITED PARTNERSHIP

00 FILE NUMBER : 786537855 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 001 OF 2 MV SCHEDULE ATTACHED :
REG NUM : 20220908 1605 1590 9403 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : 04SEP1950 IND NAME: HUNTER MILBORNE
03 BUS NAME:
OCN :
04 ADDRESS : 901-139 HAZELTON AVENUE
CITY : TORONTO PROV: ON POSTAL CODE: M5R 0A6
05 IND DOB : 26AUG1974 IND NAME: MARCUS GILLAM
06 BUS NAME:
OCN :
07 ADDRESS : 72 HANNA ROAD
CITY : TORONTO PROV: ON POSTAL CODE: M4G 3N1

08 SECURED PARTY/LIEN CLAIMANT :
MARSHALLZEHR GROUP INC.
09 ADDRESS : 412 ALBERT ST., SUITE 100
CITY : WATERLOO PROV: ON POSTAL CODE: N2L 3V3
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION
13 ASSIGNMENT AND POSTPONEMENT OF CLAIM IN FAVOUR OF 98 JAMES SOUTH
14 (2022) INC.
15
16 AGENT: CHAITONS LLP (GAR/JW/74703)
17 ADDRESS : 5000 YONGE STREET, 10TH FLOOR
CITY : TORONTO PROV: ON POSTAL CODE: M2N 7E9

CONTINUED

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

MINISTRY OF CONSUMER AND BUSINESS SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE

TYPE OF SEARCH: BUSINESS DEBTOR

CONDUCTED ON: 98 JAMES SOUTH (2022) LIMITED PARTNERSHIP

FILE CURRENCY: January 28, 2024

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 1 ENQUIRY PAGE : 2 OF 2

SEARCH : BD : 98 JAMES SOUTH (2022) LIMITED PARTNERSHIP

00 FILE NUMBER : 786537855 EXPIRY DATE : 08SEP 2027 STATUS :
01 CAUTION FILING : PAGE : 002 OF 2 MV SCHEDULE ATTACHED :
REG NUM : 20220908 1605 1590 9403 REG TYP: REG PERIOD:
02 IND DOB : 04SEP1950 IND NAME: CHARLES H MILBORNE
03 BUS NAME:
OCN :
04 ADDRESS : 901-133 HAZELTON AVENUE
CITY : TORONTO PROV: ON POSTAL CODE: M5R 0A6
05 IND DOB : IND NAME:
06 BUS NAME: 98 JAMES SOUTH (2022) LIMITED PARTNERSHIP
OCN :
07 ADDRESS : 385 MADISON AVENUE
CITY : TORONTO PROV: ON POSTAL CODE: M4V 2W7

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
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16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:
LAST SCREEN

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

This is Exhibit "K" referred to in the
affidavit of Cecil Hayes sworn February 28 , 2024

A handwritten signature in blue ink, appearing to be "A. Williams", written in a cursive style.

A Commissioner for the Taking of Affidavits

December 4, 2023

PERSONAL & CONFIDENTIAL

VIA REGULAR & REGISTERED & EMAIL TO: hunter@milborne.com and mjillam@gillamgroup.com

98 James South (2022) Inc.
385 Madison Avenue
Toronto, Ontario M4V 2W7

Attention: Hunter Milborne

Re: *Indebtedness of 98 James South (2022) Inc. (the "Borrower") to MarshallZehr Group Inc. (the "Lender")*

Dear Sirs

We are lawyers for the Lender.

Pursuant to a commitment letter dated August 19, 2022 (the "**Commitment Letter**"), the Lender agreed to make a loan to the Borrower in the maximum amount of \$12,000,000 (the "**Loan**").

The Loan is secured by, *inter alia*, a Charge/Mortgage in the principal amount of \$13,200,000 registered on lands municipally known as 98 James Street South, Hamilton, Ontario (the "**Property**") and a General Security Agreement dated September 9, 2022 granted by the Borrower in favour of the Lender (collectively, the "**Security**").


We are advised by the Lender that the Borrower is indebted to Lender in the amount of \$12,265,947.24 for principal, interest and fees as of November 28, 2023 under the Commitment Letter, as detailed in the discharge statement enclosed herewith.

We are further advised by the Lender that the Borrower defaulted on its obligations to the Lender under the Commitment Letter as a result of, among other things, its failure to make the required interest payments that were due on November 1, 2023 and December 1, 2023. As a result of these events of default, the Lender is entitled to declare all Obligations under the Commitment Letter to be immediately due and payable.

On behalf of the Lender, we hereby demand payment of the Borrower's indebtedness to the Lender. Unless payment of the aforesaid amount of \$12,265,947.24, together with additional interest accrued and fees and costs (including legal costs) incurred to the date of payment are paid forthwith, the Lender shall take such steps as it deems necessary to recover payment of the Borrower's indebtedness in full, which may include enforcement of the Security.

Enclosed please find the Lender's Notices of Intention to Enforce Security, which are served upon the Borrowers pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada).

Yours truly,
CHAITONS LLP



Maya Poliak
PARTNER
Encls.

cc: MarshallZehr Group Inc.



DISCHARGE STATEMENT AS AT: November 28, 2023

Prepared on November 28, 2023

ID#: DS202311281MZGI485

Terms: \$12,000,000 1st mortgage land loan with a term of 19 months.

\$12,000,000: Interest at Prime + 6.30% per annum (Floor Rate of 11%)

Interest shall accrue commencing on the date of each Advance to the Lender's trust account and shall be calculated daily (365 days/year), compounded and payable monthly, in arrears and due and payable on the first (1st) day of each month, both before and after the Maturity Date, Default, demand and judgment. Interest only payments in respect of the Loan shall be paid from the a) Interest Reserve, if applicable, or b) Borrower Draws up to the budgeted amount set out in the Sources and Uses of Funds herein. Once the budgeted amount has been utilized, interest payments shall be made from the Obligors' own cash resources.

98 James Street S. - MZGI 485

98 James Street South, Hamilton, Ontario

	Total
Principal Amount Outstanding	\$ 12,000,000.00
Unpaid Interest Outstanding	\$ 259,947.24
Cost Recovery	\$ -
Final Discharge Admin Fee	\$ 1,000.00
Monthly Default Fee	\$ 5,000.00
Less: Cash held in Trust	\$ -
Total Payable on Tuesday, November 28, 2023	\$ 12,265,947.24
Per Diem	\$ 4,489.67

NOTE: Payment must be received by 1:00 p.m. or per diem interest will be added up to the next business day

This discharge statement is valid until Thursday, November 30, 2023

You are authorized and directed to make the balance due payable to our solicitor: **Chaitons LLP "In Trust"**, OR as they may further direct.

MARSHALLZEHR GROUP INC.

Per: _____
Murray Snedden, Principal Broker
Mortgage Administrator #: 11955

Per: _____
Anthony Carleton, Manager - Mortgage Operations

E. & O. E.

If Total Payable is not received by the date of this Discharge Statement, then a per diem in the rate set out above will be charged. This Discharge Statement is only valid until the date specified above. Please confirm the Total Payable prior to remitting funds. Balances are projected and are based on the assumption that all outstanding amounts/payments due up to the date of this Discharge Statement are paid as set out therein. MarshallZehr Group Inc. will not provide a discharge of the mortgage until the entire outstanding balance, including interest and costs have been paid and honored.

NOTICE OF INTENTION TO ENFORCE A SECURITY
(given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)

To: 98 James South (2022) Inc., an insolvent person

Take notice that:

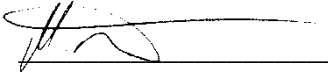
1. **MarshallZehr Group Inc.**, a secured creditor, intends to enforce its security on all of the present and after-acquired property of 98 James South (2022) Inc.,
2. The security that is to be enforced includes:
 - (a) a General Security Agreement dated September 9, 2022;
 - (b) a Charge/Mortgage registered on September 9, 2022 as Instrument No. WE1632777 against the property municipally known as 98 James South, Hamilton, Ontario (the “**Property**”) and bearing the following legal description:

PIN: 17171 - 0260 LT

Description PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; EXCEPT PT 1, 62R21103; CITY OF HAMILTON; and
 - (c) Notice of Assignment of Rents General registered on September 9, 2022 as Instrument Number WE1632778 against the Property (collectively, the “**Security**”).
3. The total amount of indebtedness secured by the Security as at the close of business on November 28, 2023 is \$12,265,947.24, inclusive of principal, interest, and fees (excluding costs).
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at Toronto, this 4th day of December, 2023.

MARSHALLZEHR GROUP INC.,
by its lawyers, Chaitons LLP

Per: 
Maya Poliak

PRIVATE & CONFIDENTIAL

December 4, 2023

VIA EMAIL, REGULAR MAIL AND REGISTERED MAIL

Hunter Milborne: hunter@milborne.com
385 Madison Avenue
Toronto, Ontario

Marcus Gillam: mgillam@gillamgroup.com
385 Madison Avenue
Toronto, Ontario

98 James South (2022) Limited
Partnership
385 Madison Avenue
Toronto, Ontario M4V 2W7

Re: *Indebtedness of 98 James South (2022) Inc. (the "Borrower") to MarshallZehr Group Inc. (the "Lender")*

Dear Sirs,

We are lawyers for the Lender.

Please find enclosed a copy of our letter to the Borrower dated December 4, 2023 demanding payment of their indebtedness and liabilities to the Lender pursuant to the Commitment Letter dated August 19, 2022 (the "**Commitment Letter**")

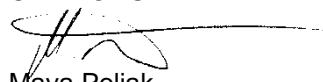
The total amount owing by the Borrower to the Lender under the Commitment Letter as at November 28, 2023 is **\$12,265,947.24**, for principal, interest and fees, excluding legal costs, as detailed in the discharge statement enclosed with the Borrowers' demand.

We refer to a written Guarantee dated September 9, 2022 granted by you in favour of the Lender (the "**Guarantee**"). Pursuant to the Guarantee, you guaranteed, without limitation, all present and future indebtedness and liability owed by the Borrowers to the Lender under the Commitment Letter. The guarantors' obligations under the Guarantee are secured by, *inter alia*, a General Security Agreement dated September 9, 2022 granted by 98 James South (2022) Limited Partnership (the "**LP**") in favour of the Lender and the Beneficial Charge dated September 9, 2022 granted by the LP in favour of the Lender (collectively, the "**Security**").

Your indebtedness and liabilities to the Lender under the Guarantee is payable on demand. On behalf of the Lender, we hereby demand immediate payment of your indebtedness and liabilities to the Lender under the Guarantee in the amounts set out above. Unless payment of the amount set out above, together with additional interest accrued and fees and costs incurred to the date of payment are paid forthwith, the Lender shall take such steps as it deems necessary to recover payment of your indebtedness in full.

Enclosed please find a Lender's Notice of Intention to Enforce Security for the LP, which is served upon you pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada).

Yours truly,
CHAITONS LLP



Maya Poliak
PARTNER
Encl.

Cc: MarshallZehr Group Inc.

December 4, 2023

PERSONAL & CONFIDENTIAL

VIA REGISTERED & EMAIL TO: hunter@milborne.com and mjillam@gillamgroup.com

98 James South (2022) Inc.
385 Madison Avenue
Toronto, Ontario M4V 2W7

Attention: Hunter Milborne

Re: *Indebtedness of 98 James South (2022) Inc. (the "Borrower") to MarshallZehr Group Inc. (the "Lender")*

Dear Sirs

We are lawyers for the Lender.

Pursuant to a commitment letter dated August 19, 2022 (the "**Commitment Letter**"), the Lender agreed to make a loan to the Borrower in the maximum amount of \$12,000,000 (the "**Loan**").

The Loan is secured by, *inter alia*, a Charge/Mortgage in the principal amount of \$13,200,000 registered on lands municipally known as 98 James Street South, Hamilton, Ontario (the "**Property**") and a General Security Agreement dated September 9, 2022 granted by the Borrower in favour of the Lender (collectively, the "**Security**").


We are advised by the Lender that the Borrower is indebted to Lender in the amount of \$12,265,947.24 for principal, interest and fees as of November 28, 2023 under the Commitment Letter, as detailed in the discharge statement enclosed herewith.

We are further advised by the Lender that the Borrower defaulted on its obligations to the Lender under the Commitment Letter as a result of, among other things, its failure to make the required interest payments that were due on November 1, 2023 and December 1, 2023. As a result of these events of default, the Lender is entitled to declare all Obligations under the Commitment Letter to be immediately due and payable.

On behalf of the Lender, we hereby demand payment of the Borrower's indebtedness to the Lender. Unless payment of the aforesaid amount of \$12,265,947.24, together with additional interest accrued and fees and costs (including legal costs) incurred to the date of payment are paid forthwith, the Lender shall take such steps as it deems necessary to recover payment of the Borrower's indebtedness in full, which may include enforcement of the Security.

Enclosed please find the Lender's Notices of Intention to Enforce Security, which are served upon the Borrowers pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada).

Yours truly,
CHAITONS LLP



Maya Poliak
PARTNER
Encls.

cc: MarshallZehr Group Inc.



DISCHARGE STATEMENT AS AT: November 28, 2023

Prepared on November 28, 2023

ID#: DS202311281MZGI485

Terms: \$12,000,000 1st mortgage land loan with a term of 19 months.

\$12,000,000: Interest at Prime + 6.30% per annum (Floor Rate of 11%)

Interest shall accrue commencing on the date of each Advance to the Lender's trust account and shall be calculated daily (365 days/year), compounded and payable monthly, in arrears and due and payable on the first (1st) day of each month, both before and after the Maturity Date, Default, demand and judgment. Interest only payments in respect of the Loan shall be paid from the a) Interest Reserve, if applicable, or b) Borrower Draws up to the budgeted amount set out in the Sources and Uses of Funds herein. Once the budgeted amount has been utilized, interest payments shall be made from the Obligors' own cash resources.

98 James Street S. - MZGI 485

98 James Street South, Hamilton, Ontario

	Total
Principal Amount Outstanding	\$ 12,000,000.00
Unpaid Interest Outstanding	\$ 259,947.24
Cost Recovery	\$ -
Final Discharge Admin Fee	\$ 1,000.00
Monthly Default Fee	\$ 5,000.00
Less: Cash held in Trust	\$ -
Total Payable on Tuesday, November 28, 2023	\$ 12,265,947.24
Per Diem	\$ 4,489.67

NOTE: Payment must be received by 1:00 p.m. or per diem interest will be added up to the next business day

This discharge statement is valid until Thursday, November 30, 2023

You are authorized and directed to make the balance due payable to our solicitor: **Chaitons LLP "In Trust"**, OR as they may further direct.

MARSHALLZEHR GROUP INC.

Per: _____
Murray Snedden, Principal Broker
Mortgage Administrator #: 11955

Per: _____
Anthony Carleton, Manager - Mortgage Operations

E. & O. E.

If Total Payable is not received by the date of this Discharge Statement, then a per diem in the rate set out above will be charged. This Discharge Statement is only valid until the date specified above. Please confirm the Total Payable prior to remitting funds. Balances are projected and are based on the assumption that all outstanding amounts/payments due up to the date of this Discharge Statement are paid as set out therein. MarshallZehr Group Inc. will not provide a discharge of the mortgage until the entire outstanding balance, including interest and costs have been paid and honored.

NOTICE OF INTENTION TO ENFORCE A SECURITY
(given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)

To: 98 James South (2022) Inc., an insolvent person

Take notice that:

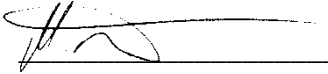
1. **MarshallZehr Group Inc.**, a secured creditor, intends to enforce its security on all of the present and after-acquired property of 98 James South (2022) Inc.,
2. The security that is to be enforced includes:
 - (a) a General Security Agreement dated September 9, 2022;
 - (b) a Charge/Mortgage registered on September 9, 2022 as Instrument No. WE1632777 against the property municipally known as 98 James South, Hamilton, Ontario (the “**Property**”) and bearing the following legal description:

PIN: 17171 - 0260 LT

Description PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; EXCEPT PT 1, 62R21103; CITY OF HAMILTON; and
 - (c) Notice of Assignment of Rents General registered on September 9, 2022 as Instrument Number WE1632778 against the Property (collectively, the “**Security**”).
3. The total amount of indebtedness secured by the Security as at the close of business on November 28, 2023 is \$12,265,947.24, inclusive of principal, interest, and fees (excluding costs).
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at Toronto, this 4th day of December, 2023.

MARSHALLZEHR GROUP INC.,
by its lawyers, Chaitons LLP

Per: 
Maya Poliak

NOTICE OF INTENTION TO ENFORCE A SECURITY
(given pursuant to section 244 of the *Bankruptcy and Insolvency Act*)

To: **98 James South (2022) Limited Partnership** an insolvent person

Take notice that:

1. **MarshallZehr Group Inc.**, a secured creditor, intends to enforce its security on all of the present and after-acquired property of 98 James South (2022) Limited Partnership.
2. The security that is to be enforced includes:
 - (a) a Charge/Mortgage registered on September 9, 2022 as Instrument No. WE1632777 against the property municipally known as 98 James South, Hamilton, Ontario (the “**Property**”) and bearing the following legal description:

PIN: 17171 - 0260 LT

Description PT LT 75 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON; PT LT 76 P. HAMILTON SURVEY (UNREGISTERED) CITY OF HAMILTON (BTN HUNTER ST, MACNAB ST, JACKSON ST & JAMES ST) AS IN HA59712; EXCEPT PT 1, 62R21103; CITY OF HAMILTON
 - (b) Beneficial Charge in 98 James South (2022) Limited Partnership’s beneficial interest in the Property dated September 9, 2022;
 - (c) a General Security Agreement dated September 9, 2022 (collectively, the “**Security**”).
3. The total amount of indebtedness secured by the Security as at the close of business on November 28, 2023 is \$12,265,947.24, inclusive of principal, interest, and fees (excluding costs).
4. The secured creditor will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice, unless the insolvent person consents to an earlier enforcement.

DATED at Toronto, this 4th day of December, 2023

MARSHALLZEHR GROUP INC.,
by its lawyers, Chaitons LLP

Per: 

Maya Poliak

MARSHALLZEHR GROUP INC.
Applicant

-and-

98 JAMES SOUTH (2022) INC. et. al
Respondents

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF CECIL HAYES
(sworn February 28, 2024)

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)
Tel: (416) 218-1161
E-mail: maya@chaitons.com

Laura Culleton (LSO No. 82428R)
Tel: (416) 218-1128
Email: laurac@chaitons.com

Lawyers for the Applicant

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

and

**98 JAMES SOUTH (2022) INC. and 98 JAMES SOUTH (2022) LIMITED
PARTNERSHIP**

Respondents

CONSENT

KSV RESTRUCTURING INC. hereby consents to being appointed as receiver over the property, assets and undertaking of the respondents, 98 James South (2022) Inc. and 98 James South (2022) Limited Partnership.

Dated this 25th day of March, 2024.

KSV RESTRUCTURING INC.

By:



Name: Noah Goldstein, Managing Director

I have authority to bind the corporation

MARSHALLZEHR GROUP INC.
Applicant

-and-

98 JAMES SOUTH (2022) INC. et al.
Respondents

Court File No. CV-24-00717051-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

CONSENT

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO #54100H)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

Laura Culleton (LSO #82428R)

Tel: (416) 218-1128

E-mail: laurac@chaitons.com

Lawyers for the Applicant

MARSHALLZEHR GROUP INC.
Applicant

-and-

98 JAMES SOUTH (2022) INC. ET AL.
Respondents

Court File No. CV-24-00717051-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

**APPLICATION RECORD
(Returnable April 15, 2024
Appointment of a Receiver)**

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (LSO No. 54100A)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

Laura Culleton (LSO No. 82428R)

Tel: (416) 218-1128

Email: laurac@chaitons.com

Lawyers for the Applicant