

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

B E T W E E N:

**DORR CAPITAL CORPORATION, COMMUNITY TRUST COMPANY
AND 2098535 ALBERTA LTD.**

Applicants

- and -

MILL STREET VENTURES GP LTD.

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985 c. B-3, as amended

MOTION RECORD
(Expanded Powers Motion)

August 20, 2021

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C & K Mortgage Services Inc.

TO: **SERVICE LIST**

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

B E T W E E N:

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TAB 1

Court File No. CV-21-00660056-00CL

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

B E T W E E N:

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Applicants

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MILL STREET VENTURES GP LTD.

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APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985 c. B-3, as amended

NOTICE OF MOTION

The Applicants, Dorr Capital Corporation, Community Trust Company and 2098535 Alberta Ltd., and the existing debtor-in-possession lender, C & K Mortgage Services Inc., carrying on business as Rescom Capital (“**Rescom**” and together with the Applicants, the “**Moving Parties**”), will make a Motion to Justice Pattillo in Chambers on Monday, August 23, 2021 at 10:00 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard by judicial video conference via Zoom at Toronto, Ontario, in accordance with the Changes to Commercial List operations in

light of COVID-19 and the Notice to the Profession updated April 2, 2020, issued by Chief Justice Morawetz. The Zoom conference call-in details are set out in Schedule “A” hereto.

THE MOTION IS FOR:

- (a) An Order abridging the time for service and filing of this Notice of Motion and Motion Record, validating service of the Notice of Motion and Motion Record, such that this Motion is properly returnable on August 23, 2021, and dispensing with further service thereof;
- (b) An Order, substantially in the form attached as Schedule “B” hereto, amending the Order of the Honourable Mr. Justice Pattillo dated April 20, 2021 (the “**Appointment Order**”), as extended by the Order of the Honourable Mr. Justice Pattillo dated May 14, 2021, to convert and expand the status and mandate of Rosen Goldberg Inc. (“**Rosen Goldberg**”) as non-possessory interim receiver pursuant to section 47 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3, as amended (the “**BIA**”) to a receiver and manager appointed pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”); and
- (c) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) Pursuant to the Appointment Order, Rosen Goldberg was appointed as non-possessory interim receiver of certain real property held by the Respondent, Mill Street Ventures GP Ltd. (the “**Respondent**”), municipally known as 305 Mill Street, Angus, Ontario (the “**Real Property**”);
- (b) The Respondent is the registered owner of the Real Property;
- (c) The Real Property comprises a 5.3 acre lot in Angus, Ontario;
- (d) The Respondent is in the process of developing the Real Property into a 45,600 square foot mixed-use office and retail plaza, which is being built in two phases (the “**Project**”);
- (e) Phase 1 of the Project (“**Phase 1**”) consist of four buildings totalling approximately 11,000 square feet. It will include a gas station and convenience store, as well as pad retail tenants in three other fully-leased buildings;
- (f) Phase 2 of the Project (“**Phase 2**”) is not yet fully planned. Completed improvements in respect of Phase 2 are limited to certain internal servicing, including storm-water receptors, sanitary pipes, and fire hydrants;
- (g) Construction of the four Phase 1 buildings was almost complete when in March, 2021, construction was halted after DUCA Financial Services Credit Union Ltd. (“**DUCA**”), the first-ranking secured creditor, ceased funding under its construction loan, and made demand for repayment in full of that loan;

- (h) DUCA indicated its intention to appoint a receiver over all of the assets, undertakings and properties of the Respondent, including the Real Property (the “**Property**”);
- (i) The Applicants successfully applied for the appointment of Rosen Goldberg Inc. as non-possessory interim receiver to complete construction of Phase 1 of the Project so as to maximize value of the Real Property and avoid a shortfall under their respective loans secured by mortgages against the Real Property;
- (j) The Appointment Order for the Interim Receiver was issued on April 20, 2021;
- (k) Rescom has loaned \$2,000,000 to Rosen Goldberg in its capacity as non-possessory interim receiver, which is secured by a Receiver’s Certificate and Receiver’s Borrowing Charge (the “**IR Borrowings**”);
- (l) The IR Borrowings were to be used to finance the completion of construction of Phase 1 and to service the Respondent’s obligations under the DUCA loan;
- (m) The IR Borrowings are insufficient to finance the completion of construction of Phase 1;
- (n) DUCA has indicated its intention to appoint a receiver over the Property;
- (o) Rescom has committed to lend such amount as is necessary to pay out the DUCA loan and obtain an assignment of its security conditional on and contemporaneous with the appointment of Rosen Goldberg (the current interim receiver) as receiver and manager pursuant to section 243 of the *BIA* and section 101 of the *CJA*;

- (p) Sections 47 and 243 of the BIA, section 101 of the CJA, and rules 3.02(1), 5.02, 16.08 of the *Rules of Civil Procedure*; and
- (q) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The Affidavit of Gary Gruneir sworn August 20, 2021;
- (b) The First Report of the Interim Receiver dated May 11, 2021;
- (c) The Second Report of the Interim Receiver dated June 24, 2021;
- (d) The Third Report of the Interim Receiver dated August 6, 2021
- (e) The Fourth Report of the Interim Receiver dated August 20, 2021;
- (f) The Affidavit of Robert Shiller sworn April 14, 2021; and
- (g) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

August 20, 2021

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Lawyers for the Applicants and C & K Mortgage
Services Inc.

TO: **SERVICE LIST**

SCHEDULE “A”

Conference details to join Motion via Zoom

Join Zoom Meeting

<https://blaney.zoom.us/j/86238044164?pwd=YUdNVTNMc1YzZEtBOW9UK3NkbmRsUT09>

Meeting ID: 862 3804 4164

Passcode: 091922

One tap mobile

+15873281099,,86238044164#,,,,*091922# Canada

+16473744685,,86238044164#,,,,*091922# Canada

SCHEDULE “B”

Court File No. CV-21-00660056-00CL

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

THE HONOURABLE) _____DAY, THE __
)
 JUSTICE PATTILLO) DAY OF _____, 2021
)

B E T W E E N:

**DORR CAPITAL CORPORATION, COMMUNITY TRUST COMPANY and
2098535 ALBERTA LTD.**

Applicants

- and -

MILL STREET VENTURES GP LTD.

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*
R.S.C. 1985, C. B-3, as amended

EXPANDED POWERS ORDER

THIS MOTION made jointly by: (a) Dorr Capital Corporation, Community Trust Company and 2098535 Alberta Ltd.; and (b) C & K Mortgage Services Inc., carrying on business as Rescom Capital (“**Rescom**” and together with the Applicants, the “**Moving Parties**”), was heard this day by judicial videoconference due to the COVID-19 pandemic.

ON READING the Affidavit of Gary Gruneir sworn August 20, 2021 (the “**Gruneir Affidavit**”) and the Fourth Report of Rosen Goldberg Inc. dated August 20, 2021 (the “**Fourth Report**”), and upon hearing the submissions of counsel for the Moving Parties, counsel for Rosen

Goldberg Inc. (“**Rosen Goldberg**”) and counsel for DUCA Financial Services Credit Union Ltd. (“**DUCA**”), no one else appearing, although served as set out in the affidavit of service of Chad Kopach sworn August __, 2021, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Moving Parties’ Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today, and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** the status and mandate of Rosen Goldberg as non-possessory interim receiver of certain property held by the Respondent, Mill Street Ventures GP Ltd. (the “**Respondent**”), municipally known as 305 Mill Street, Angus, Ontario and legally described in Schedule “A” hereto (the “**Real Property**”), pursuant to the Appointment Order of Justice Pattillo dated April 20, 2021 (the “**Appointment Order**”), as extended by the Order of Justice Pattillo dated May 14, 2021, is hereby varied and amended as hereinafter set out.

3. **THIS COURT ORDERS** that pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Court of Justice Act*, R.S.O. 1990, c. C.43, as amended, Rosen Goldberg Inc. is hereby appointed as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings, and properties of the Respondent acquired for, or used in relation to a business carried on by the Respondent, including the Real Property, and all proceeds thereof (collectively, the “**Property**”). For greater certainty, all references to the “Receiver” in the Appointment Order shall be deemed

to refer to the “Receiver” as defined herein and all references to “Property” in the Appointment Order shall be deemed to refer to “Property” as defined herein.

RECEIVER’S POWERS

4. **THIS COURT ORDERS** that in addition to the powers set out in paragraph 3 of the Appointment Order, 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;
- (b) to receive, preserve and protect the Property, or any part or parts thereof, including but not limited to the relocating of the Property or any part or parts thereof to safeguard it;
- (c) to manage, operate, and carry on the business of the Respondent, 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 Respondent;
- (d) to receive and collect all monies and accounts now owed or hereafter owing to the Respondent and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent;
- (e) 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 Respondent or the Receiver, and to settle or compromise any such proceedings, and

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;

- (f) 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;
- (g) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$25,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000.00; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (h) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchasers or purchasers thereof, free and clear of any liens or encumbrances affecting the Property;
- (i) to apply for any permits, licenses, 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 Respondent;

- (j) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondent, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondent; and
- (k) to exercise any shareholder, partnership, joint venture or other rights which the Respondent may have.

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 any other Person or Persons (as those terms are defined in the Appointment Order), including the Respondent, and without interference from any other Person.

5. **THIS COURT ORDERS** that paragraph 4 of the Appointment Order is hereby deleted.

PIPEDA

6. **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 Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

7. **THIS COURT ORDERS** that paragraph 9 of the Appointment Order is hereby amended and restated as follows:

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Respondent 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 Respondent or the Property are hereby stayed and suspended pending further Order of this Court.

8. **THIS COURT ORDERS** that the Commitment given by Rescom Capital to Rosen Goldberg Inc. in its capacity as proposed 'full blown' receiver to payout the amount owing to DUCA under its loan facilities to the Respondent (the "**Takeout Borrowings**"), marked as Exhibit H to the Gruneir Affidavit, and the terms of and conditions of borrowings contained therein, be and are hereby approved.

9. **THIS COURT ORDERS** that paragraph 14 of the Appointment Order is hereby amended and restated as follows:

14. **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 in respect of the Property, 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.

10. **THIS COURT ORDERS** that paragraph 18 of the Appointment Order is hereby amended and restated as follows:

18. **THIS COURT ORDERS** that 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, including the Takeout Borrowings, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

11. **THIS COURT ORDERS** that paragraph 21 of the Appointment Order is hereby amended and restated as follows:

21. **THIS COURT ORDERS** that in addition to the Takeout Borrowings, the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such further monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount of such further borrowings does not exceed \$3,000,000 (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, including the Takeout Borrowings, 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, including the existing borrowings of Rosen Goldberg Inc. in its capacity as Court-appointed interim receiver of the Real Property pursuant to the Appointment Order, 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*.

12. **THIS COURT ORDERS** that paragraph 24 of the Appointment Order is hereby amended and restated as follows:

24. **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, including the Takeout Borrowings.

13. **THIS COURT ORDERS** that paragraph 25 of the Appointment Order is hereby amended and restated as follows:

25. **THIS COURT ORDERS** that monies from time to time borrowed by the Receiver pursuant to this Order, including the Takeout Borrowings, 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.

14. **THIS COURT ORDERS** that paragraph 34 of the Appointment Order is hereby deleted.

15. **THIS COURT ORDERS** that Schedule B in the form annexed to the Appointment Order is hereby amended and restated in the form annexed hereto.

CONTINUING EFFECT OF APPOINTMENT ORDER

16. **THIS COURT ORDERS** that except as otherwise varied and amended by this Order, all other terms of the Appointment Order shall remain in full force and effect. In the event of any conflict between the provision of this Order and the provisions of the Appointment Order, the provisions of this Order shall govern.

**SCHEDULE A
THE REAL PROPERTY**

PIN: 58201-0239 LT in LRO #51

Description: PART OF LOT 21 CONCESSION 1 SUNNIDALE BEING PTS 4, 5 & 6 ON PL 51R39403; TOGETHER WITH AN EASEMENT OVER PT 2 ON PL 51R33560 AS IN SC322575; TOGETHER WITH AN EASEMENT OVER PTS 6 & 9 ON PL 51R34628 AS IN SC692338; TOGETHER WITH AN EASEMENT OVER PART LOT 21 CON 1 BEING PART 11, PLAN 51R34628 AS IN SC1630500; TOWNSHIP OF ESSA

**SCHEDULE B
RECEIVER'S CERTIFICATE**

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the receiver (the "Receiver") of the assets, undertakings and properties of Mill Street Ventures GP Ltd. (the "Respondent") acquired for, or used in relation to a business carried on by the Respondent, including the property including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ● day of ●, 2021 (the "Order") made in an application having Court file number CV-21-00660056-00-CL, 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 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.

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 ●, 2021.

Rosen Goldberg Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____
Name:
Title:

DORR CAPITAL CORPORATION et al.
Applicants

- and - **MILL STREET VENTURES GP LTD.**
Respondent

Court File No. CV-21-00660056-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT
TORONTO

EXPANDED POWERS ORDER

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Lawyers for the Applicants and for C & K Mortgage Services Inc.

DORR CAPITAL CORPORATION at al.
Applicants

-and- MILL STREET VENTURES GP LTD.
Respondent

Court File No. CV-21-00660056-00CL

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PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Lawyers for the Applicants and C & K Mortgage Services Inc.

TAB 2

Court File No. CV-21-00660056-00CL

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

BETWEEN:

**DORR CAPITAL CORPORATION, COMMUNITY TRUST COMPANY
AND 2098535 ALBERTA LTD.**

Applicants

- and -

MILL STREET VENTURES GP LTD.

Respondent

AFFIDAVIT OF GARY GRUNEIR

(sworn August 20, 2021)

I, **GARY GRUNEIR**, of the City of Markham, in the Province of Ontario, **MAKE OATH**

AND SAY:

1. I am the President and principal broker of the existing debtor-in-possession lender, C & K Mortgage Services Inc., a licensed mortgage broker which carries on business as Rescom Capital (“Rescom”), to Rosen Goldberg Inc. in its capacity as interim receiver (“Rosen Goldberg” or the “Interim Receiver”) of certain real property municipally known as 305 Mill Street, Angus, Ontario (the “Real Property”) held by the Respondent, Mill Street Ventures GP Ltd. (the “Respondent”). Rescom originated and administers the DIP Loan (hereinafter defined). As such, I have personal knowledge of the matters to which I hereinafter depose.

2. I am swearing this Affidavit in support of a joint motion by Rescom and the Applicants to convert Rosen Goldberg from Interim Receiver to a ‘full blown’ receiver appointed under section 243 of the *Bankruptcy and Insolvency Act* (the “BIA”) and section 101 of the *Courts of Justice Act*

- 2 -

(the “*CJA*”) of all of the assets, undertakings, and properties of the Respondent acquired for, or used in relation to a business carried on by the Respondent, including the Real Property, and all proceeds thereof (the “**Property**”).

A. Background

3. As reported in the Third Report of the Interim Receiver dated August 6, 2021 (the “**Third Report**”), a copy of which is attached, without appendices, as **Exhibit A**:

- (a) The Respondent is the registered owner of the Real Property. It comprises a 5.3 acre lot located on a main thoroughfare in the neighbourhood of Angus in the Township of Essa.
- (b) The land is partially improved, and is being developed into a 45,600 square foot mixed-use office and retail plaza to be built in 2 phases (the “**Project**”).
- (c) Phase 1 of the Project (“**Phase 1**”) includes the construction of an Esso gas station and convenience store, and pad retail tenants such as KFC, A&W, and Starbucks. Phase 2 of the Project (“**Phase 2**”) has not yet been fully planned.

4. Prior to the Interim Receiver’s appointment, construction of the Project was being financed by DUCA Financial Services Credit Union Ltd. (“**DUCA**”) pursuant to a construction loan secured by a first-ranking mortgage (the “**DUCA Mortgage**”) over the Real Property in the principal amount of \$17,950,661 (the “**DUCA Loan**”), and by the Applicants pursuant to loans secured by the second, third and fourth mortgages over the Real Property totaling \$6,650,000. The DUCA Mortgage was registered pursuant to a commitment letter dated December 6, 2019, as amended by amendment dated September 11, 2020. Copies of the DUCA commitment, as amended, and the DUCA Mortgage, are attached, collectively, as **Exhibit B**.

- 3 -

B. Appointment of the Interim Receiver

5. As reported in the Third Report, construction of Phase 1 halted because DUCA had ceased funding under the DUCA Mortgage, and made demand for repayment in full of the DUCA Loan. DUCA had advised that it intended to appoint a receiver over the Property.

6. As noted in the Affidavit of Robert Shiller sworn April 14, 2021 (the “**Shiller Affidavit**”), a copy of which is attached, without exhibits, as **Exhibit C**, the Applicants were concerned that the appointment of a receiver and manager by DUCA would potentially prejudice the recoveries under their loans to the Respondent secured by mortgages over the Real Property, as DUCA did not have any plan with respect to the Real Property other than realizing on its security.

7. Accordingly, the Applicants sought the appointment of the Interim Receiver to stabilize and complete the Project so as to maximize the value of the Real Property.

8. By Order of the Honourable Mr. Justice Pattillo dated April 20, 2021 (the “**Appointment Order**”), the Interim Receiver was appointed as non-possessory interim receiver of the Real Property pursuant to section 47 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). A copy of the Appointment Order is attached as **Exhibit D**.

9. Paragraph 22 of the Appointment Order approved the term sheet (the “**Term Sheet**”) between Rescom and Rosen Goldberg dated April 6, 2021. Pursuant to the Term Sheet, Rescom advanced \$2,000,000 to Rosen Goldberg (the “**DIP Loan**”).

10. The DIP Loan is secured by a Receiver’s Certificate and a Receiver’s Borrowings Charge (as defined in paragraph 21 of the Appointment Order). The DIP Loan has priority against the Property and Real Property and is subordinate only to the DUCA Mortgage but senior in priority

- 4 -

to the Applicants' security. The DIP Loan was to be used, among other things, to service the existing monthly obligations of the Respondent under the DUCA Mortgage, and to finance the completion of construction of Phase I of the Project. A copy of the Term Sheet is attached as **Exhibit E**.

C. DIP Loan is Insufficient to Complete Phase I

11. Unfortunately, as reported in the Second Report of the Interim Receiver dated June 24, 2021 (the "**Second Report**"), and in the Third Report, the Interim Receiver has indicated that the proceeds of the DIP Loan are insufficient to finance the completion of Phase I of the Project, including to complete the gas station. A copy of the Second Report is attached, without appendices, as **Exhibit F**.

12. This matter came back before Justice Pattillo on August 6, 2021 for a status report. By endorsement dated August 9, 2021, Justice Pattillo adjourned this matter to August 23, 2021 for a status report, and noted that the interim receivership is to be converted to a receivership, with the only issue to be resolved being who will bring the motion and who will be the receiver. A copy of the Endorsement of Justice Pattillo dated August 9, 2021 is attached as **Exhibit G**.

D. Commitment by Rescom to Takeout the DUCA Mortgage

13. Pursuant to a commitment (the "**Commitment**") dated July 14, 2021 and accepted by Rosen Goldberg on August 9, 2021, Rescom has agreed to advance such amount as is necessary to, among other things, pay DUCA in full the amount owing under the DUCA Loan, and establish a 9 month interest reserve in respect of the aggregate amounts advanced under the Commitment (collectively, the "**Loan**"). The Loan is an interest only loan, payable monthly, at a rate of 8.75%.

- 5 -

It is closed for three months. The term of the Loan is one year. A copy of the Commitment is attached as **Exhibit H**.

14. The Loan is to be secured by:

- (a) a Receiver's Certificate for the full amount of the Loan, together with interest and charges thereon, which shall charge the whole of the Property by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**"). The Receiver's Borrowing Charge will rank in priority to all security interests, trusts, liens, charges and encumbrances, but subordinate in priority to a charge in favour of Rosen Goldberg in its capacity as receiver and manager of the Property and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*. The DIP Loan will rank immediately subordinate in priority to the security for the Loan; and
- (b) the assignment of the security held by DUCA under the DUCA Loan, including, without limitation, the DUCA Mortgage, general assignment of rents, general security agreement over the Property, title insurance and guarantees to DUCA.

15. Based on a letter from Oren Chaimovitch of Devry Smith Fank LLP (counsel for DUCA) dated August 6, 2021, to Eric Golden of Blaney McMurtry (counsel for the Applicants and Rescom on this motion), I understand that as of August 6, 2021, the payout amount required to discharge the DUCA Mortgage was \$10,211,589.72 plus a fee of \$1,342.88 for preparing and registering the discharge of the DUCA Mortgage. Daily interest is accruing from August 6, 2021 to the date of payment at \$1.601.20. A copy of Mr. Chaimovitch's letter dated August 6, 2021 is attached as **Exhibit I**.

16. The advance of funds under the Commitment is conditional upon and shall occur contemporaneously with the appointment of Rosen Goldberg as Court-appointed receiver and manager of the Property pursuant to section 243(1) of the *BIA*, and section 101 of the *CJA*.

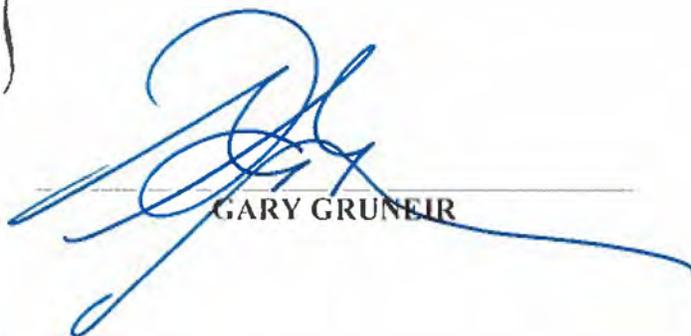
17. After DUCA is paid out, and Rescom (with input from Rosen Goldberg) is able to get a more accurate understanding of the costs associated with completing Phase I, Rescom will consider lending further money to Rosen Goldberg for that purpose.

18. The Applicants' security and the DUCA Mortgage provide for the appointment of a receiver over the Property in the event of the Respondent's default.

SWORN by **GARY GRUNEIR**, at the City of Markham, before me at the City of Toronto, in the Province of Ontario, on August 20, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
CHAD KOPACH



GARY GRUNEIR

TAB A

This is Exhibit "A" referred to in the Affidavit of Gary Gruneir sworn by Gary Gruneir at the City of Toronto, in the Province of Ontario, before me on August 20, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CHAD KOPACH



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

File No. CV-21-00660056-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

BETWEEN:

**DORR CAPITAL CORPORATION,
COMMUNITY TRUST COMPANY and
2098535 ALBERTA LTD.**

Applicants

-and-

MILL STREET VENTURES GP LTD.

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*
R.S.C.1985 c. B-3, as amended

THIRD REPORT OF ROSEN GOLDBERG INC.

August 6, 2021

I INTRODUCTION

1. By Order of the Honourable Mr. Justice Pattillo dated April 20, 2021 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed as non-possessory interim receiver (in such capacity, the “**Interim Receiver**”) of certain real property of the Respondent municipally known as 305 Mill Street, in Angus, Ontario (the “**Real Property**”) pursuant to section 47 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). A copy of the Appointment Order is attached as **Appendix “A”**.



II TERMS OF REFERENCE

2. In preparing this Third Report, the Interim Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this Third Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Interim Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Interim Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Interim Receiver expresses no opinion or other form of assurance in respect of the Information.

III PURPOSE OF THIS REPORT

3. The purpose of this Third Report is to:
 - (a) provide the Court with information on the current status of the Real Property;
 - (b) report on and seek approval of the Interim Receiver’s activities, and its proposed activities; and
 - (c) seek approval of the Interim Receiver’s interim statement of receipts and disbursements.

IV BACKGROUND

4. The Real Property comprises a 5.3 acre lot located on a main thoroughfare in the



neighbourhood of Angus in the Township of Essa.

5. The land is partially improved, and is being developed into a 45,600 square foot mixed-use office and retail plaza.
6. At the date of the Interim Receiver's appointment, the first phase of construction ("**Phase 1**"), being construction of a gas station, convenience store, and three other fully leased buildings, was nearly complete. Of the three leased buildings, one is to be occupied by Starbucks and Mucho Burrito restaurants. The other two buildings are to be occupied as standalone KFC and A&W restaurants. As of the date of the Interim Receiver's appointment, construction of Phase 1 was nearly complete, though the gas station required more work to complete than the other three buildings.
7. The second phase of construction ("**Phase 2**") is not yet fully planned, though work has commenced. Completed improvements in respect of Phase 2 are limited to certain internal servicing, including storm-water receptors, sanitary pipes, and fire hydrants. We understand planners and consultants have been retained in respect of seeking site plan approval.
8. The Interim Receiver's appointment was sought, in part, given that construction on Phase 1 had been halted because DUCA Financial Services Credit Union Ltd. ("**DUCA**"), the first-ranking secured creditor, had ceased funding under its construction loan, and made demand in for repayment in full of that loan.
9. The Interim Receiver's primary mandate in this administration is to ensure that construction of Phase 1 resumes and is completed, although the Appointment Order prohibits the Interim Receiver from taking possession of the Real Property without further Order of this Honourable Court.



10. Pursuant to the endorsement of the Honourable Mr. Justice Pattillo dated June 28, 2021, the Interim Receiver was to return to this Honourable Court on August 9, 2021, to provide a further status update at a Chambers' Appointment scheduled for 2:00 p.m.

V INTERIM RECEIVER'S ACTIVITIES TO DATE

11. Since the date of its last report dated June 24, 2021, the Interim Receiver has undertaken the following activities:
 - Reviewing and processing payment requests;
 - Dealing with contactors and other suppliers on an ongoing basis;
 - Attendance at site on several occasions;
 - Dealing with PetroMaxx Petroleum Contractors Ltd., the project manager and supervisor, on an ongoing basis in respect of all matters relating to the Phase 1 construction;
 - Dealing with water and sanitary contractors retained to complete Phase 1 connections to the municipal water and sanitary main lines;
 - Communication with construction professional retained by the Interim Receiver;
 - Communications with project engineer;
 - Ongoing consultations with legal counsel;
 - Ongoing communications with the Real Property's first and second-ranking secured lenders;
 - Ongoing communications with the Interim Receiver's lender;
 - Communicating with other stakeholders; and
 - Dealing with banking and bookkeeping.



VI PHASE 1 CONSTRUCTION

Site Services

12. As reported in the Interim Receiver's first report dated May 11, 2021 (the "**First Report**") and the second report dated June 24, 2021 (the "**Second Report**"), the installation of a sanitary pumping station and a water main were required be undertaken immediately in order to progress with the completion of Phase 1. Copies of the First Report and Second Report are attached hereto as **Appendix "B"** and **Appendix "C"**, respectively. The water main installation has been completed, however, as a result of certain delays experienced by the water main and sanitary contractor, the water main has yet to be connected to the town water supply. We understand that a new water main and sanitary contractor has been retained to complete the work that was not completed by the original contractor. It is anticipated that the water main connections and chlorination will be completed by the end of the second week of August 2021.
13. Surface works, including installing granular base, curbs, sidewalks and the asphalt surface, are in the process of being completed. It is anticipated that the work will be completed by the end of the fourth week of August 2021. This timeline is dependent on the result of engineering reviews that are currently being finalized to confirm that the civil work and services were constructed according to the approved engineering design. The delay in the completion of the surface works is attributable to delays in the installation and connection of the water main and sanitary pumping station, and engineer review of the topographical study taking longer than initially anticipated.
14. The connection/testing/commissioning of the water system and sanitary pump station, and the completion of the surface works, are required to obtain the requisite occupancy permits



for the site so that the tenants can begin operations. As noted previously, the surface works are anticipated to be completed by the end of the fourth week of August, with a target to obtain occupancy permits of the week of August 30, 2021. We are advised that the engineer from the Township of Essa has been on site, and that the required approvals can be issued in a timely manner once the works are completed to meet this schedule.

Restaurant Buildings

15. We understand that KFC, A&W and Starbucks have completed the interior work in their respective buildings and will commence commissioning of their equipment upon completion of the water and sanitary connections.
16. We further understand that Mucho Burrito has yet to commence its tenant improvements. We are advised that a matter related to an amendment to the Mucho Burrito lease has yet to be finalized, but that Mucho Burrito does intend to commence improvements once the matter is resolved.

Gas Station and Convenience Store

17. The exterior of the convenience store is mostly complete. Construction of the interior work has not yet commenced. The curbs and sidewalks must be completed. The remaining construction related to the gas station and installation of the equipment is unlikely to be completed until there is an agreement with a fuel supplier in place.

Completion of Phase 1 work

18. On the basis of the work that has been completed since the Interim Receiver's appointment, and the expected work schedule, the Interim Receiver understands that all Phase 1 work will



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

be completed by the end of the fourth week of August 2021, with occupancy permits to be issued during the week of August 30.

19. We do not believe that we have sufficient funds to complete the gas station.

VII INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

20. The Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to August 5, 2021 is attached as **Appendix "D"**.

VIII FURTHER ACTIONS OF THE INTERIM RECEIVER

21. The Interim Receiver will continue to attend at the construction site as required to monitor construction activities and deal with suppliers and other stakeholders on an ongoing basis.

IX RECOMMENDATION

22. As described above, there is still work required to complete Phase 1. For this reason, the Interim Receiver respectfully requests that the Court make an Order:

- (a) approving the Interim Receiver's actions as described in this Third Report;
- (b) approving the Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to August 5, 2021; and
- (c) for such further and other relief as counsel may advise and this Court may permit.

All of which is respectfully submitted.



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

Dated at Toronto, Ontario, this 6th day of August 2021.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED NON-POSSESSORY INTERIM RECEIVER OF
CERTAIN REAL PROPERTY OF MILL STREET VENTURES GP LTD.;
NOT IN A PERSONAL OR CORPORATE CAPACITY**

TAB B

This is Exhibit "B" referred to in the Affidavit of Gary Gruneir sworn by Gary Gruneir at the City of Toronto, in the Province of Ontario, before me on August 20, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CHAD KOPACH



Do more. Be more. Achieve more.

5255 Yonge Street, 4th Floor, Toronto, ON M2N 6P4 · 416-223-8838 · www.duca.com

December 6, 2019

Mill Street Ventures GP Ltd.
305 Mill Street
Angus, Ontario

Attention: Blake Larsen

Dear Mr. Larsen:

We are pleased to advise that DUCA Financial Services Credit Union Ltd. (the "Lender") has approved certain credit facilities in favour of Mill Street Ventures GP Ltd. (the "Borrower") for the development of a 46,503 square foot mixed use office and retail plaza together with a gas station (the "Project") on approximately 5.30 acres of vacant land municipally known as 305 Mill Street, Angus, Ontario (the "Property"), upon the terms and conditions described in this commitment letter (the "Commitment"). Upon execution, the Commitment will constitute an agreement which shall bind the Borrower, PetroMaxx Construction (BC) LLP and Maxx Properties (No. 327) Ltd. (collectively, the "Corporate Guarantors") and Blake Larsen (the "Personal Guarantor", and collectively with the Corporate Guarantors, the "Guarantors") and the Lender.

CREDIT FACILITIES

The Lender establishes the following credit facilities (collectively, the "Credit Facilities") in favour of the Borrower:

- (1) A demand non-revolving loan facility (the "Construction Facility") in the amount of \$17,000,000; and
- (2) A \$950,661 (the "LC Facility Amount") demand non-revolving letter of credit facility (the "LC Facility").

Notwithstanding compliance with the covenants and all the terms and conditions of this Commitment, the Credit Facilities are repayable **ON DEMAND**.

PURPOSE

Loans made and Letters of Credit issued under the Credit Facilities will only be used for the following respective purposes:

- (1) Construction Facility – to finance the Construction of the Project as per the Sources and Uses of Funds set out herein; and
- (2) LC Facility – to provide Letters of Credit to Governmental Authorities or for other obligations of the Borrower relating to the Construction as provided for in the Project Budget.

SOURCES AND USES OF FUNDS

Sources and Uses of Funds					
Sources	\$	%	Uses	\$	%
DUCA 1 st Mortgage	\$17,000,000	59.86%	Land Cost	\$11,772,111	41.45%
Mezz Loan (DORR Capital)	\$3,500,000	12.32%	Hard Costs	\$9,741,941	34.30%
Borrower's Equity	\$7,900,000	27.82%	Soft Costs	\$1,615,587	5.69%
			*Financing Cost	\$3,757,633	13.23%
			Development Charges	\$776,216	2.74%
			Contingency	\$736,511	2.59%
Total	\$28,400,000	100.00%	Total	\$28,400,000	100.00%

CLOSING DATE

The date of the first Advance which shall be no later than December 18, 2019 (the "Closing Date").

MATURITY DATE

The Credit Facilities shall mature and any outstanding balance shall become due and payable in full on the date (the "Maturity Date") which shall be the earlier to occur of: (1) seventeen (17) months from the Closing Date; and (2) the date on which the Lender demands repayment of the Credit Facilities.

BORROWING OPTIONS

Prime Rate Loans and Letters of Credit.

INTEREST RATE AND PAYMENTSConstruction Facility

Interest on each Prime Rate Loan shall be at a rate per annum equal to the greater of (a) 6.45%; and (b) the Prime Rate plus 2.50% per annum; calculated and payable monthly on the first day of each month, not in advance both before and after maturity, default, demand and judgment. Such interest will be calculated monthly and will accrue daily on the basis of the actual number of days elapsed and a year of 365 days. Interest will accrue from the date of disbursement of Advance monies to the Lender's solicitors. Interest shall be computed daily on overdue interest at the Interest Rate applicable to Prime Rate Loans, both before and after maturity, default, demand and judgment until paid and shall be due and payable by the Borrower to the Lender on demand. If such overdue interest and compound interest are not paid within one month from the time of default, a rest will be made and compound interest at the Interest Rate applicable to Prime Rate Loans will be payable on the aggregate amount then due, both before and after maturity, default, demand and judgment, and so on from time to time until paid. All compound interest shall be added to the Loan and secured by the Security. The Lender's Prime Rate as of the date hereof is 3.95%. The Borrower authorizes the Lender to automatically debit the Borrower's account with the Lender for all payments.

LC Facility

The Borrower shall pay a fee of 2.50% (provided that such fee shall in no event be less than \$500) of each Letter of Credit issued and subsequently upon each anniversary of the issuance thereof. The Letter of Credit rates are subject to change based on the Lender's pricing schedule in effect from time to time. If the Borrower wishes to request a Letter of Credit, the following provisions shall apply thereto:

- (1) The Borrower will execute and deliver to the Lender such usual documentation relating to the

issuance and administration of Letters of Credit as may be required by the Lender including, without limitation, an indemnity agreement. In the event of any inconsistency between the terms of such documentation and this Commitment, the terms of this Commitment will prevail.

- (2) Each Letter of Credit issued by the Lender will be in a form and on such terms as determined by the Lender in its sole and unfettered discretion.
- (3) Unless otherwise agreed by the Lender, no Letter of Credit may be issued for a period in excess of one year provided, however, that Letters of Credit may automatically renew annually.
- (4) If, at any time, a demand for payment (the amount so demanded being herein referred to as a "Relevant Amount") is made under any Letter of Credit:
 - (a) the Lender will promptly notify the Borrower of such demand;
 - (b) at or before 11:00 a.m. (Toronto time) on the date the Relevant Amount becomes payable, the Borrower shall pay to the Lender an amount in same day funds equal to the amount to be paid, together with all charges and expenses incurred by the Lender in connection with payment under the Letter of Credit; and
 - (c) the Lender will pay the Relevant Amount to the Person entitled thereto on the date upon which the Relevant Amount becomes payable under the Letter of Credit or as soon as possible thereafter.
- (5) If the Borrower fails to make payment pursuant to Subsection (4)(b), the Borrower will pay interest to the Lender on such Relevant Amount commencing on such date until paid at the rate per annum equal to Prime Rate plus 2.50%.
- (6) The Borrower hereby undertakes to indemnify and hold harmless the Lender from time to time on demand by the Lender from and against all liabilities and costs (including any costs incurred in funding any amount that falls due from the Lender under any Letter of Credit hereunder) to the extent that such liabilities or costs are not satisfied or compensated by the payment of interest on sums due pursuant to this Commitment in connection with any Letter of Credit.
- (7) The Lender will at all times be entitled, and is irrevocably authorized by the Borrower, to make any payment under a Letter of Credit for which a request or demand has been made in the required form without any further reference to the Borrower and any investigation or enquiry, need not concern itself with the propriety or validity of any claim made or purported to be made under the terms of such Letter of Credit (except as to compliance with the payment conditions of such Letter of Credit) and will be entitled to assume that any Person expressed in such Letter of Credit as being entitled to make demand or receive payments thereunder is so entitled. Accordingly, so long as a request or demand has been made as aforementioned, it will not be a defence to any demand made of the Borrower hereunder, nor will the obligations of the Borrower hereunder be impaired by the fact (if it be the case) that the Lender was or might have been justified in refusing payment, in whole or in part, of the amounts so claimed.
- (8) A certificate of the Lender as to the amounts paid by it pursuant hereto or the amount paid under any Letter of Credit will, in the absence of manifest error, be *prima facie* evidence of the existence and amount of such payment in any legal action or proceeding arising out of or in connection herewith.
- (9) If any Letter of Credit is outstanding on the Maturity Date, the Borrower will forthwith pay to the Lender an amount (the "deposit amount") equal to the undrawn face amount of the outstanding Letter of Credit, which deposit amount will be held by the Lender in an interest bearing deposit instrument for application against the indebtedness owing by the Borrower to the Lender in respect of any draw on the outstanding Letter of Credit. In the event that the Lender is not called upon to make full payment on the outstanding Letter of Credit prior to its expiry date, the deposit amount (together with interest thereon, if any), or any part thereof that has not been paid out, will, so long as

no Default then exists, be returned to the Borrower on the expiry date of the Letter of Credit.

- (10) The obligations of the Borrower with respect to Letters of Credit will be unconditional and irrevocable, and must be paid or performed strictly in accordance with the terms of this Commitment under any and all circumstances whatsoever.

At the option of the Lender, either the *Uniform Customs and Practice for documentary credits or International Standby Practices*, each published by the International Chamber of Commerce, current on the issue of each Letter of Credit will be binding on the Borrower and the Lender with respect to each such Letter of Credit. The Borrower assumes all risks of the acts or omissions of the beneficiary of each Letter of Credit with respect thereto. The determination as to whether the required documents are presented prior to the expiration of a Letter of Credit and whether such other documents are in proper and sufficient form for compliance with a Letter of Credit will be made by the Lender in its sole discretion, which determination will be conclusive and binding upon the Borrower absent manifest error. It is agreed that the Lender may honour, as complying with the terms of a Letter of Credit and this Commitment, any documents otherwise in order and signed or issued by the beneficiary thereof. Any action, inaction or omission on the part of the Lender under or in connection with any Letter of Credit or any related instrument or document, if in good faith and in conformity with such laws, regulations or commercial or banking customs as the Lender may reasonably deem to be applicable, will be binding upon the Borrower, and will not affect, impair or prevent the vesting of any of the Lender's rights or powers hereunder or the Borrower's obligation to make full reimbursement of amounts drawn under the Letter of Credit.

REPAYMENTS

The Borrower may from time to time prepay Loans outstanding under the Construction Facility, in whole or in part, without premium or penalty. Upon such prepayment, the Construction Facility shall be correspondingly permanently reduced by the amount of such prepayment.

If the Borrower, by reason of any repayment hereunder, whether mandatory or voluntary, wishes to discharge its obligation to the Lender in respect of outstanding Letters of Credit, the Borrower will deposit cash with the Lender equal to the face amount of such Letters of Credit, and the Borrower shall concurrently enter into such documentation as the Lender may reasonably require in respect thereof (which documentation shall constitute Loan Documents).

AVAILABILITY

The Construction Facility is available by way of a Prime Rate Loan with requests for Advances to be no more frequently than monthly and for amounts greater than \$250,000 subject to the Conditions Precedent for Advances set out in this Commitment. The LC Facility is available for the issuance of Letters of Credit subject to the Conditions Precedent for Advances set out in this Commitment. The Lender may cancel or restrict the availability of any unutilized portion of the Credit Facilities at any time and from time to time. The Credit Facilities are made available at the sole discretion of the Lender for the purpose of the Construction of the Project and for no other purpose without the prior written consent of the Lender.

The Lender will engage the Project Monitor to review the Plans and Specifications, approvals, permits, environmental reports, geotechnical reports, survey, contracts and all other material agreements pertinent to the development of the Project. The Project Monitor will provide a detailed Project Budget containing total Project Costs not exceeding \$28,400,000 and the Minimum Required Equity to be approved by the Lender and otherwise prepared in accordance with the Sources and Uses of Funds hereinbefore set out unless otherwise approved by the Lender. The cost of the Project Monitor shall be borne by the Borrower.

The Construction Facility will be funded by Advances to pay Project Costs. Advances will be made as recommended by the Project Monitor and approved by the Lender, on the basis of the Project Monitor verifying Costs-in-Place less Minimum Required Equity, the Sub Debt Loan accounts payable that will not be paid from the requested Advance, Interim Revenue received and utilized to fund Project Costs, Cost Overruns and Holdbacks in accordance with the Construction Act (the "Costs-in-Place Margin") subject to the unadvanced amount of the Construction Facility plus deferred costs and remaining offsetting income being equal to the Cost-to-Complete plus Holdbacks plus unpaid payables.

Holdbacks will be retained by the Lender in accordance with the Construction Act. Release of Holdbacks will be made in accordance with the Construction Act and the final release shall be approved by the Lender's legal counsel. All Cost Overruns must be funded by the Borrower from its own cash resources derived from outside the Project. Any construction liens must be fully discharged by the Borrower from its own cash resources derived from outside the Project prior to any further Advances. All Advances will be subject to an acceptable subsearch performed by the Lender's legal counsel.

SECURITY

As general and continuing security for the payment and performance of the Obligations, the following security will be granted to the Lender in form and with content satisfactory to the Lender and its solicitors:

- (1) the Charge;
- (2) a general security agreement given by the Borrower to the Lender providing a first priority security interest over all the present and future assets, property and undertaking of the Borrower located at, on, or arising from the Property;
- (3) a general assignment of the Leases and rents, revenues and profits payable thereunder made by the Borrower in favour of the Lender;
- (4) an assignment of the Borrower's insurance policies;
- (5) a cash collateral agreement executed by the Borrower pledging term deposits and /or guaranteed investment certificates if and when required by this Commitment to cash collateralize Letters of Credit;
- (6) an indemnification agreement from the Borrower in favour of the Lender in respect of any Letters of Credit issued;
- (7) a general assignment of the Material Project Agreements by the Borrower in favour of the Lender acknowledged by the counterparties as required by the Lender;
- (8) a specific assignment of the Construction Management Agreement made by the Borrower in favour of the Lender with a form of Construction Manager acknowledgement and consent (including consent to terminate without liability in the event of a default by the Borrower hereunder and enforcement by the Lender) attached;
- (9) as may be required by the Lender, an assignment of the Construction Contracts given by the Borrower to the Lender with a form of Contractor acknowledgement and consent attached as required by the Lender;
- (10) a joint and several debt service, cost overrun and completion undertaking and guarantee made by the Borrower and Guarantors in favour of the Lender;
- (11) a joint and several environmental indemnity to be provided by the Borrower and Guarantors in favour of the Lender;
- (12) the unconditional joint and several guarantee and postponement of claim by the Guarantors of all Obligations owing by the Borrower to the Lender. This guarantee and postponement of claim is in addition to the Guarantors' obligations under the environmental indemnity and debt service, cost overrun and completion undertaking and guarantee;
- (13) an agreement to be provided by the Borrower and Guarantors in favour of the Lender not to withdraw equity from the Project until the Credit Facility has been repaid in full;
- (14) standstills, subordinations, postponements and assignments of claim from any shareholder or

- stakeholder of the Borrower who is not one of the Guarantors and any other Person the Lender may designate, acting reasonably including, without limitation, the Sub Debt Lender; and
- (15) such other security as the Lender or its solicitors may reasonably require which is contemplated by this Commitment or which security more fully gives effect to the security contemplated by this Commitment.;
 - (16) a postponement of shareholder(s) and/or related party loans from the shareholder(s) and/or related parties of the Borrower, if applicable; and
 - (17) such other security as the Lender or its solicitors require, which is contemplated by this Commitment or which security more fully gives effect to the security contemplated by this Commitment.

Trustee/Beneficial Owner

If the Borrower holds the Property as nominee and bare trustee for the use, benefit and advantage of another person (the "Beneficial Owner"), the Borrower and Beneficial Owner shall grant to the Lender a trustee and beneficial owner agreement (in form and content satisfactory to the Lender and its solicitors) prior to the initial Advance, and all the covenants, agreements, rights, obligations, representations, warranties and other provisions set out in this Commitment relating to the Borrower shall apply, mutatis mutandis, to the Beneficial Owner.

CONDITIONS PRECEDENT TO THE FIRST ADVANCE

The obligation of the Lender to make the first Advance hereunder is subject to and conditional upon the prior satisfaction of the following conditions precedent:

- (1) The Lender will have received a request for the first Advance at least five (5) Business Days prior to the proposed Advance date which request shall be for an amount greater than \$250,000;
- (2) The Borrower shall be fully in compliance with all the terms and conditions of the Loan Documents;
- (3) A Material Adverse Change will not have occurred and be existing or, in the reasonable opinion of the Lender, be threatened or pending;
- (4) The Lender will have received a policy of title insurance satisfactory to the Lender;
- (5) All corporate documentation requested by the Lender and its solicitors will have been received;
- (6) the Lender shall not have received notice of the existence of any claim for lien made under the Construction Act and shall have been provided evidence satisfactory to the Lender that there are no such claims. To the extent there are any claims for lien, such liens must be discharged in their entirety by the Borrower and/or the Guarantors from their cash resources derived from outside the Project;
- (7) The Project Monitor shall have been engaged to act on behalf of the Lender throughout the duration of the Credit Facilities at the Borrower's expense;
- (8) The Lender will have completed its due diligence with respect to the Borrower, Guarantors and Project, and will have received all financial, corporate and other information requested by the Lender including receipt and satisfactory review of:
 - (a) a written status report from the Borrower and Guarantors' legal counsel with respect to any actual or threatened litigation, dispute, arbitration or other proceeding in respect of the Property, the Borrower and/or any of the Guarantors;

- (b) the personal net worth statement of the Personal Guarantor together with supporting documents and notices of assessment for 2019 and evidence that all Taxes are paid in full;
 - (c) notice to reader financial statements prepared by acceptable independent chartered accountants of the Borrower and the Corporate Guarantors for the 2019 calendar year;
 - (d) corporate tax returns of the Borrower and the Corporate Guarantors for 2019 together with evidence confirming all income taxes for such years are paid up-to-date;
 - (e) all Material Project Agreements to date;
 - (f) Leases together with an up-to-date rent roll and for a minimum of 24,911 square feet of the Project excluding the gas station with Arm's Length tenants confirming minimum annual net revenue of \$746,660 all satisfactory to the Lender;
 - (g) an updated analysis based on finalized binding offers to Lease, letters of intention to lease or Leases satisfactory to the Lender;
 - (h) the most recent realty Taxes bill and evidence of payment thereof and that all realty Taxes levied against the Property are current;
 - (i) an Appraisal with respect to the Property indicating an "as completed" value of not less than \$29,300,000 for the Project, which must be addressed to the Lender or accompanied by a letter from the Appraiser permitting the Lender to rely thereon.
 - (j) a phase 1 environmental assessment report in respect of the Property satisfactory to the Lender in its sole discretion addressed to the Lender or accompanied by a letter from the environmental consultant permitting the Lender to rely thereon;
 - (k) a geotechnical assessment and soil test / soil remediation report in respect of the Property satisfactory to the Lender in its sole discretion addressed to the Lender or accompanied by a letter from the environmental consultant permitting the Lender to rely thereon;
 - (l) copies of the Sub Debt Loan loan agreement;
 - (m) evidence satisfactory to the Lender that the Borrower's insurance is satisfactory and complies with this Commitment and in respect of which an independent insurance consultant retained by the Lender shall have provided a written report to the Lender confirming the same;
 - (n) copies of current Plans and Specifications, including, without limitation, floor plans and any current market survey materials relating to the Project;
- (9) the Lender will have received and reviewed a satisfactory report from the Project Monitor containing:
- (a) confirmation that it has reviewed and is satisfied with the Project Budget, Plans and Specifications and Construction Schedule and that the Project can be completed in accordance with the same;
 - (b) an up to date survey of the Property;
 - (c) a projected cash flow estimate for the Construction;
 - (d) verification of the reputation, qualification and capabilities of all major trades and

containing its recommendation with respect to the requirement for any Performance and Payment Bonds for major trades and suppliers (and where same have been required by the Lender, confirming the same are in form and content acceptable to the Project Monitor);

- (e) confirmation that all necessary zoning and development approvals, including all necessary Permits, have been obtained or will be issued as required pertaining to the Construction;
- (f) the site plan control agreement for the Project;
- (g) confirmation of the Project Budget of not more than \$28,400,000;
- (h) confirmation of the amount of Costs-in-Place including Land Value, Hard Costs and Soft Costs incurred on the Project to date on a line by line basis and identifying whether such costs have been incurred in accordance with the Project Budget or are Cost Overruns;
- (i) confirmation of Cost-to-Complete and Holdbacks;
- (j) confirmation that the Project Equity is not less than the Minimum Required Equity;
- (k) confirmation that the Sub Debt Loan has been fully advanced and utilized in the Project;
- (l) confirmation that any Cost Overruns that have been incurred on the Project have been funded in their entirety by the Borrower and/or the Guarantors from their own cash resources derived from outside the Project;
- (m) confirmation that 75% of the Hard Costs budget has been committed on or prior to the date of the first Advance;
- (n) confirmation that the Borrower has made all required Holdbacks with respect to the Construction completed to date in compliance with the Construction Act;
- (o) recommendation of the requested Advance amount based on the Project Monitor's verification of the Costs-in-Place Margin subject to the unadvanced amount of the Construction Facility, deferred costs and offsetting income being equal to the Cost-to-Complete plus Holdbacks plus unpaid payables; and
- (p) a certificate from a senior officer of the Borrower:
 - a. certifying the amount of Costs-in-Place incurred on the Project to date, the Cost-to-Complete and Holdbacks on a line by line basis;
 - b. certifying the payments that have been made or will be made from the proceeds of the first Advance and, where required by the Project Monitor, attaching copies of all invoices in excess of \$100,000 that will be paid from the proceeds of the first Advance;
 - c. certifying that any Cost Overruns that have been incurred on the Project have been funded by the Borrower and/or the Guarantors from their cash resources derived from outside the Project;
 - d. certifying that the Borrower has made all required Holdbacks with respect to the work completed to date in accordance with the Construction Act;
 - e. certifying the amount of Project Equity, which must be no less than the Minimum Required Equity; and

- f. certifying as to such other information and accompanied by such back-up material, as the Lender or Project Monitor may reasonably request from time to time;
- (q) certificates signed by the relevant Consultant certifying:
 - a. that all Construction to date has been completed in all material respects in accordance with the Plans and Specifications; and
 - b. such other matters as may be reasonably required by the Project Monitor (and in respect of which the Consultant is qualified to certify).
- (r) except where the Lender will be an addressee of the relevant reports, an acknowledgement from the Consultant which will be providing the Certificate of Substantial Performance in respect of the Construction Contract for the purposes of the Construction Act, that the Lender and Project Monitor will be relying on the reports and certificate provided by the Consultant and that they are entitled to do so;
- (s) a draft plan prepared by the Borrower's architect, engineer or surveyor setting forth the boundaries, area and dimensions of the Property, the location of any encroachments, easements or rights of way and the proposed location of any improvements to the Property;
- (t) evidence satisfactory to the Lender that the Borrower's insurance is satisfactory and complies with this Commitment;
- (u) copies of current Plans and Specifications, including, without limitation, floor plans and any current market survey materials relating to the Project;
- (v) all subdivision, servicing, development, site plan and similar agreements with Governmental Authorities that are required in order to ensure the completion or delivery of possession of the Project
- (w) the Material Project Agreements;
- (x) any other documents related to the Project that the Lender or Project Monitor deems necessary, including permits and development, regulatory and zoning approvals;
- (y) evidence that the Material Project Agreements relating to the Construction of the Project and the grant of necessary rights (including crane swing and shoring) by adjacent property owners, to the extent necessary, have been executed by all counterparties thereto; and
- (z) confirmation that 75% of the Hard Costs budget has been committed on the date of the first Advance;
- (10) the discharge of any existing mortgages and all other releases, discharges and postponements that are required in the discretion of the Lender (in registrable form where necessary) with respect to all Encumbrances affecting the collateral Encumbered by the Security that are not Permitted Encumbrances, if any, will have been delivered to the Lender;
- (11) all corporate documentation requested by the Lender and its solicitors will have been received;
- (12) the Lender will have received certified copies of all shareholder approvals and true copies of all regulatory governmental and other approvals, if any, required in order for the Borrower to enter into this Commitment and to perform its obligations hereunder;
- (13) the Lender will have received the payment of all fees and expenses (including the fees and

disbursements of the Lender's solicitors) payable to the Lender that are due and payable at such time;

- (14) duly executed copies of the Loan Documents and deliveries in connection therewith will have been delivered to the Lender and all such Loan Documents will have been duly registered, filed and recorded in all relevant jurisdictions where required by Applicable Law or where the Lender considers it necessary, in its sole discretion, to do so;
- (15) a currently dated letter of opinion of the Borrower's and the Guarantor's solicitors as to such matters and in such form as the Lender's solicitors may reasonably require, including with respect to usual corporate matters and enforceability, addressed to the Lender and its solicitors will have been delivered to the Lender;
- (16) the Lender shall have received a title opinion from its solicitors dated the date of the first Advance and confirming based on title insurance that: (a) the Borrower has good and marketable title to the Project, subject only to Permitted Encumbrances, and (b) the Charge constitutes a good and valid first charge on the Property, subject only to Permitted Encumbrances;
- (17) the Borrower shall have opened an account with the Lender and deposited the sum of \$1.00 into a membership share account and a one-time commercial account opening fee of \$30.00 shall have been paid, into which all Advances and Project revenues will be deposited and from which all Project Costs will be paid.
- (18) the Lender will have received identity certificates with respect to the Borrower and Guarantors in the form required by the Lender;
- (19) the Lender will have received all required identification and other due diligence materials required with respect to the Borrower to allow the Lender to comply with its obligations under all applicable anti-money laundering and anti-terrorism laws and regulations to which the Lender may be subject, including AMLA;
- (20) the Lender shall have received all other reports and deliveries required hereunder for the period prior to the date of the first Advance;
- (21) the first Advance must have occurred no later than December 18, 2019, or such later date as may be agreed to by the parties; and
- (22) the cash security in the amount of \$950,661 held in respect of letters of credit issued on behalf of the Borrower by Royal Bank of Canada shall be transferred to the Borrower's account with the Lender which amount shall be used to fund the Project and be treated as equity;

and further provided that all documents delivered pursuant the foregoing provisions hereof must be in full force and effect, and in form and substance satisfactory to the Lender and its solicitors and that the results of such due diligence will be satisfactory to the Lender in its sole discretion.

CONDITIONS PRECEDENT TO ALL SUBSEQUENT ADVANCES

The obligation of the Lender to make any subsequent Advance hereunder, whether by way of a Loan or the issuance of a Letter of Credit is subject to and conditional upon the prior satisfaction of the following additional conditions precedent:

- (1) the Lender shall have received a request for Advance at least five (5) Business Days prior to the proposed Advance date which request shall be for an amount greater than \$250,000 and not more than monthly;
- (2) the representations and warranties set out in the Loan Documents will continue to be true and correct as if made on and as of the Advance date;

- (3) the Borrower shall be fully in compliance with all the terms and conditions of the Loan Documents;
- (4) a Material Adverse Change will not have occurred and be existing;
- (5) the Lender shall not have received notice of the existence of any claim for lien made under the Construction Act and shall have been provided evidence satisfactory to the Lender that there are no such claims. To the extent there are any claims for lien, such liens must be discharged in their entirety by the Borrower and/or the Guarantors from their cash resources derived from outside the Project;
- (6) the Borrower must have delivered to the Lender all reporting required hereunder;
- (7) the Lender shall have received confirmation from its solicitors based on a subsearch of title conducted on the Advance date confirming that no Encumbrances have been registered on title to the Property since the date of the prior Advance other than Permitted Encumbrances;
- (8) prior to any Advance being utilized to fund the actual construction of the Project, the Lender shall have received evidence that the Material Project Agreements relating to the Construction of the Project and the grant of necessary rights (including crane swing and shoring) by adjacent property owners, to the extent necessary, have been executed by all counterparties thereto; and
- (9) the Lender shall have received evidence that all Permits necessary for Construction which relate to: (a) Construction in respect of which the Advance is being made, and (b) all prior Construction, are in place at the time of the Advance;
- (10) if any new Material Project Agreements have been entered into since the previous Advance, notice of such agreements shall have been given to the Lender and, if required by the Lender, specific assignments of such agreement shall be delivered to it;
- (11) all binding offers to Lease, letters of intention to lease or Leases together with an up-to-date rent roll and for a minimum of 24,911 square feet of the Project excluding the gas station with Arm's Length tenants confirming minimum annual net revenue of \$746,660;
- (12) the Lender shall have received a satisfactory report from the Project Monitor:
 - (a) confirming that the Project can be completed in accordance with the Project Budget, Plans and Specifications and Construction Schedule;
 - (b) containing an updated projected cash flow estimate for the Construction where any event has caused the previously delivered estimate to have been revised in any material manner;
 - (c) confirming that all necessary zoning and development approvals, including all necessary Permits, have been obtained or will be issued as required pertaining to each stage of Construction;
 - (d) verifying the reputation of any new major trades and containing its recommendation with respect to the requirement for any Performance and Payment Bonds to be required by the Lender in consultation with the Project Monitor for major trades and suppliers (and where the same have been required by the Lender, confirming the same are in form and content acceptable to the Project Monitor);
 - (e) verifying that all previous Advances have been applied towards the payment of Project Costs;
 - (f) recommending the requested Advance amount based on the Project Monitor's verification of the Costs-in-Place Margin subject to the unadvanced amount of the Construction Facility, deferred costs and offsetting income less Holdbacks and unpaid

payables being equal to the Cost-to-Complete;

- (g) confirming that any Cost Overruns that have been incurred on the Project have been funded in their entirety by the Borrower and/or Guarantors from their cash resources derived from outside the Project;
- (h) confirming that the Borrower has made all required Holdbacks with respect to the Construction completed to date in accordance with the Construction Act;
- (i) where the underlying conditions have been satisfied, the Certificate of Total Completion;
- (j) containing a certificate from a senior officer of the Borrower:
 - (A) certifying the amount of Costs-in-Place incurred on the Project to date, the Cost-to-Complete and Holdbacks on a line by line basis;
 - (B) certifying the payments that have been made or will be made from the proceeds of the Advance and, where required by Project Monitor, attaching copies of all invoices in excess of \$100,000 that will be paid from the proceeds of the Advance;
 - (C) certifying that all accounts payable that were to have been paid from prior Advances have been paid;
 - (D) certifying that any Cost Overruns that have been incurred on the Project have been funded in their entirety by the Borrower and/or the Guarantors from their own cash resources derived from outside the Project;
 - (E) certifying compliance with: (i) the Construction Act, including that the Borrower has made all required Holdbacks with respect to the work completed to date; and (ii) applicable legislation relating to Taxes;
 - (F) certifying the amount of Project Equity, which must be no less than: (i) the Minimum Required Equity; plus (ii) the amount of Interim Revenue received since the prior Advance; and (iii) Cost Overruns funded by the Borrower and/or Guarantor;
 - (G) certifying as to such other information and accompanied by such back-up material, as the Lender or Project Monitor may reasonably request from time to time;
 - (H) certifying that the Cost-to-Complete shall not exceed the aggregate of the unadvanced amount of the Construction Facility and offsetting income less Holdbacks and unpaid payables;
 - (I) certifying that the aggregate principal amount of all Loans under the Credit Facilities shall not exceed the lesser of (i) the authorized amount of the Credit Facilities; and (ii) the Costs-In-Place Margin;
 - (J) containing the certificates signed by the relevant Consultant (where the architect is unable to provide such certification) certifying that all Construction to date has been completed in all material respects in accordance with the Plans and Specifications, and
 - (K) such other matters as may be reasonably required and in respect of which the Consultant is qualified to certify.

- (k) Performance and Payment Bonds, if any, required by the Lender with the recommendation of the Project Monitor;
- (l) the Lender will have received payment of all fees payable to the Lender that are due and payable at such time;
- (m) the Lender shall be satisfied that after giving effect to the Advance:
 - (A) the Cost-to-Complete does not exceed the aggregate of the unadvanced amount of the Construction Facility, deferred costs and offsetting income less Holdbacks and unpaid payables;
 - (B) the aggregate principal amount of all Loans under the Construction Facility shall not exceed the lesser of (i) the authorized amount of the Construction Facility and (ii) the Costs-in-Place Margin; and
 - (C) the aggregate face amount of all Letters of Credit issued under the LC Facility shall not exceed the LC Facility Amount;
- (n) a sign shall be erected at the site, in a location not to interfere with the Borrower's leasing signage, indicating financing provided by the Lender, with the cost thereof to be borne by the Borrower; and
- (o) all other terms and conditions of the Commitment that have not been waived will have been fulfilled;

and provided further that all documents delivered pursuant to the foregoing provisions must be in full force and effect, and in form and substance satisfactory to the Lender and its solicitors.

The conditions precedent to the first Advance and to all Advances hereinbefore described are inserted for the sole benefit of the Lender and may be waived by the Lender, in whole or in part (with or without terms or conditions), in respect of any Advance without prejudicing the right of the Lender at any time to assert such conditions in respect of any subsequent Advance.

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lender as follows, and acknowledges and confirms that the Lender is relying upon such representations and warranties:

- (1) Existence and Qualification – The Borrower: (a) has been duly incorporated, amalgamated or continued, as the case may be, and is validly subsisting as a corporation under the laws of its jurisdiction of incorporation, amalgamation, or continuance, as the case may be; and (b) is duly qualified to carry on business in all jurisdictions in which it carries on its business.
- (2) Power and Authority – The Borrower has the power, authority and right (a) to enter into and deliver, and to exercise its rights and perform its obligations under the Loan Documents to which it is a party and all other instruments and agreements delivered by it pursuant to any of the Loan Documents; and (b) to own its property and carry on its business as currently conducted and as currently proposed to be conducted by it. Without limiting the foregoing, the Borrower has all necessary power and authority to own its interest in the Property and to develop and complete the Project and is duly licensed, registered and qualified to carry out such activities.
- (3) Execution, Delivery, Performance and Enforceability of Documents – The execution, delivery and performance of each of the Loan Documents to which the Borrower is a party, and every other instrument or agreement delivered by it pursuant to any Loan Document, has been duly authorized by all actions, if any, required on its part and by its directors, and each of such documents has been duly executed and delivered and constitutes a valid and legally binding

obligation of the Borrower enforceable against it in accordance with its terms subject to bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium and other similar laws of general application limiting the enforcement of creditors' rights generally and to general equitable principles.

- (4) Loan Documents Comply with Applicable Laws and Contractual Obligations – Neither the entering into nor the delivery of, and neither the consummation of the transactions contemplated in nor compliance with the terms, conditions and provisions of, the Loan Documents by the Borrower conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under or contravention of any Applicable Laws, or results or will result in the creation or imposition of any Encumbrance other than Permitted Encumbrances except in favour of the Lender upon or against the Project.
- (5) Consents Respecting Loan Documents – The Borrower has obtained, made or taken all consents, approvals, authorizations, declarations, registrations, filings, notices and other actions whatsoever required in connection with the execution and delivery by it of each of the Loan Documents to which it is a party and the consummation of the transactions contemplated in the Loan Documents.
- (6) Taxes – The Borrower has paid or made adequate provision for the payment of all Taxes levied on it or on the Property or income that are due and payable, including interest and penalties, or has accrued such amounts in its financial statements for the payment of such Taxes, and there is no material action, suit, proceeding, investigation, audit or claim now pending, or to its knowledge threatened, by any Governmental Authority regarding any Taxes that is reasonably likely to cause a Material Adverse Change nor has it agreed to waive or extend any statute of limitations with respect to the payment or collection of Taxes.
- (7) Judgments – The Borrower is not subject to any judgment, order, writ, injunction, decree or award, or to any restriction, rule or regulation that has not been stayed or of which enforcement has not been suspended and that individually or in the aggregate constitutes, or is reasonably likely to cause a Material Adverse Change.
- (8) Absence of Litigation – There are no actions, suits or proceedings pending or, to the best of the Borrower's knowledge and belief, threatened against or affecting the Borrower that are reasonably likely to cause, either separately or in the aggregate, a Material Adverse Change. The Borrower is not in default with respect to any Applicable Law in a manner or to an extent that could reasonably be expected to cause a Material Adverse Change.
- (9) Title to Property – The Borrower is the registered and beneficial owner of the Property with good and marketable title thereto, and any other real and personal property of any nature which is part of the Project, in each case free and clear of all Encumbrances except Permitted Encumbrances, and no Person has any agreement or right to acquire an interest in the Project.
- (10) Compliance with Laws – To the best of the Borrower's knowledge, it is not in default under any Applicable Law where such default could reasonably be expected to cause a Material Adverse Change. To the best of the knowledge of the Borrower, the Property is in compliance in all material respects with all Applicable Laws. Further, there are no facts known or which ought reasonably to be known, which could give rise to a notice of non-compliance to such extent with any Applicable Law.
- (11) No Default – The Borrower is not in default under any agreement, guarantee, indenture or instrument to which it is a party or by which it is bound, the breach of which could reasonably be expected to cause a Material Adverse Change.
- (12) Environmental Matters
- (a) The Property is in full compliance in all material respects with all Environmental Law; the Borrower is not aware of, nor has it received notice of any past, present or future

condition, event, activity, practice or incident that may interfere with or prevent the compliance or continued compliance of the Project or the Borrower in all respects with all Environmental Law; and the Borrower has obtained all licences, Permits and approvals in connection with the Project that are currently required under all Environmental Law and is in full compliance with the provisions of such licences, Permits and approvals.

- (b) Other than as disclosed in the environmental reports delivered by the Borrower to the Lender pursuant hereto, the Borrower is not aware that any Hazardous Substances exist on, about or within or have been used, generated, stored, transported, disposed of on, or Released from the Property other than in accordance and compliance with all Environmental Law.
- (c) The use that the Borrower has made and intends to make of the Property will not result in the use, generation, storage, transportation, accumulation, disposal, or Release of any Hazardous Substances on, in or from the Property except in accordance and compliance with all Environmental Law.
- (d) There is no action, suit or proceeding or, to its knowledge, any investigation or inquiry, before any Governmental Authority pending or, to its knowledge, threatened against the Borrower relating in any way to any Environmental Law that would or could reasonably be expected to cause a Material Adverse Change.
- (e) The Borrower has not (A) with respect to the Property, incurred any current and outstanding liability for any clean-up or remedial action under any Environmental Law with respect to current or past operations, events, activities, practices or incidents relating thereto; (B) received any outstanding written request for information by any Person under any Environmental Law with respect to the condition, use or operation of the Property; (C) received any outstanding written notice or claim under any Environmental Law with respect to any material violation of or liability under any Environmental Law or relating to the presence of Hazardous Substances on or originating from the Property, that, would or could reasonably be expected to cause a Material Adverse Change; or (D) ever been convicted of an offence or subjected to any judgment, injunction or other proceeding for non-compliance with any Environmental Law with respect to the Property or been fined or otherwise sentenced or settled such prosecution or other proceeding short of conviction for non-compliance with any Environmental Law with respect to the Property.
- (f) Copies of all material analysis and monitoring data for soil, ground water, surface water and the like and reports pertaining to any environmental assessments/audits, including any inspections, investigations and tests, relating to the Property that were obtained, are in the possession or control of, or were carried out on behalf of the Borrower have been delivered to the Lender.
- (g) Since acquiring its interest in the Property, the Borrower has maintained all environmental and operating documents and records relating to the Property substantially in the manner and for the time periods required by Environmental Law.
- (h) The Borrower has not defaulted in reporting to any applicable Governmental Authority in relation to the Property on the happening of an occurrence which it is or was required by any Environmental Law to report.

(13) Zoning, Uses and Expropriation

- (a) Except as disclosed in writing to the Lender, the Project is zoned to permit the Construction and operation of the Project.
- (b) The existing and proposed uses of the Project shall comply in all material respects with all Applicable Law.

- (c) It has not received notice of any proposed rezoning of all or any part of the Project that would be reasonably likely to cause a Material Adverse Change in respect of the Construction of the Project or otherwise.
- (d) It has not received notice of any expropriation of all or any part of the Property.
- (14) Insolvency – The Borrower (a) has not committed any act of bankruptcy; (b) is not insolvent, or has not proposed or given notice of its intention to propose a compromise or arrangement to its creditors generally; (c) has not made any petition for a receiving order in bankruptcy, made a voluntary assignment in bankruptcy, taken any proceeding with respect to any compromise or arrangement, taken any proceeding to have itself declared bankrupt or wound-up, taken any proceeding to have a receiver appointed of any part of its assets, or had any Encumbrancer take possession of its property; or (d) has not had an execution or distress become enforceable or become levied on any portion of its assets and property.
- (15) Setbacks – To the best of the knowledge of the Borrower, the location of any buildings in the Project are or will be, to the extent they have been constructed or will be constructed in accordance with the Plans and Specifications, within the boundary lines of the Project as a whole and are in compliance with all applicable setback requirements.
- (16) Full Disclosure – All information provided or to be provided to the Lender in connection with the Credit Facilities is true and correct in all material respects and none of the documentation furnished to the Lender by the Borrower, omits or will omit as of such time, a material fact necessary to make the statements contained therein not misleading in any material way, and all expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful inquiry by the Borrower and any other Person who furnished such material on its behalf.
- (17) Residency – The Borrower is not a non-resident for the purposes of Section 116 of the *Income Tax Act* (Canada).

The representations and warranties set out above survive the execution and delivery of the Loan Documents and are hereby confirmed to be repeated by the Borrower as of each Advance date.

POSITIVE COVENANTS

So long as this Commitment is in force and except as otherwise permitted by the prior written consent of the Lender, the Borrower will:

- (1) Timely Payment – Make due and timely payment of the Obligations required to be paid by it hereunder.
- (2) Conduct of Business, Maintenance of Existence, Compliance with Laws – Engage in business of the same general type as now conducted by it; carry on and conduct its business and operations in a proper, efficient and businesslike manner in accordance with good business practice; preserve, renew and keep in full force and effect its existence; and take all reasonable action to maintain all rights, privileges and franchises necessary in the normal conduct of its business and to comply in all material respects with all Material Project Agreements as applicable, Material Licences and Applicable Law.
- (3) Access to Information – Promptly provide the Lender and Project Monitor with all information reasonably requested by any of them from time to time at reasonable intervals in connection with this Commitment concerning its financial condition and the Project (including the Plans and Specifications, the Project Budget, the status of Construction, Material Project Agreements and Material Licences), and during normal business hours and from time to time at reasonable intervals upon reasonable notice, permit representatives of the Lender to inspect the Project and to examine and take extracts from its financial records, including records stored in computer data banks and computer software systems regarding the Project, and to discuss its financial condition with its senior officers and its auditors, the reasonable expense of all of which will be paid by the

Borrower.

- (4) **Obligations and Taxes** – Pay or discharge, or cause to be paid or discharged, before the same will become delinquent: (a) all Taxes imposed upon it or upon its income or profits or in respect of its business or the Project and file all tax returns in respect thereof; (b) all lawful claims for labour, materials and supplies; (c) all required payments under any of its debt; and (d) all other obligations.
- (5) **Use of Credit Facilities** – Use the proceeds of the Credit Facilities only for the purposes specified herein and not for the benefit of or on behalf of any Person other than the Borrower.
- (6) **Construction Insurance** – From the date hereof until Total Completion of the Project, the Borrower shall maintain or cause to be maintained with insurance companies acceptable to the Lender on the advice of its insurance consultant:
- (a) all risks builder's risk (including coverage against the perils of earthquake, flood, testing and commissioning Hard and Soft Costs) coverage for the full replacement cost of the Project, excluding Land Costs. Such insurance shall:
- (A) include a soft cost endorsement in an amount of not less than 100% of total recurring Soft Costs;
- (B) name the Borrower as first named insured thereunder and as additional insureds all those required to be named as additional insureds under any of the Material Project Agreements;
- (C) name the Lender as first mortgagee and first loss payee and have attached the standard Insurance Bureau of Canada mortgage clause;
- (D) provide that no cancellation or termination thereof, for any reason whatsoever (with the exception of cancellation due to non-payment of premium for which 15 days' statutory notice of cancellation may apply), shall take effect unless the insurer concerned has given the Lender not less than 30 days' prior written notice of such proposed action;
- (E) contain a waiver by the insurer or insurers of all rights of subrogation or indemnity or any other claim to which such insurer or insurers might otherwise be entitled against the Lender; and
- (F) otherwise be in such form as the Lender shall reasonably require or as required under any of the Material Project Agreements;
- (b) wrap-up liability insurance with a minimum combined single limit of liability of not less than \$10,000,000 per occurrence. Such insurance shall:
- (A) name the Borrower as first named insured and the Lender as an additional insured and name all others required to be named under any of the Material Project Agreements including architects, engineers, consultants, contractors, sub-contractors and trades of every tier as additional insureds;
- (B) provide that no cancellation or termination thereof, for any reason whatsoever (with the exception of cancellation due to non-payment of premium for which 15 days' statutory notice of cancellation may apply), shall take effect unless the insurer concerned has given the Lender no less than 30 days' prior written notice of such proposed action;
- (C) contain a waiver by the insurer of all rights of subrogation or indemnity or any other claim to which the insurer might otherwise be entitled against the Lender

and others to whom the Borrower has granted such waivers under any of the Material Project Agreements;

- (D) contain a cross-liability clause and a severability of interest clause; and
- (E) otherwise be in such form as the Lender shall reasonably require or as required under any of the Material Project Agreements.

The Borrower will provide detailed certificates of insurance for all policies required hereunder to be purchased and maintained by the Borrower in form acceptable to the Lender on the advice of its insurance consultant.

- (7) Operating Insurance – After Total Completion of the Project has been achieved, so long as the Borrower has an ownership interest in same and so long as any amounts are due hereunder, maintain or cause to be maintained all risks insurance (on a replacement cost, stated amount, no co-insurance basis), general liability insurance, business interruption insurance and such other insurance in form and in such amounts and with such deductibles as are customary in the case of owners of projects similar to the Project and in any event as are acceptable to the Lender. The Lender shall be named as first mortgagee and first loss payee or additional insured, as applicable, under such policies.
- (8) Notice of Litigation – Promptly notify the Lender on becoming aware of the occurrence of any actual or potential litigation, dispute, arbitration or other proceeding the result of which if determined adversely would be a judgment or award against the Borrower that would result in a Material Adverse Change to it, and from time to time provide the Lender with all reasonable information requested by it concerning the status of any such proceeding.
- (9) Environmental Compliance
 - (a) Operate the Property in a manner such that no material obligation, including a clean-up or remedial obligation, will arise under any Environmental Law; provided, however, that if any such claim is made or any such obligation arises, it will immediately satisfy or contest such claim or obligation at its own cost and expense, and promptly notify the Lender upon learning of (A) the existence of Hazardous Substances located on, above or below the surface of the Property or contained in the soil or water constituting such land (except those being stored, used, contained or otherwise handled in substantial compliance with Environmental Law); or (B) the occurrence of any reportable Release of Hazardous Substances into the air, land, surface water or ground water that has occurred on or from such land; or (C) any other event or occurrence relating to the Project which, in the opinion of the Borrower, is likely to give rise to a notice of non-compliance in any material respect with any Environmental Law.
 - (b) Comply, and cause any other party that is acting under its authority to comply, in all material respects with all Environmental Law (including obtaining any Material Licences or similar authorizations) relating to the Project.
 - (c) Use its reasonable commercial efforts not to cause or permit a Release of any Hazardous Substance at, on, under, or near the Project except in compliance with Environmental Law.
 - (d) Provide the Lender with an environmental site assessment/audit report of the Project, or an update of such assessment/audit report (A) upon the written request of the Lender if, in its reasonable opinion, there is a concern about the Borrower's compliance as it relates to the Project or the Project's compliance with Environmental Law, all in scope, form and content satisfactory to the Lender; (B) if such assessment/audit report has been prepared at the request of or on behalf of any Governmental Authority; or (C) if an event of non-

compliance relating to an environmental matter has occurred, and the Lender has made a written request to the Borrower for such an assessment/audit report or update, within 30 Business Days after such request, and all such assessments/audits reports or updates thereof shall be at the Borrower's expense and risk; an environmental site assessment/audit may include, for purposes hereof, any inspection, investigation, test, sampling, analysis, monitoring pertaining to air, land and water relating to the Project reasonably required under the circumstances giving rise to the request for the assessment/audit report.

- (e) Not use the Project, or permit it to be used, to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances except in compliance with all Environmental Law.
 - (f) Maintain in all material respects all environmental and operating documents and records, including, without limitation, Material Licences and orders, relating to the Project in the manner and for the time periods required by Environmental Law.
- (10) Adequate Books – Maintain adequate books, accounts and records in respect of the Project and the Borrower in accordance with GAAP consistently applied.
- (11) Material Project Agreements and Permitted Encumbrances
- (a) At all times be and remain in full compliance in all material respects with all of its covenants, agreements and obligations in and diligently enforce all its material rights under all Material Project Agreements and Permitted Encumbrances if non-compliance could lead to a Material Adverse Change. The Borrower shall not alter, amend or waive, in any material respect, any of its rights under or permit any termination or surrender of any Material Project Agreement or Permitted Encumbrance, without the prior written consent of the Lender, unless such alterations, amendments, waivers, terminations or surrenders, as applicable, reflect, in all material respects, good business practice, are in the ordinary course of business, and such material terms as a prudent owner of a similar property would accept having regard to all relevant factors at the time.
 - (b) Advise the Lender in writing of all new Material Project Agreements and Permitted Encumbrances (or any material amendments of existing Material Agreements or Permitted Encumbrances) entered into forthwith following the entering into thereof and shall deliver forthwith copies thereof to the Lender. The Borrower shall provide written notice to the Lender of any assignment made by a contracting party to a Material Project Agreement.
- (12) Access – Permit the Lender (through its agents, officers or employees), for the purpose of monitoring compliance with the covenants and obligations of the Borrower hereunder, at its risk, to visit and inspect the Property to conduct tests, measurements and surveys in relation to the Project, provided that such tests, measurements and surveys are conducted in accordance with prudent industry practice and Applicable Law and/or are required as a result of the reasonable concerns of the Lender as to non-compliance with such covenant and obligation, and to be advised as to the same by the officers, engineers and advisers of the Borrower (or such other Persons as may be appropriate), all at such reasonable times and intervals as the Lender may desire upon reasonable prior notice and in the presence of the Borrower if it so desires. Such visits, inspections, measurements, reviews and tests shall be at the cost of the Borrower, provided such expenses are reasonably incurred. Any such visit, inspection, examination, discussion or tests shall not be supervision, charge, management, control or occupation by the Lender for purposes of any environmental or other liabilities.
- (13) Consultants – Permit the Lender, and it shall have the right, to appoint the Project Monitor and an independent insurance consultant to assist the Lender with (a) reviewing and approving the insurance policies maintained by the Borrower for the Project, the Project Budget, the Construction Schedule, the Plans and Specifications and the Material Project Agreements; (b) projecting the

Cost-to-Complete and determining the Costs-in-Place Margin; (c) advising the Lender as to whether the Project has been constructed in accordance with prudent industry practice, Applicable Law, the Project Budget, the Plans and Specifications, the Material Project Agreements and the Material Licences; and (d) performing such additional functions as the Lender shall reasonably request. The Borrower shall pay all reasonable fees, costs and expenses of the Project Monitor and insurance consultant. Commencing with the start of site works on the Property, the Project Monitor shall deliver reports monthly regardless of whether an Advance is requested in such month.

- (14) Management and Control of Project - Diligently and continuously proceed with and manage the Construction of, and operate the Project in all material respects in accordance with: (a) prudent industry practice; (b) the Material Project Agreements and Material Licences; (c) the Project Budget; (d) all warranties; (e) the Plans and Specifications; (f) the Construction Schedule; and (g) all insurance policies issued in respect of the Project. Subject to Force Majeure, it shall not abandon (for a single period of 20 days or more), and shall ensure that there is no abandonment of, the Project. The Borrower shall not make any amendments to the Plans and Specifications, Material Project Agreements, Contracts or any other agreements in respect of the Project which would (i) result in a single change of \$500,000 (ii) cumulatively result in a change of \$1,000,000 and/or (iii) prejudicially affect the Security without the prior written consent of the Lender.
- (15) Construction Act - Comply with the provisions of the Construction Act, including retaining the Holdbacks required thereby. In the event that any lien is registered under the Construction Act against the Property (or notice of such lien is provided to the Lender), the Borrower shall cause such lien to be vacated or discharged within 10 days of the earlier of: (a) the date of registration thereof or the date the Borrower has received written notice thereof; and (b) the date that the Borrower has been provided written notice thereof by the Lender, with any payment thereof being made from financial resources other than the Credit Facilities. The Borrower will not release the Holdbacks until: (a) 60 days have elapsed following the publication of a certificate of substantial completion pursuant to the Construction Act; and (b) the Lender shall be satisfied that no construction liens have been registered on title to the Property as of the expiry date of such period.
- (16) HST Refunds - File on a monthly basis all returns and other documents necessary to obtain the refund of HST in respect of the Project and apply the amount of any such refund to payment of Project Costs.
- (17) "As Built" Survey - (Survey of Foundations) - As soon as practicable, and in any event not later than completion of the foundations for any buildings on the Property, provide the Lender with a survey of the foundations of the buildings on the Property prepared and certified by a land surveyor qualified to practise in Ontario confirming the boundaries, area and dimensions of the Property, the location of the improvements to the Project and the location of any encroachments, easements or rights of way.
- (18) "As Built" Survey - (Survey of Permanent Structures) - Within 120 days after Total Completion of the Project, deliver to the Lender an "As-Built" survey of the Project, prepared and certified by a land surveyor qualified to practise in Ontario which will identify, *inter alia*, the location of all encroachments, easements and rights of way affecting the Project.
- (19) Project Equity, Margin Deficiencies and Cost Overruns - Maintain Project Equity in an amount of no less than the Minimum Required Equity and fund any margin deficiencies and/or Cost Overruns on a line by line basis (after allocation of contingencies and demonstrable savings) by an additional contribution of Project Equity from resources outside the Project. Without limiting the foregoing, if at any time a Letter of Credit issued under the LC Facility is drawn upon and such amount, or any portion thereof, does not from part of the Project Budget at the time of such draw, then the Borrower shall contribute additional Project Equity in an amount equal to such drawn amount or portion, as the case may be.
- (20) Signage - Upon the request of the Lender, cause any sign to be provided by the Lender erected in

respect of the Project to contain an acknowledgement of the financing provided by the Lender, the size and format of such acknowledgement: (a) to be similar to that of other major providers of services in respect of the Project; and (b) to comply with municipal by-laws. Such sign shall be erected by the Borrower at its own cost and may be removed by the Borrower upon achievement of Total Completion.

- (21) Location of Operation Accounts - Maintain the Project Account in an account with the Lender during the term of this Commitment.
- (22) Non-Disturbance Agreement - In respect of any Lease where the Lender requests, obtain from the tenant under such Lease an attornment and non-disturbance agreement in a form acceptable to the Lender.
- (23) Acknowledgement and Assignment of Consultant Contracts and Construction Contracts- Use its commercially reasonable efforts to cause each counterparty to the Consultant Contracts and each Construction Contract to cause such counterparty to execute and deliver an acknowledgment (in the form provided by the Lender or such other form as may be acceptable to the Lender) of the assignment thereof in favour of the Lender.
- (24) Performance and Payment Bonds - Obtain and maintain all Performance and Payment Bonds required hereunder.
- (25) Building Permits - Obtain all necessary Permits to facilitate Construction in accordance with the Construction Schedule having regard to the staged Construction of the Project (it being acknowledged that Permits will be required to be delivered in respect of Construction relating to the excavation phase, in respect of the foundation phase and in respect of the above-ground phase of Construction of the Project).
- (26) Takeout Financing - The Borrower shall provide the Lender with the first opportunity to provide takeout financing for the Project including debt servicing agreements substantially in the form provided for the Credit Facilities from the Borrower and the Corporate Guarantors.
- (27) Leasing - The Borrower shall lease a minimum of 95% of the net leasable area of the Project on or before December 31, 2020 provided that in the event of a breach of this covenant, the Lender may, in its sole discretion, accept a cash reserve sufficient to compensate for the loss of rental income for the Project, as determined by the Lender in its sole discretion, from the Borrower and/or the Guarantors from their own cash resources derived from outside the Project.

NEGATIVE COVENANTS

So long as this Commitment is in force and except as otherwise permitted by the prior written consent of the Lender, the Borrower will not:

- (1) No Sale of Project - Dispose of the Project or any part thereof or interest therein except as contemplated herein, unless approved by the Lender in writing.
- (2) No Transfer of Interest in Borrower - Permit any Disposition of any interest in the Borrower without giving 30 days' prior written notice to the Lender and obtaining the Lender's prior written consent.
- (3) No Consolidation, Amalgamation - Consolidate, amalgamate or merge with any other Person, enter into any corporate reorganization or other transaction intended to effect or otherwise permit a change in its existing corporate structure, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution without the consent of the Lender in its sole and absolute discretion.
- (4) No Change of Name - Change its name without providing the Lender with 30 days' prior written notice thereof.

- (5) No Distributions – Make any Distribution until all Obligations under the Credit Facilities have been repaid in full and the Lender has no further obligation to make Advances hereunder or, in the case of the LC Facility, any outstanding Letters of Credit have been fully cash collateralized on a dollar for dollar basis.
- (6) Amendments to Material Project Agreements – Except as otherwise contemplated herein, amend, vary or alter in any material way, consent to any assignment or transfer of, or waive or surrender any of its material rights or material entitlements under any Material Project Agreement.
- (7) Amendment of Project Budget – Without the prior written consent of the Lender not to be unreasonably withheld, and the concurrence of the Project Monitor, make cumulative positive or negative changes to the Project Budget including, for greater certainty, cumulative positive or negative changes to individual line items within such Project Budget (whether or not resulting in a change to the aggregate Budgeted Project Costs) and regardless of whether such changes are within the initial contingency budget, unless:
- (a) such changes do not exceed the lesser of (A) \$500,000 in the aggregate; (B) 10% of the approved Hard Costs portion of the Project Budget; and (C) 50% of the approved Hard Costs contingency portion of the Project Budget;
 - (b) the Contingency Amount in such Project Budget continues to be reasonable and adequate to ensure Construction Completion of the Project as recommended by the Project Monitor; and
 - (c) there is no adverse effect on the overall quality or change in the scope of the applicable Project stage as a result of the changes.
- Upon any revision of a Project Budget, the Borrower will forthwith provide a copy to the Lender and its Project Monitor.
- (8) Amendment of Plans and Specifications – Revise the Plans and Specifications in any material respect, except with the consent of the Lender and its Project Monitor, such consent not to be unreasonably withheld. Upon revision of the Plans and Specifications, the Borrower will forthwith provide a copy to the Lender.
- (9) Amendment of Construction Schedule – Revise the Construction Schedule to permit completion of Construction later than that contemplated in the then current Construction Schedule, except with the consent of the Lender and its Project Monitor, acting reasonably, and provided, if required, the Borrower can demonstrate that it has contributed additional Project Equity sufficient to cover any increased Budgeted Project Costs arising in connection therewith. Upon revision of the Construction Schedule, the Borrower will forthwith provide a copy to the Lender and its Project Monitor.
- (10) Leasing – Enter into any Leases or renew, amend, terminate, forfeit or cancel any Leases unless such Leases, amendments, renewals, terminations, forfeitures or cancellations reflect in all material respects good business practice and such material terms as a prudent owner of a similar property would accept having regard to all relevant factors and the leasing practice in the market at the relevant time.
- (11) Concerning Leases Generally – Accept or require payment of rent or other monies payable by a tenant under any Lease that would result in more than one month of such rent or other monies being prepaid under such Lease other than:
- (a) prepaid rent or deposits on account of rent which represent the portion of the cost of construction of the relevant demised premises which exceeds the portion of such cost which was used as the basis for determining the basic rental otherwise payable under such Lease; or

- (b) an amount representing a bona fide pre-calculation of any amount that is required to be paid under such Lease in addition to basic rental, including amounts payable with respect to Taxes and maintenance of the Project and overage and percentage rentals; or
 - (c) lease surrender payments and security deposits made by the tenant under such Lease.
- (12) Letters of Credit - Obtain letters of credit required for the Project other than Letters of Credit issued by the Lender under the LC Facility.
- (13) No Financial Assistance - Guarantee or otherwise provide for, on a direct, indirect or contingent basis, the payment of any monies or performance of any obligations of any other Person, except as may be contemplated by the Loan Documents and other than in the ordinary course of business of the Borrower.
- (14) No Further Encumbrances - The Borrower shall not enter into any further financing of the Property or the Project and shall not further encumber the Property or the Project without the prior written consent of the Lender, which consent may be withheld in the Lender's sole discretion.

MANAGEMENT

If the management of the Project becomes unsatisfactory, in the Lender's sole opinion, the Lender may, after giving the Borrower 30 days' prior written notice to correct any such deficiency, appoint alternate management, with all costs in this regard being borne by the Borrower.

TAXES LEVIED AGAINST PROPERTY

With respect to Taxes levied against the Property: (1) the Lender may deduct from any Advance an amount sufficient to pay the Taxes which have become or will become due and payable on the date of such Advance or are unpaid at the date of such Advance; (2) the Borrower will pay all Taxes as they fall due and will provide the Lender with receipts confirming payment of same as it may require; (3) the Borrower shall, if directed by the Lender, pay to the Lender in monthly instalments on the dates on which monthly instalments on the Loans are payable hereunder, sums which in the sole opinion of the Lender will be sufficient to enable it to pay the whole amount of Taxes on or before the due date for payment thereof or, if such amount is payable in instalments, on or before the due date for payment of the first instalment thereof; (4) the Lender agrees to apply such deduction and payments to the Taxes levied against the Property so long as the Borrower is not in Default, but nothing herein contained shall obligate the Lender to apply such payments on account of Taxes more often than yearly; provided, however, that if before any sum so paid to the Lender shall have been so applied, there shall be Default by the Borrower in respect of any monthly payments on the Loan, the Lender may apply such sum in or towards payment of the principal and/or interest in default; the Borrower shall transmit to the Lender the assessment notices, tax bills and other notices affecting the imposition of Taxes forthwith upon receipt; and (5) the Lender shall allow the Borrower interest on the average monthly balance standing in the account from time to time to the credit of the Borrower for payment of Taxes, at a rate per annum and at such times as the Lender may determine in its sole discretion, and the Borrower shall be charged interest at the interest rate applicable to Prime Rate Loans on the debit balance, if any, of Taxes in the account outstanding after payment of Taxes by the Lender until such debit balance is fully repaid.

APPRAISALS AND ASSESSMENTS

All appraisals, inspections, assessments and information with respect to the Property provided to the Lender are provided only for the purpose of assisting it in determining whether to approve the Credit Facilities, and no acceptance, use of or adoption of such appraisals, inspections, assessments or information by the Lender shall be construed as any agreement by it as to the value or condition of the Property or Project. The Borrower is responsible for all appraisal and assessment fees.

RENEWAL ON MATURITY

On the Maturity Date at a time (1) when an amount remains owing under the Loan for principal, (2) the Borrower is not in default under this Commitment, and (3) the Borrower has not agreed to a renewal or extension on terms satisfactory to the Lender, the Loan shall automatically renew for a period of 30 days from such maturity date at an interest rate equal to the existing interest rate on such date plus 3.0% per annum, and the monthly payment for principal and interest shall be adjusted accordingly. The Loan shall automatically renew for additional thirty-day periods unless the Lender provides at least 15 days' notice to the Borrower of the Lender's intent not to renew prior to the end of any renewal period.

REPORTING REQUIREMENTS

For the purposes of the Lender's annual review of the Credit Facilities and Project, the Borrower and Guarantors shall provide the following statements and information (collectively the "Statements") to the Lender:

- (1) notice to reader financial statements prepared by accountants acceptable to the Lender for the Borrower and Corporate Guarantors by May 31st in each year together with copies of all tax filings and notices of assessments to confirm all taxes are paid up-to-date;
- (2) updated net worth statement for each of the Personal Guarantors together with supporting information as requested by the Lender by May 31st together with copies of notices of assessment to confirm all taxes are paid up-to-date as requested by the Lender;
- (3) current realty Taxes bill with confirmation that all required Taxes have been paid;
- (4) current insurance policy indicating the Lender as first mortgagee and as additional insured with respect to public liability insurance;
- (5) updated status report of the Construction, costs, and Interim Revenue;
- (6) updated rent roll for the Project together with copies of any new Leases; and
- (7) such other information pertinent to the Property and Project as the Lender may request.

LATE REPORTING

In the event that any of the Statements are not provided to the Lender within the time required therefor, a minimum late reporting fee of \$500 will be charged by the Lender to the Borrower for each month (or part thereof) such Statements remain undelivered. The Lender may also declare such failure to be a default under this Commitment entitling the Lender to exercise its rights and remedies consequent upon default. The Lender may request the Borrower or the Guarantors to provide the Lender with updated Statements at any time during a fiscal year of the Borrower. The failure to provide the updated Statements may be declared by the Lender to be a default under this Commitment.

ASSIGNMENT AND SYNDICATION

Neither the Borrower nor the Guarantors shall have the right to assign any of its respective rights or obligations under this Commitment or in respect of the Credit Facilities to any Person. The Borrower and the Guarantors agree that the Lender may transfer and assign, without their consent and without notice to

them, the Lender's rights and obligations under the Credit Facilities and Loan Documents to any Person. The Lender may, at any time before or after the first Advance, syndicate, securitize or grant participation interests in the Credit Facilities and Loan Documents without the consent of the Borrower and Guarantors or notice to them. The Borrower and Guarantors agree that the Lender may disclose confidential information relating to the Credit Facilities and Loan Documents, including any financial information provided by them at any time or otherwise relating to the Property and Project and any plans, drawings or other documentation or information regarding the Property and Project, to any Person in connection with any of the transactions contemplated in this paragraph.

CONSENT TO DISCLOSURE

The Borrower hereby consents (such consent to remain in force as long as the Credit Facilities are outstanding) to any Governmental Authority or other Person having information relating to HST or any other amount required to be paid by the Borrower, where the failure to pay such other amount could give rise to a claim ranking or capable of ranking in priority to the Security, releasing such information to the Lender at any time upon its request. The Borrower shall provide signed third party authorizations in support of the foregoing at any time upon the Lender's request.

LENDER'S EXPENSES AND ADMINISTRATION FEES

The Borrower shall pay all costs, charges and expenses incurred by the Lender in connection with the operation or enforcement of this Commitment or the Security, including costs of registration of financing statements or financing change statements and searches in connection therewith, periodic property inspections and Taxes verifications and other similar costs, and any fees or charges of agents or other Persons retained by the Lender for the purpose of conducting such activities on its behalf. In addition, the Borrower shall pay the administration fees in connection with the administration of the Credit Facilities by the Lender, including the provision of mortgage statements and discharges, processing late payments, and cheques or automatic debits which are dishonoured or not accepted, the amount of each such administration fee being a liquidated amount to cover administrative costs and not a penalty. If the Borrower fails to pay any such costs, charges or expenses upon demand, they will be added to the outstanding Loans and shall be secured by the Security.

COSTS AND FEES

Whether or not the transactions contemplated hereby are completed, the Borrower shall pay the legal fees and disbursements of the Lender's solicitors, and the costs incurred by the Lender or its consultants including, without limitation, in connection with the Loan Documents, including those related to fire and title insurance, appraisal and environmental reports, survey, inspection, monitoring and progress Advances and discharges. Such fees, disbursements and costs may be deducted from any Advance.

PROGRESS ADVANCE FEE

A fee of \$500 is payable on each Advance.

DISCHARGE FEE

A fee of \$1,000 is payable on the discharge of the Security.

ANNUAL REVIEW FEE

The Lender shall conduct a review of the Credit Facilities and Project each year during continuation of the Credit Facilities. The first annual review will be performed on June 30, 2020. A minimum annual review fee of \$2,500 will be charged by the Lender to the Borrower.

APPLICATION FEE

A fee of \$85,000 is acknowledged as received by the Lender. This fee is non-refundable and is earned by the Lender as compensation for costs incurred, including time expended in processing, approving and

providing this Commitment, but excluding the Costs and Fees referred to above.

COMMITMENT FEE

A fee of \$140,000 shall be payable by the Borrower which fee is earned on the date hereof and is payable on the earlier of December 18, 2019, and the date of the first Advance.

BREACH FEE

In addition to any rights of the Lender pursuant to the Security or otherwise, the Borrower shall pay to the Lender a minimum fee of \$1,000 in respect of each covenant breached by the Borrower and/or the Guarantors pursuant to the Security with the obligation to pay each such to be secured by the Security.

LENDER'S RECORDS

The Lender shall keep accounts showing the status of the Credit Facilities and records of the sums borrowed, principal and interest repayments and all other sums due under this Commitment. In the absence of manifest error, the Lender's records shall constitute conclusive evidence of the Borrower's indebtedness to the Lender hereunder.

PAYMENTS TO GOVERNMENT AUTHORITIES

As long as the Credit Facilities are outstanding, the Borrower shall pay, when due, all amounts owing to any Governmental Authority which, if unpaid, would give such authority recourse for such amounts ranking in priority to the Security.

TIME

Time is of the essence hereof.

AMENDMENT

This Commitment shall only be amended by agreement in writing executed by all the parties hereto.

WAIVER

Any failure by the Lender to exercise any rights or remedies under the Loan Documents shall not constitute a waiver thereof.

GOVERNING LAW

This Commitment shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

SURVIVAL

The terms and conditions of this Commitment shall survive the execution and registration of the Security and there shall be no merger of these provisions or conditions in the Security; provided that in the event of any conflict between the provisions of this Commitment and the Security, the provisions of this Commitment shall prevail to the extent necessary to remove such conflict. Notwithstanding the foregoing, in the event that the Security contains remedies which are in addition to the remedies set forth in this Commitment, the existence of such additional remedies in the Security shall not constitute a conflict or inconsistency with the provisions of this Commitment.

NOTICES

Any notice or demand or other written communication hereunder shall be given by facsimile, letter or by

electronic means of communication. A facsimile communication shall be received on the Business Day following its transmission. A letter shall be received when delivered to the receiving party at the address shown on page 1 hereof. An electronic communication shall be received on the day of transmittal if a Business Day and before 5:00 p.m. or, if not, on the next Business Day. Each party shall be bound by any notice given as provided hereunder and entitled to act in accordance therewith.

INTERPRETATION

In this Commitment (1) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; (2) the word "including" shall mean "including, without limitation,"; (3) the word "will" shall be construed to have the same meaning and effect as the word "shall"; (4) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto; (5) any reference to this Commitment, the Security or other concomitant agreement or instrument shall include all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto from time to time; (6) any reference to the Lender, Borrower, Guarantors and any other Person shall include their respective heirs, estate trustees, legal representatives, successors and assigns; and reference to a "corporation" shall include a company or other form of body corporate; (7) all dollar amounts are expressed in Canadian dollars; (8) the division of this Commitment into separate sections and the insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this Commitment; (9) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights; and (10) if more than one Person is named as, or otherwise becomes liable for or assumes the obligations and liabilities of the Borrower or Guarantors, then the obligations and liabilities of all such Persons shall be joint and several, unless otherwise provided herein. This Commitment is intended to supplement and not derogate from the Security or any other Loan Document.

ANNOUNCEMENTS

The Borrower irrevocably acknowledges and agrees that, at any time following the Closing Date, the Lender may announce the closing of the transaction and include details of the transaction in its external public communications, which communications may (a) disclose the Borrower's name, the amount and purpose of the Credit Facilities, the Closing Date and any other non-confidential facts related to the relationship between the parties; and (b) be made in any and all media or formats now or hereafter known or developed.

ADDITIONAL LOAN TERMS

The definitions attached as Schedule "A" to this Commitment shall form a part hereof as if incorporated herein.

LENDER APPROVED SOLICITORS

Philip Taylor
Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario
416 218 1125

[The remainder of this page is intentionally blank. Signature page follows.]

ACCEPTANCE:

The terms of this Commitment are open for acceptance by the Borrower and Guarantors by executing the original hereof where indicated below and delivering it to the Lender's head office at 5255 Yonge Street, 4th Floor, Toronto, Ontario M2N 6P4, on or before 5:00 p.m. on December 10, 2019, after which date and time this Commitment shall lapse and become null and void.

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

dh
Per: *Faisal Hoque*
Name: Faisal Hoque
Title: Senior Account Manager Commercial Finance

GA Per: *Riz Ahmad*
Name: Riz Ahmad
Title: Chief Risk Officer

Address for Service:

5255 Yonge Street, 4th Floor
Toronto, ON
M2N 6P4
Email: commercialadmin@duca.com

ACCEPTED on: December ____, 2019.

MILL STREET VENTURES GP LTD.

Per: *Blake Lockart*
Name: *Blake Lockart*
Title: *PRESIDENT*

I have authority to bind the Corporation.

Address for Service:
Telephone No.
Email: _____

[Handwritten signature]

The undersigned Guarantors have read, understand and accept the terms and conditions of this Commitment.

ACCEPTED on: December ____, 2019.

PETROMAXX CONSTRUCTION (BC) LLP,

Per:  Blake Larsen
Name: Blake Larsen
Title: President

I have authority to bind the Partnership

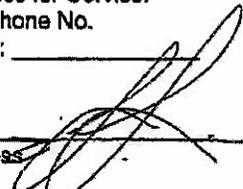
Address for Service:
Telephone No.
Email: _____

MAXX PROPERTIES (NO. 327) LTD.

Per:  Blake Larsen
Name: Blake Larsen
Title: President

I have authority to bind the Corporation.

Address for Service:
Telephone No.
Email: _____

Witness: 


Blake Larsen

Address for Service:
Telephone No.
Email: _____

SCHEDULE "A"
ADDITIONAL LOAN TERMS

DEFINITIONS

For the purpose of this Commitment, the following terms and phrases shall have the following meanings:

- (1) "Advance" means any advance hereunder by way of a Loan or the issuance of a Letter of Credit.
- (2) "AMLA" means the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada).
- (3) "Applicable Law" means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgment, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person, in each case whether or not having the force of law.
- (4) "Appraisal" means a report prepared by an Appraiser who will be engaged based on a mandate letter, and containing assumptions acceptable to the Lender.
- (5) "Appraiser" means an Accredited Appraiser Canadian Institute (AACI) designated real estate appraiser acceptable to the Lender.
- (6) "Arm's Length" has the meaning ascribed to such term as set out in section 251 of the Income Tax Act (Canada).
- (7) "Borrower" means Mill Street Ventures GP Ltd. and includes any beneficial owner of the Property.
- (8) "Budgeted Project Costs" means the costs associated with acquisition of the Property and all budgeted Hard Costs and Soft Costs described as a line item in the Project Budget, including any Contingency Amount of budgeted Hard Costs and Soft Costs reviewed by the Project Monitor and approved by the Lender.
- (9) "Business Day" means any day other than a Saturday, Sunday or any statutory or civic holiday observed in the Province of Ontario.
- (10) "Certificate of Total Completion" means a certificate to be issued by the Project Monitor, certifying that all required work under each Construction Contract in respect of the Project has been fully completed (pursuant to the Form 5 Declaration of Last Supply under subsection 31 (5) of the Construction Act obtained by the Project Monitor from each Contractor or the publication of a certificate of substantial performance under the Construction Act), and accompanied by a certificate or report issued by each of the major Consultants involved in the Construction of the Project confirming that the Construction of the Project that falls within the purview of its control, supervision or responsibility has been completed in accordance with the Ontario Building Code and the applicable zoning and building by-laws of the Town of Angus, in substantial conformity with the approved Plans and Specifications and related Material Project Agreements and certificates of substantial performance pursuant to the Construction Act have been published as required by such Act.
- (11) "Charge" means a collateral charge in the principal amount of \$17,950,661 to be granted by the Borrower in favour of the Lender constituting a first charge on the Property and granting a first priority security interest over all present and future personal property of the Borrower related to the Project, including plans, contracts, drawings, agreements, permits, approvals, equipment,

receivables, inventory, intellectual property and which shall contain an assignment of property insurance proceeds.

- (12) **"Construction"** means the design and construction of the Project in accordance with the Plans and Specifications.
- (13) **"Construction Completion"** means the date on which:
- (a) Construction has been completed to the standard required for delivery under the related Leases;
 - (b) the Borrower has received all relevant occupancy permits and passed inspections required by Governmental Authorities.
- (14) **"Construction Contracts"** means all contracts, subcontracts and agreements entered into by or on behalf of the Borrower relating to the Construction, including contracts, subcontracts and agreements relating to the supply of materials or services to or for the Project.
- (15) **"Construction Act"** means the *Construction Act* (Ontario).
- (16) **"Construction Management Agreement"** means the construction management agreement made between the Construction Manager and Borrower, as the same may be modified, amended or restated as permitted by the Lender.
- (17) **"Construction Manager"** means the manager appointed by the Borrower under the Construction Management Agreement and approved by the Lender.
- (18) **"Construction Schedule"** means the construction schedule provided to and approved by the Lender and its Project Monitor, as it may be amended from time to time with the consent of the Lender.
- (19) **"Consultant Contracts"** means the contracts entered into by or on behalf of the Borrower and each of the Consultants.
- (20) **"Consultants"** means, as applicable, the architect, mechanical and electrical consultant, engineer, geotechnical and environmental engineer and other consultants retained by or on behalf of the Borrower in connection with the Construction, as approved by the Lender.
- (21) **"Contingency Amount"** means, with respect to the Project Budget, the amount, if any, of any contingency provided in respect of the calculation of Project Costs.
- (22) **"Contractors"** means the contractors, sub-contractors and suppliers retained by or on behalf of the Borrower in connection with the Construction of the Project and **"Contractor"** means any one of the Contractors.
- (23) **"Cost Overruns"** means the excess of the current Project Budget over the initial Project Budget.
- (24) **"Costs-In-Place"** means Land Costs, Hard Costs and Soft Costs incurred at any time.
- (25) **"Costs-in-Place Margin"** has the meaning ascribed thereto in the section of the Commitment headed "Availability".
- (26) **"Cost-to-Complete"** means, at any given date, that amount calculated by the Project Monitor after consulting with the Borrower and approved by the Lender, which is the amount of all Project Costs not then incurred.

- (27) **"Credit Facilities"** means the Construction Facility and the LC Facility and "Credit Facility" means any one of them.
- (28) **"Default"** means any non-compliance by the Borrower or Guarantors with the covenants, agreements, terms and conditions set out in the Loan Documents.
- (29) **"Disposition"** means, with respect to a Person, any sale, assignment, transfer, conveyance, lease, license or other disposition of any nature or kind whatsoever of any property or of any right, title or interest in or to any property, and the verb **"Dispose"** has a corresponding meaning.
- (30) **"Distribution"** means:
- (a) any payment, declaration of dividend or other distribution, whether in cash or property to any holder of shares, limited partnership units or other equity interests of any class of such Person; or
 - (b) any repurchase, redemption, retraction or other retirement or purchase for cancellation of shares of such Person, or of any options, warrants or other rights to acquire any of such shares,
- and the verb **"Distribute"** has a corresponding meaning.
- (31) **"Encumbrance"** means, with respect to any Person, any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, hypothecation or security interest granted or permitted by such Person or arising by operation of law, in respect of any of such Person's property, or any consignment by way of security or capital lease (or a lease that should be treated as such) of property by such Person as consignee or lessee, as the case may be, or any other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or other obligation, and **"Encumbrances"**, **"Encumbrancer"**, **"Encumber"** and **"Encumbered"** have corresponding meanings.
- (32) **"Environmental Law"** means any Applicable Law relating to the environment, including those pertaining to:
- (a) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or Release, or the threat of the same of Hazardous Substances; and
 - (b) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handing and the like of Hazardous Substances, including those pertaining to occupational health and safety.
- (33) **"Force Majeure"** means any of the following events which prevents or materially impairs the Construction or operation of the Project and is not caused by and is beyond the reasonable control of the Borrower: acts of God, floods, earthquakes, tidal waves, hurricanes, windstorms, severe weather conditions, lightning, fire, wars (whether declared or not), riots, insurrections, rebellions, civil commotions, sabotage, partial or entire failure of utilities, strikes, walkouts or other labour disruptions, delays in transportation, accidents, shortages of and inability to procure labour, materials and supplies (after all commercially reasonable efforts have been made by the Borrower to obtain replacement for such labour, materials and supplies) or orders, legislation, regulations and directives of any Governmental Authorities. For greater certainty, lack of funds, the state of the market or any wilful or negligent act or omission on the part of the Borrower does not constitute Force Majeure.
- (34) **"GAAP"** means those accounting principles that are from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute.

- (35) **"Governmental Authority"** means any federal, provincial, municipal or other form of government or any political subdivision or agency thereof, any body or authority exercising any functions of government, and any court;
- (36) **"Hard Costs"** means amounts expended or to be expended for work, services or materials done, performed, placed or furnished in connection with the Construction of the Project, all as more particularly set out in the Project Budget (for greater certainty, Hard Costs shall not include amounts payable pursuant to the terms of the Construction Contracts).
- (37) **"Hazardous Substance"** means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to any Environmental Law, including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law.
- (38) **"Holdback"** means any amount required to be retained by or on behalf of the Borrower in respect of the value of work, services and materials actually done, performed, placed or furnished on or in the Project in accordance with the Construction Act.
- (39) **"HST"** means the harmonized sales tax under the *Excise Tax Act* (Canada).
- (40) **"Interim Revenue"** means proceeds of sale, recovery of expenses or any other Project cash flow received or anticipated while any availability under the Credit Facilities exists or any Obligations remain outstanding under the Loan and Loan Documents recommended by the Project Monitor and approved by the Lender.
- (41) **"Land Costs"** means the purchase price of the land being \$11,772,111 plus associated costs.
- (42) **"Lease"** means any lease, sublease, agreement to lease, accepted binding offer to lease, licence or right of occupation granted from time to time by or on behalf of the Borrower entitling the lessee, sublessee or grantee thereunder to use or occupy all or any part of the Project.
- (43) **"Letter of Credit"** means a standby letter of credit, commercial or letter of guarantee, as applicable, issued by the Lender under the LC Facility at the request and for the account of the Borrower under this Commitment.
- (44) **"Loan"** means any extension of credit by the Lender under this Commitment, except for any Letter of Credit.
- (45) **"Loan Documents"** means (1) this Commitment; (2) the Security; and (3) all present and future agreements, documents, certificates and instruments delivered by the Borrower or Guarantors to the Lender pursuant to or in respect of this Commitment or the Security, in each case as the same may from time to time be amended, and **"Loan Document"** means any one of the Loan Documents.
- (46) **"Material Adverse Change"** means any event or occurrence which, when considered individually or together with other events or occurrences, has a material adverse effect on (1) the business, assets, liabilities, operations, results of operations, condition (financial or other) or prospects of the Borrower, taken as a whole; (2) the Construction and/or operation of the Project; or (3) the ability of the Borrower to perform its Obligations under the Loan Documents in all material respects.
- (47) **"Material Licences"** means all licences, Permits or approvals issued by any Governmental Authority, or any applicable stock exchange or securities commission, to the Borrower, and which are at any time on or after the date of this Commitment,
- (a) necessary or material to the business and operations of the Project (including the Construction of the Project), the breach or default of which would result in a Material Adverse Change, other than those not required or able to be obtained until a later stage

of Construction or until Total Completion, provided those not obtained may be reasonably expected to be received in the ordinary course of business prior to the date when required to complete the transactions provided for in the Material Project Agreements and to construct and operate the Project; or

- (b) designated by the Lender as a Material Licence with respect to the Project provided that the Lender has notified the Borrower of such designation.

(48) **"Material Project Agreements"** means:

- (a) the Construction Management Agreement;
- (b) the Consultant Contracts;
- (c) the Construction Contracts;
- (d) each other operating contract with respect to the Project having a term more than one year and which contemplates payments in excess of \$500,000 per annum;
- (e) any insurance trust agreement;
- (f) any shared facilities and/or reciprocal easement agreements; and
- (g) the Plans and Specifications and all planning approvals, permits, licences, development agreements, site plan agreements, record of site condition and other material contracts with respect to the Project designated as Material Project Agreements by the Lender from time to time, provided that the Lender has notified the Borrower of such designation.

(49) **"Minimum Required Equity"** means an amount of Project Equity equal to the sum of:

- (a) \$7,900,000; and
- (b) Cost Overruns funded by the Borrower and/or Guarantor.

(50) **"Obligations"** means all obligations of the Borrower to the Lender under or in connection with the Loan Documents, including all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Lender in any currency or remaining unpaid by the Borrower to the Lender under or in connection with this Commitment or the other Loan Documents whether arising from dealings between the Lender and the Borrower, or from any other dealings or proceedings by which the Lender may be or become in any manner whatsoever a creditor or obligee of the Borrower or any of them pursuant to this Commitment or the Loan Documents, and wherever incurred, and whether incurred by the Borrower alone or with another or others and whether as principal or surety, and all interest, fees, legal and other costs, charges and expenses relating thereto.

(51) **"Performance and Payment Bonds"** means labour and material or performance bonds as may be required by the Lender in consultation with the Project Monitor (in each case, up to 50% of the amount of the relevant Construction Contract) issued by a surety acceptable to the Lender relating to all or a portion of the Construction, such bonds to be in customary form typically utilized within the construction industry and otherwise acceptable to the Lender (which bonds shall contain dual obligee riders in favour of the Lender) and in such amount as may be required hereunder.

(52) **"Permits"** means all permits, consents, orders, waivers, applications, authorizations, licences, certificates, approvals, registrations, franchises, rights, privileges and exemptions or the like issued or granted by any Governmental Authority or by any third party with respect to the Project (including any Permits relating to Environmental Laws).

(53) "Permitted Encumbrances" means, with respect to the Property, the following:

- (a) liens for Taxes, rates, assessments or other governmental charges or levies not yet due, or for which instalments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person, provided that, if the aggregate amount being contested is in excess of \$100,000, the Borrower shall have deposited with the Lender collateral satisfactory to the Lender to secure the payment of such Taxes and assessments.
- (b) undetermined or inchoate liens, rights of distress and charges incidental to construction, maintenance or current operations that have not at such time been filed or exercised and of which the Lender has not been given notice, or that relate to obligations not due or payable, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;
- (c) reservations, limitations, provisos and conditions expressed in any original grant from the Crown or other grants of real or immovable property, or interests therein, that do not materially affect the use of the affected land for the purpose for which it is used by that Person;
- (d) permits, reservations, covenants, servitudes, right of access or user licences, easements, rights of way and rights in the nature of easements (including licences, easements, rights of way and rights in the nature of easements for railways, sidewalks, public ways, sewers, drains, gas and oil pipelines, steam and water mains or electric light and power, or telephone, telecommunication, television and telegraph conduits, poles, wires and cables) that do not materially impair the use of the affected land for the purpose for which it is used by that Person, or in respect of which satisfactory arrangements have been made for relocation so that such use will not in the aggregate, be materially and adversely impaired, or which that Person is bound to enter into pursuant to any agreement with a Governmental Authority or a counterparty to a Material Project Agreement entered into in connection with the development of the Project;
- (e) title defects, irregularities or other matters relating to title that are of a minor nature and that in the aggregate do not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (f) the right reserved to or vested in any Governmental Authority by the terms of any lease, licence, franchise, grant or permit acquired by that Person or by any statutory provision to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (g) the Encumbrance resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workers' compensation, employment insurance, surety or appeal bonds, costs of litigation when required by law, liens and claims incidental to current construction, mechanics', warehousemen's, carriers' and other similar liens, and public, statutory and other like obligations incurred in the ordinary course of business;
- (h) security given to a public utility or any Governmental Authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of its business;
- (i) the Encumbrance created by a judgment of a court of competent jurisdiction, or claim (excluding claims pursuant to the Construction Act) filed, against the Borrower as long as the judgment is being contested diligently and in good faith by appropriate proceedings by that Person, provided that if such judgment or claim is in the aggregate greater than \$250,000, the Borrower or Guarantors shall have either (A) in the case of any such

judgment or claim, if acceptable to the Lender, deposited with the Lender collateral satisfactory to the Lender to secure the payment of such judgment or claim; or (B) posted a payment bond, or made payment into court of such amount as is necessary to remove such Encumbrance;

- (j) the Security;
 - (k) the Charge;
 - (l) encroachments by the Project or structures thereon over neighbouring lands (including public streets) and minor encroachments by neighbouring lands or structures thereon over the Property, so long as, in the former case, there are written agreements permitting such encroachments;
 - (m) subdivision, development, servicing and site plan agreements, undertakings and agreements made pursuant to applicable planning and development legislation, entered into with or made in favour of any Governmental Authority, or public or private utility relating to the Property;
 - (n) Leases relating to the Property that have been approved by the Lender or entered into in accordance with this Commitment and notices of them;
 - (o) all municipal by-laws and regulations and other municipal land use instruments, including official plans, zoning and building by-laws, restrictive covenants and other land use limitations, public or private, and other restrictions as to the use of the Property;
 - (p) security in respect of the Sub Debt Loan; and
 - (q) such other Encumbrances as are agreed to in writing by the Lender.
- (54) "Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.
- (55) "Plans and Specifications" means the plans and specifications (including all structural, architectural, mechanical, electrical, landscape and interior design and specifications) pertaining to the development and Construction of the Project prepared by or at the direction of the Borrower and as approved by the Lender in consultation with the Project Monitor, as amended from time to time with the consent of the Lender.
- (56) "Prime Rate" means the annual rate of interest announced from time to time by the Lender as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada and designated by the Lender as its prime rate.
- (57) "Prime Rate Loan" means a Loan in Canadian dollars made by the Lender to the Borrower with respect to which interest is to be calculated by reference to the Prime Rate.
- (58) "Project Account" means the account maintained by the Borrower with the Lender in respect of which all revenues and expenses relating to the Project (and only the Project) will be paid into and from, as applicable.
- (59) "Project Budget" means the budget of all Project Costs which has specified a line by line itemization of Project Costs, including Contingency Amounts, as prepared by the Borrower, reviewed by the Project Monitor and approved by the Lender, as amended from time to time with the consent of the Lender.
- (60) "Project Costs" means the aggregate of all Hard Costs and all Soft Costs expended or to be expended to achieve Construction Completion in accordance with the Plans and Specifications and Construction Schedule.

- (61) **"Project Monitor"** means the consultant engaged by the Lender to advise and assist the Lender with respect to the Project or any part thereof.
- (62) **"Project Equity"** means, at any time and from time to time, the equity of the Borrower in the Project.
- (63) **"Release"** means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal, and the word **"Released"** has a corresponding meaning.
- (64) **"Security"** means the documents creating an Encumbrance in favour of the Lender, or any collateral held from time to time by the Lender in each case securing or intended to secure repayment of the Obligations, including all security described herein.
- (65) **"Soft Costs"** means all amounts expended or to be expended in respect of the Project for consultants, architects, taxes, surveys, construction insurance, bonding costs, legal fees, promotions of the Project, financing, leasing, pre-operating costs and all other costs related to the Project except Hard Costs and the cost of acquiring the Property (for greater certainty, Soft Costs includes fees, excluding reimbursements for Hard Costs, payable pursuant to the terms of Consultant Contracts).
- (66) **"Standard Form Lease Agreement"** means the standard form lease agreement to be utilized in respect of the Project, approved as to form by the Lender.
- (67) **"Sub Debt Lender"** means Dorr Capital Corporation.
- (68) **"Sub Debt Loan"** means the subordinated secured loan made by the Sub Debt Lender to the Borrower in the principal amount of \$3,500,000 pursuant to a commitment letter dated August 7, 2019.
- (69) **"Taxes"** means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.
- (70) **"Total Completion"** means the date on which the Project Monitor is able to deliver the Certificate of Total Completion.



This is Exhibit "14" referred to in the Affidavit of Robert Shiller
sworn on this 14th day of April 2021.



Commissioner for Taking Affidavits (or as may be)

CHAD KOPACH

EXHIBIT 14

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

Properties

PIN 58201 - 0239 LT *Interest/Estate* Fee Simple
Description PART OF LOT 21 CONCESSION 1 SUNNIDALE BEING PTS 4, 5 & 6 ON PL 51R39403;
 TOGETHER WITH AN EASEMENT OVER PT 2 ON PL 51R33560 AS IN SC322575;
 TOGETHER WITH AN EASEMENT OVER PTS 6 & 9 ON PL 51R34628 AS IN SC692338;
 TOGETHER WITH AN EASEMENT OVER PART LOT 21 CON 1 BEING PART 11, PLAN
 51R34628 AS IN SC1630500; TOWNSHIP OF ESSA
Address 305 MILL STREET
 ANGUS

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 MILL STREET VENTURES GP LTD.
Address for Service 15 - 3347 262 Street
 Aldergrove, British Columbia
 V4W 3V9

I, Blake Larsen, 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 DUCA FINANCIAL SERVICES CREDIT UNION LTD.
Address for Service 5255 Yonge Street, 4th Floor
 Toronto, ON M2N 6P4

Statements

Schedule: See Schedules

Provisions

Principal \$17,950,661.00 *Currency* CDN
Calculation Period Monthly, Not In Advance
Balance Due Date On Demand
Interest Rate Prime Rate Plus 2.50% Per Annum
Payments
Interest Adjustment Date
Payment Date
First Payment Date
Last Payment Date
Standard Charge Terms
Insurance Amount Full insurable value
Guarantor

Signed By

Denise Borzi 5000 Yonge Street, 10th Floor acting for Signed 2020 03 18
 Toronto
 M2N 7E9
 Chargor(s)

Tel 416-222-8888

Fax 416-218-1860

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

Submitted By

CHAITONS LLP 5000 Yonge Street, 10th Floor 2020 03 18
 Toronto
 M2N 7E9

Tel 416-222-8888

Fax 416-218-1860

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

Fees/Taxes/Payment

Statutory Registration Fee	\$65.05
Total Paid	\$65.05

SCHEDULE TO COLLATERAL MORTGAGES

Any reference to the "Computer Field" in this Charge means a computer data entry field in a charge registered pursuant to Part 111 of the *Land Registration Reform Act* (Ontario) into which the terms and conditions of this Charge may be inserted.

1. **Definitions.** In this Schedule, the following terms shall have the following meanings:

- (a) "**Applicable Laws**" means all applicable federal, provincial or municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits, licences, authorizations and approvals.
- (b) "**Bankruptcy Legislation**" means any present or future bankruptcy or insolvency legislation, including where applicable the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada).
- (c) "**Business Day**" means any day other than a Saturday, Sunday or any statutory or civic holiday observed in the Province of Ontario.
- (d) "**Charge**" means the charge prepared in the electronic format and registered electronically pursuant to Part 111 of the LRRRA, including this Schedule and any other schedules thereto.
- (e) "**Chargee**" means DUCA Financial Services Credit Union Ltd.
- (f) "**Chargor**" means the person or persons indicated in the Computer Field of the Charge entitled "**Chargor(s)**".
- (g) "**Costs**" means all fees, costs, charges and expenses of the Chargee of and incidental to (a) the negotiation, preparation, execution and registration of the Charge and any other instruments connected therewith and every renewal or discharge thereof; (b) the collection of any amounts payable hereunder, enforcement of any covenants contained herein and the realization of the security herein contained; (c) procuring or attempting to procure payment of any Indebtedness or any other amounts due and payable hereunder including foreclosure, power of sale or execution proceedings commenced by the Chargee or any other party; (d) any inspection required to be made of the Mortgaged Premises, or review of plans, specifications and other documentation which may require the approval or consent of the Chargee; (e) all repairs and replacements required to be made to the Mortgaged Premises; (f) the Chargee having to go into possession of the Mortgaged Premises and secure, complete and equip the Fixtures or Improvements in any way in connection herewith; and (g) solicitors' costs, charges and expenses relating to any of the foregoing and any necessary examination of title to the Mortgaged Premises. For greater certainty, Costs shall (i) extend to and include legal costs incurred by the Chargee; (ii) be payable forthwith by the Chargor; and (iii) be a charge on the Mortgaged Premises. Costs include interest at the highest interest rate applicable to the Indebtedness on all such fees, costs, charges and expenses.
- (h) "**Event of Default**" has the meaning ascribed thereto in Section 12.
- (i) "**Fixtures**" includes all fixtures, buildings, erections, appurtenances, plants and improvements, fixed or otherwise, now or hereafter put on the Lands, including all fences, furnaces, oil burners, water heaters, electric light fixtures, window blinds, screen and storm doors and windows, and all air-conditioning, plumbing, cooling, ventilating, cooking, refrigeration and heating equipment and all other apparatus and equipment appurtenant to the Mortgaged Premises.
- (j) "**Improvement**" includes any construction, installation, alteration, addition, repair or demolition to any part of the Mortgaged Premises.
- (k) "**Indebtedness**" means all obligations, debts and liabilities, whether present or future, direct or indirect, absolute or contingent, matured or not, extended or renewed now or at any time hereafter owing by the Chargor to the Chargee, whether as principal or surety, whether alone or jointly with any other person and in whatever name, style or form, whether otherwise secured or not and whether arising from dealings between the Chargee and the Chargor or from other dealings or proceedings by which the Chargee may become a creditor of the Chargor and whether the same are from time to time reduced and thereafter increased or entirely extinguished and thereafter incurred again, and all interest, compound interest, damages and Costs, and all premiums of insurance upon the Improvements and Fixtures, Taxes and other amounts paid by the Chargee in accordance with the provisions of this Charge.
- (l) "**LRRRA**" means the *Land Registration Reform Act* (Ontario)
- (m) "**Lands**" means the lands and premises described in the Computer Field of the Charge entitled "Properties".
- (n) "**Lien**" means any mortgage, charge, pledge, hypothec, assignment, lien, lease, sublease, easement, preference, priority, trust or other security interest or encumbrance of any kind or nature whatsoever with respect to any property or asset, including any title reservations, limitations, provisos or conditions.
- (o) "**Mortgaged Premises**" means the Lands, Fixtures and Improvements.
- (p) "**Permitted Encumbrances**" means (a) Liens for Taxes not at the time due; and (b) any other Liens disclosed by the registered title to the Lands provided the same (i) do not, in the Chargee's opinion, in the aggregate, materially impair the development, management, ownership, operation, value or marketability of the Mortgaged Premises or any part thereof; (ii) are materially complied with by the Chargor and the Mortgaged Premises; and (iii) do not, in the Chargee's opinion, pose any threat to the Mortgaged Premises.

- (q) “**person**” means any individual, general or limited partnership, joint venture, sole proprietorship, corporation, unincorporated association, trust, trustee, estate trustee, legal representative or governmental authority.
 - (r) “**Prime**” and “**Prime Rate**” when referred to in the Computer Field of the Charge entitled “Interest Rate” means the annual rate of interest announced from time to time by DUCA Financial Services Credit Union Ltd. as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans in Canada and designated by the Chargee as its prime rate.
 - (s) “**Principal Amount**” means the amount indicated in the Computer Field of the Charge entitled “Principal”.
 - (t) “**Receiver**” shall include one or more of a receiver and a receiver and manager of all or any portion of the Mortgaged Premises appointed by the Chargee pursuant to this Charge.
 - (u) “**Taxes**” means all taxes, rates and other impositions whatsoever which are now or may hereafter be imposed, charged or levied by any authority creating a lien or charge on the Mortgaged Premises or any part thereof.
 - (v) “**Transfer**” means (a) any conveyance, assignment, transfer, sale, granting or creation of an option or trust with respect to, or other disposition of (directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, and whether or not for consideration or of record) any legal or beneficial interest in the Mortgaged Premises or any part thereof; or (b) any change in the effective voting control of any person comprising the Chargor or any beneficial or unregistered owner of any part of the Mortgaged Premises from that existing as of the date of this Charge (including any change of ownership of 50% or more of the voting securities representing an interest in any such person) and shall include any agreement to do or complete any of the matters referred to in (a) or (b) above.
2. **Implied Covenants.** The implied covenants deemed to be included in the Charge by sections 7(1) 1. iii., and 7(1) 2. of the LRRRA are hereby varied by deleting therefrom the words “except as the records of the land registry office disclose” and substituting therefor “except Permitted Encumbrances”. The implied covenant deemed to be included in the Charge by section 7(1) 1. vii. of the LRRRA is hereby varied to provide that “the Chargor or the Chargor’s successors will, before and after default, execute and deliver such further assurances of the Mortgaged Premises and do such other acts, at the Chargor’s expense, as may be required by the Chargee”. The implied covenants deemed to be included in a charge under section 7(1) of the LRRRA are in addition to and shall not be interpreted to supersede or replace any of the covenants contained in this Charge which are covenants by the Chargor, for the Chargor and the Chargor’s successors and assigns with the Chargee and the Chargee’s successors and assigns. In the event of any conflict between any of the covenants implied by the LRRRA, and any other covenant or provision contained herein, the covenant or provision contained herein shall prevail.
3. **Successors.** Notwithstanding the definition of the word “successor” in the LRRRA, the word “successor” as used in this Charge shall include an heir, executor, administrator, estate trustee, personal representative or successor.
4. **Charge.** In consideration of the sum of \$10.00 and other good and valuable consideration (the receipt and sufficiency whereof are hereby acknowledged by the Chargor) and as a continuing security for the payment to the Chargee of the Indebtedness and to secure the performance of all the obligations of the Chargor hereunder, the Chargor hereby charges the Mortgaged Premises with payment to the Chargee of any ultimate outstanding balance of the Indebtedness due and remaining unpaid and the performance of the Chargor’s obligations hereunder, provided that such security shall be limited to the aggregate of the Principal Amount, Costs and any other amounts payable hereunder, and with the powers of sale hereinafter expressed.
5. **Defeasance.** Provided this Charge to be void upon payment in full on demand of all the Indebtedness and the performance in full of all the obligations of the Chargor hereunder up to a maximum amount of the aggregate of the Principal Amount, Costs and any other amounts payable hereunder, together with Taxes and performance of statute labour, and observance and performance of all covenants, provisos and conditions herein contained.
6. **Demand.** In the event that the Chargor is called upon to pay any Indebtedness in accordance with its terms or if any Event of the Default has occurred which has not been remedied, the Chargor shall be obligated to pay and the Chargee shall be entitled to forthwith make demand for payment of all such Indebtedness and any other monies secured hereby.
7. **Covenants of Chargor.** The Chargor hereby covenants, agrees and declares as follows:
- (a) The Chargor has good title in fee simple to the Mortgaged Premises free of all encumbrances other than the Permitted Encumbrances.
 - (b) The Chargor has the right to convey the Mortgaged Premises to the Chargee.
 - (c) On default, the Chargee shall have quiet possession of the Mortgaged Premises, free from all encumbrances other than the Permitted Encumbrances.
 - (d) The Chargor will execute at the Chargor’s expense such further assurances of the Mortgaged Premises as may be requisite.

- (e) The Chargor has done no act to encumber the Mortgaged Premises, except the Permitted Encumbrances.
 - (f) The Chargor shall pay as they fall due all Permitted Encumbrances and Taxes and shall not suffer any construction, statutory or other liens or rights of retention, other than Permitted Encumbrances, to remain outstanding upon any of the Mortgaged Premises. The Chargor shall, within one month from the date fixed for payment of the last instalment of Taxes in each year, furnish the Chargee, if requested by it, with receipted tax bills showing all such Taxes for the year have been paid in full.
 - (g) The Chargor will insure, with insurance companies satisfactory to the Chargee, the Mortgaged Premises to the amount of not less than their full replacement cost in dollars of lawful money of Canada. Such insurance shall have "Extended Coverage" and "Replacement Cost" endorsements and include not only insurance against loss or damage by fire, but also insurance against loss or damage by war, the enemy, explosion, tempest, tornado, cyclone, lightning and such other risks or hazards as the Chargee may reasonably require at any time and from time to time and, if requested by the Chargee, against loss or damage from any other cause with insurers approved by the Chargee, and the Chargor will pay all premiums necessary for such purposes as the same shall become due. The Chargee may require any such insurance to be cancelled and new insurance to be effected with insurance companies satisfactory to the Chargee. The loss under all policies or contracts of insurance shall be payable to the Chargee as mortgagee or as its interest may appear and such policies or contracts shall contain the Insurance Bureau of Canada standard mortgage clause and shall be in terms satisfactory to the Chargee. Evidence of continuation of all such insurance having been effected shall be produced to the Chargee, if requested by it, at least three Business Days before the expiration thereof, otherwise the Chargee may provide therefor and charge the premium paid to the Chargor and the same shall be payable forthwith and shall also be a charge upon the Mortgaged Premises.
 - (h) All Fixtures are and shall, immediately on being placed upon the Mortgaged Premises, become fixtures and a part of the Mortgaged Premises, and form a part of this security; and the Chargor hereby grants and releases to the Chargee all its claims upon the Mortgaged Premises subject to the aforesaid proviso for defeasance.
 - (i) The Chargee may distrain for arrears of interest, if any, and for overdue principal and any other sum payable hereunder. The Chargor waives the right to claim exceptions and agrees that the Chargee shall not be limited in the amount for which it may distrain.
 - (j) The Chargee may make any payment or cure any default under any Permitted Encumbrance and may pay and satisfy the whole or any part of any liens, Taxes, charges or encumbrances now or hereafter existing in respect of the Mortgaged Premises. In the event of the Chargee making any such payment or curing a default or satisfying any such liens, Taxes, charges or encumbrances it shall be entitled to all the equities and securities of the person or persons so paid and is hereby authorized to retain any discharge thereof without registration for so long as it may think fit so to do.
 - (k) The Chargor will keep the Mortgaged Premises in good condition and repair and shall not permit any act of waste to be committed upon the Mortgaged Premises; the Chargee may, whenever it deems it necessary or desirable, by its agent enter upon and inspect the same and in the event of a default hereunder the reasonable cost of such inspection shall be payable by the Chargor to the Chargee. If the Chargor neglects to keep the Mortgaged Premises in good condition and repair or commits or permits any act of waste on the Mortgaged Premises (as to which the Chargee shall be sole judge), the Chargee may make such repairs and replacements as it deems necessary.
 - (l) The Chargor shall diligently and continuously construct in a good and workmanlike manner any unfinished Fixtures and, in the event that any material amount of work is not done on such Fixtures for a period of ten consecutive days, the Chargee or its representatives may enter into the Mortgaged Premises and do any or all work which they may consider necessary or desirable to complete such Fixtures or to protect the same from deterioration.
 - (m) The Chargor shall not make any material Improvement, whether financed by the Chargee or otherwise, without the prior written consent of the Chargee and except in accordance with contracts, plans and specifications approved by the Chargee in writing prior to the commencement of work on the Improvement.
 - (n) The Chargor shall at all times comply with all Applicable Laws relating to it and the Mortgaged Premises, including all applicable zoning by-laws, rent control legislation and construction lien legislation.
8. **Quiet Possession.** Until default of payment, the Chargor shall have quiet possession of the Mortgaged Premises.
9. **Waivers.** The Chargee may waive any breach by the Chargor of any of the provisions contained in this Charge or any default by the Chargor in the observance or performance of any covenant or condition required to be observed or performed by the Chargor hereunder, provided that no such waiver by the Chargee shall extend to or be taken in any manner to affect any subsequent breach or default or the rights resulting therefrom.
10. **Performance of Covenants.** If the Chargor shall fail to perform any covenant on its part herein contained, the Chargee may in its absolute discretion perform any such covenant capable of being

performed by it. If any such covenant requires the payment of money or if the Mortgaged Premises shall become subject to any encumbrance ranking in priority to the lien hereof other than a Permitted Encumbrance, the Chargee may make such payment or pay or discharge such encumbrance, but shall be under no obligation to do so. All sums so paid by the Chargee shall immediately be payable by the Chargor to the Chargee and shall constitute a charge upon the Mortgaged Premises. No such performance or payment shall relieve the Chargor from any default hereunder or any consequences of such default.

11. **Continuing and Additional Security.** The security hereby constituted is a continuing security for the payment of all Indebtedness and the fulfillment of all the obligations of the Chargor hereunder and such security is in addition to any other security now or hereafter held by the Chargee. The taking of any action or proceedings or refraining from so doing, or any other dealings with any other security for the monies secured hereby, shall not release or affect the obligations of the Chargor hereunder or the charges created hereby.
12. **Default.** The security hereby created shall become enforceable in each of the following events (each event being herein called an "Event of Default"):
- (a) if the Chargee shall make an authorized and proper demand for payment of any Indebtedness or any other monies hereby secured and payment in full has not been received by the Chargee within the time limited therefor;
 - (b) if the Chargor defaults in the performance or observance of any other covenant or condition herein contained and such default shall continue for 15 days after written notice thereof to the Chargor by the Chargee;
 - (c) if there is any material misrepresentation or misstatement contained in any certificate or document delivered by the Chargor or any representative of the Chargor to the Chargee in connection with this Charge or the Indebtedness;
 - (d) if a petition is filed under any Bankruptcy Legislation against the Chargor or an authorized assignment made or a Receiver appointed under any Bankruptcy Legislation or by or on behalf of a secured creditor of the Chargor or a proposal made to the creditors of the Chargor under any Bankruptcy Legislation;
 - (e) if any execution, distress, sequestration or any other process of any court becomes enforceable against any of the property of the Chargor, or if a distress or like process is levied upon any of such property;
 - (f) if the Chargor commits any act of bankruptcy;
 - (g) if any portion of the Mortgaged Premises is expropriated by any governmental body or authority which the Chargee (in its sole discretion) considers material;
 - (h) if a Transfer is made or permitted without the prior written consent of the Chargee in its sole discretion; or
 - (i) if a Lien shall be created, issued, incurred or permitted to exist (by operation of law or otherwise and whether prior or subordinate to the security of this Charge) on any part of the Mortgaged Premises or any interest therein (except in favour of the Chargee as security for the Indebtedness) without the prior written consent of the Chargee in its sole discretion.
13. **Remedies.** Upon the happening of any Event of Default, in addition to any other rights or remedies available to it hereunder or at common law or in equity or pursuant to any statute, the Chargee shall have the following rights and powers:
- (a) To enter upon and possess all or any part of the Mortgaged Premises;
 - (b) To preserve and maintain the Mortgaged Premises and make such replacements thereof and additions thereto as it shall deem advisable;
 - (c) On default of payment for at least 15 days the Chargee or its agents or representatives may on giving the notice, if any, required hereby enter on and/or lease the Mortgaged Premises or on default of payment for at least 15 days may on at least 35 days' notice sell the Mortgaged Premises. In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, it is agreed that notice may be effectually given by giving it in accordance herewith; and such notice shall be sufficient although not addressed to any person or persons by name or designation and notwithstanding that any person to be affected thereby may be unknown, unascertained or under disability. The Chargee may sell the Mortgaged Premises or any part thereof by public auction or private sale, for such price as can reasonably be obtained therefor, and on such terms as to credit and otherwise, and with such conditions of sale and stipulations as to title or evidence or commencement of title or otherwise, as it shall in its discretion deem proper, and in the event of any sale on credit or for part cash and part credit, the Chargee shall not be accountable for or charged with any monies until actually received. The Chargee may rescind or vary any contract of sale and may buy in and resell the Mortgaged Premises or any part thereof without being answerable for loss occasioned thereby. No purchaser or lessee shall be bound to inquire into the legality, regularity or propriety of any sale or lease or be affected by notice of any irregularity or impropriety of any kind; and no lack of default or want of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale or lease hereunder. The Chargee may sell or lease without entering into actual possession of the Mortgaged Premises and when it desires to take possession it may break locks and bolts and while in possession or upon any

- sale or lease the Chargee shall be accountable only for monies which are actually received by it. Sales may be made from time to time of parts of the Mortgaged Premises to satisfy any portion of the Indebtedness or other sums owing hereunder and leaving the Indebtedness or the residue thereof secured hereunder on the remaining Mortgaged Premises. The Chargor hereby appoints the Chargee its true and lawful attorney and agent to make application under the *Planning Act* (Ontario) and to do all things and execute all documents to effectually complete such sale. The Chargee may lease or take sale proceedings hereunder notwithstanding that other mortgage proceedings have been taken or are then pending; and
- (d) To appoint by instrument any person or persons to be a Receiver of all or any portion of the undertaking, property and assets of the Chargor forming the Mortgaged Premises and all rents, issues, incomes and profits to be derived therefrom, to fix the Receiver's remuneration and from time to time to remove any Receiver so appointed and appoint another or others in its stead.

14. **Receiver.** Any Receiver shall have all of the powers of the Chargee set forth in this Charge and, in addition, shall have the following powers:

- (a) To lease all or any portion of the Mortgaged Premises and for this purpose execute contracts in the name of the Chargor, which contracts shall be binding upon the Chargor and the Chargor hereby irrevocably constitutes such Receiver as its attorney for such purposes;
- (b) To take possession of the Mortgaged Premises, collect all rents, issues, incomes and profits derived therefrom and realize upon any additional or collateral security granted by the Chargor to the Chargee and for that purpose may take any proceedings in the name of the Chargor or otherwise; and
- (c) To carry on or concur in carrying on the business which the Chargor is conducting on and from the Mortgaged Premises and for that purpose the Receiver may borrow money on the security of the Mortgaged Premises in priority to this Charge.

Any Receiver appointed pursuant to the provisions hereof shall be deemed to be the agent of the Chargor for the purposes of (i) carrying on and managing the business and affairs of the Chargor; and (ii) establishing liability for all the acts or omissions of the Receiver while acting in any capacity hereunder and the Chargee shall not be liable for such acts or omissions; provided that, without restricting the generality of the foregoing, the Chargor irrevocably authorizes the Chargee to give instructions to the Receiver relating to the performance of its duties as set out herein.

15. **Application of Monies.** All monies actually received by the Chargee or the Receiver pursuant hereto shall be applied, subject to any claims of creditors of the Chargor ranking in priority to the charges created by this Charge, in the following manner: (a) First, in or towards payment of all applicable Costs; (b) Second, in or towards payment or satisfaction of any remaining Indebtedness in such order as the Chargee in its sole discretion may determine; and (c) Third, any surplus shall be paid to the Chargor or as required by Applicable Law.

16. **Release, Extensions.** The Chargee may in its sole discretion at all times release any part or parts of the Mortgaged Premises either with or without any consideration therefor, without responsibility therefor and without thereby releasing any other part of the Mortgaged Premises or any person from its obligations under this Charge, the Indebtedness or from any of the covenants herein contained and without being accountable to the Chargor for the value thereof or for any money except that actually received by the Chargee, it being expressly agreed that every part of the Mortgaged Premises into which it is or may hereafter be divided does and shall stand charged with the whole of the amount hereby secured. The Chargee may grant time, renewals, extensions, indulgences, releases and discharges to, may take additional securities, may give any securities up, may abstain from taking securities or from perfecting securities, may accept compositions, and may otherwise deal with the Chargor and all other persons and securities as the Chargee may see fit without prejudicing the rights of the Chargee under this Charge.

17. **No Change in Rights.** No sale or other dealing by the Chargor with the Mortgaged Premises or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or the Mortgaged Premises or the amount or terms of any Indebtedness or any guarantee thereof.

18. **No Merger.** The taking of a judgment or judgments on any of the covenants herein contained shall not operate as a merger of the said covenants.

19. **Assignment of Rents.** Subject to the proviso for defeasance, and as additional and separate continuing collateral security for the Chargor's obligations hereunder, the Chargor hereby assigns to the Chargee all present and future leases of the Mortgaged Premises or any part thereof, and all rents, issues, incomes and profits now or hereafter derived from the leases or the Mortgaged Premises or any part thereof, together with the benefit of all covenants, agreements and provisos contained in such leases. The Chargor will execute and deliver to the Chargee, from time to time, upon the request of the Chargee and at the expense of the Chargor, assignments in registrable form of all leases and rents relating to the Mortgaged Premises and such other notices or documents as may be required by the Chargee. Nothing in this Charge shall make the Chargee responsible for the

collection of rents payable under any lease of the Mortgaged Premises or any part thereof or for the performance of any covenants, terms or conditions contained in any such lease. The Chargee shall be liable to account only for such rents as actually come into its hands after the deduction of collection charges in respect thereof and may apply such rents to the repayment of the Indebtedness.

20. **Disclosure of Information.** The Chargor acknowledges that the Chargee may be obliged to release information relating to this Charge and the Indebtedness and any amounts advanced thereunder or secured hereby. The Chargor hereby authorizes the Chargee to release all such information and any other information it may, from time to time, be required to release by Applicable Law to those entitled to such information.
21. **Discharge.** After payment in full of all Indebtedness and Costs, the Chargee shall within a reasonable period of time after receipt of a written request therefor from the Chargor, provide the Chargor with a discharge of the Charge or an assignment or transfer of the Charge if so required and directed by the Chargor; any such discharge, assignment or transfer shall be prepared by the Chargee at the expense of the Chargor.
22. **Governing Law.** This Charge shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
23. **Notice.** Any notice required or desired to be given hereunder or under any instrument supplemental or collateral hereto shall be in writing and may be given either by personally delivering the same or by sending the same by registered mail, postage prepaid, to the Chargor or the Chargee at its address for service indicated in the Computer Field of this Charge entitled "Chargor(s)" and "Chargee(s)" respectively. Any notice so delivered shall be conclusively deemed given when personally delivered and any notice so mailed shall be conclusively deemed given on the third Business Day following the day of mailing, provided that in the event of a known disruption of postal service, notice shall be given by personal delivery only. Any address for notice or payments may be changed by notice given pursuant hereto.
24. **Condominium Provision.** If any part the Mortgaged Premises is a condominium unit (a) the Chargor shall promptly observe and perform all of its covenants, duties and obligations under or pursuant to the *Condominium Act* (Ontario) (the "CA") and the declaration, by-laws and rules of the condominium corporation created by registration of the declaration and the description relating thereto of which the condominium unit forms part (the "Condominium Corporation"); (b) the Chargor will pay promptly when due any and all contributions to common expenses and all other levies, charges and assessments made, assessed or levied by or on behalf of the Condominium Corporation payable in respect of, or charged to the owner of, the Mortgaged Premises (all such common expenses, levies, charges, assessments are called "unit charges"); (c) upon request by the Chargee from time to time, the Chargor shall provide satisfactory proof to the Chargee that all unit charges have been paid in full; (d) if the Chargor does not pay any unit charges when due, then, without limiting any of other rights and remedies of the Chargee hereunder or otherwise at law or in equity, the Chargee may (but shall not be obligated to do so) pay the same and the amount so paid shall be added to the Indebtedness and secured by this Charge and shall be payable forthwith to the Chargee upon demand; (e) promptly following receipt thereof, the Chargor shall deliver to the Chargee copies of every notice, assessment, request, claim or demand, notice of meeting and all other documentation or information of any kind relating to the condominium unit or the Condominium Corporation received by the Chargor so that the Chargee receives them at least ten days prior to the date that any response, payment or other action is required; (f) any default by the Chargor under this section (regardless of any action or proceedings taken or proposed by the Condominium Corporation) shall be an Event of Default under this Charge; (g) the Chargor hereby irrevocably assigns to the Chargee, and irrevocably authorizes and empowers the Chargee to exercise, all rights of the Chargor as the owner of the Mortgaged Premises to vote or to consent to all matters relating to the affairs of the Condominium Corporation, provided however that (i) the Chargee may at any time and from time to time give notice in writing to the Chargor and to the Condominium Corporation that the Chargee does not intend to exercise the said right to vote or consent and in that event until the Chargee revokes such notice the Chargor may exercise the right to vote or consent in respect of all matters not requiring a unanimous resolution (any such notice may be for an indeterminate period of time or for a specific meeting or matter); (ii) the Chargee's right to vote and consent do not impose any obligation on the Chargee to consult with the Chargor as to the manner in which such right to vote or consent will be exercised or not exercised or to protect the Chargor's interests and the Chargee shall not be responsible for any exercise or failure to exercise the right to vote or consent; and (iii) neither this assignment and authorization in favour of the Chargee nor the exercise by the Chargee of the right to vote or consent shall constitute the Chargee a mortgagee in possession nor give rise to any liability on the part of the Chargee; (h) this Charge includes a mortgage, charge, assignment and sublease in favour of the Chargee of any lease or rights to occupy any parking space or spaces in the Mortgaged Premises demised to or reserved or designated for exclusive use by the Chargor or its condominium unit and of any lease or right to exclusive use of any common Mortgaged Premises or special privileges in respect thereof granted to the Chargor or its condominium unit; (i) without limiting the obligations of the Chargor hereunder, the Chargor shall cause the Condominium Corporation to maintain the insurance required by this Charge with respect to all the Mortgaged Premises which are governed by

the CA for the benefit of the Chargee and shall cause the Condominium Corporation to comply fully with the terms of the required policies of insurance and the insurance provisions of the CA and the declaration, by-laws and rules of the Condominium Corporation; (j) in addition to the Events of Default set out herein, it shall be an Event of Default if (i) the government of the Mortgaged Premises by the Condominium Corporation or any part thereof by the CA is terminated; or (ii) a vote of the Condominium Corporation authorizes the sale of all or substantially of its property or assets or all or any part of its common elements which are all or any part of the Mortgaged Premises, or if any part of such common elements of the Condominium Corporation is expropriated; or (iii) the Condominium Corporation fails to comply with any provision of the CA or the declaration, by-laws or any of the rules of the Condominium Corporation; or (iv) the Condominium Corporation fails to insure the condominium units and the common elements governed by it in accordance with the CA and declaration and by-laws of the Condominium Corporation; or (v) in the Chargee's opinion, the Condominium Corporation fails to manage its property and assets in a prudent and businesslike manner and in keeping with the highest standards for similar properties in the locality in which the Mortgaged Premises are located.

25. **Multi-Residential Properties.** If the Mortgaged Premises are a multi-residential property, the Chargor represents and warrants with respect to the Mortgaged Premises as follows: (a) except as permitted by Applicable Laws in respect of residential housing (i) no demolition, conversion, renovation, repair or severance has taken place with respect to the Mortgaged Premises; and (ii) there have been no increases in the rental rate charged for any residential rental unit or units on the Mortgaged Premises; (b) in accordance with Applicable Laws in respect of residential housing (i) all rents charged with respect to the Mortgaged Premises are lawful rents and all required rebates have been paid; and (ii) all required filings have been made and were timely, accurate and complete; and (c) under Applicable Laws in respect of residential housing (i) no applications, investigations or proceedings have been commenced or made; and (ii) there are no outstanding orders or decisions made by any governmental authority with respect to the Mortgaged Premises or any residential rental unit. On request by the Chargee, the Chargor shall provide a statutory declaration by an officer or director of the Chargor that the above representations and warranties are true and correct. The Chargor shall deliver to the Chargee on request all documents required to establish the legality of rents.

The Chargor hereby authorizes all governmental authorities having jurisdiction over residential housing to release to the Chargee or its solicitors any and all information contained in their files. The Chargor shall comply with the provisions of all Applicable Laws while this Charge is continuing. Any breach of this covenant or any material incorrectness of any of the representations and warranties hereinabove contained shall be an Event of Default under this Charge.

26. **Construction.** In this Charge (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders; (b) the words "including", "includes" and "include" shall mean "including without limitation", "includes without limitation" and "include without limitation" respectively; (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced from time to time, and any successor statute thereto; (d) any reference to any agreement or instrument shall include all amendments, addenda, modifications, extensions, renewals, restatements, supplements or replacements thereto from time to time; (e) reference to the Chargee, Chargor, any beneficial owner of the Mortgaged Premises, and any other person shall include their respective heirs, estate trustees, legal representatives, successors and assigns, and reference to a "corporation" shall include a company or other form of body corporate; (f) all dollar amounts are expressed in Canadian dollars; (g) the division of this Charge into separate sections and subsections, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Charge; (h) the Chargee's right to give or withhold any consent or approval, make any determination or exercise any discretion shall be exercised by the Chargee acting reasonably unless otherwise expressly provided, except that following an Event of Default, the Chargee shall be entitled to exercise the same in its sole discretion; (i) if more than one person is named as Chargor, or otherwise becomes liable for or assumes the obligations and liabilities of the Chargor, then the obligations and liabilities of all such persons shall be joint and several; (j) time shall be of the essence; (k) all obligations of the Chargor in this Charge will be deemed to be covenants by the Chargor in favour of the Chargee; and (l) in the event of any conflict or inconsistency between any provision of this Charge and the provisions of the commitment letter governing the loan between the Chargor and the Chargee, the commitment letter will prevail to the extent of any such conflict or inconsistency. The delivery of this Charge for registration by direct electronic transmission shall have the same effect for all purposes as if this Charge was in written form, signed by the Chargor and delivered to the Chargee.

This is Exhibit "15" referred to in the Affidavit of Robert Shiller
sworn on this 14th day of April 2021.



Commissioner for Taking Affidavits (or as may be)

CHAD KOPACH

EXHIBIT 15

September 11, 2020

Mill Street Ventures GP Ltd.
305 Mill Street
Angus, Ontario L0M 1B4

Attention: Blake Larsen

Dear Mr. Larsen:

Re: DUCA Financial Services Credit Union Ltd. loan to Mill Street Ventures GP Ltd. secured, inter alia, by a Charge over 305 Mill Street, Angus, ON

Reference is made to the commitment letter entered into among DUCA Financial Services Credit Union Ltd. (“**DUCA**” or the “**Lender**”), Mill Street Ventures GP Ltd. (the “**Borrower**”), and Petromaxx Construction (BC) LLP, Maxx Properties (No. 327) Ltd. and Blake Larsen (collectively, the “**Guarantors**”) as guarantors dated December 6, 2019, as amended by a letter agreement dated February 4, 2020 and further amended by a letter agreement dated March 13, 2020 (collectively, the “**Commitment**”). All capitalized terms used herein shall have the meanings ascribed thereto in the Commitment unless otherwise indicated.

As you are aware, events of Default have occurred and are continuing and we have demanded repayment of your indebtedness to the Lender.

The Lender has approved the following amendments to the Commitment and the parties hereto hereby agree as follows:

1. The Construction Facility shall be reduced to a maximum amount of \$10,350,000.
2. The Credit Facilities shall mature and any outstanding balance shall become due and payable in full on the date (the “**Maturity Date**”) which shall be the earlier to occur of: (i) six (6) months from the date of this Amendment; and (ii) the date on which the Lender demands repayment of the Credit Facilities. Again, to reiterate, notwithstanding compliance with the covenants and all the terms and conditions of the Commitment as amended by this Amendment, the Credit Facilities are repayable on demand.
3. Borrower shall use its existing chequing account with the Lender as its day-to-day banking account from which all Project Costs will be paid, with all cheques issued from such account needing to match the Project Budget most-recently approved by the Project Monitor in order to clear.
4. The table in the Commitment under the heading “**SOURCES AND USE OF FUNDS**” shall be replaced with the following:

Sources and Uses of Funds					
Sources	\$	%	Uses	\$	%
DUCA 1st Mortgage	\$10,350,000	46%	Land Cost	\$12,307,290	55%
Mezz Loan (Subordinating Creditors)	\$4,607,527	21%	Hard Costs	\$4,840,201	22%
Borrower's Equity	\$7,242,473	32%	Soft Costs	\$648,968	3%
Deferred Exit Fee	\$200,000	1%	Financing Cost	\$3,937,098	18%
			Development Charges	\$303,704	1%
			Contingency	\$362,739	2%
Total	\$22,400,000		Total	22,400,000	

5. The definition of “Cost Overruns” in Schedule A to the Commitment shall be amended to mean the excess of the current Project Budget over the Project Budget of \$22,400,000 herein approved.

6. The definition of “Minimum Required Equity” in Schedule A to the Commitment shall be amended to mean the amount of the Project Equity equal to the sum of (a) \$7,242,473 and Cost Overruns funded by the Borrower and/or Guarantors.

7. In addition to the items listed in the Commitment under the heading “CONDITIONS PRECEDENT TO ALL SUBSEQUENT ADVANCES” the Lender’s obligation to make any subsequent Advance by way of a Loan or the issuance of a Letter of Credit is subject to and conditional upon the satisfaction of the following additional conditions precedent:

(a) The existing subordination and standstill agreement dated as of March 17, 2020 made between the Lender as Senior Lender and Dorr Capital Corporation (“**Dorr**”) and Community Trust Company (“**Community Trust**”) and 2098535 Alberta Ltd. (“**2098535**”) (Dorr, Community Trust and 2098535 being referred to herein as the “**Subordinating Creditors**” and each a “**Subordinating Creditor**”) is to be amended to the satisfaction of the Lender’s counsel to ensure the Lender receives any proceeds of realization by the Subordinating Creditors of any security held by the Subordinating Creditors or any of them, including, without limitation, any funds realized from the security interests granted in favour the Subordinating Creditors or any of them in the following properties:

- (i) an operating gas station at 1516 Markham Road, Toronto, ON
- (ii) an operating gas station at 1120 John Street, Thunder Bay, ON

- (iii) vacant land at 112 Front Street, West Nippissing, ON
 - (iv) a 33,000 square foot single-tenant industrial building at 7001 96th Street, Grande Prairie, AB
 - (v) a 14,080 square foot single-tenant industrial building at 10901 96th Ave, Grand Prairie, AB.
- (b) The debts and liabilities of the Borrower to the Subordinating Creditors (collectively referred to as the “**Subordinate Indebtedness**”) invested into the Project by Subordinating Creditors shall be not less than \$4,607,527 in the aggregate.
- (c) Receipt by the Lender and its satisfactory review of:
 - (i) an Appraisal of the Phase 2 Lands showing the valuation thereof on an as-is basis of not less than \$4,000,000;
 - (ii) an Appraisal of the Phase 1 Lands showing the valuation thereof on an as-is basis; and
 - (iii) an Appraisal of the Phase 1 Lands showing an “as completed” value of not less than \$12,560,000.

with all such Appraisals either being addressed to the Lender or accompanied by a letter from the Appraiser permitting the Lender to rely thereon. For the purpose hereof, the “Phase 1 Lands” shall mean that portion of the Property consisting of a gas bar along with a convenience store to be built and operated by the Borrower under a franchise agreement with Esso and three retail buildings totaling 7,771 square feet leased to A&W Food Services of Canada Inc., Soul Restaurants Canada Inc., Yogi BK Enterprise Inc., and Starbucks Coffee Canada Inc., and the “Phase 2 Lands” means that portion of the Property that will consist of three multi-tenant buildings, not yet built, at the rear of the Property. For clarity, the Lender will not be financing further development of the Phase 2 Lands.

- (d) The Lender is to be satisfied in its sole discretion that all lease agreements for the buildings on the Phase 1 Lands remain in force and effect, unamended.
- (e) Borrower shall provide updated, detailed certificates of insurance for all policies required under the Commitment to be purchased and maintained by the Borrower in a form acceptable to the Lender on the advice of its insurance consultant.

(f) Without limiting the provisions of the Commitment that require, *inter alia*, confirmation that no Encumbrances have been registered on title to the Property since the date of the prior Advance, the Construction Liens and related Certificates of Action registered by Complete Building Systems Inc. and Rill Products Inc. shall be discharged and vacated from title to the Property.

8. The Borrower shall pay a fee to the Lender in the amount of \$10,000, which fee shall be deemed to have been earned by the Lender as compensation for the costs incurred by the lender, including time expended in processing this Amendment, excluding the legal costs referred to below. The Borrower hereby irrevocably directs the Lender to deduct and pay such amount from the next Advance.

9. By signing below, each of the Borrower and Guarantors acknowledges and agrees that:

(a) it/he has received the demand letters (the “**Demands**”), the Notice of Intention to Enforce Security (the “**Notice**”) and the Notice of Sale under the Personal Property Security Act (the “**Notice of Sale**”) issued by Devry Smith Frank LLP dated August 12, 2020. It/he agrees that the issuance of Demands, the Notice and the Notice of Sale and their delivery were proper in all respects, the indebtedness as set out therein is correct and that the Demands and the Notice and Notice of Sale not been withdrawn but remain and will continue to remain in full force and effect. If an additional event of Default occurs under the Commitment or you default in your obligations hereunder, the Lender shall be permitted to use and rely on the Demands and the Notice and Notice of sale and shall not be required to issue a fresh demand for payment or Notice of Intention to Enforce Security prior to enforcing its Security. Provided, however, that should the events of Default be cured, the conditions precedent for the next Advance under the Loan be satisfied and such further Advance be made, the Demands, Notice and Notice of Sale shall be automatically withdrawn.

(b) it/he has no defences, counterclaims or rights of set off or reduction against the Obligations (or to enforcement of the Security) whatsoever and all such defences, counterclaims or set off rights are expressly waived. Without limitation, the undersigned Borrower and Guarantors hereby release and discharge the Lender and its respective officers, directors, employees and agents from and against all claims and demands in respect of any actual or alleged action or omission the Lender arising up to and including the date of this Amendment.

10. The Borrower and the Guarantors shall be responsible for the legal fees and disbursements of the Lender, including, without limitation, in connection with the preparation and negotiation of this Amendment which amount shall be paid forthwith on demand and shall be secured by the Security. The Borrower hereby irrevocably directs the Lender to deduct and pay the amount of such legal fees and disbursements from the next Advance

11. This Amendment shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein. The Borrower and Guarantors irrevocably submit to the non-exclusive jurisdiction of the courts of such Province and acknowledge the competence of such courts and irrevocably agrees to be bound by a judgment of any such court.

12. This Amendment is supplemental to and shall be read with and be deemed to be part of the Commitment and the Security, which shall be deemed to be amended *mutatis mutandis* as herein provided. Any reference to the Commitment or the Security in any agreements or documents entered into in connection with the Commitment or the Security shall mean the Commitment and the Security as amended hereby and all such agreements and documents are also hereby amended *pro tanto* to give effect to this Amendment.

13. All the terms and conditions of the Commitment and the Security, except insofar as the same are amended by the express provisions of this Amendment, are confirmed and ratified in all respects, shall survive and shall not merge with or be extinguished by the execution and delivery of this Amendment and shall hereafter continue in full force and effect, as amended.

14. This Amendment may be executed in any number of separate counterparts by any one or more of the parties hereto, and all of said counterparts taken together shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by telecopier, PDF or by other electronic means shall be as effective as delivery of a manually executed counterparts.

The terms of this Amendment are open for acceptance by the Borrower and Guarantors by executing the original hereof where indicated below and delivering it to the Lender's head office at 5255 Yonge Street, 4th Floor Toronto, Ontario M2N 6P4, on or before 5:00 p.m. on September 15, 2020 after which date and time this Amendment shall lapse and become null and void.

[The remainder of this page is blank. Signature page follows.]

Yours truly,

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Per: 
Name: Sergiu Cosmin
Title: Senior Manager, Special Assets

Per: _____
Name:
Title:

ACCEPTED on: September __, 2020

Mill Street Ventures GP Ltd.

Per: _____
Name:
Title:
I have authority to bind the corporation

Each of the undersigned Guarantors has read, understands and accepts the terms and conditions of this Amendment.

ACCEPTED on: September __, 2020

Blake Larson

Petromaxx Construction (BC) LLP

Per: _____
Name:
Title:
I have authority to bind the corporation

Maxx Properties (No. 327) Ltd.

Per: _____
Name:
Title:
I have authority to bind the corporation

TAB C

This is Exhibit "C" referred to in the Affidavit of Gary Gruneir sworn by Gary Gruneir at the City of Toronto, in the Province of Ontario, before me on August 20, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CHAD KOPACH

Court File No. CV-21-00660056-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

B E T W E E N:

**DORR CAPITAL CORPORATION,
COMMUNITY TRUST COMPANY and
2098535 ALBERTA LTD.**

Applicants

- and -

MILL STREET VENTURES GP LTD.

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*
R.S.C.1985 c. B-3, as amended

AFFIDAVIT OF ROBERT SHILLER
(Sworn April 14, 2021)

I, **ROBERT SHILLER**, of the City of Toronto, in the Province of Ontario, **MAKE OATH**
AND SAY:

1. I am a Managing Partner of, and a mortgage broker (licensed by the Financial Services Regulatory Authority of Ontario) at, the Applicant Dorr Capital Corporation (“**Dorr**”) and, as such, have knowledge of the matters to which I hereinafter depose.
2. Where the information in this affidavit is based upon information and belief, I have indicated the source of my information and belief and do verily believe it to be true.
3. To the extent that any information is based on my review of documents, I believe the information in those documents to be true.

4. I am swearing this Affidavit in support of an Application by Dorr, and the co-Applicants Community Trust Company (“**Community Trust**”) and 2098525 Alberta Ltd. (“**209 Alberta**”), for an Order appointing Rosen Goldberg Inc. (“**Rosen Goldberg**”) as interim receiver (in such capacities, the “**Receiver**”) without security, of certain real property owned by Mill Street Ventures GP Ltd. (“**Mill Street Ventures**” or the “**Respondent**”), municipally known as 305 Mill Street, Angus, Ontario (the “**Mortgaged Property**”), pursuant to s. 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”).

5. As is further detailed below, the within Application relates to stalled development of the Mortgaged Property from vacant land, into a new retail plaza and gas bar. The construction of this development is being funded by DUCA Financial Services Credit Union Ltd. (“**DUCA**”) pursuant to a loan secured by a first-ranking mortgage over the Mortgaged Property, and the Applicants pursuant to loans secured by their second, third and fourth ranking charges. DUCA is currently owed approximately \$10.1 million. Dorr, Community Trust and 209 Alberta (collectively, the “**Applicants**”) are owed approximately \$4.53 million in principal and interest, excluding charges, fees and legal costs.

6. Dorr is a commercial mortgage lender incorporated pursuant to the laws of Ontario.

7. Community Trust is a federally-regulated financial institution. Among other things, Community Trust carries on business in Ontario as a provider of trustee services in respect of mortgage loans.

8. 209 Alberta is incorporated pursuant to the laws of Alberta. 209 Alberta is the nominee and bare trustee of Newfound HK Limited (“**Newfound**”).

9. Mill Street Ventures is incorporated pursuant to the laws of British Columbia. Blake Larsen (“**Larsen**”) is its sole officer and director. Attached hereto and marked as **Exhibits “1”** and **“2”** to this affidavit, respectively, are copies of the British Columbia Company Summary and the Ontario Corporation Profile Report for Mill Street Ventures, both dated April 7, 2021.

The Mortgaged Property

10. Mill Street Ventures is the registered owner of the Mortgaged Property, which it purchased for \$7.5 million on or about March 6, 2015. Attached hereto and marked as **Exhibits “3”** and **“4”**, respectively, to this affidavit is a copy of the transfer of the Mortgaged Property to Mill Street Ventures registered on March 6, 2015, as Instrument No. SC1196942, and the parcel page for the Mortgaged Property as of April 5, 2021.

11. As set out in the appraisals discussed below, the Mortgaged Property is a 5.3-acre lot located on a heavily travelled main thoroughfare to cottage country just east of Barrie, within the Angus community of the Town of Essa. It is approximately 6 kilometers north of CFB Borden. At the time Mill Street Ventures acquired the Mortgaged Property in 2015, it was undeveloped vacant land.

The Project

12. Mill Street Ventures is in the process of developing the Mortgaged Property for commercial use into a 45,600 square foot mixed-use office and retail plaza, which is being built in two phases (the “**Project**”).

Phase 1

13. Phase 1 of the Project (“**Phase 1**”) consists of four buildings totalling approximately 11,000 square feet, which are being constructed on approximately 3.14 acres. Phase 1 will include a gas station and convenience store, as well as pad retail tenants in three other fully-leased buildings. Construction of the four buildings is almost complete.

14. One of the four Phase 1 buildings will be occupied by Starbucks and Mucho Burrito, each pursuant to a 10 year lease. The second building will be occupied by KFC (15 year lease), and a third by A&W (20 year lease), each as a stand-alone restaurant. A fourth building consists of the gas station, with a convenience store to be operated by Mill Street Ventures or an affiliate.

Phase 2

15. Phase 2 of the Project (“**Phase 2**”) was expected to consist of three buildings, made up of two commercial retail units and one restaurant. The buildings are expected to total approximately 36,000 square feet on the remaining approximately 2.2 acres. Although some internal servicing is in place, such as stormwater receptors, sanitary pipes, and fire hydrants, Phase 2 of the Project has not yet been fully planned, and above-ground construction has not yet commenced.

Financing of the Project

16. As is further detailed below under the heading “The Mortgages”, construction of the Project is being financed by DUCA pursuant to a construction loan secured by a first-ranking mortgage over the Mortgaged Property in the principal amount of \$17,950,661 (the “**DUCA Mortgage**”), and by the Applicants pursuant to loans secured by the second, third and fourth mortgages over the Mortgaged Property totaling \$6,650,000. Two of the Applicants’ mortgages

were registered prior to the DUCA Mortgage, but have been subordinated to that DUCA Mortgage pursuant to postponement agreements. The following chart sets out the mortgages currently registered over the Mortgaged Property, the current registered amount of each mortgage, and the priority ranking.

Mortgage Rank	Mortgagee(s)	Registered Amount	Registration Date
1 st	DUCA	\$17,950,661	March 18, 2020
2 nd	Dorr and Community Trust	\$6,000,000	September 16, 2019
3 rd	209 Alberta	\$550,000	December 18, 2019
4 th	Dorr	\$100,000	January 8, 2021

17. As explained below, although there are only approximately 90 to 120 days' worth of construction remaining to complete Phase 1, construction of Phase 1 has ceased because DUCA has stopped funding under its construction loan, and has made demand for repayment in full of that loan.

The Mortgages

18. The four mortgages registered against title to the Mortgaged Property are described below, set out in order of the date each was registered on title.

The Applicants' First Loan and First Mortgage

19. Dorr agreed to make a mortgage loan for \$4.15 million to Mill Street Ventures (the "**Applicants' First Loan**") pursuant to an amended and restated commitment letter dated September 14, 2020 (the "**Applicants' Commitment Letter**") to be used for, among other things,

funding the Project and assisting Mill Street Ventures to pay the commitment fee required by DUCA for its construction loan. The maturity date under the Applicants' First Loan is August 31, 2021. Attached hereto and marked as **Exhibit "5"** to this affidavit is a copy of the Applicants' Commitment Letter.

20. Pursuant to the Applicants' Commitment Letter, on or about September 16, 2019, Mill Street Ventures granted Dorr and Community Trust a mortgage over the Mortgaged Property in the principal amount of \$3.5 million, registered on title as Instrument No. SC1624045 (the "**Applicants' First Mortgage**"). Attached hereto and marked as **Exhibit "6"** to this affidavit is a copy of the Applicants' First Mortgage.

21. Community Trust is listed as a mortgagee on the Applicants' First Mortgage because of the source of certain funds for the Applicants' First Loan. Dorr is a syndicated lender and, as such, uses capital from various investors to fund its loans, holding the loan and the security in trust for such investors. Some of the investors in the Applicants' First Loan used capital from their registered funds (e.g. RRSP and TFSA), and due to the legal requirements relating to the use of such funds in mortgage loans, Community Trust holds their interests in the Applicants' First Mortgage.

22. On or about October 8, 2020, the Applicants' First Mortgage was amended to, among other things, increase the principal amount of the Applicants' First Mortgage to \$6 million, and notice of the amendment was registered as Instrument No. SC1717805 (the "**Applicants' First Mortgage Amendment Notice**"). Attached hereto and marked as **Exhibit "7"** to this affidavit is a copy of the Applicants' First Mortgage Amendment Notice.

23. The Applicants' First Loan is also secured by a general security agreement dated August 29, 2019 from Mill Street Ventures in favour of Dorr (the "**Applicants' First GSA**"). Attached hereto and marked as **Exhibit "8"** to this affidavit is a copy of the Applicants' First GSA.

24. As set out in the parcel page for the Mortgaged Property (Exhibit 4), on March 19, 2020, the Applicants' First Mortgage was subordinated to the DUCA Mortgage.

The Applicant's Second Loan and Second Mortgage

25. Newfound made a loan for \$550,000 to Mill Street Ventures pursuant to an amended and restated promissory note from Mill Street Ventures dated March 18, 2020 (the "**Applicants' Second Loan**"). The term of the Applicants' Second Loan was for 17 months, with an interest rate of 12.5% *per annum*. Attached hereto and marked as **Exhibit "9"** to this affidavit is a copy of the promissory note evidencing the Applicants' Second Loan.

26. Originally, Newfound was to be an investor in the Applicants' First Loan. However, for tax reasons this loan by Newfound could not be held by Dorr, and accordingly a separate mortgage was required for the Applicants' Second Loan.

27. As security for the Applicants' Second Loan, a mortgage in the amount of \$400,000 was registered in favour of 209 Alberta (the nominee and bare trustee of Newfound in respect of the Applicants' Second Loan) against title to the Mortgaged Property on December 18, 2019, as Instrument No. SC1650090 (the "**Applicants' Second Mortgage**"). Attached hereto and marked as **Exhibit "10"** to this affidavit is a copy of the Applicants' Second Mortgage.

28. On or about March 19, 2020, the Applicants' Second Mortgage was amended to, among other things, increase the principal amount of Applicant's Second Mortgage to \$550,000.00, and notice of the amendment was registered as Instrument No. SC1669151 (the "**Applicants' Second Mortgage Amendment Notice**"). Attached hereto and marked as **Exhibit "11"** to this affidavit is a copy of the Applicants' Second Mortgage Amendment Notice.

29. The Applicants' Second Loan is also secured by a general security agreement dated December 16, 2019 from Mill Street Ventures in favour of 209 Alberta (the "**Applicants' Second GSA**"). Attached hereto and marked as **Exhibit "12"** to this affidavit is a copy of the Applicants' Second GSA.

30. Dorr and 209 Alberta have entered into an agreement whereby all proceeds realized by Dorr and 209 Alberta from the mortgages registered in each of their favour would be treated as *pari passu* proceeds, to which both Dorr and 209 Alberta are entitled, in their respective interests.

The DUCA Mortgage

31. Pursuant to a Commitment Letter dated December 6, 2019 (the "**DUCA Commitment Letter**"), DUCA agreed to make a loan for \$17,950,661 to Mill Street Ventures (the "**DUCA Loan**") to fund construction of the Project. Attached hereto and marked as **Exhibit "13"** to this affidavit is a copy of the DUCA Commitment Letter.

32. The DUCA Commitment Letter contemplated two facilities under the DUCA Loan: \$17,000,000 of the DUCA Loan was dedicated to financing the Project construction costs (the "**DUCA Construction Facility**"), and the remaining \$950,661.07 to fund letters of credit (the

“**DUCA LC Facility**”) in respect of Mill Street Ventures’ obligations to the governmental authorities in respect of the Project.

33. Pursuant to the DUCA Commitment Letter, Mill Street Ventures granted the DUCA Mortgage over the Mortgaged Property in the principal amount of \$17,950,661, registered on March 18, 2020 as Instrument Number SC1668966. Attached hereto and marked as **Exhibit “14”** to this affidavit is a copy of the DUCA Mortgage.

34. The DUCA Commitment Letter was subsequently amended, most recently by letter dated September 11, 2020 (collectively, the “**DUCA September Amendment**”). Attached hereto and marked as **Exhibit “15”** to this affidavit is a copy of the DUCA September Amendment executed by DUCA.

35. Among other things, pursuant to the DUCA September Amendment, the DUCA Loan maturity date was set at the earlier of six months from the date of the agreement (in other words, March 11, 2021), or the date on which DUCA demands prepayment of the facilities. Further, the DUCA Construction Facility was reduced to \$10,350,000.

The Applicants’ Subordination to the First DUCA Mortgage

36. Dorr and Community Trust agreed to a postponement of the Applicants’ First Mortgage in favour of the DUCA Mortgage, and 209 Alberta agreed to a postponement of the Applicants’ Second Mortgage in favour of the DUCA Mortgage. As set out in the parcel page for the Mortgaged Property (Exhibit 4), these postponements were registered on title on March 19, 2020 as instruments numbered SC1669172 (by Dorr and Community Trust) and SC1669179 (by 209 Alberta).

The Applicants' Third Loan and Third Mortgage

37. Mill Street Ventures required additional Project funds in 2021. Dorr made a further loan in the amount of \$100,000 to Mill Street Ventures (the “**Applicants' Third Loan**”) pursuant to a promissory note dated January 16, 2021 made by Mill Street Ventures in favor of Dorr. The Applicants' Third Loan is payable on demand, and bears interest at the rate of 15% *per annum*. Attached hereto and marked as **Exhibit “16”** to this affidavit is a copy of the promissory note evidencing the Applicants' Third Loan.

38. As security for the Applicants' Third Loan, a mortgage in the principal amount of \$56,000 was registered in favour of Dorr against title to the Mortgaged Property on January 8, 2021, as Instrument No. SC1744391 (the “**Applicants' Third Mortgage**”). Attached hereto and marked as **Exhibit “17”** to this affidavit is a copy of the Applicants' Third Mortgage.

39. On or about February 12, 2021, the Applicants' Third Mortgage was amended to, among other things, increased the principal amount of the Applicants' Third Mortgage to \$100,000, and notice of the amendment was registered on February 16, 2021 as Instrument No. SC1755108 (the “**Applicants' Third Mortgage Amendment Notice**”). Attached hereto and marked as **Exhibit “18”** to this affidavit is a copy of the Applicants' Third Mortgage Amendment Notice.

DUCA's Demand for Payment

40. Under cover of letter dated March 11, 2021, DUCA's legal counsel gave notice to Dorr and to 209 Alberta (the “**DUCA Notice**”) that Mill Street Ventures was in default of its loan agreement with DUCA, and that DUCA had made demand on Mill Street Ventures for payment in full of all amounts owing under the DUCA Loan, and issued its related notice pursuant to section

244 of the BIA DUCA's demand Notice states that Mill Street Ventures' default was a result of not paying out the DUCA Loan on maturity. Further, the DUCA Notice also states that DUCA "believes that there have been budget increases to the Project for which there is an equity shortfall." Attached hereto and marked as **Exhibit "19"** to this affidavit is a copy of the DUCA Notice.

41. By way of email dated April 5, 2021, Oren Chaimovitch of Devry Smith Frank LLP, the lawyers for DUCA, provided Steven Jeffery of Blaney McMurtry LLP ("**Blaneys**"), the Applicants' lawyers, with the payout amounts for the DUCA Mortgage as at March 11, 2021 (the "**DUCA Payout**"). Attached hereto and marked as **Exhibit "20"** to this affidavit is a copy of the DUCA Payout.

42. Among other things, the DUCA Payout states that Mill Street Ventures was indebted to DUCA in the amount of \$10,090,955.80 (exclusive of legal fees) as of March 11, 2021, and interest accrues at \$1,601.20 per day.

Applicants' Demand for Payment

43. As set out in section 5(j) of the Applicants' First Mortgage, the Applicants' Second Mortgage and the Applicants' Third Mortgage (collectively, the "**Applicants' Mortgages**"), any default by Mill Street Ventures under the DUCA Mortgage constitutes a default under the Applicants' Mortgages.

44. The Applicants made demand on Mill Street Ventures for payment in full under their loans on March 18, 2021, and issued their notice under s. 244 of the *BIA* on March 31, 2021. Attached hereto and marked as **Exhibit "21"** to this affidavit are copies of the Applicants' demand letters

to Mill Street Ventures dated March 18, 2021, and the Applicants' letters enclosing their *BIA* notices to Mill Street Ventures dated March 31, 2021.

45. As of March 18, 2021, the total amount of principal and interest owing under the Applicants' loans, excluding charges, fees and legal costs, was \$3,869,888.11 under the Applicants' First Loan, \$553,390.41 under the Applicants' Second Loan, and \$102,193.84 under the Applicants' Third Loan.

Appraisals of the Mortgaged Property

46. Antec Appraisal Group ("**Antec**") carried out four appraisals addressed to Dorr of the various parts of the Mortgaged Property: (i) September 20, 2019 (the "**2019 Gas Station Appraisal**"); (ii) October 10, 2019 (the "**2019 Retail Lands Appraisal**"), (iii) August 31, 2020 (the "**2020 Phase 2 Lands Appraisal**", prepared in draft), and (iv) September 23, 2020 (the "**2020 Phase 1 Lands Appraisal**", also prepared in draft). Attached hereto and marked as **Confidential Exhibits "A", "B", "C" and "D"** to this affidavit are copies of the 2019 Gas Station Appraisal, 2019 Retail Lands Appraisal, 2020 Phase 2 Lands Appraisal, and 2020 Phase 1 Lands Appraisal, respectively.

47. The 2019 Gas Station Appraisal includes Antec's estimate of the market value of just the gas station portion of the Mortgaged Property as of August 20, 2019. The 2019 Retail Lands Appraisal includes Antec's estimate of the market value of the Mortgaged Property, save and except for the gas station portion, as of September 26, 2019. The 2019 Retail Lands Appraisal assumes, among other things, that the entire retail plaza (i.e. Phase 1 and Phase 2) has been constructed and is fully leased.

48. The 2020 Phase 2 Lands Appraisal includes Antec's estimate of market value of the Phase 2 of the Mortgaged Property as of August 20, 2020. Among other things, it assumes that Phase 2 construction is not complete, but that Phase 1 is complete and occupied by the committed tenancies of Starbucks, A&W and KFC.

49. The 2020 Phase 1 Lands Appraisal includes Antec's estimates of the value of Phase 1 on two bases; "as if completed" and "as is" vacant, both as of September 10, 2020.

50. Based on the Phase 1 Lands Appraisal, completion of Phase 1 construction, and occupancy of the Phase 1 buildings by the tenants, will significantly increase the value of the Mortgaged Property.

Applicants' Plan to Complete Construction

51. Glynn Group Incorporated ("**Glynn Group**") are retained by Dorr as the cost consultants for the Project. On or about March 2, 2021, Glynn Group delivered to Dorr a Project progress report as of March 2021 (the "**Phase 1 Progress Report**"), which included a Capital Cost and Cost to Date Summary for Phase 1 of the Project (the "**Phase 1 Cost Summary**"). Attached hereto and marked as **Exhibit "22"** to this affidavit is an extract from the Phase 1 Cost Summary portion of the Phase 1 Progress Report.

52. As set out in line 236 of the Phase 1 Cost Summary, the total budget cost for Phase 1 is \$23,355,000, of which \$21,211,438 had been completed as of March, 2021, with a cost to complete of \$2,143,562. However, this cost to complete includes \$260,000 in finance charges in respect of the Applicants' Mortgages (lines 202, 203 and 204), future interest charges of \$48,000 in respect of the Applicants' First Loan (line 206), and \$451,867 in future interest charges in respect of the

DUCA Loan (line 224). When these financing and interest charges are backed out, the cost to complete Phase 1 of the Project is \$1,383,695.

53. I have spoken with Steven Chi, Senior Vice President of Project Monitoring at Glynn Group, and am advised that if work on Phase 1 were to recommence immediately, the buildings in which KFC, A&W Mucho Burrito and Starbucks are located can be completed within approximately 45 days, and the gas station and convenience store can be completed by August, 2021.

General Contractor Retainer

54. The general contractor carrying out the Project is PetroMaxx Petroleum Contractors Ltd. (“**PetroMaxx Petroleum**”), which is a related entity to Mill Street Ventures. The above schedule and budget – that is, to complete Phase 1 in August, 2021 at an additional cost of \$1,383,695 – assumes that the work will be completed by PetroMaxx Petroleum. If an alternate general contractor is required (for example, if the Respondent were to oppose the relief sought on this Application), it is estimated that the cost to complete would increase by at least 20%, based on inquiries Dorr has made to line up another general contractor (if required).

Interim Financing

55. Subject to the Interim Receivership Order sought herein being issued, the Applicants have arranged for funding from Rescom Capital of up to \$2,000,000 (the “**DIP Funding**”). As set out in the term sheet for the DIP Funding dated April 6, 2021 (the “**DIP Term Sheet**”), among other things the DIP Funding will be used to service Mill Street Ventures’ monthly obligations under

the DUCA Loan on a go forward basis, and to finance the completion of Phase 1 of the Project. Attached hereto and marked as **Exhibit “23”** to this affidavit is a copy of the DIP Term Sheet.

56. The DIP Funding and the Receiver’s Charge in the proposed Appointment Order sought by the Applicants herein will rank behind the DUCA Mortgage.

57. The Applicants also intend to fund the interest payments due under the DUCA Loan during the period of time that the Phase 1 construction is being completed (monthly payments of approximately \$48,000).

The DUCA Draft Notice of Application

58. On or about March 22, 2021, Larsen forwarded to Dorr a draft Notice of Application to Appoint a Receiver. Attached hereto and marked as **Exhibit “24”** to this Affidavit is a copy of DUCA’s draft Notice of Application and the related draft Order.

59. DUCA scheduled the hearing of its receivership application for April 20, 2021.

60. Based on the DUCA Payout, and given the “as is” valuation of the Mortgaged Property (that is, without completion of Phase 1), based on the 2020 Phase 1 Lands Appraisal and the 2020 Phase 2 Lands Appraisal, there is a real risk of a shortfall to DUCA, and no recovery at all under the Applicants’ Mortgages, if the Mortgaged Property is sold without Phase 1 first being completed.

Basis and Need for a Receiver

61. Pursuant to section 6.5 of each of the Applicants' Mortgages, and 6.1(b)(i) of the Applicants' First GSA and the Applicants' Second GSA, the Applicants' security provides for the appointment of a receiver upon default.

62. For the reasons set out above, I believe that it is just and equitable and in the interests of the Applicants, DUCA and the Respondent that a Receiver be appointed over the Mortgaged Property, so as to stabilize and complete the Project and enable the tenants of the Phase 1 buildings to proceed to occupancy, and to protect the interests of the Applicants.

63. Rosen Goldberg has consented to act as Receiver over the Mortgaged Property. Attached hereto and marked as Exhibit "25" to this affidavit is a copy of the consent to act as Receiver executed by Rosen Goldberg.

64. This affidavit is sworn in support of the Applicants' application for, among other things, an Order to appoint Rosen Goldberg as interim receiver over the Mortgaged Property, and for no improper purpose.

SWORN BEFORE ME by videoconference at)
the City of Toronto, in the Province of Ontario,)
this 14th day of April, 2021)



A Commissioner for Taking Affidavits

C. Kopach



Robert Shiller

TAB D

This is Exhibit "D" referred to in the Affidavit of Gary Gruneir sworn by Gary Gruneir at the City of Toronto, in the Province of Ontario, before me on August 20, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CHAD KOPACH

Court File No. CV-21-00660056-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

THE HONOURABLE)	TUESDAY, THE 20 th
)	
JUSTICE PATTILLO)	DAY OF APRIL, 2021

B E T W E E N:

**DORR CAPITAL CORPORATION,
COMMUNITY TRUST COMPANY and
2098535 ALBERTA LTD.**

Applicants

- and -

MILL STREET VENTURES GP LTD.

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*
R.S.C.1985 c. B-3, as amended

**APPOINTMENT ORDER
(Non-Possessory Interim Receiver)**

THIS APPLICATION made by Dorr Capital Corporation, Community Trust Company, and 2098535 Alberta Ltd. (collectively, the “**Applicants**”), for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) appointing Rosen Goldberg Inc. (“**Rosen Goldberg**”) as non-possessory interim receiver of certain property of Mill Street Ventures GP Ltd. (the “**Respondent**”) municipally known as 305 Mill Street, Angus, Ontario and legally described in Schedule “A” hereto (the “**Property**”), and sealing the

confidential exhibits (the “**Confidential Exhibits**”) to the Affidavit of Robert Shiller, sworn April 14, 2021, (the “**Shiller Affidavit**”) from the public record until further Order of the Court, was heard this day by Zoom videoconference due to the Covid-19 pandemic.

ON READING the Shiller Affidavit and the Exhibits thereto, including the Confidential Exhibits, on hearing submissions of counsel for the Applicants, the Respondent and DUCA Financial Services Credit Union Ltd. (“**DUCA**”), on being advised of the consent of the Respondent and that DUCA was not opposing the herein Order, and on reading the consent of Rosen Goldberg to act as the non-possessory interim receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record herein 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 47(1) of the *BIA*, Rosen Goldberg is hereby appointed non-possessory interim receiver (in such capacity, the “**Receiver**”) of the Property.

RECEIVER’S POWERS

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

- (a) to take possession of and exercise control over 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 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 engage contractors, tradespersons, quantity surveyors, consultants, construction consultants, appraisers, agents, experts, auditors, accountants, managers, including a property manager and/or a construction manager, 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;
- (d) to undertake any renovations and make any repairs to the Property necessary to ensure the Property is well maintained and rentable and is in compliance with the applicable laws and building codes;
- (e) to undertake any construction at the Property necessary to complete construction of the Project (as that term is defined in the Shiller Affidavit) in compliance with applicable laws and building codes;
- (f) to market available rental units, and subject to Court approval or consent of the Respondent and DUCA enter into new rental agreements;

- (g) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Respondent or any part or parts thereof;
- (h) to receive and collect all monies and accounts now owed or hereafter owing to the Respondent in respect of the Property and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent in respect of the Property;
- (i) to settle, extend or compromise any indebtedness owing to the Respondent;
- (j) to deal with any lien claims, trust claims, and trust funds that have been or may be registered or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Respondent or to or on behalf of any beneficiaries of any such trust funds pursuant to section 85 of the *Construction Act*;
- (k) to undertake environmental, geotechnical or worker's health and safety assessments of the Property and the operations of the Respondent;
- (l) 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 Respondent, for any purpose pursuant to this Order;
- (m) 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 Property and to settle or compromise any such proceedings, and 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;

- (n) 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;
- (o) to register a copy of this Order and any other Orders in respect of the Property, against title to the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority in respect of the Property and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondent;
- (q) 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 Respondent, and without interference from any other Person.

4. **THIS COURT ORDERS** that, without further Court Order, the Receiver shall not take possession of the Property, and shall not be deemed to have done so by reason of its appointment herein, and/or from exercising any of the rights and/or powers conferred in paragraph 3 above, or in any of the paragraphs below, including without limitation the retainer if necessary of one or

more contractors to enter on to the Property and provide materials or services to the Property. Notwithstanding that the Receiver shall not take possession, or be deemed to have taken possession, of the Property without further Court Order, the Respondent shall not after the appointment of the Receiver take any affirmative action in relation to the Property except at the direction of and with the written consent of the Receiver, or by way of Court Order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Respondent, (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, upon notice of the herein Order, advise the Receiver of the existence of any aspect(s) or portion(s) of the 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.

6. **THIS COURT ORDERS** that all Persons having notice of the herein Order 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 Respondent in respect of the Property, 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 6 or in paragraph 7 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.

7. **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 having notice of the herein Order and 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 having notice of the herein Order shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

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 RESPONDENT OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Respondent in relation to the Property or against 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 Respondent in relation to the Property or against 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 Respondent and/or the Receiver 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 Respondent to carry on any business which the Respondent is not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondent 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 Respondent in respect of the Property, 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 Respondent 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 Respondent in respect of the Property 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 Respondent's current telephone numbers, facsimile numbers, internet addresses and domain names in respect of the Property, 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 Respondent 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.

13. **THIS COURT ORDERS** that in the event that an account for the supply of goods and/or services is transferred from the Respondent to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

RECEIVER TO HOLD FUNDS

14. **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 collection of any accounts receivable in whole or in part in respect of the Property, 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

15. **THIS COURT ORDERS** that all employees of the Respondent shall remain the employees of the Respondent until such time as the Receiver, on the Respondent'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*.

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, subject to any registered charge or security held by DUCA as of the date of this Order (the "**DUCA Security**"), in which case the Receiver's Charge will form a second charge on the Property subordinate in priority to the DUCA Security, but otherwise the Receiver's Charge will

be 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 their 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 \$2,000,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in

favour of any Person, but subordinate in priority to the DUCA Security, 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 the Term Sheet for Receiver's Borrowings marked as Exhibit "23" to the Shiller Affidavit, and the terms of and conditions of borrowings contained therein, be and are hereby approved.

23. **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.

24. **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.

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

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/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 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘www.rosengoldberg.com/current-files.php’.

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 Respondent’s creditors or other interested parties at their respective addresses as last shown on the records of the Respondent and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

28. **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, and shall come back before this Court on May 14, 2021 at 9:30 am to report on the Property.

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

30. **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.

31. **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.

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

33. **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.

34. **THIS COURT ORDERS** that notwithstanding the commencement of the within Application and the appointment of the Receiver, the Applicants shall be deemed to be protecting their security, shall not be deemed to have resorted to realizing upon their security over the

Property, and the equitable right of redemption in respect of the Applicants' mortgages over the real property of the Respondent identified on the attached Schedule "A" shall not be triggered.

35. **THIS COURT ORDERS** that the Confidential Exhibits shall be sealed, kept confidential and not form part of the public record, but shall remain with counsel for the Applicants to be filed at a later date, and when so filed shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.

36. **THIS COURT ORDERS** that the Confidential Exhibits shall remain under seal until further Order of the Court.



SCHEDULE "A"**THE REAL PROPERTY**

PIN 58201-0239 LT in LRO #51

Description: PART OF LOT 21 CONCESSION 1 SUNNIDALE BEING PTS 4, 5 & 6 ON PL 51R39403; TOGETHER WITH AN EASEMENT OVER PT 2 ON PL 51R33560 AS IN SC322575; TOGETHER WITH AN EASEMENT OVER PTS 6 & 9 ON PL 51R34628 AS IN SC692338; TOGETHER WITH AN EASEMENT OVER PART LOT 21 CON 1 BEING PART 11, PLAN 51R34628 AS IN SC1630500; TOWNSHIP OF ESSA

SCHEDULE “B”
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the non-possessory interim receiver (the “**Receiver**”) of the real property of Mill Street Ventures GP Ltd. identified on Schedule “A” to the Appointment Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the ____ day of April, 2021__ (the “**Order**”) made in an action having Court file number _____, 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__.

ROSEN GOLDBERG INC., solely in its capacity as non-possessory interim receiver of the Property, and not in its personal or corporate capacity

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Court File No. CV-21-00660056-00CL

DORR CAPITAL CORPORATION et al

and

MILL STREET VENTURES GP LTD.

Applicants

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceeding commenced at Toronto

**APPOINTMENT ORDER
(Non-Possessory Interim Receiver)**

BLANEY MCMURTRY LLP

Barristers & Solicitors

2 Queen Street East, Suite 1500

Toronto ON M5C 3G5

Eric Golden (LSUC #38239M)

(416) 593-3927 (Tel)

Email: egolden@blaney.com**Chad Kopach (LSUC #48084G)**

(416) 593-2985 (Tel)

Email: ckopach@blaney.com

Lawyers for the Applicants

T A B L E

This is Exhibit "E" referred to in the Affidavit of Gary Gruneir sworn by Gary Gruneir at the City of Toronto, in the Province of Ontario, before me on August 20, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CHAD KOPACH

TERM SHEET FOR RECEIVER'S BORROWINGS
Dated April 6, 2021

WHEREAS Rosen Goldberg Inc. may be appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Receivership Order**"), as receiver and manager (the "**Borrower**") of all of the assets, undertakings and properties (the "**Property**") of Mill Street Ventures GP Ltd. (the "**Debtor**"), including, without limitation, the real property owned by the Debtor known municipally as 305 Mill Street, Angus, Ontario (the "**Mortgaged Property**"), and the proceeds thereof (the "**Receivership**");

AND WHEREAS the Receiver has requested that the Lender (as defined below) provide funding ("**Receiver's Borrowings**") to be used exclusively for the purpose described below;

NOW THEREFORE in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

- | | |
|----------------------------------|--|
| BORROWER: | Rosen Goldberg Inc. |
| LENDER: | C & K Mortgages Services Inc. (the " Lender "). |
| PURPOSE /USE OF PROCEEDS: | <p>Firstly, to service the existing monthly obligations of the Debtor to DUCA under the first mortgage registered against the Mortgaged Property;</p> <p>Secondly, to service the Borrower's monthly interest only obligations under the Receiver's Borrowings;</p> <p>Thirdly, to fund the completion of construction of the Phase 1 Retail Plaza, Gas Station and Convenience Store on the Mortgaged Property, and costs ancillary thereto (the "Project"); and</p> <p>Fourthly, to pay other costs of the Receivership (collectively, the "Purpose").</p> |
| PRINCIPAL AMOUNT: | \$2 million, to be drawn immediately in one-lump sum (the " Principal "). |
| MATURITY: | The " Maturity Date " shall be the date that is the earliest of: (i) the first anniversary of the granting of the Receivership Order; (ii) the closing of a sale by the Receiver of the Mortgaged Property; or (iii) such earlier date upon which repayment is required due to the occurrence of an Event of Default (as defined below). The Maturity Date may be extended at the request of the Receiver and with the written consent of the Lender for additional periods of not more than |

90 days, on such terms as the Receiver and the Lender may agree in writing.

All amounts outstanding under the Receiver's Borrowings shall be repaid in full no later than the Maturity Date without the Lender being required to make demand upon the Borrower or to give notice that the Receiver's Borrowings have expired, and the obligations are due and payable.

The Borrower may prepay the Receiver's Borrowings upon paying one month's interest bonus.

**LENDER'S FUNDING
CONDITIONS:**

The Lender shall not be obligated to provide any funding pursuant to this Term Sheet if any one or more of the following occurs prior to the advance of the Principal: (a) the Lender has not received a satisfactory report from a quantity surveyor, cost consultant, or project monitor, confirming the cost to complete the Project; (b) the Lender is not satisfied that the Receiver's Borrowings will be sufficient to complete the Project and otherwise fund the Purpose; (c) the Receivership Order does not expressly approve the terms of this Term Sheet and the Receiver's Borrowing contemplated herein; (d) the terms of the Receivership Order are not satisfactory to the Lender, acting reasonably; (e) the Receivership Order has been vacated, stayed or otherwise caused to become ineffective or is amended in a manner which is not acceptable to the Lender (such consent not to be unreasonably withheld); or (f) a Default or Event of Default has occurred and is continuing.

**INTEREST RATE AND
PAYMENTS:**

Interest at the Rate (as defined below) shall be payable monthly, in arrears, on the first Business Day of each month on the Principal from the date of advance and on any overdue interest, both before and after maturity, default or judgment. Interest shall be calculated daily and compounded monthly.

LENDER'S FEE:

The Borrower shall pay to the Lender a lender's fee equal to 2% of the Principal, and the Lender is authorized to deduct such amount from the advance.

COSTS AND EXPENSES:

The Borrower shall pay the Lender's costs and expenses incurred in connection with this Term Sheet (including legal fees on a full indemnity basis), and the Lender is authorized to deduct such amounts from the advance.

In addition, the Lender shall be entitled to recover from the Mortgaged Property its costs and expenses (including legal fees on a full indemnity basis) incurred in order to protect the Lender's interests and recover the amounts owing by the Borrower to the Lender. Such amounts shall be added to and included in the indebtedness secured by the Receiver's Certificate.

SECURITY:

The Receiver's Borrowings shall be secured by a Receiver's Certificate and by the Receiver's Borrowings Charge (as defined in the Receivership Order) and shall have priority against the Property and the Mortgaged Property subordinate only to any first-ranking security held by DUCA but senior in priority to the existing second mortgage registered against the Mortgaged Property and any other security held by the second mortgagee against the Mortgaged Property or the Property.

REPRESENTATIONS AND WARRANTIES:

The Borrower represents and warrants to the Lender, upon which the Lender relies in entering into this Term Sheet, that upon the granting of the Receivership Order:

- (a) the transactions contemplated by this Term Sheet:
 - (i) will be within the powers of the Borrower;
 - (ii) will be duly authorized by all necessary approvals;
 - (iii) will constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their terms;
 - (iv) will not require the consent or approval of, registration or filing with, or any

other action by, any governmental authority; and

- (b) no commissions or other payments shall be due to any broker, consultant or other third-party in connection herewith.

EVENTS OF DEFAULT:

The occurrence of any one or more of the following events shall constitute an event of default (“**Event of Default**”) under this Term Sheet:

- (a) the granting of an order dismissing the Receivership proceedings, or lifting the stay in the Receivership Order to permit the enforcement of any security against the Debtor, the Property or the Mortgaged Property;
- (b) the granting of an order staying, reversing, vacating or otherwise modifying the Receivership Order or the granting of an order by the Court having the equivalent effect, without the prior written consent of the Lender;
- (c) any representation or warranty by the Borrower shall be incorrect or misleading in any material respect when made and where such failure is continuing more than three Business Days after written notice thereof from the Lender to the Borrower;
- (d) any steps are taken to challenge the validity, enforceability or priority of the Receiver’s Borrowings Charge;
- (e) borrowings under this Term Sheet exceed the Principal;
- (f) any tenant of the Mortgaged Property has notified the Debtor or the Borrower that such tenant considers its lease, or intends to treat its lease as terminated, repudiated, cancelled or of no further force and effect; or
- (g) any tenant of the Mortgaged Property is in breach of its obligations under its lease.

It is acknowledged that, for the purposes of subsections (a) through (g) above, written notice may be delivered by electronic mail.

REMEDIES:

Upon the occurrence of an Event of Default, the Lender may terminate its commitment, and exercise all such other rights and remedies available to the Lender, in accordance with the Receivership Order.

FURTHER ASSURANCES:

Each party shall at its expense, from time to time, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including, without limitation, certificates, declarations, affidavits, reports and opinions) and things as the other party may reasonably request for the purpose of giving effect to this Term Sheet and perfecting, protecting and maintaining the liens created by the Receiver's Borrowing Charge or the Receiver's Certificate or establishing compliance with the representations, warranties and conditions of this Term Sheet.

ENTIRE AGREEMENT CONFLICT:

This Term Sheet constitutes the entire agreement between the parties relating to the subject matter hereof.

AMENDMENTS, WAIVERS, ETC.:

No waiver or delay on the part of the Lender in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing and signed by an authorized officer of the Lender.

**COUNTERPARTS
FACSIMILE SIGNATURES:**

AND This Term Sheet may be executed and delivered in any number of counterparts and by email or facsimile, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this Term Sheet by signing any counterpart of it.

**GOVERNING LAW AND
JURISDICTION:**

This Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

CANADIAN CURRENCY:

Unless otherwise provided, all dollar amounts are in Canadian currency.

ADDITIONAL DEFINITIONS:

Capitalized terms not otherwise defined herein shall have the following meanings:

“Business Day” means each day other than a Saturday or Sunday or a statutory or civic holiday that banks are open for business in Toronto, Ontario, Canada;

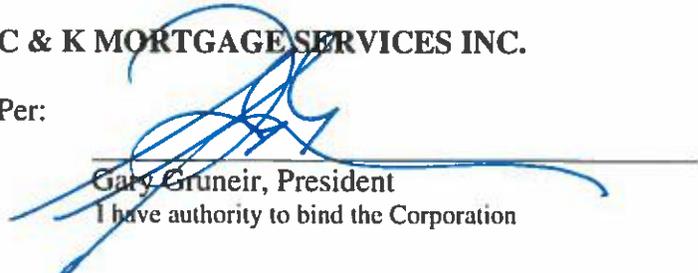
“Default” means an event which, with the giving of notice and/or lapse of time would constitute an Event of Default (as defined herein);

“Rate” means the rate of interest equal to twelve percent (12 %) per annum;

IN WITNESS HEREOF, the parties hereby execute this Term Sheet as at April 6, 2021

C & K MORTGAGE SERVICES INC.

Per:



Gary Gruneir, President

I have authority to bind the Corporation

**ROSEN GOLDBERG INC., in its capacity as the
proposed Court-appointed receiver and manager
of the Property**

Per:

Brahm Rosen, President

I have authority to bind the Corporation

TAB F

This is Exhibit "F" referred to in the Affidavit of Gary Gruneir sworn by Gary Gruneir at the City of Toronto, in the Province of Ontario, before me on August 20, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CHAD KOPACH



ROSEN GOLDBERG
L.L.P. & ASSOCIATES

File No. CV-21-00660056-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

BETWEEN:

**DORR CAPITAL CORPORATION,
COMMUNITY TRUST COMPANY and
2098535 ALBERTA LTD.**

Applicants

-and-

MILL STREET VENTURES GP LTD.

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*
R.S.C.1985 c. B-3, as amended

SECOND REPORT OF ROSEN GOLDBERG INC.

June 24, 2021

I INTRODUCTION

1. By Order of the Honourable Mr. Justice Pattillo dated April 20, 2021 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed as non-possessory interim receiver (in such capacity, the “**Interim Receiver**”) of certain real property of the Respondent municipally known as 305 Mill Street, in Angus, Ontario (the “**Real Property**”) pursuant to section 47 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). A copy of the Appointment Order is attached as **Appendix “A”**.



II TERMS OF REFERENCE

2. In preparing this Second Report, the Interim Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this Second Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Interim Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Interim Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Interim Receiver expresses no opinion or other form of assurance in respect of the Information.

III PURPOSE OF THIS REPORT

3. The purpose of this Second Report is to:
 - (a) provide the Court with information on the current status of the Real Property;
 - (b) report on and seek approval of the Interim Receiver’s activities, and its proposed activities; and
 - (c) seek approval of the Interim Receiver’s interim statement of receipts and disbursements.



ROSEN GOLDBERG

LEGAL COUNSEL & REAL ESTATE

IV BACKGROUND

4. The Real Property comprises a 5.3 acre lot located on a main thoroughfare in the neighbourhood of Angus in the Township of Essa.
5. The land is partially improved, and is being developed into a 45,600 square foot mixed-use office and retail plaza.
6. At the date of the Interim Receiver's appointment, the first phase of construction ("**Phase 1**"), being construction of a gas station, convenience store, and three other fully leased buildings, was nearly complete. Of the three leased buildings, one is to be occupied by Starbucks and Mucho Burrito restaurants. The other two buildings are to be occupied as standalone KFC and A&W restaurants. As of the date of the Interim Receiver's appointment, construction of Phase 1 was nearly complete, though the gas station required more work to complete than the other three buildings.
7. The second phase of construction ("**Phase 2**") is not yet fully planned, though work has commenced. Completed improvements in respect of Phase 2 are limited to certain internal servicing, including storm-water receptors, sanitary pipes, and fire hydrants. We understand planners and consultants have been retained in respect of seeking site plan approval for Phase 2.
8. The Interim Receiver's appointment was sought, in part, given that construction on Phase 1 had been halted because DUCA Financial Services Credit Union Ltd. ("**DUCA**"), the first-ranking secured creditor, had ceased funding under its construction loan, and made demand in for repayment in full of that loan.



ROSEN GOLDBERG

LAW FIRM & REAL ESTATE

9. The Interim Receiver's primary mandate in this administration is to ensure that construction of Phase 1 resumes and is completed, although the Appointment Order prohibits the Interim Receiver from taking possession of the Real Property without further Order of this Honourable Court.
10. Pursuant to the endorsement of the Honourable Mr. Justice Pattillo dated May 14, 2021, the Interim Receiver was to return to this Honourable Court on June 28, 2021, to provide a further status update at a 9:30 Chambers' Appointment.

V INTERIM RECEIVER'S ACTIVITIES TO DATE

11. Since the date of its last report dated May 11, 2021, the Interim Receiver has undertaken the following activities:
 - Reviewing and processing payment requests;
 - Dealing with contactors and other suppliers on an ongoing basis;
 - Attendance at site as required;
 - Ongoing communications with Glynn Group Incorporated ("**Glynn Group**"), the project monitor, regarding its reporting in respect of cost to complete construction of Phase 1 and other matters;
 - Dealing with PetroMaxx Petroleum Contractors Ltd. ("**PetroMaxx Contractors**"), the project manager and supervisor, on an ongoing basis in respect of all matters relating to the Phase 1 construction;
 - Dealing with Bar-Con Development Ltd. ("**Bar-Con**"), a specialized water and sanitary contractor retained to complete Phase 1 connections to the municipal water and sanitary main lines;
 - Communications with CC Tatham Engineering Limited, the project engineer;



ROSEN GOLDBERG

REAL ESTATE & FINANCIAL SERVICES

- Discussions with F.P.S. Consulting Inc., the lease consultant;
- Ongoing consultations with legal counsel;
- Ongoing communications with the Real Property's first and second-ranking secured lenders;
- Ongoing communications with the Interim Receiver's lender;
- Communicating with other stakeholders; and
- Dealing with banking and bookkeeping.

VI PHASE 1 CONSTRUCTION

Site Services

12. As reported in the Interim Receiver's first report dated May 11, 2021 (the "**First Report**"), the installation of a sanitary pumping station and a water main had to be undertaken immediately in order to progress with the completion of Phase 1. This work is substantially complete, and the system is undergoing the required testing and commissioning. A copy of the First Report, without appendices, is attached as **Appendix "B"**.
13. Surface works, including installing granular base, curbs, sidewalks and the asphalt surface, are in the process of being completed. It is anticipated that the work will be completed at the end of the first week in July 2021.
14. The testing/commissioning of the water system and sanitary pump station, and the completion of the surface works, are required to obtain the requisite occupancy permits for the site so that the tenants can begin operations. This work is anticipated to be completed within approximately two weeks, with the occupancy permits to be issued shortly thereafter.



ROSEN GOLDBERG

LAW, P.C.

Restaurant Buildings

15. We understand that both KFC and A&W have completed the interior work in their respective buildings and will commence commissioning of their equipment upon completion of the water and sanitary connections.
16. Starbucks is currently in the process of completing its improvements, and expects to be completed in July, 2021.
17. Mucho Burrito commenced its tenant improvements during the week of June 21, 2021.

Gas Station and Convenience Store

18. The exterior of the convenience store is mostly complete. Construction of the interior work has not yet commenced. The curbs and sidewalks must be completed.
19. We understand that management of the Respondent is in process of negotiating a lease agreement with Parkland Corporation, who would operate the gas station and convenience store. The Interim Receiver has not been advised of any details of these negotiations, nor has it been provided with any documentation in this regard. The Interim Receiver is concerned that a lease agreement could possibly have a negative impact on the realizable value of the Real Property. The Interim Receiver's position is that any agreements entered into by the Respondent relating to the sale or leasing of the Real Property require Court approval. Counsel for the Applicant advised the lawyer for Parkland Corporation of this position in an email dated June 23, 2021, which is attached as **Appendix "C"** to this Report.



Completion of Phase 1 work

20. On the basis of the work that has been completed since the Interim Receiver's appointment, and the expected work schedule, the Interim Receiver remains of the belief that all Phase 1 work will be complete by sometime in August, 2021.
21. However, based on events since the Appointment Order, the Interim Receiver is concerned that the \$2 million that it borrowed will not be sufficient to complete Phase 1. The Interim Receiver is working with Glynn Group (among others) to prepare a revised budget for the actual cost to complete.
22. Among the issues that have arisen that may impact the cost to complete are a possible increase in scope of the Bar-Con work, unpaid amounts to certain suppliers that were not previously identified and discussions with PetroMaxx Contractors who indicated additional funds may be required to complete the convenience store.

VII INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

23. The Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to June 23, 2021 is attached as **Appendix "D"**.

VIII FURTHER ACTIONS OF THE INTERIM RECEIVER

24. The Interim Receiver will continue to attend at the construction site as required to monitor construction activities and deal with suppliers and other stakeholders on an ongoing basis.



ROSEN GOLDBERG

L.L.P.
ADVISORS & ARCHITECTS**IX RECOMMENDATION**

25. As described above, there is still work required to complete Phase 1. For this reason, the Interim Receiver respectfully requests that the Court make an Order:

- (a) approving the Interim Receiver's actions as described in this Second Report;
- (b) approving the Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to June 23, 2021; and
- (c) for such further and other relief as counsel may advise and this Court may permit.

All of which is respectfully submitted.

Dated at Toronto, Ontario, this 24th day of June 2021.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED NON-POSSESSORY INTERIM RECEIVER OF
CERTAIN REAL PROPERTY OF MILL STREET VENTURES GP LTD.;
NOT IN A PERSONAL OR CORPORATE CAPACITY**

TAB G

This is Exhibit "G" referred to in the Affidavit of Gary Gruneir sworn by Gary Gruneir at the City of Toronto, in the Province of Ontario, before me on August 20, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CHAD KOPACH

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Door Capital Plaintiff(s)
AND
Mill Street Ventures GP Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
See attached App 'A'		

- Order Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- Adjourned to: _____
- Time Table approved (as follows):

The activities in the Interim Receiver's Third Report dated August 6, 2021 are approved.

This matter is adjourned to August 23, 2021 at 10:00am (30 min.) before me for a status report.

The Interim Receivership is to be converted to a receivership. At this point, the question of who will bring the motion and who will be the Receiver is not resolved. Accordingly, the issue is set to be heard September 9, 2021 at 10:00am (1 hour) if not resolved earlier.

Aug 9, 2021
Date

[Signature]
Judge's Signature

Additional Pages _____

Appendix "A"

COUNSEL SLIP**Court File Number:** CV-21-00660056-00CL**Date:** Monday, August 9, 2021 – 2:00 p.m.
via videoconference**Title of Proceeding:** Dorr Capital Corporation et al v. Mill Street Ventures GP Ltd.

Counsel	Party	Contact
Eric Golden Chad Kopach Blaney McMurtry LLP	Counsel for the Applicants	Tel: 416.593.1221 Fax: 416.596.2049 Email: egolden@blaney.com ckopach@blaney.com
David Preger Dickinson Wright LLP	Counsel to the Non-Possessory Interim Receiver	Tel: 416.366.6406 Fax: 416.865.1398 Email: dpreger@dickinsonwright.com
Brahm Rosen (NB – Not Counsel)	The Non-Possessory Interim Receiver	Tel: 416.224.4200 Fax: 416.224.4330 Email: brosen@rosengoldberg.com
Brandon Jaffe Jaffe & Peritz LLP	Counsel for the Respondent	Tel: 416.368.2809 Email: bjaffe@jaffeperitz.com
Oren Chaimovitch Devry Smith Frank LLP	Counsel for DUCA Financial Services Credit Union Ltd.	Tel: 416.446.3342 Fax: 416.449.7072 Email: oren.chaimovitch@devrylaw.ca
Roger Jaipargas Borden Ladner Gervais LLP	Counsel for Parkland Fuel Corporation	Tel: 416.367.6266 Email: rjaipargas@blg.com

[Handwritten Signature]
 Aug 9/21

TAB H

This is Exhibit "H" referred to in the Affidavit of Gary Gruneir sworn by Gary Gruneir at the City of Toronto, in the Province of Ontario, before me on August 20, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CHAD KOPACH



RESCOM Capital
1670 Bayview Avenue, Suite 400
Toronto, Ontario M4G 3C2

T. 416.485.2636
F. 416.482.4043
www.rescomcapital.com

July 14, 2021

Brahm Rosen
Rosen Goldberg Inc.
5255 Yonge Street, Suite 804,
Toronto, Ontario, M2N 6P4

Dear Sir:

Re: Mill Street Ventures GP Ltd. (the "Debtor"), 305 Mill Street, Angus, Ontario (the "Property")

This letter will serve as our commitment to finance the Property. For greater certainty, the term "Property" shall include, not only the property municipally known as 305 Mill Street, Angus, Ontario, but all of the assets, undertakings and properties of the Debtor and all proceeds thereof (the "Property")

Loan Amount: Such amount as necessary to

- (a) pay DUCA Credit Union Ltd. ("DUCA") in full the amount owing under its loan facilities to the Debtor on the day of closing (the "DUCA Payment Amount"). We understand that as at May 14, 2021, the DUCA Payment Amount was \$10,223,602.93;
- (b) pay us an arrangement fee equivalent to 2% of the DUCA Payment Amount;
- (c) pay our reasonable legal fees and disbursements in connection with this financing; and
- (d) establish a 9 month interest reserve for us in respect of the aggregate of the amounts referred to (a), (b), (c) above

(collectively, the "Loan").

Interest Rate: 8.75% percent per annum, calculated and payable interest only monthly

Term: 1 year

Privileges: The Loan will be closed for three months and open thereafter upon receipt of 30 days written notice and payment of one month's interest.

Amortization: Interest only.

Security: 1. A Receiver's Certificate for the full amount of the Loan, together with interest and charges thereon. The whole of the Property shall be

charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the Loan together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, but subordinate in priority to a charge in favour of Rosen Goldberg Inc., in its capacity as Court-appointed receiver and manager of the Property and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"). For greater certainty, the existing borrowings obtained by Rosen Goldberg Inc., in its capacity as Court-appointed interim receiver of the Property, and the security therefor created by Order of Justice Pattillo dated April 11, 2021, shall rank immediately subordinate in priority to the security for the Loan.

2. The assignment of all security held by DUCA under its loan facilities to the Debtor, including, without limitation, DUCA's existing first mortgage, general assignment of rents, general security agreement over the Property, title insurance and guarantees to DUCA (collectively, the "DUCA Security")

3. Such other reasonable documentation as our solicitors may consider advisable

Advance of Funds: The advance of funds will be made when our solicitors can provide their certificate of title and when all other conditions precedent to such advance as stated herein are satisfied. Advance of funds will be subject to the following conditions

Conditions:

1. The advance of the DUCA Payment Amount to DUCA shall be conditional upon and shall occur contemporaneously with (a) the appointment of Rosen Goldberg Inc. as Court-appointed receiver and manager of the Property 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"), on terms consistent with this commitment and otherwise satisfactory to us acting reasonably; and (b) the assignment of the DUCA Security to us.

2 Title, all security and title insurance must be satisfactory to our solicitors, acting reasonably.

3. In the event that any payment is returned to us for any cause whatsoever, including there being insufficient funds in Rosen Goldberg Inc.'s account to cover same, we will be entitled to reimbursement for all bank charges related to the dishonoured cheque. In addition, our or our administrator's time for collection will be charged at a rate of \$300 per hour and all time will be docketed and charged to Rosen Goldberg Inc.'s account. These charges will apply to all administration costs related to any default under the Loan including but not limited to collection costs related to late payments, insurance cancellation and work orders affecting the Property.

4. Any payment (other than payment of the regular payments of interest) that is made after 1 00 p.m. on any date or 11:00 a.m. on a Friday or the business day preceding a statutory holiday, shall be deemed for the purpose of calculation of interest, to have been made and received on the next bank business day. For greater certainty, if funds are received (or deemed received) on a Friday after 11:00 a.m. or the day preceding a statutory holiday, interest will be payable to the next bank business day.

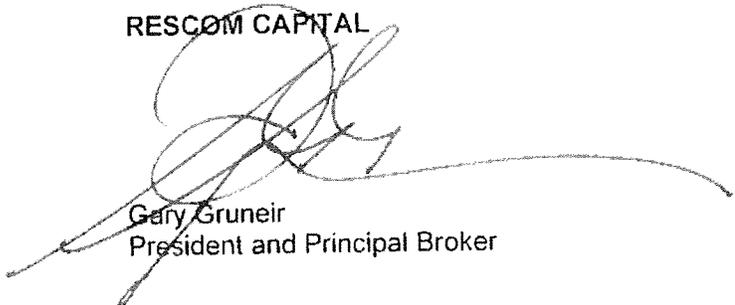
5. In the event the Loan is not repaid at the time or times provided, we will not be required to accept payment of the principal monies without first receiving three (3) months' notice in writing or receiving three (3) months interest in advance of the principal monies.

6. In the event of default, Rescom Capital will be appointed as the manager for investors in the Loan and will be entitled to a fee of \$350 per hour for its services and such fee will be charged to the borrower's account.

7. This commitment is open for acceptance until 1 00 PM on August 9, 2021.

Yours truly,

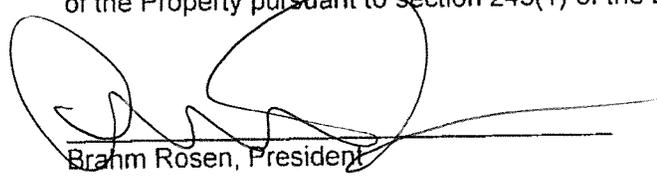
RESCOM CAPITAL


Gary Gruneir
President and Principal Broker

The undersigned hereby accepts the above terms and conditions.

Dated this 9th day of August, 2021

ROSEN GOLDBERG INC., in its capacity as the proposed Court-appointed receiver and manager of the Property pursuant to section 243(1) of the BIA and section 101 of the CJA


Brahm Rosen, President

TAB I

This is Exhibit "I" referred to in the Affidavit of Gary Gruneir sworn by Gary Gruneir at the City of Toronto, in the Province of Ontario, before me on August 20, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

CHAD KOPACH

Oren.Chaimovitch@devrylaw.ca

August 6, 2021

BY EMAIL: egolden@blaney.com

Blaney McMurtry LLP
2 Queen Street East
Suite 1500
Toronto, Ontario
M5C 3G5
Attn: Eric Golden

Dear Mr. Golden:

**Re: DUCA Financial Credit Union Ltd. (“DDUCA”) loan facilities in favour of Mill Street Ventures GP Ltd. secured by a mortgage (the “Mortgage”) over 305 Mill Street, Angus, Ontario
Our File No.: DUCA0029**

Further to your email communication of yesterday's date, the amount required to discharge the above Mortgage as at today's date is as follows:

(a) Principal balance owing under Demand Loan:	\$9,061,050.00
(b) Accrued interest on Demand Loan to August 6, 2021	\$137,706.60
(c) Discharge fee	\$1,000.00
(d) PPSA discharge fee	\$100.00
(e) Letters of Credit	\$950,661.07
(f) Letter of Credit Fee	\$23,766.53
(g) Legal fees incurred to August 6, 2021 (estimated)	<u>\$37,305.52</u>
(h) Total	\$10,211,589.72

In addition to the above, our fee for preparing and registering the Mortgage discharge is \$1,000.00 plus the cost of registration and HST for a total of \$1,342.88.

Interest continues to accrue from August 6, 2021 to the date of payment at DUCA's prime rate of interest in effect from time to time plus 3.45% per annum, which as of today's date is equal to \$1,601.20 per day. Funds received after 5 pm are deemed to be received the next business day.

You may deliver the above funds by certified cheque drawn on a lawyer's trust account to our office made payable to **Devry Smith Frank LLP, In Trust**. Alternatively, funds may be wired

directly into our trust account. We would provide details of our trust account shortly in advance of such payment.

Upon receipt of the requisite funds, we will discharge the Mortgage and related assignment of rents and provide you evidence of registration. Funds paid above in relation to the Letters of Credit would to be retained by DUCA as security for the obligations under the Letters of Credit until the Letters of Credit are returned to DUCA by the town. DUCA would need to retain a first ranking security interest in such funds until the Letters of Credit are returned.

The foregoing amount is current only to the date indicated and includes all costs of which we are aware to date. Any costs which have not been disclosed or which may later arise, are reserved and a discharge of the mortgage will not be provided until all such costs are paid. It is subject to any adjustments or corrections occasioned by returned payments, payments to satisfy third party or priority claims, errors or omissions.

We advise that no intermediate acts, negotiations, or indulgences shall act as a waiver of the Credit Union's rights, or, demand for payment unless so expressly stated in writing.

Yours truly,

DEVRY SMITH FRANK LLP



Oren Chaimovitch
OHC:oc

DORR CAPITAL CORPORATION et al.
Applicants

-and- MILL STREET VENTURES GP LTD.
Respondent

Court File No. CV-21-00660056-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF GARY GRUNEIR

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

Eric Golden (LSUC #38239M)
(416) 593-3927 (Tel)
Email: egolden@blaney.com

Chad Kopach (LSUC #48084G)
(416) 593-2985 (Tel)
Email: ckopach@blaney.com

Lawyers for the Applicants and C & K Mortgage Services
Inc.

TAB 3



ROSEN GOLDBERG

LAW FIRM & REALTY GROUP

File No. CV-21-00660056-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

BETWEEN:

**DORR CAPITAL CORPORATION,
COMMUNITY TRUST COMPANY and
2098535 ALBERTA LTD.**

Applicants

-and-

MILL STREET VENTURES GP LTD.

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*
R.S.C.1985 c. B-3, as amended

FOURTH REPORT OF ROSEN GOLDBERG INC.

August 20, 2021

I INTRODUCTION

1. By Order of the Honourable Mr. Justice Pattillo dated April 20, 2021 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed as non-possessory interim receiver (in such capacity, the “**Interim Receiver**”) of certain real property of the Respondent municipally known as 305 Mill Street, in Angus, Ontario (the “**Real Property**”) pursuant to section 47 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). A copy of the Appointment Order is attached as **Appendix “A”**.



ROSEN GOLDBERG

SOLUTIONS & RESOLUTIONS

II TERMS OF REFERENCE

2. In preparing this Fourth Report, the Interim Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this Third Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Interim Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Interim Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Interim Receiver expresses no opinion or other form of assurance in respect of the Information.

III PURPOSE OF THIS REPORT

3. The purpose of this Third Report is to:
 - (a) provide the Court with information on the current status of the Real Property;
 - (b) report on and seek approval of the Interim Receiver’s activities, and its proposed activities; and
 - (c) seek approval of the Interim Receiver’s interim statement of receipts and disbursements.

IV BACKGROUND

4. The Real Property comprises a 5.3 acre lot located on a main thoroughfare in the



neighbourhood of Angus in the Township of Essa.

5. The land is partially improved, and is being developed into a 45,600 square foot mixed-use office and retail plaza.
6. At the date of the Interim Receiver's appointment, the first phase of construction ("**Phase 1**"), being construction of a gas station, convenience store, and three other fully leased buildings, was nearly complete. Of the three leased buildings, one is to be occupied by Starbucks and Mucho Burrito restaurants. The other two buildings are to be occupied as standalone KFC and A&W restaurants. As of the date of the Interim Receiver's appointment, construction of Phase 1 was nearly complete, though the gas station required more work to complete than the other three buildings.
7. The second phase of construction ("**Phase 2**") is not yet fully planned, though work has commenced. Completed improvements in respect of Phase 2 are limited to certain internal servicing, including storm-water receptors, sanitary pipes, and fire hydrants. Planners and consultants have been retained in respect of seeking site plan approval.
8. The Interim Receiver's appointment was sought, in part, given that construction on Phase 1 had been halted because DUCA Financial Services Credit Union Ltd. ("**DUCA**"), the first-ranking secured creditor, had ceased funding under its construction loan, and made demand in for repayment in full of that loan.
9. The Interim Receiver's primary mandate in this administration is to ensure that construction of Phase 1 resumes and is completed, although the Appointment Order prohibits the Interim Receiver from taking possession of the Real Property without further Order of this Honourable Court.



ROSEN GOLDBERG

LAW FIRM & ARCHITECTS

10. Pursuant to the endorsement of the Honourable Mr. Justice Pattillo dated August 9, 2021, the Interim Receiver and other stakeholders were to return to this Honourable Court on August 23, 2021, to provide a further status update at a Chambers' Appointment scheduled for 10:00 a.m.

V INTERIM RECEIVER'S ACTIVITIES TO DATE

11. Since the date of its last report dated August 9, 2021, the Interim Receiver has undertaken the following activities:
 - Reviewing and processing payment requests;
 - Dealing with contactors and other suppliers on an ongoing basis;
 - Attendance at site on several occasions;
 - Dealing with Petromaxx Petroleum Contractors Ltd. ("**Petromaxx**"), the project manager and supervisor, on an ongoing basis in respect of all matters relating to the Phase 1 construction;
 - Ongoing consultations with the construction professional retained by the Interim Receiver;
 - Communications with project engineer;
 - Ongoing consultations with legal counsel;
 - Communications with tenants on an ongoing basis;
 - Communications with planners re status of various development matters;
 - Ongoing communications with the Real Property's first and second-ranking secured lenders;
 - Ongoing communications with the Interim Receiver's lender;
 - Communicating with other stakeholders; and



ROSEN GOLDBERG

CONSULTING & PROJECT ENGINEERS

- Dealing with banking and bookkeeping.

VI PHASE 1 CONSTRUCTION

Site Services

12. As reported in the Interim Receiver's first report dated May 11, 2021 (the "**First Report**"), the second report dated June 24, 2021 (the "**Second Report**") and the third report dated August 5, 2021 (the "**Third Report**"), the installation of a sanitary pumping station and a water main were required be undertaken immediately in order to progress with the completion of Phase 1. Copies of the First Report, the Second Report and the Third Report are attached hereto as **Appendices "B"**, **"C"** and **Appendix "D"**, respectively. The water main installation has been completed, however, as a result of delays caused by the contractor retained by Petromaxx (who we understand was attempting to connect the water main in the wrong location), the water main has yet to be connected to the town water supply. A replacement contractor has been retained and the water will be connected imminently.
13. Surface works, including installing granular base, curbs, sidewalks and the asphalt surface, have been delayed. In order to complete this work it was necessary to obtain a topographical report and have it reviewed by the project engineer, the results which were received recently. As a result it was determined that certain curbs, which were previously installed, were placed incorrectly and will have to be removed and reinstalled. Additionally, the base asphalt, which was installed in December, was unacceptable and was placed on sub-grade that was not previously tested and will have to be remediated. A contractor has been retained to complete this work. Lastly, it was discovered that the sanitary lines that were previously installed by Petromaxx, were not flushed and no video or reports were obtained. As a result there was an abnormal amount of debris and sediment in these lines, and the extensive



ROSEN GOLDBERG

NEW YORK & BOSTON OFFICES

flushing required created additional cost and delay.

14. These delays and additional costs appear to be as a result of no ongoing inspections and the lack of involvement of the project engineer on an ongoing basis. Additionally, the project manager has attempted to manage the construction project from off-site and as a result there was insufficient on-site supervision of sub-contractors and trades. This void has resulted in the Interim Receiver and the construction professional it retained, to be contacted directly by trades and tenants, requesting updates and timelines to completion.
15. The project, despite the delays, continues to move forward towards Phase 1 completion and obtaining an occupancy permit, as new contractors have been retained to complete the required work.

Restaurant Buildings

16. We understand that KFC, A&W and Starbucks have completed the interior work in their respective buildings and will commence commissioning of their equipment upon completion of the water and sanitary connections.
17. We further understand that Mucho Burrito has yet to commence its tenant improvements. We are advised that a matter related to an amendment to the Mucho Burrito lease has yet to be finalized, but that Mucho Burrito does intend to commence improvements once the matter is resolved.

Gas Station and Convenience Store

18. The exterior of the convenience store is mostly complete. Construction of the interior work has not yet commenced. The curbs and sidewalks must be completed. The remaining construction related to the gas station and installation of the equipment will not be completed



until there is an agreement with a fuel supplier in place.

Completion of Phase 1 work

19. On the basis of the work that has been completed since the Interim Receiver's appointment, and the expected work schedule, the Interim Receiver understands that all Phase 1 work will be completed within four weeks.
20. The costs to complete that was provided at the time of our appointment was significantly inaccurate. We estimate that we will require an additional \$250,000 in excess of the original borrowings to complete the work. This does not include the remaining construction of the gas station, which includes, *inter alia*, sourcing and installing the pumps and other equipment, sourcing and constructing the canopy for the gas bar and completing the convenience store.

VII INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

21. The Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to August 19, 2021 is attached as **Appendix "E"**.

VIII FURTHER ACTIONS OF THE INTERIM RECEIVER

22. The Interim Receiver will continue to attend at the construction site as required to monitor construction activities and deal with suppliers and other stakeholders on an ongoing basis.



ROSEN GOLDBERG

REAL ESTATE & RECEIPTS

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IX RECOMMENDATION

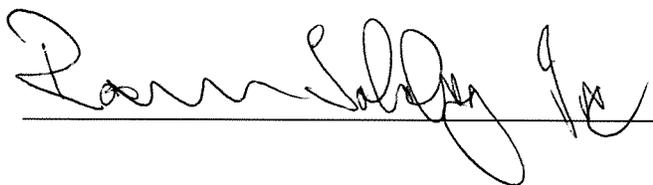
23. As described above, there is still work required to complete Phase 1. For this reason, the Interim Receiver respectfully requests that the Court make an Order:

- (a) approving the Interim Receiver's actions as described in this Fourth Report;
- (b) approving the Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to August 19, 2021; and
- (c) for such further and other relief as counsel may advise and this Court may permit.

All of which is respectfully submitted.

Dated at Toronto, Ontario, this 20th day of August 2021.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED NON-POSSESSORY INTERIM RECEIVER OF
CERTAIN REAL PROPERTY OF MILL STREET VENTURES GP LTD.;
NOT IN A PERSONAL OR CORPORATE CAPACITY**



APPENDIX “A”

Court File No. CV-21-00660056-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

THE HONOURABLE) TUESDAY, THE 20th
)
JUSTICE PATTILLO) DAY OF APRIL, 2021

B E T W E E N:



**DORR CAPITAL CORPORATION,
COMMUNITY TRUST COMPANY and
2098535 ALBERTA LTD.**

Applicants

- and -

MILL STREET VENTURES GP LTD.

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*
R.S.C.1985 c. B-3, as amended

**APPOINTMENT ORDER
(Non-Possessory Interim Receiver)**

THIS APPLICATION made by Dorr Capital Corporation, Community Trust Company, and 2098535 Alberta Ltd. (collectively, the “**Applicants**”), for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) appointing Rosen Goldberg Inc. (“**Rosen Goldberg**”) as non-possessory interim receiver of certain property of Mill Street Ventures GP Ltd. (the “**Respondent**”) municipally known as 305 Mill Street, Angus, Ontario and legally described in Schedule “A” hereto (the “**Property**”), and sealing the

confidential exhibits (the “**Confidential Exhibits**”) to the Affidavit of Robert Shiller, sworn April 14, 2021, (the “**Shiller Affidavit**”) from the public record until further Order of the Court, was heard this day by Zoom videoconference due to the Covid-19 pandemic.

ON READING the Shiller Affidavit and the Exhibits thereto, including the Confidential Exhibits, on hearing submissions of counsel for the Applicants, the Respondent and DUCA Financial Services Credit Union Ltd. (“**DUCA**”), on being advised of the consent of the Respondent and that DUCA was not opposing the herein Order, and on reading the consent of Rosen Goldberg to act as the non-possessory interim receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record herein 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 47(1) of the *BIA*, Rosen Goldberg is hereby appointed non-possessory interim receiver (in such capacity, the “**Receiver**”) of the Property.

RECEIVER’S POWERS

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

- (a) to take possession of and exercise control over 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 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 engage contractors, tradespersons, quantity surveyors, consultants, construction consultants, appraisers, agents, experts, auditors, accountants, managers, including a property manager and/or a construction manager, 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;
- (d) to undertake any renovations and make any repairs to the Property necessary to ensure the Property is well maintained and rentable and is in compliance with the applicable laws and building codes;
- (e) to undertake any construction at the Property necessary to complete construction of the Project (as that term is defined in the Shiller Affidavit) in compliance with applicable laws and building codes;
- (f) to market available rental units, and subject to Court approval or consent of the Respondent and DUCA enter into new rental agreements;

- (g) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Respondent or any part or parts thereof;
- (h) to receive and collect all monies and accounts now owed or hereafter owing to the Respondent in respect of the Property and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent in respect of the Property;
- (i) to settle, extend or compromise any indebtedness owing to the Respondent;
- (j) to deal with any lien claims, trust claims, and trust funds that have been or may be registered or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Respondent or to or on behalf of any beneficiaries of any such trust funds pursuant to section 85 of the *Construction Act*;
- (k) to undertake environmental, geotechnical or worker's health and safety assessments of the Property and the operations of the Respondent;
- (l) 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 Respondent, for any purpose pursuant to this Order;
- (m) 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 Property and to settle or compromise any such proceedings, and 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;

- (n) 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;
- (o) to register a copy of this Order and any other Orders in respect of the Property, against title to the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority in respect of the Property and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondent;
- (q) 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 Respondent, and without interference from any other Person.

4. **THIS COURT ORDERS** that, without further Court Order, the Receiver shall not take possession of the Property, and shall not be deemed to have done so by reason of its appointment herein, and/or from exercising any of the rights and/or powers conferred in paragraph 3 above, or in any of the paragraphs below, including without limitation the retainer if necessary of one or

more contractors to enter on to the Property and provide materials or services to the Property. Notwithstanding that the Receiver shall not take possession, or be deemed to have taken possession, of the Property without further Court Order, the Respondent shall not after the appointment of the Receiver take any affirmative action in relation to the Property except at the direction of and with the written consent of the Receiver, or by way of Court Order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Respondent, (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, upon notice of the herein Order, advise the Receiver of the existence of any aspect(s) or portion(s) of the 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.

6. **THIS COURT ORDERS** that all Persons having notice of the herein Order 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 Respondent in respect of the Property, 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 6 or in paragraph 7 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.

7. **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 having notice of the herein Order and 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 having notice of the herein Order shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

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 RESPONDENT OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Respondent in relation to the Property or against 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 Respondent in relation to the Property or against 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 Respondent and/or the Receiver 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 Respondent to carry on any business which the Respondent is not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondent 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 Respondent in respect of the Property, 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 Respondent 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 Respondent in respect of the Property 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 Respondent's current telephone numbers, facsimile numbers, internet addresses and domain names in respect of the Property, 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 Respondent 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.

13. **THIS COURT ORDERS** that in the event that an account for the supply of goods and/or services is transferred from the Respondent to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

RECEIVER TO HOLD FUNDS

14. **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 collection of any accounts receivable in whole or in part in respect of the Property, 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

15. **THIS COURT ORDERS** that all employees of the Respondent shall remain the employees of the Respondent until such time as the Receiver, on the Respondent'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*.

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, subject to any registered charge or security held by DUCA as of the date of this Order (the "**DUCA Security**"), in which case the Receiver's Charge will form a second charge on the Property subordinate in priority to the DUCA Security, but otherwise the Receiver's Charge will

be 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 their 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 \$2,000,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in

favour of any Person, but subordinate in priority to the DUCA Security, 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 the Term Sheet for Receiver's Borrowings marked as Exhibit "23" to the Shiller Affidavit, and the terms of and conditions of borrowings contained therein, be and are hereby approved.

23. **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.

24. **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.

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

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/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 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'www.rosengoldberg.com/current-files.php'.

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

GENERAL

28. **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, and shall come back before this Court on May 14, 2021 at 9:30 am to report on the Property.

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

30. **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.

31. **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.

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

33. **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.

34. **THIS COURT ORDERS** that notwithstanding the commencement of the within Application and the appointment of the Receiver, the Applicants shall be deemed to be protecting their security, shall not be deemed to have resorted to realizing upon their security over the

Property, and the equitable right of redemption in respect of the Applicants' mortgages over the real property of the Respondent identified on the attached Schedule "A" shall not be triggered.

35. **THIS COURT ORDERS** that the Confidential Exhibits shall be sealed, kept confidential and not form part of the public record, but shall remain with counsel for the Applicants to be filed at a later date, and when so filed shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.

36. **THIS COURT ORDERS** that the Confidential Exhibits shall remain under seal until further Order of the Court.



SCHEDULE "A"**THE REAL PROPERTY**

PIN 58201-0239 LT in LRO #51

Description: PART OF LOT 21 CONCESSION 1 SUNNIDALE BEING PTS 4, 5 & 6 ON PL 51R39403; TOGETHER WITH AN EASEMENT OVER PT 2 ON PL 51R33560 AS IN SC322575; TOGETHER WITH AN EASEMENT OVER PTS 6 & 9 ON PL 51R34628 AS IN SC692338; TOGETHER WITH AN EASEMENT OVER PART LOT 21 CON 1 BEING PART 11, PLAN 51R34628 AS IN SC1630500; TOWNSHIP OF ESSA

SCHEDULE “B”
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Rosen Goldberg Inc., the non-possessory interim receiver (the “**Receiver**”) of the real property of Mill Street Ventures GP Ltd. identified on Schedule “A” to the Appointment Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the ____ day of April, 2021____ (the “**Order**”) made in an action having Court file number _____, 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__.

ROSEN GOLDBERG INC., solely in its capacity as non-possessory interim receiver of the Property, and not in its personal or corporate capacity

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Court File No. CV-21-00660056-00CL

DORR CAPITAL CORPORATION et al

and

MILL STREET VENTURES GP LTD.

Applicants

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

Proceeding commenced at Toronto

**APPOINTMENT ORDER
(Non-Possessory Interim Receiver)**

BLANEY MCMURTRY LLP

Barristers & Solicitors

2 Queen Street East, Suite 1500

Toronto ON M5C 3G5

Eric Golden (LSUC #38239M)

(416) 593-3927 (Tel)

Email: egolden@blaney.com**Chad Kopach (LSUC #48084G)**

(416) 593-2985 (Tel)

Email: ckopach@blaney.com

Lawyers for the Applicants

APPENDIX “B”



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

File No. CV-21-00660056-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]

BETWEEN:

**DORR CAPITAL CORPORATION,
COMMUNITY TRUST COMPANY and
2098535 ALBERTA LTD.**

Applicants

-and-

MILL STREET VENTURES GP LTD.

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*
R.S.C.1985 c. B-3, as amended

FIRST REPORT OF ROSEN GOLDBERG INC.

May 11, 2021

I INTRODUCTION

1. By Order of the Honourable Mr. Justice Pattillo dated April 20, 2021 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed as non-possessory interim receiver (in such capacity, the “**Interim Receiver**”) of certain real property of the Respondent municipally known as 305 Mill Street, in Angus, Ontario (the “**Real Property**”) pursuant to section 47 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). A copy of the Appointment Order is attached as **Appendix “A”**.



2. Section 47(1)(c) of the BIA provides that an interim receiver is to be appointed until the earliest of:
 - (a) the taking of possession by a receiver, within the meaning of subsection 243(2), of the debtor's property over which the interim receiver was appointed,
 - (b) the taking of possession by a trustee of the debtor's property over which the interim receiver was appointed, and
 - (c) the expiry of 30 days after the day on which the interim receiver was appointed or of any period specified by the court.

3. This 30-day period is set to expire on May 19, 2021. The Applicants have advised the Interim Receiver that they wish to extend the interim receivership as permitted under section 47(1)(c).

II TERMS OF REFERENCE

4. In preparing this first report (the "**First Report**"), the Interim Receiver has relied upon information from third party sources (collectively, the "**Information**"). Certain information contained in this First Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Interim Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Interim Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Interim Receiver expresses no opinion or other form of assurance in respect of the Information.



III PURPOSE OF THIS REPORT

5. The purpose of this First Report is to:
 - (a) provide the Court with information on the current status of the Real Property;
 - (b) report on and seek approval of the Interim Receiver's activities, and its proposed activities;
 - (c) seek approval of the Interim Receiver's interim statement of receipts and disbursements; and
 - (d) provide the Court with the evidentiary basis to make an Order extending the interim receivership until further Order of this Court.

IV BACKGROUND

6. The Real Property comprises a 5.3 acre lot located on a main thoroughfare in the neighbourhood of Angus in the Township of Essa.
7. The land is partially improved, and is being developed into a 45,600 square foot mixed-use office and retail plaza.
8. At the date of the Interim Receiver's appointment, the first phase of construction ("Phase 1"), being construction of a gas station, convenience store, and three other fully leased buildings, was nearly complete. Of the three leased buildings, one is to be occupied by Starbucks and Mucho Burrito restaurants. The other two buildings are to be occupied by stand-alone KFC and A&W restaurants. Construction of Phase 1 is nearly complete, though the gas station requires more work to complete than the other three buildings.



9. The second phase of construction (“**Phase 2**”) is not yet fully planned, though work has commenced. Completed improvements in respect of Phase 2 are limited to certain internal servicing, including storm-water receptors, sanitary pipes, and fire hydrants.
10. The Interim Receiver’s appointment was sought, in part, given that construction on Phase 1 had been halted because DUCA Financial Services Credit Union Ltd. (“**DUCA**”), the first-ranking secured creditor, had ceased funding under its construction loan, and made demand in for repayment in full of that loan.
11. The Interim Receiver’s primary mandate in this administration is to ensure that construction of Phase 1 resumes and is completed, although the Appointment Order prohibits the Interim Receiver from taking possession of the Real Property without further Order of this Honourable Court.
12. Pursuant to paragraph 28 of the Appointment Order, the Interim Receiver is to return before this Honourable Court on May 14, 2021 to report on the status of the Real Property.

V INTERIM RECEIVER’S ACTIVITIES TO DATE

13. Since the date of its appointment, the Interim Receiver has undertaken the following activities:
 - Obtained funding of \$2 million through the issuance of a Receiver’s Certificate in accordance with the Appointment Order. The funding is based on the budgeted amount required to complete construction of Phase 1;
 - Arranged for the payment of arrears of invoices to suppliers and trades;
 - Directed the project manager to resume construction of Phase 1;



- Dealt with insurance;
- Continued the engagement of Glynn Group Incorporated (“**Glynn Group**”) as project monitor and to review, revise and approve disbursement requests;
- Dealt extensively with the project manager PetroMaxx Petroleum Contractors Ltd. and Glynn Group;
- Established a trust account in the Interim Receiver’s name;
- Ongoing consultations with legal counsel;
- Ongoing communications with the Real Property’s first and second-ranking secured lenders;
- Communicated with other stakeholders; and
- Dealt with banking and bookkeeping.

VI PHASE 1 CONSTRUCTION

Site Services

14. Based on an investigation of the Real Property, the Interim Receiver identified the installation of a sanitary pumping station and a water main as work that had to be undertaken immediately in order to progress with the completion of Phase 1.
15. As noted above, the Interim Receiver has attended to ensuring the resumption of construction of Phase 1. Initially, the Interim Receiver’s primary focus was to engage a contractor qualified to complete the installation of the sanitary pumping station and water main, and to attend to the various connections of same at the site. To that end, the Interim Receiver contracted with Bar-Con Development Ltd. (“**Bar-Con**”) on April 27, 2021 to complete this required work.



16. To date, Bar-Con has, among other things, installed de-watering pumps, delivered and assembled trench boxes at the site, and delivered granular to the site, all of which is required for the installation of the sanitary pumping station. When Bar-Con's work is completed, which the Interim Receiver expects will occur by the end of May, 2021, all of the Phase 1 water supply and sewer works will have been completed.

Restaurant Buildings

17. In addition to the sanitary pumping station and water main work, the Interim Receiver has attended to grading and preparing areas around the three restaurant buildings for concrete work.
18. The concrete work at the three restaurant buildings is expected to be completed by the end of May, 2021, following which paving is scheduled to begin in the first week of June.
19. When paving is completed, the restaurant buildings will be complete, subject to interior work being done by restaurant tenants. We understand that the tenants committed to the premises and that they are moving ahead with their fixturing and leasehold improvements.

Gas Station and Convenience Store

20. The Interim Receiver has also attended to the resumption of exterior work on the convenience store building. The exterior work is ongoing, and at present, the building is approximately 90% sheathed. Roofing work has been completed, with the exception of certain flashings which can only be installed after all exterior finishes are completed. Windows are scheduled to be installed during the week of May 10, 2021.



21. The gas station building exterior is expected to be completed by the end of June, 2021. The interior of the building is expected to be completed in August, 2021.
22. Petroleum tanks have been sourced and are scheduled to be delivered during the first week of July, 2021. Following the installation of the petroleum tanks, other petroleum/forecourt work will commence. The petroleum work is expected to be completed in concert with the completion of the convenience store interior work in August, 2021.

Completion of Phase 1 work

23. On the basis of the work that has been completed since the Interim Receiver's appointment, and the expected work schedule, the Interim Receiver anticipates that all Phase 1 work will be complete by August, 2021.
24. The Interim Receiver believes that the \$2 million that it has borrowed to date will be sufficient to complete the Phase 1 construction work. A current budget in respect of Phase 1 of the project is attached hereto as **Appendix "B"**.

VII INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

25. The Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to May 11, 2021 is attached as **Appendix "C"**.

VIII FURTHER ACTIONS OF THE INTERIM RECEIVER

26. The Interim Receiver intends to continue to attend to the construction operations at the site to complete construction of Phase 1, and to deal with stakeholders and creditors on an ongoing basis.



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

IX RECOMMENDATION

27. As described above, there is still work required to complete Phase 1. For this reason, the Interim Receiver respectfully request that the Court make an Order:
- (a) extending the interim receivership until further Order of this Court;
 - (b) approving the Interim Receiver's actions as described in this First Report;
 - (c) approving the Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to May 11, 2021; and
 - (d) for such further and other relief as counsel may advise and this Court may permit.

All of which is respectfully submitted.

Dated at Toronto, Ontario, this 11th day of May 2021.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED NON-POSSESSORY INTERIM RECEIVER OF
CERTAIN REAL PROPERTY OF MILL STREET VENTURES GP LTD.;
NOT IN A PERSONAL OR CORPORATE CAPACITY**

APPENDIX “C”



ROSEN GOLDBERG
 L.L.P. & S. S. L.L.P.

File No. CV-21-00660056-00CL

**ONTARIO
 SUPERIOR COURT OF JUSTICE
 [COMMERCIAL LIST]**

BETWEEN:

**DORR CAPITAL CORPORATION,
 COMMUNITY TRUST COMPANY and
 2098535 ALBERTA LTD.**

Applicants

-and-

MILL STREET VENTURES GP LTD.

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*
 R.S.C.1985 c. B-3, as amended

SECOND REPORT OF ROSEN GOLDBERG INC.

June 24, 2021

I INTRODUCTION

1. By Order of the Honourable Mr. Justice Pattillo dated April 20, 2021 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed as non-possessory interim receiver (in such capacity, the “**Interim Receiver**”) of certain real property of the Respondent municipally known as 305 Mill Street, in Angus, Ontario (the “**Real Property**”) pursuant to section 47 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). A copy of the Appointment Order is attached as **Appendix “A”**.



II TERMS OF REFERENCE

2. In preparing this Second Report, the Interim Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this Second Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Interim Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Interim Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Interim Receiver expresses no opinion or other form of assurance in respect of the Information.

III PURPOSE OF THIS REPORT

3. The purpose of this Second Report is to:
 - (a) provide the Court with information on the current status of the Real Property;
 - (b) report on and seek approval of the Interim Receiver’s activities, and its proposed activities; and
 - (c) seek approval of the Interim Receiver’s interim statement of receipts and disbursements.



ROSEN GOLDBERG

LEGAL COUNSEL & REAL ESTATE

IV BACKGROUND

4. The Real Property comprises a 5.3 acre lot located on a main thoroughfare in the neighbourhood of Angus in the Township of Essa.
5. The land is partially improved, and is being developed into a 45,600 square foot mixed-use office and retail plaza.
6. At the date of the Interim Receiver's appointment, the first phase of construction ("**Phase 1**"), being construction of a gas station, convenience store, and three other fully leased buildings, was nearly complete. Of the three leased buildings, one is to be occupied by Starbucks and Mucho Burrito restaurants. The other two buildings are to be occupied as standalone KFC and A&W restaurants. As of the date of the Interim Receiver's appointment, construction of Phase 1 was nearly complete, though the gas station required more work to complete than the other three buildings.
7. The second phase of construction ("**Phase 2**") is not yet fully planned, though work has commenced. Completed improvements in respect of Phase 2 are limited to certain internal servicing, including storm-water receptors, sanitary pipes, and fire hydrants. We understand planners and consultants have been retained in respect of seeking site plan approval for Phase 2.
8. The Interim Receiver's appointment was sought, in part, given that construction on Phase 1 had been halted because DUCA Financial Services Credit Union Ltd. ("**DUCA**"), the first-ranking secured creditor, had ceased funding under its construction loan, and made demand in for repayment in full of that loan.



ROSEN GOLDBERG

LAW, P.A.

9. The Interim Receiver's primary mandate in this administration is to ensure that construction of Phase 1 resumes and is completed, although the Appointment Order prohibits the Interim Receiver from taking possession of the Real Property without further Order of this Honourable Court.
10. Pursuant to the endorsement of the Honourable Mr. Justice Pattillo dated May 14, 2021, the Interim Receiver was to return to this Honourable Court on June 28, 2021, to provide a further status update at a 9:30 Chambers' Appointment.

V INTERIM RECEIVER'S ACTIVITIES TO DATE

11. Since the date of its last report dated May 11, 2021, the Interim Receiver has undertaken the following activities:
 - Reviewing and processing payment requests;
 - Dealing with contactors and other suppliers on an ongoing basis;
 - Attendance at site as required;
 - Ongoing communications with Glynn Group Incorporated ("**Glynn Group**"), the project monitor, regarding its reporting in respect of cost to complete construction of Phase 1 and other matters;
 - Dealing with PetroMaxx Petroleum Contractors Ltd. ("**PetroMaxx Contractors**"), the project manager and supervisor, on an ongoing basis in respect of all matters relating to the Phase 1 construction;
 - Dealing with Bar-Con Development Ltd. ("**Bar-Con**"), a specialized water and sanitary contractor retained to complete Phase 1 connections to the municipal water and sanitary main lines;
 - Communications with CC Tatham Engineering Limited, the project engineer;



ROSEN GOLDBERG

REAL ESTATE & FINANCIAL SERVICES

- Discussions with F.P.S. Consulting Inc., the lease consultant;
- Ongoing consultations with legal counsel;
- Ongoing communications with the Real Property's first and second-ranking secured lenders;
- Ongoing communications with the Interim Receiver's lender;
- Communicating with other stakeholders; and
- Dealing with banking and bookkeeping.

VI PHASE 1 CONSTRUCTION

Site Services

12. As reported in the Interim Receiver's first report dated May 11, 2021 (the "**First Report**"), the installation of a sanitary pumping station and a water main had to be undertaken immediately in order to progress with the completion of Phase 1. This work is substantially complete, and the system is undergoing the required testing and commissioning. A copy of the First Report, without appendices, is attached as **Appendix "B"**.
13. Surface works, including installing granular base, curbs, sidewalks and the asphalt surface, are in the process of being completed. It is anticipated that the work will be completed at the end of the first week in July 2021.
14. The testing/commissioning of the water system and sanitary pump station, and the completion of the surface works, are required to obtain the requisite occupancy permits for the site so that the tenants can begin operations. This work is anticipated to be completed within approximately two weeks, with the occupancy permits to be issued shortly thereafter.



ROSEN GOLDBERG
LAW, P.C.

Restaurant Buildings

15. We understand that both KFC and A&W have completed the interior work in their respective buildings and will commence commissioning of their equipment upon completion of the water and sanitary connections.
16. Starbucks is currently in the process of completing its improvements, and expects to be completed in July, 2021.
17. Mucho Burrito commenced its tenant improvements during the week of June 21, 2021.

Gas Station and Convenience Store

18. The exterior of the convenience store is mostly complete. Construction of the interior work has not yet commenced. The curbs and sidewalks must be completed.
19. We understand that management of the Respondent is in process of negotiating a lease agreement with Parkland Corporation, who would operate the gas station and convenience store. The Interim Receiver has not been advised of any details of these negotiations, nor has it been provided with any documentation in this regard. The Interim Receiver is concerned that a lease agreement could possibly have a negative impact on the realizable value of the Real Property. The Interim Receiver's position is that any agreements entered into by the Respondent relating to the sale or leasing of the Real Property require Court approval. Counsel for the Applicant advised the lawyer for Parkland Corporation of this position in an email dated June 23, 2021, which is attached as **Appendix "C"** to this Report.



Completion of Phase 1 work

20. On the basis of the work that has been completed since the Interim Receiver's appointment, and the expected work schedule, the Interim Receiver remains of the belief that all Phase 1 work will be complete by sometime in August, 2021.
21. However, based on events since the Appointment Order, the Interim Receiver is concerned that the \$2 million that it borrowed will not be sufficient to complete Phase 1. The Interim Receiver is working with Glynn Group (among others) to prepare a revised budget for the actual cost to complete.
22. Among the issues that have arisen that may impact the cost to complete are a possible increase in scope of the Bar-Con work, unpaid amounts to certain suppliers that were not previously identified and discussions with PetroMaxx Contractors who indicated additional funds may be required to complete the convenience store.

VII INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

23. The Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to June 23, 2021 is attached as **Appendix "D"**.

VIII FURTHER ACTIONS OF THE INTERIM RECEIVER

24. The Interim Receiver will continue to attend at the construction site as required to monitor construction activities and deal with suppliers and other stakeholders on an ongoing basis.



ROSEN GOLDBERG
L.L.P.
NEW YORK & PHILADELPHIA

IX RECOMMENDATION

25. As described above, there is still work required to complete Phase 1. For this reason, the Interim Receiver respectfully requests that the Court make an Order:
- (a) approving the Interim Receiver's actions as described in this Second Report;
 - (b) approving the Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to June 23, 2021; and
 - (c) for such further and other relief as counsel may advise and this Court may permit.

All of which is respectfully submitted.

Dated at Toronto, Ontario, this 24th day of June 2021.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED NON-POSSESSORY INTERIM RECEIVER OF
CERTAIN REAL PROPERTY OF MILL STREET VENTURES GP LTD.;
NOT IN A PERSONAL OR CORPORATE CAPACITY**

APPENDIX “D”



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

File No. CV-21-00660056-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]**

BETWEEN:

**DORR CAPITAL CORPORATION,
COMMUNITY TRUST COMPANY and
2098535 ALBERTA LTD.**

Applicants

-and-

MILL STREET VENTURES GP LTD.

Respondent

APPLICATION UNDER Section 47 of the *Bankruptcy and Insolvency Act*
R.S.C.1985 c. B-3, as amended

THIRD REPORT OF ROSEN GOLDBERG INC.

August 6, 2021

I INTRODUCTION

1. By Order of the Honourable Mr. Justice Pattillo dated April 20, 2021 (the “**Appointment Order**”), Rosen Goldberg Inc. was appointed as non-possessory interim receiver (in such capacity, the “**Interim Receiver**”) of certain real property of the Respondent municipally known as 305 Mill Street, in Angus, Ontario (the “**Real Property**”) pursuant to section 47 of the *Bankruptcy and Insolvency Act* (the “**BIA**”). A copy of the Appointment Order is attached as **Appendix “A”**.



II TERMS OF REFERENCE

2. In preparing this Third Report, the Interim Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this Third Report may refer to, or be based on, the Information. As the Information has been provided by other parties, or obtained from documents filed with the Court in this matter, the Interim Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the Interim Receiver has not audited or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Interim Receiver expresses no opinion or other form of assurance in respect of the Information.

III PURPOSE OF THIS REPORT

3. The purpose of this Third Report is to:
 - (a) provide the Court with information on the current status of the Real Property;
 - (b) report on and seek approval of the Interim Receiver’s activities, and its proposed activities; and
 - (c) seek approval of the Interim Receiver’s interim statement of receipts and disbursements.

IV BACKGROUND

4. The Real Property comprises a 5.3 acre lot located on a main thoroughfare in the



neighbourhood of Angus in the Township of Essa.

5. The land is partially improved, and is being developed into a 45,600 square foot mixed-use office and retail plaza.
6. At the date of the Interim Receiver's appointment, the first phase of construction ("**Phase 1**"), being construction of a gas station, convenience store, and three other fully leased buildings, was nearly complete. Of the three leased buildings, one is to be occupied by Starbucks and Mucho Burrito restaurants. The other two buildings are to be occupied as standalone KFC and A&W restaurants. As of the date of the Interim Receiver's appointment, construction of Phase 1 was nearly complete, though the gas station required more work to complete than the other three buildings.
7. The second phase of construction ("**Phase 2**") is not yet fully planned, though work has commenced. Completed improvements in respect of Phase 2 are limited to certain internal servicing, including storm-water receptors, sanitary pipes, and fire hydrants. We understand planners and consultants have been retained in respect of seeking site plan approval.
8. The Interim Receiver's appointment was sought, in part, given that construction on Phase 1 had been halted because DUCA Financial Services Credit Union Ltd. ("**DUCA**"), the first-ranking secured creditor, had ceased funding under its construction loan, and made demand in for repayment in full of that loan.
9. The Interim Receiver's primary mandate in this administration is to ensure that construction of Phase 1 resumes and is completed, although the Appointment Order prohibits the Interim Receiver from taking possession of the Real Property without further Order of this Honourable Court.



10. Pursuant to the endorsement of the Honourable Mr. Justice Pattillo dated June 28, 2021, the Interim Receiver was to return to this Honourable Court on August 9, 2021, to provide a further status update at a Chambers' Appointment scheduled for 2:00 p.m.

V INTERIM RECEIVER'S ACTIVITIES TO DATE

11. Since the date of its last report dated June 24, 2021, the Interim Receiver has undertaken the following activities:
 - Reviewing and processing payment requests;
 - Dealing with contactors and other suppliers on an ongoing basis;
 - Attendance at site on several occasions;
 - Dealing with PetroMaxx Petroleum Contractors Ltd., the project manager and supervisor, on an ongoing basis in respect of all matters relating to the Phase 1 construction;
 - Dealing with water and sanitary contractors retained to complete Phase 1 connections to the municipal water and sanitary main lines;
 - Communication with construction professional retained by the Interim Receiver;
 - Communications with project engineer;
 - Ongoing consultations with legal counsel;
 - Ongoing communications with the Real Property's first and second-ranking secured lenders;
 - Ongoing communications with the Interim Receiver's lender;
 - Communicating with other stakeholders; and
 - Dealing with banking and bookkeeping.



VI PHASE 1 CONSTRUCTION

Site Services

12. As reported in the Interim Receiver's first report dated May 11, 2021 (the "**First Report**") and the second report dated June 24, 2021 (the "**Second Report**"), the installation of a sanitary pumping station and a water main were required be undertaken immediately in order to progress with the completion of Phase 1. Copies of the First Report and Second Report are attached hereto as **Appendix "B"** and **Appendix "C"**, respectively. The water main installation has been completed, however, as a result of certain delays experienced by the water main and sanitary contractor, the water main has yet to be connected to the town water supply. We understand that a new water main and sanitary contractor has been retained to complete the work that was not completed by the original contractor. It is anticipated that the water main connections and chlorination will be completed by the end of the second week of August 2021.
13. Surface works, including installing granular base, curbs, sidewalks and the asphalt surface, are in the process of being completed. It is anticipated that the work will be completed by the end of the fourth week of August 2021. This timeline is dependent on the result of engineering reviews that are currently being finalized to confirm that the civil work and services were constructed according to the approved engineering design. The delay in the completion of the surface works is attributable to delays in the installation and connection of the water main and sanitary pumping station, and engineer review of the topographical study taking longer than initially anticipated.
14. The connection/testing/commissioning of the water system and sanitary pump station, and the completion of the surface works, are required to obtain the requisite occupancy permits



for the site so that the tenants can begin operations. As noted previously, the surface works are anticipated to be completed by the end of the fourth week of August, with a target to obtain occupancy permits of the week of August 30, 2021. We are advised that the engineer from the Township of Essa has been on site, and that the required approvals can be issued in a timely manner once the works are completed to meet this schedule.

Restaurant Buildings

15. We understand that KFC, A&W and Starbucks have completed the interior work in their respective buildings and will commence commissioning of their equipment upon completion of the water and sanitary connections.
16. We further understand that Mucho Burrito has yet to commence its tenant improvements. We are advised that a matter related to an amendment to the Mucho Burrito lease has yet to be finalized, but that Mucho Burrito does intend to commence improvements once the matter is resolved.

Gas Station and Convenience Store

17. The exterior of the convenience store is mostly complete. Construction of the interior work has not yet commenced. The curbs and sidewalks must be completed. The remaining construction related to the gas station and installation of the equipment is unlikely to be completed until there is an agreement with a fuel supplier in place.

Completion of Phase 1 work

18. On the basis of the work that has been completed since the Interim Receiver's appointment, and the expected work schedule, the Interim Receiver understands that all Phase 1 work will



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

be completed by the end of the fourth week of August 2021, with occupancy permits to be issued during the week of August 30.

19. We do not believe that we have sufficient funds to complete the gas station.

VII INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

20. The Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to August 5, 2021 is attached as **Appendix "D"**.

VIII FURTHER ACTIONS OF THE INTERIM RECEIVER

21. The Interim Receiver will continue to attend at the construction site as required to monitor construction activities and deal with suppliers and other stakeholders on an ongoing basis.

IX RECOMMENDATION

22. As described above, there is still work required to complete Phase 1. For this reason, the Interim Receiver respectfully requests that the Court make an Order:
- (a) approving the Interim Receiver's actions as described in this Third Report;
 - (b) approving the Interim Receiver's statement of receipts and disbursements for the period from April 20, 2021 to August 5, 2021; and
 - (c) for such further and other relief as counsel may advise and this Court may permit.

All of which is respectfully submitted.



ROSEN GOLDBERG

INSOLVENCY & RESTRUCTURING

Dated at Toronto, Ontario, this 6th day of August 2021.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED NON-POSSESSORY INTERIM RECEIVER OF
CERTAIN REAL PROPERTY OF MILL STREET VENTURES GP LTD.;
NOT IN A PERSONAL OR CORPORATE CAPACITY**

APPENDIX “E”

Rosen Goldberg Inc.; Court Appointed Interim Receiver of:
Mill Street Ventures GP Ltd.
 For the period April 20, 2021 to August 19, 2021

Receipts

Interim Receiver's borrowings:	2,000,000
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Disbursements

Construction costs	993,367
Interest paid on first mortgage	163,323
Engineering services	19,898
HST paid	126,438
Interest on interim receiver's borrowings	67,232
Fees and costs on interim receiver's borrowings	42,526
Interim receiver's fees	32,500
Consulting fees	15,949
Insurance	23,051
	<u>1,484,284</u>
Excess of receipts over disbursements	<u><u>515,716</u></u>

The schedule is prepared on a cash basis and does not include the obligations of the Interim Receiver.

The Interim Receiver has held back approximately \$100,000 from construction cost disbursements.

DORR CAPITAL CORPORATION at al.
Applicants

-and- MILL STREET VENTURES GP LTD.
Respondent

Court File No. CV-21-00660056-00CL

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

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

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