

**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

MOTION RECORD

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

February 16, 2022

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Lawyers for the Court-appointed Receiver,
Rosen Goldberg Inc.

TO: SERVICE LIST

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Tab 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
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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

ROSEN GOLDBERG INC., in its capacity as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of the Respondent Mill Street Ventures GP Ltd. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the property municipally known as 305 Mill Street, Angus, Ontario (the “**Real Property**”), and all proceeds thereof (collectively, the “**Property**”), will make a Motion to a Judge presiding over the Commercial List on Friday, February 18, 2022 at 9:30 AM by Zoom videoconference at the following link:

<https://dickinsonwright.zoom.us/j/87597377357?pwd=d29HYk1vT0oxTnJ4QVpjZjlham1nZz09>

PROPOSED METHOD OF HEARING: The Motion is to be heard by videoconference

THE MOTION IS FOR an Order:

1. 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, and dispensing with further service thereof;
2. approving the Seventh Report of the Receiver dated February 16, 2022 (the “**Seventh Report**”) and the activities of the Receiver set out in the Seventh Report;
3. approving the Receiver’s statement of receipts and disbursements for the period from April 20, 2021 to February 11, 2022 contained in the Seventh Report;
4. increasing the Receiver’s borrowing powers from \$5 million to \$7 million;
5. authorizing the Receiver to enter into a fuel supply agreement with Parkland Corporation (“**Parkland**”);
6. sealing a letter of intent respecting the terms of the fuel supply agreement between the Receiver and Parkland;
7. authorizing for the Receiver to enter into a further agreement with Parkland with respect to operating a branded “On the Run” convenience store on the Real Property;
8. sealing a letter of intent respecting the terms of the convenience store agreement between the Receiver and Parkland; and

9. such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE

- (a) By Order of Justice Pattillo dated April 20, 2021, Rosen Goldberg Inc. was appointed non-possessory interim receiver of the Real Property;
- (b) By Order of Justice Pattillo dated September 20, 2021, Rosen Goldberg Inc.'s appointment as interim receiver was converted into a 'full blown' receiver of the Property;
- (c) The Real Property is a 5.3 acre lot in Angus, Ontario, in the Township of Essa (the "**Township**"). It is partially improved and was being developed by the Debtor into a mixed-use office and retail plaza;
- (d) As reported in its Sixth Report dated November 9, 2021, there were delays and cost overruns encountered with installing the sanitary pumping station and the connection of the watermain to the Township's water supply. Problems were also encountered in connecting the sanitary pumping system to buildings. These issues have now been resolved;
- (e) In respect of surface work, the final grading and first coat of paving have been completed. In the spring, the final coat of paving will be laid and landscaping will be completed;
- (f) On December 16, 2021, the Township issued an occupancy permit for the restaurant buildings, although it refused to permit KFC to operate the drive-through

component of its restaurant due to fire route concerns. Occupancy was subsequently approved for the drive-through on January 25, 2022. As a term thereof, the Receiver agreed to construct a turnaround on the Real Property in the spring to facilitate the fire route;

- (g) As site work is now substantially complete, the Receiver has applied for a reduction of \$481,655 in the \$975,000 of security the Township is holding in respect of the project. When the funds are received, they will be applied to reduce the indebtedness owing to DUCA under its security;
- (h) As of January 27, 2022, all four restaurant tenants had commenced operating. To maintain the site and clear snow, the Receiver has engaged a property manager;
- (i) The Receiver has been communicating with the tenants to update them regarding the progress of site work and has had discussions with them regarding the lengthy delays in obtaining occupancy and the impact of the Debtor's insolvency on their leasehold rights. The Receiver is attempting to achieve consensual resolutions with the tenants regarding rent-free periods and unpaid tenant's allowances under their leases. The discussions are complicated because it is unlikely that the Property will be sold for an amount sufficient to repay all of the secured mortgage debt against the Real Property and some or all of tenants did not obtain non-disturbance agreements or postponements from the mortgagees. If the Receiver is unable to reach commercially reasonable arrangements with tenants in the near future, it may have move for directions to disclaim leases;

- (j) The Receiver has engaged a general contracting firm to construct the gas bar and install tanks and the pumps. Excavation has been completed and tanks have now been installed. A permit has also been obtained to allow for the storage and sale of propane on site. The Receiver is in process of obtaining proposals for the construction of the convenience store. The opening of the gas station is targeted for May of this year;
- (k) By Order of Justice Cavanagh dated November 15, 2021, the Receiver was authorized to take such steps to sever the Real Property into three separate parcels. When registered, the severances will create three separate parcels, namely, the Phase 2 land, the gas station and convenience store land and the restaurant land. The outstanding item that remains to be completed before registering the severances is obtaining DUCA's authorization to register the necessary municipal services easements and postponements that the Township requires;
- (l) The Receiver determined that it would be commercially preferable to enter into a consignment-based fuel supply agreement and market the gas station to an owner-operator, rather than entering into a straight lease and marketing the gas station to a tenant;
- (m) The Receiver has signed two letters of intent with Parkland, both of which are subject to Court approval, namely, a letter of intent for a branded fuel supply agreement and a letter of intent for an "On the Run." The terms of the letters of intent are commercially favourable. Subject to Court approval, the Receiver intends

to enter into longer forms of agreement with Parkland on terms substantially similar to those contained in the letters of intent;

- (n) The Receiver's borrowing powers are presently capped at \$5 million, consisting of \$3 million for construction and \$2 million which was used to pay down DUCA;
- (o) To complete its mandate, the Receiver requests that it be authorized to borrow a further \$2 million. The funds will be utilized to, among other things, fund construction of the gas station, fund engineering and planning costs associated with the severances and resolving the KFC drive-through issue, and also to service monthly interest payable to DUCA under its loan to the Debtor. Under the existing borrowings cap it will not be possible to complete construction of the gas station;
- (p) Although a marketing and sale process is still being formulated, the Receiver expects it will be a two stage process. The initial stage will involve marketing of the restaurant land and the Phase 2 land. In that regard, the Receiver is in the process of obtaining proposals from listing agents. The second stage will be to market the gas station once it is operational;
- (q) 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
- (r) 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:

- (s) The Seventh Report of the Receiver, dated February 16, 2022; and
- (t) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

February 16, 2022

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Goldberg Inc.

TO: **SERVICE LIST**

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

NOTICE OF MOTION

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Tab 2



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**

SEVENTH REPORT OF ROSEN GOLDBERG INC.

February 16, 2022

I INTRODUCTION

1. By Order of Justice Pattillo dated April 20, 2021 (the “**IR Appointment Order**”), Rosen Goldberg Inc. was appointed non-possessory interim receiver (in such capacity, the “**Interim Receiver**”) of certain real property of the Respondent Mill Street Ventures GP Ltd. (the “**Debtor**”) 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 IR Appointment Order is attached as **Appendix A**.



2. By Order of Justice Pattillo dated May 14, 2021, a copy of which is attached **Appendix B**, the Interim Receiver’s appointment was extended until further Order of this Court.

3. Pursuant to an Expanded Powers Order of Justice Pattillo dated September 20, 2021 (the “**Expanded Powers Order**”), the Interim Receiver’s powers were expanded and it was appointed ‘full blown’ receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings, and properties of the Debtor, acquired for, or used in relation to a business carried on by the Debtor, including the Real Property, and all proceeds thereof (collectively, the “**Property**”), pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (the “**CJA**”). A copy of the Expanded Powers Order is attached as **Appendix C**. A copy of Justice Pattillo’s endorsement dated September 9, 2020, pursuant to which the Expanded Powers Order was granted, is attached as **Appendix D**.

4. This Seventh Report is Rosen Goldberg Inc.’s second report as ‘full blown’ receiver and manager of the Property.

II TERMS OF REFERENCE

5. In preparing this Seventh Report, the Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this Seventh 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 Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the 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 Receiver expresses no opinion or other form of assurance in respect of the Information.

III PURPOSE OF THIS REPORT

6. The purpose of this Seventh Report is to:
 - (a) provide an update on the status of the Receiver's administration and report on its activities since its Sixth Report dated November 9, 2021;
 - (b) seek approval of the activities of the Receiver described herein;
 - (c) seek authorization to increase the Receiver's borrowing powers from \$5 million under the Expanded Powers Order, to \$7 million;
 - (d) seek authorization for the Receiver to enter into a fuel supply agreement with Parkland Corporation ("**Parkland**");
 - (e) seek an Order sealing a letter of intent respecting the terms of the fuel supply agreement between the Receiver and Parkland, a copy of which is attached as **Confidential 1**;
 - (f) seek authorization for the Receiver to enter into a further agreement with Parkland with respect to operating a branded "On the Run" convenience store on the Real Property; and
 - (g) seek an Order sealing a letter of intent respecting the terms of the convenience store agreement between the Receiver and Parkland, a copy of which is attached as **Confidential 2**.



IV BACKGROUND

7. The Real Property is a 5.3 acre parcel located on a main thoroughfare in the neighbourhood of Angus in the Township of Essa (the “**Township**”).
8. When the IR Appointment Order was made, the Real Property was partially improved and being developed by the Debtor into a 45,600 square foot mixed-use office and retail plaza. The first phase of construction (“**Phase 1**”) of a gas station, convenience store, and three other leased buildings, was nearing completion. Of the three leased buildings, one was to be occupied by Starbucks and Mucho Burrito. The other two buildings were to be occupied as standalone KFC and A & W restaurants. The gas station required considerably more work than the other three buildings. No definitive arrangements had been made with any end-user of the gas station.
9. The second phase of construction (“**Phase 2**”) was not fully planned, though some general infrastructure work had commenced. Completed improvements in respect of Phase 2 were limited to certain internal servicing, including storm-water receptors, sanitary pipes, and fire hydrants. Planners and consultants had been engaged by the Debtor to assist in seeking site plan approval.
10. The Applicants are subordinate-ranking mortgagees of the Real Property. The Interim Receiver’s appointment was sought by, in part, to overcome a halt in construction of Phase 1, which occurred when DUCA Financial Services Credit Union Ltd. (“**DUCA**”), the first-ranking secured creditor, ceased funding under its construction loan to the Debtor, and made demand for payment in full.
11. The Interim Receiver’s primary mandate was to facilitate the resumption and completion of construction of Phase 1, although the IR Appointment Order prohibited it from taking



possession of the Real Property without further Order of the Court.

12. It became apparent to the Interim Receiver that the project's delays and costs overruns arose due to a lack of supervision, poor work on the part of sub-contractors and liquidity issues facing the Debtor.
13. The Interim Receiver engaged replacement trades, engineers, and architects obtained topographical reports which identified deficiencies, and proceeded with remediating the deficiencies. As problems were uncovered below grade, dates to complete site services were pushed out and construction costs increased.
14. The Expanded Powers Order was granted on September 20, 2021, after Justice Pattillo heard competing applications by DUCA, on one hand, and the Interim Receiver's 'DIP' lender, Rescom, who had been funding the completion of Phase 1, on the other hand.
15. As a condition of the Rosen Goldberg Inc.'s appointment, Rescom offered to pay \$2 million to DUCA in partial reduction of DUCA's indebtedness under its first mortgage. The payment of \$2 million to DUCA was made on September 20, 2021.

V RECEIVER'S ACTIVITIES TO DATE

16. Since its Sixth Report dated November 9, 2021 (the "**Sixth Report**"), the Receiver has undertaken the following activities;
 - Obtained an Order of Justice Cavanagh dated November 15, 2021, among other things, authorizing the Receiver to take such steps as may be necessary to sever the Real Property into three separate parcels;
 - Attended at the Real Property on multiple occasions;
 - Dealt with matters related to completing severances of the Real Property;
 - Had ongoing dealings with contractors;



- Reviewed and approved budgets and timelines;
- Approved payments;
- Had ongoing meetings and communications with the project's engineers and architects;
- Had ongoing consultations with Rescom and the Applicants;
- Communicated with counsel for DUCA;
- Communicated with unsecured creditors;
- Communicated with Blake Larsen, the Debtor's principal and his counsel;
- Communicated with CRA and prepared HST returns;
- Had ongoing meetings communications with the Receiver's project manager;
- Communicated and met with Parkland regarding the gas station and convenience store;
- Dealt with matters pertaining to construction of the gas station;
- Dealt with matters relating to obtaining occupancy permits;
- Had extensive communications with tenants relating to occupancy and addressing the Debtor's pre-filing commitments to tenants;
- Engaged a property manager to maintain the site and clear snow;
- Prepared the within report;
- Had ongoing communications with the Receiver's legal counsel; and
- Dealt with banking and bookkeeping.

VI PHASE 1 CONSTRUCTION

Site Services and Occupancy Permit

17. As reported in its Sixth Report, a copy of which is attached (without appendices) as **Appendix E**, there were delays and cost overruns encountered with installing the sanitary



pumping station and the connection of the watermain to the Township's water supply. Problems were also encountered in connecting the sanitary pumping system to buildings. These issues have now been resolved.

18. In respect of surface work, the final grading and first coat of paving have been completed. In the spring, the final coat of paving will be laid and landscaping will be completed.
19. On December 16, 2021, the Township issued an occupancy permit for the restaurant buildings, although it refused to permit KFC to operate the drive-through component of its restaurant due to fire route concerns. After significant communications and submissions, occupancy was approved for the drive-through on January 25, 2022. As a term thereof, the Receiver agreed to construct a turnaround on the Real Property in the spring to facilitate the fire route.
20. As site work is now substantially complete, the Receiver has applied for a reduction of \$481,655 in the \$975,000 of security the Township is holding in respect of the project. When the funds are received, they will be applied to reduce the indebtedness owing to DUCA under its security.

Restaurant Buildings

21. As of January 27, 2022, all four restaurant tenants had commenced operating. To maintain the site and clear snow, the Receiver has engaged a property manager.
22. The Receiver has had ongoing communications with representatives of the tenants to update them regarding the progress of site work and has engaged in extensive discussions with them regarding the lengthy delays in obtaining occupancy and the impact of the Debtor's insolvency on their leasehold rights. In that regard, the Receiver is attempting to achieve consensual resolutions with the tenants regarding rent-free periods and unpaid tenant's allowances under their leases. The discussions are complicated because it is unlikely that



the Property will be sold for an amount sufficient to repay all of the secured mortgage debt against the Real Property and some or all of tenants did not obtain non-disturbance agreements or postponements from the mortgagees. If the Receiver is unable to reach commercially reasonable arrangements with tenants in the near future, the Receiver expects that it will have move for directions to disclaim leases.

Gas Station and Convenience Store

23. The Receiver has engaged Shayona Construction Inc., a general contracting firm, to construct the gas bar and install tanks and the pumps. Excavation has been completed and tanks have now been installed.
24. A permit has also been obtained to allow for the storage and sale of propane on site.
25. The Receiver is in process of obtaining proposals for the construction of the convenience store and will be reviewing proposals shortly. The opening of the gas station is targeted for May of this year.
26. Subject to Court approval, and as described in greater detail below, the Receiver has entered into letters of intent with Parkland for the supply of fuel and for the operation of an “On the Run” convenience store.

Severances

27. In its Sixth Report, the Receiver outlined the status of the severance process that the Debtor had commenced and for which Notices of Decisions were issued on November 27, 2021 by the Township of Essa’s Committee of Adjustments granting provisional consent to sever the Real Property into three parcels.
28. By Order of Justice Cavanagh dated November 15, 2021, the Receiver was authorized to take such steps as may be necessary to sever the Real Property into three separate parcels.



A copy of the Order is attached as **Appendix F**.

29. When registered, the severances will create three separate parcels, namely, the Phase2 land, the gas station and convenience store land and the restaurant land.
30. At present, the outstanding item that remains to be completed before registering the severances is obtaining DUCA's authorization to register the necessary municipal services easements and postponements that the Township of Essa requires.

VII LETTERS OF INTENT WITH PARKLAND

31. The Receiver considered two alternatives in relation to the gas station. One alternative was entering into a straight lease and marketing the gas station to a tenant. The other alternative was entering into a fuel supply agreement and marketing the gas station to an owner-operator. After discussions with Rescom and the Applicants and consulting with an industry expert, the Receiver determined that it would be commercially preferable to enter into a consignment-based fuel supply agreement and market the gas station to an owner-operator.
32. The Receiver proceeded to execute two letters of intent with Parkland. Parkland is the largest independent fuel supplier in Canada. Both letters of intent are subject to Court approval.
33. On November 12, 2021, the Receiver signed a letter of intent for a branded fuel supply agreement with Parkland. Its salient terms are follows:
 - a term of 10 years or until 70,000,000 litres of product have been sold;
 - the gas station will operate under the "Pioneer" brand;
 - Parkland will consign product to the gas station. The gas station will earn a commission on sales;
 - Parkland will loan the point of sale and other related equipment to the gas station;



- Parkland will provide an interest free, forgivable loan of \$300,000 to the gas station and receive a general security agreement as security for therefor;
 - Parkland will be granted a first right of refusal to purchase the gas station.
34. As the letter of intent contains a clause requiring that it be kept strictly confidential, copy of the letter of intent is attached as **Confidential Appendix 1**.
35. On December 2, 2021, the Receiver signed a second letter of intent for an On the Run convenience store agreement with Parkland. As it too contains a clause requiring that it be kept strictly confidential, a copy the letter of intent is attached as **Confidential Appendix 2**. Its salient terms are as follows:
- a ten year term;
 - requirement to purchase certain products from suppliers determined by Parkland;
 - minimum annual purchases of \$300,000 from suppliers determined by Parkland;
 - Parkland will pay \$14,500 as an initial stocking fee; and
 - Parkland will bear costs with any required construction review and design work.
36. The Receiver is satisfied that the terms of the letters of intent are commercially favourable. Subject to Court approval, the Receiver intends to enter into longer forms of agreement with Parkland on terms substantially similar to those contained in the letters of intent.

VIII RECEIPTS AND DISBURSEMENTS

37. Rosen Goldberg Inc.'s statement of receipts and disbursements for the period from April 20, 2021 to February 11, 2022 is attached as **Appendix G**. As of February 11, 2022, the Receiver was holding \$187,591.00.



38. The Receiver has drawn on its borrowings on a periodic basis rather than in a lump sum.

IX RECEIVER'S BORROWINGS

39. Pursuant to paragraph 21 of the IR Appointment Order, the Receiver was authorized to borrow \$3 million for construction, in addition to \$2 million of additional borrowings which were used to pay down DUCA.
40. In order to complete its mandate, the Receiver requests that it be authorized to borrow a further \$2 million. The funds will be utilized to, among other things, fund construction of the gas station, fund engineering and planning costs associated with the severances and resolving the KFC drive-through issue, and also to service monthly interest payable to DUCA under its loan to the Debtor.
41. A cash budget prepared by the Receiver is attached as **Appendix H**. As noted in the Sixth report, under the existing borrowings cap it will not be possible to complete construction of the gas station.

X MARKETING AND SALES PROCESS

42. Before implementing a marketing and sale process, with input from Rescom and the Applicants, the Receiver determined that a greater realization could be achieved by completing Phase 1, completing the severances, completing construction of the gas station and convenience store, delivering occupancy of the restaurants to tenants and finalizing their leasehold arrangements.
43. Although a marketing and sale process is still being formulated, the Receiver expects it will be a two stage process. The initial stage will involve marketing of the restaurant parcel and the Phase 2 land. In that regard, the Receiver is in the process of obtaining proposals from listing agents. The second stage will be to market the gas station once it is operational.



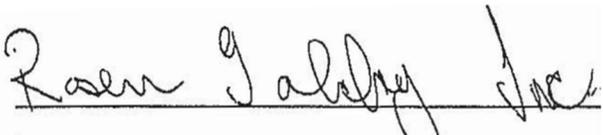
XI CONCLUSION

44. On the basis of the foregoing, the Receiver recommends that this Honourable Court grant the relief described in paragraph 6.

All of which is respectfully submitted.

Dated at Toronto, Ontario, this 16th day of February 2022.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER OF
THE PROPERTY, AND NOT IN A PERSONAL OR CORPORATE CAPACITY**



Rosen Goldberg Inc.

Appendix "A"

**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:

DORR CAPITAL CORPORATION et al

Applicants

MILL STREET VENTURES GP LTD.

Respondent

and

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

Proceeding commenced at Toronto

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

BLANEY MCMURTRY LLP
Barristers & Solicitors
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Toronto ON M5C 3G5

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Lawyers for the Applicants

Appendix "B"

ON READING the First Report, on being advised that the Respondent and the first mortgagee DUCA Financial Services Credit Union Ltd. do not oppose the relief sought, and on hearing the submissions of counsel for the Receiver and the Applicants, no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service of Chad Kopach sworn May 11, 2021, filed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the First Report, and the actions of the Interim Receiver described therein, be and are hereby approved.
3. **THIS COURT ORDERS** that the Interim Receiver's Interim Statement of Receipts and Disbursements for the period from April 20, 2021 to May 11, 2021 as set out in Appendix "C" to the First Report, be and is hereby accepted and approved.
4. **THIS COURT ORDERS** that the status and mandate of the Interim Receiver pursuant to the Appointment Order of Justice Pattillo dated April 20, 2021 (the "**Appointment Order**"), is hereby extended on the same terms as set out in the Appointment Order until further Order of this Court.
5. **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.



DORR CAPITAL CORPORATION et al
Applicants

and

Court File No. CV-21-00660056-00CL
MILL STREET VENTURES GP LTD.
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
[COMMERCIAL LIST]
Proceeding commenced at Toronto

ORDER
(Extending Interim Receivership)

BLANEY MCMURTRY LLP
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Lawyers for the Applicants and
Rosen Goldberg Inc.

Appendix "C"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) MONDAY, THE 20th
)
JUSTICE PATTILLO) DAY OF SEPTEMBER, 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 c3 B-3, as amended

EXPANDED POWERS ORDER

THIS MOTION, made by C & K Mortgage Services Inc., carrying on business as Rescom Capital (“**Rescom**”), was heard on September 9, 2021 by judicial videoconference due to the COVID-19 pandemic.

ON READING the Affidavit of Gary Gruneir sworn August 20, 2021, the Affidavit of Gary Gruneir sworn September 2, 2021, the Fourth Report of Rosen Goldberg Inc. dated August 20, 2021, the Fifth Report of Rosen Goldberg Inc. dated September 7, 2021 and upon hearing the submissions of counsel for Rescom, counsel for the Applicants Dorr Capital Corporation, Community Trust Company and 2098535 Alberta Ltd., counsel for counsel for Rosen Goldberg

Inc., counsel for DUCA Financial Services Credit Union Ltd. (“**DUCA**”), counsel for the Respondent Mill Street Ventures GP Ltd. (the “**Respondent**”) and counsel for Parkland Fuels Inc., no one else appearing, although served,

APPOINTMENT

1. **THIS COURT ORDERS** the status and mandate of Rosen Goldberg Inc. as non-possessory interim receiver of certain property held by 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.

2. **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 *Courts 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

3. **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, continue with construction of Phase 1 on the Real Property (“**Phase 1**”), 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.

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

PIPEDA

5. **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.

6. **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.

7. **THIS COURT ORDERS** that the commitment of Rescom to lend Rosen Goldberg Inc. funds in connection with its appointment pursuant this Order, for the purpose of paying down \$2,000,000.00 of principal under DUCA's mortgage and servicing monthly interest on the remainder of the DUCA mortgage on a go-forward basis (collectively, the "**Additional Borrowings**") is hereby approved.

8. **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.

9. **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 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 Additional Borrowings, but subject to any registered charge or security held by DUCA as of the date of this Order (the “**DUCA Security**”) and to sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

10. **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 Additional 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 \$1,000,000 (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 Additional 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 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*.

11. **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 Additional Borrowings.

12. **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 Additional 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.

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

14. **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

15. **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.

DISPENSING WITH ENTRY AND FILING

16. **THIS COURT ORDERS** that that notwithstanding Rule 59.05, this Order is effective from the date that it is made, and is enforceable without any need for entry and filing. In accordance with Rule 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.



**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
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

EXPANDED POWERS ORDER

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Lawyers for C&K Mortgage Services Inc. o/a Rescom
Capital

Appendix "D"

Court File Number: CV-21- 00660056-00CL
CV-21-00667752-00CL

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

DORR CAPITAL CORPORATION et al.

Applicants

AND

MILL STREET VENTURES GP LTD.

Respondent

Case Management Yes No by Judge: L.A. Pattillo J.

Counsel	Telephone No:	Email/Facsimile No:
See Attached App. "A"		

ENDORSEMENT

Date Heard: SEPTEMBER 9, 2021

1. On April 20, 2021, I appointed Rosen Goldberg Inc. as non-possessory interim receiver of the respondent's, Mill Street Ventures GP Inc. (Mill Street), property at 305 Mill Street in Angus, Ontario pursuant to s. 47 of the BIA. The Property was being developed into a retail plaza by the respondent who was in default to its first ranking secured creditor, DUCA Financial Services Credit Union Ltd. (DUCA), who holds a first mortgage as well as other security. As a result, construction had ground to a halt.
2. The applicants also financed Mill Street's construction and hold security subordinate to DUCA's. Its loans were also in default. Their application was commenced to preempt DUCA's intention to appoint a receiver in order to complete the construction of Phase 1 of the development. DUCA consented to the application on the agreement by the applicants, as reflected in my endorsement, that the appointment order was without prejudice to DUCA and its security and its rights thereunder including, among other things, its right to bring a motion to lift the stay after 30 days and, if DUCA is granted leave to lift the stay, to appoint a receiver, the applicants would not oppose DUCA not oppose MSI Spergel Inc. (Spergel) being appointed as receiver.

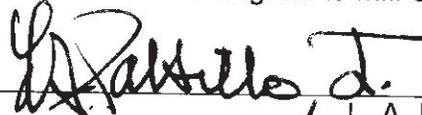
3. The interim receiver's mandate was to complete the construction of Phase 1 which consists of a gas station, convenience store and three buildings to be occupied by fast food restaurants and a coffee shop pursuant to long term leases. In its first report dated May 11, 2021, the interim receiver noted that at the date of the appointment, Phase 1 was nearly complete. The appointment order authorized the interim receiver, among other things, to borrow up to \$2 million in DIP financing to complete the construction. It expected to complete construction by the end of May.
4. The DIP lender is C&K Mortgage Services Inc., carrying on business as Rescom Capital (Rescom).
5. Subsequently, delays resulting from various issues has resulted in Phase 1 still not being completed. In the fifth report dated September 7, 2021, the interim receiver estimates 4 weeks to complete which does not include the gas station or convenience store. Further, it estimates the cost to complete the construction to be an additional \$300,000 over and above the \$2 million authorized.
6. In early August, I was advised that the intention of the Applicants was to expand the interim receivership to a full receivership, and they expected to pay out DUCA by August 23rd. As DUCA indicated that in the absence of being paid out, it wanted to bring an application to appoint its receiver and Mill Street was not sure of its position, I set September 9, 2021, to decide the matter and August 23, 2021 for a status update.
7. On August 20, 2021, the applicants commenced a motion to amend the appointment order to convert and expand the status and mandate of the interim receiver to a receiver and manager appointed pursuant to s. 243 of the BIA and s.101 of the *Courts of Justice Act*. The material indicated that Rescom was to pay out DUCA conditional, among other things, on the motion being granted.
8. On August 23, 2021, having still not been paid out, DUCA indicated that it intended to commence an application to appoint its receiver. Mill Street was not sure of its position. A timetable was set for materials in advance of September 9, 2021.
9. On August 26, 2021, DUCA commenced its application (Ct. file CV-21-00667752-00CL) seeking leave to lift the stay arising from my appointment order and appointing Spergel as receiver of Mill Street.
10. In light of DUCA's application and their undertaking not to oppose, the applicants relinquished carriage of their motion to convert the interim receivership to Rescom. They support Rescom's conversion motion.
11. Mill Street filed an affidavit from Blake Larsen, its sole officer and director, which opposed both applications for receivership. Mr. Larsen indicated that Mill Street had entered into conditional agreements to sell both Phase 1 and 2, subject to approval of the court and that the monies from the sales would be sufficient to pay off each of DUCA, the applicants and Rescom. Mr. Larsen indicated he was attempting to get financing to complete Phase 1 and asked for time to complete the construction and the agreements.
12. At the commencement of the hearing, Mill Street's counsel advised that the proposed sale agreements were no longer in place and Mill Street was unable to raise any

financing to complete the construction or pay out its creditors. If a receiver was to be appointed, it opposed DUCA's application and supported Rescom's motion.

13. All the secured creditors agree that it is both just and convenient that a receiver be appointed. There is no issue that both proposed receivers are qualified to undertake to job. The issue is which proposed receiver should be appointed.
14. DUCA submits that it should be entitled to its choice of receiver as the first ranking secured creditor. It has indicated its intention to appoint a receiver since default and only consented to the appointment of the interim receiver on the basis it was without prejudice to its rights to seek the appointment of its own receiver. Notwithstanding various statements by the applicants and Rescom, its debt remains in default.
15. DUCA further submits that Rescom is effectively a proxy for the applicants who agreed not to oppose its application. It denies Rescom and Mill Street's allegation that it simply wants to sell the property, as is, without completing the construction. While it has not put forward a plan, it submits that once its receiver takes possession and assesses the situation, it will return to court with a plan.
16. Rescom submits that its motion should be allowed. As the DIP lender, it is a stakeholder and is not bound by the applicants' undertaking. It submits that it is more economical and efficient to appoint the interim receiver based on its familiarity with the project. The appointment of DUCA's receiver will increase costs and delay construction of the project. Further, DUCA has very little risk in being fully paid out. It is the applicants and Rescom whose debt ranks behind DUCCA who have the real risk. Further, Rescom has offered to "de-risk" DUCCA by paying it \$2 million towards its debt, continuing to service the debt and continuing it to rank as the first secured creditor.
17. While I agree both proposed receivers are qualified, I lean towards extending the interim receiver. The objective is to finish Phase 1 to maximize the value of the property. There is not much left to complete. The interim receiver clearly has familiarity with the project which is important in finishing Phase 1 as quickly and as economically as possible, particularly given there are potential tenant issues that could arise with delay. Substituting Spergel at the present time will necessarily lead to increased costs and delay. While I am concerned with the delays that have occurred to date, the fact that the applicants, Rescom and Mill Street, the parties that have the most at risk, all support the interim receiver's appointment to finish Phase 1 in a timely manner negates that concern.
18. While DUCA has not been paid out, it is and will; remain the first ranking secured creditor. Further, based on Rescom's commitments to "de-risk" it, it will not be prejudiced by the appointment of the interim receiver. Nor do I consider that Rescom is bound by the applicants undertaking not to oppose DUCA's application.
19. For the above reasons therefore, I allow DUCA's motion to lift the stay to enable it to bring its application but dismiss the application. Further, I allow Rescom's motion and appoint Rosen Goldberg as receiver and manager, without security, of all assets, undertakings, and properties of Mill Street in accordance with the terms set forth in Rescom's revised draft order uploaded to Caselines on September 9, 2021, save and except that the authorization for further borrowings in paragraph 11 should not exceed

\$1,000,000 over and above the initial \$2 million already authorized based on the estimated costs to complete Phase 1. If further funds are required, they can be authorized.

20. If a revised order can be sent to me in Word format, I will arrange to have it signed and circulated to all parties.
21. In Mill Street's original motion record, it included as an exhibit a copy of a draft lease from an intended fuel supplier. No agreement was reached and the fuel supplier considers its draft lease confidential. Mill Street and the fuel supplier have agreed that the draft lease will be removed from its motion record and the motion record will be refiled. That has occurred on Caselines. In order to ensure it also occurs in the court file, I direct court staff to replace Mill Street's original motion record with the replacement record excluding the fuel lease and return the original to Mill Street.



L. A. Pattillo J.

September 10, 2021

App 'A'

COUNSEL SLIP

Court File Number: CV-21-00660056-00CL

Date: Thursday Sep. 9, 2021 – 10:00 a.m.
via Zoom

Title of Proceeding: Dorr Capital Corporation et al v. Mill Street Ventures GP Ltd.

Counsel	Party	Contact
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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
Andrew Winton Carter Liebzeit Lax O'Sullivan Lisus Gottlieb LLP	Counsel for the DIP Lender, C&K Mortgages Services Inc. c.o.b. Rescom	Tel: 416 598 1744 Fax: 416 598 3730 Email: awinton@lolg.ca cliebzeit@lolg.ca

 Sept 10/21

Appendix “E”



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**

SIXTH REPORT OF ROSEN GOLDBERG INC.

November 9, 2021

I INTRODUCTION

1. By Order of Justice Pattillo dated April 20, 2021 (the “**IR 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 Mill Street Ventures GP Ltd. (the “**Debtor**”) 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 IR Appointment Order is attached as **Appendix A**.



2. By Order of Justice Pattillo dated May 14, 2021, a copy of which is attached as **Appendix B**, the Interim Receiver’s appointment was extended until further Order of this Court.

3. Pursuant to an Expanded Powers Order of Justice Pattillo dated September 20, 2021, the Interim Receiver’s powers were expanded and it was appointed ‘full blown’ receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings, and properties of the Debtor, acquired for, or used in relation to a business carried on by the Debtor, including the Real Property, and all proceeds thereof (collectively, the “**Property**”), pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act* (the “**CJA**”). A copy of the Expanded Powers Order is attached as **Appendix C**. A copy of Justice Pattillo’s endorsement dated September 9, 2021, pursuant to which the Expanded Powers Order was granted, is attached as **Appendix D**.

4. This Sixth Report is Rosen Goldberg Inc.’s first report as ‘full blown’ receiver and manager of the Property.

II TERMS OF REFERENCE

5. In preparing this Sixth Report, the Receiver has relied upon information from third party sources (collectively, the “**Information**”). Certain information contained in this Sixth 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 Receiver has relied on this Information, and to the extent possible reviewed the Information for reasonableness. However, the 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 Receiver expresses no opinion or other form of assurance



in respect of the Information.

III PURPOSE OF THIS REPORT

6. The purpose of this Sixth Report is to provide an update on the status of the Property since Rosen Goldberg Inc. appointment as ‘full blown’ receiver on September 20, 2021 and to set out the grounds for its recommendation that it be authorised to take such steps as may be necessary to sever the Real Property into three separate parcels.

IV BACKGROUND

7. The Real Property comprises a 5.3 acre lot located on a main thoroughfare in the neighbourhood of Angus, in the Township of Essa (the “**Township**”).
8. The Real Property is partially improved, and was being developed by the Debtor into a 45,600 square foot mixed-use office and retail plaza.
9. At the date of the IR Appointment Order, the first phase of construction (“**Phase 1**”) of a gas station, convenience store, and three other leased buildings, was nearing completion. Of the three leased buildings, one was to be occupied by Starbucks and Mucho Burrito. The other two buildings were to be occupied as standalone KFC and A & W restaurants. The gas station required considerably more work than the other three buildings. No arrangements had been made with any end-user of the gas station.
10. The second phase of construction (“**Phase 2**”) was not fully planned, though some general infrastructure work had commenced. Completed improvements in respect of Phase 2 were limited to certain internal servicing, including storm-water receptors, sanitary pipes, and fire hydrants. Planners and consultants had been engaged by the Debtor to assist in seeking site plan approval.



11. The Interim Receiver's appointment was sought by the Applicants/subordinate mortgagees, in part, to overcome a halt in construction of Phase 1 because DUCA Financial Services Credit Union Ltd. ("DUCA"), the first-ranking secured creditor, had ceased funding under its construction loan, and made demand for payment in full of its loan.
12. The Interim Receiver's primary mandate was to facilitate the resumption and completion of construction of Phase 1, although the IR Appointment Order prohibited it from taking possession of the Real Property without further Order of the Court.
13. It became apparent to the Interim Receiver that the project's delays and costs overruns arose due to a lack of supervision, poor work on the part of sub-contractors and liquidity issues facing the Debtor. The Interim Receiver proceeded to engage replacement trades, obtain topographical reports which identified deficiencies, and proceed with remediating the deficiencies. As problems were uncovered by the Interim Receiver below grade, dates to complete site services were pushed out and construction costs increased.
14. On September 9, 2021, Justice Pattillo heard competing applications by DUCA, on the one hand, and the Interim Receiver's 'DIP' lender, Rescom, who had been funding the completion of Phase 1, on the other hand, for the appointment of a 'full blown' receiver over the Property pursuant to section 243 of the BIA and section 101 of the *Courts of Justice Act*.
15. As a condition of the Rosen Goldberg Inc.'s appointment, Rescom offered to pay \$2 million to DUCA in partial reduction of DUCA's indebtedness under its first mortgage. The payment of \$2 million to DUCA was made on September 20, 2021.

V RECEIVER'S ACTIVITIES

16. Rosen Goldberg Inc. has undertaken the following activities since its appointment as 'full blown' receiver on September 20, 2021:



- Engaged a project manager to oversee construction;
- Attended at the Real Property on multiple occasions;
- Had ongoing dealings with contractors;
- Reviewed and approved budgets and timelines;
- Approved payments;
- Met with the project's engineers and architects;
- Had ongoing consultations with Rescom and the Applicants;
- Communicated with unsecured creditors;
- Communicated with Blake Larsen, the Debtor's principal;
- Dealt with Petromaxx Petroleum Contractors Ltd. ("**Petromaxx**"), the former project manager, regarding transitional issues;
- Dealt with a municipal planner, a surveyor and with the Township of Essa regarding obtaining severances;
- Communicated and met with Parkland Fuels Inc. ("**Parkland**") regarding the gas station;
- Dealt with matters related to the construction of the gas station;
- Prepared the Receiver's statutory report;
- Dealt with HST;
- Had ongoing communications with its legal counsel;
- Communicated with tenants on an ongoing basis; and
- Dealt with banking and bookkeeping.

VI PHASE 1 CONSTRUCTION

Site Services

17. As reported in Rosen Goldberg Inc.'s Fifth Report, a copy of which is attached (without



appendices) as **Appendix E**, the installation of a sanitary pumping station and a watermain was required to be completed immediately as a first step toward achieving completion of Phase 1. The watermain installation was completed, but there were delays in connecting the watermain to the Township water supply caused by the contractor retained by Petromaxx. The Receiver replaced that contractor. The watermain is now connected and water is flowing to the Real Property.

18. The Receiver experienced delays in connecting the sanitary pumping system to the buildings. The delays arose because Petromaxx moved the location of a tank and the cables that were originally ordered for the tank were not long enough to reach the electrical panel. To remedy the problem, the Receiver engaged Xylem Canada LP to obtain the appropriate cables, which were installed and connected during the week of October 25, 2021. The sanitary pumping system is now being commissioned.
19. Surface works, including installing granular base, curbs, sidewalks and the asphalt surface, which were delayed because the Debtor had failed to obtain a topographical report, have now commenced. Curbing is complete and main sidewalks have been poured and completed. Final grading is underway and asphalt will be laid during the week of November 8, 2021. Light standards are presently being installed.

Restaurant Buildings

20. KFC, A &W and Starbucks have completed their interior work and will be in a position to commence operating imminently. Mucho Burrito commenced its interior work in September 2021 is nearly complete.
21. The Receiver has been in ongoing communications with representatives of the tenants to update them regarding the progress of site work. The Receiver will be meeting with each of them shortly to discuss business issues coinciding with their commencing operations.



Gas Station and Convenience Store

22. The Receiver has engaged an architect and engineer to assist with completing drawings, and obtaining permits for completing the gas station and convenience store. It has also received a letter of intent from Parkland outlining the terms of a fuel supply agreement.
23. The Receiver is in the process of obtaining and evaluating proposals from contractors to complete the gas station and expects to be in a position to make a final decision within two weeks.

Severances

24. On November 27, 2020, the Township's Committee of Adjustments granted its provisional consent to the severance of the Real Property into 3 separate parcels. Copies of the Notices of Decision and a severance sketch identifying the proposed parcels are attached, collectively, as **Appendix F**. Subject to the conditions contained in the Notices of Decision being met or arrangements satisfactory to the Township being achieved on or before November 26, 2021, when the severances are effected, the gas station and convenience store lands will be one of the severed parcels. The leased buildings lands will be the other severed parcel and the Phase 2 lands will be the retained parcel.
25. The severing of the Real Property in this manner is expected to considerably improve recoveries for the Debtor's estate. The Receiver, therefore, recommends that it be authorized to take such steps as may be necessary to meet the conditions in the Notices of Decision or make arrangements satisfactory to the Township on or before November 26, 2021, including, without limitation granting such easements as may be required, and incorporating two companies (individually a "Newco" and, collectively, the "Newcos") to take title to the severed lots.
26. The Receiver proposes to convey each severed parcel to a Newco and to hold the shares of



such company in its name. So as not to disturb existing priorities, both severed lots will be conveyed subject to the existing encumbrances registered against the Real Property.

27. The Township will require that certain access easements be registered against the severed parcels, although the terms of the easements have not yet been precisely defined. The Receiver's real estate lawyer, planner and surveyor are working in real time with the Township to prepare a new reference plan that will identify the easements. The Receiver expects that the new reference plan will be registered after the severed lots are conveyed to the Newcos. The Township will likely require that the existing mortgages be postponed to the easements. When the mechanics are settled, the Receiver will either approach the mortgagees to execute postponements or return to Court on notice to the mortgagees for an Order postponing their security to the easements.

VII STATEMENT OF RECEIPTS AND DISBURSEMENTS

28. Rosen Goldberg Inc.'s statement of receipts and disbursements for the period from April 20, 2021 to November 4, 2021 is attached as **Appendix G**. As of November 4, 2021, the Receiver was holding a surplus of \$133,269 on a cash basis. Under the terms of the Expanded Powers Order, the Receiver is authorised to borrow a further \$1 million to fund the exercise of its powers of duties.

VIII CONCLUSION

29. The Receiver believes that all major issues that have caused delays and cost overruns have now been identified and that going forward the project should proceed to completion without further delays or surprises.

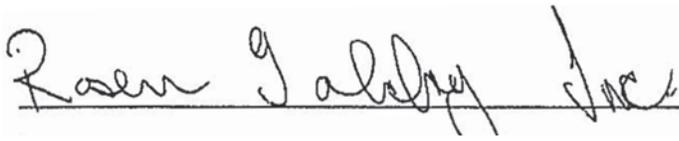
All of which is respectfully submitted.



ROSEN GOLDBERG
INSOLVENCY & RESTRUCTURING

Dated at Toronto, Ontario, this 9th day of November 2021.

**ROSEN GOLDBERG INC., SOLELY IN ITS CAPACITY AS
COURT-APPOINTED RECEIVER OF
THE PROPERTY, AND NOT IN A PERSONAL OR CORPORATE CAPACITY**



Appendix “F”

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

THE HONOURABLE) MONDAY, THE 15th
JUSTICE CAVANAGH) DAY OF NOVEMBER, 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

ORDER

THIS MOTION, made by Rosen Goldberg Inc. in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) all of the assets, undertakings and properties of the Respondent Mill Street Ventures GP Ltd. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including the property municipally known as 305 Mill Street, Angus, Ontario and legally described in Schedule “A” hereto (the “**Real Property**”), and all proceeds thereof, was heard this day by judicial videoconference due to the COVID-19 pandemic.

ON READING the Sixth Report of the Receiver dated November 8, 2021 (the “**Sixth Report**”), and upon hearing the submissions of counsel for the Receiver and counsel for the Applicants, and counsel for DUCA Financial Services Credit Union Ltd., no one else appearing, although served as set out in the affidavit of service of Janet Nairne sworn November 15, 2021, filed,

1. **THIS COURT ORDERS** that the time for service of the 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.
2. **THIS COURT ORDERS** that the Sixth Report and the activities of the Receiver set out in the Sixth Report, be and are hereby approved.
3. **THIS COURT ORDERS** that the Receiver is hereby authorised to take such steps as may be necessary to sever the Real Property into three separate parcels, including, without limitation, incorporating two companies to take title to the severed parcels, executing a transfer of each severed parcel to one of the companies and to grant such transfer easements over the retained parcel and the severed parcels as The Corporation of the Township of Essa may require, or as in the Receiver’s discretion may otherwise be required, provided however that no transfer or transfer easement shall affect the priority of any existing encumbrance against the Real Property without the written consent of such encumbrancer or Order of this Court.
4. **THIS COURT ORDERS** that the Receiver’s interim statement of receipts and disbursements for the period from April 20 to November 4, 2021, be and hereby approved.

5. **THIS COURT ORDERS** that that notwithstanding Rule 59.05, this Order is effective from the date that it is made, and is enforceable without any need for entry and filing. In accordance with Rule 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original signing, entry and filing when the Court returns to regular operations.



Digitally signed by
Mr. Justice Cavanagh

**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

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

ORDER

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Lawyers for the Court-appointed Receiver, Rosen Goldberg Inc.

Appendix “G”

Rosen Goldberg Inc.; Court Appointed Receiver of:
Mill Street Ventures GP Ltd.
For the period April 20, 2021 to February 11, 2022

Receipts

Interim Receiver's borrowings: 4,950,000

Disbursements

Principal repayment to DUCA	2,000,000
Construction costs	1,307,917
Construction costs of gas bar	430,458
Interest paid on first mortgage	403,002
HST paid	231,722
Interest on receiver's borrowings	87,232
Engineering services	86,737
Management fees	48,000
Fees and costs on interim receiver's borrowings	42,526
Interim receiver's fees	42,500
Insurance	34,752
Realty taxes	31,614
Consulting fees	<u>15,949</u>
	4,762,409
Excess of receipts over disbursements	<u><u>187,591</u></u>

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

The Receiver has held back approximately \$ 83,000 from construction cost disbursements.

Appendix “H”

Rosen Goldberg Inc.; Receiver and Manager of
Mill Street Ventures GP Ltd.
Estimated Cash Requirements to April 15, 2022
Prepared as of February 11, 2022

	Notes	
Accounts payable as per attached list		450,439
Estimated costs to complete gas bar		750,000
Estimated costs to complete convenience store	1	450,000
Additional engineering and planning costs	2	75,000
Interest to Duca (4 months)		150,000
Other estimated costs	2	<u>250,000</u>
		2,125,439
Current cash on hand		100,000
HST refunds pending	3	<u>204,000</u>
		304,000
		<u><u>1,821,439</u></u>

1. Costs not finalized as of today's date
2. General estimate
3. Could take 90 days to receive funds
4. Does not include funds to be received from Parkland

Rosen Goldberg Inc.; Receiver and Manager of
Mill Street Ventures GP Ltd.

Accounts Payable as of February 11, 2022

Trisan	1	265,000
Aqua Tech		83,787
Accrued amounts re severance		35,000
Tatham Engineers		32,700
Alcar		15,000
Garfinkle Biderman		12,369
Gary Bell		6,583
		<hr/>
		450,439

1. Have not received invoices from Trisan.

TAB 3

Confidential Appendix 1

Subject to Sealing Request

TAB 4

Confidential Appendix 2
Subject to Sealing Request

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

Applicants

-and-

MILL STREET VENTURES GP LTD.

Respondents

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

ONTARIO

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

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

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