

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

BETWEEN:

MERIDIAN CREDIT UNION LIMITED

Applicant

- and -

**260 HIGH PARK LIMITED PARTNERSHIP, TRAC DEVELOPMENTS INC., AND
2486357 ONTARIO INC.**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, section 68 of the *Construction Act*, R.S.O 1990, c. C.30, and section 101 of the *Courts of Justice Act*, R.S.O 1990 c. c.43, as amended

**MOTION RECORD OF ERNST & YOUNG INC.,
IN ITS CAPACITY AS COURT-APPOINTED PROJECT RECEIVER,
MANAGER AND CONSTRUCTION LIEN TRUSTEE
(Sale Process Approval)**

September 26, 2024

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in its capacity as Court-appointed Project
Receiver, Manager, and Construction Lien
Trustee

TO: SERVICE LIST

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TAB 1

Court File No. CV-24-00718677-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**NOTICE OF MOTION
(Sale Process Approval)**

ERNST & YOUNG INC. (“**EY**”, or the “**Receiver**”), in its capacity as project receiver, manager and construction lien trustee of all of the assets, undertakings and properties of 260 High Park Limited Partnership, TRAC Developments Inc., and 2486357 Ontario Inc. (collectively, “**260 High Park**” or the “**Debtor**”), including the Project (defined below), acquired for, or used in relation to the business carried on by them (in such capacity, the “**Receiver**”), will make a motion to a Judge of the Commercial List on Tuesday, the 1st day of October, 2024, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue in Toronto.

PROPOSED METHOD OF HEARING: The Motion is to be heard by judicial video conference via Zoom co-ordinates to be established by the Court prior to the motion date.

THE MOTION IS FOR an Order:

1. if necessary, abridging the time for service of the Receiver's Motion Record and related Notice of Motion, validating service of the Motion Record and related Notice of Motion, and dispensing with further service thereof;
2. approving the activities described in the Receiver's first report dated September 25, 2024 (the "**First Report**");
3. approving the proposed marketing and sale process for the property municipally known as 248 High Park Avenue and 260 High Park Avenue, Toronto, Ontario (the "**Real Property**"), as described in the First Report;
4. approving and accepting the Receiver's Interim Statement of Receipts and Disbursements for the period from May 27, 2024, to September 24, 2024, as set out in Appendix "C" to the First Report, and,
5. such further and other relief as counsel may advise and this Honourable Court may permit;

THE GROUNDS FOR THE MOTION ARE:

1. by way of the Order of Justice Cavanagh dated May 27, 2024 (the "**Receivership Order**"), EY was appointed receiver and manager of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof and Real Property (the "**Property**"), and construction lien trustee in respect of the Property;

Background – the Project

2. prior to the Receivership Order, the Debtor had been in the process of constructing a 70-unit residential condominium (the “**Project**”) consisting of the conversion of a former church, and a newly built mid-rise condominium, at the Real Property. 64 of the 70 condominium units have been pre-sold;
3. the Project is only partially complete, and construction activity at the Project has not advanced since late-2023. The trade contractors abandoned the Project due to liquidity challenges and other delays;
4. among other things, work stopped without: (i) completing the installation of windows or window frames throughout the existing church building and the newly constructed mid-rise building; (ii) completing of the demolition of certain church walls; (iii) patching holes in the roof of the church; or (iv) sealing the building envelope for winterization purposes;

Registered Security

5. the construction of the Project was being financed by the Applicant, Meridian Credit Union Limited (“**MCU**”). MCU’s loan facilities are secured by, among other things, a first charge/mortgage against the Mortgaged Lands dated March 6, 2020, in the principal amount of \$50,000,000.00 (the “**Meridian Mortgage**”);
6. as of April 9, 2024, the Debtor owed MCU approximately \$42.2 million;
7. Westmount Guarantee Services Inc. (“**Westmount**”) holds a third-ranking mortgage over the Real Property, in the principal amount of \$20 million. Westmount provides condominium

purchaser deposit insurance, and the Receiver understands that approximately \$11.2 million is presently owing to Westmount under its third mortgage, representing deposits released from escrow;

8. Fiera FP Real Estate Financing Inc. and Fiera FP Real Estate Financing Fund, L.P. (collectively, “**Fiera**”) holds a second-ranking mortgage against the Real Property in the principal amount of \$14,300,000, registered on March 6, 2020;
9. in addition to the three mortgages referenced above, 13 trade contractors have registered 15 construction liens totalling \$8,670,283.96 against the Real Property;

The Receiver’s Powers

10. the Receivership Order authorizes the Receiver to, among other things:
 - a. take possession of and exercise control over the Property (including the Real Property) and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - b. receive, preserve, and protect the Property;
 - c. 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;
 - d. market any or all of the Property, including, without limitation, condominium units, including advertising and soliciting offers in respect of any and all such 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,

- e. apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

Securing, Protecting and Winterizing the Project

11. security monitoring at the Project had been discontinued prior to the Receivership Order, with significant instances of dumping of refuse and vandalism evident upon inspection of the Project, which had attracted the attention of City of Toronto bylaw enforcement, as well as the local City Counsellor's office. The Receiver has reinstated 24-hour security cameras at the Project, and arranged for security personnel to monitor the site periodically over each 24 hour period;
12. the Receiver has engaged Elm Developments Corp. ("**Elm**") as a construction manager to prioritize and address site deficiencies, including cleaning up the refuse and vandalism, and to prepare the site for winter, including temporarily closing window openings, addressing water intrusion given the exposed elevator shaft and lack of windows, instituting a water mitigation strategy, protecting elements not designed to be exposed to winter conditions, protecting the existing foundation from frost, heating portions of the structure where necessary, and repairing and reinforcing (if necessary), the existing shoring;

Cost of Securing, Protecting and Winterizing, and Increase in Borrowing Limit

13. the Receiver's borrowing limit pursuant to paragraph 21 of the Receivership Order is currently \$1,000,000. The expenses associated with the site clean up, stabilization, winterization, security measures, insurance, utilities, consultants, advisors and professional

costs are being paid out of the receipt of insurance proceeds as described below, which have been sufficient to fund the receivership proceedings to date. The Receiver has not drawn on the borrowing certificate;

Cost to Complete the Project

14. after reviewing the condition of the Project, considering the costs and time frame to complete the Project, the alternative scenarios between a purchaser assuming or disclaiming some or all of the pre-existing condominium unit agreements of purchase and sale, and the position of MCU, Fiera, and Westmount (the “**Lenders**”) that none of them will advance the funds necessary to complete the construction, the Receiver determined that the most appropriate course of action in the circumstances is to immediately commence a sale process for the Real Property on an “as-is, where-is” basis;

Marketing and Sales Process

15. the Receivership Order includes provisions from the Commercial List’s model order giving the Receiver the power to market and sell the Property, including the Real Property;
16. the Receiver invited four qualified and experienced real estate brokers to submit listing proposals for the marketing and sale of the Real Property, and received three proposals;
17. the Receiver prepared a comparative analysis of the proposals, engaged in discussions with MCU to obtain its input, and sent the comparative analysis to Westmount and Fiera for their review, following which the Receiver selected CBRE Limited (“**CBRE**”) to market the Real Property;

18. the Receiver has prepared a sale process for the Real Property (the “**Sale Process**”). The key terms of the Sale Process are described in the First Report under the heading “Proposed Marketing and Sale Process”. If the Court authorizes the Receiver to retain CBRE, the Sale Process can commence by October 4, 2024, a bid deadline is expected on or about the end of the third full week in November, 2024, with a sale approval motion potentially as early as January 22, 2025;
19. the Receiver is of the view that the Sale Process is appropriate for the following reasons, among others, as set out in the First Report:
 - a. the Sale Process is designed to be fair, open and transparent, was developed with input from CBRE, and is intended to canvass the market broadly on an efficient basis to obtain the highest and best price for the Real Property; and
 - b. the Sale Process provides the Receiver with the timelines, procedures and flexibility that it believes are necessary to maximize value;

Receipts and Disbursements

20. the Interim Statement of Receipts and Disbursements of the Receiver attached as Appendix “C” to the First Report is a fair and accurate representation of the funds received and disbursed directly by the Receiver since the Receivership Order herein. It sets out actual receipts over disbursements of approximately \$3 million;
21. section 249 of the *Bankruptcy and Insolvency Act*,
22. Rules 2.03, 3.02, 37 and 41.05 of the *Rules of Civil Procedure*; and,
23. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING
OF THE MOTION:**

1. the First Report and the appendices attached thereto; and
2. such further and other evidence as counsel may advise and this Honourable Court may permit.

September 26, 2024

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Receiver, Manager, and
Construction Lien Trustee

TO: SERVICE LIST

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Applicant

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Respondents

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Sale Process Approval)**

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Manager, and Construction Lien Trustee

TAB 2

Court File No. CV-24-00718677-00CL

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COMMERCIAL LIST**

B E T W E E N:

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section 101 of the *Courts of Justice Act*, R.S.O 1990 c. c.43, as amended**

**FIRST REPORT OF THE PROJECT RECEIVER, MANAGER
AND CONSTRUCTION LIEN TRUSTEE**

SEPTEMBER 25, 2024

INTRODUCTION

1. The first report of the Project Receiver and Manager (the “**First Report**”) is filed by Ernst & Young Inc. (the “**Receiver**”) in its capacity as Project Receiver, Manager and Construction Lien Trustee of all of the assets, undertakings and properties of 260 High Park Limited Partnership, TRAC Developments Inc. (“**Trac**”), and 2486357 Ontario Inc. (collectively, “**260 High Park**” or the “**Debtors**”), including the Project (defined below), pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated May 27, 2024 (the “**Appointment Order**”). 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 Debtors and status of the Project;
 - (b) provide information in support of the Receiver's request for an order approving the Sale Process (as defined below), as described in this First Report;
 - (c) update the Court and the Registered Lien Claimants (as defined below) regarding the liens registered against the Property (as defined below), the position of the Registered Lien Claimants, and the Receiver's preliminary analysis regarding the Registered Lien Claimants' priority holdback claims; and
 - (d) report on the activities of the Receiver since its appointment.

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 former 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 motion, available on the Receiver's website at www.ey.com/ca/260HighPark. The Receiver has also established a toll-free phone number and email address that is referenced

on the Receiver's website so that parties may contact the Receiver if they have questions with respect to this proceeding.

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

OVERVIEW

Background and Status of the Development

8. 260 High Park Limited Partnership, its general partner, Trac, and 2486357 Ontario Inc. are, respectively a limited partnership incorporated pursuant to the *Limited Partnerships Act*, R.S.O. 1990, c. L.16 and two private companies incorporated pursuant to the *Business Corporations Act*, R.S.O. 1990 c. B.16.
9. Prior to the Receiver's appointment, 260 High Park was in the process of constructing a 70-unit residential condominium (the "**Project**") consisting of the conversion of a former church, and a newly built mid-rise condominium, on lands municipally known as 248 and 260 High Park Avenue, Toronto, Ontario, and bearing property identification numbers 21365-0346 (LT) and 21365-0009 (LT) in the Land Registry Office for the Land Titles Division in Toronto (No. 80) (collectively, the "**Mortgaged Lands**" or the "**Property**").
10. 260 High Park had entered into purchase and sale agreements for 64 of the 70 units of the Project (the "**Unit APSs**").

Financing of the Development

The Meridian Credit Agreement and Security

11. Pursuant to a demand credit agreement dated July 12, 2022, between the Debtors as borrowers, Michael Giamou and Chris Giamou as guarantors (collectively with the Debtors, the "**Meridian Credit Parties**"), and Meridian Credit Union Limited ("**MCU**")

as lender, MCU agreed to loan the Meridian Credit Parties funds to finance the construction of the Project. This demand credit agreement superseded an earlier credit agreement entered into shortly before the registration of the Meridian Mortgage (as defined below), and was amended by letter agreement dated September 25, 2023 (the “**Amended Credit Agreement**”). Pursuant to the Amended Credit Agreement, MCU agreed to advance up to \$47,039,338, and agreed to establish a letter of credit facility of \$2,000,000. As of April 9, 2024, 260 High Park was indebted to MCU in the approximate amount of \$42 million.

12. The Amended Credit Agreement stipulated that all credit facilities were available on a demand basis only, and that MCU may terminate the credit facilities at any time. Notwithstanding the demand character of the loan, all amounts were to be repaid by September 30, 2023. As security for the indebtedness and liability to MCU, the Debtors provided MCU with:
 - (a) a first charge/mortgage against the Mortgaged Lands dated March 6, 2020, in the principal amount of fifty million dollars (\$50,000,000) (the “**Meridian Mortgage**”);
 - (b) a general assignment of leases and rents with respect to the Project (the “**Meridian Assignment of Rents and Leases**”);
 - (c) general security agreements dated February 25, 2020, in respect of all of the personal property of 260 High Park LP and 2486357 Ontario Inc.;
 - (d) an assignment of the Debtors’ rights and interests in all construction and related contracts; and,
 - (e) a joint and several undertaking in favour of MCU, that the Meridian Credit Parties agree to complete the Project and fund, from resources outside of the Project, all cost overruns in excess of the aggregate costs set out in the Project budget approved by MCU as set out in the Amended Credit Agreement.

Registrations against the 260 High Park Project

13. Given the Westmount Meridian Postponement (as defined below), MCU is the first ranking secured creditor of the Project.
14. MCU registered both the Meridian Mortgage and a notice of the Meridian Assignment of Rents and Leases over title to the Mortgaged Lands on or about March 6, 2020.
15. At the time of registration of the Meridian Mortgage, a mortgage dated November 23, 2018, was already registered against the Mortgaged Lands in favour of Westmount Guarantee Services Inc. (“**Westmount**”) in the principal amount of \$20,000,000 (the “**Westmount Mortgage**”). The Receiver understands that Westmount is the deposit insurer for the Unit APSs at the Project, and in this regard holds PPSA security over 260 High Park. As at the date of this First Report, the Receiver understands that approximately \$11,200,000 of purchaser deposits have been released from escrow and used in the construction of the Project. As deposit insurer, Westmount may have a contingent claim for up to this amount, which will be crystallized if Unit APSs are terminated, to the extent that the deposit(s) for those terminated Unit APSs had already been advanced to 260 High Park. In this event, the deposit could not be paid to the purchaser from the assets of the Debtors, and would have to be funded by Westmount.
16. MCU and Westmount entered into a postponement of interest agreement in respect of the Mortgaged Lands on March 6, 2020, pursuant to which Westmount postponed the Westmount Mortgage in favour of MCU, with the effect that the Meridian Mortgage ranks ahead of the Westmount Mortgage (the “**Westmount Meridian Postponement**”). The Westmount Meridian Postponement was registered on title to the Mortgaged Lands on or about March 6, 2020.
17. A third mortgage was registered in favour of Fiera FP Real Estate Financing Inc. and Fiera FP Real Estate Financing Fund, L.P. (collectively, “**Fiera**”) on March 6, 2020 (subsequent to the Westmount Meridian Postponement), in the principal amount of \$14,300,000 (the “**Fiera Mortgage**”).

18. Westmount and Fiera entered into a postponement of interest agreement in respect of the Mortgaged Lands pursuant to which Westmount postponed its mortgage in favour of the Fiera Mortgage, with the effect that the Fiera Mortgage ranks ahead of the Westmount Mortgage (the “**Westmount Fiera Postponement**”).
19. Notwithstanding the Westmount Meridian Postponement and the Westmount Fiera Postponement, given its PPSA security, Westmount appears to retain priority over deposits paid to 260 High Park in respect of the Unit APSs, but only to the extent that the deposits remain in trust with counsel for 260 High Park. As at June 4, 2024, Harris Sheaffer LLP, the Debtors’ counsel, was holding approximately \$540,000 of deposits, plus interest, in respect of the Unit APSs.

Events Leading up to the Receivership Proceeding

20. As set out below, the registration of construction liens against the Mortgaged Lands, and 260 High Park’s failure to clear them from title immediately, is a breach of the Amended Credit Agreement.
21. Additionally, under the terms of the Amended Credit Agreement, the Meridian Credit Parties are required to fund all cost overruns in excess of the aggregate costs set out in the Project budget.
22. The Meridian Credit Parties failed to fund the cost overruns, failed to complete the Project, permitted numerous construction liens to be registered on title, and failed to clear them from title immediately. As a result, MCU lost confidence in 260 High Park’s ability to manage and complete the Project.
23. For these reasons, on April 18, 2024, MCU brought an application under section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), section 68 of the *Construction Act*, R.S.O. 1990 c. C.30 (the “**Construction Act**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for the appointment of a receiver, manager and construction lien trustee over the Debtors, including the Property and the Project.

Funding of the Receivership

24. Pursuant to the Appointment order, the Receiver is entitled to borrow up to the principal amount of \$1,000,000 to fund the Receivership.
25. MCU 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.
26. The Receiver has not drawn upon the borrowing certificate yet, as a result of the receipt of insurance proceeds as described below, which have been sufficient to fund the receivership proceedings to date.

Status of the Project

27. The Project is only partially complete. Construction activity at the Project has not advanced since late-2023, when the Receiver understands the trade contractors abandoned the site due to liquidity challenges and other delays. Work stopped without, among other things: (i) completing the installation of windows or window frames throughout the existing church building and the newly constructed mid-rise building; (ii) completing the demolition of certain church walls; (iii) patching holes in the roof of the church; or (iv) sealing the building envelope for winterization purposes.
28. Upon its appointment, the Receiver corresponded with representatives of 260 High Park, Finnegan Marshall Inc. ("**Finnegan Marshall**", the Debtors' cost consultant on the Project), and Clark Construction Management Inc. ("**Clark**", the former construction manager for the Project), to obtain architectural drawings, engineering reports, cost consultant progress reports and other available documentation to identify potential steps to secure, stabilize and implement protective measures in respect of the Project.

PROPOSED MARKETING AND SALE PROCESS

29. Pursuant to paragraph 4(l) of the Appointment Order, the Receiver, among other things, has the authority to market any or all of the Property, including, without limitation, condominium units, 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.

30. After reviewing the condition of the Property, considering the costs and time frame to complete the Project, and the alternative scenarios between a purchaser assuming or disclaiming some or all of the pre-existing condominium unit agreements of purchase and sale, and being advised that the position of MCU, Fiera, and Westmount (collectively, the “**Lenders**”) was that none of them will advance the funds necessary to complete the construction of the Project, the Receiver determined that the most appropriate course of action in the circumstances was to immediately commence a sale process for the Property on an “as-is, where-is” basis.
31. The Receiver undertook extensive discussions with the Lenders and their respective advisors reviewing all aspects of the Receiver’s assessment. The Lenders subsequently advised the Receiver that they either support and/or do not oppose the decision to proceed with a sale process for the Property. Therefore, subject to Court approval, the Receiver proposes to commence a process to list the Project for sale (the “**Sales Process**”) immediately.
32. The Receiver proposes that the Sales Process will have the following features:
 - (a) retaining a qualified real estate broker with experience in both residential condominium properties and receivership proceedings;
 - (b) ensuring that there is a broad marketing of the Property, including listing on the Multiple Listing Service (or whatever the broker recommends) to aid in exposing the Property to the market as broadly and extensively as possible;
 - (c) an electronic Data Room with relevant information about the Property, to be made available to interested parties subject to their execution of the NDA (defined below);
 - (d) a broadly distributed Teaser;
 - (e) a form of Non-Disclosure Agreement (“**NDA**”) available to be distributed without delay;

- (f) a process to provide site tours to qualified interested parties;
 - (g) an Asset Purchase Agreement (“**APA**”) prepared by the Receiver to obtain minimal conditions and conditional periods;
 - (h) a minimum five weeks of overall marketing time; and
 - (i) ensuring the process and procedures undertaken and the results obtained throughout the process are well documented.
33. In anticipation of its request for Court approval to commence the Sale Process, the Receiver requested proposals from four qualified and experienced real estate brokers, three of which provided a proposal to list the Project for sale. The Receiver prepared a comparative analysis of the proposals received and engaged in discussions with MCU to obtain its input. The Receiver also sent the comparative analysis to Westmount and Fiera for their review. Subject to Court approval authorizing the Receiver to commence the Sale Process, the Receiver proposes to retain CBRE Limited (“**CBRE**”) as listing broker to conduct the Sale Process (in this capacity, the “**Advisor**”).
34. The Receiver expects the Sale Process will consist of a marketing phase and a two-round offer submission phase.
35. The marketing phase will consist of, among other things, the following:
- (a) prospect identification, including the Advisor preparing a master prospect list and having discussions with targeted prospects;
 - (b) preparation of an offering summary and marketing materials;
 - (c) publication of the acquisition opportunity in such journals, publications and online as the Advisor and the Receiver deem appropriate to maximize interest in the opportunity;
 - (d) posting “for sale” signage at the Property, to the extent applicable;
 - (e) telephone and email canvass of the prospects;

- (f) posting the acquisition opportunity on MLS on an unpriced basis; and
 - (g) meeting with and interviewing prospective bidders to screen candidates and ensure they have the financial resources to close a transaction.
36. Prior to the bid deadline, the Receiver and its legal counsel will prepare the APA to be provided to all prospective purchasers. The Advisor will provide detailed information to qualified prospects who execute an NDA, including access to a data room containing relevant reports associated with the Property in the Receiver's possession. The Receiver and the Advisor will facilitate all due diligence by interested parties.
37. Following the marketing phase, on the bid deadline, interested parties ("**Bidders**") will be invited to submit an APA with any changes to the APA blacklined.
38. After the submission deadline, the Receiver and the Advisor will open and record all bids received, analyze the submissions, and select one or more Bidders (the "**Short-Listed Bidders**") to participate in a second-round offering process. The Receiver may consult with one or more of the Lenders and their counsel (as it considers appropriate) with respect to the review of the bids and the selection of the Short-Listed Bidders.
39. During the second round of the offer submission phase, the Receiver and the Advisor will negotiate with the Short-Listed Bidders, during which time Short-Listed Bidders may be asked to improve their offers. The Receiver may invite certain parties to participate in as many rounds of bidding as is required to maximize the consideration and minimize closing risk. The Receiver may also seek to clarify terms of the offers submitted, and to negotiate such terms.
40. Following the second round of bidding, the Receiver may select the successful Bidder and finalize definitive documents (the "**Final Purchase Agreement**"). The Receiver will select a successful Bidder, if any, based on, among other things:
- (a) total consideration;
 - (b) form of consideration being offered;

- (c) financial ability of the potential purchaser to close the transaction;
- (d) third-party approvals required, if any;
- (e) conditions, if any; and
- (f) other factors affecting the speed and certainty of closing and the value of the offers.

41. Additional terms of the Sale Process include:

- (a) the Receiver may consult with stakeholders and their counsel as it deems appropriate with respect to the review, negotiation and acceptance of any Final Purchase Agreement;
- (b) the Receiver will not be obliged under any circumstances to recommend or choose any particular Final Purchase Agreement, and the Receiver may reject any and all offers, including the highest and best offers, for any reason;
- (c) all offers will be initially considered in private by the Receiver and its Advisor, and no parties, save and except for legal counsel for the Receiver, will be invited to any opening of the offers, subject to the Receiver's ability to consult with one or more of the Lenders and their counsel (as it considers appropriate);
- (d) the Property will be marketed and sold on an "as-is, where-is" basis, with standard representations and warranties for a receivership transaction;
- (e) to the extent permitted by law, all of the right, title and interest in the Property will be sold free and clear of all pledges, liens, security interests, encumbrances and claims, pursuant to an approval and vesting order to be sought by the Receiver;
- (f) if in the Receiver's sole discretion, it will assist to maximize recoveries, the Receiver will have the right to: (i) waive strict compliance with the terms of the Sale Process, including any of the deadlines in the table below; and (ii) modify or adopt such other procedures that will better promote the sale of the Property or increase the aggregate recoveries from the sale for stakeholders;

- (g) the Receiver may, in its sole discretion, terminate at any time further participation in the Sale Process by any interested party, or terminate the Sale Process; and
- (h) any transaction by the Receiver for the Property shall be subject to Court approval.

Sale Process Timeline

42. Set out below is the proposed Sale Process timeline:

October 1, 2024	Order approving the Sale Process.
October 4, 2024	Enter into a listing agreement with the Advisor.
By October 18, 2024	The Advisor to establish an electronic data room, complete a draft confidential information memorandum (“ CIM ”), confidentiality agreement, prospective buyers list and a teaser letter (“ Teaser ”), and provide same to the Receiver for approval.
Throughout the Sale Process	The Advisor to contact interested parties and distribute Teaser.
Week of October 21, 2024	The Advisor to place a newspaper advertisement in the Globe and Mail-Real Estate edition.
October 21, 2024, to Bid Deadline	The Advisor to distribute the confidentiality agreement and, upon receipt of a signed confidentiality agreement, distribute the CIM to interested parties.
October 21, 2024, to Bid Deadline	The Advisor to respond to requests for information, arrange site visits and due diligence conference calls. Interested parties to conduct due diligence.
To be determined based on market feedback, but estimated to be November 22, 2024	Bid deadline. The Advisor will notify all Bidders in advance of the Bid Deadline.
5-10 days from Bid Deadline	Selection of Short-Listed Bidders to participate in second round bidding.

Approximately 45 days from Bid Deadline	Selection of successful bidder and finalize definitive documents.
60-75 days from Bid Deadline	Sale approval motion.
As soon as possible after sale approval motion	Closing.

Sales Process Recommendation

43. 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 issues identified above, including: (i) the stage of the Project; (ii) the lack of funding to advance the Project; and (iii) feedback from the Lenders;
 - (b) the Sale Process is designed to be fair, open and transparent, was developed with input from the Advisor, and is intended to canvass the market broadly on an efficient basis to obtain the highest and best price;
 - (c) the Sale Process provides the Receiver with the timelines, procedures and flexibility that it believes are necessary to maximize value; and
 - (d) there will be no delay in commencing the Sale Process as CBRE is ready to begin as soon as a listing agreement is executed.

REGISTERED LIEN CLAIMS

44. As set out in the chart below, there are 13 lien claimants (the “**Registered Lien Claimants**”) with 15 registered liens (two of the Registered Lien Claimants have registered two liens each), totaling \$8,670,283.96.
45. The Receiver reviewed the Claims for Lien, Statements of Claim, and Certificates of Action registered or filed by the Registered Lien Claimants (as applicable), and contracts, invoices and other materials provided by the Registered Lien Claimants, in order to

determine the lienability, timeliness and quantum of their respective liens, and to establish the likely maximum holdback claim (and thus claim for priority over the Meridian Mortgage) that each of the Registered Lien Claimants will have against any proceeds of sale of the Property. This analysis is subject to review and comment from stakeholders, including the principals of the Debtors. If the Registered Lien Claimants' claims (including the quantum of their respective holdback claims) cannot be resolved on consent, a lien claims process may be required.

46. Based on the Receiver's analysis, pursuant to section 78 of the *Construction Act*, the Registered Lien Claimants in the chart below have priority over the Meridian Mortgage to the extent of any deficiency in the holdbacks required to be retained by the owners of the Property under the *Construction Act*:

Lien Claimant	Registered Lien Amount(s)	Receiver's Analysis - Maximum Holdback Claim Amount
Clark	\$1,276,892.62	\$127,689.27
Knightsbridge	\$2,932,110.93	\$395,665.43
Construction One	\$2,110,206.82	\$612,889.89
Anax	\$300,241.60	\$44,558.16
Topcrete	\$615,856.47	\$3,982.40 (most of this lien was registered out of time)
Top Line	\$164,840.73	\$72,110.67
Dolente	\$91,418.05	\$28,050.60
Pro Con	\$142,692.78	\$15,082.20
Turnbull	\$173,512.81	\$83,045.49
Flynn	\$86,392.33	\$32,565.74
CRS	\$250,000.00	\$26,329.00
Stephenson's	\$362,380.12	\$36,238.01

JVH	\$163,738.70	\$34,669.70
TOTAL:	\$8,670,283.96	\$1,512,876.56

47. Based on the material produced to the Receiver to date by the Registered Lien Claimants, the Registered Lien Claimants' priority claims vis-à-vis the Meridian Mortgage is limited to the deficiency in the holdback that was required to be maintained by 260 High Park. The Receiver has not been advised as to any other basis for any of the Registered Lien Claimants' priority claims.
48. The Receiver's analysis of the lien claims is based on the information and documentation that has been provided to it. Accordingly, the Receiver's analysis sets out the maximum holdback that, in the Receiver's opinion, can be claimed by each of the Registered Lien Claimants.
49. Each one of the Registered Lien Claimants had its own separate contract with 260 High Park, meaning there is a separate holdback calculation applicable to each of the claims. Regarding timing for registration and perfection, the Project is not governed by the current version of the *Construction Act*. As per the reasons for decision of Associate Justice Wiebe in [DNR Restoration Inc. v. Trac Developments Inc., 2023 ONSC 1849](#) ("*DNR v Trac*"), given that 260 High Park had contracted with Wilkinson Construction Services Inc. ("**Wilkinson**", the construction manager for the Project prior to Clark) with respect to the Project on March 23, 2018, "all contracts on the improvement fall under the old [*Construction Act*] regardless of the dates of those contracts." (see [para 38](#) of *DNR v Trac*).
50. Accordingly, the Registered Lien Claimants each had (per section 31(1) of the previous *Construction Act*) 45 days to register (preserve) their respective claims for lien from the earlier of the date on which a copy of the certificate or declaration of the substantial performance of the contract was published (which is only relevant to the lien of Topcrete), and the date the contract was completed or abandoned. The Receiver has been provided with no evidence of any contract being completed or abandoned more than 45 days before the date each lien was registered.

51. The Registered Lien Claimants each also had a further 45 days from the date they could have preserved their respective liens in order to perfect pursuant to section 36(2) of the old *Construction Act*. However, perfection is not an issue for any of the Registered Lien Claimants, as all of the currently-registered liens are able to shelter under liens that had been previously preserved and perfected, including those of DNR Restoration Inc. (“DNR”) and of Wilkinson, both of whom had perfected their liens prior to the Receiver’s appointment.
52. The Receiver’s analysis in respect of each individual Registered Lien Claimant’s lien(s) is set out in **Appendix “B”**.

ACTIVITIES OF THE RECEIVER TO DATE

53. The Receiver notes that at the time of its appointment, 260 High Park did not have any employees or any payroll. The Receiver understands that the individuals that maintain the books and records of the Debtors and who have been assisting the Receiver are employees/consultants of Medallion Capital Group, an entity the Receiver understands is controlled by Chris Giamou and Mike Giamou.
54. Immediately after its appointment, the Receiver took the following actions with respect to the Project in connection with its obligations under the Appointment Order:
 - (a) held conference calls and had email correspondence with 260 High Park’s shareholders and directors to request the books and records and other information in respect of the Project;
 - (b) held conference calls and engaged in email correspondence with 260 High Park’s general construction manager for the Project;
 - (c) attended at the Property multiple times;
 - (d) set up new bank accounts in the name of the Receiver for 260 High Park;
 - (e) arranged for the Appointment Order to be registered against title to the Property;

- (f) confirmed and arranged for payment of insurance coverage for the Property and set up the Receiver as additional insured and loss payee to the insurance policy;
- (g) arranged for the extension of the above insurance coverage ahead of the September 30, 2024, expiry of the initial term of the insurance policy;
- (h) responded to inquiries relating to the nature of the receivership proceeding, and creditor's outstanding amounts;
- (i) provided updates to the Lenders and their advisors with respect to the status of the receivership proceedings;
- (j) posted the Appointment Order and other court documents on the Receiver's website: www.ey.com/ca/260HighPark;
- (k) participated in discussions with 260 High Park's shareholders and planning consultant to understand the status of the Project, and to gather available information;
- (l) maintained a statement of receipts and disbursements and an accounting record for ongoing disbursement requirements and general banking responsibilities;
- (m) corresponded with Canada Revenue Agency and filed statutory HST returns;
- (n) prepared and provided to all known creditors of the Debtors a copy of the Receiver's report pursuant to sections 245 and 246 of the *BIA*. The Receiver continues to provide mailings to creditors as they are identified;
- (o) reviewed the financial records of 260 High Park and requested supporting documentation in support of the Registered Lien Claims;
- (p) obtained electronic copies of 260 High Park's construction records;
- (q) corresponded with unit purchasers and their representatives;

- (r) arranged for the remediation of the Project site, an inventory of materials, and the winterization of the site by Elm Development Corp. (“**Elm**”) as described below;
- (s) arranged to take possession of 260 High Park’s offsite storage facility;
- (t) corresponded with Tarion Warranty Corporation concerning deposit insurance for purchasers of units;
- (u) responded to inquiries regarding the Property by a number of potentially interested purchasers and brokers; and
- (v) established a toll-free number for creditors and other interested parties to contact the Receiver.

Retainer of Elm

- 55. The Appointment Order authorized the Receiver to, among other things, engage managers to assist with the exercise of the Receiver’s powers and duties in respect of the Project.
- 56. The Receiver has engaged Elm as construction manager for the Project for the following reasons:
 - (a) Elm has extensive experience in managing the construction of both commercial and residential properties, including in other receivership proceedings;
 - (b) the Lenders support Elm’s engagement;
 - (c) Elm prepares regular reports and other information required for the Receiver to oversee and report on the progress of securing and protecting the Project; and
 - (d) Elm has agreed to a competitive pricing structure in line with current market rates.

Construction Work to Secure the Project

- 57. Upon taking possession of the Project, the Receiver was made aware by 260 High Park, a City of Toronto bylaw enforcement officer, and staff from the office of the Toronto City Counsellor for Ward 4 of debris that was left on site. Elm assisted the Receiver with the

disposal of this debris, satisfying the bylaw officer and City Counsellor that the remediation efforts were sufficient, and that the Property was returned to a state of good condition.

58. To protect against future unauthorized access or dumping of debris, the Receiver reinstated 24-hour security cameras at the Property, and arranged for security personnel to monitor the site periodically over each 24 hour period.
59. When the Receiver took possession of the Project, inventory, construction materials, parts and elevator components were lying scattered throughout the building in an unorganized manner. The Receiver was not provided a full inventory of materials on site by 260 High Park, nor by the previous construction manager. Elm assisted the Receiver with preparing an inventory of parts, materials and elevator components, as well as organizing the inventory. As a result, the Receiver now has an inventory listing of materials delivered to date, and the inventory has been organized to ensure the security of these materials.
60. As described above, very few of the exterior windows and doors have been installed at the Project. There are several areas in the Project with large openings in the curtain wall where the 'weather barrier' consists merely of plastic tarpaulins loosely covering the openings. Throughout the building there are also partially installed windows or cutouts for the future installation of windows or doors, which allows the interior of the structure to be exposed to the elements. In a few areas, the openings were mostly uncovered, and substantially open to the elements. The roof section of the church also has significant openings on one side, exposing the interior of the structure below to the elements.
61. Recognizing these conditions would result in damage and deterioration to the site, the Receiver engaged in discussions with Elm to determine appropriate steps to protect the Property, then reviewed the situation and proposed remedial actions (and costs) with the Lenders. Ultimately, the purpose of this stabilization project completed by Elm is, among things, to:
 - (a) limit water from seeping through exposed elevator shafts and higher-level floors where no windows have been installed;
 - (b) prevent erosion via a water mitigation strategy;

- (c) protect exposed elements that were not designed to be exposed to winter conditions, including concrete slabs, inventory, and mechanical equipment;
 - (d) protect the existing foundation from the effects of frost, and to heat portions of the structure where necessary; and
 - (e) repair and, if necessary, reinforce the existing shoring.
62. Elm has prepared a quote, which was accepted by the Receiver and supported by the Lenders, to temporarily seal in the structure ahead of winter. Elm has commenced the installation of plywood and dimensional lumber to close the relevant areas. The Receiver understands this scope of work is expected to be completed before the end of October.

Collection of Insurance Proceeds

63. 260 High Park entered into course of construction and wrap up insurance policies with Lloyd's Insurers through Tripoint Insurance Underwriting Inc. ("**Tripoint**") commencing on February 27, 2019, and extended thereafter (the "**Insurance Policies**").
64. The Receiver understands that during excavation in or about November, 2020, a crack developed in the church structure which delayed construction for four months while 260 High Park and its consultants worked to determine what could be done to remedy and repair the façade. As a result of this crack, a claim was submitted against the Insurance Policies, with a date of loss of November 3, 2020. McLarens Canada ("**McLarens**") (at the time, MGB Claims Consultants Inc.) was retained as insurance adjuster in respect of the insurance claim, which was ultimately settled with Tripoint on or about February 21, 2024.
65. As of the date of Receivership, the Receiver had understood that insurance proceeds from the settlement had not been paid to 260 High Park. On May 27, 2024, the Receiver wrote to McLarens notifying McLaren's that the insurance proceeds were to be forwarded to the Receiver. The sum of \$3,745,986.77 was received shortly thereafter (the "**Receiver Insurance Funds**").
66. The Receiver has been contacted by counsel for DNR, which takes the position that it is entitled to payment of part of the Receiver Insurance Funds.

67. The Receiver has reviewed the pleadings in DNR's lien action (the "**DNR Lien Action**"). Based on the pleadings in the DNR Lien Action, the Receiver understands that DNR's claim to the settlement funds is based on a DNR invoice dated April 12, 2022, in the amount of \$948,535.79 (the "**DNR Delay Invoice**"), that DNR issued in respect of "delay caused by the failure of the church façade". DNR alleges that the DNR Delay Invoice was forwarded to 260 High Park's insurer, and that it was paid as part of the insurance settlement. It is DNR's position that DNR has a "constructive trust" claim over the Receiver Insurance Funds (the "**Purported DNR Trust Claim**").
68. In the course of reviewing DNR's claim against the Receiver Insurance Funds, the Receiver has made inquiries with McLarens as to the settlement of the insurance claim. McLarens advises that the insurance settlement was not for \$3.745 million (the amount of the Receiver Insurance Funds), but rather was for \$5,450,000, less a \$50,000 deductible. McLarens further advises that, prior to the Receiver's appointment, approximately \$1,654,013.23 in insurance proceeds had been paid out to the Debtors (the "**Pre-Receivership Insurance Payments**") as partial payments while the claim was being assessed and adjusted.
69. Specifically, McLarens advised that an initial payment of \$710,000 was paid to 260 High Park in or about July, 2022, and \$944,013.23 was paid to 260 High Park in or about February, 2023.
70. McLarens further advises that Trac sought payment of approximately \$1,749,935 in respect of costs allegedly incurred by DNR (the "**DNR Costs**"), and the Pre-Receivership Insurance Payments and the Receiver Insurance Funds (collectively, the "**Insurance Payments**") did include amounts in respect of costs incurred by DNR. However, the Insurance Payments did not include payment for the DNR Delay Invoice.
71. McLarens advises that the Insurance Payments included payment in respect of DNR's expenses for the supply of shotcrete (\$196,371 claimed by Trac, but only \$112,907.11 paid), labour for caissons and remediation (\$159,629 claimed, \$98,956.40 paid), rental charges for skids, lifts, excavators and backhoes (\$40,902 claimed, \$12,000 paid), and rental charges for a structural support system (\$28,800 claimed, \$13,292.05 paid).

72. The DNR Costs that were not paid by the insurer, however, were the DNR Delay Invoice (\$839,412 claimed), surveyor standby fees (\$60,821 claimed), crane rentals (\$152,000 claimed), and cost of forms (\$272,000 claimed).
73. The Receiver has provided the above information to DNR's counsel, and is awaiting a response, including whether DNR wishes to advance the Purported DNR Trust Claim given the information provided by McLarens.
74. A motion for directions may be required to deal with the Purported DNR Trust Claim, depending on DNR's position.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

75. Attached as **Appendix "C"** is the Receiver's Statement of Receipts and Disbursements for the period from May 27, 2024, to September 24, 2024, which indicates actual receipts over disbursements of approximately \$3 million.

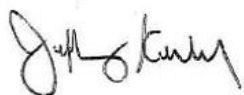
RECOMMENDATION

76. For the reasons enumerated above, the Receiver requests an order: (i) approving the activities as outlined in this First Report; and (ii) directing the Receiver to commence the Sale Process.

All of which is respectfully submitted this 25th day of September, 2024.

**ERNST & YOUNG INC.,
solely in its capacity as Project Receiver,
Manager and Construction Lien Trustee of 260 High Park Limited Partnership,
TRAC Developments Inc., and 2486357 Ontario
Inc. and not in its personal capacity**

Per:



Jeffrey D. Kerbel
Senior Vice-President

APPENDIX “A”

Court File No. CV-24-00718667-00CL

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

THE HONOURABLE)	MONDAY, THE 27TH
)	
JUSTICE CAVANAGH)	DAY OF MAY, 2024

MERIDIAN CREDIT UNION LIMITED

Applicant

- and -

**260 HIGH PARK LIMITED PARTNERSHIP, TRAC DEVELOPMENTS INC., AND
2486357 ONTARIO INC.**

Respondents

APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, section 68 of the *Construction Act*, R.S.O. 1990, c. C.30, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. c-43, as amended

ORDER

(appointing Project Receiver and Construction Lien Trustee)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") and section 68 of the *Construction Act*, R.S.O. 1990 c. C.30 (the "*Construction Act*") appointing Ernst & Young Inc. as Project Receiver and manager (in such capacities, the "Project Receiver") without security, and Construction Lien Trustee of all of the assets, undertakings and properties of 260 High Park Limited Partnership, TRAC Developments Inc., and 2486357 Ontario Inc. (collectively, the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Amber Waheed sworn April 12, 2024 and the Exhibits thereto and on hearing the submissions of counsel for Meridian Credit Union Limited (“Meridian”), counsel for Ernst & Young Inc., and those other counsel noted on the counsel slip, no one else appearing although duly served as appears from the affidavit of service of Jessica Chen sworn May 24, 2024 and on reading the consent of Ernst & Young Inc. to act as the Project Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, Ernst & Young Inc. is hereby appointed Project Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof and the lands legally described as set out in Schedule “B” hereto (the "Property").

3. THIS COURT ORDERS that pursuant to section 68 of the *Construction Act*, Ernst & Young Inc. is hereby appointed as Construction Lien Trustee in respect of the Property (in its joint capacities as Project Receiver and Construction Lien Trustee, the “Project Receiver”).

PROJECT RECEIVER’S POWERS

4. THIS COURT ORDERS that the Project 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 Project Receiver is hereby expressly empowered and authorized to do any of the following where the Project Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Project Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to 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 Debtor or to or on behalf of any beneficiaries of any such trust funds pursuant to section 85 of *the Construction Act*;

- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Project Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Project 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;
- (k) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtor thereon;
- (l) to market any or all of the Property, including, without limitation, condominium units, 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 Project Receiver in its discretion may deem appropriate;
- (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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

- (n) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Project Receiver deems appropriate on all matters relating to the Property and the Project Receivership, and to share information, subject to such terms as to confidentiality as the Project Receiver deems advisable;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) 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 Project Receiver, in the name of the Debtor and to meet with and discuss with such governmental authorities and execute any such agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Project Receiver and not in its personal or corporate capacity);
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to make payments, as required, under any contract in relation to the Project, without assuming any liability or obligations thereunder;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (u) to repudiate contracts or agreements to which the Debtor is a party or in respect of the Property;
- (v) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and,

(w) to exercise the powers provided under section 68(2) of the *Construction Act*.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE PROJECT RECEIVER

5. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, (iii) all construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants and service providers, and all other persons acting on their instructions or behalf, and (iv) 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 Project 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 Project Receiver, and shall deliver all such Property to the Project Receiver upon the Project Receiver's request.

6. THIS COURT ORDERS that all Persons shall forthwith advise the Project Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Project Receiver or permit the Project Receiver to make, retain and take away copies thereof and grant to the Project 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 Project 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 in possession or control of such Records shall forthwith give unfettered access to the Project Receiver for the purpose of allowing the Project 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 Project Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Project Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Project Receiver with all such assistance in gaining immediate access to the information in the Records as the Project Receiver may in its discretion require including providing the Project Receiver with instructions on the use of any computer or other system and providing the Project 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 PROJECT 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 Project Receiver except with the written consent of the Project Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. THIS COURT ORDERS that all rights and remedies against the Debtor, the Project Receiver, or affecting the Property, including, without limitation, licenses and permits, are hereby stayed and suspended except with the written consent of the Project 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 Project Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Project Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE PROJECT RECEIVER

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

CONTINUATION OF SERVICES

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

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

PROJECT RECEIVER TO HOLD FUNDS

14. THIS COURT ORDERS that all funds, including trust funds, monies, cheques, instruments, and other forms of payments received or collected by the Project 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 Project Receiver (the "Post Project Receivership Accounts") and the monies standing to the credit of such Post Project Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Project 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 Debtor shall remain the employees of the Debtor until such time as the Project Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Project 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 Project 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

16. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Project 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 Project Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. THIS COURT ORDERS that nothing herein contained shall require the Project 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 Project Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Project Receiver shall not, as a result of this Order or anything done in pursuance of the Project 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 PROJECT RECEIVER'S LIABILITY

18. THIS COURT ORDERS that the Project 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 Project Receiver by section 14.06 of the BIA or by any other applicable legislation, including the *Construction Act* and in particular sections 68 and 78(7) thereof.

PROJECT RECEIVER'S ACCOUNTS

19. THIS COURT ORDERS that the Project Receiver and counsel to the Project 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 Project Receiver and counsel to the Project Receiver shall be entitled to and are hereby granted a charge (the "Project 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 Project Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, construction 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, save and except as against deposit monies paid by purchasers of condominium units forming part of the Property to the extent such deposit monies are held in trust by Harris Sheaffer LLP ("Deposit Trust Monies").

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

21. THIS COURT ORDERS that prior to the passing of its accounts, the Project 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 Project 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 PROJECT RECEIVERSHIP

22. THIS COURT ORDERS that the Project 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 \$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 Project 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 "Project 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, construction liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Project Receiver's Charge, the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA and in relation to Deposit Trust Monies only, subordinate to the claims of Westmount Guarantee Services Inc.

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

24. THIS COURT ORDERS that the Project Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Project 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 Project Receiver pursuant to this Order or any further order of this Court and any and all Project 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 Project Receiver's Certificates.

SERVICE AND NOTICE

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

Case Website shall be established in accordance with the Guide with the following URL www.ey.com/ca/260HighPark.

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

GENERAL

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

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

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 Project 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 Project Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Project Receiver and its agents in carrying out the terms of this Order.

31. THIS COURT ORDERS that the Project 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 Project 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 Plaintiff shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Project Receiver from the Debtor'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 Project 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.

 Mr. Justice
Cavanagh

SCHEDULE "A"

PROJECT RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Ernst & Young Inc., the Project Receiver (the "Project Receiver") of the assets, undertakings and properties of 260 High Park Limited Partnership, TRAC Developments Inc., and 2486357 Ontario Inc. (collectively, the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 27th day of May, 2024 (the "Order") made in an application having Court file number CV-24-00718667-00CL, has received as such Project Receiver from the holder of this certificate (the "Lender") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Project 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 Project 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 Project 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 Project 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 Project 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 Project 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 Project Receiver of the Property, and not in
its personal capacity

Per: _____
Name:
Title:

SCHEDULE "B"**LEGAL DESCRIPTION OF LANDS**

PIN 21365-0346 (LT) in LRO #66

LOT 1-4 PLAN 795 WEST TORONTO JUNCTION EXCEPT PARTS 2-3 66R31308; PART LOT 14-15 BLK 15 PLAN 553 WEST TORONTO JUNCTION AS IN CA129444; CITY OF TORONTO

PIN 21365-0009 (LT) in LRO #66

PT LT 15 BLK 15 PL 553 WEST TORONTO JUNCTION AS IN CA544188; SUBJECT TO AN EASEMENT AS IN AT6421071; CITY OF TORONTO

MERIDIAN CREDIT UNION LIMITED

-and-

260 HIGH PARK LIMITED PARTNERSHIP,
TRAC DEVELOPMENTS INC., AND
2486357 ONTARIO INC
Respondents

Court File No.: CV-24-00718667-00CL

Applicant

	ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) (PROCEEDING COMMENCED AT TORONTO)
	ORDER
	<p>Gowling WLG (CANADA) LLP Barristers & Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 Toronto ON M5X 1G5</p> <p>Clifton P. Prophet (LSO#34845K) Email: clifton.prophet@gowlingwlg.com Tel: 416 862 3509 Fax: 416 862 7661</p> <p>Thomas Gertner (LSO# 67756S) Email: thomas.gertner@gowlingwlg.com Tel: 416 369 4618 Fax: 416 862 7661</p> <p>Jessica R. Chen (LSO# 81633A) Email: jessica.chen@gowlingwlg.com Tel: 416 862 4457 Fax: 416 862 7661</p> <p><i>Co-Counsel for Meridian Credit Union Limited</i></p>

APPENDIX “B”

Clark Construction Management Inc. (“Clark”)

1. Clark registered two separate liens. The first lien was registered in the amount of \$1,029,348.92 on February 27, 2024, as instrument number AT6520440, and the second in the amount of \$247,543.70 on April 4, 2024, as instrument number AT6545893 (collectively, the “**Clark Claims for Lien**”).
2. The Clark Claims for Lien were perfected by registering a Certificate of Action on April 8, 2024, as instrument number AT6547111.
3. The Clark Claims for Lien are in respect of a contract it had with 260 High Park (capitalized terms not defined herein have the same definition as in the Receiver’s First Report dated September 25, 2024) dated February 24, 2022 (the “**Clark CM Contract**”). The Clark CM Contract is in the CCDC 5A format. Pursuant to the Clark CM Contract, Clark provided construction management services (the “**CM Services**”) to the Project, having taken over this role from Wilkinson. Clark did not contract with trades and suppliers itself (the trades/suppliers contracted with the owners directly, typically using the CCDC 17 form of document designed to be used when the CM is retained pursuant to a CCDC 5A).
4. As backup for the Clark Claims for Lien, Clark has produced seven monthly payment applications for each of September, 2023, to March, 2024, each of which includes, among other things, a ledger summarizing the costs that make up the fees for each month. The payment applications support the total lien claim amount of \$1,276,982.62, inclusive of tax.
5. Clark did not provide an account summary for its construction management services provided prior to the September, 2023, invoicing. This documentation would have been required had Clark alleged that it was owed holdback in respect of invoicing prior to September, 2023. However, Clark’s counsel has confirmed that Clark was paid in full on its invoicing prior to September, 2023 (i.e., inclusive of holdbacks), and accordingly Clark has no claim for holdback for the period prior to September 2023.

6. Based on the backup documents and information provided by Clark, its maximum holdback claim is \$127,689.27 inclusive of tax.
7. Clark has produced monthly invoicing for April and May, 2024, in the total amount of \$110,543.41 (with backup documents as those provided in support of the Clark Claims for Lien). However, these amounts are not part of either of the existing Clark Claims for Lien, and accordingly do not increase Clark's holdback claim.

8230498 Canada Inc. o/a Knightsbridge Group ("Knightsbridge")

8. Knightsbridge registered a claim for lien on January 24, 2024, in the amount of \$2,932,110.93, as instrument number AT6501520 (the "**Knightsbridge Claim for Lien**"). Knightsbridge perfected the Knightsbridge Claim for Lien by way of Certificate of Action registered March 8, 2024, as instrument number AT6528448.
9. 260 High Park retained Knightsbridge pursuant to a CCDC 17 contract dated July 2, 2020, to supply aluminum windows, entrance doors and railings to the Project (the "**Knightsbridge Window Contract**") at a contract price of \$2,276,763.55, inclusive of tax.
10. Knightsbridge has provided the Receiver with a spreadsheet that purports to break down its claim into several subheadings, with the majority of the claim being related to alleged delay on the part of Trac. The spreadsheet quantifies Knightsbridge's claim as of two dates: \$2,932,110.93 as of January 24, 2024 (the date of the Knightsbridge Claim for Lien), and \$3,237,780.44 as of March 8, 2024 (which appears to be the date the spreadsheet was prepared). The difference appears to be office expenses and site visit costs that were not included in the document prepared as of January 24, 2024.
11. The vast majority of both claim amounts - \$1,872,995.34 (inclusive of tax) as of January 24, 2024, and \$2,178,664.86 (inclusive of tax) as of March 8, 2024 – are characterized by Knightsbridge as delay claims. In this regard, Knightsbridge is claiming these amounts from 260 High Park as direct costs that Knightsbridge incurred given the fact that the Project was not completed on time. If the lien for delay is valid (the Receiver is unable to confirm validity at this point, as further described below), then the holdback claim would

be based on the delay claim as of January 24, 2024, given the Knightsbridge Claim for Lien was registered on that date, and would be \$187,299.53, inclusive of tax.

12. The balance of Knightsbridge's claim, \$1,059,115.59, inclusive of tax, can be broken down into two categories. First is a material price increase of \$291,800.00 (exclusive of tax, being \$329,734.00 inclusive of tax). Knightsbridge's position is that this increase was agreed to by 260 High Park and subsequently invoiced, but the invoice was not paid. The holdback portion of this invoice is \$32,973.40 inclusive of tax.
13. The second category is unpaid invoices relating to labour and material supplied under the Knightsbridge Window Contract. In this regard, Knightsbridge claims unpaid holdback from two invoices issued May 20, 2022, and August 10, 2022, in the amount of \$50,370.87 each, exclusive of tax (\$113,838.16 inclusive of tax). Knightsbridge further claims the September, October, and November, 2023, invoices are unpaid, in the amounts of \$201,483.49, \$171,622.60, and \$171,622.60, respectively, which amounts are exclusive of tax, and have no reduction for holdback. The holdback applicable to these three invoices are \$20,148.35, \$17,162.26 and \$17,162.26, respectively, without tax. With tax, the total holdback for these three invoices is \$61,554.34.
14. Prior to the Receiver's appointment, 260 High Park had taken initial steps to challenge the Knightsbridge Claim for Lien. In this regard, a representative of Knightsbridge, Ali Osman Ruzgar (CEO and President of Knightsbridge) was cross-examined on Knightsbridge's Claim for Lien on February 15 and 22, 2024, by 260 High Park's counsel. The result was a transcript in excess of 500 pages (the "**Ruzgar Examination Transcript**"), with many undertakings, under advisements and refusals, which had not been answered by the time of the Receiver's appointment (and no motion to reduce the lien had been brought).
15. It is apparent from the review of the Ruzgar Examination Transcript that the Knightsbridge Claim for Lien is being challenged on several fronts, including whether some of the services and materials were actually delivered to the Project (as opposed to being warehoused offsite, in which case they may not be lienable as having not been supplied to the Project), as well as whether Knightsbridge is entitled to a lien for the part of its claim relating to delay. However, based on the material received and reviewed to date, it is not

possible for the Receiver to conclude one way or another whether Knightsbridge will succeed on all or a portion of its lien claim.

16. Knightsbridge's holdback claim will be at least \$175,392.50, inclusive of tax, with an additional \$32,973.40 to be added in the event the material escalation claim is a valid claim, for a holdback claim of \$208,365.90, inclusive of tax. However, if the \$1,872,995.34 delay claim is properly lienable, then the holdback on the delay claim could be increased by a further \$187,299.53, inclusive of tax. Accordingly, Knightsbridge's maximum holdback claim is \$395,665.43.

Construction One Contracting Inc. ("Construction One")

17. Construction One registered two liens. The first was registered on February 2, 2024, in the amount of \$987,006.82, inclusive of tax, but exclusive of holdback (the "**First Construction One Lien**"). The second was registered on March 1, 2023, in the amount of \$1,123,200.00, inclusive of tax (the "**Second Construction One Lien**").
18. The "statements" section of the Second Construction One Lien states that this lien consists of claims for (a) work performed after February 2, 2024 (the date of the First Construction One Lien), (b) the holdback with respect to the First Construction One Lien, and (c) the "agreed upon price increase with respect to base contract work" that was not included in the First Construction One Lien.
19. Construction One perfected the First Construction One Lien by way of Certificate of Action registered March 14, 2024, as instrument number AT6530727 and perfected the Second Construction One Lien by way of Certificate of Action registered March 14, 2024, as instrument number AT6530731.
20. 260 High Park retained Construction One pursuant to two CCDC 17 contracts. The first was dated December 7, 2019, to supply the mechanical scope of work to the Project (the "**Construction One Mechanical Contract**"), with an initial total contract price of \$4,324,978.95, inclusive of tax, and amended on March 1, 2023, to increase the price by \$400,000, plus tax. The second contract was dated January 14, 2020, to supply the electrical scope of work to the Project (the "**Construction One Electrical Contract**"),

with an initial total contract price of \$1,201,286.05, inclusive of tax, and amended on March 1, 2023, to increase the price by \$300,000, plus tax.

21. The Construction One liens require further investigation. Based on the holdback invoice Construction One has delivered, the total value of work done on the two contracts is \$5,726,675.40 (inclusive of tax), which is more than the total of the original contract prices of the Construction One Mechanical Contract plus the Construction One Electrical Contract (\$5,526,265), and more than 90% of the two contracts when the price increases are factored into the contract prices (which would increase the contract prices to \$6,317,265, inclusive of tax). However, given the work remaining to be done at the Project, it does not appear that either the Construction One Mechanical Contract or the Construction One Electrical Contract are 90% complete.
22. As well, the Second Construction One Lien includes \$355,950.00 for “price amendment not billed”, which appears to relate to amendments to the two contracts to account for Construction One’s costs increases resulting from delays. It does not appear that this escalation claim relates to any specific supply of services or materials, and accordingly may not be lienable (and therefore Construction One may not have a claim for holdback relating to this amount).
23. However, if both the First Construction One Lien and the Second Construction One Lien are valid for the full amounts claimed, the maximum holdback claim would be \$612,889.89. That said, Construction One’s counsel has provided a holdback summary to the Receiver which indicates that the total holdback claim is \$507,805.12, though it is not clear if this is inclusive of tax, and was provided subject to “further documents” from Construction One.

Anax Inc. (“Anax”)

24. Anax registered a claim for lien in the amount of \$300,241.60 on February 16, 2024, as instrument number AT6515808 (the “**Anax Roofing Lien**”), and perfected its lien by registering a Certificate of Action on March 15, 2024, as instrument number AT6532014.

25. 260 High Park retained Anax pursuant to a CCDC 17 contract dated October 28, 2020 (the “**Anax Roofing Contract**”) to supply the roofing scope of work at the Project at a total contract price of \$607,940.00, inclusive of tax. Anax alleges extras to the contract, to bring the total contract price up to \$831,680.00, inclusive of tax.
26. Anax has produced an invoice summary that lists four outstanding invoices variously dated from September 19, 2023, to February 13, 2024, as well as copies of each of the invoices. The summary indicates that the four invoices total \$445,581.60 inclusive of tax and holdback, that two payments were made on December 7 and 19, 2023, in the total amount of \$125,000, and that a deposit of \$20,340.00 was applied against the balance on February 13, 2024. The balance outstanding on the four invoices is \$300,214.60, inclusive of tax and holdback. Anax’s maximum holdback claim is \$44,558.16, inclusive of tax.

Topcrete Forming Inc. (“Topcrete”)

27. Topcrete registered its claim for lien in the amount of \$615,856.47 on February 26, 2024, as instrument number AT6519895 (the “**Topcrete Claim for Lien**”), and perfected its lien by registering a Certificate of Action on April 23, 2024, as instrument number AT6557999.
28. 260 High Park retained Topcrete pursuant to a CCDC 17 contract dated August 4, 2022 (the “**Topcrete Formwork Contract**”) to supply concrete formwork at the Project at a total contract price of \$1,130,000, inclusive of tax. Based on the payment applications Topcrete has supplied, there were significant extras to the contract, bringing the total contract price up to \$3,752,707.28 (it is not clear if this is inclusive of tax).
29. Topcrete’s payment applications prior to May 31, 2023, the date of Topcrete’s 9th payment application, were paid in full (save for holdback). Prior to May 31, 2023, the payment applications totaled \$3,233,209.15, exclusive of tax. From May to October, 2023, Topcrete issued 5 invoices, only one of which was paid in full (save for the holdback). Topcrete issued a holdback invoice on November 10, 2023, in the amount of \$414,857.75, inclusive of tax.

30. Topcrete then issued two more invoices in January, 2024, in the total amount of \$35,841.66, inclusive of tax, but without holdback. The holdback on these two additional invoices is \$3,982.40, inclusive of tax.
31. Subject to the below, Topcrete's maximum holdback claim is \$418,840.15.
32. Notwithstanding the above analysis as to quantum, it appears that a significant portion of the Topcrete Claim for Lien was registered out of time.
33. The Topcrete Claim for Lien states that it was for work done from October 3, 2022 to February 21, 2024. However, a search on the Daily Commercial News online indicates that the Topcrete Formwork Contract was substantially performed on September 27, 2023, and a certificate in this regard was jointly signed by 260 High Park and Topcrete on December 1, 2023 (the "CSP"). The CSP was published pursuant to the *Construction Act* on December 27, 2023.
34. Pursuant to s.31(2) of the old *Construction Act*, Topcrete's lien for the pre-December 27, 2023, work had to be registered within 45 days of publication of the CSP, which was February 12, 2024 (the 45th day is February 10, but that was a Saturday, so the date expired on February 12, 2024). The Topcrete Claim for Lien appears to have been registered 14 days out of time.
35. At most, Topcrete will be able to maintain the Topcrete Claim for Lien only for that work performed after December 27, 2023, being (at most) \$39,824.06, meaning that Topcrete's maximum holdback claim is \$3,982.40, inclusive of tax.

Top Line Metalworks ("Top Line")

36. Top Line preserved its lien by registering a claim for lien in the amount of \$164,840.73 on March 12, 2024, as instrument number AT6529778 (the "**Top Line Metal Lien**"), and perfected its lien by registering a Certificate of Action on April 19, 2024, as instrument number AT6556105.
37. 260 High Park retained Top Line to supply metal fabrication services and structural steel to the Project pursuant to a quote dated February 18, 2022 (the "**Top Line Metal**

Contract”), which indicates a total price of \$425,000, plus tax. Top Line produced a change order dated February 1, 2024, that increases the contract price by \$9,100, though is silent as to whether this includes tax (the “**February 2024 CO**”). However, the February 2024 CO indicates there were previous change orders to the Top Line Metal Contract (possibly as many as 38, given the change order numbering), and that after the February 2024 CO, the new contract amount was \$814,385.00 (again, it is not clear if this amount includes tax).

38. Top Line has produced four invoices that are unpaid, dated November 20, 2023, December 15, 2023, January 26, 2024, and February 22, 2024. The total amount of the four invoices is \$92,730.06, which includes tax, but excludes holdback. The holdback on these invoices is \$10,303.34, inclusive of tax. In addition, the February 22, 2024, invoice includes a summary of all previous progress draws, which sets out the total work supplied and invoiced, being \$638,147.50, exclusive of tax, but inclusive of holdback. Based on this documentation, Top Line’s maximum holdback claim is \$72,110.67, inclusive of tax.

Dolente Concrete & Drain Company Limited (“Dolente”)

39. Dolente registered its claim for lien in the amount of \$91,418.05 on March 18, 2024, as instrument number AT6532917 (the “**Dolente Lien**”), and perfected its claim by registering a Certificate of Action on April 18, 2024, as instrument number AT6555712.
40. 260 High Park retained Dolente to perform mechanical site services, including the installation of the storm and sanitary drainage systems, and the water supply from the lot line to the building, pursuant to a CCDC 17 contract dated December 12, 2019 (the “**Dolente Services Contract**”), at a total contract price of \$244,645.00, inclusive of tax.
41. Dolente has produced the eight invoices it issued under the Dolente Services Contract, which confirms additions to the contract price of \$36,735.38 (exclusive of tax) as a result of change orders and site instructions, and confirms Dolente’s maximum holdback claim is \$28,050.60, inclusive of tax.

Pro Con Doors & Hardware Ltd. (“Pro Con”)

42. Pro Con registered its claim for lien in the amount of \$142,692.78 on April 19, 2024, as instrument number AT6556556 (the “**Pro Con Door Lien**”), and perfected its lien by registering a Certificate of Action on July 12, 2024, as instrument number AT6615833.
43. Pro Con has produced three purchase orders in support of its claim. Two of the purchase orders bear number T043, one dated August 16, 2022, and the other dated July 12, 2023. Both are in respect of the same scope of work, being the supply and installation of door frames and doors to the Project (the “**First Pro Con Door Contract**”). As of August 2022, the First Pro Con Door Contract price was \$247,300.00, exclusive of tax, but this was reduced slightly as of July 2023, to \$240,315.00 exclusive of tax. The third purchase order is dated August 8, 2023, bearing number T120, in the amount of \$80,000.00, exclusive of tax (the “**Second Pro Con Door Contract**”).
44. Pro Con has produced two account statements, one dated April 16, 2024, and the other dated April 18, 2024, and initially produced 13 invoices variously dated from December 13, 2023, to April 13, 2024. Both account statements reference invoices issued under both the First Pro Con Door Contract, and the Second Pro Con Door Contract. The April 16 statement indicates a total outstanding of \$137,042.78, inclusive of tax (and inclusive of holdback, as none of the invoices make any provision for holdback), while the April 18 statement indicates a total owing of \$142,692.78 (inclusive of tax and holdback).
45. Pro Con’s counsel advised that the April 16 statement was prepared and sent in error. However, they also advise that the lien did not account for all outstanding invoices, and produced four further unpaid invoices variously dated from June 13, 2023 to December 15, 2023 in the total amount of \$8,129.22.
46. While Pro Con issued (and was paid for) invoices issued prior to December 13, 2023, given that the outstanding invoices made no provision for holdback, it is assumed that the earlier invoices also did not provide for holdback, and were paid in full (inclusive of holdback), and that Pro Con has no holdback claim for the pre-December 13, 2023 invoices that were paid.

47. Given the information and documentation provided, Pro Con's maximum holdback claim is \$15,082.20, inclusive of tax.

Turnbull Masonry Ltd. ("Turnbull")

48. Turnbull registered its claim for lien in the amount of \$173,512.81 on April 25, 2024, as instrument number AT6559510 (the "**Turnbull Claim for Lien**"), and perfected its lien by registering a Certificate of Action on May 3, 2024, as instrument number AT6566076.
49. 260 High Park retained Turnbull pursuant to a CCDC 17 contract dated July 24, 2020 (the "**Turnbull Conservation Contract**"), to supply specialized heritage masonry conservation work at the Project at an initial contract price of \$613,025.00, inclusive of tax. Pursuant to a series of 10 change orders variously dated from July 18, 2022, to February 15, 2024, the contract price was increased to \$836,878.00, likely exclusive of tax, though the change orders are silent on this issue.
50. Turnbull has produced all of the invoices it issued under the Turnbull Conservation Contract. It alleges it is currently owed \$253,120.54, inclusive of tax and holdback. The paid invoices leading up to June, 2022, do not, on their face, include deductions for holdback. However, Turnbull has produced a statutory declaration from Ron Turnbull (the "**Turnbull Statutory Declaration**"), an officer and director of Turnbull, confirming that all of the paid invoices (which totaled \$486,680.48), were paid subject to a 10% holdback (i.e. \$48,668.06 was held back).
51. The Turnbull Claim for Lien was only registered for \$173,512.81, not the full \$253,120.54 Turnbull alleges is outstanding. This was due to inadvertence. Based on the holdback amounts in the post-June, 2022, invoices (\$34,377.43, inclusive of tax) and the holdback amount per the Turnbull Statutory Declaration (\$48,668.06), Turnbull's maximum holdback claim is \$83,045.49 of tax. This holdback claim is subsumed in the lien notwithstanding that it was not registered for the full amount owing.

Flynn Canada Ltd. (“Flynn”)

52. Flynn registered its claim for lien in the amount of \$86,392.33 on May 1, 2024, as instrument AT6563243 (the “**Flynn Claim for Lien**”), and perfected its lien by registering a Certificate of Action on July 12, 2024, as instrument number AT6615731.
53. 260 High Park retained Flynn pursuant to a CCDC 17 contract dated February 6, 2020 (the “**Flynn Waterproofing Contract**”) to perform waterproofing work at the Project for an initial contract price of \$406,800.00, inclusive of tax. Pursuant to four change orders/work orders dated January 9, 2023, February 16, 2023, and December 6, 2023 (two on this date), the contract price was increased to \$491,203.42, inclusive of tax.
54. Flynn has produced four unpaid invoices variously dated from October, 2023, to January, 2024. The invoices total \$53,826.59, inclusive of tax, but exclusive of holdback. The holdback on these four invoices is \$5,292.68, exclusive of tax. With tax added in, the holdback is \$5,980.73.
55. Flynn has also produced two account reconciliations for the entirety of the Flynn Waterproofing Contract. The reconciliation confirms that holdback totaling \$26,585.01 was not paid on its invoicing prior to October, 2023. Accordingly, Flynn’s maximum holdback claim is \$32,565.74, inclusive of tax.

CRS Contracting Inc. (“CRS”)

56. CRS registered its claim for lien in the amount of \$250,000 on May 13, 2024, as instrument number AT6570540 (the “**CRS Claim for Lien**”), and perfected its lien by registering a Certificate of Action on June 12, 2024, as instrument number AT6591760.
57. 260 High Park retained CRS pursuant to a CCDC 17 contract dated April 27, 2023 (the “**CRS Drywall Contract**”) to supply and install drywall at the Project at an initial contract price of \$2,005,750.00, inclusive of tax. CRS has also produced a copy of the tender package for the drywall scope of work at the Project dated March 28, 2023 (the “**Drywall Tender**”). Two change orders have also been produced, though they are inconsistent as to the total contract price. The first change order is dated January 8, 2024, and purports to

double the contract price from \$425,000 to \$850,000 (it is silent as to whether this is inclusive or exclusive of tax). The second change order is dated January 31, 2024, and does not reference the first change order's impact on price. This second change order purports to increase the contract price from \$425,000 to \$445,000 (again, silent on whether it is inclusive or exclusive of tax). Curiously, neither change order is in the name of CRS, but rather are in the name of Rapid Building Services Inc. (“**Rapid**”).

58. CRS has produced six “invoices”. The first purported invoice is in the name of Rapid, in the amount of \$144,075, inclusive of tax, and dated December 7, 2023. There is no provision for holdback. As well, this invoice states on its face that it is “a deposit for brick work”. This invoice is a deposit for work not performed, it cannot be the basis for a lien, and no holdback is payable on the amount set out in this invoice.
59. The second, third, fourth and fifth invoices are from CRS (not Rapid), and are dated August 14, 2023, October 9, 2023, October 27, 2023, and January 4, 2024. They are inconsistent in their provision for holdback, with only three of the invoices having a deduction for “H.B.”. Only one of the invoices properly calculates holdback at the 10% set out in the *Construction Act*, and different rates are applied to the two invoices (approx. 3.7% in one case, and approx. 3.8% in the other).
60. These four invoices total \$233,000, exclusive of tax, and without deducting the holdback calculated therein, or \$263,290.00 with tax included. The holdback claim in respect of these invoices is \$26,329.00.
61. The sixth purported invoice is not actually an invoice, but rather is an estimate from CRS dated April 12, 2023 in the amount of \$2,005,750.00, inclusive of tax. The “description” portion of the estimate reference drywall and related work “To be completed.”. This cannot support a lien claim in respect of the \$2,005,750.00 referenced therein.
62. Based on the material reviewed to date, CRS’ maximum holdback claim is \$26,329.00, inclusive of tax.

Stephenson's Rental Services Inc. ("Stephenson's")

63. Stephenson's registered its claim for lien in the amount of \$250,000 on May 15, 2024, as instrument number AT6572072 (the "**Stephenson's Claim for Lien**"), and perfected its lien by registering a Certificate of Action on May 17, 2024, as instrument number AT6595269.
64. 260 High Park retained Stephenson's to supply various equipment to the Project, including edge protection panels for partially constructed balconies, perimeter fencing, scaffolding, a skidsteer, a forklift, pumps, hoses, road plates and related equipment, pursuant to an application for credit dated May 16, 2019 (the "**Stephenson's Credit Application**").
65. Stephenson's has produced in excess of 100 invoices dated from July 24, 2023, to May 13, 2024, together with a four-page account summary showing all unpaid and partially-paid invoices. Based on this summary, and the date of the Stephenson's Credit Application, invoices were issued prior to July 24, 2023, but do not appear on the account summary because they were paid in full (inclusive of holdback).
66. The total amount owing under Stephenson's invoices is \$362,380.12, which includes tax. Stephenson's maximum holdback claim is \$36,238.01, inclusive of tax.

JVH Masonry Ltd. ("JVH")

67. JVH registered a claim for lien in the amount of \$163,738.70 on June 5, 2024, as instrument number AT6586696 (the "**JVH Claim for Lien**"), and perfected its lien by registering a Certificate of Action on July 30, 2024, as instrument number AT6626272.
68. JVH's Certificate of Action inadvertently set out the incorrect instrument number for the JVH Claim for Lien, and has not yet been certified. JVH is expected to bring a motion to correct the Certificate of Action *nunc pro tunc*. Alternatively, JVH may rely on the sheltering provisions of the *Construction Act*. In any event, the instrument number error will not impact JVH's lien claim, including its holdback claim.
69. 260 High Park retained JVH to supply concrete block masonry to the Project pursuant to a CCDC 17 contract dated January 23, 2023, at an initial contract price of \$271,200.00,

inclusive of tax (the “**JVH CMU Contract**”). JVH has also produced five change orders that, in the aggregate, increased the contract price to \$317,210.00, exclusive of tax (\$358,447.30 with tax included).

70. JVH has produced three sets of invoices. The first is comprised of seven invoices issued and paid (except for holdback) from February, 2023, to July, 2023. In total, the holdback on these invoices is \$20,328.70, inclusive of tax.
71. The second set of invoices from JVH are unpaid invoices for work performed from October, 2023 to May, 2024. The invoices total \$129,069.00, which includes tax, but does not include holdback. The holdback on these invoices is \$14,341.00, inclusive of tax.
72. The third set is comprised of one invoice, which is a holdback invoice dated May 22, 2024.
73. Based on the documents produced, JVH’s maximum holdback claim is \$34,669.70, inclusive of tax.

APPENDIX “C”

ERNST & YOUNG INC.
Court appointed Project Receiver and manager of
260 High Park Limited Partnership, TRAC Developments Inc., and 2486357 Ontario Inc.
STATEMENT OF RECEIPTS AND DISBURSEMENTS
For the period of May 27, 2024 to September 24, 2024

**May 27, 2024 to
September 24, 2024**

Receipts:

Insurance Settlement Proceeds	\$	3,745,986.77
HST Refunds		50,170.13
Interest Earned		13,060.85
HST Refund Interest		11.19
		11.19
Total Receipts	\$	<u>3,809,228.94</u>

Disbursements:

Project Receiver Fees	\$	246,992.50
Construction Costs		202,176.15
Legal Fees		95,910.00
HST Paid		84,893.49
Property Taxes		70,282.33
Security/Alarm Services		67,305.00
Insurance		40,311.38
Storage Units		13,984.17
Repairs and Maintenance		10,018.07
Consulting Services		9,757.41
Utilities		6,693.53
Project Receiver Disbursements		834.00
Legal Disbursements		756.10
Registration Fees		80.42
Bank Charges		63.49
		63.49
Total Disbursements	\$	850,058.04

Excess (Deficiency) of Receipts over Disbursements		<u>2,959,170.90</u>
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MERIDIAN CREDIT UNION LIMITED
Applicant

and

260 HIGH PARK LIMITED PARTNERSHIP. et al.
Respondents

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

Proceeding commenced at Toronto

**MOTION RECORD OF ERNST & YOUNG INC.,
IN ITS CAPACITY AS COURT-APPOINTED PROJECT
RECEIVER, MANAGER AND CONSTRUCTION LIEN
TRUSTEE
(Sale Process Approval)**

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