

Court File No. CV-22-00682959-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 248 OF THE *BUSINESS CORPORATIONS ACT*,  
R.S.O. 1990, C. B. 16, AS AMENDED, AND SECTION 101 OF THE *COURTS OF  
JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

BETWEEN:

**ROSE-ISLI CORP., 2631214 ONTARIO INC., SEASIDE CORPORATION, AND 2735440  
ONTARIO INC.**

Applicants

- and -

**FRAME-TECH STRUCTURES LTD. MICHAEL J. SMITH, FRANK SERVELLO,  
CAPITAL BUILD CONSTRUCTION MANAGEMENT CORP., AND 2735447 ONTARIO  
INC.**

Respondents

**FIRST REPORT OF THE RECEIVER AND MANAGER OF 2735447 ONTARIO  
(the “First Report”)**

**SEPTEMBER 7, 2022**

**INTRODUCTION**

1. Upon the application of the Applicants, Ernst & Young Inc. (“EYI”) was appointed as receiver and manager (the “**Receiver**”) by Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated July 8, 2022 (the “**Appointment Order**”) pursuant to section 248 of the *Business Corporations Act*, R.S.O. 1990, C.B 16, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, of all of the assets, undertakings and properties of 2735447 Ontario Inc. (the “**Company**”), including, without limitation, the real property described in Schedule “A” to the Appointment Order and municipally described as 177, 185 and 197 Woodbridge Avenue, Vaughan, Ontario

and all proceeds thereof (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.

2. The purpose of this First Report is to:
  - (a) provide a summary of the background of the Company;
  - (b) provide a summary of the offer received for the purchase of Rosehill (as defined below) and the status of that potential transaction;
  - (c) report on the activities of the Receiver since its appointment;
  - (d) provide information in support of the Receiver’s request for Court approval of the activities of the Receiver as described in this First Report; and
  - (e) provide information in support of the Receiver’s request for Court approval to engage a real estate broker and to enter into a marketing and sale process (the “**Sale Process**”) for the Property to be undertaken by the Receiver as described herein.

#### **TERMS OF REFERENCE**

3. In preparing this First Report and making the comments herein, the Receiver has been provided with and has relied upon certain unaudited, draft and/or internal financial information, the motion materials filed in respect of this proceeding, and discussions with management (collectively, the “**Information**”). Future oriented financial information relied upon in this First Report is based on assumptions regarding future events, actual results achieved may vary from this information and these variations may be material.
4. The Receiver has not audited or otherwise verified the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Auditing Standards (“**GAAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.
5. The Receiver will make a copy of this First Report, and related documents with respect to this Receivership application, available on the Receiver’s website at

[www.ey.com/ca/rosehill](http://www.ey.com/ca/rosehill)

6. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.
7. Capitalized terms not defined in the First Report have the meaning ascribed to them in the affidavits and the Appointment Order.

## OVERVIEW

### Background

8. The Company is an Ontario corporation that is the registered owner of the real property municipally known as 177, 185 and 197 Woodbridge Avenue, Vaughan, Ontario (the “**Lands**”). The Lands are currently being developed into a mixed used retail and residential condominium real estate project called “**Rosehill**” through a joint venture management structure. The parties to this joint venture are the Applicants, 2631214 Ontario Inc. and Rose-Isli Corp., and the Respondents, the Company and Frame Tech Structures Ltd. (“**Frame-Tech**”) (together the “**JV Parties**”). The Company is the entity through which the joint venture is developing the project.
9. The Rosehill project is a proposed six-story mixed used residential and retail development which is anticipated to comprise of approximately 80 condominium units. Construction of the project has not yet commenced, and the Lands are currently vacant except for a sales office and two heritage homes.
10. As at the date of the Appointment Order, 60 residential suites and one commercial unit have already been pre-sold. The purchaser deposits related to the pre-sale of these suites and commercial unit are being held in trust by Schneider Ruggiero Spencer Milburn LLP as real estate counsel to the Company. Tarion has a first charge on these purchaser deposits.

### History and Status of the Project

11. In early 2020, the Company was incorporated to purchase the Lands with the intention of a quick resale. After the purchase, the shareholders of the Company changed their initial

intentions with respect to how to monetize their interests in Rosehill. Ultimately, the shareholders agreed to develop Rosehill as a residential, mixed-use project and to manage the development by way of a joint venture.

12. Pursuant to a joint venture agreement, Capital Build Construction Management Corp. (“**Capital Build**”) was engaged by the Company as the construction manager of Rosehill. The Receiver understands that Capital Build is owned and managed by the Respondents, Michael Smith and Frank Servello.
13. To advance the development of the project, the JV Parties engaged a number of consultants, including architecture, planning and municipal counsel in an effort to advance the Rosehill development. However, the Receiver understands the working relationship between the JV Parties broke down and as a result, in March 2022, the Company began to pursue a sale of the entire Rosehill development.
14. Detailed background information in respect of Rosehill, including a description of its business, affairs, assets and events that precipitated this proceeding are set out in the affidavits filed in the Notice Application dated June 21, 2022, Responding & Counter Application dated July 1, 2022, and Reply Application dated July 4, 2022. These materials are available on the Receiver’s website.

### **Zoning and Municipal Matters**

15. Prior to the Receiver’s appointment, the Company had made an application for site plan approvals with the City of Vaughan. At the time of the Receiver’s appointment, there were outstanding preconditions that were required to be fulfilled before the Ontario Land Tribunal (the “**OLT**”) would issue final orders approving an Official Plan Amendment (the “**OPA**”) and a Zoning By-law Amendment (the “**ZBA**”), both of which were required before the development could be finalized.
16. At the time of the Receiver’s appointment, there were also outstanding information requests from the City of Vaughan in respect of a Site Plan Agreement (the “**SPA**”), which had to be executed as a condition to site plan approval.

17. To facilitate discussions with the City of Vaughan and to advance the municipal approval process, the Receiver engaged Overland LLP as municipal counsel. Overland LLP was municipal counsel to the Company prior to the Receiver's appointment and has knowledge of historical matters relating to Rosehill.
18. Overland LLP informed the Receiver that there are amendments to s. 37 of the *Planning Act*, R.S.O. 1990, c. P.13 that would come into effect in September 2022, and that it was recommended to obtain OPA and ZBA approvals prior to the amendment coming into effect to avoid additional costs for the development.
19. Through counsel, the Receiver advanced the municipal planning process and satisfied the outstanding preconditions to OPA and ZBA approvals. As at the date of this First Report, the final Order of the OPA and the ZBA has been issued for Rosehill.
20. The Receiver participated in discussions with respect to pursuing the SPA and corresponding site plan approval. The Receiver believes it may take further time to advance and finalize the SPA and obtain site plan approval, and that such approval may not be obtained prior to the sale of Rosehill

### **Financing of the Project and Construction Lien**

#### Financing

21. The Company has historically been financed through loans from a third-party lender and 2735440 Ontario Inc, a related party to the Company. Based on the books and records of the Company, the principal financing arrangements in place are set out below:
  - a) mortgage financing advanced by Trez Capital Limited Partnership (“**Trez**”) secured by a first charge on the Lands; and
  - b) mortgage financing advanced by 2735440 Ontario Inc. (“**273**”) secured by a second charge on the Lands.

### The Trez Capital Limited Partnership Mortgage

22. Pursuant to a financing commitment letter dated December 6, 2021, and amendment to financing commitment letter dated January 20, 2022, Trez agreed to loan the principal amount of \$5.9 million to the Company and provide a \$1.0 million letter of credit facility with a maturity date of September 1, 2022. On August 10, 2022, Trez issued a notice of default and acceleration to the Company. As of September 1, 2022 the outstanding principal balance, including the letter of credit, is \$6,837,073.67 (the “**Trez Mortgage**”).

### 2735440 Ontario Inc. Mortgage

23. As described in the Affidavit of Katarzyna Pikula sworn June 21, 2022, pursuant to a financing commitment letter dated January 6, 2020, and subsequent amendments on January 15, 2021 and on July 16, 2021, 273 advanced mortgage financing in the principal amount of \$7,628,751 (the “**273 Mortgage**”). The 273 Mortgage is secured by a second ranking charge on the Lands. 273 is also party to a general security agreement dated January 15, 2020 granting it security over all of the personal and after acquired property of the Company.
24. The Receiver has not yet performed an independent security review of either the Trez Mortgage or the 273 Mortgage to determine validity or priority.

### Construction Lien

25. On April 29, 2022, Capital Build registered a construction lien on title to the Lands in the amount of \$2,000,667 in connection with construction on the Lands (the “**Construction Lien**”).
26. On July 25, 2022, Capital Build filed a statement of claim against the Company to perfect its Construction Lien, notwithstanding the stay of proceedings and without the consent of the Receiver. The action includes claims for pre-construction labour, site planning services and maintenance of the structures for the period from January 15, 2020 to April 29, 2022. Capital Build asserts that its lien has priority over the 273 Mortgage.

27. The Receiver has not performed an analysis of the Construction Lien claim to validate any work performed, or to determine priority. The Receiver has requested and counsel to Capital Build has agreed that all further steps with respect to the Construction Lien will be held in abeyance while the stay of proceedings is in effect.

#### **OFFER TO PURCHASE THE ROSEHILL PROJECT**

28. As described above, prior to the appointment of the Receiver, the Company had begun marketing Rosehill for sale. The marketing and sale process undertaken by Rosehill is described in the Affidavit of Domenic Grossi, sworn June 21, 2022.
29. Pursuant to paragraph 3(j) of the Appointment Order, the Receiver is required to consider any offers received prior to the Receiver's appointment.
30. As at the date of the Receiver's appointment, there was one conditional offer for Rosehill ("**Pre-Receivership Offer**"). The Receiver is aware other offers were made prior, but which were no longer valid at the time of the Receiver's appointment.
31. The Receiver has taken steps to advance the Pre-Receivership Offer and has requested the prospective purchaser execute a formal asset purchase agreement.
32. When the Receiver was appointed, the prospective purchaser under the Pre-Receivership Offer was in its due diligence phase. The Receiver consented to the prospective purchaser's request to extend the due diligence period and to deliver information sought by the prospective purchaser. The information sought by the prospective purchaser included, among other items, architectural and engineering designs and plans, consultant reports, information regarding the sale of the residential and commercial units and various updates on governmental approvals.
33. The Receiver worked with the JV Parties and the Company's architecture and planning consultants to gather information, to understand the status of the project, and to provide the prospective purchaser with the most up to date information to perform its due diligence. As of August 8, 2022, the Receiver had delivered all available relevant information requested by the prospective purchaser.

34. On August 12, 2022, the Receiver delivered a form of asset purchase agreement (“**APA**”) to the prospective purchaser for execution. The Receiver requested that the prospective purchaser advise no later than August 17, 2022, as whether it was prepared to waive all outstanding conditions and execute the APA.
35. On August 24, 2022, a representative of the prospective purchaser provided comments on the terms of the APA, requested an extension of the deadline and requested further information regarding certain municipal site plan and zoning approvals. On August 26, 2022, the Receiver delivered a revised draft APA and the requested information. The Receiver requested that the prospective purchaser execute the APA no later than August 31, 2022, failing which the Receiver would seek court approval to commence a court approved sale process.
36. Throughout these proceedings, the Receiver provided the JV Parties with regular updates with respect to the Pre-Receivership Offer. While the JV Parties expressed their preference for the Receiver to pursue and attempt to enter into a transaction with the prospective purchaser in hopes of avoiding additional costs of an expanded sale process, the Receiver has not received a response from the prospective purchaser regarding the revised APA as at the date of this First Report. No deposit was ever delivered to the Receiver notwithstanding the Receiver’s repeated requests. The Receiver therefore seeks approval to begin the Sale Process to market and sell the Property.

#### **ACTIVITIES OF THE RECEIVER TO DATE**

37. The Receiver has taken the actions, in connection with its obligations under the Appointment Order as set out below:
  - a) gathering books and records and other financial information of the Company from the individuals responsible for maintaining the Company’s books and records. The Receiver notes that at the time of its appointment, the Company did not have any employees and was not incurring any payroll costs. The Receiver understands that the individuals who maintain the books and records of the Company are employees or independent contractors of Capital Build;

- b) opening new bank accounts in respect of any funds relating to the Company or the Rosehill development. The Receiver notes that upon its appointment, Capital Build purported to close the bank accounts of the Company on the basis that the principals of Capital Build did not wish to have the Receiver interfere with their personal relationships at the bank. The Receiver was advised that there were limited funds maintained in the Company's bank accounts, as funds were transferred to the bank account on an as-needed basis to fund expenses as they arose. The Receiver requested bank statements to verify amounts flowing through the Company's bank accounts before they were closed. The Receiver is maintaining new bank accounts on behalf of the Company for any funding going forward;
- c) made various site visits to the Lands including to the sales office located at 177 Woodbridge Avenue, Vaughan, Ontario. The Receiver changed the locks at the sales office and performed a walk-through with one of the JV Parties to observe and record the state of the sales office;
- d) registered the Appointment Order against title to the Lands;
- e) requested for the transfer of the Pre-Receivership Offer deposit to the bank account held by the Receiver, however no deposit was ever received from the prospective purchaser;
- f) arranged for insurance coverage for the Lands and set up the Receiver as loss payee to the insurance policy;
- g) received executed Non-Disclosure Agreements from those parties interested in receiving status updates and confidential information about the Rosehill project and negotiations;
- h) prepared and delivered to the JV Parties a draft recovery analysis based on the books and records of the Company, noting however that the Receiver has not undertaken an analysis of the validity or relative priority of the Construction Lien and the mortgage security interests;
- i) responded to inquiries relating to the nature of the Company's receivership proceeding,

- and creditor outstanding amounts;
- j) provided updates to Trez Capital's legal counsel with respect to the status of the receivership proceedings and the Pre-Receivership Offer;
- k) provided updates to Tarion's legal counsel, the JV Parties and their respective legal counsel with respect to the status of the receivership proceedings and the sale process;
- l) posted the Appointment Order and other court documents on the Receiver's website: [www.ey.com/ca/rosehill](http://www.ey.com/ca/rosehill);
- m) established a toll free number: 1-866-259-1420 for creditors and other interested parties to contact the Receiver; and
- n) prepared this First Report.

#### Efforts to Sell Rosehill

38. As discussed in this First Report, the Receiver made the following efforts to complete the Pre-Receivership Offer of Rosehill:
- a) participated in numerous discussions with the JV Parties, Company's counsel, architect and other consultants to understand the status of the project, and to gather available information;
  - b) responded to queries, and provided information to the prospective purchaser and its representative in response to their due diligence requests;
  - c) discussed the transaction with the prospective purchaser, provided extensions and numerous follow-ups, and considered its comments on the APA;
  - d) obtained electronic copies of the project construction records;
  - e) prepared and provided a draft of the APA to the prospective purchaser;
  - f) held various conference calls with Rosehill's counsel to obtain status updates with respect to approvals from the City of Vaughan and the Ontario Land Tribunal;

- g) worked with Rosehill's counsel, representatives from the City of Vaughan and the Ontario Land Tribunal to get necessary approvals, agreements and final orders for the project;
- h) contacted and issued Non-Disclosure Agreements to real estate brokerages to obtain proposals for the marketing and sale of the project; and
- i) responded to interest in the project with a number of potentially interested parties and brokers.

### **PROPOSED MARKETING AND SALE PROCESS**

- 39. As further discussed in this First Report, the prospective purchaser that submitted the Pre-Receivership Offer did not execute the APA, deliver a deposit, nor waive conditions notwithstanding the extensive due diligence undertaken. As a result, the Receiver seeks approval of the Sale Process for Rosehill to solicit further bids for the Property.
- 40. Since the Receiver's appointment, six other parties and brokers have contacted the Receiver and expressed their interest to participate in the Sale Process once launched. The Receiver also received two unsolicited conditional offers for the project on July, 22, 2022 and on August 4, 2022, respectively.
- 41. The Receiver is aware that the JV Parties wish to sell Rosehill and 60 residential units of the development have been pre-sold to purchasers awaiting construction of their homes. Construction on Rosehill has not begun, and the Company does not have the liquidity to advance the project. Despite the efforts of the Receiver there is no executed APA with the prospective purchaser with respect to the Pre-Receivership Offer and therefore the Receiver is of the view that it is appropriate to commence the Sale Process at this time. In addition, as noted above, the Trez Mortgage has now matured and is secured by a first charge on the Lands. The Receiver intends to keep Trez informed and updated as to the key milestones of the Sales Process as outlined below, including that of the real estate broker selection.

42. The Receiver seeks to commence the Sale Process to solicit bids for the Property and to ultimately consummate a sale transaction. The proposed Sale Process will be a 60-day sale process comprising the following timeline:

September 12, 2022	Order approving the Sale Process
As soon as practicable following Court Approval of the Sale Process	The listing broker to establish an electronic data room, complete a draft confidential information memorandum (“ <b>CIM</b> ”), confidentiality agreement, prospective buyers list and a teaser letter (“ <b>Teaser</b> ”) and provide same to the Receiver for approval.
Commencement of Marketing As soon as practicable following Court Approval of the Sale Process	The listing broker to contact interested parties and distribute Teaser.  The listing broker to distribute the confidentiality agreement and, upon receipt of a signed confidentiality agreement, distribute the CIM to interested parties.  The listing broker will respond to requests for information, arrange site visits and due diligence conference calls. Interested parties to conduct due diligence.
Approximately 45-50 days after Court Approval of the Sale Process	Proposed bidders shall submit an executed binding Asset Purchase Agreement (“ <b>Binding APA</b> ”) with a blackline to the form provided in the data room.
Approximately 60 days after Court Approval of the Sale Process	Selection of a successful bid (the “ <b>Successful Bid</b> ”) and finalize the APA with the successful bidder.
As soon as possible after final negotiations of the Successful Bid	Court approval of the Successful Bid.

#### Selection of a Real Estate Broker

43. The Receiver has contacted three nationally recognized real estate brokerages to submit a proposal to list the Property. The real estate broker will work with the Receiver to prepare marketing materials and advertise the Property at the agent’s expense, negotiate and obtain confidentiality agreements from interested parties, organize site visits for interested parties, work with the Receiver to maintain data rooms to facilitate the Sale Process and assisting interested parties with their due diligence, assist with the review and consideration of offers

submitted, report on and summarize the results of the Sale Process, which will be relied on by the Receiver for the recommended transaction, and assist with the closing of the transaction.

44. The Receiver will select the real estate broker based on the broker's proposed marketing plan and the broker's experience selling similar real estate, including around the location of the Property. The Receiver will also consider the compensation structure and the broker's experience acting in Court-supervised situations and other factors in the Receiver's sole discretion.

#### Sale Process Requirements

45. The Sale Process may be extended by the Receiver, acting reasonably, all with a view to completing a fair and reasonable offer for the Property.
46. The Property shall be transferred free and clear of all liens and claims, subject to any permitted encumbrances, pursuant to an approval and vesting order issued by the Court approving the transaction.
47. Any purchase of the Property will be on an "as is, where is" basis without representations or warranties of any kind, nature or description by the Receiver or any of its respective directors, officers, partners, employees, agents, advisors or estates, except to the extent as may be set forth in a binding asset purchase agreement.

#### Participation Requirements

48. A Binding APA must comply with all of the following requirements:
  - (a) the bid is delivered to the Receiver prior to the bid deadline;
  - (b) includes a letter of acknowledgment stating that the bidder's offer is irrevocable and open for acceptance until the Successful Bid is selected by the Receiver;
  - (c) it is accompanied by written evidence of a firm, irrevocable commitment

for financing or other evidence satisfactory to the Receiver, in its sole discretion, of the ability of the proposed bidder to consummate the proposed transaction, and that will allow the Receiver to make a determination as to the proposed bidder's financial and other capabilities to consummate the proposed sale;

- (d) it is unconditional;
- (e) it fully discloses the identity of each entity that will be bidding for the Property, or otherwise sponsoring, financing, participating or benefiting from such bid;
- (f) it includes an acknowledgement and representation of the proposed bidder that: (i) it has had an opportunity to conduct any and all due diligence regarding the Property prior to making its bid; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Property in making its bid; and (iii) it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the Property or the completeness of any information provided in connection therewith;
- (g) it provides a deposit in the amount of not less than 10% of the purchase price offered; and
- (h) the bid contemplates closing the transaction within five business days of Court approval of the Successful Bid.

- 49. The Receiver may determine whether to entertain bids that do not conform to one or more of the requirements specified herein.
- 50. The Receiver may extend the bid deadline or cancel the Sale Process.

### Evaluation of Binding APA

51. Each Binding APA will be considered and reviewed by the Receiver based upon several factors including, without limitation, items such as the proposed purchase price and the net value provided by such bid, the claims likely to be created by such bid in relation to other bids, the counterparties to such transactions, the proposed transaction documents, other factors affecting the speed and certainty of the closing of the transaction, the value of the transaction, any related transaction costs, the likelihood and timing of consummating such transactions, and such other matters as the Receiver may determine.

### Selection of Successful Bid

52. The Receiver may identify the highest or otherwise best offer for the Property to constitute the Successful Bid.
53. If the Receiver receives one or more Binding APAs, it may, in the Receiver's sole discretion, negotiate with such bidders with a view to improving the bids received.

### Sale Process Recommendation

54. The Receiver recommends that the Court issue an Order approving the Sale Process for the following reasons:
  - a) the Sale Process is reasonable and appropriate at this time based on the reasons identified above, including that the Pre-Receivership Offer was not executed;
  - b) the Sale Process is fair, open and transparent and is intended to canvass the market broadly on an efficient basis to obtain the highest and best price; and
  - c) the Sale Process and the timelines set out herein are flexible and provide sufficient time to obtain bids that maximize value for the Property.

## **FUNDING OF THE RECEIVERSHIP**

55. Pursuant to the Appointment Order, the Receiver is entitled to borrow up to the principal amount of \$200,000 to fund the Receivership.

56. One of the JV Parties has offered to act as a lender for the purposes of funding this receivership proceeding through the issuance of one or more receiver's borrowing certificates. The principal sum advanced will incur interest compounded monthly at rate per annum equal to the rate of 13%. Pursuant to the terms of the Appointment Order, the Receiver's Borrowing Charge (as defined therein) ranks in priority to all security interests, trusts, liens and charges but is subordinate to the Trez Mortgage.

### **RECOMMENDATION**

57. For the reasons enumerated above, the Receiver requests an order, *inter alia*:
- a) approving the Receiver's activities as outlined in this First Report; and
  - b) approving the engagement of a real estate broker and the proposed Sale Process as described in this First Report.

All of which is respectfully submitted this 7<sup>th</sup> day of September, 2022.

**ERNST & YOUNG INC.,  
solely in its capacity as Receiver and Manager of  
2735447 Ontario Inc. and not in its personal capacity**

Per:



David Saldanha  
Senior Vice-President

Jeffrey D. Kerbel  
Senior Vice-President

# **Appendix A**

## **Appointment Order**

Court File No. CV-22-00682959-00CL

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

THE HONOURABLE	)	FRIDAY, THE 8TH
	)	
JUSTICE OSBORNE	)	DAY OF JULY, 2022

ROSE-ISLI CORP., 2631214 ONTARIO INC., SEASIDE CORPORATION,  
and 2735440 ONTARIO INC.

Applicants

– and –

FRAME-TECH STRUCTURES LTD., MICHAEL J. SMITH, FRANK SERVELLO,  
CAPITAL BUILD CONSTRUCTION MANAGEMENT CORP., and 2735447 ONTARIO INC.

Respondents

**ORDER**  
(Appointing Receiver)

THIS APPLICATION made by the Applicants for an Order pursuant to section 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16, as amended (the "**OBCA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Ernst & Young Inc. (LIT) ("**EY**") as receiver and manager (in such capacities, the "**Receiver**") without security, of all of the assets, undertakings and properties of 2735447 Ontario Inc. (the "**Company**"), including but not limited to all the lands and premises municipally described as 177, 185 and 197 Woodbridge Avenue, Vaughan, Ontario (the "**Lands**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit, confidential affidavit, and Reply Affidavit of Katarzyna Pikula and the Exhibits thereto (the "**Pikula Affidavit**"), the affidavit and confidential affidavit of Domenic Grossi and the Exhibits thereto (the "**Grossi Affidavit**"), the affidavit of Davide Di Iulio and the Exhibits thereto, the affidavit of Michael J. Smith and the Exhibits thereto, and the

Affidavit of Frank Servello and the Exhibits thereto, and on hearing the submissions of counsel for the Applicants, EY, and the Respondents and such other counsel as were present, no one else appearing although duly served as appears from the affidavits of service of Sandy Ballott and on reading the consent of EY to act as the Receiver.

### **SERVICE**

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

### **APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 248 of the OBCA, and section 101 of the CJA, EY is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Company including but not limited to all the lands and premises legally described in **Schedule "A"** hereto and municipally described as 177, 185 and 197 Woodbridge Avenue, Vaughan, Ontario (the "**Lands**"), and including all proceeds thereof (collectively, including the Lands, 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 the Property, including any deposits, or funds held in trust by the Company or its solicitors, and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the of the Company, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Company;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Company or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Company and to exercise all remedies of the Company in collecting such monies, including, without limitation, to enforce any security held by the Company;
- (g) to settle, extend or compromise any indebtedness owing to the Company;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Company, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Company, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its

discretion may deem appropriate, and without limiting the generality of the foregoing, to take into account any offers to purchase the Lands or other assets of the Company that have been received and/or accepted to date as part of the sales process described in the Grossi Affidavit;

- (k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business; provided, however, that in each such case notice under subsection 63(4) of the *Ontario Personal Property Security Act*, or section 31 of the *Ontario Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens, encumbrances, or other instruments affecting such Property, other than any permitted encumbrances as may be acceptable to the purchaser;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Company;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Company, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Company;

- 5 -

- (q) to exercise any shareholder, partnership, joint venture or other rights that the Company may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

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

4. THIS COURT ORDERS that (i) the Company, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel, shareholders, the joint venture partners under the Joint Venture Agreement executed in or about June 2021, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

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

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service

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

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

7. 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 COMPANY OR THE PROPERTY**

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

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

9. THIS COURT ORDERS that all rights and remedies against the Company, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Company to carry on any business which the Company is not lawfully entitled to carry on, (ii) exempt the Receiver or the Company 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**

10. 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 Company, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Company 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 Company 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 Company's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Company or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

**RECEIVER TO HOLD FUNDS**

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

**EMPLOYEES**

13. THIS COURT ORDERS that all employees of the Company shall remain the employees of the Company until such time as the Receiver, on the Company's behalf, may terminate the

employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*

## **PIPEDA**

14. 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 Company, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. 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**

16. 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**

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

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

19. 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

20. 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 \$200,000 (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 with the Applicants, 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 Trez Security and 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.

21. 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.

22. 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.

23. 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

24. 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/e-service-protocol/>) 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 on the Receiver's website at [https://www.ey.com/en\\_ca](https://www.ey.com/en_ca).

25. 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 or electronic transmission to the Company's creditors or other interested parties at their respective addresses as last shown on the records of the Company and that any such service or distribution by courier, personal delivery, or facsimile or electronic 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.

#### **SEALING ORDER**

26. THIS COURT ORDERS that the confidential affidavit of Katarzyna Pikula sworn June 21, 2022 and the Exhibits thereto and the confidential affidavit of Domenic Grossi sworn June 21, 2022 and the Exhibits thereto shall be sealed until further order of the Court.

#### **GENERAL**

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

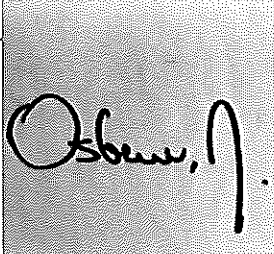
28. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Company.

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

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

31. 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, to the Applicants, 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.

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**SCHEDULE "A"****LEGAL DESCRIPTION OF THE LANDS**

PIN 03299-0390 (LT)

PART OF THE WEST HALF OF LOT 7, CONCESSION 7, VAUGHAN, AS IN WB5781,  
R543781 AND PART 1, PLAN 65R-11983; CITY OF VAUGHAN

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

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

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

32. THIS IS TO CERTIFY that Ernst & Young Inc. ("EY"), the receiver (the "Receiver") of the assets, undertakings and properties 2735447 Ontario Inc., including all the lands and premises legally described in the Schedule hereto and municipally described as 177, 185 and 197 Woodbridge Avenue, Vaughan, Ontario (the "Lands"), including all proceeds thereof (collectively, including the Lands, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 22<sup>nd</sup> day of June, 2022 (the "Order") made in an action having Court file number \_\_-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 \$200,000 which the Receiver is authorized to borrow under and pursuant to the Order.

33. 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 last day of each month after the date hereof at a notional rate per annum equal to the rate of ████████ per cent.

34. 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.

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

36. 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.

37. 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.

38. 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\_\_.

Ernst & Young Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

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**SCHEDULE**

**LEGAL DESCRIPTION OF THE LANDS**

PIN 03299-0390 (LT)

PART OF THE WEST HALF OF LOT 7, CONCESSION 7, VAUGHAN, AS IN WB5781,  
R543781 AND PART 1, PLAN 65R-11983; CITY OF VAUGHAN

Court File No. CV-22-00682959--00CL

ROSE-ISLI CORP. ET AL. -and- MICHAEL J. SMITH ET AL.

Applicant

Respondent

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

Proceeding commenced at TORONTO

**ORDER**

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Lawyers for the Applicants