

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

B E T W E E N:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**LA PUE INTERNATIONAL INC.**

Respondent

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**

June 7, 2023

**CHAITONS LLP**

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

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**Lawyers for the Applicant**

TO: SERVICE LIST

**SERVICE LIST**  
**(as at June 7, 2023)**

Receiver's URL: <https://www.ksvadvisory.com/experience/case/lapue>

<p><b>CHAITONS LLP</b> 5000 Yonge Street, 10<sup>th</sup> Floor Toronto, ON M2N 7E9</p> <p>Maya Poliak (54100A) Tel: 416-218-1161 Email: <a href="mailto:maya@chaitons.com">maya@chaitons.com</a></p> <p>Laura Culleton (LSO No. 82428R) Tel: (416) 218-1128 E-mail: <a href="mailto:laurac@chaitons.com">laurac@chaitons.com</a></p> <p>Lawyers for the Applicant, MarshallZehr Group Inc.</p>	<p><b>KSV RESTRUCTURING INC.</b> 150 King Street West, Sute 2308 Toronto, ON M5H 1J9</p> <p>Noah Goldstein Email: <a href="mailto:ngoldstein@ksvadvisory.com">ngoldstein@ksvadvisory.com</a></p> <p>Court-Appointed Receiver</p>
<p><b>LA PUE INTERNATIONAL INC.</b> 6158 Allendale Ave. Niagara Falls, Ontario, L2G 0A5</p> <p><b>PAWEL FUGIEL</b> 511 Mcdonald Road Oakville, ON L6J 2B7</p> <p>Email: <a href="mailto:lapueinternational@gmail.com">lapueinternational@gmail.com</a></p>	<p><b>DEPARTMENT OF JUSTICE</b> The Exchange Tower 130 King Street West, Suite 3400 Toronto, ON M5X 1K6</p> <p>Diane Winters Tel: (416) 973-3172 Email: <a href="mailto:diane.winters@justice.gc.ca">diane.winters@justice.gc.ca</a></p> <p>Rakhee Bhandari Email: <a href="mailto:rakhee.bhandari@justice.gc.ca">rakhee.bhandari@justice.gc.ca</a></p> <p>Lawyers for Canada Revenue Agency</p>
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

B E T W E E N:

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Applicant

- and -

**LA PUE INTERNATIONAL INC.**

Respondent

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

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**TAB 1**



Court File No.

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

**B E T W E E N:**

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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

**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 **Thursday, June 15, 2023, at 10:00 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 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 June 7, 2023

Issued by \_\_\_\_\_  
Local Registrar

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

**TO: LA PUE INTERNATIONAL INC.**  
6158 Allendale Ave.  
Niagara Falls, Ontario, L2G 0A5

Attention: Pawel Fugiel

## 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 undertakings of La Pue International Inc. (the “**Debtor**”) 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 to this Honourable Court may deem just.
2. The grounds for the application are:

### *The Parties*

- (a) The Debtor is a corporation incorporated under the laws of the Province of Ontario and has its head office located in Niagara Falls, Ontario.
- (b) The Debtor is the registered owner of land municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Property**”).
- (c) The Debtor intends to construct on the Property three buildings, two of which will be residential buildings and one being a mixed-use building (collectively, the

“**Development**”). Construction has began and was being funded by the Debtor and its principal, Pawel Fugiel.

- (d) The Lender is an Ontario corporation that provides financing for the acquisition and development of residential property.

### ***Loan and Security***

- (e) Pursuant to a commitment letter dated November 15, 2021, as amended by letters dated June 27, 2022 and November 30, 2022 (collectively, the “**Commitment Letter**”), the Lender agreed to provide a loan to the Debtor in the maximum principal amount of \$18 million (the “**Loan**”) for the purpose of refinancing an existing mortgage on the Property and to provide working capital to the Debtor.

### ***Security***

- (f) As security for the Loan, the Debtor has granted, among other things, a first-ranking charge/mortgage in the principal amount of \$13.8 million against the Property (the “**Lender’s Charge**”), and a general security agreement (collectively, the “**Security**”).
- (g) Pursuant to the terms of the Commitment Letter and the Security, the Debtor has agreed that, upon an event of 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***

- (h) Sovereign General Insurance Company (“**SGIC**”) holds a second ranking charge in the principal amount of \$12,000,000 as security for deposit insurance. SGIC also



registered a financing statement against the Debtor under the *Personal Property Security Act* (Ontario) (“**PPSA**”).

- (i) In addition to PPSA registrations in favour of SGIC and the Lender, three automotive companies have registered financing statements against the Debtor listing certain motor vehicles as collateral.
- (j) Between February 2023 and May 2023 five construction liens totalling \$12,867,788 were registered against the Property (collectively, the “**Construction Liens**”). At least one of these lien claimants has registered a Certificate of Action and issued a claim against the Debtor, the Lender and SGIC claiming full priority for its lien in the amount claimed of 3,673,337.03 over the Lender and SGIC.
- (k) The registration of the Construction Liens against the Property was not disclosed by the Debtor to the Lender. The Lender only learned of the Construction Liens when it began to prepare these receivership materials and obtained a parcel register search.
- (l) The Loan matured on April 1, 2023 and was not repaid. On May 4, 2023, the Lender, through its lawyers, demanded payment of \$12,975,281.62 for principal, interest and fees (including legal costs) owed by the Debtor to the Lender as of May 3, 2023, and delivered a notice of intention to enforce its security under the Bankruptcy and Insolvency Act (Canada) (“**BIA**”).
- (m) To date, the Lender has not received any payments from the Debtor in response to the demand for payment.

***Just and Convenient to Appoint a Receiver***

- (n) The Loan has matured. The Lender has demanded payment of the Loan from the Debtor and has sent a *BIA* notice. The 10-day period under the *BIA* has expired.
- (o) In addition to failure to repay the Loan on maturity, the Debtor is in breach of the “Borrower’s Covenants” under the Commitment Letter for failing to ensure that no liens are registered against the Development and to move immediately to have same vacated if registered.
- (p) The Debtor owes approximately \$13 million to the Lender.
- (q) The Debtor has provided no evidence to suggest that it will be in a position to repay the Loan in the near future or to resolve its issues with the various construction lien claimants. Instead, the Debtor has concealed the existence of these liens and its issues with the lien holders from the Lender.
- (r) Pursuant to the terms of the Loan and Security, upon an Event of Default that has not been cured, the Lender is entitled to appoint a receiver in writing and/or make an application for the court appointment of a receiver over the property, assets and undertakings of the Debtor.
- (s) In these circumstances, it is just and convenient that KSV Restructuring Inc. be appointed as Receiver to:
  - (i) take control over and realize on the Property under Court supervision for the benefit of all stakeholders, including the lenders with the benefit of a

vesting order that would enable the Receiver to transfer title to the Property  
free and clear of all claims; and

- (ii) address competing claims between mortgagees and lien claimants.
- (t) MarshallZehr proposes that KSV Restructuring Inc. be appointed as Receiver. KSV Restructuring Inc. has agreed to accept the appointment

***Statutory and Other Grounds***

- (u) Section 243 of the *BIA*, and Section 101 of the *CJA*.
  - (v) Rules 1.04(1), 1.05, 2.01, 2.03, 3.02, and 38 of the *Rules of Civil Procedure*.
  - (w) 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:
- (a) the affidavit of Cecil Hayes sworn June 7, 2023 and the exhibits thereto; and
  - (b) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 7, 2023

**CHAITONS LLP**

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Toronto, Ontario M2N 7E9

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**Lawyers for the Applicant**

-and-

Applicant

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Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF APPLICATION**

**CHAITONS LLP**

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

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**Lawyers for the Applicant**

**TAB 2**

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

BETWEEN:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

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**AFFIDAVIT OF CECIL HAYES**  
(sworn June 7, 2023)

I, **CECIL HAYES**, of the City of Richmond Hill, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of the Applicant, MarshallZehr Group Inc. ("**MarshallZehr**"). The facts in this affidavit 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 set out below are based upon information and advice from others, I believe same to be true.

2. This affidavit is sworn in support of the application by MarshallZehr for the appointment of KSV Restructuring Inc. ("**KSV**") as receiver ("**Receiver**") of the property, assets, and

undertakings of the Respondent, La Pue International Inc. (the “**Debtor**”).

## **THE PARTIES**

3. The Debtor is a corporation governed by the Ontario *Business Corporations Act*. The Debtor was incorporated on March 13, 2017 and has its registered office located in Niagara Falls, Ontario. A copy of the Corporate Profile Report for the Debtor is attached hereto and marked as **Exhibit “A”**. The Corporate Profile Report discloses that Pawel Fugiel is the sole officer and director of the Debtor.

4. The Debtor is the registered owner of the land municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Property**”). The Debtor acquired the Property on April 20, 2018 for the purpose of constructing three mid-rise buildings thereon consisting of one mixed-use, one hotel and one residential building under the name the “Stanley District” (the “**Project**”).

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

## **LOAN AND SECURITY**

### Commitment Letter

6. Pursuant to a commitment letter dated November 15, 2021, as amended by letter dated June 27, 2022 (collectively, the “**Commitment Letter**”), MarshallZehr agreed to provide a loan in the maximum principal amount of \$12,375,000 to the Debtor (the “**Loan**”) for the purpose of refinancing an existing mortgage on the Property, fund an interest reserve and to provide working capital. A copy of the Commitment Letter is attached hereto and marked as **Exhibit “B”**.



7. Pursuant to a letter dated November 30, 2022 (the “**November Amendment**”), MarshallZehr increased the loan amount by \$5,625,000 (the “**Third Advance**”) to \$18,000,000 and extended the maturity date from January 1, 2023 to April 1, 2023. The November Amendment also included one three-month extension option in favour of MarshallZehr, provided the Debtor was not in default of any of its obligations under the Commitment Letter. A copy of the November Amendment is attached hereto and marked as **Exhibit “C”**.

8. The Third Advance was conditional upon the Debtor satisfying all of the conditions set out at page 4 of the November Amendment. The Debtor did not satisfy the required conditions prior to April 1, 2023. Accordingly, the Third Advance was never made.

#### Security

9. As security for the Loan, the Debtor granted, among other things, the following security documents in favour of MarshallZehr:

- (a) a Charge/Mortgage registered on title to the Property on December 1, 2021 in the principal amount of \$13.8 million as Instrument No. SN703091 (the “**MZ Charge**”), a copy of which is attached hereto and marked as **Exhibit “D”**;
- (b) a General Security Agreement dated November 30, 2021 granted by the Debtor (the “**Debtor GSA**”), a copy of which is attached hereto and marked as **Exhibit “E”**; and
- (c) an Unlimited Guarantee and a General Security Agreement each dated November 30, 2021 granted by Pawel Fugiel, copies of which collectively are attached hereto and marked as **Exhibit “F”**.

#### **OTHER CREDITORS**

10. I am advised by the Lender’s legal counsel, Chaitons LLP (“**Chaitons**”), that a parcel register search for the Property discloses the following registrations against the Property listed in order of registration:

- (a) a Charge/Mortgage in the principal amount of \$12,000,000 in favour of Sovereign General Insurance Company (“**SGIC**”) registered on October 2, 2020, as amended by the Notice (the “**SGIC Charge**”)<sup>1</sup>;
- (b) the MZ charge;
- (c) a Construction Lien in the amount of \$3,673,337 in favour of HC Matcon Inc. (“**Matcon**”);
- (d) a Construction Lien in the amount of \$841,498 in favour of Kada Group Inc. (“**Kada Group**”);
- (e) a Construction Lien in the amount of \$8,205,941 in favour of Buttcon Limited (“**Buttcon Limited**”);
- (f) a Construction Lien in the amount of \$123,734 in favour of Kada Group;
- (g) a Certificate of Action registered by Matcon on May 1, 2023; and
- (h) a Construction Lien in the amount of \$23,278 in favour of TT Galbraith Electric Ltd. (“**Galbraith**”)

11. Attached to this Affidavit as **Exhibit “G”** is a copy of the parcel register search for the Property prepared on June 6, 2023.

### SGIC

12. The SGIC Charge secures deposit insurance. Pursuant to a Priority Agreement dated November 30, 2021 between MarshallZehr and SGIC (the “**Priority Agreement**”), SGIC agreed that the SGIC Charge and all other security granted to SGIC by the Debtor was subordinate to the MZ Charge and all other security granted to MarshallZehr by the Debtor. A copy of the Priority Agreement is attached hereto and marked as **Exhibit “H”**.

---

<sup>1</sup> Pursuant to the Notice registered as Instrument No. SN658896 on January 26, 2021, the principal balance of the SGIC Charge was increased from \$2 million to \$12 million (the “**Notice**”).

13. A Postponement of Interest was registered on title to the Property on December 1, 2021 as Instrument No. SN703098, in connection with the Priority Agreement, a copy of which is attached hereto and marked as **Exhibit "I"**.

#### Construction Liens

14. On February 22, 2023, Matcon registered a construction lien as Instrument No. SN758055 in the amount of \$3,673,337.03, representing the amount claimed as owing in respect of labour, material and equipment for shoring and caissons supplied to the Property.

15. On March 15, 2023 and on March 31, 2023, Kada Group registered two construction liens: (i) Instrument Nos. SN759949 in the of \$841,498.31, representing the amount claimed as owing in respect of site services and earthworks supplied to the Property; and (ii) Instrument No. SN761643 in the amount of \$123,734.28, representing the amount claimed as owing in respect of site services and earthworks supplied to the Property.

16. On March 17, 2023, Buttcon registered a construction lien as Instrument No. SN760306 in the amount of \$8,205,941.87, representing the amount claimed as owing in respect of construction manager services, labour and materials supplied to the Property.

17. On May 26, 2023, Galbraith registered a construction lien as Instrument No. SN767364 in the amount of \$23,278, representing the amount claimed as owing in respect of labour and materials supplied to the Property. Copies of the receipted construction liens are collectively attached hereto and marked as **Exhibit "J"**.

Matcon's Lien

18. On May 1, 2023, Matcon perfected its lien by registering a Certificate of Action as Instrument No. SN764799. A copy of the Certificate of Action is attached hereto and marked as **Exhibit "K"**.

19. Attached hereto as **Exhibit "L"** is a copy of the Statement of Claim issued by Matcon naming the Debtor, SGIC and MarshallZehr as Defendants. In its action, Matcon claims full priority over MarshallZehr's security.

PPSA

20. I am advised by Chaitons, that the following financing statements were registered against the Debtor under the *Personal Property Security Act* (Ontario) as of June 6, 2023:

- (a) SGIC registered two financing statements on October 2, 2020 and January 26, 2021, listing collateral classified as "other" and listing collateral classified as "accounts" and "other" respectively;
- (b) MarshallZehr registered two financing statements on November 25, 2021, one listing collateral classified as "accounts" and "other", and the other listing collateral classified as "inventory", "equipment", "accounts", "other", and "motor vehicle included";
- (c) Policaro Leasing Ltd. registered a financing statement on March 29, 2022, with respect to a 2019 Ferrari Portofino;

- (d) Newroads Automotive Group Ltd., registered a financing statement on June 1, 2022, with respect to a 2021 Mercedes S Class; and
- (e) Newroads Automotive Group Ltd. registered a financing statement on September 30, 2022, with respect to a 1965 Ford Shelby.

Attached hereto and marked as **Exhibit “M”** is a copy of the PPSA search result for the Debtor.

### **DEFAULTS AND DEMAND**

21. Commencing in December 2022 and continuing into January and February 2023, the Debtor defaulted on the Loan by failing to make monthly interest payments due under the Commitment Letter. Following the issuance of notices of default by MarshallZehr in January 2023, in February 2023, the Debtor cured its defaults.

22. Pursuant to a letter dated November 27, 2022, MarshallZehr offered the Debtor a three-month extension of the Loan pursuant to the terms of the November Amendment conditional upon the Debtor paying an extension fee (the “**Extension Offer**”). The Debtor did not sign back the Extension Offer and did not pay the extension fee. Accordingly, the Loan matured on April 1, 2023. A copy of the Extension Offer is attached hereto as **Exhibit “N”**.

23. The Debtor failed to repay the outstanding balance of the Loan by the maturity date. On May 4, 2023, MarshallZehr, through its lawyers, demanded payment of \$12,975,281.62 for principal, interest and fees (including legal costs) owed by the Debtor to MarshallZehr as of May 3, 2023, and delivered a notice of intention to enforce its security under the Bankruptcy and Insolvency Act (Canada) (“**BIA**”). A copy of the demand letter and BIA notice is attached hereto and marked as **Exhibit “O”**.

24. As of the date of the swearing of this affidavit, MarshallZehr has received no payment from the Debtor since the Loan matured on April 1, 2023 and demand was issued.

#### **SUBSEQUENTLY DISCOVERED DEFAULTS**

25. I am advised by Chaitons that in connection with preparation of these materials, on May 24, 2022, Chaitons obtained a parcel register search for the Property. From this search, Chaitons and MarshallZehr learned for the first time, that construction liens in the cumulative principal amount of \$12,844,511.50 were registered against title to the Property in February and March 2023. MarshallZehr did not receive notice of these liens or the claims associated with these liens from the lien claimants or the Debtor until Chaitons obtained the parcel register search attached hereto as Exhibit G.

26. On June 6, 2023, MarzhallZehr received notice that a new lien had been registered against title to the Property. On June 6, 2023, Chaitons obtained an updated parcel register search for the Property, which disclosed the registration of Galbraith's lien on May 26, 2023.

27. Pursuant to the "Borrower's Covenants" under the Commitment Letter, *inter alia*, the Debtor shall:

- (a) provide payment to suppliers of materials and services; and
- (b) ensure that no liens are registered against the Project or its assets and will immediately move to have same vacated if registered.

28. The Debtor is in breach of both of the "Borrower's Covenants" listed in paragraph 27 above.

## JUST AND CONVENIENT TO APPOINT A RECEIVER

29. The Debtor owes approximately \$13 million to MarshallZehr. MarshallZehr has demanded payment of the Loan and has delivered its BIA Notice. The 10-day period has expired. The Debtor has provided no evidence to suggest that it will be in a position to repay the Loan in the near term.

30. Construction liens totalling in excess of \$12 million have been registered against the Property and at least one of these liens in the amount of approximately \$3.7 million claims full priority over the MZ Charge.

31. Pursuant to the terms of the Loan and Security, upon an Event of Default that has not been cured, the Lender is entitled to appoint a receiver in writing and/or make an application for the court appointment of a receiver over the property, assets and undertakings of the Debtor.

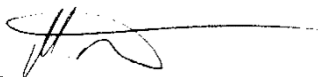
32. In these circumstances, it is just and convenient that a receiver be appointed to:

- (a) take control over and realize on the Property under Court supervision for the benefit of all stakeholders, including the lenders and the lien claimants and with the power to obtain a vesting order that would enable the Receiver to transfer title to the Property free and clear of all claims; and
- (b) address competing claims between mortgagees and lien claimants.

33. MarshallZehr proposes that KSV Restructuring Inc. be appointed as Receiver. KSV Restructuring Inc. has agreed to accept the appointment, and a copy of its consent is attached hereto as **Exhibit "P"**.

34. This affidavit is sworn in support of MarshallZehr's application for the appointment of a Receiver and for no other or improper purpose.

**SWORN BEFORE ME** over videoconference on this 7<sup>th</sup> day of June, 2023. The affiant was located in the City of Waterloo in the Province of Ontario and the commissioner was located in the City of Toronto, in the Province of Ontario, Canada. This affidavit was commissioned remotely in accordance O. Reg. 431/20, Administering Oath or Declaration Remotely



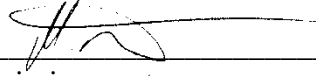
**Maya Poliak**  
Commissioner for Taking Affidavits  
*(or as may be)*



**CECIL HAYES**



THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, appearing to be "J. Hayes", written over a horizontal line.

A Commissioner, etc.



## Profile Report

LA PUE INTERNATIONAL INC. as of May 24, 2023

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	LA PUE INTERNATIONAL INC.
Ontario Corporation Number (OCN)	2565998
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	March 13, 2017
Registered or Head Office Address	6158 Allendale Ave, Niagara Falls, Ontario, Canada, L2G 0A5

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 PAWEL FUGIEL  
Address for Service 96 Cumberland Drive, Mississauga, Ontario, Canada, L5G  
3M8  
Resident Canadian Yes  
Date Began March 13, 2017

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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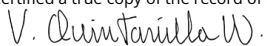
**Active Officer(s)**

**Name** PAWEL FUGIEL  
**Position** President  
**Address for Service** 96 Cumberland Drive, Mississauga, Ontario, Canada, L5G 3M8  
**Date Began** March 13, 2017

**Name** PAWEL FUGIEL  
**Position** Secretary  
**Address for Service** 96 Cumberland Drive, Mississauga, Ontario, Canada, L5G 3M8  
**Date Began** March 13, 2017

**Name** PAWEL FUGIEL  
**Position** Treasurer  
**Address for Service** 96 Cumberland Drive, Mississauga, Ontario, Canada, L5G 3M8  
**Date Began** March 13, 2017

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**Corporate Name History**

**Name**

LA PUE INTERNATIONAL INC.

**Effective Date**

March 13, 2017

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 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
Annual Return - 2018 PAF: PAWEL FUGIEL - DIRECTOR	December 16, 2018
CIA - Notice of Change PAF: PAWEL FUGIEL - DIRECTOR	January 18, 2018
CIA - Notice of Change PAF: PAWEL FUGIEL - DIRECTOR	December 04, 2017
CIA - Initial Return PAF: PAWEL FUGIEL - DIRECTOR	April 19, 2017
BCA - Articles of Incorporation	March 13, 2017

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.

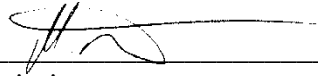
*V. Quintanilla W.*

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THIS IS EXHIBIT "B" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

A Commissioner, etc.



November 15, 2021

**Attention: Pawel Fugiel**

La Pue International Inc.  
6158 Allendale Ave.  
Niagara Falls, ON

Dear Pawel Fugiel

**Re:** Land Refinancing for 5528 Ferry Street, Niagara Falls, ON

**Project Name:** The Stanley District Lands – MZGI 424 (the “Project”)

This commitment letter confirms that MarshallZehr Group Inc. (the “Lender”) is prepared to provide financing (the “Loan”) for the Project conditional on the terms and conditions contained in this letter agreement (the “Commitment”).

**I. LOAN**

**Borrower:** La Pue International Inc. (the “Borrower”)

**Guarantors:** Pawel Fugiel, together with such other related parties as the Lender may deem advisable (the “Guarantors”).

**Obligors:** Means, collectively, the Borrower and the Guarantors and the “Obligor(s)” means any one of them.

**Lender:** MarshallZehr Group Inc. (the “Lender”) and/or such other assignee or lenders as MarshallZehr Group Inc. may arrange to participate in the Loan.

**Project:** Those lands and premises described municipally as 5528 Ferry Street, Niagara Falls, ON, and legally as: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273; VILLAGE OF NIAGARA FALLS; NIAGARA FALLS; PART LOTS 43, 44, 45, PLAN 273; VILLAGE OF NIAGARA FALLS; AS IN R0712797, NIAGARA FALLS; LOTS 48, 49, & 50, PLAN 273, & PART LOT 47, PLAN 273; NIAGARA FALLS, SURFACE ONLY AS IN R0718049; NIAGARA FALLS.

**Loan Amount:** \$12,000,000 (the “Loan”).



**Purpose:** 1<sup>st</sup> Mortgage for Land Refinancing.

The Lender understands the 1<sup>st</sup> Mortgage financing will be used for the purposes of refinancing the subject lands. Monies will further fund an Interest Reserve and Fees contemplated herein, as well as provide working capital to the Borrower.

The Lender further understands that the Project is to consist of the future development of three buildings. Building A will be a 7-storey mixed-use building, consisting of 65 residential units, and commercial space located on the ground floor. Building C will be a 30-storey condominium with approximately 435 residential suites. The underground parking will consist of 301 parking stalls. Building B will be 6 stories and 148 units. Furthermore, the Lender understands that the Borrower intends achieve Site Plan Approval for Phase 1, which will consist of Building C within the term of this loan.

**Sources and  
Uses of Funds:**

**Uses**

Land Costs	\$	11,432,000
Development Charges	\$	659,000
Hard Costs	\$	748,000
Soft Costs	\$	2,514,000
Sales & Administrative Costs	\$	2,450,000
Financing Costs	\$	1,410,000
3rd Party Broker Fee	\$	30,000
<b>Total Uses</b>	<b>\$</b>	<b>19,244,000</b>

**Sources**

1st Mortgage - Land	\$	12,000,000
Deferred Costs	\$	570,000
Borrower Equity	\$	6,674,000
<b>Total Sources</b>	<b>\$</b>	<b>19,244,000</b>

**Syndication  
of the Loan:**

It is the Lender's intention to syndicate all or a portion of the Loan with other lenders on terms and conditions satisfactory to the Lender. All obligations of the Lender are conditional on successful syndication by the Lender. This Commitment shall be null and void if the Lender is unable to syndicate the Loan, and all fees, less the Good Faith Deposit together with any due-diligence and legal costs incurred by the Lender, shall be returned to the Borrower. The Lender shall notify the Borrower in writing once all Initial Funding Conditions have been met. Upon receipt of notification that the Initial Funding Conditions have been met, the Lender shall, within 15 business days, notify the Borrower that the Loan has been successfully syndicated. If the Lender is unable to provide the Borrower written confirmation that the Loan has been successfully syndicated within this time, it will be the sole option of the Borrower to terminate this agreement, in which case this Commitment will be null and void and all fees, less the Good Faith Deposit together with any due-diligence and legal costs incurred by the Lender, shall be returned to the Borrower.



**Initial Advance and Draw:**

The first advance and draw (the "Initial Advance" and "Draw 1", respectively) is anticipated to be in the principal amount of \$12,000,000 and advanced upon satisfaction of the conditions contained herein and accompanied by the applicable Notices (see Appendix A, B, C and D). The Initial Advance and Draw is expected to be advanced as follows:

Existing Mortgage(s)	\$	11,000,000
Interest Reserve	\$	570,000
Working Capital	\$	130,000
Lender Fee Amount	\$	240,000
3rd Party Broker Fee	\$	30,000
Legal Amount	\$	25,000
Admin Amount	\$	5,000
<b>Initial Advance Amount</b>	<b>\$</b>	<b>12,000,000</b>

**Lender Advances:**

A Lender Advance is defined as the transfer of funds from the participating Lender(s) to MarshallZehr's Trust account. Interest shall become payable on these funds from the date of the deposit of the funds into the MarshallZehr Trust account, regardless of whether the funds are used in the project immediately, or later returned to the Lender without ever having been drawn by the Borrower.

**Borrower Draws:**

A Borrower Draw is defined as the request of funds from MarshallZehr's Trust account to fund the Project bank account or to be directly applied against project expenses.

**Term:** Thirteen (13) months (commencing from the Interest Adjustment Date or IAD). Interest from the date of the Initial Advance to the IAD shall be deducted by the Lender from the Initial Advance.

**Interest Rate:** Prime + 7.05% per annum (Floor Rate: 9.50%)

Interest shall accrue commencing on the date of the Initial Advance, calculated daily (365 days/year), compounded and payable monthly with interest only payments made from the Interest Reserve. Once the Interest Reserve has been fully utilized, interest payments will come from the Borrower and/or the Guarantor's own resources. Prime shall be defined as the Bank of Montreal Prime Rate of Interest. For the purpose of determining the interest rate used in the interest calculation, the Bank of Montreal Prime Business Rate on the first day of each month will be used as the Prime Rate for that entire month.

**Wrap Up  
Period:**

The final month of the Term shall be the beginning of the Wrap Up Period, and bear interest at twice the Interest Rate, and if there are multiple Facilities or Tranches, calculated, compounded and payable in the same manner as prior to entering the Wrap Up Period for each applicable Facility or Tranche.

**Interest  
Adjustment  
Date:**

The "Interest Adjustment Date" or "IAD" shall be the 1st of the month following the Initial Advance.

**Standby  
Interest:**

In the event that the Loan has not been fully advanced by November 30, 2021 (the "Advance Date") or for any reason other than a default by the Lender, interest will commence on the Advance Date established herein for the Initial Advance or a Draw 1 as the case may be, in the form of standby interest ("Standby Interest") on any unadvanced portion of the Loan or the Initial Advance as the case may be and will become due and payable on the date the Initial Advance is advanced or upon the termination of this Commitment Letter without any advances having been made.

Standby Interest shall be calculated from the date of the expected advance as mentioned herein to the IAD and shall be payable at the time of the advance and deducted from the advance.

**Advance****Deductions:**

At the time of a Lender Advance, the Lender may at its sole discretion, deduct an amount equal to the applicable interest for such advance for the balance of the term of the Loan as an interest reserve (the "Interest Reserve").

Six (6) Month Interest Reserve Amount: \$570,000

The Interest Reserve shall be held in the Lender's trust account and be used to service the interest payments on the outstanding balance of the Loan. Any funds held in the Lender's trust account from an advance are considered to be and shall be deemed to be principal advanced to the Borrower and interest shall accrue on those funds as if they had been paid directly to the Borrower.

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

**Anniversary****Date:**

The anniversary date is defined as one year from the Interest Adjustment Date (IAD). The Lender may request compliance deliverables based on anniversary dates of the mortgage, or as the lender deems necessary in their sole discretion.

**Time and  
Place of  
Payments:**

Payments are to be made to the Lender at its offices at 206-465 Phillip Street,



Waterloo, Ontario no later than 1:00 p.m. on the date scheduled for payment. Payments made after such time shall be treated as having been received on the next business day. Payments made after the date scheduled for payment must be made by certified cheque or bank draft. Whenever any payment is due on a day that is not a business day, then such payment will be due on the next business day, and interest will accrue to such business day. Any NSF Cheques will incur a fee of \$500.

**Principal**

**Payments:** There shall be no regularly scheduled principal repayments and the entire outstanding principal amount shall become due and payable at maturity.

**Partial**

**Discharges:** Provided that the Borrower is not in default, the Lender shall provide partial discharges of Project units on the closing of a unit sale transaction provided the Borrower pays the Lender Net Sales Proceeds of each sale. Net Sales Proceeds is defined as the sale price of the unit less deductions for deposits (used in the Project's financing) and any payments on account of principal required to be made to a permitted prior lender, if any, to obtain a partial discharge of its security, normal sales commissions, and legal costs. The Borrower will pay the Lender an administration fee of \$250 and its solicitor's reasonable legal fees in respect of the preparation of the discharge for each partial discharge requested by the Borrower. In the Event of Default, the Lender shall not be obligated to provide partial discharges. The Net Sale Proceeds shall be dispersed as follows:

- a) Repayment of all accrued and unpaid interest;
- b) Repayment of the outstanding MZ 1<sup>st</sup> Mortgage principal balance

**Prepayment:** Subject to any partial discharge provisions, the mortgage may be prepaid in whole or in part at any time or times on the following terms:

- a) At least 60 days prior written notice is given to the Lender in the form provided in Appendix E – Repayment Notice
- b) No pre-payment shall be in an amount of less than \$100,000 without consent of the Lender
- c) The Borrower shall pay the Lender an administration fee of \$500 and its solicitor's reasonable legal fees in respect to the discharge or repayment



**Fees:** The Borrower shall pay the following Lender fees to the transaction mortgage broker, MarshallZehr Group Inc.:

**Good Faith**

**Deposit:** \$30,000 (Received), non-refundable if Borrower fails to proceed based on the terms of this Commitment Letter as determined by the Lender in its sole and unfettered discretion and such deposit shall be deemed to be fully earned by the Lender for its work and efforts in preparation of this Commitment Letter in addition to any other rights and/or remedies which the Lender has against the Borrower hereunder, at law or otherwise. The Borrower shall also be responsible for the Lender's legal and other professional fees and out of pocket expenses if the Borrower fails to proceed with the Loan. Such expenses shall include, without limitation, accrued interest on the loan (or portion thereof), from time to time, from and including the date upon which funds were requisitioned from the Lender, regardless of whether same are actually advanced, subject to the Borrower's satisfaction of all pre-funding conditions pursuant to this Commitment. This fee is accepted upon signing of the Commitment Letter and is payable to "MarshallZehr Group Inc. in Trust". The Good Faith Deposit will be credited to the Borrower against the Lender Fee payable on closing.

**Lender Fee:** \$240,000, 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 Borrower.

**Admin**

**Fee:** An additional fee of \$5,000 payable to MarshallZehr Group Inc. will be paid by the Borrower at closing of the Initial Advance in order to set up the administration files and complete all regulatory documentation.

**Draw Fee:** The Borrower agrees to pay \$250 to the Lender as an administrative fee (the "Draw Fee") in conjunction with each request for a Borrower Draw (the "Draw Request").

**Final Discharge**

**Fee:** The Borrower will pay the Lender an administration fee of \$500 and its solicitor's reasonable legal fees in respect of the preparation of the final discharge of this mortgage.

**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 and all legal costs regardless of whether the Borrower proceeds with the transaction and any costs of recovery of unpaid amounts should that be necessary. Upon request the Lender shall provide an estimate of the legal fees to be incurred by the Lender.





Regardless, the Borrower is responsible for all reasonable legal fees incurred by the Lender.

**Subordinate  
Financing:**

No additional financing will be permitted without the prior written consent of the Lender and in the event of a default under this restriction, the entire principal, interest, fees and all other amounts under the Commitment and security issued pursuant thereto shall become immediately due and payable.

Should additional subordinate financing be placed by the Borrower on the consent of the Lender, such consent will be conditional upon the secondary lender entering into a postponement, subordination and standstill agreement that requires the secondary lender to issue zero dollar discharges to the Lender and Borrower within 2 business days of being requested and requires complete cooperation in executing all postponements and consents as may be required to advance the development of the Project. Any discharge greater than zero shall require prior consent from the Lender. Failure to comply shall be considered a default by the Borrower.

**Right of  
First  
Refusal:**

The Borrower shall grant to the Lender:

- a) a right of first opportunity (the "Right of First Opportunity") and
- b) a right of first refusal ("Right of First Refusal") (collectively, the "Further Financing Rights"),

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 (any such financing being referred to herein as "Further Financing").

With respect to the Right of First Opportunity: 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) 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.

With respect to the Right of First Refusal: 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.

In order to secure the Lender's Further Financing Rights, the Borrower hereby authorizes the Lender and its solicitors to register on title to the Project a notice pursuant to Section 118 of the Land Titles Act restricting the Borrower from further charging the Project except upon the consent of the Lender.

**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 that permitted by the laws of Canada. 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.

**Administration  
Fee Payable  
on 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 \$5,000.00 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.



## II. 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:

### 2.1 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:

- a) All the Security and 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 Section III. SECURITY TO BE DELIVERED for a complete listing.
- b) The Lender shall have satisfied itself with the financial performance and condition of the Borrower and each of the Guarantors in the Lender's sole discretion. Each of the Obligors shall provide within ten (10) business days of the date of execution of this Commitment, at a minimum, the following deliverables:
  - i. Corporate Obligor(s) shall provide externally accountant prepared annual financial statements (Review Engagement or Notice to Reader) for the two most recently ended fiscal years.
  - ii. Corporate Obligors shall provide Corporate Notice of Assessments for its two most recently ended fiscal years.
  - iii. Personal Obligors shall provide Notices of Assessment received from the Canada Revenue Agency for their two most recently ended taxation years, with respect to their income tax filings.
  - iv. Personal Obligors shall provide the Lender's form of Personal Net Worth Statement with supporting documentation.
  - v. All Obligors shall complete the Lender's form of Mortgage Application. To facilitate the Lender's due diligence regarding the creditworthiness of the Obligors, each of the Obligors shall authorize the Lender to conduct credit checks and authorize each of the financial institutions with which the Obligors deal to release any and all information reasonably required and requested by the Lender to adequately assess the credit worthiness of each respectively.
- c) The Borrower shall deliver to the Lender within five (5) business days of the acceptance of this Commitment for the Lender's satisfactory review and acceptance the following:
  - i. A copy of the Purchase and Sale Agreement (and any subsequent amendments or side letters related thereto) and statement of adjustments for the purchase by the Borrower of the Project Lands confirming a purchase price of not less than \$4,350,000.
  - ii. 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 with the recommendations, if any, which may be contained in such soils-test/geotechnical report. Such geotechnical report must be addressed to the Lender or be accompanied by a Reliance letter from the engineer to the Lender and shall confirm that the Lender can rely upon such report for lending purposes.
  - iii. An appraisal, satisfactory to the Lender, of the Project confirming a fair market value of the land 'as-is', in the minimum amount of \$17,803,000 inclusive of HST to be prepared at the Borrower's expense and paid in advance by a Lender approved appraiser. Such



- appraisal report must be addressed to the Lender or be accompanied by a Reliance letter from the appraiser to the Lender and shall confirm that the Lender can rely upon such appraisal for lending purposes.
- iv. A satisfactory Phase 1 Environmental Site Assessment Report (and further Environmental Site Assessment Reports, Environmental Remediation Plans or a Record of Site Condition, if necessary) conducted and prepared by a consultant approved by the Lender together with a transmittal letter from the consultant permitting the Lender to rely on the Assessment Report (and the subsequent environmental reports, if any). 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.
  - v. A survey of the Project by an Ontario licensed land surveyor showing the relationship of the lands to public thoroughfares for access purposes; and indicating no encroachments, easements or rights of way, save and except those that do not encroach or hinder the Borrower's ability to construct the project in accordance with the proposed site plan which the Lender may specifically accept. If no survey is available at the time of the Initial Advance, the Lender in its sole discretion may rely upon the title
  - vi. MZG or a related party may post two MZG signs (on each main street).
  - vii. Satisfactory proof of \$6,673,000 in invested capital in the Project and means to cover any potential closing costs, if required.
  - viii. A Project budget prepared by the Lender's Quantity Surveyor satisfactory to the Lender. The Lender and its Quantity Surveyor, in their sole discretion, shall be satisfied
    - a) that the budgeted hard and soft Project costs (including financing and contingency costs) shall be sufficient to complete the Project as planned;
    - b) all sources and uses of cash are acceptable;
    - c) the terms of the contract with the general contractor/project manager are satisfactory.
  - ix. A detailed planning letter from a third-party planner outlining the time to complete the various stages and phases of the Project, acceptable to the Lender.
  - x. Copy of the most recent Disclosure Statement and attachments as required by the Condominium Act, 1998 to be provided to prospective unit purchasers.
  - xi. Borrower's Tarion Warranty application and confirmation a Tarion Warranty certificate for the Project will be issued within 30 days of posting the required security deposit.
  - xii. The Borrower shall have pre-sold residential units in Building C, with firm and binding purchase and sale agreements including satisfactory deposits, sufficient to generate \$178,000,000 of gross revenue (including parking, and locker) and \$26,000,000 of deposits contracted for use in the project. Each purchase and sale agreement shall be on terms and with purchasers acceptable to the Lender:
    - a) The Lender reserves the right to disregard agreements with purchasers buying for investment or who are directly or indirectly related to the Borrower or Guarantors (non-arms-length purchasers).
    - b) All residential units shall be subject to purchaser deposits at 15% of purchase price, no late or deferred deposit payment schedules will be allowable.
  - xiii. Discharge Statement from Current 1st Mortgagee(s) confirming the outstanding principal balance does not exceed \$11,130,000 and is in good standing.
- d) 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 70%. For the purpose of calculating the Loan to Value ratio in the absence of current market values;

- i. The Loan amount shall include all debt obligations including all senior ranking and unapproved subordinate debt and outstanding Project accounts payable.
  - ii. 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. In the case of unsold lots, the value shall be calculated as per the methodology used by the Appraisal. For units under construction, the Appraised Value shall be the Estimated Value of the unit upon completion less the cost to complete including financing costs as per the methodology used by the Appraisal less the expected profit margin.
- e) The initial Loan to Cost ratio at the time of the Initial Advance, as determined in the Lender's sole discretion, shall not be greater than 70%. For the purpose of calculating the Loan to Cost ratio in the absence of current market values;
- i. The Loan amount shall include all debt obligations including senior ranking and unapproved subordinate debt and outstanding Project accounts payable.
  - ii. Cost shall be determined by utilizing the Net Cost to Date per the Lender approved Quantity Surveyor's report unless otherwise adjusted and agreed to by the Lender.
- f) Confirmation satisfactory to the Lender that all property taxes for the Project are current and have been paid.
- g) Applicable Notices in the forms provided in Appendix A, B, C and D.
- h) Anti-Money Laundering Compliance documentation to be completed; Agent Examination of Identification Form will be provided to the Borrower's lawyer with the closing documents. (to be completed by the Borrower and each Guarantor, the identification of all authorized signatories as outlined on the Director's Resolution, to a maximum of three must be obtained).
- i) Evidence of the existence, details and signing authorities related to a separate Project specific bank account through which all Project related transactions will flow.
- j) 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.

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### III. SECURITY TO BE DELIVERED

The Borrower shall deliver the following security (the "Security") duly registered where applicable and all in the form and on the terms acceptable to the Lender's solicitors:

- a) **Mortgage** – A 1<sup>st</sup> mortgage in the amount of \$13,800,000 on The Stanley District Lands – MZGI 424 Project and property plus any accrued contingent payments. The mortgage will be registered at the Wrap Up rate of interest, being two times the rate of Prime + 14.10%.
- b) **GSA** – General Security Agreement over all of the assets and undertaking of the Borrower and each Guarantor, if any.
- c) **General Assignment of all leases and rents with respect to this project.**
- d) **Guarantees** – Unlimited joint and several guarantees from each of the guarantors.
- e) **Environmental** – An Environmental Undertaking and Indemnity and Checklist from the Borrower in such form as the Lender shall require.
- f) **Security Opinion** – A favourable Letter of Opinion from the Lender's solicitor confirming the validity and enforceability of the Lender's security.
- g) **Insurance** – Proof of appropriate Insurance and an assignment of insurance satisfactory to an insurance professional engaged on behalf of the Lender. In addition, a certificate of insurance showing the Lender as additional insured and loss payee on any required insurance, and Commercial Liability coverage of not less than the amount deemed appropriate by the Lender's Insurance Consultant.
- h) **Title Insurance** – Satisfactory title insurance.
- i) **Taxes** – Borrower provides satisfactory proof that taxes are current.
- j) **Postponement** – Postponement, Subrogation and Assignment from 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.
- k) **General Assignment** – General Assignment and Reliance letters from the authors of all project plans, specifications, drawings and permits, all architectural, engineering, general contractor and construction contracts and copies of all third party purchase and sale agreements and deposits for individual units sold 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 on a default by the Borrower.
- l) **Preauthorized Payment** – If required by the Lender such preauthorized payment documentation necessary to authorize the Lender to debit directly from the Borrower's account amounts due under the Commitment and Loan.
- m) **Deficiency Agreement** – Joint and Several Deficiency Agreement executed by the Borrower and the Guarantors agreeing to fund costs not included or in excess of forecasted expenditure.
- n) **Assignment of Purchaser Deposits** – Such assignments of purchaser's deposits as the Lender and its solicitor's may reasonably require provided, the Borrower shall be permitted to inject the deposit funds into the Project in respect of direct Project construction costs.
- o) **Assignment of Cash Security** - An assignment and pledge of all securities posted in relation to the subject property, including, but not limited to, cash security posted (i) directly with Tarion, (ii) directly with the city/town/municipality, and/or (iii) posted with a financial institution as security for letters of credit for the project. The Borrower is to provide a direction to the party holding the cash security (i.e. Tarion, City/Municipality, Financial Institution, etc.) directing all releases/reductions in the cash security to the Lender.
- p) **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.

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#### IV. BORROWERS COVENANTS

The Borrower and, where applicable, each of the Guarantors covenants as follows and a breach of any covenant shall be a default under the terms of the Security:

##### 4.1 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:

- a) **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.
- b) **Corporate Existence and Conduct of Business** – The Borrower shall, and the Borrower shall cause the 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, licences and qualifications to carry on business in any jurisdiction in which it or they carry on business and each of the Borrowers shall, and the Borrower shall cause the Guarantors to, maintain all of its or their respective properties and assets consistent with industry standards.
- c) **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 Environmental Law and to preserve and keep in full force and effect all franchises, licences, rights, privileges and permits necessary to enable each of the Obligor 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, licences, rights, privileges and permits.
- d) **Material Litigation** – The Borrower shall promptly give written notice to the Lender of any litigation, proceeding or dispute affecting it or any of the other Obligor 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 Obligor or any of its Subsidiaries 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.
- e) **Financial Statements and Other Information** – The Borrower shall deliver, or cause to be delivered, to the Lender:
  - i. **Annual Financial Statements of the Borrower** – as soon as available and, in any event, within ninety (90) days after the end of each of its fiscal years, copies of the Borrower's externally professional accountant prepared audited (Notice to Reader or Review Engagement) financial statements are required. Statements on a consolidated basis in each case consisting of the balance sheet, statement of profit and loss and surplus and statement of changes in financial condition for each such year, together with the notes thereto, all prepared in accordance with Generally Accepted Accounting Principles ("GAAP") consistently applied;
  - ii. **Annual 'As Is' Appraisal Report** – as soon as available and, in any event within thirty days (30) prior to the one-year anniversary of the previous 'As Is' appraisal report, a refreshed 'As Is' appraisal report is to be submitted to the Lender. The report shall be prepared by a member of the Appraisal Institute of Canada and prepared in accordance with the Canadian Uniform Standards of Professional Appraisal Practice.



- The effective date of the appraisal shall be at or up to 60 days after the date of inspection and the estimated value cannot depend on assumptions not in existence at the effective date of appraisal. Such appraisal report must be addressed to the Lender or be accompanied by a Reliance letter from the appraiser to the Lender and shall confirm that the Lender can rely upon such appraisal for lending purposes;
- iii. **Annual Project Budget** - as soon as available, and in any event, within ninety (90) days prior to the end of the Borrower fiscal year, a Project Budget for the following two fiscal years shall be provided to the Lender;
  - iv. **Annual Personal Net Worth Statement** – Personal Obligors shall provide to the Lender, an updated personal net worth statement with supporting documentation on an annual basis;
  - v. **Annual Personal Notice of Assessment** – Personal Obligors shall provide to the Lender, their respective Notice of Assessments within 60 days of their personal tax deadlines, for the most recently ended taxation year;
  - vi. **Annual Corporate Notice of Assessment** – Corporate Obligors shall provide to the Lender, their respective Notice of Assessments within 60 days of their corporate tax deadlines, for the most recently ended taxation year;
  - vii. **Quarterly Financial Statements of the Borrower** – as soon as available and, in any event within thirty (30) days after the end of each of its first, second and third Fiscal Quarters, copies of the Borrower’s internally prepared quarterly financial statements on a consolidated basis, in each case consisting of the balance sheet, statement of profit and loss and surplus and statement of changes in financial condition for each such period all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year prepared and certified by its Chief Executive Officer or Chief Financial Officer, without personal liability;
  - viii. **Quarterly Compliance Certificates** – as soon as available, and in any event, within thirty (30) days of the end of each Fiscal Quarter, a Loan Compliance Certificate as provided in Appendix B of this agreement are to be provided to the Lender;
  - ix. **Quarterly Property Taxes** - The Borrower shall ensure that all property taxes and any other taxes applicable to the Project have been paid when due except if such taxes are permitted encumbrances. On each tax installment date, the Borrower will provide to the Lender proof of payment;
  - x. **Insurance** – 30 days prior to the insurance expiry date(s), the Borrower will provide to the Lender, a certificate of insurance and policy from its insurance broker indicating that all insurance required by the Lender is adequate and still in effect. Refer to Section 4.1 h) for further details;
  - xi. **Other** – The Lender may reasonably 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 Interest, or the Obligor’s business. This list is not exhaustive and the Lender may also reasonably 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. Should such a request be made please refer to Appendix F.
- f) **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 the Property Interests 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).

g) **Project Specific** – The Borrower shall:

- i. comply in all relevant aspects with the provisions of the Construction Lien Act;
- ii. as and when requested by the Lender, provide to the Lender complete bank records relating to all holdbacks including cancelled cheques, bank statements and completion certificates as the Lender may reasonably require;
- iii. grant to the Lender the right and authority for the Lender to obtain all information relative to the holdback account(s) from the financial institution(s) where the holdback(s) is/are retained;
- iv. provide a covenant that the Borrower will supply to the Lender a statutory declaration in conjunction with each advance under the mortgage, confirming the status of the holdback account(s) as at the date of the statutory declaration;
- v. substantially complete the Project in accordance with Lender approved plans, specifications, project budget and construction schedule, pay its taxes, protect its properties by contest of adverse claims, maintain required insurance, perform its obligations under contracts and agreements, 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. It is agreed that the Lender shall retain the services of a quantity surveyor to monitor the Project at the expense of the Borrower and the Borrower covenants to assist and cooperate with such surveyor.
- vi. shall 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 Lien Act.
- vii. shall ensure that no liens are registered against the Project or its assets and will immediately move to have same vacated if registered.
- viii. shall authorize the Lender to approve all professional services involved in the Project. Such professional reports and services include but are not limited to, appraisals, environmental, geotechnical, planning, architects, quantity surveyors, auditors, and Borrower's solicitor.
- ix. shall, at the request of the Lender, provide a percentage completion report on a weekly basis detailing the percentage completion of various tasks necessary to complete the Project subject to this financing. If unable to provide, the Lender may engage a third party to complete the onsite reporting requirements at the Borrower's expense.

h) **Insurance**

- i. 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. 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) Builders' all risks property insurance in connection with the Project, including rental loss insurance (if applicable) with responsible and reputable insurance companies in such amounts equal to 100% of replacement value
  - c) If applicable, boiler and pressure vessel insurance including rental loss, for such amount as may be acceptable to the Lender, all with such deductibles as are customary in the case of businesses of established reputation engaged in the same or similar businesses and in any event as are acceptable to the Lender. The Lender shall be added as an additional insured to the liability policies.
  - d) Other 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.
- ii. All such insurance policies shall:
- a) name the Lender as a mortgagee thereunder as its interest may appear;
  - b) name MarshallZehr Group Inc. 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 shall reasonably require.
- iii. 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.
- iv. 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 of the amounts outstanding hereunder.
- v. 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. The Lender shall place such funds in an interest-bearing account and interest thereon shall accrue to the benefit of the Borrower.
- vi. 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 amounts 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.
- vii. 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.



- viii. **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 mortgage and for each insurance renewal throughout the term of the mortgage.
- i) **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; the occurrence of any Default or Event of Default;
  - c) any other matter or event that has a Material Adverse Effect.
- j) **Use of Advances** - The Borrower shall use all Advances made to it for the specific purposes set out in the Loan.
- k) **Payment of Taxes, etc.** - The Borrower shall, and the Borrower shall cause each of the Guarantors to, from time to time:
- i. 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;
  - ii. 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
  - iii. 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 Properties, 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.
- l) **Material Documents, Leases and Permitted Encumbrances** - The Borrower shall ensure that all material 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. It will ensure that it does not default under any major lease related to any Property and will advise the Lender forthwith after being so notified of a material breach of any major lease.
- m) **New Material Documents** – The Borrower will promptly advise the Lender if any Obligor enters into any agreement which could reasonably be expected to be a material document and shall provide a copy of such agreement to the Lender.
- n) **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.
- o) **Environmental Law** – The Borrower shall, and the Borrower shall cause each of the Guarantors to, with respect to each Project:
- i. 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;
  - ii. 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
- iii. 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 law of each of the Properties or the property and the release to the Lender, or its representatives, of information relating to the assets or undertakings of each Obligor. The Borrower hereby irrevocably constitutes and appoints, and the Borrower shall cause each Guarantor to irrevocably constitute and appoint, the Lender the true and lawful attorney of the such Borrower or such Guarantor, as the case may be, 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.
- p) **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 (including the Existing 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), provided that the registration of any construction lien or privilege shall not be deemed to be a breach of this covenant if the Borrower shall contest same and shall if the Lender so requires, give security to the satisfaction of the Lender for the due payment of the amount claimed in respect thereof and provided further that nothing herein will require the Borrower to renew or amend financing statements filed under personal property security statutes.
- q) **Operation and Repair** – Except as otherwise permitted herein, the Borrower will ensure the diligent management and operation of each of the Properties 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 each of the Properties 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 Agreement, 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 each of the Properties in order to review the state and condition the same are in.
- r) **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.
- s) **Maintain and Operate** – The Borrower will diligently maintain, use and operate or will cause to be maintained, used and operated the Property Interest and the Project, in a proper and efficient manner so as to preserve and protect the Property Interest and each of the Properties.
- t) **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.

- u) **Expropriation** – Any awards or payments received by an Obligor for expropriation of any Project Lands, or any part thereof, 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 amounts outstanding up to the amount outstanding hereunder at such time.

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#### 4.2 Financial Covenants

So long as any amount payable hereunder is outstanding or the Loan is available hereunder, the Borrower covenants and agrees with the Lenders that, unless the Lender otherwise consents in writing:

- a) **Project Net Equity** – The Borrower and Guarantors must have and maintain throughout the term of the loan a minimum combined net equity in the Project equal to \$6,643,000.
  - i. For the purposes of this paragraph net equity shall be equal to the sum of the cost of the raw land as determined by the Lender (to a maximum value of \$11,432,000 plus the cost of the Project completed to date (exclusive of land value) as determined by the Lender's quantity surveyor, net of all payables, purchaser deposits paid into the Project, construction holdbacks, unsubordinated Project financing, amounts advanced by the Lender and all Recoveries (Recoveries being defined as all recaptured Project expenses including, HST, previously funded by the construction lender or the proceeds of the Loan herein).
- b) **Project Loan to Value Ratio (LTV)** – The Borrower shall, at all times, maintain an LTV Ratio of less than 70.0%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTV shall be calculated in accordance with the parameters defined in Section 2.1;
- c) **Project Loan to Cost Ratio (LTC)** – The Borrower shall, at all times, maintain an LTC Ratio of less than 70.0%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTC shall be calculated in accordance with the parameters defined in Section 2.1;
- d) **Maximum Borrowing** – The Borrower shall ensure that outstanding Advances under the Commitment Letter do not exceed the most current calculation of the Maximum Total Amount Available (Loan Amount less estimated costs to complete). The Loan Amount is the total credit approved as outlined in Section I.

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#### 4.3 Negative Covenants

So long as any amount payable hereunder is outstanding or the Loan Facilities are available hereunder, each of the Borrower (with respect to itself and each of the other Obligor(s)) covenants and agrees with the Lender that, unless the Lender otherwise consents in writing:

- a) **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 Lenders, such consent not to be unreasonably withheld or delayed.
- b) **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).
- c) **No Sale, etc. of Property Interest** – No Obligor shall sell, transfer, assign or otherwise dispose of all or any portion of any Property Interest except pursuant to a permitted encumbrance.
- d) **No Dissolution** – No Obligor shall liquidate, dissolve or wind-up or take any steps or proceedings in connection therewith, provided, however, that a Guarantor (other than the Borrower) may enter into a transaction designed to wind-up or dissolve such Guarantor into the Borrower, but not without the Lender's 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 Lenders' credit risk or the Security will be adversely affected by the proposed transaction.
- e) **Non-Arm's Length Transactions** – No Obligor shall enter into any contract relating in any manner to the Property Interest with an Affiliate (e.g. any related entity with a related ownership interest held directly or indirectly) 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.
- f) **Negative Pledge** – Except for permitted encumbrances, no Obligor shall create, issue, incur, assume or permit to exist any mortgage, charge, lien or other encumbrance on the Property Interest other than permitted encumbrances.
- g) **No Changes to Material Document** – No Obligor shall amend, surrender or terminate any material document without the prior written consent of the Lender which consent is not to be unreasonably withheld or delayed.
- h) **No Changes to Major Leases** – No Obligor shall terminate or accept a surrender of, or agree to any material amendment to, any major 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.
- i) **Dealing with Leases** – None of the Obligor(s) shall enter into any leases or amend, renew, terminate, forfeit or cancel any leases unless:
  - i. such leases, amendments, renewals, terminations, forfeitures or cancellations are made on arm's length terms and in good faith; and
  - ii. such leases, amendments, renewals, terminations, forfeitures or cancellations reflect good business practice.



- j) **Concerning Leases Generally** – Except in the ordinary course of business and provided such action is prudent in the circumstances, none of the Obligor 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:
- i. 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; or
  - ii. 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
  - iii. lease surrender payments made by the tenant under such lease; and
  - iv. except for any renewals or extensions of existing leases pursuant to the terms thereof, each of the Obligor 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 such lease 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 Lenders or any purchaser from the Lenders in the event of an exercise by the Lenders of their remedies under the Documents, for the then unexpired residue of the term of, and upon all of the terms and conditions of such lease.
- k) **No Waiver** – Except as otherwise provided pursuant to Section 5, no Obligor shall waive, or agree to waive, any failure of any party to any permitted encumbrance, material 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.
- l) **Ground Leases** – No Obligor will agree with the landlords under any of the ground leases to terminate, forfeit, cancel, alter, amend or modify any ground lease or provide a surrender of any ground lease prior to the end of the term of such ground lease unless such surrender occurs concurrently with the acquisition of the freehold interest in the applicable Property and the applicable Obligor concurrently provides a mortgage of such freehold interest to the Lender together with such legal opinions and other documents and agreements as the Lender may reasonably require in connection therewith. No Obligor shall exercise any right of termination it may have under any ground lease.
- m) **Freehold Interest in the Property** – Unless the Lender otherwise expressly consents in writing, which consent shall not be unreasonably withheld or delayed, the freehold estate in the Property and the leasehold estate demised by the ground leases, respectively, shall not merge but shall always remain, respectively, separate and distinct notwithstanding the union of such estates either in the respective landlords or, any Obligor.
- n) **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.
- o) **Change of Chief Executive Office** – 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.





## V. 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.

### 5.1 Events of Default

The occurrence of any one or more of the following events (each such event being herein referred to as an “Event of Default”) shall constitute an Event of Default under this Agreement:

- a) **Payment of Principal** – if the Borrower defaults in the payment of the principal of any Advance under any Credit Facility when due and payable, without any requirement by the Lender to provide notice of the same;
- b) **Payment of Interest and Fees** – if the Borrower defaults in the payment of:
  - i. any interest (including, if applicable, default interest) due on any Advance under this Commitment;
  - ii. any fee with respect to this Commitment, including Lender Fee, etc.
  - iii. any other amount not specifically referred to herein payable by the Borrower to the Mortgage Administrator or the Lenders (or any of them) 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;
- c) **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 Section 5.0) 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;
- d) **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 Associate ( as that term is defined in the Business Corporations Act R.S.O. 1990 ) 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 Associate 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;
- e) **Priority Encumbrance Cross Default** – if an Event of Default as defined in any indenture or instrument which is an encumbrance on any Property in priority to the Security shall have occurred and be continuing and all applicable cure periods have expired;
- f) **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;



- g) **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;
- h) **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;
- i) **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 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;
- j) **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;
- k) **Incorrect 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 Agreement 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;
- l) **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 business (2) days;
- m) **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;
- n) **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 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;



- o) **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;
- p) **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;
- q) **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 business days; or
- r) **Financial Covenant Default** – if there is a default by the Borrower of any of the Financial Covenants outlined in Section 4.2;
- s) **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
- t) **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 30 days or 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; or

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 Section 5.1.

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## 5.2 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 Advances to be terminated;
- b) declare all Obligations (whether matured or unmatured, drawn or undrawn) of the Borrower to the Lender (including, without limitation, the 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;
- c) upon the occurrence of an Event of Default specified in Section 5.1(a), the Loan shall automatically terminate and all Obligations specified in Section I shall automatically become due and payable, in each case without any requirement that notice be given to the Borrower;
- d) Immediately upon the occurrence of an Event of Default specified in Section 5.1 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 Section I, 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.

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### 5.3 Appointment of Receiver

- a) 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 instead; 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.
- b) 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:
- i. as a whole or in various units;
  - ii. by a public sale or call for tenders by advertising such sale; and
  - iii. by private sale.
- c) 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.
- d) 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.

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#### 5.4 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 Section 5.1 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 Lenders 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 Advances) not hereinbefore referred to in this Section 5.4 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 Advances 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.

#### 5.5 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:

- 1) the specific performance of any covenant or agreement contained in the Documents;
- 2) enjoining a violation of any of the terms of the Documents;
- 3) aiding in the exercise of any power granted by the Documents or by law; or
- 4) 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.



### **5.6 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 Section 5.1 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 Agreement, including, without limitation, contingent or deferred obligations of the Lenders.

### **5.7 Cash Collateral Accounts**

Upon delivery of an Acceleration Notice or the occurrence of an Event of Default specified in Section 5.1 and in addition to any other rights or remedies of the Lenders 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.

### **5.8 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 Section I from the date paid by the Lender hereunder to and including the date such amounts are repaid in full by the Borrower.

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## VI. GENERAL PROVISIONS

- a) 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.
- b) 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 Guarantor.
- c) The Lenders solicitors shall be:
  - Chaitons LLP
  - 5000 Yonge Street, 10<sup>th</sup> Floor
  - Toronto, ON M2N7E9
  - Attention: Robert Miller
- d) The Borrower's solicitor shall be:
  - Keyser Mason Ball, LLP
  - 3 Robert Speck Pkwy #900,
  - Mississauga, ON L4Z 2G5
  - Attention: David Di Gregorio

The Borrower shall bear any and all reasonable legal costs of the Lender.

- e) Time is of the essence in this Commitment.
- f) The Borrower and Guarantors 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.
- g) The waiver by the Lender of any breach or default by the Borrower of any provisions contained herein shall not be construed as a waiver of any other or subsequent breach or default by the Borrower. In addition, any failure by the Lender to exercise any rights or remedies hereunder or under the Security shall not constitute a waiver thereof.
- h) The representations, warranties, covenants and obligations herein set out shall not merge or be extinguished by the execution or registration of the Security but shall survive until all obligations under this Commitment and the Security have been duly performed and the Loan, interest thereon and any other moneys payable to the Lender are repaid in full. In the event of any inconsistency or conflict between any of the provisions of the Commitment and any provision or provisions of the Security, the Lender shall choose which provisions that will prevail.
- i) Notwithstanding the registration of the Security or the advancement of funds, the terms of this Commitment Letter 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 Letter 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 Letter, the Commitment Letter shall govern.
- j) 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.

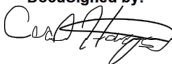
If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this letter agreement together with the \$30,000 Good Faith Deposit (Received) payable to MarshallZehr Group Inc. in Trust. The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitors.

By signing this Commitment Letter, pertaining to The Stanley District Lands – MZGI 424, the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.

**Unless this Commitment Letter 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, along with the Good Faith Deposit, then, at the Lender's sole option, the Commitment shall be terminated.**

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

Yours truly,

DocuSigned by:  
  
6697E6642B774AE...



Financing Efficiency = Opportunity

**Cecil Hayes** CIM  
Chief Operating Officer

**T** 519 342 1000 **X** 233  
**C** 519 590 3810

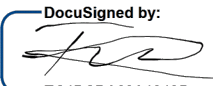
[marshallzehr.com](http://marshallzehr.com) | [email](mailto:)



Acknowledged and agreed at Oakville this 15th day of November, 2021.

Borrower:

La Pue International Inc.

DocuSigned by:  
  
Per: \_\_\_\_\_  
EC1BCDA69A18485...

Name:

Title:

I have authority to bind the corporation

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

\_\_\_\_\_  
Witness:

DocuSigned by:  
  
\_\_\_\_\_  
EC1BCDA69A18485...  
Pawel Fugiel /s

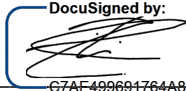


**Lender:**

I HEREBY accept the terms and conditions as stated herein.

DATED at Waterloo, this 15th day of November, 2021.

MarshallZehr Group Inc. "in Trust"

Per:  \_\_\_\_\_  
C7AE499691764A8...

Gregory Zehr  
CEO & Co-Founder  
"I/We have the authority to bind the Corporation"

The Stanley District Lands – MZGI 424



## APPENDIX A – OFFICERS’ CERTIFICATE & STATUTORY DECLARATION

*(This document may be updated from time to time and confirms the Obligor(s) are in full compliance with the terms of the Commitment Letter. It further provides details on how funds provided will be used and details on any amounts the could rank in priority to the security registered to secure this Loan).*

[Date of Letter]

[Borrower]

[Borrower Address]

MarshallZehr Group Inc.  
206-465 Phillip St  
Waterloo ON N2L 6C7  
Attention: [MZ Contact]

### Re: Officers’ Certificate for [Project Name] [Funding # or Quarterly Update]

I/we, [Officer #1] of [Borrower], being respectively the [Officer #1 Title] of [Borrower] in my capacity as an officer of [Borrower] and not in my personal capacity, do hereby certify that:

1. This Certificate is being delivered pursuant to Section [2.1 for Initial Funding, 2.2 for Borrower Draws or 4.1 for Quarterly Certificates] of the Commitment dated as of [DAY] day of [MONTH, YEAR] made among [Borrower] and MarshallZehr Group Inc. (“MZG”).
2. To the best of our knowledge and belief, no Event of Default exists as of the date of this Certificate.
3. The representations and warranties contained in Section 4.1 of the Commitment are true and correct as though made on the date hereof, except for those changes to the representations and warranties which have been disclosed to and accepted by the Lenders pursuant to Section 4.1 and any representation and warranty which is stated to be made as of a certain date.
4. We hereby confirm that the Financial Covenants set out in Section 4.2 of the Loan Agreement are in full compliance as of the date of execution of this Certificate.
5. We hereby acknowledge that we have personal knowledge of the fact that all accounts for labour, subcontracts, products, services, and construction machinery and equipment which have been incurred directly by the Borrower in performance of the work required to complete the Project, and for which the Borrower(s) and/or Owner(s) of the Borrower(s) might in any way be held responsible, have been paid in full as required by the Commitment up to and including the latest progress payment received, being on the [DAY] day of [MONTH], [YEAR], except for
  - a. Holdback monies properly retained amounting to [\$.]
  - b. Payments deferred by agreement amounting to [\$.], or
  - c. Amounts withheld by reason of legitimate dispute which have been identified to the party or parties, from whom payment has been withheld amounting to [\$.].

IN WITNESS WHEREOF I/we, the undersigned, have signed this Certificate as of the [DAY] day of [MONTH], [YEAR]



[Name of Borrower]

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

Name:

Title:

I have authority to bind the corporation



**APPENDIX B – COMPLIANCE CERTIFICATE**

*(This document may be updated from time to time and confirms full compliance with the terms contained within the Commitment Letter and provides details of the calculations confirming same)*

[Date of Letter]

[Borrower]

[Borrower Address]

MarshallZehr Group Inc.  
206-465 Phillip St  
Waterloo ON N2L 6C7  
Attention: [MZ Contact]

**Re: Compliance Certificate for [Project Name] [Funding #1 or Quarterly Update]**

The undersigned, [Borrower], refers to the Commitment Letter dated as of [MONTH] [DAY], [YEAR] (as amended, supplemented, replaced or restated from time to time, the "Commitment", the terms defined therein being used herein as therein defined) among the Obligors and the Lender party thereto.

I/we, [Officer #1] of [Borrower], being respectively the [Officer #1 Title] of [Borrower] in my capacity as an officer of [Borrower] and not in my personal capacity, do hereby certify that:

1. This Compliance Certificate is delivered pursuant to Section [2.1 for Initial Funding or 4.1 for Quarterly Certificates] of the Loan Agreement for [Funding #1 dated [DAY] [MONTH], [YEAR] (the "Initial Funding Period") or the Financial Fiscal Quarter/Year ending on [DAY] [MONTH], [YEAR] (the "Fiscal Period")].
2. I am familiar with and have examined the provisions of the Commitment.
3. The financial statements most recently delivered pursuant to Section 4.1 of the Commitment present fairly the financial position, results of operations and changes in financial position of the persons specified therein in accordance with GAAP (subject to normal year-end adjustments and the absence of any required notes to such financial statements).
4. As of the date hereof, [Borrower] is not in breach of any of the covenants contained in Sections 4 and 5 of the Commitment, and no default or Event of Default has occurred and is continuing as at the date hereof.
5. As of [DAY] [MONTH], [YEAR], the [Initial Funding or Fiscal Period]:
 

a. Total Net Project Costs to Date:	[\$•]	
b. Estimated Cost to Complete Project (incl. lien holdback):	[\$•]	
c. Total Advanced Loan ([incl. current/previous funding #]):	[\$•]	[\$•]
d. Estimated Current Project Value:	[\$•]	
e. Last Appraised Value as of [MONTH] [DAY], [YEAR]:		[\$•]



6. The Financial Covenants outlined in Section 4.2 of the Commitment have been calculated below as of the [Initial Funding or Fiscal Period]:

<b><u>FINANCIAL COVENANTS:</u></b> Guideline only, refer to Commitment for Covenants that are required.	<b><u>CALCULATIONS:</u></b> Guideline only, refer to Commitment on how to calculate Covenants and update accordingly.	<b><u>AMOUNT:</u></b>
Project Net Equity	Project Costs to Date (a) Less Advanced Loan (c)	\$
Maximum Borrowing	Loan Amount Less Costs to Complete (b)	\$
Estimated Loan to Value Ratio	Loan Advanced to Date (c) Divided by Estimated Current Value (d)	%
Estimated Loan to Cost Ratio	Loan Advanced to Date (c) Divided by Project Costs to Date (a)	%

IN WITNESS WHEREOF I/we, the undersigned, have signed this Certificate as of the [DAY] day of [MONTH], [YEAR]

[Name of Borrower]

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

Name:

Title:

I have authority to bind the corporation



**APPENDIX C – REQUEST FOR LENDER ADVANCE NOTICE**

*(This document may be updated from time to time and is used to request funds from the Lender(s) that will be advanced to the Mortgage Administrator and start interest charges to the Borrower).*

[Date of Letter]  
[Borrower]  
[Borrower Address]

MarshallZehr Group Inc.  
206-465 Phillip St  
Waterloo ON N2L 6C7  
Attention: [MZ Contact]

**Re: Request for Advance of Funds for [Project Name] Funding Number [#]**

I hereby formally request the advance of CAD [Advance Amount] from the Commitment dated [Commitment Date] (the “Commitment”) and secured against the lands described as [Municipal Address] and legally known as [Legal Address] as well as all other security issued pursuant to the Commitment (the “Security”).

I hereby acknowledge according to the Commitment Letter that the Borrower must give at least [#] day’s written notice of an advance, and wish to receive acknowledgement from MarshallZehr as to the date of the advance. I understand and acknowledge that the interest will begin on the date of the advance regardless of if funds are released or held in Trust by MarshallZehr.

Furthermore, a Borrower Draw will not be processed until such time as all the conditions related to the Draw are met, as outlined in Section 2.2, and the Borrower has provided the applicable form and Notices as provided in Appendix D.

The Borrower acknowledges that a failure to comply with the covenants and conditions of the Commitment letter represents a default on behalf of the Borrower, and grants the Lender the right to pursue whatever remedy it deems most appropriate, at the expense of the Borrower, with no further notice.

[Name of Borrower]

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

Name:

Title:

I have authority to bind the corporation





#### APPENDIX D – BORROWER DRAW NOTICE

*(This document may be updated from time to time and is required for funds to be delivered to the Borrower from funds held by the Mortgage Administrator in accordance with the terms of the Commitment Letter)*

[Date of Letter]

[Borrower]

[Borrower Address]

MarshallZehr Group Inc.  
206-465 Phillip St  
Waterloo ON N2L 6C7  
Attention: [MZ Contact]

Re: Request for Draw of Funds for [Project Name] Funding Number [#]

I hereby formally request the advance of CAD [Advance Amount] from the Commitment dated [Commitment Date] (the “Commitment”) and secured with the instrument registered as [Instrument Number], and secured against the lands described as [Municipal Address] and legally known as [Legal Address] as well as other security issued pursuant to the Commitment (the “Security”).

I hereby acknowledge according to the Commitment Letter that the Borrower must give at least [#] day’s written notice of an advance, and wish to receive acknowledgement from MarshallZehr as to the date of the advance.

I hereby certify, represent and warrant that all conditions and covenants of the Commitment and Security are met, and that the Borrower and the guarantors have not violated any of the conditions or covenants of the Commitment or Security. Specifically, the Borrower and Guarantors certify, represent and warrant:

- There are no liens on the Property
- No subordinate financing has been placed on the Property without prior written consent
- No party has committed any waste on the Property
- At this time Property taxes are current
- There have been no sales or purchases of shares, or payments of dividends from the Borrower to any party without prior written consent of the Lender
- The owner of the Borrower has not changed
- The Borrower where applicable is in compliance with the Construction Lien Act, and there are no Liens on the Property
- The Borrower has informed the Lender of all changes to the Project schedule and the budget

The hereby gives you notice pursuant to Section 2.2 of the Commitment Letter that the undersigned hereby requests a Draw under the Commitment Letter, and, in that connection sets forth below the information relating to such Draw as required by:

- a. The date of the Draw, being a Business Day, is [•].
- b. The aggregate amount of the Draw is [\$.].





The undersigned hereby certifies and confirms that on the date of this Notice and the date of the corresponding Draw, and immediately after giving effect thereto and to the application of any proceeds therefrom, the representations and warranties contained in Section 4 of the Commitment Letter are true and correct on and as of each such date, all as though made on and as of each such date, except for those changes to the representations and warranties which have been disclosed to and accepted by the Lenders pursuant to Section 4. Any representation and warranty which is stated to be made as of a certain date shall confirm:

- a. no event or condition has occurred and is continuing, or would result from such Borrowing or giving effect to this Borrowing Notice, which constitutes a default or an Event of Default; and
- b. such Borrowing, or otherwise giving effect to this Borrowing Notice, will not violate any Applicable Law now in effect.

The undersigned further confirms and certifies to each Lender that the proceeds of the proposed Borrowing will be used solely for the purposes permitted by the Credit Agreement.

The Borrower acknowledges that a failure to comply with the covenants and conditions of the Commitment letter represents a default on behalf of the Borrower, and grants the Lender the right to pursue whatever remedy it deems most appropriate, at the expense of the Borrower, with no further notice.

Borrower:

[Name of Borrower]

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

Name:

Title:

I have authority to bind the corporation



**APPENDIX E – REPAYMENT NOTICE**

*(This document may be updated from time to time and is to be provided in advance of any repayment in accordance with the terms of the Commitment Letter)*

[DATE]

Borrower:

[Borrower Name]

[Borrower Address]

Lender:

MarshallZehr Group Inc.

206-465 Phillip St

Waterloo ON N2L 6C7

Attention: [MZ Contact]

**Re: Notice of Repayment for [PROJECT NAME]**

I hereby formally inform MarshallZehr Group Inc. of the repayment of the [PROJECT NAME] Loan as per the Commitment Letter dated [DATE], and as further amended [DATE] and per the renewal dated [DATE]. This repayment is inclusive of all principal, interest and fees.

I hereby acknowledge the Borrower must provide 60 days’ written notice of repayment as per the Commitment Letter. With this notice, we would request a Discharge Statement contemplating the stated repayment date.

The maturity date on this Loan is [DATE], (however or and) the anticipated date of repayment will be [DATE].

I hereby acknowledge according to the Commitment Letter that the Borrower must pay the Lender an administration fee of \$500.00 and its solicitor’s reasonable legal fees in respect to the preparation of the discharge or repayment.

**Borrower:**

[Borrower Name]

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

Name: [Name]

Title: [Title]

I have authority to bind the corporation



**APPENDIX F – PROJECT OPERATING REPORT**

*(This document may be updated from time to time and is to be provided upon request by the Borrower to the Lender providing detail on the items outlined below)*

(Borrower/Developer letterhead)

[Date of Letter]

[Borrower]

[Borrower Address]

MarshallZehr Group Inc.  
206-465 Phillip St  
Waterloo ON N2L 6C7  
Attention: [MZ Contact]

**Re: Compliance Project Operating Report for [Project Name]**

[Project Magnitude – Total Units/Acres/Construction Costs/ Expected Gross Receipts]

[Sales Activity - Pre-Sales Order Book/Homes under Construction/Closed, Expected Closings & Closing Schedule]

[Project Completion Status – Status of Approvals, Completion Schedule, Cost to Date, Expected Costs to Complete/Budget]

[Current Project Debt and Description of Debt and related Liens]

[Estimated Current Project Value]

[Project Site Pictures]

**SEPARATOR PAGE**



**MarshallZehr Group Inc.**

412 Albert Street, Suite 100  
Waterloo, ON N2L 3V3, Canada

June 27, 2022

PRIVATE AND CONFIDENTIAL

La Pue International Inc.  
6158 Allendale Ave  
Niagara Falls ON

Attention: Pawel Fugiel

RE:      Project:                    The Stanley District Lands – MZGI 424  
           Purpose:                    First (1<sup>st</sup>) Amendment  
           Borrower:                    La Pue International Inc.  
           Property Address:        5528 Ferry Street, Niagara Falls ON  
           Current Maturity Date:    January 1, 2023

MarshallZehr Group Inc. (the "Lender") is pleased to advise we have approved the following amendment (the "1<sup>st</sup> Amendment") to the above noted mortgage and Commitment Letter dated November 15, 2021:

Delete (Original):

**Loan Amount:**                \$12,000,000 (the "Loan")

Insert (New):

**Loan Amount:**                \$12,375,000 (the "Loan")

Delete (Original):

**Sources and Uses of Funds**

**Uses**

Land Costs	\$	11,432,000
Development Costs	\$	659,000
Hard Costs	\$	748,000
Soft Costs	\$	2,514,000
Sales & Administrative Costs	\$	2,450,000
Financing Costs	\$	1,410,000
3rd Party Broker Fee	\$	30,000
<b>Total Uses</b>	<b>\$</b>	<b>19,244,000</b>

**Sources**

1st Mortgage - Land	\$	12,000,000
---------------------	----	------------

MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453

412 Albert Street, Suite 100, Waterloo, ON N2L 3V3 | p.519.342.1000 f.519.342.0851 | www.marshallzehr.com



Deferred Costs	\$	570,000
Cash Equity	\$	6,674,000
<b>Total Sources</b>	<b>\$</b>	<b>19,244,000</b>

Insert (New):

**Sources and Uses of Funds**

<b>Uses</b>		
Land Costs	\$	11,432,000
Development Costs	\$	659,000
Hard Costs	\$	748,000
Soft Costs	\$	2,515,000
Sales & Administrative Costs	\$	2,450,000
Financing Costs	\$	1,785,000
3rd Party Broker Fee	\$	30,000
<b>Total Uses</b>	<b>\$</b>	<b>19,619,000</b>
<b>Sources</b>		
1st Mortgage - Land	\$	12,375,000
Deferred Costs	\$	570,000
Cash Equity	\$	6,674,000
<b>Total Sources</b>	<b>\$</b>	<b>19,619,000</b>

The following provisions shall be included in this Amendment that were not contemplated in the original Commitment:

**Amendment Fee:** Upon execution of this Amendment, the Borrower shall pay a fee of \$10,000 to the Lender (the "Amendment Fee"). This Amendment shall not be effective until such time as the Lender has received the Amendment Fee in full. Please make the cheque payable to MarshallZehr Group Inc.

**Subsearch:** A subsearch will be completed prior to executing this Amendment at the expense of the Borrower .

**All other terms of the Commitment shall survive, unamended.**

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.

By signing this amending letter the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.





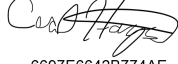
Project: The Stanley District Lands – MZGI 424  
June 27, 2022

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 to the satisfaction of the Lender and its solicitors.

If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this agreement, along with the Amendment Fee, by June 29, 2022.

This Amendment Letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc. and the mortgage is in good standing.

Sincerely,

DocuSigned by:  
  
6697E6642B774AE...



**Cecil Hayes CIM**  
Chief Operating Officer

**T** 519 342 1000 **X** 233  
**C** 519 590 3810

[marshallzehr.com](http://marshallzehr.com) | [email](#)

Broker  
MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453



By signing below, I agree to the extension of the above-noted mortgage.

**Borrower:**

I HEREBY accept the terms and conditions as stated herein.

DATED this 27 day of June, 2022.

La Pue International Inc.

DocuSigned by:  
  
Per: \_\_\_\_\_  
EC1BCDA69A18485...

Name:  
Title:  
I have authority to bind the corporation

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

Pawel Fugiel

DocuSigned by:  
  
Per: \_\_\_\_\_  
EC1BCDA69A18485...

Name:  
Title:  
I have authority to bind the corporation

\_\_\_\_\_  
Witness:

DocuSigned by:  
  
\_\_\_\_\_  
EC1BCDA69A18485... I/S  
Pawel Fugiel



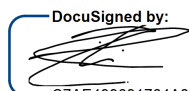
Project: The Stanley District Lands – MZGI 424  
June 27, 2022

Lender:

I HEREBY accept the terms and conditions as stated herein.

DATED at Waterloo, this 27 day of June, 2022.

MarshallZehr Group Inc.

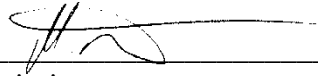
DocuSigned by:  


Per: \_\_\_\_\_  
C7AE499691764A8...

Gregory Zehr  
CEO & Co-Founder

I have the authority to bind the Corporation

THIS IS EXHIBIT "C" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

A Commissioner, etc.



Wednesday, November 30, 2022

**PRIVATE AND CONFIDENTIAL**

La Pue International Inc.  
6158 Allendale Ave.  
Niagara Falls, ON  
**Attention: Pawel Fugiel**

Dear Pawel Fugiel

**RE:**       **Project:**               The Stanley District Lands – MZGI 424  
          **Purpose:**                Second (2<sup>nd</sup>) Amendment  
          **Borrower:**            La Pue International Inc.  
          **Property Address:**   5528 Ferry Street, Niagara Falls ON  
          **Current Maturity Date:** January 1<sup>st</sup>, 2023

MarshallZehr Group Inc. (the “Lender”) is pleased to advise we have approved the following amendment (the “2<sup>nd</sup> Amendment”) to the above noted mortgage and Commitment Letter dated November 15, 2021, and the 1<sup>st</sup> Amendment dated June 27, 2022:

Delete (Original):  
**Maturity Date:**                January 1<sup>st</sup>, 2023

Insert (New):  
**Maturity Date:**                April 1<sup>st</sup>, 2023

Delete (Original):  
**Loan Amount:**                 \$12,375,000 (the “Loan”)

Insert (New):  
**Loan Amount:**                 \$18,000,000 (the “Loan”)

Delete (Original):  
**Sources & Uses:**

<b>Uses</b>		
Land Costs	\$	11,432,000
Development Costs	\$	659,000
Hard Costs	\$	748,000
Soft Costs	\$	2,515,000
Sales & Administrative Costs	\$	2,450,000
Financing Costs	\$	1,785,000
3rd Party Broker Fee	\$	30,000
<b>Total Uses</b>	<b>\$</b>	<b>19,619,000</b>
<b>Sources</b>		
1st Mortgage - Land	\$	12,375,000
Deferred Costs	\$	570,000
Cash Equity	\$	6,674,000
<b>Total Sources</b>	<b>\$</b>	<b>19,619,000</b>

Insert (New):  
**Sources & Uses:**

<b>Uses</b>	
<b>Land Costs</b>	\$ 11,432,000
<b>Development Costs</b>	\$ 659,000
<b>Hard Costs</b>	\$ 748,000
<b>Soft Costs</b>	\$ 2,515,000
<b>Project Related Costs to Complete</b>	\$ 4,274,500
<b>Sales &amp; Administrative Costs</b>	\$ 2,450,000
<b>Financing Costs</b>	\$ 3,135,500
<b>3rd Party Broker Fee</b>	\$ 30,000
<b>Total Uses</b>	<b>\$ 25,244,000</b>
<b>Sources</b>	
<b>1st Mortgage - Land</b>	\$ 18,000,000
<b>Deferred Costs</b>	\$ 570,000
<b>Cash Equity</b>	\$ 6,674,000
<b>Total Sources</b>	<b>\$ 25,244,000</b>

Delete (Original):  
**Security to be Delivered Mortgage**

A 1st mortgage in the amount of \$13,800,000 on The Stanley District Lands – MZGI 424 Project and property plus any accrued contingent payments. The mortgage will be registered at the Wrap Up rate of interest, being two times the rate of Prime + 14.10%.

Insert (New):  
**Security to be Delivered Mortgage**

A 1st mortgage in the amount of \$21,600,000 on The Stanley District Lands – MZGI 424 Project and property plus any accrued contingent payments. The mortgage will be registered at the Wrap Up rate of interest, being two times the rate of Prime + 14.10%.

Delete (Original):  
**4.2 b) Project Loan to Value Ratio (LTV)**

The Borrower shall, at all times, maintain an LTV Ratio of less than 70.0%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTV shall be calculated in accordance with the parameters defined in Section 2.1;

Insert (New):  
**4.2 b) Project Loan to Value Ratio (LTV)**

The Borrower shall, at all times, maintain an LTV Ratio of less than 72.5%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTV shall be calculated in accordance with the parameters defined in Section 2.1;

Delete (Original):  
**4.2 c) Project Loan to Cost Ratio (LTC)**

The Borrower shall, at all times, maintain an LTC Ratio of less than 70.0%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTC shall be calculated in accordance with the parameters defined in Section 2.1;

Insert (New):  
**4.2 c) Project Loan to Cost Ratio (LTC)**

The Borrower shall, at all times, maintain an LTC Ratio of less than 72.5%; notwithstanding the foregoing, for the purposes of calculating this ratio each Fiscal Quarter as required pursuant to the compliance certificate contemplated in Section 4.1(e)(iv). LTC shall be calculated in accordance with the parameters defined in Section 2.1;

Insert (New):  
**1st Renewal**

Provided the Borrower is not in default of any of its obligations under this Commitment or under any Lender security, the Lender will offer one three (3) month extension option with 30 days written notice prior to the end of the Term (the "Renewal Term"). The interest will

be calculated and compounded at the same rate as the original Term of this mortgage. The extension is open for repayment at any time, within the Renewal Term with 30 days' notice. The Borrower shall pay a renewal fee of 0.50% of the outstanding loan balance. A subsearch will be conducted by the Lender's solicitor upon the acceptance of this renewal letter at the Borrower's expense. The Borrower will be responsible for any reasonable costs associated with the extension.

*[Space left intentionally blank]*

The following provisions shall be included in this 2<sup>nd</sup> Amendment that were not contemplated in the original Commitment:

- 3<sup>rd</sup> Advance Conditions** The following conditions must be fulfilled by the Borrower, to the Lender's satisfaction, in its sole discretion, prior to the advance of \$5,625,000 funds (the "**3<sup>rd</sup> Advance**") by the Lender:
- a) The Borrower shall provide an executed copy of a finalized partnership agreement between the Borrower, or an Affiliate, and Buttcon Limited, to the satisfaction of the Lender, in their sole discretion. Such partnership agreement shall be satisfactory to the Lender in terms of form, content, conditions, and terms;
  - b) The Borrower shall provide financial statements for Buttcon Limited's two most recently ended fiscal years. The Lender shall be satisfied with Buttcon Limited's financial capacity to guarantee a construction loan, in their sole discretion;
  - c) The 3<sup>rd</sup> Advance shall be requested in writing and in the form provided to the Borrower by the Lender;
  - d) A title search will be conducted by the Lender's solicitors for each Lender Advance. The title search and solicitors' fees and expenses applicable thereto are at the Borrower's expense and shall be deducted from the Lender Advance by the Lender. In the event a Lender Advance is occurring simultaneously with a Borrower Draw, only one title search will be conducted; and
  - e) The Borrower shall deliver an executed statutory declaration, in the form provided by the Lender, indicating it is in compliance with the requirements of the Construction Act, if applicable, and that all funds shall be used to pay for the applicable Project Costs outlined in the advance request.

The Borrower hereby acknowledges and agrees that interest shall accrue as of the date that the 3<sup>rd</sup> Advance is deposited into the Lender's trust account, regardless of whether the Borrower has met the conditions set out herein.

**2<sup>nd</sup> Amendment Fee:** Upon execution of this 2<sup>nd</sup> Amendment, the Borrower shall pay a fee of \$61,875 to the Lender for extension of the Loan Term (the "**1<sup>st</sup> Installment**").

Upon satisfying all conditions for advance of the 3<sup>rd</sup> Advance, the Borrower shall pay of fee of \$112,500 to allow the increase in the Loan Amount (the "**2<sup>nd</sup> Installment**").

Both the 1<sup>st</sup> Installment and 2<sup>nd</sup> Installment of said fees shall constitute the 2<sup>nd</sup> Amendment Fee. This 2<sup>nd</sup> Amendment shall not be effective until such time as the Lender has received the 2<sup>nd</sup> Amendment Fees as outlined above, in full.

**Syndication of the 2<sup>nd</sup> Amendment** It is the Lender's intention to syndicate all or a portion of the 2<sup>nd</sup> Amendment with other lenders on terms and conditions satisfactory to the Lender. All obligations of the Lender are conditional on successful syndication by the Lender. This 2<sup>nd</sup> Amendment shall be null and void if the Lender is unable to syndicate the 2<sup>nd</sup> Amendment.

**Subsearch:** A subsearch will be completed by the Lender's solicitor upon acceptance this 2<sup>nd</sup> Amendment at the Borrower's expense. A subsearch will be required upon execution of the extended maturity date as well as execution of the loan increase.

**All other terms of the Commitment shall survive, unamended.**





This 2<sup>nd</sup> Amendment may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterpart together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

By signing this amending letter, the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.


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 to the satisfaction of the Lender and its solicitors.

**If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this agreement, along with the 1<sup>st</sup> Installment of the 2<sup>nd</sup> Amendment Fee as outlined above, by November 28th, 2022.**

**This amending letter is not binding until it has been approved and signed back by an Officer of the Lender, Marshall Zehr Group Inc. and the mortgage is in good standing.**

Sincerely,

**MARSHALLZEHR GROUP INC.**

DocuSigned by:  
  
6697E6642B774AE

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

Name: Cecil Hayes


Title: Chief Operating Officer

I have the authority to bind the Corporation

Acknowledged and agreed at OAKVILLE this 30TH day of NOVEMBER, 2022.

**Borrower:**

La Pue International Inc.

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

Name: LA PUE INTERNATIONAL INC.

Title: CEO, PRESIDENT

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


Name:

Title:

I/we have authority to bind the Corporation

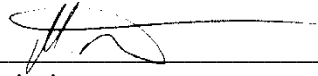
The following parties execute this Commitment in their capacities as guarantors only.

**Guarantors:**

 \_\_\_\_\_ I/S  
Pawel Fugiel

\_\_\_\_\_  
Witness:

THIS IS EXHIBIT "D" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

A Commissioner, etc.

**Properties**

PIN 64349 - 0257 LT Interest/Estate Fee Simple  
 Description LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273; VILLAGE OF NIAGARA FALLS;  
 NIAGARA FALLS;PART LOTS 43, 44, 45, PLAN 273; VILLAGE OF NIAGARA FALLS; AS  
 IN RO712797, NIAGARA FALLS;LOTS 48, 49,& 50, PLAN 273, & PART LOT 47, PLAN  
 273; NIAGARA FALLS, SURFACE ONLY AS IN RO718049; NIAGARA FALLS.  
 Address NIAGARA FALLS

**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 LA PUE INTERNATIONAL INC.  
 Address for Service 6158 Allendale Ave, Niagara Falls,  
 Ontario, Canada, L2G 0A5

I, Pawel Fugiel, President, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

**Chargee(s)**

Capacity

Share

Name MARSHALLZEHR GROUP INC.  
 Address for Service 465 Phillip St., Suite 206, Waterloo, ON N2L 6C7

**Statements**

Schedule: See Schedules

**Provisions**

Principal \$13,800,000.00 Currency CDN  
 Calculation Period Monthly, Interest Only  
 Balance Due Date 2023/01/01  
 Interest Rate Two times the Prime Rate plus 14.10% per annum  
 Payments  
 Interest Adjustment Date 2021 12 01  
 Payment Date 1st day of each and every month  
 First Payment Date 2021 12 01  
 Last Payment Date 2023 01 01  
 Standard Charge Terms 200033  
 Insurance Amount Full insurable value  
 Guarantor Pawel Fugiel

**Signed By**

Wing Chiu Wu 5000 Yonge Street, 10th Floor acting for Signed 2021 12 01  
 Toronto Chargor(s)  
 M2N 7E9

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 2021 12 01  
 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 collectively, the loan proposal and the letter of commitment, each 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 (1<sup>st</sup>) day of each and every month from and including the first (1<sup>st</sup>) day of the month immediately following the Interest Adjustment Date to and including the first (1<sup>st</sup>) 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 (1<sup>st</sup>) 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) approved legal costs in respect of such sale;
  - (ii) approved sales commission in respect of such sale; and
  - (iii) 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 ranking 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.

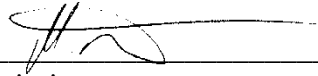
48. **BLANKET CHARGE**

(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 "E" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

A Commissioner, etc.

## GENERAL SECURITY AGREEMENT

THIS AGREEMENT dated as of November 30, 2021.

TO: MARSHALLZEHR GROUP INC.

### WHEREAS:

- A. La Pue International 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.

**LA PUE INTERNATIONAL INC.**

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



Name: Pawel Fugiel

Title: President

I have authority to bind the Corporation.

Address: 6158 Allendale Avenue  
Niagara Falls, Ontario L2G 0A5

Attention: Pawel Fugiel  
E-mail: lapueinternational@gmail.com

**SCHEDULE A**

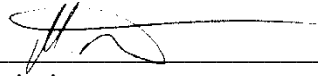
**Locations of Collateral (Paragraph 5(a))**

6158 Allendale Avenue, Niagara Falls, Ontario  
5528 Ferry Street, Niagara Falls, Ontario

**Locations of Real Property (Paragraph 5(a))**

6158 Allendale Avenue, Niagara Falls, Ontario  
5528 Ferry Street, Niagara Falls, Ontario

THIS IS EXHIBIT "F" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

A Commissioner, etc.



## GENERAL SECURITY AGREEMENT

THIS AGREEMENT dated as of November 30, 2021.

TO: MARSHALLZEHR GROUP INC.

WHEREAS:

- A. Pawel Fugiel (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.

Witness:



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)  
)  
)

Name: **Saminder Singh Brach**

  
Pawel Fugiel

Address: 6158 Allendale Avenue  
Niagara Falls, Ontario L2G 0A5

Attention: Pawel Fugiel  
E-mail: lapueinternational@gmail.com

**SCHEDULE A**

**Locations of Collateral (Paragraph 5(a))**

6158 Allendale Avenue, Niagara Falls, Ontario  
5528 Ferry Street, Niagara Falls, Ontario

**Locations of Real Property (Paragraph 5(a))**

6158 Allendale Avenue, Niagara Falls, Ontario  
5528 Ferry Street, Niagara Falls, Ontario



**SEPARATOR PAGE**

## GUARANTEE

THIS GUARANTEE dated of as November 30, 2021.

TO: MARSHALLZEHR GROUP INC. (the "Lender")

### WHEREAS:

- A. The Lender has agreed to extend a loan in the principal amount not exceeding Twelve Million (\$12,000,000) Dollars (the "Loan") in favour of La Pue International Inc. (the "Borrower") on the terms and subject to the conditions as set out in the commitment letter dated November 15, 2021 issued in connection with the Loan (the "Commitment"); and
- B. The Loan is being advanced to the Borrower by the Lender on the condition that Pawel Fugiel (the "Covenantor") executes and delivers this Guarantee.

NOW THEREFORE in consideration of the Lender making the advance of the Loan and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto), the Covenantor hereby acknowledges and agrees as follows:

- 1. The Covenantor hereby guarantees as if the Covenantor was a principal debtor and not merely a surety, the due and punctual payment to the Lender of the Loan including, without limitation, all present and future indebtedness and liability owing by the Borrower to the Lender on account of the Loan whether direct or indirect, absolute or contingent, matured or not including, without limitation:
  - (a) all amounts expressed to be owing to the Lender pursuant to the Commitment and all agreements, instruments and other documents, whether referred to in the Commitment or otherwise, that are now or may hereafter be delivered or assigned to the Lender in connection with or as security for the Loan (the Commitment and any such instrument and other documents are sometimes hereinafter collectively called the "Loan Documents");
  - (b) all commissions, costs, charges, fees and other expenses (including legal fees and disbursements on a substantial indemnity basis) arising out of or incurred by the Lender in connection with any one or more of the following:
    - (i) the collection of the amounts owing by the Borrower to the Lender on account of the Loan;
    - (ii) the enforcement of this Guarantee; and
    - (iii) any action or other proceeding instituted by the Lender, the Borrower, the Covenantor or any other person in any way relating to this Guarantee, the Loan, the Loan Documents or any part thereof,
- 2. This Guarantee is a specific guarantee of the Loan and shall only apply to and secure the amounts referred to in paragraph 1 hereof (hereinafter collectively called the "Liabilities") and any ultimate balance due or remaining unpaid to the Lender thereunder. This Guarantee is irrevocable, absolute

and unconditional and the obligation of the Covenantor hereunder is not cancellable or terminable by the Covenantor (whether or not the entire Loan has been advanced).

3. All indebtedness and liability, present and future, of the Borrower to the Covenantor are hereby assigned to the Lender and postponed to the Liabilities, and all moneys received by the Covenantor in respect thereof shall be received in trust for the Lender and forthwith upon receipt shall be paid over to the Lender, the whole without in any way limiting or lessening the liability of the Covenantor under this Guarantee; and this assignment and postponement is independent of this Guarantee and shall remain in full effect notwithstanding that the liability of the Covenantor under this Guarantee may be extinct.
4. The Covenantor's liability to make payment under this Guarantee shall arise forthwith after demand for payment has been given to the Covenantor. Such demand may be given by personal delivery to the Covenantor or by sending such demand to the Covenantor by telecopier or by prepaid registered mail to the last address of the Covenantor known to the Lender. If mailed, such demand shall be deemed to have been effectually made on the fourth day after an envelope containing such demand addressed to the Covenantor is mailed.
5. The Covenantor expressly waives notice of the acceptance of this Guarantee and notice of non-performance, non-payment or non-observance on the part of the Borrower under the Loan or under the Loan Documents or any part thereof.
6. This Guarantee and the rights of the Lender hereunder shall not be released, discharged, mitigated, impaired or affected by:
  - (a) any grant of time, renewals, extensions, compromises, indulgences or modifications to; extending or failing to extend credit to; making or failing to make Loans or advances to; taking or failing to take securities from; releasing or discharging any securities to; failing to perfect or keep perfected or otherwise taking advantage of any securities received from; accepting compositions from; and releasing, discharging or otherwise dealing with; the Borrower, the Covenantor or any other person whatsoever;
  - (b) any failure of the Lender to prove a claim against the estate of the Borrower or any waiver or failure to enforce any of the terms, conditions or other provisions of, or any loss, diminution of value or unenforceability of, any of the Loan Documents;
  - (c) the application by the Lender of any monies received from the Borrower, the Covenantor or any other person or from securities on account of such part or parts of the Liabilities in such manner as the Lender deems best and the changing of such application in whole or in part at any time or from time to time;
  - (d) the death, incapacity, receivership, bankruptcy, insolvency, winding-up, dissolution or the loss of corporate existence of the Borrower or the Covenantor, the release or discharge of the Borrower or the Covenantor by operation of law or otherwise, any change in the name, objects, capital structure or constitution of the Borrower or any transfer of the assets or businesses of the Borrower to a partnership or to a corporation or any incorporation, amalgamation, continuance, arrangement or reorganization of the Borrower or the Covenantor; and/or

- (e) the distribution of the assets of the Borrower (whether voluntary or compulsory) or upon the occurrence of a bulk sale of any of the Borrower's assets or any composition with the Lender or any scheme of arrangement; and in any such event the Lender shall have the right to rank in all respects in priority to the Covenantor for its full claim against the Borrower and to receive all dividends or other payments in respect thereof until the Lender's claim and all Liabilities have been paid in full; and the retention by the Lender of all or any part or parts of the Loan Documents shall not, as between the Lender and the Covenantor, be considered a purchase of such securities, or payment, satisfaction or reduction of the Liabilities or any part thereof.
- 7. Without prejudice to any of the rights or recourses which the Lender may have against the Borrower, the Covenantor expressly waives any right to require the Lender to initiate or exhaust any rights, remedies or recourses against the Borrower, the Covenantor or any other person, value, realize upon or dispose of any of the Loan Documents; or initiate or exhaust any other remedy which the Lender may have at law or in equity before requiring or becoming entitled to demand and enforce payment from the Covenantor under this Guarantee; and the Covenantor renounces all benefits of discussion and division.
- 8. If for any reason the Borrower has no legal existence, or if the Borrower is or becomes under no legal obligation to discharge the Liabilities or if any of the Liabilities becomes statute barred or otherwise irrecoverable from the Borrower whether by operation of law or for any reason whatsoever including, without limitation, as a result of any lack or limitation of power, capacity or disability of the Borrower or its directors, partners, officers or agents or as a result of any irregularity, fraud, defect or informality in the obtaining of any advances, credits or renewals from the Lender (whether or not the Lender should have had knowledge thereof), this Guarantee and the covenants, agreements and obligations of the Covenantor set out herein shall nevertheless be binding upon the Covenantor as principal debtor until such time as such monies have been paid in full to the Lender and all Liabilities have been discharged and the Covenantor shall be responsible for the payment thereof to the Lender upon demand.
- 9. The Covenantor hereby agrees to indemnify, save, hold and keep the Lender harmless from any and all claims, losses, damages, costs and expenses resulting from the non-payment to the Lender of all monies herein secured, and the liability of the Covenantor shall not be released, discharged, extinguished or diminished by any act whatsoever of the Borrower or any loss, avoidance, termination by operation of law or otherwise of the obligations of the Borrower or any other person, including, without limitation, any act of bankruptcy or insolvency, or any other act, matter or thing whatsoever, save only full payment in cash of all monies herein secured and full performance and observance of all covenants, terms and obligations pursuant to this Guarantee and all Loan and security documents related thereto.
- 10. The Covenantor agrees to file all claims against the Borrower in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law with respect to any indebtedness owing by the Borrower to the Covenantor and will assign to the Lender all of the Covenantor's rights thereunder on demand. If the Covenantor does not file any such claim, the Lender, as attorney in fact of the Covenantor, is authorized to do so in the name of the Covenantor or in the Lender's discretion to assign the claim to and cause proof of claim to be filed in the name of the Lender's nominee. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to the Lender the full amount of such claim in the proceeding before making any payment to any of the Covenantor, and to the full extent

necessary for that purpose the Covenantor agrees to assign to the Lender on demand all of the Covenantor's right to any payments or distributions to which the Covenantor otherwise would be entitled. If the amount so paid is greater than the guaranteed obligations then outstanding, the Lender will pay the amount of the excess to the party entitled thereto.

11. All compositions and payments received by the Lender from the Borrower or from others or from estates shall be regarded for all purposes as payments in gross without any right on the part of the Covenantor to claim the benefit thereof in reduction of the Liabilities. The Covenantor shall not have any right to be subrogated to any rights of the Lender until all Liabilities have been discharged to the satisfaction of the Lender.
12. Upon this Guarantee bearing the signature of the Covenantor and being received by the Lender or any officer, agent or employee thereof, this Guarantee shall be deemed to be a deed signed and delivered by the Covenantor under seal and shall not be subject to or affected by any promise or condition affecting or limiting the Covenantor's liability hereunder except as may be expressly provided for herein. No statement, representation, warranty, agreement or promise on the part of any officer, employee or agent of the Lender, unless expressly set out herein, forms any part of this Guarantee or has induced the entering into or execution of this Guarantee or shall be deemed in any way to affect the Covenantor's liability hereunder.
13. The Lender may, without notice of any kind, sell, assign or transfer all or any part of the Liabilities and, in such event, each and every immediate and successive assignee, transferee or holder of all or any part of the Liabilities shall have the right to enforce this Guarantee as fully and effectively as if such assignee, transferee or holder were specifically named herein in place of or together with the Lender.
14. No action or proceeding brought or instituted under this Guarantee and no recovery or judgment in pursuance thereof shall be a bar or defence to any further action or proceeding which may be brought under this Guarantee by reason of any further default or defaults under this Guarantee or in the payment of the Liabilities.
15. No failure to exercise and no delay in exercising, on the part of the Lender, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other rights, powers or privileges. The rights and remedies herein provided for are cumulative and not exclusive of any rights or remedies provided at law or in equity.
16. This Guarantee shall be in addition to and not in substitution for the Loan Documents and any other guarantees which the Lender may now or hereafter hold in respect of the Liabilities and the Lender shall be under no obligation to marshal in favour of the Covenantor any other guarantees or other securities or any moneys or other assets which the Lender may be entitled to receive or may have a claim upon.
17. Any term, condition or provision of this Guarantee which is held or deemed to be void, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be severable herefrom and be ineffective to the extent of such avoidance, prohibition or unenforceability without invalidating the remaining terms, conditions and provisions hereof and any such avoidance, prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such term, condition or provision in any other jurisdiction.

18. This Guarantee shall be exclusively governed by and construed in accordance with the laws of the Province of Ontario.
19. No modification of this Guarantee shall be effective unless it is in writing and signed by the Covenantor and the Lender.
20. The Lender shall not be concerned to see or inquire into the existence, powers or capacities of the Borrower, the Covenantor or their respective officers, directors or agents, acting or purporting to act on their respective behalf.
21. All terms, agreements and conditions of this Guarantee shall extend to and be binding upon the Covenantor and the Borrower and their respective successors and permitted assigns and shall enure to the benefit of and may be enforced by the Lender and its successors and assigns.
22. All nouns and personal pronouns herein including the defined terms "Covenantor" and "Borrower" shall be read and construed as the number and gender may require in each case and the verb shall be read and construed as agreeing with such noun or pronoun.
23. The words "herein", "hereof", "hereunder", "herefrom", "the Guarantee" and "this Guarantee" refer to this entire agreement and not to any particular paragraph or subparagraph unless the context so requires.
24. The Covenantor acknowledges receipt of a copy of this Guarantee.
25. This Guarantee may be executed and transmitted by electronic transmission, which electronic copy shall constitute an original and legally binding instrument.

*[remainder of this page intentionally left blank]*

**DATED** as of the date first written above.

Witness:



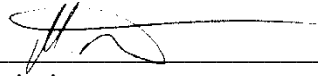
\_\_\_\_\_  
Name: **Saminder Singh Brach**

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\_\_\_\_\_  
Pawel Fugiel

THIS IS EXHIBIT "G" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

A Commissioner, etc.



LAND  
REGISTRY  
OFFICE #59

64349-0258 (LT)

PAGE 1 OF 3  
PREPARED FOR Lynda001  
ON 2023/06/06 AT 12:16:22

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

**PROPERTY DESCRIPTION:** FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN R0718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN R0441658 AS IN SN754703; CITY OF NIAGARA FALLS

**PROPERTY REMARKS:** FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2022/03/11. CORRECTION: DOCUMENT 59R16793 ADDED TO 64349-0258 ON 2022/04/07 AT 10:29 BY OTTEN, LISA.

**ESTATE/QUALIFIER:**  
FEE SIMPLE  
LT ABSOLUTE PLUS

**RECENTLY:**  
RE-ENTRY FROM 64349-0257

**PIN CREATION DATE:**  
2022/03/11

**OWNERS' NAMES**  
LA PUE INTERNATIONAL INC.

**CAPACITY SHARE**  
ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2022/03/11 **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
NOTE: THE NO DEALINGS INDICATOR IS IN EFFECT ON THIS PROPERTY						
SN549654	2018/04/20	TRANSFER	\$2,100,000	MALMER HOLDINGS LTD.	LA PUE INTERNATIONAL INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SN549655	2018/04/20	TRANSFER	\$250,000	NIACAN LTD.	LA PUE INTERNATIONAL INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SN549656	2018/04/20	TRANSFER	\$2,000,000	2075790 ONTARIO INC.	LA PUE INTERNATIONAL INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
SN613492	2019/12/12	APL CONSOLIDATE		LA PUE INTERNATIONAL INC.		C
SN629148	2020/05/14	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
REMARKS: AGREEMENT						
SN642462	2020/09/18	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C
REMARKS: SITE PLAN AGREEMENT						
59R16793	2020/10/01	PLAN REFERENCE				C
REMARKS: SN643628.						
SN644659	2020/10/02	CHARGE	\$2,000,000	LA PUE INTERNATIONAL INC.	THE SOVEREIGN GENERAL INSURANCE COMPANY	C
SN658896	2021/01/26	NOTICE	\$1	LA PUE INTERNATIONAL INC.	THE SOVEREIGN GENERAL INSURANCE COMPANY	C

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

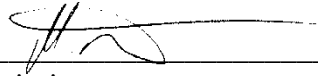
REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD	
		REMARKS: SN644659					
SN666113	2021/03/22	BYLAW DEEM PLNP		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C	
		REMARKS: BY-LAW 2020-04 TO DEEM LOTS NOT TO BE REGISTERED ON PART LOTS 43, 44, 45 AND 47 AND LOTS 46, 48-52 AND 61-65, ON PLAN 273 FOR THE PURPOSE OF SUBSECTION 50(4) OF THE PLANNING ACT.					
SN666891	2021/03/26	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C	
SN703091	2021/12/01	CHARGE	\$13,800,000	LA PUE INTERNATIONAL INC.	MARSHALLZEHR GROUP INC.	C	
SN703094	2021/12/01	NO ASSGN RENT GEN		LA PUE INTERNATIONAL INC.	MARSHALLZEHR GROUP INC.	C	
		REMARKS: SN703091					
SN703098	2021/12/01	POSTPONEMENT		THE SOVEREIGN GENERAL INSURANCE COMPANY	MARSHALLZEHR GROUP INC.	C	
		REMARKS: SN644659 TO SN703091					
SN703255	2021/12/01	RESTRICTION-LAND		LA PUE INTERNATIONAL INC.		C	
		REMARKS: PROHIBITING ANY FURTHER CHARGE OF SUCH LANDS WITHOUT THE CONSENT OF MARSHALLZEHRGROUP INC.					
59R17206	2022/03/11	PLAN REFERENCE				C	
SN716940	2022/03/11	APL ABSOLUTE TITLE		LA PUE INTERNATIONAL INC.	LA PUE INTERNATIONAL INC.	C	
		REMARKS: SN625230					
SN721529	2022/04/12	APL (GENERAL)		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C	
		REMARKS: SN629148 RELEASED FROM PART LOTS 61, 62, 63, 64 & 65, PLAN 273 BEING PART 1 ON 59R-16793 AND PART LOTS 44, 45 & 46, PLAN 273 BEING PART 3 ON 59R-17206					
SN721530	2022/04/12	APL (GENERAL)		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C	
		REMARKS: SN642462 FROM PART LOTS 61, 62, 63, 64 & 65, PLAN 273 BEING PART 1 ON 59R-16793 AND PART LOTS 44, 45 & 46, PLAN 273 BEING PART 3 ON 59R-17206					
SN721531	2022/04/12	APL (GENERAL)		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C	
		REMARKS: SN666891 FROM PART LOTS 61, 62, 63, 64 & 65, PLAN 273 BEING PART 1 ON 59R-16793 AND PART LOTS 44, 45 & 46, PLAN 273 BEING PART 3 ON 59R-17206					
SN723231	2022/04/26	NOTICE		THE CORPORATION OF THE CITY OF NIAGARA FALLS		C	
SN729954	2022/06/09	APL DEPOSIT PLAN		*** COMPLETELY DELETED ***			
59R17292	2022/06/13	PLAN REFERENCE				C	
		REMARKS: SN729954.					
SN734331	2022/07/13	CONSTRUCTION LIEN		*** COMPLETELY DELETED ***			

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
SN738509	2022/08/15	CERTIFICATE		ASTRO EXCAVATING INC.  *** COMPLETELY DELETED *** ASTRO EXCAVATING INC.		
	REMARKS: SN734331					
SN743390	2022/09/26	NO CHNG ADDR INST		MARSHALLZEHR GROUP INC.		C
SN751026	2022/12/02	APL DEL CONST LIEN		*** COMPLETELY DELETED *** ASTRO EXCAVATING INC.		
	REMARKS: SN734331. SN738509					
SN754703	2023/01/13	TRANSFER EASEMENT	\$1	LA PUE INTERNATIONAL INC.	LOUKAS, ANASTASIA GEORGINA 2779006 ONTARIO INC.	C
SN754704	2023/01/13	POSTPONEMENT		MARSHALLZEHR GROUP INC.	LOUKAS, ANASTASIA GEORGINA 2779006 ONTARIO INC.	C
	REMARKS: SN703091 AND SN703094 TO SN754703 PARTS 1 AND 2, 59R17292					
SN754705	2023/01/13	POSTPONEMENT		THE SOVEREIGN GENERAL INSURANCE COMPANY	LOUKAS, ANASTASIA GEORGINA 2779006 ONTARIO INC.	C
	REMARKS: SN644659 AND SN658896 TO SN754703 PARTS 1 AND 2, 59R17292					
SN754853	2023/01/16	LR'S ORDER		LAND REGISTRAR, NIAGARA SOUTH LAND REGISTRY OFFICE		C
	REMARKS: AMENDING TYPO IN PROPERTY DESCRIPTION					
SN758055	2023/02/22	CONSTRUCTION LIEN	\$3,673,337	HC MATCON INC.		C
SN759949	2023/03/15	CONSTRUCTION LIEN	\$841,498	KADA GROUP INC.		C
SN760306	2023/03/17	CONSTRUCTION LIEN	\$8,205,941	BUTTCO LIMITED		C
SN761643	2023/03/31	CONSTRUCTION LIEN	\$123,734	KADA GROUP INC.		C
SN763208	2023/04/17	NOTICE	\$1	LOUKAS, ANASTASIA GEORGINA 2779006 ONTARIO INC. LA PUE INTERNATIONAL INC.		C
SN764799	2023/05/01	CERTIFICATE		HC MATCON INC.		C
	REMARKS: SN758055					
SN767364	2023/05/26	CONSTRUCTION LIEN	\$23,278	TT GALBRAITH ELECTRIC LTD		C

THIS IS EXHIBIT "H" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, appearing to be "J. Hayes", written over a horizontal line.

A Commissioner, etc.

## PRIORITY AGREEMENT

THIS AGREEMENT dated the 30<sup>th</sup> day of November, 2021.

B E T W E E N:

**THE SOVEREIGN GENERAL INSURANCE COMPANY**  
(hereinafter collectively called the "**Surety**")

- and -

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

### WHEREAS:

1. La Pue International Inc. (hereinafter called the "**Principal**") has entered into a commitment letter with the Lender dated as of the 15<sup>th</sup> day of November, 2021 (the "**Commitment Letter**") pursuant to which it has executed and delivered certain security to the Lender, including, without limitation, a charge of land dated the 30<sup>th</sup> day of November, 2021, in the principal amount of Thirteen Million Eight Hundred Thousand (\$13,800,000) Dollars (the "**First Charge**").
2. The Principal has granted to the Lender, pursuant to the provisions of the Commitment Letter and the First Charge, certain other security interests in its personal property (all present and future security granted by the Principal to the Lender, including such security pursuant to the First Mortgage, is hereinafter collectively referred to as the "**Lender Security**").
3. The First Charge was registered in the Niagara (South) Land Registry No. 59 (the "**Registry Office**") on the 1<sup>st</sup> day of December, 2021, as Instrument No. SN703091 against the lands municipally known as 5528 Ferry Street, Niagara Falls, Ontario and legally described in PIN 64349-0257 (LT) (hereinafter called the "**Property**").
4. All deposit monies received from time to time from purchasers of dwelling units in the condominium being developed by the Principal on the Property (the "**Project**") and accrued interest thereon (the "**Deposit Monies**") have (or will be) deposited in a designated trust account at the Bank of Montreal, Trust Account #1000-937 (the "**Designated Trust Account**") with Sullivan Mahoney LLP.
5. By a mortgage (the "**Surety Mortgage**") made between the Principal as mortgagor and the Surety as mortgagee which Surety Mortgage was registered on the 2<sup>nd</sup> day of October, 2020 in the Registry Office as Instrument No. SN644659, as amended by a notice to amend registered on the 26<sup>th</sup> day of January, 2021 in the Registry Office as Instrument No. SN658896, the Principal did mortgage the Property to the Surety to secure payment of the sum of Twelve Million (\$12,000,000) Dollars and interest as set out in the Surety Mortgage.
6. The Principal has granted to the Surety, pursuant to the provisions of the Surety Mortgage, security interests in certain of its personal property, including the Deposit Monies (all present and future security granted by the Principal to the Surety, including

such security pursuant to the Surety Mortgage, hereinafter collectively referred to as the "**Surety Security**").

7. The parties hereto wish to record their agreement as to the priorities of the Lender Security and the Surety Security.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are acknowledged) the Surety and the Lender agree as follows:

- (a) The Lender's Security and all amounts secured thereby (including all costs, charges and fees and expenses incurred by the Lender, or any agent, receiver or receiver and manager appointed by the Lender, in connection therewith but including advances made thereunder only to the extent of Thirteen Million Eight Hundred Thousand (\$13,800,000) Dollars, plus interest thereunder and secured thereby and all additional advances for construction cost overruns, shall be an encumbrance upon the Property ranking at all times prior to the Surety Security, and the Surety hereby postpones and subordinates all of its rights and interests under the Surety Security, to and in favour of the Lender's Security, and to all amounts secured thereby (including all costs, charges, fees and expenses incurred by the Lender, or any agent, receiver or receiver and manager appointed by the Lender, in connection therewith), and to all advances made thereunder to the extent noted above and to all interest accruing thereunder and secured thereby. In order to give effect to this postponement and subordination, the Surety releases to the Lender all of its rights and claims to priority with respect to the Surety Security, to the extent noted above.
- (b) Subject to the provisions of paragraph (a) above, the Surety Security shall at all times be postponed to (and shall correspondingly rank subordinate to) the Lender Security, except in respect of the Deposit Monies, in respect of which the Surety Security shall have priority over the Lender Security for only so long as, and to the extent that, such Deposit Monies shall remain in the Designated Trust Account.
- (c) The above postponements and subordinations shall apply notwithstanding the respective dates of execution and registration of any of the Lender Security and the Surety Security, in whole or in part, or the date of attachment or perfection of any security interest(s) granted thereby, the date of any advance(s), the date of any default(s), or any other matter(s). Each of the parties hereto agrees that it shall not claim against the others the benefit of any charge, mortgage, security interest, trust or other claim which would affect the priorities set out herein.
- (d) The Surety hereby agrees that, except in respect of the Deposit Monies, it shall not take any Enforcement Action (as defined hereunder) under or in respect of the Surety Security with respect to all or any part of the Property or against the Principal and/or Pawel Fugiel (collectively, the "**Credit Parties**") without reasonable prior notice to and the written consent of the Lender, which consent may be given or withheld by the Lender in its sole discretion. The Surety shall not challenge, contest or bring into question the validity, priority or perfection of the Lender Security or any Enforcement Action taken by the Lender under or in respect of the Lender Security against all or any part of the Property or against the Credit Parties.

In this Agreement the term "**Enforcement Action**" means the commencement of a power of sale, foreclosure or other judicial or private sale proceedings, the appointment or obtaining of the appointment of a receiver, a manager, or a receiver/manager of all or any part of the Property, or the appointment of any other person, corporation or entity having similar powers as the aforesaid, the attainment of rents, the taking of possession or control of all or any part of the Property or any other property or undertaking of the Credit Parties, the commencing, giving notice of or making any demand for payment, the

provision of any notice of intention to enforce security, the taking or commencement of any action or proceeding seeking payment of or recovery of all or any part of any indebtedness or damages in lieu thereof, the accepting of a transfer of any property in lieu of foreclosure and/or the exercise of any other rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy proceedings or any consent of the Surety to any voluntary bankruptcy proceeding initiated by the Credit Parties.

- (e) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed that:
  - (i) the foregoing covenants set out in paragraph (d) above shall only be binding and enforceable against the Surety for ninety (90) days after default of the Credit Parties under the Lender Security; and
  - (ii) nothing contained herein shall prevent the Surety from filing a proof of claim in (or otherwise participating in) any bankruptcy or insolvency proceedings initiated by any other creditor (or by the Credit Parties themselves) against the Credit Parties and/or the estate of Pawel Fugiel, to the extent applicable.
- (f) The Surety hereby confirms that notwithstanding any provision to the contrary in any of the Surety Security, the security provided by the Surety Security over the Property and other assets of the Principal in any way related to the Project (including without limitation, the Deposit Monies) shall not secure any indebtedness, liability or obligation of the Credit Parties except in respect of the Project, while any amounts under the Lender Security remains unpaid.
- (g) The Surety and the Lender hereby consent to the granting of the security by the Principal referred to herein, and shall at all times (and from time to time) execute and deliver to the others all such further documents, agreements or other assurances as may be necessary to give effect to this agreement, and to carry out the intent hereof.
- (h) Nothing herein shall affect the rights of the Surety and the Lender, respectively against the Principal. The provisions of this agreement shall enure to the benefit of, and be correspondingly binding upon, the Lender and the Surety and their respective successors and assigns, and shall be interpreted and construed according to the laws of the Province of Ontario.
- (i) The Surety hereby covenants, agrees and undertakes to and with the Lender to execute and deliver any usual documentation required in connection with the development and registration of the Property as a Condominium.
- (j) The Lender may grant time, renewals, extensions, releases and discharges to, accept compositions from and otherwise deal with the Credit Parties as it may see fit, including without limitation renewal of the loan secured by the Lender Security, upon written notice to the Surety and without prejudice to or in any way limiting or affecting the agreements on the part of the Surety pursuant to this Agreement.
- (k) This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute one and the same instrument. Executed counterparts of this Agreement may be transmitted by electronic transmission in pdf format (or other electronic format) and shall in such event be deemed to be originals and binding on the parties hereto.

*[remainder of this page intentionally left blank]*

IN WITNESS WHEREOF the parties have duly executed this agreement as of the date first above written.

**THE SOVEREIGN GENERAL INSURANCE COMPANY**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation

**MARSHALLZEHR GROUP INC.**

DocuSigned by:  
*Murray Snedden*  
Per: \_\_\_\_\_  
Name: Murray Snedden  
Title: Chief Financial Officer & Principal Broker

Per: \_\_\_\_\_  
Name:  
Title:


I/We have authority to bind the Corporation



IN WITNESS WHEREOF the parties have duly executed this agreement as of the date first above written.

**THE SOVEREIGN GENERAL INSURANCE COMPANY**

Per:  \_\_\_\_\_  
Name: Janarthan Selvarajah  
Title: Sr. Underwriter, Residential Surety

Per:  \_\_\_\_\_  
Name: Steve Irwin  
Title: Manager, Residential Surety

I/We have authority to bind the Corporation

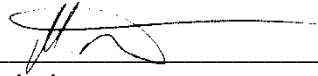
**MARSHALLZEHR GROUP INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the Corporation

THIS IS EXHIBIT "I" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, appearing to be "J. Hayes", written over a horizontal line.

A Commissioner, etc.

**Properties**

*PIN* 64349 - 0257 LT  
*Description* LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273; VILLAGE OF NIAGARA FALLS;  
 NIAGARA FALLS;PART LOTS 43, 44, 45, PLAN 273; VILLAGE OF NIAGARA FALLS; AS  
 IN RO712797, NIAGARA FALLS;LOTS 48, 49,& 50, PLAN 273, & PART LOT 47, PLAN  
 273; NIAGARA FALLS, SURFACE ONLY AS IN RO718049; NIAGARA FALLS.  
*Address* NIAGARA FALLS

**Source Instruments**

<i>Registration No.</i>	<i>Date</i>	<i>Type of Instrument</i>
SN644659	2020 10 02	Charge/Mortgage

**Party From(s)**

*Name* THE SOVEREIGN GENERAL INSURANCE COMPANY  
*Address for Service* One York Street, Suite 1400  
 Toronto, Ontario L5J 0B6

I, Steve Irwin, Manager, Residential Surety & Cecilia Yanga, Jr. Underwriter, Residential Surety, have the authority to bind the corporation.

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

**Party To(s)***Capacity**Share*

*Name* MARSHALLZEHR GROUP INC.  
*Address for Service* 465 Phillip St., Suite 206, Waterloo, ON N2L 6C7

**Statements**

The applicant postpones the rights under the selected instrument to the rights under an instrument registered as number SN703091 registered on 2021/12/01

Schedule: The applicant further postpones the rights under Instrument No. SN658896 to the rights under an instrument registered as number SN703091.

This document relates to registration number(s)SN658896

**Signed By**

Wing Chiu Wu	5000 Yonge Street, 10th Floor Toronto M2N 7E9	acting for Party From(s)	Signed	2021 12 01
--------------	---	-----------------------------	--------	------------

Tel 416-222-8888

Fax 416-218-1860

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

**Submitted By**

CHAITONS LLP	5000 Yonge Street, 10th Floor Toronto M2N 7E9	2021 12 01
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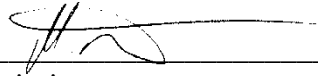
Tel 416-222-8888

Fax 416-218-1860

**Fees/Taxes/Payment**

<i>Statutory Registration Fee</i>	\$66.30
<i>Total Paid</i>	\$66.30

THIS IS EXHIBIT "J" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, appearing to be a stylized name, positioned above a horizontal line.

\_\_\_\_\_  
A Commissioner, etc.

**Properties**

**PIN** 64349 - 0258 LT  
**Description** FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS  
**Address** NIAGARA FALLS

**Consideration**

**Consideration** \$3,673,337.03

**Claimant(s)**

**Name** HC MATCON INC.  
**Address for Service** c/o Pavey Law LLP  
 73 Water St. N., Suite 200  
 Cambridge, ON  
 N1R 7L6

I, Frank Claessens, Senior Project Manager, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

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.

**Statements**

Name and Address of Owner La Pue International Inc. 6158 Allendale Avenue, Niagara Falls, ON L2G 0A5 Name and address of person to whom lien claimant supplied services or materials Buttcon Limited, 8000 Jane St., Tower B, Suite 401, Concord, ON L4K 5B8 Time within which services or materials were supplied from 2022/06/15 to 2023/02/06 Short description of services or materials that have been supplied Labour, Material, and Equipment for shoring and caissons. Contract price or subcontract price \$5,891,432.64, inclusive of H.S.T. Amount claimed as owing in respect of services or materials that have been supplied \$3,673,337.03.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Schedule: Additional or alternative party with whom the lien claimant contracted and supplied services and materials to: La Pue International Inc. 1658 Allendale Avenue, Niagara Falls, ON L2G 0A5

**Signed By**

Ioana Mandru 73 Water Street North, Suite 200 acting for Signed 2023 02 22  
 Cambridge Applicant(s)  
 N1R 7L6

Tel 519-621-7260

Fax 519-621-1304

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

**Submitted By**

PAVEY LAW LLP 73 Water Street North, Suite 200 2023 02 22  
 Cambridge  
 N1R 7L6

Tel 519-621-7260

Fax 519-621-1304

**Fees/Taxes/Payment**

**Statutory Registration Fee** \$69.00  
**Total Paid** \$69.00

**File Number**

**Claimant Client File Number :** 20230130

**Properties**

**PIN** 64349 - 0258 LT  
**Description** FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS  
**Address** NIAGARA FALLS

**Consideration**

**Consideration** \$841,498.31

**Claimant(s)**

**Name** KADA GROUP INC.  
**Address for Service** 50865 OReillys Road,  
Wainfleet, ON L3B 5N6

I, Kevin DeGazio, President, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

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.

**Statements**

Name and Address of Owner La Pue International Inc., 6158 Allendale Avenue, Niagara Falls, ON L2G 0A5 Name and address of person to whom lien claimant supplied services or materials Buttcon Limited, 8000 Jane Street, Suite 401, Tower B, Concord, ON L4K 5B8 Time within which services or materials were supplied from 2022/07/01 to 2023/01/31 Short description of services or materials that have been supplied Site services and earthworks Contract price or subcontract price \$2,549,000.00 Amount claimed as owing in respect of services or materials that have been supplied \$841,498.31

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: Alternative party to whom the claimant supplied: Buttcon Ltd., 8000 Jane Street, Suite 401, Tower B, Concord, ON L4K 5B8

**Signed By**

Glenn William Ackerley 66 Wellington Street West, Suite 4100 acting for Applicant(s) Signed 2023 03 15  
Toronto  
M5K 1B7

Tel 416-365-1110

Fax 416-365-1876

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

**Submitted By**

WEIRFOULDS LLP 66 Wellington Street West, Suite 4100 2023 03 15  
Toronto  
M5K 1B7

Tel 416-365-1110

Fax 416-365-1876

**Fees/Taxes/Payment**

**Statutory Registration Fee** \$69.00

**Total Paid** \$69.00

**File Number**

**Claimant Client File Number :** 23571.00005

**Properties**

**PIN** 64349 - 0258 LT  
**Description** FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS  
**Address** NIAGARA FALLS

**Consideration**

**Consideration** \$123,734.28

**Claimant(s)**

**Name** KADA GROUP INC.  
**Address for Service** c/o WEIRFOULDS LLP  
 66 Wellington Street West, Suite 4100  
 P.O. Box 35, TD Bank Tower,  
 Toronto, ON M5K 1B7  
 Attention: D. Dilks

I, Kevin DeGazio, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

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.

**Statements**

Name and Address of Owner La Pue International Inc., 6158 Allendale Avenue, Niagara Falls, ON L2G 0A5 Name and address of person to whom lien claimant supplied services or materials Buttcon Limited, 8000 Jane Street, Suite 401, Tower B, Concord, ON L4K 5B8 Time within which services or materials were supplied from 2022/07/01 to 2023/01/31 Short description of services or materials that have been supplied Site services and earthworks Contract price or subcontract price \$2,549,000.00 Amount claimed as owing in respect of services or materials that have been supplied \$123,734.28

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Schedule: Alternative party to whom the claimant supplied: Buttcon Ltd., 8000 Jane Street, Suite 401, Tower B, Concord, ON L4K 5B8

**Signed By**

Michael Robert Swartz 66 Wellington Street West, Suite 4100 acting for Signed 2023 03 31  
 Applicant(s)  
 Toronto  
 M5K 1B7

Tel 416-365-1110

Fax 416-365-1876

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

**Submitted By**

WEIRFOULDS LLP 66 Wellington Street West, Suite 4100 2023 03 31  
 Toronto  
 M5K 1B7

Tel 416-365-1110

Fax 416-365-1876

**Fees/Taxes/Payment**

**Statutory Registration Fee** \$69.00  
**Total Paid** \$69.00

**File Number**

**Claimant Client File Number :** 23571.00005

**Properties**

*PIN* 64349 - 0258 LT  
*Description* FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS  
*Address* NIAGARA FALLS  
*PIN* 64349 - 0178 LT  
*Description* LT 54 PL 273 VILLAGE OF NIAGARA FALLS; NIAGARA FALLS (AMENDED BY REGISTRAR #27 1999/11/26 AT 15:19PM)  
*Address* 5978 ALLENDALE AVE  
 NIAGARA FALLS

**Consideration**

*Consideration* \$8,205,941.87

**Claimant(s)**

*Name* BUTTCON LIMITED  
*Address for Service* 8000 Jane Street, Suite 401, Tower B,  
 Concord, Ontario, L4K 5B8

SOLICITOR: Emilio Bisceglia  
 9100 Jane Street, 2nd floor,  
 Concord, Ont L4K 0A4

I, Mark Rowlands, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

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.

**Statements**

Name and Address of Owner LA PUE INTERNATIONAL INC., 6158 Allendale Avenue, Niagara Falls, Ontario, L2G 0A5 Name and address of person to whom lien claimant supplied services or materials LA PUE INTERNATIONAL INC., 6158 Allendale Avenue, Niagara Falls, Ontario, L2G 0A5 Time within which services or materials were supplied from 2020/04/06 to 2023/03/17 Short description of services or materials that have been supplied : Provide construction manager services, labour and materials, with respect to the Stanley District Mixed Use Development and related matters. Contract price or subcontract price \$12,021,033.63 (H.S.T. included) Amount claimed as owing in respect of services or materials that have been supplied \$8,205,941.87 (H.S.T. included)

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

**Signed By**

Anne Scott 85 Rosebury Lane acting for Signed 2023 03 17  
 Woodbridge Applicant(s)  
 L4L 3Z1

Tel 905-264-1632

Fax 905-264-1059

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

**Submitted By**

SUMMIT SEARCH LIMITED 85 Rosebury Lane 2023 03 17  
 Woodbridge  
 L4L 3Z1

Tel 905-264-1632

Fax 905-264-1059

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$69.00  
*Total Paid* \$69.00



**Properties**

*PIN* 64349 - 0258 LT  
*Description* FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS  
*Address* NIAGARA FALLS

**Consideration**

*Consideration* \$23,278.00

**Claimant(s)**

*Name* TT GALBRAITH ELECTRIC LTD  
*Address for Service* 2-213 BUNTING RD  
ST. CATHERINES, ON, L2M 3Y2

I, JAMES GALBRAITH, OWNER, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

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.

**Statements**

Name and Address of Owner LA PUE INTERNATIONAL INC. of 6158 ALLENDALE AVENUE, NIAGARA FALLS, ON L2G 0A5 Name and address of person to whom lien claimant supplied services or materials BUTTCON LIMITED of B401-8000 JANE ST, CONCORD, ON, L4K 5B8 Time within which services or materials were supplied from 2022/10/28 to 2023/04/13 Short description of services or materials that have been supplied provision of labour and material to install underground electrical ductbank and transformer vault with ground grid, excavate/fill splice pit for hydro connections. Contract price or subcontract price \$23,278.00 Amount claimed as owing in respect of services or materials that have been supplied \$23,278.00

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

**Signed By**

Bradley James Lohner 17315A 108 Ave NW acting for Signed 2023 05 26  
Edmonton Applicant(s)  
T5S 1G2

Tel 780-486-0219

Fax 780-486-3998

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

**Submitted By**

Priority Credit Management Corp. 17315A 108 Ave NW 2023 05 26  
Edmonton  
T5S 1G2

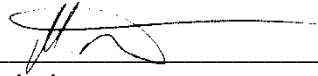
Tel 780-486-0219

Fax 780-486-3998

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$69.00  
*Total Paid* \$69.00

THIS IS EXHIBIT "K" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, appearing to be "J. Hayes", written over a horizontal line.

A Commissioner, etc.

**Properties**

*PIN* 64349 - 0258 LT  
*Description* FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS  
*Address* NIAGARA FALLS

**Party From(s)**

*Name* HC MATCON INC.  
*Address for Service* c/o Pavey Law LLP  
73 Water St., N., Suite 200  
Cambridge, ON N1R 7L6

Attention: Anthony J. Gabriele

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.

**Statements**

This document relates to registration number(s)SN758055

Schedule: See Schedules

The registration of this document is not prohibited by registration SN703255 registered on 2021/12/01.

**Signed By**

Ioana Mandru 73 Water Street North, Suite 200 acting for Signed 2023 05 01  
Cambridge Party From(s)  
N1R 7L6

Tel 519-621-7260

Fax 519-621-1304

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

**Submitted By**

PAVEY LAW LLP 73 Water Street North, Suite 200 2023 05 01  
Cambridge  
N1R 7L6

Tel 519-621-7260

Fax 519-621-1304

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$69.00

*Total Paid* \$69.00

**File Number**

*Party From Client File Number :* 20230130



**FORM 14**  
**CERTIFICATE OF ACTION UNDER SECTION 36 OF THE ACT**

*Construction Act*

.....  
Court File No.

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN**

**HC MATCON INC.**

Plaintiff(s)

(court seal)

And

**LA PUE INTERNATIONAL INC., BUTTCON LIMITED, THE SOVEREIGN  
GENERAL INSURANCE COMPANY and MARSHALLZEHR GROUP  
INC.**

Defendant(s)

**CERTIFICATE OF ACTION**

I certify that an action has been commenced in the Superior Court of Justice under the *Construction Act* between the above parties in respect of the premises described in Schedule A to this certificate, and relating to the claim(s) for lien bearing the following registration numbers:

**SN758055**

Date: .....

.....  
(registrar or local registrar)

**SCHEDULE A**

Description of premises:

**PIN: 64349-0258 LT**

**FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS**

.....  
(The description of the premises must be the same as in the statement of claim, and must be sufficient for registration under the *Land Titles Act* or the *Registry Act*, as the case may be.)

HC MATCON INC.  
Plaintiff

-and- LA PUE INTERNATIONAL INC. et al.  
Defendants

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF** the Construction Act, R.S.O. 1990, c. C.30

PROCEEDING COMMENCED AT  
WELLAND

**CERTIFICATE OF ACTION**

**PAVEY LAW LLP**  
LAWYERS  
73 Water St. N.  
Suite 200  
Cambridge, Ontario N1R 7L6

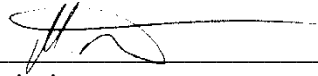
**Anthony J. Gabriele**  
LSO# 67752L  
*gabriele@paveylaw.com*  
Tel: 519-621-7260

Lawyers for the Plaintiff,  
HC Matcon Inc.

**File Number: 20230130**

RCP-F 4C (September 1, 2020)

THIS IS EXHIBIT "L" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, appearing to be "J. Hayes", written over a horizontal line.

A Commissioner, etc.



Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF** the *Construction Act*, R.S.O. 1990, c. C.30

**B E T W E E N:**

(Court Seal)

HC MATCON INC.

Plaintiff

and

LA PUE INTERNATIONAL INC., BUTTCON LIMITED, THE SOVEREIGN  
GENERAL INSURANCE COMPANY and MARSHALLZEHR GROUP INC.

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.  
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

-2-

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of 102 E Main Street  
court office: Welland, ON L3B 3W6

TO: **La Pue International Inc.**  
6158 Allendale Avenue  
Niagara Falls ON L2G 0A5

AND TO: **Buttcon Limited**  
8000 Jane Street  
Tower B, Suite 401  
Vaughan ON L4K 5B8

AND TO: **The Sovereign General Insurance Company**  
1400 - One York Street  
Toronto ON L5J 0B6

AND TO: **Marshallzehr Group Inc.**  
206 - 465 Phillip Street  
Waterloo ON N2L 6C7



-3-

## CLAIM

1. The Plaintiff, HC Matcon Inc., claims:
  - (a) Payment from the Defendants, La Pue International Inc. and Buttcon Limited, *jointly and severally*, in the amount of **Three Million Six Hundred and Seventy-Three Thousand Three Hundred and Thirty-Seven Dollars and Three Cents (\$3,673,337.03)**;
  - (b) A declaration that the Plaintiff is entitled to a lien upon La Pue International Inc.'s interest in the Subject Lands, *as defined herein*, in the amount of **Three Million Six Hundred and Seventy-Three Thousand Three Hundred and Thirty-Seven Dollars and Three Cents (\$3,673,337.03)**;
  - (c) A charge on any and all holdbacks required to be retained pursuant to the *Construction Act*, R.S.O. 1990 c. C-30, as amended;
  - (d) Full priority over the Sovereign and Marshallzehr Group Inc. Mortgages, *as defined herein*; in the alternative, priority over said mortgages to the extent that any portion of such mortgages advanced exceeded the actual value of the premises at the time when the first lien arose; in the alternative, priority over said mortgages to the extent of any unadvanced portion thereof at the time when the first lien arose; or in the further alternative, priority over said mortgages to the extent of any advances made by the mortgagees, or any of them, after notice of the lien was received; or in the further alternative, priority over the said mortgages to the extent of any deficiencies in the holdback required to be retained pursuant to the *Construction Act*, R.S.O. 1990, c. C. 30;
  - (e) That, in default of payment in the amount of **\$3,673,337.03** plus legal costs, that all the estate and interests of La Pue International Inc. in the Subject Lands, hereinafter set out, be sold and the proceeds applied in and towards payment of the Plaintiff's claim, costs and interest pursuant to the *Construction Act*, R.S.O. 1990, c. C. 30;
  - (f) For the purposes aforesaid, and for all other purposes, that all proper directions be given, inquires made, and accounts taken;
  - (g) Prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (h) Post judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
  - (i) Its costs of this proceeding, plus all applicable taxes; and
  - (j) Such further and other relief as the Honourable Court may deem just.

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***The Parties***

2. The Plaintiff, HC Matcon Inc. (“**HCM**”), is a corporation incorporated pursuant to the laws of the Province of Ontario, with its registered office in the Township of North Dumfries in the Province of Ontario, where, *among other places*, it carries on business as an excavation, foundation and shoring contractor.

3. The Defendant, La Pue International Inc. (“**La Pue**”), is a corporation incorporated pursuant to the laws of the Province of Ontario, with its registered office in Niagara Falls, Ontario. La Pue was at all material times the registered owner of the Subject Lands identified by 64349-0258 (LT) as more fully and legally described in the Construction Lien attached hereto as **Schedule “A” (the “Subject Lands”)**.

4. The Defendant, Buttcon Limited. (“**Buttcon**”), is a corporation incorporated pursuant to the laws of the Province of Ontario, with its registered office in Vaughan, Ontario where, *amongst other places*, it carries on business as a general contractor and/or construction manager.

5. The Defendant, The Sovereign General Insurance Company (“**Sovereign**”), is a mortgagee with respect to the Subject Lands. On October 2, 2020, a mortgage for the principal sum \$2,000,000.00 was registered against the Subject Lands as Instrument No. SN644659 in favour of Sovereign (**the “Sovereign Mortgage”**).

6. The Defendant, Marshallzehr Group Inc. (“**MarshallZehr**”), is a mortgagee with respect to the Subject Lands. On December 1, 2021, a mortgage for the principal sum of \$13,800,000.00 was registered against the Subject Lands as Instrument No. SN703091 in favour of MarshallZehr (**the “MarshallZehr Mortgage”**).

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***The Agreement***

7. On or around September 23, 2022, HCM entered into a written agreement (**the “Agreement”**) with La Pue and/or Buttcon pursuant to which the parties agreed, *inter alia*, that HCM would supply labour materials, equipment and services to design, supply and install shoring and caissons (**the “Work”**) for the construction of the Stanley District Development (**the “Improvement”**) upon the Subject Lands.

8. Pursuant to the Agreement, the parties agreed that, in consideration for HCM’s supply of the Work, La Pue and/or Buttcon would pay HCM a price of \$4,310,633.60 inclusive of H.S.T (**the “Price”**).

9. HCM states that it was an implied or express term of the Agreement that HCM would be paid within thirty (30) days of an invoice being rendered.

***The Work & Extras***

10. From June 15, 2022 to February 6, 2023, HCM supplied the Work to the Improvement upon the Subject Lands pursuant to the Agreement.

11. In the Course of fulfilling its obligations under the Agreement, the scope of HCM’s Work changed drastically such that HCM provided various price reductions (**the “Credits”**) and extra labour, material and equipment (**the “Extras”**).

12. As a result of the Extras and Credits, it was agreed that HCM would be paid an additional \$1,432,147.08 inclusive of H.S.T.

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***Indebtedness***

13. As a result of HCM's supply of the Work and Extras to the Improvement upon the Subject Lands, La Pue and/or Buttcon are currently indebted to HCM in the amount of \$3,673,337.03, plus accruing interest and now legal costs.

14. HCM states that despite its repeated requests and demands for payment, La Pue and/or Buttcon have failed, refused or otherwise neglected to pay the amount outstanding to HCM thereby breaching the terms of the Agreement.

***The Construction Lien***

15. By reason of supplying the Work and Extras to the Improvement upon the Subject Lands, HCM became entitled to a lien upon the Subject Lands more fully and legally described in the Construction Lien attached hereto as **Schedule "A"** in the amount of \$3,673,337.03.

16. On February 22, 2023, HCM, pursuant to the *Construction Act*, registered a Construction Lien in the Land Titles Office for the Registry Division of South Niagara (No. 59) as Instrument Number SN758055 for the sum of \$3,673,337.03, a true copy of which is attached hereto as **Schedule "A"**.

17. The Subject Lands are owned by La Pue and are the lands to which HCM supplied labour, material, equipment and services to complete the Work and Extras for the direct benefit of La Pue.

18. HCM pleads and relies upon the *Construction Act*, R.S.O 1990, c. C.30, *as amended*.

-7-

***The Mortgages***

19. HCM claims that the Sovereign and Marshallzehr Group Inc. Mortgages, *or either of them*, were given and taken with the intention of securing the financing of the Improvement, and/or taken out to repay such mortgage, and HCM claims that its lien has full priority over the Sovereign and Marshallzehr Group Inc. Mortgages, *or either of them*. In the alternative, HCM claims

- (a) Priority over the said mortgages, *or either of them*, to the extent of any deficiency in the holdback required to be retained by La Pue;
- (b) Priority over the said mortgages, *or either of them*, to the extent that any portion advanced exceeded the actual value of the premises at the time when the lien arose;
- (c) Priority over the said mortgages, *or either of them*, to the extent of any unadvanced portions thereof; and/or
- (d) Priority over the said mortgages, *or either of them*, to the extent of any advance made at a time when there was a preserved or perfected lien against the Subject Lands and premises herein described, or after receipt of written notice of a lien.

***Interest, Unjust Enrichment, and Jurisdiction***

20. HCM claims pre and post judgement interest pursuant to Sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended, *respectively*.

21. In addition and in the alternative, HCM states that La Pue and/or Buttcon have been unjustly enriched by HCM's supply of the Work and Extras to the Improvement upon the Subject Lands and that HCM has suffered a corresponding deprivation. HCM relies on the doctrine of unjust enrichment and claims compensation on a *quantum meruit* basis.

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22. HCM requests that this action be tried in the City of Welland in the Province of Ontario.

*(Date of issue)*

**PAVEY LAW LLP**  
LAWYERS  
73 Water St. N.  
Suite 200  
Cambridge, Ontario N1R 7L6

**Anthony J. Gabriele**  
LSO# 67752L  
*gabriele@paveylaw.com*  
Tel: 519-621-7260  
Fax: 519-621-1304

Lawyers for the Plaintiff,  
HC Matcon Inc.

RCP-E 14A (June 9, 2014)

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

**Properties**

**PIN** 64349 - 0258 LT  
**Description** FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS  
**Address** NIAGARA FALLS

**Consideration**

**Consideration** \$3,673,337.03

**Claimant(s)**

**Name** HC MATCON INC.  
**Address for Service** c/o Pavey Law LLP  
73 Water St. N., Suite 200  
Cambridge, ON  
N1R 7L6

I, Frank Claessens, Senior Project Manager, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

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.

**Statements**

Name and Address of Owner La Pue International Inc. 6158 Allendale Avenue, Niagara Falls, ON L2G 0A5 Name and address of person to whom lien claimant supplied services or materials Buttcon Limited, 8000 Jane St., Tower B, Suite 401, Concord, ON L4K 5B8 Time within which services or materials were supplied from 2022/06/15 to 2023/02/06 Short description of services or materials that have been supplied Labour, Material, and Equipment for shoring and caissons. Contract price or subcontract price \$5,891,432.64, inclusive of H.S.T. Amount claimed as owing in respect of services or materials that have been supplied \$3,673,337.03.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien Schedule: Additional or alternative party with whom the lien claimant contracted and supplied services and materials to: La Pue International Inc. 1658 Allendale Avenue, Niagara Falls, ON L2G 0A5

**Signed By**

Ioana Mandru 73 Water Street North, Suite 200 acting for Signed 2023 02 22  
Cambridge Applicant(s)  
N1R 7L6

Tel 519-621-7260

Fax 519-621-1304

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

**Submitted By**

PAVEY LAW LLP 73 Water Street North, Suite 200 2023 02 22  
Cambridge  
N1R 7L6

Tel 519-621-7260

Fax 519-621-1304

**Fees/Taxes/Payment**

**Statutory Registration Fee** \$69.00  
**Total Paid** \$69.00

**File Number**

**Claimant Client File Number :** 20230130

HC MATCON INC.  
Plaintiff

-and- LA PUE INTERNATIONAL INC. et al.  
Defendants

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF** the Construction Act, R.S.O. 1990, c. C.30  
**PROCEEDING COMMENCED AT  
WELLAND**

**STATEMENT OF CLAIM**

**PAVEY LAW LLP**  
LAWYERS  
73 Water St. N.  
Suite 200  
Cambridge, Ontario N1R 7L6

**Anthony J. Gabriele**  
LSO# 67752L  
*gabriele@paveylaw.com*  
Tel: 519-621-7260

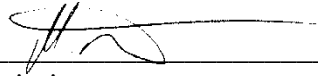
Lawyers for the Plaintiff,  
HC Matcon Inc.

**File Number: 20230130**

RCP-F 4C (September 1, 2020)



THIS IS EXHIBIT "M" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

A Commissioner, etc.



PERSONAL PROPERTY SECURITY REGISTRATION  
SYSTEM (ONTARIO) ENQUIRY RESULTS

Prepared for : Chaitons LLP - Lynda Christodoulou  
Reference : 68783  
Search ID : 924197  
Date Processed : 6/6/2023 2:30:11 PM  
Report Type : PPSA Electronic Response  
Search Conducted on : LA PUE INTERNATIONAL INC.  
Search Type : Business Debtor

DISCLAIMER :

This report has been generated using data provided by the Personal Property Registration Branch, Ministry of Government 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

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: LA PUE INTERNATIONAL INC.

FILE CURRENCY: June 5, 2023

RESPONSE CONTAINS: APPROXIMATELY 7 FAMILIES and 11 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: LA PUE INTERNATIONAL INC.

FILE CURRENCY: June 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 7 ENQUIRY PAGE : 1 OF 11

SEARCH : BD : LA PUE INTERNATIONAL INC.

00 FILE NUMBER : 766400931 EXPIRY DATE : 02OCT 2031 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 003 MV SCHEDULE ATTACHED :  
REG NUM : 20201002 1508 1862 2211 REG TYP: P PPSA REG PERIOD: 11  
02 IND DOB : IND NAME:  
03 BUS NAME: LA PUE INTERNATIONAL INC.  
OCN :  
04 ADDRESS : 33 CUMBERLAND AVENUE  
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5G 3M8  
05 IND DOB : IND NAME:  
06 BUS NAME:  
OCN :  
07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
THE SOVEREIGN GENERAL INSURANCE COMPANY  
09 ADDRESS : ONE YORK STREET, SUITE 1400  
CITY : TORONTO PROV: ON POSTAL CODE: M5J 0B6  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
10 X  
YEAR MAKE MODEL V.I.N.  
11  
12

GENERAL COLLATERAL DESCRIPTION

13 SECURITY INTEREST IN BOTH THE DEPOSIT MONIES RECEIVED FROM TIME TO  
14 TIME IN CONNECTION WITH THE SALE OF UNITS IN THE PROJECT LOCATED AT  
15 5510 FERRY STREET, NIAGARA FALLS, ONTARIO KNOWN AS "THE STANLEY  
16 AGENT: CYBERBAHN  
17 ADDRESS : 4610-199 BAY STREET  
CITY : TORONTO PROV: ON POSTAL CODE: M5L 1E9

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: LA PUE INTERNATIONAL INC.

FILE CURRENCY: June 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 7 ENQUIRY PAGE : 2 OF 11

SEARCH : BD : LA PUE INTERNATIONAL INC.

00 FILE NUMBER : 766400931 EXPIRY DATE : 02OCT 2031 STATUS :  
01 CAUTION FILING : PAGE : 002 OF 003 MV SCHEDULE ATTACHED :  
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03 BUS NAME:  
OCN :  
04 ADDRESS :  
CITY : PROV: POSTAL CODE:  
05 IND DOB : IND NAME:  
06 BUS NAME:  
OCN :  
07 ADDRESS :  
CITY : PROV: POSTAL CODE:

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

13 DISTRICT", AND IN THE WARRANTY RETENTION MONIES SO REQUESTED BY THE  
14 SECURED PARTY TO BE DEPOSITED INTO THE DESIGNATED TRUST ACCOUNT BY  
15 THE PRINCIPAL AS ADDITIONAL COLLATERAL SECURITY FOR THE PERFORMANCE  
16 AGENT:

17 ADDRESS :  
CITY : PROV: POSTAL CODE:

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: LA PUE INTERNATIONAL INC.

FILE CURRENCY: June 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 1 OF 7 ENQUIRY PAGE : 3 OF 11

SEARCH : BD : LA PUE INTERNATIONAL INC.

00 FILE NUMBER : 766400931 EXPIRY DATE : 02OCT 2031 STATUS :  
01 CAUTION FILING : PAGE : 003 OF 003 MV SCHEDULE ATTACHED :  
REG NUM : 20201002 1508 1862 2211 REG TYP: REG PERIOD:  
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OCN :  
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CITY : PROV: POSTAL CODE:  
05 IND DOB : IND NAME:  
06 BUS NAME:  
OCN :  
07 ADDRESS :  
CITY : PROV: POSTAL CODE:

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

13 AND FULFILLMENT OF THE PRINCIPAL'S OBLIGATIONS TO THE SECURED PARTY  
14 ARISING UNDER THE OUTSTANDING INDEMNITY AGREEMENT.

15

16 AGENT:

17 ADDRESS :  
CITY : PROV: POSTAL CODE:

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: LA PUE INTERNATIONAL INC.

FILE CURRENCY: June 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 7 ENQUIRY PAGE : 4 OF 11

SEARCH : BD : LA PUE INTERNATIONAL INC.

00 FILE NUMBER : 769461417 EXPIRY DATE : 26JAN 2032 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 003 MV SCHEDULE ATTACHED :  
REG NUM : 20210126 1509 1862 9924 REG TYP: P PPSA REG PERIOD: 11  
02 IND DOB : IND NAME:  
03 BUS NAME: LA PUE INTERNATIONAL  
OCN :  
04 ADDRESS : 6158 ALLENDALE AVE  
CITY : NIAGARA FALLS PROV: ON POSTAL CODE: L2G 0A5  
05 IND DOB : IND NAME:  
06 BUS NAME:  
OCN :  
07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
THE SOVEREIGN GENERAL INSURANCE COMPANY  
09 ADDRESS : ONE YORK STREET, SUITE 1400  
CITY : TORONTO PROV: ON POSTAL CODE: M5J 0B6  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
10 X X X  
YEAR MAKE MODEL V.I.N.  
11  
12

GENERAL COLLATERAL DESCRIPTION

13 SECURITY INTEREST IN ALL DEPOSIT MONIES (AND IN ALL WARRANTY  
14 RETENTION MONIES REQUIRED TO BE DEPOSITED BY THE DEBTOR TO SECURE ANY  
15 OUTSTANDING OBLIGATIONS TO OR IN FAVOUR OF THE SECURED PARTY)  
16 AGENT: CYBERBAHN  
17 ADDRESS : 4610-199 BAY STREET  
CITY : TORONTO PROV: ON POSTAL CODE: M5L 1E9

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: LA PUE INTERNATIONAL INC.

FILE CURRENCY: June 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 7 ENQUIRY PAGE : 5 OF 11

SEARCH : BD : LA PUE INTERNATIONAL INC.

00 FILE NUMBER : 769461417 EXPIRY DATE : 26JAN 2032 STATUS :  
01 CAUTION FILING : PAGE : 002 OF 003 MV SCHEDULE ATTACHED :  
REG NUM : 20210126 1509 1862 9924 REG TYP: REG PERIOD:  
02 IND DOB : IND NAME:  
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OCN :  
04 ADDRESS :  
CITY : PROV: POSTAL CODE:  
05 IND DOB : IND NAME:  
06 BUS NAME:  
OCN :  
07 ADDRESS :  
CITY : PROV: POSTAL CODE:

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

13 PURSUANT TO A DEPOSIT TRUST AGREEMENT DATED JANUARY 13, 2021, AS MAY  
14 BE AMENDED OR SUPPLEMENTED HEREAFTER FROM TIME TO TIME, IN RESPECT OF  
15 THE STANLEY DISTRICT CONDOMINIUM PROJECT TO BE MUNICIPALLY KNOWN AS  
16 AGENT:

17 ADDRESS :  
CITY : PROV: POSTAL CODE:

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: LA PUE INTERNATIONAL INC.

FILE CURRENCY: June 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 2 OF 7 ENQUIRY PAGE : 6 OF 11

SEARCH : BD : LA PUE INTERNATIONAL INC.

00 FILE NUMBER : 769461417 EXPIRY DATE : 26JAN 2032 STATUS :  
01 CAUTION FILING : PAGE : 003 OF 003 MV SCHEDULE ATTACHED :  
REG NUM : 20210126 1509 1862 9924 REG TYP: REG PERIOD:  
02 IND DOB : IND NAME:  
03 BUS NAME:  
OCN :  
04 ADDRESS :  
CITY : PROV: POSTAL CODE:  
05 IND DOB : IND NAME:  
06 BUS NAME:  
OCN :  
07 ADDRESS :  
CITY : PROV: POSTAL CODE:

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  
13 5510 FERRY STREET, NIAGARA FALLS, ONTARIO.

14  
15  
16 AGENT:  
17 ADDRESS :  
CITY : PROV: POSTAL CODE:

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: LA PUE INTERNATIONAL INC.

FILE CURRENCY: June 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 3 OF 7 ENQUIRY PAGE : 7 OF 11

SEARCH : BD : LA PUE INTERNATIONAL INC.

00 FILE NUMBER : 778525902 EXPIRY DATE : 25NOV 2026 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20211125 1518 1590 6050 REG TYP: P PPSA REG PERIOD: 5  
02 IND DOB : IND NAME:  
03 BUS NAME: LA PUE INTERNATIONAL INC.  
OCN :  
04 ADDRESS : 6158 ALLENDALE AVE  
CITY : NIAGARA FALLS PROV: ON POSTAL CODE: L2G 0A5  
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 : 465 PHILLIP ST., SUITE 206  
CITY : WATERLOO PROV: ON POSTAL CODE: N2L 6C7  
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.

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GENERAL COLLATERAL DESCRIPTION

16 AGENT: CHAITONS LLP (JW/68783)  
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: LA PUE INTERNATIONAL INC.

FILE CURRENCY: June 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 4 OF 7 ENQUIRY PAGE : 8 OF 11

SEARCH : BD : LA PUE INTERNATIONAL INC.

00 FILE NUMBER : 778525911 EXPIRY DATE : 25NOV 2026 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20211125 1519 1590 6051 REG TYP: P PPSA REG PERIOD: 5  
02 IND DOB : IND NAME:  
03 BUS NAME: LA PUE INTERNATIONAL INC.  
OCN :  
04 ADDRESS : 6158 ALLENDALE AVE  
CITY : NIAGARA FALLS PROV: ON POSTAL CODE: L2G 0A5  
05 IND DOB : 13JUL1984 IND NAME: PAWEL FUGIEL  
06 BUS NAME:  
OCN :  
07 ADDRESS : 5158 ALLENDALE AVENUE  
CITY : NIAGARA FALLS PROV: ON POSTAL CODE: L2G 0A5

08 SECURED PARTY/LIEN CLAIMANT :  
MARSHALLZEHR GROUP INC.  
09 ADDRESS : 465 PHILLIP ST., SUITE 206  
CITY : WATERLOO PROV: ON POSTAL CODE: N2L 6C7  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
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YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT: CHAITONS LLP (JW/68783)

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: LA PUE INTERNATIONAL INC.

FILE CURRENCY: June 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 5 OF 7 ENQUIRY PAGE : 9 OF 11

SEARCH : BD : LA PUE INTERNATIONAL INC.

00 FILE NUMBER : 781526259 EXPIRY DATE : 29MAR 2025 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20220329 1402 1901 3295 REG TYP: P PPSA REG PERIOD: 03  
02 IND DOB : IND NAME:  
03 BUS NAME: LA PUE INTERNATIONAL INC  
OCN :  
04 ADDRESS : 6158 ALLENDALE AVE  
CITY : NIAGARA FALLS PROV: ON POSTAL CODE: L2G 0A5  
05 IND DOB : IND NAME:  
06 BUS NAME:  
OCN :  
07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
POLICARO LEASING LTD.  
09 ADDRESS : 191 WYECROFT RD, UNIT 1  
CITY : OAKVILLE PROV: ON POSTAL CODE: L6L 3S3  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
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YEAR MAKE MODEL V.I.N.  
11 2019 FERRARI PORTOFINO ZFF89FPA9K0243515  
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GENERAL COLLATERAL DESCRIPTION

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16 AGENT: ESC CORPORATE SERVICES LTD.  
17 ADDRESS : 445 KING STREET WEST, SUITE 400  
CITY : TORONTO PROV: ON POSTAL CODE: M5V 1K4

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: LA PUE INTERNATIONAL INC.

FILE CURRENCY: June 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 6 OF 7 ENQUIRY PAGE : 10 OF 11

SEARCH : BD : LA PUE INTERNATIONAL INC.

00 FILE NUMBER : 783547137 EXPIRY DATE : 01JUN 2026 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20220601 1259 1210 8587 REG TYP: P PPSA REG PERIOD: 04  
02 IND DOB : IND NAME:  
03 BUS NAME: LA PUE INTERNATIONAL INC  
OCN :  
04 ADDRESS : 6158 ALLENDALE AVE  
CITY : NIAGARA FALLS PROV: ON POSTAL CODE: L2G 0A5  
05 IND DOB : 13JUL1984 IND NAME: PAWEL FUGIEL  
06 BUS NAME:  
OCN :  
07 ADDRESS : 6158 ALLENDALE AVE  
CITY : NIAGARA FALLS PROV: ON POSTAL CODE: L2G 0A5

08 SECURED PARTY/LIEN CLAIMANT :  
NEWROADS AUTOMOTIVE GROUP LTD  
09 ADDRESS : 18100 YONGE ST  
CITY : NEWMARKET PROV: ON POSTAL CODE: L3Y 8V1  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
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GENERAL COLLATERAL DESCRIPTION

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16 AGENT:

17 ADDRESS :

CITY : PROV: POSTAL CODE:

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: LA PUE INTERNATIONAL INC.

FILE CURRENCY: June 5, 2023

1C FINANCING STATEMENT / CLAIM FOR LIEN

FAMILY : 7 OF 7 ENQUIRY PAGE : 11 OF 11

SEARCH : BD : LA PUE INTERNATIONAL INC.

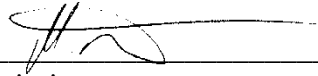
00 FILE NUMBER : 787200831 EXPIRY DATE : 30SEP 2026 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :  
REG NUM : 20220930 1548 1210 9204 REG TYP: P PPSA REG PERIOD: 04  
02 IND DOB : IND NAME:  
03 BUS NAME: LA PUE INTERNATIONAL INC  
OCN :  
04 ADDRESS : 5158 ALLENDALE AVE  
CITY : NIAGARA FALLS PROV: ON POSTAL CODE: L2G 0A5  
05 IND DOB : 13JUL1984 IND NAME: PAWEL FUGIEL  
06 BUS NAME:  
OCN :  
07 ADDRESS : 511 MACDONALD RD  
CITY : OAKVILLE PROV: ON POSTAL CODE: L6J 2B7

08 SECURED PARTY/LIEN CLAIMANT :  
NEWROADS AUTOMOTIVE GROUP LTD  
09 ADDRESS : 18100 YONGE ST  
CITY : NEWMARKET PROV: ON POSTAL CODE: L3Y 8V1  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
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YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION  
13 1965 FORD SHELBY VIN# FFR4157K  
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16 AGENT:  
17 ADDRESS :  
CITY : PROV: POSTAL CODE:  
LAST SCREEN

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

THIS IS EXHIBIT "N" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, consisting of a stylized 'H' followed by a horizontal line and a flourish.

\_\_\_\_\_  
A Commissioner, etc.

**From:** [Lisa Evans](#)  
**To:** [Pawel Fugiel](#)  
**Cc:** [Lisa Vo](#); [Bryce Lee](#); [Dawn Wise](#)  
**Subject:** The Stanley District Lands - Extension  
**Attachments:** [2023-03-28 - The Stanley District Lands - 1st Extension \(MZ Signed\).pdf](#)

---

Hi Pawel,

I am about to send you the first extension document through docusign for execution.

Please read through the agreement and sign back as soon as possible. Please note that the extension is not effective until we also receive the fee of \$61,875.

Additionally, our compliance department has advised that there are multiple compliance items that are outstanding and require items to be sent. Please provide these as soon as possible.

Required compliance:

1. La Pue International Inc. February 28<sup>th</sup>, 2022, FYE financials (Finals – draft on file) – were due by May 31<sup>st</sup>, 2022
2. La Pue International Inc. 2022 NOA, to include proof of payment if balance owing – was due by October 31<sup>st</sup>, 2022
3. Pawel Fugiel 2021 personal NOA to include proof of payment if balance owing required – was due by June 30<sup>th</sup>, 2022
4. Pawel Fugiel annual PNW – was due in September 2022
5. La Pue International Inc. Q2 and Q3 internal financials for QE August 31st and November 30th, 2022
6. 2022 Final Property tax bills and proof of payment
7. 2023 Interim Property tax bills and proof of payment
8. Compliance Certificate for Q4 (none provided since the initial funding – November 2021)

If you have any questions please reach out to myself or Bryce to discuss.

Thank you,



**Lisa Evans**

**Manager - Project Management**

**T** 519 342 1000 **X** 243

**C** 519-580-4326

[marshallzehr.com](http://marshallzehr.com) | [email](#)

Agent



MarshallZehr Group Inc. | Mortgage Administration #11955 | Mortgage Brokerage #12453

**Confidentiality Note:** This transmission (including any attachments) may contain confidential information, privileged material (including material protected by the solicitor-client or other applicable privileges), or constitute non-public information. Any use of this information by anyone other than the intended recipient is prohibited. If you have received this transmission in error, please immediately reply to the sender and delete this information from your system. Use, dissemination, distribution, or reproduction of this transmission by unintended recipients is not authorized and may be unlawful.



Monday, March 27, 2023

**PRIVATE AND CONFIDENTIAL**

La Pue International Inc.  
6158 Allendale Ave.  
Niagara Falls, ON  
**Attention: Pawel Fugiel**

Dear Pawel Fugiel

**RE:**       **Project:**               The Stanley District Lands – MZGI 424  
          **Purpose:**               First (1st) Extension  
          **Borrower:**           La Pue International Inc.  
          **Property Address:**   5528 Ferry Street, Niagara Falls ON  
          **Current Maturity Date:** April 1<sup>st</sup>, 2023

---

MarshallZehr Group Inc. (the “Lender”) is pleased to advise we have approved the following extension (the “1st Extension”) to the above noted mortgage and Commitment Letter dated November 15, 2021 and further amended on June 27<sup>th</sup>, 2022 and November 30, 2022:

The Lender will renew the mortgage on this property for a period of three months on the following conditions:

1. The new maturity date will be June 1<sup>st</sup>, 2023
2. The Borrower shall pay a fee of \$61,875 to the Lender (the “1st Extension Fee”). This 1st Extension shall not be effective until such time as the Lender has received the 1st Extension Fee in full.
3. A subsearch will be conducted by the Lender’s solicitor upon acceptance of this 1st Extension at the Borrower’s expense.

**All other terms of the Commitment Letter shall survive, unamended.**



This 1st Extension may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterpart together shall constitute one and the same instrument. A facsimile or electronic copy of an executed counterpart shall be deemed to be an original.

By signing this extension letter the Borrowers and Guarantors agree that the Lender may obtain credit and other financially related information about the Borrower(s) and the Guarantor(s), including reports from other credit grantors, consumer reporting agencies and credit bureau.

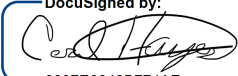
The execution of this letter does not obligate the Lender to advance any of the agreed funds unless all of the conditions to such advances have been satisfied to the satisfaction of the Lender and its solicitors.

**If you are in agreement with the above terms, please indicate such agreement by signing and forwarding to the undersigned a copy of this agreement, along with the 1st Extension Fee, by Friday March 31<sup>st</sup>, 2023.**

**This extension letter is not binding until it has been approved and signed back by an Officer of the Lender, MarshallZehr Group Inc. and the mortgage is in good standing.**

Sincerely,

**MARSHALLZEHR GROUP INC.**

DocuSigned by:  
  
Per: \_\_\_\_\_  
6697E6642B774AE...

Name: Cecil  
Title: President

I have the authority to bind the Corporation



Acknowledged and agreed at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**Borrower:**

La Pue International Inc.

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

Name:

Title:

I/we have authority to bind the Corporation

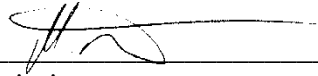
The following parties execute this Commitment in their capacities as guarantors only.

**Guarantors:**

\_\_\_\_\_/S  
Pawel Fugiel

\_\_\_\_\_  
Witness:

THIS IS EXHIBIT "O" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, appearing to be "J. Hayes", written over a horizontal line.

A Commissioner, etc.

May 4, 2023

**PERSONAL & CONFIDENTIAL**

**VIA EMAIL TO [lapueinternational@gmail.com](mailto:lapueinternational@gmail.com)  
AND REGISTERED MAIL**

La Pue International Inc.  
6158 Allendale Avenue  
Niagara Falls, ON L2G 0A5

Attention: Pawel Fugiel

**Re: *Indebtedness of La Pue International Inc. (the “Borrower”) to MarshallZehr Group Inc. (the “Lender”)***

Dear Mr. Fugiel,

As you are aware, we are lawyers for the Lender.

Pursuant to a commitment letter dated November 15, 2021, as amended by letters dated June 27, 2022 and November 30, 2022 (collectively, the “**Commitment Letter**”), the Lender agreed to make a loan in the maximum amount of \$18,000,000 (the “**Loan**”) to the Borrower subject to fulfilling the conditions in the November 30, 2022 amendment. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Commitment Letter.

The Loan is secured by, *inter alia*, a Charge/Mortgage in the principal amount of \$21,600,000 registered on lands municipally known as 5528 Ferry Street, Niagara, Falls, Ontario (the “**Property**”), and a General Security Agreement dated November 30, 2021 (collectively, the “**Security**”).

We are advised by the Lender that the Borrower is indebted to Lender in the amount of \$12,975,281.62 for principal, interest and fees as of May 3, 2023 under the Commitment Letter, as detailed in the discharge statement enclosed herewith.

We are further advised by the Lender that the Loan matured on April 1, 2023 (the “**Maturity Date**”) and has not been repaid. The Borrower is in default of its obligations under the Commitment Letter, including without limitation, as a result of its failure to repay the Loan by the Maturity Date.

On behalf of the Lender, we hereby demand payment of the Borrower’s indebtedness to the Lender. Unless payment of the aforesaid amount of \$12,975,281.62, 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 Notice of Intention to Enforce Security, which is served upon the Borrower pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (Canada).

Yours truly,  
CHAITONS LLP



Harvey Chaiton  
PARTNER  
Encls.

cc: MarshallZehr Group Inc.

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

To: **La Pue International Inc.**, an insolvent person

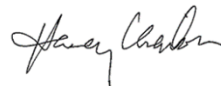
Take notice that:

1. **MarshallZehr Group Inc.**, a secured creditor, intends to enforce its security on all of the present and after-acquired property of La Pue International Inc.
2. The security that is to be enforced includes (i) a Charge/Mortgage registered on December 1, 2021 as Instrument No. SN703091 against title to the lands and premises municipally known as 5528 Ferry Street, Niagara Falls, Ontario (the “**Property**”); (ii) a Notice of Assignment of Rents-General registered on December 1, 2021 as Instrument No. SN703094 against title to the Property; and (iii) a General Security Agreement dated November 30, 2021 (collectively, the “**Security**”).
3. The total amount of indebtedness secured by the Security as at the close of business on May 3, 2023 is \$12,975,281.62, 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 4<sup>th</sup> day of May, 2023.

**MARSHALLZEHR GROUP INC.,**  
by its lawyers, Chaitons LLP

Per:



\_\_\_\_\_  
Harvey Chaiton





## DISCHARGE STATEMENT AT: May 3rd, 2023

Prepared on May 2nd, 2023

ID#: AS202305021MZGI424

**Terms:** \$12,375,000 1st mortgage land loan with a term of 13 months.  
Facility 1: \$12,375,000 Interest at Prime + 7.05% per annum (Floor Rate: 9.50%)

Interest shall accrue commencing on the date of the Initial Advance, calculated daily (365 days/year), compounded and payable monthly with interest only payments made from Borrower Draws up to the budgeted amount, after which payments shall be made from the Borrower and/or the Guarantor's own resources.

### The Stanley District Lands - MZGI 424

5528 Ferry Street, Niagara Falls, ON

	Facility 1	Total
Principal Amount Outstanding	\$ 12,375,000.00	\$ 12,375,000.00
Unpaid Monthly Interest	\$ 295,543.32	\$ 295,543.32
Unpaid Monthly Wrap Up Interest	\$ 295,543.32	\$ 295,543.32
Cost to Recover: Legal		\$ 8,694.98
Final Discharge Admin Fee		\$ 500.00
Less: Cash held in Trust		\$ -
<b>Total Balance on May 3rd, 2023</b>		<b>\$ 12,975,281.62</b>
Per Diem	\$ 9,539.10	\$ 9,539.10

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

Additional legal fees, applicable taxes and disbursements incurred by MarshallZehr Group Inc. not reflected on this statement will be confirmed on or prior to the date of repayment

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.

DocuSigned by:

*Murray Snedden*

5D7B047774B943F...

Murray Snedden, Principal Broker

Mortgage Administrator #: 11955

DocuSigned by:

*Lisa Evans*

F7F40E6466094E2...

Lisa Evans, Manager - Mortgage Operations

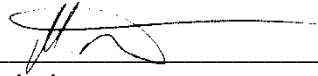
E. & O. E.

If Total Payable is not received by the Proposed Settlement Date, then a per diem rate set out above will be charged. This Statement is only valid for a period of 30 days from the Proposed Settlement Date. 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 Proposed Settlement Date 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.

#### MarshallZehr Group Inc.

FSRA Mortgage Brokerage #12453 | FSRA Mortgage Administrator #11955 | BCFSA Mortgage Broker #MB600627  
412 Albert Street, Suite 100, Waterloo ON, N2L 3V3

THIS IS EXHIBIT "P" REFERRED TO IN THE  
AFFIDAVIT OF CECIL HAYES, SWORN  
BEFORE ME THIS 7<sup>TH</sup> DAY OF JUNE, 2023

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

A Commissioner, etc.

Court File No.

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

B E T W E E N:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**LA PUE INTERNATIONAL INC.**

Respondent

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

**CONSENT**

KSV Restructuring Inc. hereby consents to act as Receiver of La Pue International Inc.

DATED this 7<sup>th</sup> day of June, 2023

KSV RESTRUCTURING INC.

Per: 

\_\_\_\_\_  
Name: Noah Goldstein, Managing Director  
I have authority to bind the corporation

MARSHALLZEHR GROUP INC.  
Applicant

-and-

LA PUE INTERNATIONAL INC.  
Respondent

Court File No.

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
PROCEEDING COMMENCED AT  
TORONTO

**CONSENT**

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

**Maya Poliak (54100A)**  
Tel: (416) 218-1161  
E-mail: maya@chaitons.com

**Lawyers for the Applicant**

**TAB 3**

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

THE HONOURABLE ) THURSDAY, THE 15<sup>th</sup>  
 )  
JUSTICE KIMMEL ) DAY OF JUNE, 2023  
 )

B E T W E E N:

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**LA PUE INTERNATIONAL INC.**

Respondent

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

**ORDER  
(Appointing Receiver)**

**THIS APPLICATION** made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of La Pue International Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day via videoconference.

**ON READING** the affidavit of Cecil Hayes sworn June 7, 2023 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and for the Respondent, and on reading the consent of KSV Restructuring Inc. to act as the Receiver,

### **SERVICE**

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

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"), including, without limitation, the real property described in **Schedule "A"** attached hereto.

### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the

relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;



- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

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

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

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

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

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

to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court

upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

**NO PROCEEDINGS AGAINST THE RECEIVER**

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

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

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

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

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

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

### **CONTINUATION OF SERVICES**

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

### **RECEIVER TO HOLD FUNDS**

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this

Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

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

information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

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

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any



gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

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

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

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

## **FUNDING OF THE RECEIVERSHIP**

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

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

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

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates

evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### **RETENTION OF COUNSEL**

25. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

### **SERVICE AND NOTICE**

26. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at [www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL “<https://www.ksvadvisory.com/experience/case/lapue>”.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any

other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

#### **GENERAL**

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

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

31. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

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

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

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

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

35. **THIS COURT ORDERS** that this order is effective from the date it is made, and it is enforceable without any need for entry and filing, provided that any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.

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## SCHEDULE "A"

**Municipal Address:** 5528 Ferry Street, Niagara Falls, Ontario

**PIN:** 64349-0285 (LT)

**Property Description:** FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS

## SCHEDULE "B"

### RECEIVER CERTIFICATE

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

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

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of La Pue International Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 15<sup>th</sup> day of June, 2023 (the "**Order**") made in an application having Court file number CV-●, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver



to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**KSV RESTRUCTURING INC.**, solely in its capacity as Receiver of the Property, and not in its personal capacity

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

Name:

Title:

MARSHALLZEHR GROUP INC.  
Applicant

-and-

LA PUE INTERNATIONAL INC.  
Respondent

Court File No. CV-23-00695238-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER  
(appointing Receiver)**

**CHAITONS LLP**

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

**Maya Poliak** (LSO #54100H)

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E-mail: maya@chaitons.com

**Laura Culleton** (LSO #82428R)

Tel: (416) 218-1128

E-mail: laurac@chaitons.com

**Lawyers for the Applicant**

**TAB 4**

Court File No. \_\_\_\_\_

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

THE HONOURABLE \_\_\_\_\_ ) ~~WEEKDAY~~ THURSDAY, THE #15<sup>th</sup>  
JUSTICE \_\_\_\_\_ KIMMEL ) DAY OF ~~MONTH~~ JUNE, ~~20YR~~ 2023

B E T W E E N:

**PLAINTIFF<sup>1</sup>**

**Plaintiff**

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**DEFENDANT**

**Defendant**

**LA PUE INTERNATIONAL INC.**

Respondent

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

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<sup>1</sup>The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

**ORDER**  
**(~~appointing~~Appointing Receiver)**

THIS ~~MOTION~~APPLICATION made by the ~~Plaintiff~~<sup>2</sup>Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing ~~[RECEIVER'S NAME]~~KSV Restructuring Inc. as receiver ~~[and manager] (in such capacities,~~ (the "Receiver") without security, of all of the assets, undertakings and properties of ~~[DEBTOR'S NAME]~~La Pue International Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day ~~at 330 University Avenue, Toronto, Ontario~~via videoconference.

ON READING the affidavit of ~~[NAME]~~Cecil Hayes sworn ~~[DATE]~~June 7, 2023 and the Exhibits thereto, and on hearing the submissions of counsel for ~~[NAMES], no one appearing for [NAME] although duly served as appears from the affidavit of service of [NAME] sworn [DATE]~~the Applicant and for the Respondent, and on reading the consent of ~~[RECEIVER'S NAME]~~KSV Restructuring Inc. to act as the Receiver,

**SERVICE**

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<sup>2</sup>~~Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".~~

1. **THIS COURT ORDERS** that the time for service of the Notice of ~~Motion~~Application and the ~~Motion~~Application Record is hereby abridged and validated<sup>3</sup> so that this ~~motion~~application is properly returnable today and hereby dispenses with further service thereof.

#### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, ~~[RECEIVER'S NAME]~~KSV Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"), including, without limitation, the real property described in Schedule "A" attached hereto.

#### **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking

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<sup>3</sup> ~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$~~\_\_\_\_\_~~100,000, provided that the aggregate consideration for all such transactions does not exceed \$~~\_\_\_\_\_~~500,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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~~<sup>4</sup>This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~



and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~for section 31 of the Ontario *Mortgages Act*, as the case may be,~~<sup>5</sup> shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply.~~

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

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<sup>5</sup> ~~If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.~~

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

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

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records,

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

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

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

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

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

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

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

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

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in

respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

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

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

### **CONTINUATION OF SERVICES**

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

other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

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

### **EMPLOYEES**

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal

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

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

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers

under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

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

### **RECEIVER'S ACCOUNTS**

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.<sup>6</sup>

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<sup>6</sup> ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".~~



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

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

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

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

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

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

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

#### RETENTION OF COUNSEL

25. THIS COURT ORDERS that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

#### **SERVICE AND NOTICE**

26. ~~25.~~ THIS COURT ORDERS that the E-Service ~~Protocool~~Guide of the Commercial List (the "~~Protocool~~Guide") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the ~~Protocool~~Guide (which can be found on the Commercial List website at ~~http://www.ontariocourts.ca/scj/practice/practice-~~

~~directions/toronto/e-service-protocol/~~[www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/](http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/)) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph ~~24~~13 of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the ~~Protocol~~Guide with the following URL ~~“@”~~“https://www.ksvadvisory.com/experience/case/lapue”.

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

28. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor’s creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in

satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

## GENERAL

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

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

31. ~~29.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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

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

35. **THIS COURT ORDERS** that this order is effective from the date it is made, and it is enforceable without any need for entry and filing, provided that any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.

**SCHEDULE "A"**

**Municipal Address:** 5528 Ferry Street, Niagara Falls, Ontario

**PIN:** 64349-0285 (LT)

**Property Description:** FIRSTLY: LOTS 46, 51, 52, 61, 62, 63, 64 & 65, PLAN 273 & PART LOTS 43, 44, 45, 47, 48, 49 & 50, PLAN 273, VILLAGE OF NIAGARA FALLS, PARTS 1 & 3 PLAN 59R17206; SECONDLY: SURFACE RIGHTS ONLY (AS IN RO718049), PART LOTS 47, 48, 49 & 50 PLAN 273, VILLAGE OF NIAGARA FALLS, PART 2 PLAN 59R17206; SUBJECT TO AN EASEMENT OVER PARTS 1 & 2 59R17292 IN FAVOUR OF PART LOTS 41 & 42 PLAN 273 AS IN RO441658 AS IN SN754703; CITY OF NIAGARA FALLS

SCHEDULE "AB"

**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that ~~{RECEIVER'S NAME}~~ KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties ~~{DEBTOR'S NAME}~~ of La Pue International Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 15<sup>th</sup> day of June, 2023 (the "**Order**") made in an action application having Court file number CV-CL-2023-00000, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

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

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

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

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, ~~20~~202.

~~[RECEIVER'S \_\_\_\_\_ NAME]~~KSV  
RESTRUCTURING INC., solely in its capacity  
as Receiver of the Property, and not in its personal  
capacity

Per: \_\_\_\_\_  
Name:  
Title:



MARSHALLZEHR GROUP INC.  
Applicant

-and-

LA PUE INTERNATIONAL INC.  
Respondent

Court File No. CV-23-00695238-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

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

**CHAITONS LLP**

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

**Maya Poliak (LSO #54100H)**

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E-mail: maya@chaitons.com

**Laura Culleton (LSO #82428R)**



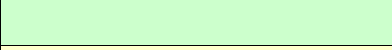
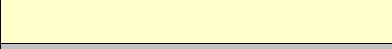

Tel: (416) 218-1128

E-mail: laurac@chaitons.com

**Lawyers for the Applicant**

Document comparison by Workshare Compare on Wednesday, June 7, 2023 3:58:52 PM

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Document 2 ID	file://C:\Users\LyndaC\Desktop\MZ_La Pue - Receivership Order.doc
Description	MZ_La Pue - Receivership Order
Rendering set	Standard

Legend:	
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Moved cell	
Split/Merged cell	
Padding cell	

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Moved to	0
Style changes	0
Format changes	0
Total changes	203

MARSHALLZEHR GROUP INC.

-and-

LA PUE INTERNATIONAL INC.

Applicant

Respondent

Court File No. CV-23-00700695-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**APPLICATION RECORD**

**CHAITONS LLP**

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