

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

B E T W E E N:

**CHIEF EXECUTIVE OFFICER OF THE FINANCIAL SERVICES
REGULATORY AUTHORITY OF ONTARIO**

Applicant

and

**SUSSMAN MORTGAGE FUNDING INC., 2486976 ONTARIO INC.
and 1981361 ONTARIO INC.**

Respondents

APPLICATION UNDER SECTION 37 OF THE *MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006*, S.O. 2006, c. 29, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

**AIDE MEMOIRE OF BALLYMORE BUILDING (INNISFIL) CORP. AND
BALLYMORE DEVELOPMENT (INNISFIL) CORP.
(Hearing Returnable July 25, 2025)**

Ballymore Building (Innisfil) Corp. and Ballymore Development (Innisfil) Corp. provide this Aide Memoire for the purpose of the motion returnable July 25, 2025.

July 24, 2025

ROBINS APPLEBY LLP

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Lawyers for Ballymore Building (Innisfil)
Corp. and Ballymore Development (Innisfil)
Corp.

BACKGROUND

1. Ballymore Development (Innisfil) Corp. ("**Ballymore**") is the joint venture partner, along with the debtor company, 2486976 Ontario Inc. ("**248**"), in a housing development consisting of four separate parcels in Innisfil, Ontario (the "**Ballymore Property**"¹ and the "**Ballymore Project**").

2. Ballymore submits that the following revisions (bolded and underlined below) be made to the July 24, 2025 Draft Order, at paragraphs 3(n) and 3(o) respecting the Receiver's powers:

(m) to market any or all of the Property set out in **Schedule "C"**, 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;

(n) to sell, convey, transfer, lease or assign the Property **set out in Schedule "C"** 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 \$600,000 with the support of any party holding security over such Property; 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, or where the support of any party holding security over such Property has not been provided;

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;

(o) to apply for any vesting order or other orders necessary to convey the Property **set out in Schedule "C"** or any part or parts thereof, to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

JVA RESTRICTIONS ON 248'S ABILITY TO SELL OR TRANSFER ITS INTEREST

3. The Ballymore Project is governed by a Joint Venture Agreement dated January 19, 2016

¹ More particularly set out in the First Report of the Receiver, at pages 31-34, Tab "1" to the Aide Memoire.

(the "**JVA**") and Amending Agreement dated March 31, 2016, copies of which are attached as **Tab "2"**, and located at Appendix "H" of the Receiver's First Report.

4. 248 faces restrictions on attempts to transfer or sell its interest in the JVA. These restrictions include:

- (a) the Management Committee (composed of one representative each from 248 and Ballymore) must approve the sale of all or part of the Project (including any portion of a Member's Tenancy Interest) – Articles 5.2, 5.6(a)(v), and 5.6(b);
- (b) the unanimous written consent of all Members is required before a Member may transfer any portion of its Tenancy Interest (subject to other stipulations) – Article 8.1(b); and
- (c) there are specific processes governing 248's ability to sell its interest to Ballymore, and vice versa – Article 10.

5. Paragraph 3(n) and 3(o), as currently proposed by the Receiver, would grant the Receiver the unfettered authority to sell, convey, transfer, or vest 248's interest in the JVA and the Ballymore Property, which would disregard the terms of the JVA.

6. As the Receiver steps into the shoes of 248, it acquires no greater rights than 248 with respect to the JVA and the Ballymore Property. Ballymore's proposed language more appropriately reflects the scope of authority that should be granted to the Receiver.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, JULY 24, 2025



Samuel Mosonyi
Lawyers for Ballymore Building (Innisfil) Corp. and Ballymore Development (Innisfil) Corp.

TAB 1.

currently encumbered by a charge in favour of Olympia in trust for certain Registered Investors.

109. On May 7, 2025 the Receiver emailed Subramaniam to advise him of the receivership proceedings and to instruct him to remit monthly payments for S-26 and S-27 to the Receiver. On May 15, 2025 the Receiver again emailed Subramaniam to advise that payments for S-27 had not been received for March, April or May, 2025. Finally, on May 23, 2025 the Receiver wrote to Subramaniam to advise that a post-dated cheque in respect of the S-26 Mortgage had been returned for insufficient funds and that Subramaniam was in default of both mortgages. A copy of the Receiver's emails are attached hereto as **Appendix "P"**.
110. On May 23, 2025 the Receiver wrote to Ramachandran Law, counsel to Subramaniam, noting the default and demanding payment in full of the payments in arrears by May 27, 2025, failing which the matter would be referred to counsel for further action. A copy of the Receiver's letter is attached hereto as **Appendix "Q"**. The Receiver has been advised by Ramachandran Law that payment of the arrears will be made shortly.

Mortgages Related to the Projects

111. Information on mortgages related to the Uptergrove Project and the Waterways Project is provided below as part of the discussion of the JVs.

C. The Joint Venture Agreements

112. As set out above, the Projects are governed by the JVs. The following section discusses the scope of the JVs, the relationship between the parties, the status of the Projects, and the Receiver's estimate of potential recoveries on each Project.

The Ballymore Project

Background and Current Status

113. The Ballymore Project is a housing development consisting of four separate parcels in Innisfil, Ontario (the "**Ballymore Property**"), including:

- a. 1335 Killarney Beach Road, Innisfil (“**1335**”), a 10.9 acre site currently under construction for a 130 unit detached home subdivision;
 - b. 1317 Killarney Beach Road, Innisfil (“**1317**”), a 3.5 acre site which is currently vacant but is the subject of an Official Plan Amendment and Zoning By-Law Amendment to permit the development of a mix of 3-storey common element townhouses and 3-storey back-to-back townhouses;
 - c. 1015 Cumberland St., Innisfil (“**1015**”), a 3.2 acre property which is currently vacant but is the subject of an Official Plan Amendment and Zoning By-Law Amendment to permit the development of 16 single detached homes; and
 - d. 1490 Killarney Beach Road, Innisfil (“**1490**”), a 7.5 acre site which is currently vacant. There are conceptual plans for 102 townhouse units, but no formal applications have been submitted.
114. SMFI’s involvement with the Ballymore Project dates back to 2006, when SMFI advanced funds to Baywood Homes (Big Bass Phase 1) Inc. (“**Baywood**”) for the development of a housing project (the “**Baywood Project**”). Baywood was unable to complete the development and the senior secured lender enforced on its mortgage. The Ballymore Nominee purchased the Ballymore Property through a power of sale proceeding.
 115. The Receiver understands that funds raised from investors in the Ballymore SMLs were used to (a) finance the purchase of the Ballymore Property; and (b) repay investors in the original Baywood Project. No mortgages were actually granted in favour of SMFI in connection with the Ballymore SMLs. There were two mortgages in favour of SMFI in place at the time the Ballymore Property was acquired, but these were fully repaid.
 116. Given the issues identified above with the Information, the Receiver has not to date been able to derive a complete accounting of those funds.
 117. At present, only 1335 has been developed. All but 19 of the 130 units in 1335 have been completed and closed. The remaining 19 units are subject to executed purchase agreements and are expected to close by September 2025. Ballymore advises that it expects to realize

profits of approximately \$14 million from the sale of the remaining homes, which would be subject to distribution pursuant to the terms of the JV.

118. Ballymore relaunched marketing of the 1317 development on May 31, 2025 and intends to begin construction in spring, 2026, subject to the outcome of pre-sale efforts. Once complete, Ballymore expects the 1317 development to result in profits of approximately \$2 million but cautions that the current state of the housing market may have a negative impact on projected sales and on the project schedule.
119. Development of 1015 and 1490 has not begun and the timeline to develop these phases is unclear.

The Ballymore JV

120. The Ballymore JV governs the development of the Ballymore Project and the rights and obligations of Ballymore and 248. The Ballymore Nominee holds title to the Ballymore Property for the Members. Each of 248 and Ballymore hold a 49.98% interest in the Ballymore Project, with the balance of 0.04% held by the Ballymore Nominee. Key terms of the Ballymore JV include:
 - a. 248 and Ballymore are both responsible for providing a certain portion of funds required for the acquisition of the Ballymore Property.
 - b. 248 is entitled to recover a portion of the funds provided for purchase (the “**Sussman Deemed Equity**”) before any profit distributions are made to the Members.
 - c. The Members are required to contribute additional funds after the closing of the acquisition under certain circumstances.
 - d. Following the repayment of all debt and equity obligations, Surplus Cash (as defined in the Ballymore JV) is to be distributed to Members according to the interest set out above.
 - e. Management of the Ballymore Project is provided by a Management Committee consisting of a representative of each of 248 and Ballymore.

Potential Realization

121. The Receiver engaged Avison Young (“**AY**”) to prepare an opinion of value (the “**AY Opinion**”) in respect of the Ballymore Property. Based on the Receiver’s review of the AY Opinion, and subject to the customary assumptions and qualifications contained therein, the Receiver estimates the realizable value of 248’s interest in the Ballymore Project, which includes proceeds from the closing of units already sold and proceeds from the sale of land, to be between \$8.0 million and \$10.0 million.

The Alliance Project

Background and Current Status

122. The Alliance Project is a housing development consisting of a manufactured home community on an 11.5 acre site at 5166 Highway 12 and 3396 Concession 10 Road, Ramara, Ontario (the “**Alliance Property**”). The Alliance Project is a land-lease community, in which customers purchase the homes but lease the land, generating an additional income stream for the land owner.
123. The development plan includes a total of 300 manufactured homes. 111 of the lots have been serviced. Phase 1 consists of 100 units, of which 87 are currently built and occupied. Phases 2 and 3 consist of 100 units each which have yet to be constructed.
124. There are three mortgages registered against the Alliance Property (the “**Alliance Mortgages**”). Interest on the mortgage advances is capitalized (i.e. not paid in cash but added to the principal amount of the mortgage). As discussed above, the capitalization of interest, particularly on the Alliance Project, has materially contributed to SMFI’s liquidity issues as interest is paid to Investors monthly. The Receiver has been provided with an accounting of mortgage advances and interest calculations by Alliance and is in the process of reconciling those figures with information in SMFI’s records. The Receiver estimates that the total amount payable on the mortgages related to the Alliance Project is approximately \$35 million.

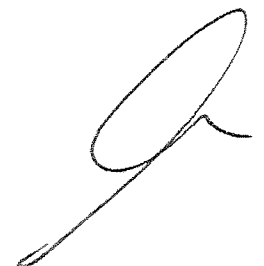
TAB 2.

Appendix “H” to the First Report of the Receiver

JOINT VENTURE AGREEMENT

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JOINT VENTURE AGREEMENT

THIS AGREEMENT is made as of the 19th day of January 2016

BETWEEN:

2486976 ONTARIO INC.,
a corporation incorporated under the laws of the Province of Ontario

(the "**Purchaser**" or "**Sussman** ")

OF THE FIRST PART

- and -

BALLYMORE DEVELOPMENT (INNISFIL) CORP.,
a corporation incorporated under the laws of the Province of Ontario
[to be incorporated Tuesday]

("Ballymore")

OF THE SECOND PART

- and -

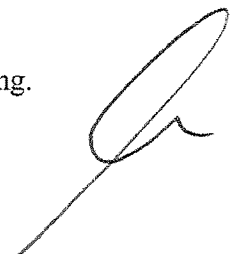
2499948 ONTARIO INC.,
a corporation incorporated under the laws of the Province of Ontario
[to be incorporated Tuesday]

(the "**Nominee**")

OF THE THIRD PART

WHEREAS

- A. Sussman, Ballymore and the Nominee (herein individually referred to as a "**Member**" and collectively called the "**Members**") have agreed to form and constitute a joint venture (hereinafter referred to as the "**Joint Venture**") for the purposes hereinafter set forth.
- B. Pursuant to a certain Agreement of Purchase and Sale dated October 26, 2015, as amended from time to time (the "**Purchase Agreement**"), the Purchaser, as purchaser, agreed to purchase all of the interest in the Lands described in Schedule "A" hereto, which lands and premises are more particularly described in the Purchase Agreement and are hereinafter referred to as the "**Lands**" or "**Lands**").
- C. Title to the Lands will be directed in favour of the Nominee on the Date of Closing.



- D. It is intended that title to the Lands shall be registered in the name of the Nominee in trust for the Members as tenants-in-common pursuant to the terms of this Agreement.
- E. The Members wish to enter into this Agreement for the purpose of setting forth the various terms, provisions and conditions governing their arrangements to develop, service, build and sell the Project (as hereinafter defined).

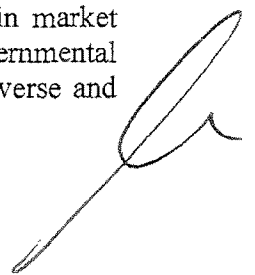
THEREFORE in consideration of the mutual covenants of the parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

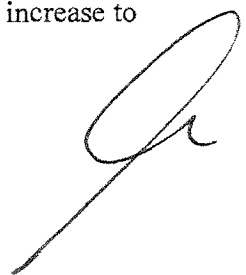
Unless the context otherwise requires, the terms defined in this Agreement shall for all purposes have the meanings set forth below:

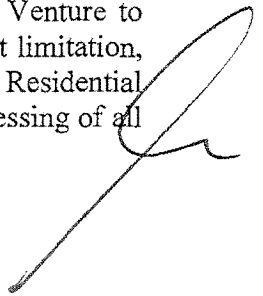
- (a) **"Accredited Appraiser"** means a Person dealing at arm's length with each Member who enjoys a fully accredited membership in the Appraisal Institute of Canada (or its successor organization or, failing either, another equivalent national Canadian real estate appraisal organization and who has had extensive experience in appraising the land component of land developed or capable of being developed for residential and commercial purposes in the County of Simcoe or Greater Toronto Area within the ten (10) year period before his or her retainer);
- (b) **"Accounting Period"** means the period of twelve (12) months ending on the last day of November in each calendar year, except for the first Accounting Period for the Property which shall be the period from and including the Effective Date;
- (c) **"Acquisition Equity"** shall have the meaning ascribed thereto in Section 3.4(b) hereof;
- (d) **"Acquisition Price"** shall have the meaning ascribed thereto in Section 3.1 hereof;
- (e) **"Adverse Development Conditions"** means any event or series of events beyond the control of the Member such as strikes, walkouts, labour troubles, inability to procure materials or services or construction financing, power failures, restrictive governmental laws or regulations or the orders or directions of any administrative board, governmental department, officer or other authority, riots, insurrections, war, sabotage, rebellion or acts of God, material changes or delays in market conditions affecting sales or closings, delays in obtaining governmental approvals, permits, rezoning or similar regulatory requirements, or adverse and



material changes to the Project Budget, none of which is the fault of the Member having acted in a commercially reasonable manner;

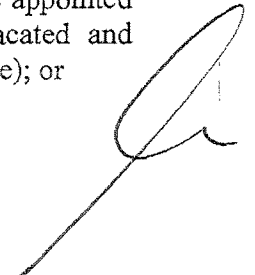
- (f) "**Affiliate**" with respect to a Member means any corporation which directly or indirectly is Controlled by or Controls such Member or is Controlled by the same Person or group of Persons which Controls such Member; or any trusts, the beneficiaries of which are the Person or group of Persons who Controls any Member or any spouse or issue of that Person; or any corporation, the sole shareholders of which are such trusts or any one of such trusts;
- (g) "**Agreement**" means this agreement, including the schedules hereto, as amended from time to time;
- (h) "**Applicable Interest**" has the meaning ascribed thereto in Section 9.5(a);
- (i) "**Approval**" of the Members or of the Joint Venture means an approval of the Management Committee on behalf of the Members as contemplated in Section 5.6 or otherwise approved in writing by the Members and "approve" or "approved" when referring to the Members or Joint Venture shall have the same meaning mutatis mutandis;
- (j) "**BIA**" means the Bankruptcy and Insolvency Act (Canada);
- (k) "**Business Day**" means any day other than a Saturday, Sunday, or statutory holiday in Ontario;
- (l) "**Buy/Sell Provisions**" means the buy/sell arrangements under Article 10 hereof;
- (m) "**Cash Call**" has the meaning ascribed thereto in Section 3.10 hereof;
- (n) "**Closing**" or "**Date of Closing**" means the closing date for the acquisition of the Lands as contemplated in this Purchase Agreement and "Closing" and "Closing Date" shall have the same meaning;
- (o) "**Closing Costs**" shall mean:
 - (i) any reasonable due diligence costs incurred by Sussman, as reasonably approved by Ballymore and required for the purchase of the Lands and as more particularly set out in the Schedule B attached hereto;
 - (ii) any legal costs incurred in the negotiation, and closing of the Purchase Agreement and incorporation and organization of the Nominee (currently estimated at \$34,000.00 plus disbursements and HST) with any increase to be approved by the Members, acting reasonably;

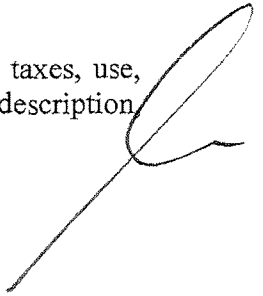
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- (iii) any mortgage, placement or commitment fees required to be paid for the First Mortgage or the Construction Financing, as the case may be, and approved by the Members and related legal costs; and
 - (iv) any other expenses incurred by Sussman for the Project and approved by Ballymore, acting reasonably.
- (p) **"Construction Equity"** has the meaning ascribed thereto in Section 3.4(b) hereof;
- (q) **"Construction Finances"** means any Joint Venture loan intended to finance the construction of the Development alone or together with the funds for acquisition of the Property;
- (r) **"Control"** means:
- (i) when applied to the relationship between a Person (or group of Persons) and a corporation, the ownership by such Person (or group of Persons) (other than by way of security only) either directly or indirectly (including by means of the direct or indirect control of one or more intermediate corporations or other entities) of voting securities of such corporation carrying more than fifty per cent (50%) of the votes for the election of directors, if the votes carried by such securities are sufficient, if exercised, to elect a majority of the board of directors of such corporation; and
 - (ii) when applied to the relationship between a Person (or group of Persons) and a partnership, joint venture or other unincorporated entity, the ownership by such Person (or group of Persons) (other than by way of security only) either directly or indirectly (including by means of the direct or indirect control of one or more intermediate corporations or other entities) of more than fifty per cent (50%) of the ownership interests of such partnership, joint venture or other entity in circumstances where it can reasonably be expected that such Person (or group of Persons) directs the affairs of such partnership, joint venture or other entity;
- and the words **"Controlled by"**, **"Controlling"** and similar words have corresponding meanings;
- (s) **"Deemed Value"** shall mean the purchase price paid by the Joint Venture for the Lands up to a maximum amount of Fourteen Million Five Hundred Thousand Dollars (\$14,500,000.00);
- (t) **"Development"** means the development of the Lands by the Joint Venture to facilitate and permit the construction of the Project including, without limitation, the provision of the Services, the marketing and sale of the Residential Component, the preparation of agreements of purchase and sale, processing of all
- 

official plan amendments, draft plan and secondary plan approvals, zoning approvals, Committee of Adjustment applications, plan of subdivision approvals, satisfying draft plan conditions, site plan agreements, development agreements, Section 37 agreements and other similar agreements with any Government Authority and "Develop" has a similar meaning;

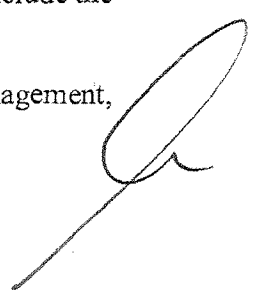
- (u) **"Effective Date"** means the date of this Agreement;
- (v) **"Encumbrance"** means any charge, mortgage, lien, pledge, claim, restriction, security interest or other encumbrance whether created or arising by agreement, statute or otherwise at law, attaching to Lands, interests or rights and shall be construed in the widest possible terms and principles known under the law applicable to such Lands, interests or rights and whether or not they constitute specific or floating charges as those terms are understood under the laws of the Province of Ontario;
- (w) **"Equity Interest"** has the meaning ascribed thereto in Section 3.3(b) hereof;
- (x) **"Event of Insolvency"** means in regard to any Member, the occurrence of any one of the following events:
 - (i) if such Member, is wound up, dissolved, liquidated, or has its existence terminated unless such existence is reinstated within a reasonable time, or has any resolution passed therefor or makes a general assignment for the benefit of its creditors or a proposal under the *Bankruptcy and Insolvency Act* (Canada), or is adjudged bankrupt or insolvent, or if it proposes a compromise or arrangement under the *Companies' Creditors Arrangement Act* (Canada) or files any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, or similar relief for itself under any present or future law relating to bankruptcy, insolvency, or other relief for or against debtors generally; or
 - (ii) if a court of competent jurisdiction enters an order, judgment or decree against such Member seeking any reorganization, arrangement, composition, re-adjustment, liquidation, dissolution, winding up, termination of existence, declaration of bankruptcy or insolvency or similar relief under any present or future law relating to bankruptcy, insolvency or other relief for or against debtors generally, and such order, judgment or decree remains unvacated and unstayed for an aggregate of 15 days (whether or not consecutive) from the day such Member receives notice thereof; or if any trustee in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers is appointed for any such Member and such appointment remains unvacated and unstayed for an aggregate of 15 days (whether or not consecutive); or



- (iii) if a writ of execution, distress, attachment or similar process is issued or levied against a Member by a court of competent jurisdiction and such writ of execution, distress, attachment or process shall not be satisfied in accordance with its terms and shall continue unstayed in effect for thirty (30) days from the date such Member receives notice of such writ of execution, distress, attachment or similar process that is issued or levied; or
 - (iv) if such Member admits or acknowledges that it is unable to pay its debts generally or that it is otherwise insolvent, or becomes insolvent.
 - (y) "**Excess Liability**" has the meaning ascribed thereto in Section 3.7 hereof;
 - (z) "**Fair Market Value**" means the value of the Lands or any part or parts thereof or a Tenancy Interest, as the case may be, determined without any minority discount by appraisal pursuant to the provisions of Section 9.6 hereof;
 - (aa) "**First Mortgage**" has the meaning ascribed thereto in Section 3.2(a)(i) hereof;
 - (bb) "**First Mortgage Advance**" has the meaning ascribed thereto in Section 3.1(a)(i) hereof;
 - (cc) "**First Phase**" shall mean the first sixty-three (63) residential units of the Residential Component to be constructed in the Project and which as of the Effective Date, have received draft plan approval from the Town of Innisfil and are fully serviced, save and except for asphalt and sidewalks;
 - (dd) "**Freeze Period**" shall mean the date upon which all units in the Residential Component have been completed, sold and closed in the Project or five (5) years from the Effective Date, whichever comes first;
 - (ee) "**GAAP**" means generally accepted accounting principles for private, non-offering real estate holding and development companies in Canada, consistently applied;
 - (ff) "**Government Authority**" means any person, body, department, bureau, agency, board, tribunal, commission, branch or office of any federal, provincial, regional or municipal government having jurisdiction over part or all of the Lands, the Development, the transactions contemplated by this Agreement and/or one or more of the Members and shall include a board or association of insurance underwriters;
 - (gg) "**Gross Receipts**" has the meaning ascribed thereto in Section 4.2;
 - (hh) "**HST**" means all goods and services taxes, value added taxes, sales taxes, use, consumption taxes and other similar taxes of whatever name or description.
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whether or not in existence at the date hereof, now or hereafter imposed, levied, rated, charged or assessed by the Government of Canada or by any provincial, municipal or local government or public authority, including the goods and services tax or any harmonized sales tax now or hereafter levied pursuant to the *Excise Tax Act* (Canada);

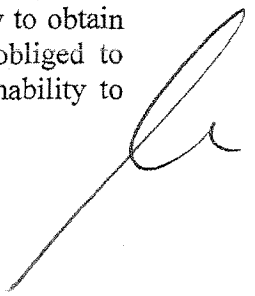
- (ii) "**Initiating Member**" has the meaning ascribed thereto in Section 9.5(a);
- (jj) "**Interest Rate**" means a rate of interest which at all times is the Prime Rate plus ten percent (10%);
- (kk) "**Joint Venture Assets**" has the meaning ascribed thereto in Section 2.1;
- (ll) "**Lands**" shall mean the lands set out in Schedule "A" and any other lands acquired for the Project by the Joint Venture;
- (mm) "**Lender**" means any lender or mortgagee or other secured lender of the Joint Venture approved by the Management Committee as herein provided;
- (nn) "**Management Committee**" means the management committee established pursuant to the provisions of Article 5 hereof;
- (oo) "**Maximum Principal Amount**" has the meaning ascribed thereof in Section 3.2(a)(iii) hereof;
- (pp) "**Member**" means any of the Nominee, Sussman or Ballymore (and collectively the "Members");
- (qq) "**Member Group**" has the meaning ascribed thereto in Section 2.7(b);
- (rr) "**Members' Account**" means the bank account of the Joint Venture as provided in Section 7.4(g);
- (ss) "**Mortgagees**" means, collectively, Pacific & Western Bank of Canada and KingSett Real Estate Mortgage GP No. 3 Inc., and hold a first and second charge, respectively, on title to the Lands as of the Effective Date and which charges shall be discharged on Closing;
- (tt) "**Non-Defaulting Member**" means any Member who is not at the relevant particular time a Defaulting Member;
- (uu) "**Non-Residential Component**" means that portion of the Project that is not the Residential Component, and which at the Effective Date is intended to include the lots on Emily Street, a seniors block and two commercial blocks;
- (vv) "**Operations**" means the Development, improvement, operation, management, repair and maintenance of the Lands;

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- (ww) **"Permitted Encumbrances"** means, when used in relation to a Member's Tenancy Interest:
- (i) liens for taxes, assessments or governmental charges or levies which are not at the time due and delinquent;
 - (ii) undetermined or inchoate liens or charges which have not at the time been filed pursuant to law against the Member or which relate to obligations not due or delinquent;
 - (iii) liens in respect of any judgment rendered, writ of execution issued or claim filed against the Member or any of its Lands which may be satisfied by the payment of money and which the Member is diligently contesting in good faith, provided that such contestation prevents the forfeiture or loss of any part of the Member's Tenancy Interest; and
 - (iv) Encumbrances affecting the Lands approved by the Management Committee and created or assumed by all of the Members in connection with the Operations;
- (xx) **"Person"** means a natural person, firm, trust, partnership, joint venture, estate, unincorporated organization, association, corporation, government or governmental board, agency or instrumentality;
- (yy) **"Project"** means the proposed mixed use development to be constructed on the Lands and consisting of both the Residential Component and the Non-Residential Component;
- (zz) **"Project Budget"** means any budget or budgets for the Project or any part thereof, approved by the Members as contemplated herein, together with all changes and amendments thereto approved by the Management Committee; "
- (aaa) **"Project Costs"** means those costs incurred for the Project and contained in the Project Budget or otherwise approved by the Management Committee;
- (bbb) **"Prime Rate"** means the prime commercial lending rate of interest of the Royal Bank of Canada from time to time establishes as the reference rate of interest for the purpose of determining the rate of interest that it would charge to its most favoured commercial customers for loans in Canadian funds at its head office or main branch in Toronto, Ontario, and which it refers to as its "prime rate" as the same is in effect from time to time;
- (ccc) **"Purchase Agreement"** has the meaning ascribed thereto in recital B;
- (ddd) **"Purchase Notice"** has the meaning ascribed thereto in Section 9.5(a);

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- (eee) "**Purchaser**" has the meaning ascribed thereto in Section 9.5(a);
- (fff) "**PW LC**" has the meaning ascribed thereto in Section 3.3(d);
- (ggg) "**Representative**" shall mean a member of the Management Committee;
- (hhh) "**Residential Component**" means the residential component of the Project and which at the Effective Date shall be comprise 241 lots and certain partial lots consisting of approximately 10,290 linear front feet which shall be used for the construction of single family residences;
- (iii) "**Second Phase**" means the subsequent phases for the balance of the residential units not included as part of the First Phase of the Residential Component;
- (jjj) "**Services**" means all services, as such term is commonly used in the residential development industry, necessary to permit the subdivision of the Lands and as may be required by any Government Authority pursuant to any subdivision, development, site plan or like agreements applicable to the Lands, including storm and sanitary sewers, functioning water service, water pumping station, storm water management pond, utilities (including a hydroelectric looping system), roads, sidewalks and landscaping, whether constructed on the Lands or on other lands owned by any other Person;
- (kkk) "**Share**" means with respect to each of the Members and subject to adjustment as per Section 2.14, be equal to forty-nine (49.98%) per cent for each of Sussman and Ballymore and 0.04% for the Nominee;
- (lll) "**Sussman Deemed Equity**" shall have the meaning set forth in Section 3.2;
- (mmm) "**Sussman Purchase Funds**" shall have the meaning set forth in Section 3.2(a)(iii);
- (nnn) "**Sussman Purchase Funds Mortgage**" shall have the meaning set forth in Section 3.5;
- (ooo) "**Tarion**" shall have the meaning set forth in Section 3.6;
- (ppp) "**Tenancy Interest**" shall have the meaning set forth in Section 2.1;
- (qqq) "**Time of Closing**" means 4:00 p.m., Toronto time or such other time on the Date of Closing as the particular Vendor and Purchaser may agree upon;
- (rrr) "**Unavoidable Delay**" means a delay in the performance of an act or compliance with a covenant caused by an act of God, fire, strike, lockout, inability to obtain or delay (which is not reasonably within the control of the party obliged to perform or comply) in obtaining material, equipment or transport, inability to

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obtain or delay (which is not reasonably within the control of the party obliged to perform or comply) in obtaining governmental approvals, permits, licences or allocations, restrictive laws or governmental regulations, or any other cause, whether of the kind specifically enumerated above or not, which is not reasonably within the control of the Party obliged to comply or perform, but does not mean a delay caused by lack of funds or other financial reasons of a party;

- (sss) "**Vendor**" has the meaning ascribed thereto in Article 9 and Article 10 hereof as the case may be; and
- (ttt) "**VTB**" means the mortgage to be given back by the Purchaser to the Vendor under the Purchase Agreement and assigned to an Affiliate of Sussman and which shall be discharged immediately after Closing;

ARTICLE 2 THE JOINT VENTURE

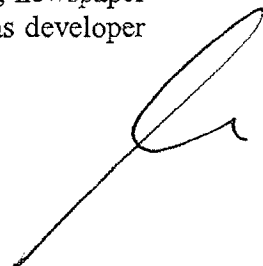
2.1 Interests in the Joint Venture

The Members shall hold an undivided interest ("**Tenancy Interest**") in the Lands, assets and rights of the Joint Venture (the "**Joint Venture**") both real and personal as tenants in common in the following proportions:

MEMBER	PERCENTAGE SHARE
Sussman	49.98%
Ballymore	49.98%
Nominee	0.04%

2.2 Purpose and Scope

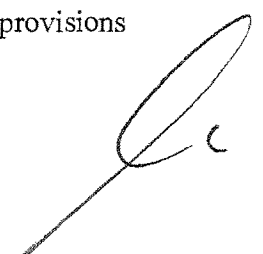
- (a) The Members, each expressly relying on the warranties, representations and covenants in this Agreement, hereby establish a Joint Venture for the purpose of governing their respective rights and obligations to and with each other with respect to the Development of the Project.
- (b) The purpose, and only purpose, of the Joint Venture is to acquire, own, Develop, market, construct and sell the Project under the Joint Venture name to be chosen by the Management Committee or such other name as may from time to time be agreed upon by the Members. The Members agree, in promoting the Development, all advertising and marketing materials, plans, signage, newspaper advertisements, promotions and any of the like showing Ballymore as developer of the Development.



- (c) The Members agree to own, operate, maintain and Develop the Lands and construct the Project in accordance with the terms of this Agreement.
- (d) Subject to any Adverse Development Conditions, the Members agree to diligently and in good faith take such steps as are commercially reasonable to Develop the Lands.
- (e) The Members hereby agree that this Agreement shall govern and define their respective rights, benefits, liabilities, obligations, interests and powers as Members with respect to:
 - (i) the Lands;
 - (ii) the Development;
 - (iii) the Project;
 - (iv) all property and property rights, whether real or personal, now owned or hereafter acquired by the Members in connection with the Development and the Property;
 - (v) gross receipts, including all revenues, capital sums and other proceeds derived from the Development; and
 - (vi) all present and future leases and other agreements and choses-in-action which may be entered into or owned by or on behalf of the Members in connection with the Development, the Lands, and the Project.

2.3 Effective Date and Continuance

- (a) This Agreement is effective from and after the date of this Agreement.
- (b) This Agreement shall continue in full force and effect until the later of:
 - (i) the date that the last of the Residential Component and the Non-Residential Component in the Project is sold by the Members to a third party purchaser and all letters of credit deposited with any municipal and/or governmental authorities, tribunals, corporations (including Tarion Warranty Corporation) or agencies have been released;
 - (ii) the date that final settlement has been made among the Members in accordance with Section 2.3(c) unless this Agreement and the Joint Venture constituted hereby is otherwise terminated upon written agreement by the Members or otherwise in accordance with the provisions hereof; and
 - (iii) the date that only one Member has an interest in the Project.

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- (c) In the event that the Members sell all of the Residential Component to one or more third party purchasers and the Non-Residential Component of the Development is completed and sold (or is transferred to a Member pursuant to the terms of this Agreement), the Members shall make a final settlement among themselves to the end that, subject to Section 2.7 hereof, the Members shall share all of the rights and benefits and bear all of the liabilities and obligations of the Joint Venture in accordance with their respective Tenancy Interest, provided that any distribution of funds shall be made only in accordance with Section 4.1.

2.4 Partnership Not Created

Each Member expressly disclaims any intention to create a partnership. Nothing in this Agreement, or otherwise arising herefrom, shall be construed to constitute any of the Members nor the Nominee a partner, agent or representative of the others or any of them or any commercial or other partnership. Each Member expressly declares its intention to rely upon:

- (a) the provisions of Section 3 of the *Partnership Act* (Ontario), as amended or re-enacted from time to time, to the effect, inter alia, that tenancy in common, common lands or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof; and
- (b) the statutory and common law as it applies to tenants in common save only to the extent that the same is, by the express provisions of this Agreement, amended or varied.

2.5 Apportionment of Profits and Losses

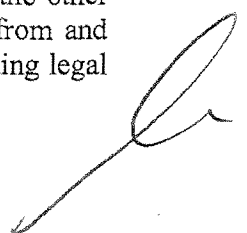
Except as hereinafter otherwise specifically provided, all net profits derived from the ownership, operation, development and sale of the Property shall belong to the Members in accordance with their respective Tenancy Interest, and all expenditures or losses incurred in connection with the Property shall be borne by the Members in accordance with their respective Tenancy Interests.

2.6 No Authority to Bind

Except as otherwise expressly provided in this Agreement, a Member shall not have any authority to act for or on behalf of the other Member or to bind the other Member or the Nominee.

2.7 Indemnity

- (a) Each Member (in this Section called the "**Indemnitor**") hereby irrevocably and unconditionally undertakes and agrees to indemnify and save harmless the other Member and the Nominee (in this Section called the "**Indemnitees**") from and against any and all liability, loss, harm, damage, cost or expense, including legal



fees on a full indemnity basis, which the Indemnitees or either of them may suffer, incur or sustain as a result of any act of the Indemnitor committed outside the scope of or in breach of this Agreement.

- (b) In the event that any time hereafter any of the Members (or an Affiliate thereof or principals thereof) (the "**Member Group**") shall become a surety or guarantor, or become indebted or liable for any moneys borrowed by the Joint Venture or for any obligation entered into by the Joint Venture, or any of the Member Group expends any money on behalf of the Joint Venture, so long as such debt, liability, obligation or expenditure is incurred pursuant to the provisions of this Agreement, then, in any such event, each of the Members hereto covenants and agrees to protect, indemnify and save the other Member Group harmless against and from any such loss, damage, costs and liability whatsoever, arising in respect of the aforementioned debt, liability, obligation, expenditure or loan, in the respective Shares.
- (c) As security for its obligations, relating to any guarantees provided by Ballymore, its affiliates or principals hereunder, pursuant to the indemnity hereunder, Sussman hereby grants Ballymore a security interest in its Tenancy Interest. This security interest shall be postponed to any financing necessary for the development of the Project.

2.8 Liability

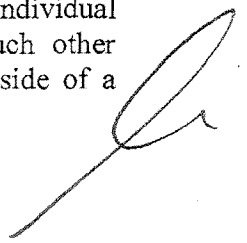
Subject to Section 2.7 hereof, the obligations of each Member with respect to the Project and the Joint Venture and all borrowings by or secured obligations entered into by or on behalf of the Members in connection therewith shall, in every case, be several to the extent of the Share of such Member and not joint, and not joint and several, unless expressly otherwise approved by the Management Committee (or if required by Tarion Warranty Corporation). All contracts and agreements for the Operations shall be entered into by the Nominee.

2.9 Legal and Beneficial Ownership

The Members confirm and agree that title to the Lands and to all lands, whether real, personal or mixed, comprising, used or otherwise acquired in connection with the Lands or used in connection with the Joint Venture including, without limitation, personal Lands and choses-in-action, shall be taken and held in the name of the Nominee, and that beneficial ownership shall be held by each of the Members as tenants in common in the same ratio as their respective Shares.

2.10 Other Businesses, etc.

- (a) Each Member and any Affiliates shall have the free and unrestricted right independently to engage in other businesses or ventures for its own individual profit without any accountability to the other Member, even if such other businesses or ventures are similar to or compete with the Lands outside of a



radius of 3 miles of the Project. Notwithstanding the foregoing, either Member or any Affiliate may, at any time, purchase, develop and sell lands within a 3 mile radius of the Lands provided that no steps will be taken to develop the lands until at least 100 units have been sold in the Residential Component of the Project.

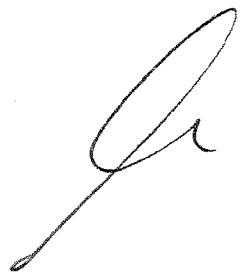
- (b) Each Member shall maintain its corporate status in good standing and pay all taxes and other levies owing to governmental authorities in a timely manner.
- (c) Save as specifically set forth in this Agreement, no Member or any officer, director or shareholder of a Member shall be required to devote any particular amount of time or attention to the Joint Venture, save as otherwise provided herein, but each Member shall cause its officers and/or employees to devote such time and attention thereto as shall be necessary to permit and promote the effective ownership, holding and development of the Lands in accordance with the terms and provisions of this Agreement.
- (d) Each Member covenants to perform, discharge and exercise the powers, duties and discretions entrusted, allocated or reserved to it hereunder, or as a result hereof, in good faith and in the best interest of the Joint Venture, and that, in connection therewith, it shall exercise that degree of care, diligence and skill that a reasonable prudent developer and owner of similar Lands would exercise in comparable circumstances.

2.11 No Partitioning

No Member and no person claiming through or under a Member shall partition or apply to the court or other authority having jurisdiction over the matter, or commence or prosecute any proceeding for the partition or sale of the Lands, or any part thereof. In the event of a breach of the provisions of this Section by a Member, the other Members shall, in addition to all other rights and remedies at law or in equity to which they are otherwise entitled, be entitled to a decree or order perpetually restraining and enjoining such partition, application, action or other proceeding, and the first-mentioned Member is hereby precluded from pleading in defence that there would be an adequate remedy at law (it being acknowledged by all the Members that the injury and damages flowing from any such breach would be impossible to measure monetarily).

2.12 Waiver of Sale

Each of the Members waives the benefit of all provisions of law, as now in effect or as hereinafter enacted, relating to actions for sale in lieu of partition of real and personal Lands including, without limiting the generality of the foregoing, the *Partition Act* (Ontario), as amended, and each of the Members agrees that it will not resort to any action at law or in equity for a sale in lieu of partition in respect of the Lands.

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2.13 Indemnity for Loans from Unauthorized Acts

No Member shall lend money or give credit to, or borrow money from, or enter into any contract or have other dealings with any Person purportedly on behalf of the Joint Venture to pledge the credit of the Joint Venture unless authorized or contemplated by this Agreement or as otherwise arises by operation of law, or unless the approval by the Management Committee to such action is obtained as herein set forth, and if it does, it shall indemnify and save the other Members harmless from all demands, costs, losses, debts, obligations, duties, claims, liabilities, damages and expenses in respect thereof.

2.14 Representations and Warranties

Each Member hereby represents and warrants to the other Member that the Tenancy Interest owned by such Members are free and clear of all liens, charges, encumbrances and other security interests of whatsoever nature other than the Permitted Encumbrances, including any agreement, option, right or privilege (whether by law, pre-emptive right or contract) capable of becoming a right to purchase from such Member of any of such Tenancy Interest. Sussman represents and warrants that the Lands are free and clear of all liens, charges, debts, encumbrances and other security interests of whatsoever nature except the Permitted Encumbrances, including any agreement, option, right or privilege (whether by law, pre-emptive right or contract) capable of becoming a right to purchase from the interest of the Nominee of any of its interest in the Property.

ARTICLE 3 FINANCING

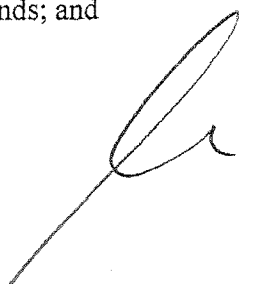
3.1 Funds required for the Acquisition of Lands

It is acknowledged and agreed that all funds required to close the purchase of the Lands as contemplated in the Purchase Agreement (the "**Acquisition Price**") shall be the sole responsibility of the Purchaser, subject to the terms hereof.

3.2 Funds Required for Closing

(a) The funds required for Closing shall be provided as follows:

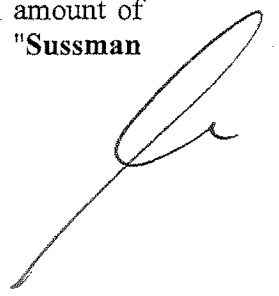
- (i) up to an amount not to exceed the Deemed Value, the Joint Venture shall advance the amounts obtained ("**First Mortgage Advance**") from financing by a recognized financial institution ("**First Mortgage**");
- (ii) from Ballymore, 50% of:
 - (A) land transfer tax payable on the Deemed Value of the Lands; and
 - (B) Closing Costs.



- (iii) from Sussman, the balance required for the Closing including the land transfer tax payable in accordance with the Purchase Agreement;
- (iv) The cash due on Closing, after credit for the First Mortgage Advance and any deposits paid in accordance with the Purchase Agreement, required to be paid by Sussman for the aggregate of the following:
 - (A) the amounts to discharge the Mortgagees;
 - (B) the commission owing to CBRE Limited being 2% of the Purchase Price, but not to exceed \$400,000.00 plus HST, in accordance with the Purchase Agreement;
 - (C) the costs to vacate or discharge the construction lien registered on title to the Lands in the amount of \$134,132.99; and
 - (D) any realty taxes payable under the Purchase Agreement and not otherwise included in the amounts payable to the Mortgagees,

shall be the "**Sussman Purchase Funds**".

- (v) It is understood and agreed that Sussman may arrange private financing or financings (the "**Second Mortgage**") for the total principal amount (the "**Maximum Principal Amount**") equal to the Sussman Purchase Funds, together with any interest payments made to the Mortgagees from and including October 1, 2015 to the Closing as set out in Schedule "C" (the "**Interest Payments**") plus the deposit of \$1,000,000.00 paid pursuant to the Purchase Agreement. The rate of interest for the Second Mortgage shall not exceed the rate of interest under the First Mortgage for the first \$1,000,000.00 of the Maximum Principal Amount and 200 basis points over the rate charged to the Joint Venture under the First Mortgage on the balance. It is further understood and agreed that the Second Mortgage shall be non-recourse against Ballymore or its principals and shall have recourse only against the Lands and Project assets. The Joint Venture shall consent to the registration of the Second Mortgage to secure the Sussman Purchase Funds, provided that the First Mortgage and Construction Financing permits same and on such terms as it may require including, inter alia, execution of postponement/standstill agreements in favour of the First Mortgage and any Construction Finances and containing the usual development provisions.
- (vi) It is understood and agreed that the difference between the Deemed Value, and the sum of the First Mortgage Advance and the principal amount of the Second Mortgage, shall be referred to herein as the "**Sussman Deemed Equity**".

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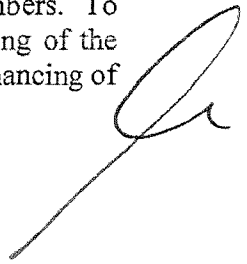
By way of example, see below:

(A)	Deemed Value	=	\$14,500,000.00
(B)	First Mortgage	=	\$ 9,000,000.00
(C)	Principal Amount Second Mortgage	=	\$ 3,200,000.00
(D)	Sussman Deemed Equity	=	\$ 2,300,000.00

- (b) An amount equal to the Sussman Deemed Equity shall be paid to Sussman in accordance with the Priority of Distribution set forth in Article 4.
- (c) It is acknowledged that Sussman shall advance the sum of \$367,000.00 to cash collateralize the Letter of Credit ("PW LC") presently lodged with the Town of Innisfil by Pacific and Western Bank of Canada, for pre-servicing and, such funds will be replaced by the First Mortgage and/or Construction Financing in accordance with the terms thereof and such funds shall be returned to Sussman Mortgage Funding Inc. once released by Pacific & Western Bank of Canada. Alternatively, if such cash collateral can be posted with the Town of Innisfil on Closing so as to permit a release of the PW LC, Sussman shall do so and same shall be considered as part of the Sussman Purchase Equity.

3.3 Financing

- (a) The Members shall, using reasonable commercial efforts, actively pursue to obtain the financing for the Development and the Project from a Lender with a view to obtain the most advantageous terms and conditions possible. To the maximum extent possible, all amounts required by the Joint Venture for the acquisition of the Lands and the Development of the Project shall be obtained by way of conventional mortgage financing of the Lands, supported, if required by the covenant of Ballymore or its Affiliates but not that of Sussman or the Nominee, provided that Sussman and the Nominee shall charge their Tenancy Interests and execute such documentation as may be required by a Lender.
- (b) In the event the Joint Venture obtains financing from any Lender for both the acquisition of the Lands and for the construction of the Development and the Project, on terms satisfactory to the Members and the Lender requires from the Members equal contributions of equity to fund the Purchase, then Sections 3.2(a)(iii) and 3.3(b) hereof shall not apply, both Members shall advance their respective shares of equity from their own resources and no interest shall accrue on any amount required to be advanced by the Lender by each of the Members unless same is advanced by mezzanine financing approved by the Members. To the extent the said Lender can designate equity required for the funding of the Acquisition Price ("**Acquisition Equity**") and separate equity for the financing of



the construction of the Development ("**Construction Equity**"), Sussman shall fund the Acquisition Equity via the Second Mortgage or his own resources and both Members shall equally fund the Construction Equity. For the purpose of clarity, it is understood that Sussman is responsible for obtaining and funding the Purchase Price. No credit will be given to Sussman, on account of any required Construction Equity, for any portion of the Purchase Price including the initial \$1,000,000.00 deposit

3.4 Vendor Take Back Mortgage/ Sussman Purchase Funds Mortgage

The VTB shall be discharged from title to the Lands immediately following the purchase of the Property. The Members acknowledge that the VTB is not an obligation of the Joint venture.

3.5 Guarantees/Covenants and Tarion Security

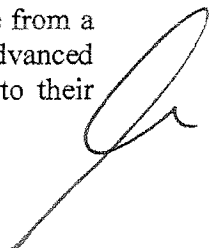
With respect to registering the Project under the Tarion Warranty Corporation ("**Tarion**") and providing all required indemnities and documentation, Ballymore or its Affiliate without Sussman acceptable to Tarion, shall be required to provide same including, inter alia, acting as the registered vendor and builder and using the Nominee as Vendor under the Ballymore group registration under Tarion and provided that Sussman shall execute any documents required by Tarion so long as Sussman is not required to give any guarantees except a charge of its Tenancy interest in the project.

3.6 Indemnity

In the event that at any time hereafter any of the parties hereto, or any of their respective Affiliates, shall become a surety or guarantor, or become indebted or liable for any monies borrowed by the Joint Venture or for any obligations entered into by the Joint Venture including Tarion,, or any of the Members or any of their respective Affiliates expends any money on behalf of the Joint Venture as a result of a legal demand by a third party lender or obligee, in both cases in an amount exceeding such Member's Share of same ("**Excess Liability**"), so long as such debt, liability, obligation or expenditure is incurred pursuant to the provisions of this Agreement, or in the event that any Member or its respective Affiliates shall not receive repayment in full of the monies advanced by such Member or its Affiliates to the Joint Venture pursuant to the provisions of this Agreement, then, in any such event, each of the Members and their respective Affiliates covenants and agrees to protect, indemnify and save the other Members and their Affiliates harmless against and from any such loss, damage, cost and liability whatsoever, arising in respect of the aforementioned debt, liability, obligation, expenditure, guarantee or loan proportionate to their respective Shares for such Excess Liability.

3.7 Additional Capital

If the Joint Venture, after Closing shall require funds in excess of those available from a lender and the same has been provided for in the Project Budget, such funds shall be advanced within the time frames approved by the Members, except for the Nominee, pro rata to their



Shares. In the event funds required are other than stated in the Project Budget then the Management Committee shall consider and approve same.

3.8 Interest

Amounts advanced by the Members in their respective Shares pursuant to Section 3.8 above shall not bear interest.

3.9 Notice for Advance

Whenever funds are required to meet any legal obligations arising out of the business and affairs of the Joint Venture, as contemplated herein, any member of the Management Committee shall be entitled to notify the Members in writing, which notice shall set out the amount of the contribution from each Member and the date upon which such funds are required ("**Cash Call**"). If the purpose of the Cash Call is not anticipated in the Project Budget, the Cash Call shall provide the specific purpose for which it is required. Subject to the provisions of Section 3.8 hereof, each Member shall advance the amount required on or before the date set forth in such Cash Call payable to the Nominee and delivered for deposit to the Members' Account, which shall be no less than ten (10) business days following the date the notice has been given.

3.10 Default under a Cash Call

If a Member does not advance funds as is required pursuant to a Cash Call (the "**Defaulting Member**") on or before the date such funds are required, the other Member shall have recourse against the Defaulting Member in accordance with Article 9 hereof.

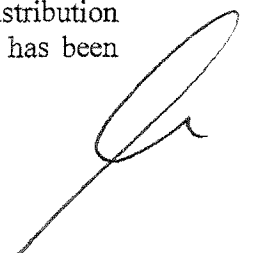
3.11 Additional Equity required for Development

If the Joint Venture, after Closing, shall require funds in excess of those available from any financings arranged by the Joint Venture and the same has been provided for in the Project Budget, such funds shall be advanced within the time frames approved by the Members pro rata to their Shares. In the event funds required are other than stated in the Project Budget then the Management Committee shall consider and approve same.

ARTICLE 4 CASH SURPLUS; DISTRIBUTIONS

4.1 Priority

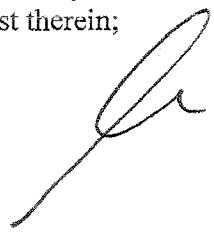
The cash surplus ("**Cash Surplus**") of the Joint Venture arising from the receipt of any Project Revenue (save for collateralization of any Letters of Credit, approved reserves for warranty claims, unpaid Project Costs or other reserves approved by the Joint Venture) shall be distributed to the Members, as and when funds become available for distribution, in the priority and manner as follows (the "**Priority of Distributions**"), without duplication, no distribution being made in any category set forth below unless and until the preceding category has been satisfied in full, unless the Members otherwise agree in writing:



- (a) firstly, to Lenders for the repayment of any financing or any other financing obtained by the Joint Venture for the Development of the Project;
- (b) secondly, to repay the Second Mortgage;
- (c) thirdly, any unpaid Project Costs including the Project Management Fee, as defined at Section 6;
- (d) fourthly, interest on the Sussman Purchase Funds at the rates set out under the Second Mortgage from the date of advance to the date of repayment, to the extent such Sussman Purchase Funds has not been advanced and secured under the Second Mortgage (the "**Unsecured Sussman Purchase Funds**");
- (e) fifthly, the Sussman Deemed Equity not secured by the Second Mortgage;
- (f) sixthly, payment to the applicable Member any Excess Loans pro rata together with accrued interest;
- (g) seventhly, payment of any equity owing to the Members pro rata in accordance with their Shares; and
- (h) eighthly, to the Members pro rata in accordance with their Shares.

4.2 Calculation of Cash Surplus

For the purpose of Section 4.1 hereof, "**Cash Surplus**" of the Joint Venture for each Accounting Period means all amounts actually received by the Joint Venture arising out of the Lands or the sale or operation thereof of every kind or nature whatsoever howsoever earned, derived or received ("**Gross Receipts**") for each Accounting Period from and after the Construction/Commitment Date, including without limitation:

- (a) the leasing or sale of any Lands of the Joint Venture;
 - (b) funds provided by the Members pursuant to the advances made pursuant to **Error! Reference source not found.** hereof;
 - (c) the amount, if any, of any insurance proceeds received by the Joint Venture over the amount thereof necessary to repair the damage compensated for, or payable to any third party mortgagee having a mortgage on the Lands or any part thereof;
 - (d) the net proceeds, if any, received by the Joint Venture from any Lender, from partial or total expropriations (over the amount thereof necessary for restoration and less any amount thereof paid to any third party mortgagee having a mortgage on such Lands or any part thereof), from sales of easements, rights of way or similar interests in respect of the Lands or from dispositions of an interest therein;
- 

less the aggregate for the Accounting Period of:

- (i) all expenses, charges and outlays actually paid by the Joint Venture incurred with respect to the Lands or business of the Joint Venture during such period, including any sums paid on account of principal and/or interest to third party Lenders in respect of any loans owing by the Joint Venture;
- (ii) the payment of the compensation to any financial, development or construction or Lands manager; and
- (iii) such portion of the cash on hand as the Management Committee determines is reasonably necessary for payment of current and anticipated payables and to provide a reserve for contingencies and for anticipated future costs and expenses of the Joint Venture,

provided that for greater certainty, in calculating the Cash Surplus for any period, no deduction shall be made for capital cost allowance in respect of the Lands and no reserve shall be provided for the same.

ARTICLE 5 MANAGEMENT COMMITTEE

5.1 General Provision

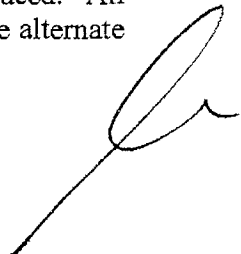
The Members hereby establish a Management Committee and the Major Decisions, as defined in Section 5.6 hereof shall be made by the Management Committee.

5.2 Composition

The Management Committee shall be composed of two (2) members, being 2 representatives of each Member. Each Member shall appoint at least one (1) alternate representative to serve on the Management Committee during the period or periods when the principal representative of such Member is not available. The principal representative and alternate, until notice of change is given as herein required, for each Member shall be as follows:

MEMBER	PRINCIPAL REPRESENTATIVES	ALTERNATE REPRESENTATIVE
Sussman	Sandy Sussman	Lawrence Cogan
Ballymore	Louie Morra	Larry Dekkema

A Member may change its principal representative or its alternate representative by giving notice of such change to the other Members and to its representatives so replaced. All references in this Article to Representatives of a Member shall include and refer to the alternate



Representative of such Member in the event that any of its Representatives is not present or is unable to act.

5.3 Vacating of Office

The office of a representative shall be vacated upon the occurrence of any of the following events:

- (a) if a receiving order is made against him/her or if s/he makes an assignment under the BIA, as amended or re-enacted from time to time;
- (b) if an order is made declaring him/her to be a mentally incompetent person or incapable of managing his/her affairs;
- (c) if he/she shall be removed from office by a written notice from the Member that appointed him/her pursuant to this Article; or
- (d) if by notice in writing to the Members, s/he resigns his/her office and such resignation, if not effective immediately, becomes effective in accordance with its terms.

5.4 Vacancies

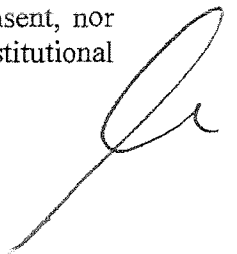
Any vacancy in the Management Committee shall be filled by a natural person appointed by the Member which appointed the former representative whose loss of office created the vacancy, as soon as reasonably possible after the creation of the vacancy. Such Member shall fill the vacancy by written notice stating the name and address of the natural person whom it appoints to the Management Committee to fill the vacancy. Such written notice shall be given to the other Members, to the Nominee and to the person so appointed the representative.

5.5 Authority of Individual Representatives

The Representatives appointed by each Member have the power and authority to represent and bind each Member with respect to any matter within the competence of the Management Committee.

5.6 Authority of Management Committee

- (a) Subject to Section 6.3 hereof, the Management Committee has the power and authority, and the Members hereby direct the Management Committee, to be responsible for the following decisions ("**Major Decisions**"):
 - (i) negotiating and entering into financial arrangements with any Lender, including, *inter alia*, the Acquisition and Construction Loan, provided that each member shall not unreasonably withhold or delay its consent, nor shall it withhold its consent to conventional bona fide institutional

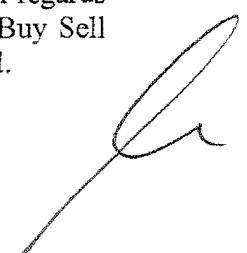


financing that is in accordance with current market interest rates and in accordance with the Project Budget;

- (ii) review and approve all budgets, including the Project Budget and any changes to the Project Budget which would cumulatively increase same by 10%;
- (iii) any applications or material amendments for rezoning, draft plan approvals, configuration of the Development; development approval or official plan currently filed for the Lands with the Town of Innisfil with respect to the First Phase or to be filed with the Town of Innisfil with respect to the Second Phase;
- (iv) any decisions with respect to the Non-Residential Component, future phases and acquisition by purchase, lease or otherwise of any additional land or interest therein;
- (v) the sale or lease or disposition of all or part of the Lands or the Project (including all or part of a Member's Tenancy Interest) other than a transfer for the sale of any unit within the Residential Component of the Project to a third party Purchaser;
- (vi) the exchange of any part of the Lands for lands owned by third parties;
- (vii) determining whether or not distributions should be made to the Members, other than in the manner set forth in this Agreement;
- (viii) the adjustment, settlement, or the compromise of any claim, obligation, debt, demand, suit or judgment against the Joint Venture involving a sum in excess of \$100,000.00 for any such claim, obligation, debt, demand, suit or judgment; and
- (ix) commencing and engaging in any legal action, suit or proceeding involving a sum in excess of \$100,000 for any such legal action, suit or proceeding, and the defending of any such legal action, suit or proceeding.

The decision of the Management Committee with respect to any matter within its competence shall be binding on the Members and the Nominee.

- (b) Save for Major Decisions referred to in Sections 5.6(a)(iv), (v), (viii) and (ix), in the event of a disagreement between the representatives on the Management Committee, Ballymore's decision shall be binding. It is understood and agreed that in the event Sussman is not agreeable with Ballymore's decision in regards to Section 5.6(a) (iv) or (v), Sussman shall be entitled to exercise the Buy Sell provisions contained in Article 10 hereof irrespective of the Freeze Period.

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5.7 Advisors

A representative shall be entitled to invite advisors to attend meetings of the Management Committee, subject to such restrictions on their attendance at and their participation in meetings as the Management Committee may impose.

5.8 Meetings

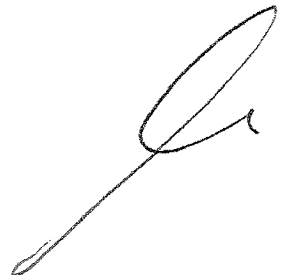
- (a) Meetings of the Management Committee may be held in person or by telephone from time to time at such time and place as the representative of each Member may determine and such notice shall be given in accordance with the provisions of this Agreement not less than twenty-four (24) hours (excluding any day that is not a Business Day) before the time when the meeting is scheduled to be held, provided that notice shall not be necessary if all the representatives are present or if the absent representative(s) have waived notice of or otherwise signified their consent to the holding of such meeting.
- (b) Notwithstanding the foregoing, meetings of the Management Committee will be held at least monthly from and after the commencement of construction of the Project. Meetings of the Management Committee shall be held at Ballymore's offices located at 12840 Yonge Street, Richmond Hill, Ontario, or such place as may be agreed upon by the Management Committee from time to time.

5.9 Voting Rights

The representative of each Member on the Management Committee shall have one (1) vote each.

5.10 Quorum

A quorum for a meeting of the Management Committee shall be two (2) representatives present in person or by phone (one representing each Member), provided that if there shall be no quorum present at any properly convened meeting of the Management Committee, such meeting shall be automatically adjourned and reconvened on three (3) Business Days' notice to all representatives and notwithstanding anything else contained herein, the representatives present at such reconvened meeting shall constitute a quorum for the transaction of business by the Management Committee. For the purpose of determining quorum, a member of the Management Committee attending or participating in any meeting, by means of conference telephone or other communications equipment, or by means of a proxy, as permitted herein, shall be deemed and counted as a representative of such Member attending or having attended such meeting in person. Where there is any vacancy or vacancies in the Management Committee, the remaining members may exercise all powers of the Management Committee so long as a quorum remains in office.

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5.11 Proxies

Each of the members of the Management Committee is authorized to appoint by means of a proxy a proxy holder, who is not required to be a member of the Management Committee, to attend and act at the meetings of the Management Committee in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy. A proxy holder appointed pursuant to this subsection shall have the same rights as the member who appointed him to speak at and participate in a meeting of the members of the Management Committee in respect of any matter and to vote at the meeting.

5.12 Chairman

A chairman of the Management Committee shall be the Ballymore representative. He/she shall be chairman of any of the meetings of the Management Committee at which s/he is present, failing which the members of the Management Committee shall choose one of their other members to be chairman. Subject to the provisions of Section 5.6 hereof, the chairman of a meeting shall not be entitled to cast a second or tie breaking vote in the event that an equal number of votes is cast at any meeting of the Management Committee.

5.13 Decisions by Vote

Save for Major Decisions, all other decisions to be made with respect to the Lands, Project and Development shall be made by the Project Manager.

5.14 Decisions in Good Faith

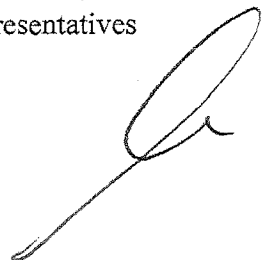
The Management Committee shall implement the provisions of this Agreement and undertakes to perform the duties assigned to it under this Agreement. Any decision required to be made by the Management Committee shall be made in good faith and strictly upon the merits of the matter in respect of which its decision is required and shall not be unreasonably delayed.

5.15 Records and Systems

All financial planning and recording for the Joint Venture, the Lands, the Project and the Development, including accounting, bookkeeping and banking systems and procedures, shall be established by the Project Manager. The Project Manager shall be responsible for establishing and maintaining all financial planning and recording for the Joint Venture, the Property and the Development, including accounting, bookkeeping, audit and banking systems and procedures.

5.16 Agreement for Provision of Materials or Services

No Member or an Affiliate of a Member shall enter into an agreement with the Joint Venture for the provision of materials or services for the Lands without prior disclosure to the Management Committee of the relationships and upon the approval of the Representatives excluding that of the Member with the conflict.

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5.17 Where Defaulting Member

In addition to, and without in any way limiting, the remedies contained in this Agreement or otherwise available to a Member that is a Non-Defaulting Member with respect to the default of a Member that is a Defaulting Member hereunder, in the event of a continuing Event of Default on the part of the Defaulting Member, where the alleged Event of Default [is not the subject of an arbitration pursuant to Section 15 hereof], the representative of a Defaulting Member shall be entitled to attend but not to vote (although he shall be entitled to continue receiving notices of meetings) at any meeting of the Management Committee. In such case, so long as any such default continues, a quorum for a meeting shall be constituted by the representative of the Non-Defaulting Member, any decision of the Management Committee shall be made by such representatives of the Non-Defaulting Member and any decision so made shall be final and binding on all Members and on the Nominee.

5.18 Indemnity

Each Member hereby irrevocably and unconditionally undertakes and agrees to indemnify and save harmless each representative on the Management Committee from and against any and all liability loss, harm damage, cost or expense, including legal fees, which such representative may suffer, incur or sustain as a result of any suit, claim or demand brought or commenced against such representative and arising out of any action properly taken by the Management Committee. The liability of each Member under or by virtue of this Section is not limited to its Share.

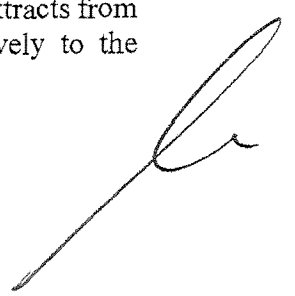
5.19 Remuneration of Management Committee

Unless approved by all Members, no fees, salaries, commissions or other compensation shall be paid by the Members to the representatives of the Management Committee in respect of their work related thereto. Such representatives shall, however, be entitled to reimbursement of all actual, reasonable and appropriate expenditures made by them on behalf of the Members and the Joint Venture and in accordance with the terms of this Agreement.

5.20 Information on Lands

Solely with respect to books and records maintained from the date of this Agreement, each Member shall:

- (a) furnish to the other Member such information respecting the Lands and the Development as may be reasonably required by such other Member at the expense of the requesting Member; and
- (b) have the right at all reasonable times and on reasonable notice at its expense and during usual business hours to audit, examine and make copies of or extracts from the books and records of the Joint Venture which pertain exclusively to the Lands.

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Such right may be exercised through any agent or employee of such Member designated by it or by an outside independent chartered accountant designated by such Member. Each Member shall bear all expenses incurred by it in any examination made for its account.

ARTICLE 6 PROJECT MANAGER

6.1 Appointment of Project Manager

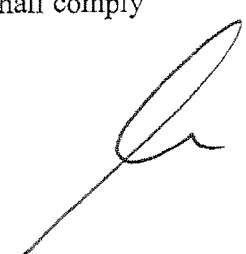
Ballymore Terra Inc. or an affiliated corporation shall be appointed project manager (the "Project Manager") to manage and supervise all aspects of the development of the Project.

6.2 Project Management Agreement

The Joint Venture will enter into a Project Management Agreement substantially on the terms attached as Schedule "C" to this Agreement. The appointment of the Project Manager will be effective until the expiry or termination of the Project Management Agreement. Any decision by the Joint Venture relating to the purported default of the Project Manager under the Project Management Agreement shall be made by the Sussman representative on the Management Committee, acting reasonably, and subject to the default provisions at Article 9, hereof.

6.3 Duties of Project Manager

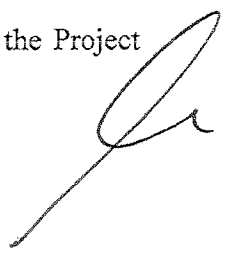
- (a) The Project Manager shall have full authority to manage the Development of the Project and make all decisions in respect thereto including, *inter alia*, with respect to the following:
 - (i) finalization of zoning approvals and the status of draft plan of subdivision approvals for the Residential Component of the First Phase and Second Phase;
 - (ii) approve all construction contracts provided that same are to arm's length contracts and are at a competitive market rate;
 - (iii) managing the marketing and sales program including hiring of marketing agencies, sales agents and others (but excluding the actual sale personnel which will be part of the third party real estate brokers for which separate commissions will be paid);
 - (iv) providing for builder and vendor registration with Tarion and handling all communications with Tarion including conciliations and other Tarion related matters, it being understood and agreed that Sussman shall comply with the requirements of Tarion, if any;



- (v) arranging for deposit bonding and insurance for Taron deposits and excess deposits;
- (vi) providing monthly reports as to the status of the Development, construction, sales and financial matters (e.g. revenues, expenses, loan advances) in formats approved by the Management Committee and as may be reasonably required by Sussman;
- (vii) customer sales and service from and after marketing of the Project, including all communications with purchasers in the Residential Component both before and after closing of their units (such as addressing PDI, deficiencies and Taron conciliations and claims); and
- (viii) all such other duties relating to and ancillary to the Development of the Project.

6.4 Compensation of Project Manager

- (a) In consideration for the provision of the services referred to in Section 6.3 and as set forth in the Project Management Agreement, Ballymore shall be entitled to receive a fee (the "**Project Management Fee**") of:
 - (i) Eight Thousand (\$8000.00) Dollars plus HST per residential unit constructed and sold in the First Phase of the Project, payable as follows:
 - (A) The sum of \$4,000 plus HST is payable upon the execution of an Agreement of Purchase and Sale for any residential unit; and
 - (B) The balance of \$4,000.00 plus HST upon closing of each residential unit.
 - (ii) and Twelve Thousand (\$12,000.00) Dollars plus HST per residential unit constructed and sold in the Second Phase of the Project, payable as follows:
 - (A) The sum of \$4,000.00 plus HST for all of the approved residential units upon commencement of the installation Services;
 - (B) The sum of \$4,000.00 plus HST is payable upon the execution of an Agreement of Purchase and Sale for any residential unit; and
 - (C) The balance of \$4,000.00 plus HST upon closing of each residential unit.
- (b) The Joint Venture shall negotiate the project management fees with the Project Manager for the development of the Non- Residential Component



6.5 Accounting, Budgets and Development Plan

Prior to commencement of the construction of any phase of the Project, the Project Manager shall prepare or cause to be prepared and submit to the Management Committee for consideration by the Members a proposed budget setting forth the estimated expenses, including capital expenditures and reasonable details of the purposes for which expenditures are to be made, an estimated reserve and such other information as may be reasonably requested by any of the Members. The proposed budget shall be approved by the Members as required by Section 5.6(a)(ii) (and following such approval is herein referred to as a "**Project Budget**"). Amendments of the Project Budget, if approved by the Management Committee, shall be made from time to time as required.

ARTICLE 7 OTHER FINANCIAL AND ACCOUNTING MATTERS

7.1 Fiscal Year

Accounts for the Joint Venture shall be prepared and settled as of the 30th day of November in each year or as of any other date the Members may agree upon.

7.2 Books of Account

Proper and complete books, records, reports and accounts of the Joint Venture shall be kept at the principal office of the Joint Venture and shall be open and available for inspection and copying by any one of the parties hereto or its authorized representative at any reasonable time during normal business hours. The said books and records shall fully and accurately reflect all transactions of the Joint Venture and shall be maintained in conformity with GAAP.

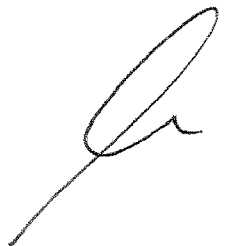
7.3 Accountants

The accountants (the "**Accountants**") of the Joint Venture shall be determined by the Management Committee. Ballymore shall have the right to select lawyers to represent the Joint Venture on house sale closings and all related matters with respect to the residential subdivisions. Robins Appleby LLP shall provide legal services relating to the Closing, all Non-Residential Components, and First Mortgage and Construction Financing.

7.4 Financial Statements

Within one hundred and eighty days (180) days after the end of each Accounting Period of the Joint Venture, the Project Manager shall cause the Accountants of the Joint Venture to furnish to each Member an annual report consisting of:

- (a) a Balance Sheet;
- (b) Statement of Earnings;

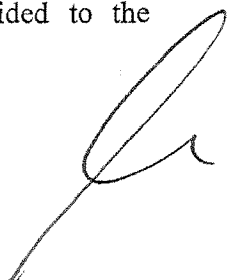


- (c) Statement of Members Capital;
- (d) Statement of Changes in Financial Position;
- (e) applicable notes and tax information;
- (f) a profit and loss statement for such year; and
- (g) any additional information that the Members may require for the preparation of their individual federal and provincial income tax returns.

The said financial statements shall not be audited and shall be accompanied by the report of the Accountants thereon. The Accountants shall also, at such other time as may reasonably be required by a Member, prepare audited financial statements of the books and accounts of the Joint Venture, and for such purpose the Accountants shall have access to all books of account, records, vouchers, cheques, papers and documents of or which relate to the Joint Venture. The Accountants shall furnish copies of all audited financial statements to each Member forthwith after preparation. The cost of audit shall be for the Member who requests same unless there is a discrepancy of greater than 5%, in which case the cost of audit is a Project Cost.

7.5 Banking

- (a) A separate bank account (the "**Member's Account**") shall be opened and maintained for the Joint Venture by the Nominee or in such other name or names as may from time to time be agreed upon by the Management Committee. The bank of the Joint Venture shall be such bank or banks as the Management Committee may from time to time determine.
- (b) All gross receipts and other monies from time to time received on account of the Joint Venture shall be paid immediately into the Member's Account in the same drafts, cheques, bills and cash in which they are received and all disbursements on account of the Joint Venture shall be made by cheque on such bank.
- (c) All cheques, negotiable instruments and withdrawals from the Member's Account in excess of Fifty-Thousand (\$50,000.00) shall require the signature of the representatives for each of the Members. All cheques less than \$50,000 shall only require the signature of the Ballymore Member. All other documents required to be executed in respect of matters including, but not limited to, the repayment to the Members of their respective advances to the Joint Venture under this Agreement, distribution of Cash Surplus to the Members, financing commitment, mortgages and sales of any part of the Property, shall be executed by a representative of Ballymore. Banking statements will be provided to the Members monthly.

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7.6 Timely Decision and Execution

Except as otherwise agreed herein, each Member agrees to make all decisions and execute and deliver all documents and cheques under this Agreement as soon as possible but in any event within two (2) Business days after the request.

7.7 Payment for Services

Except as may be hereafter approved by the Members, no payment will be made to any Member for its services or the services of its shareholders, directors or employees.

7.7 Status Report

Each Member will, at the request of any of the Members, execute and deliver at no cost to the requesting Member, or such party as the requesting Member may in writing designate, a certificate which certifies to the best of the knowledge of such Member after due investigation as to the then status of this Agreement, including as to whether it is in full force and effect, is modified or unmodified, confirming the state of accounts between the Members, the existence or non-existence of defaults, and any other matter pertaining to this Agreement as to which the other Members shall, acting reasonably, request a certificate.

ARTICLE 8 TRANSFER OF INTERESTS IN THE JOINT VENTURE

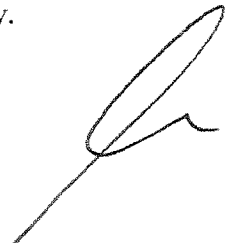
8.1 Prohibition against Disposition

- (a) In this Agreement, "**transfer**" means to sell, assign, surrender, gift, transfer, pledge, mortgage, charge, create a security interest in, hypothecate or otherwise encumber or deal any portion of its Tenancy Interest, whether legal or beneficial. Any change in legal or beneficial ownership of a Member shall be deemed to be a transfer by such Member of its Tenancy Interest and shall be prohibited by the terms of this Agreement, save to Affiliates (as defined in the *Ontario Business Corporations Act*) or family trusts, provided the directing minds for each of the Members is as follows:

Sussman:	Sandy Sussman
Ballymore:	Louie Morra

Notwithstanding the above and for clarity, it is understood and agreed that the Tenancy Interest of the Ballymore Member is held by various parties and may be transferred by any such party so long as Louie Morra retains an interest and has the authority to make all decisions.

The Project still must continue at all times with Ballymore banner only.



- (b) Except as otherwise expressly provided in this Agreement or unless the unanimous written consent of all of the Members is first obtained, and the transferee first enters into an assumption agreement in favour of the Joint Venture and the other Member in the form reasonably satisfactory to the solicitors of the Joint Venture and the other Member pursuant to which the transferee shall agree to be bound by all of the terms, covenants, conditions and agreements contained in this Agreement on the part of the transferor as fully and effectively as if the transferee had originally executed this Agreement as the transferor, no Member shall transfer (by operation of law, contract or otherwise) any portion of its Tenancy Interest and any attempt to do otherwise shall be void.
- (c) In granting or withholding its consent under this Section, each Member may act in its sole arbitrary and unfettered discretion.

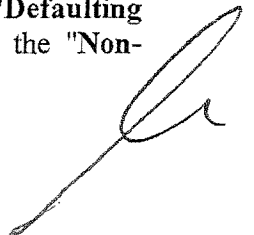
ARTICLE 9 EVENTS OF DEFAULT AND INSOLVENCY

9.1 Act of Default

A Member shall be deemed to have committed an act of default in the event that such Member:

- (a) fails to advance any amount required pursuant to Section 3.2 or 3.8 hereof;
- (b) is in default under any other provision or provisions of this Agreement, and such default continues for a period of thirty (30) days after written notice by the other Member;
- (c) makes any assignment for the benefit of creditors or is adjudged bankrupt or insolvent by any court of competent jurisdiction under any legislation then in force, or takes the benefit of any act that may be in force for bankrupt or insolvent debtors, or shall go into liquidation, either voluntary or under an order of a court of competent jurisdiction, or otherwise acknowledges its insolvency;
- (d) is the subject of any order made for the winding up of the Member; or
- (e) is the subject of any distress or execution or any similar process that is levied or enforced upon or against such Member's interest in the Joint Venture and the same remains unsatisfied for a period of thirty (30) days, unless the Member is in good faith disputing such process and has given security, which, in the absolute discretion of the other Member shall be deemed sufficient to pay in full the amount claimed in the event that it shall be held to be a valid claim.

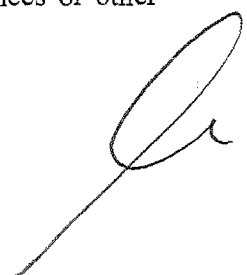
The Member committing such act of default shall be referred to herein as the "**Defaulting Member**", and the other or others of them shall be referred to herein as the "**Non-Defaulting Member**".



9.2 Remedies

In the event of default under this Agreement, and provided such default continues for a period of five (5) days after written notice thereof to the Defaulting Member by the Non-Defaulting Member, the Non-Defaulting Member shall have the following rights, in addition to any other right contained herein:

- (a) Non-Defaulting Member may advance to the Joint Venture the Defaulting Member's portion of an advance as is required to be made and the amount so advanced by the Non-Defaulting Member shall be owing to the Non-Defaulting Member as a loan (the "**Excess Loan**") and be repaid forthwith by the Defaulting Member to the Non-Defaulting Member and, until repaid, shall bear interest at the Interest Rate, on the amounts from time to time owing to the Non-Defaulting Member by the Defaulting Member as aforesaid, and, until so repaid, such amounts together with interest thereon as aforesaid shall, to the extent thereof, be and constitute a first lien and charge on and against the shares of the Defaulting Member in the Joint Venture, and on and against all other interests of the Defaulting Member in the Project and on all moneys derivable thereunder or therefrom, all of which interests of the Defaulting Member are hereinafter collectively referred to as the "**Defaulting Member's Interests**" and same shall be enforceable both as a security interest under the *Personal Property Security Act* (Ontario) and as a mortgage under the *Mortgages Act* (Ontario) as applicable.
- (b) The Non-Defaulting Member is hereby irrevocably authorized, instructed and directed for on behalf of and as attorney for the Defaulting Member to execute any and all documents required to be executed pursuant to the provisions hereof and to do all such other things as may be necessary or advisable in connection therewith, it being expressly understood and intended by each of the Members that the grant of the foregoing Power of Attorney is coupled with an interest to do so.
- (c) It is understood and agreed that, during the period of such default, the representatives of the Non-Defaulting Member to the board of directors and Management Committee shall be vested with the irrevocable right to exercise and cast the vote of the representative of the Defaulting Member on the board of directors and Management Committee.
- (d) It is further understood and agreed that, during the period of such default, the Non-Defaulting Member shall be vested with and authorized to make all decisions, do all acts, and sign all documents required, which shall be binding on the Joint Venture and on all the parties hereto without requiring the approval, consent or affirmative vote of the Defaulting Member or its nominees or other representatives.

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- (e) In the event of an unremedied act of default and an Excess Loan being made by the Non-Defaulting Member, no payment shall be made by the Joint Venture to the Defaulting Member of any moneys received by the Joint Venture that would otherwise be available for distribution to the Members until the Joint Venture or the Defaulting Member has made repayment to the Non-Defaulting Member of all Excess Loan advanced by it, plus interest.
- (f) If Ballymore is a Defaulting Member, Sussman shall have the right to terminate the Project Manager and in such event, shall be obliged to hire a new competent manager to complete the Project on competitive terms.

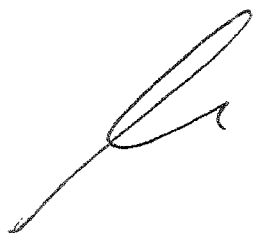
9.3 Right to Sign for Defaulting Member / Nominee

If the Representative of the Defaulting Member is also the authorized signing officer for the Nominee, the Non-Defaulting Member shall request the Management Committee to appoint an alternative signatory who is not Affiliated with the Defaulting Member to execute any and all cheques, negotiable instruments and other documents as may be required.

9.4 Advance of Moneys

Subject to the provisions of Section 9.2 hereof, if a Non-Defaulting Member expends money to remedy the Event of Default of a Defaulting Member (including providing all or a portion of the Defaulting Member's share of funds required for the Operations):

- (a) the amount paid by the Non-Defaulting Member shall bear interest from the date of payment to the date of actual repayment at the Interest Rate, such interest to be calculated and payable monthly with interest on overdue interest at the Interest Rate; for greater certainty, any judgment obtained by the Non-Defaulting Member in respect of any such amount shall similarly bear interest and interest on overdue interest at the Interest Rate;
- (b) the amount paid by the Non-Defaulting Member, and any interest thereon shall be a debt owing by the Defaulting Member to the Non-Defaulting Member and shall be deemed to be a demand loan made by the Non-Defaulting Member to the Defaulting Member which the Non-Defaulting Member has been irrevocably directed to advance for payment of the Joint Venture Cash Calls for and on behalf of the Defaulting Member;
- (c) the Non-Defaulting Member shall have the right to receive the Defaulting Member's share of any Cash Surplus in accordance with Section 4.1 hereof or any fees or other sums payable to the Defaulting Member by or in respect of the Joint Venture including any fees or other sums due in respect of services rendered in connection with the Lands, until the amount owing by the Defaulting Member has been paid in full; and



- (d) the debt for any monies including interest owed by the Defaulting Member to a Non-Defaulting Member shall be secured by a charge over the Defaulting Member's Tenancy Interest which may be registered and enforced pursuant to the *Personal Lands Security Act* (Ontario) or the *Mortgages Act* in the discretion of the Non-Defaulting Member.

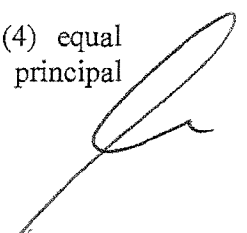
9.5 Sale of Defaulting Member's Interest

If an Event of Default or an Event of Insolvency occurs with respect to a Defaulting Member and continues to exist for at least one hundred and eighty (180) days:

- (a) the Non-Defaulting Member (the Non-Defaulting Member delivering the Purchase Notice (as hereinafter defined) being hereinafter collectively referred to as the "**Initiating Member**") may deliver a notice in writing (the "**Purchase Notice**") to the Defaulting Member (hereinafter referred to as the "**Vendor**") requiring the Vendor to sell, assign and transfer to the Non-Defaulting Member (hereinafter referred to as the "**Purchaser**") the Vendor's Tenancy Interest free and clear of any Encumbrances whatsoever, other than Permitted Encumbrances (the "**Applicable Interest**") and, upon receipt of such Purchase Notice, the Vendor shall sell, assign and transfer to the Purchaser and the Purchaser shall purchase from the Vendor its Applicable Interest upon the terms and subject to the conditions hereinafter provided.
- (b) The Purchase Price for the Applicable Interest shall be equal to seventy-five per cent (75%) of the Fair Market Value of the Applicable Interest or in the case of an Event of Insolvency, equal to one hundred per cent (100%) of the Fair Market Value of the Applicable Interest on the date that the Purchase Notice is delivered to the Defaulting Member (the "**Applicable Date**"), determined in the manner set out in Section 9.6 hereof and payable as hereinafter set forth.

The aggregate Purchase Price for the Applicable Interest subject to the adjustments as set out herein, shall be paid as follows:

- (a) as to an amount equal to the Vendor's share of the Joint Venture's liabilities as at the Date of Closing by the assumption by the Purchaser(s) of such liabilities *pro rata*, having regard to their respective Share or in such other proportions as they may agree upon, subject to the consent of the Permitted Encumbrances, if required;
- (b) the balance, if any, shall be payable as follows:
 - (i) as to fifty per cent (50%) thereof in cash or by certified cheque at the Time of Closing; and
 - (ii) the balance of the Purchase Price shall be paid in four (4) equal consecutive annual instalments together with interest on the principal

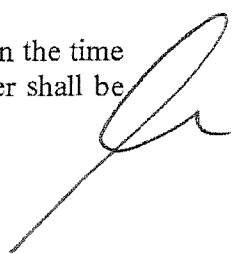


balance from time to time outstanding, calculated annually, not in advance, at the rate hereinafter provided, both before and after default, as well after as before maturity, with interest on overdue interest at the aforesaid rate, such interest to be payable annually at the same time as payments of principal and secured by a promissory note by the Purchaser(s) on a several basis, such note to be open for prepayment without notice or bonus, subsequent in priority to and subordinated to all financing of the Joint Venture in connection with the Development. The first of such instalments of principal and interest shall become due and payable one (1) year after the date of closing with interest at the aforesaid rate computed from the date of closing. In calculating the amount of interest payable on any particular payment date, the rate of interest to be applied shall be the Prime Rate in effect on such date less one percentage point and the rate so determined shall be deemed to have been the rate in effect throughout the period since the last such payment of interest.

9.6 Determination of Fair Market Value

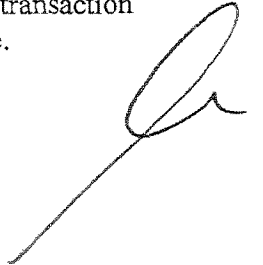
The Fair Market Value of the Defaulting Member's Applicable Interest shall, unless determined in writing by the Vendor and Purchaser(s) within fifteen (15) days of the Applicable Date, be determined by appraisal as follows:

- (a) the Purchaser(s) and the Vendor shall appoint a single Accredited Appraiser satisfactory to both (or all, as the case may be) such parties for the purpose of determining the Fair Market Value of the Applicable Interest;
- (b) if the Vendor and the Purchaser(s) fail to agree upon an Accredited Appraiser within such fifteen (15) day period, then within ten (10) days thereafter, the Vendor shall appoint one Accredited Appraiser and the Purchaser(s), jointly, shall appoint one Accredited Appraiser. The two Accredited Appraisers so appointed shall, within ten (10) days of the date on which the last of such appraisers is appointed, appoint a third Accredited Appraiser. The three appraisers so appointed shall each determine the Fair Market Value of the Applicable Interest;
- (c) if either the Vendor or the Purchaser(s) shall fail within the ten (10) day period limited hereby to appoint an Accredited Appraiser then the appraiser so appointed by the other of them shall be conclusively deemed to have been appointed by the Vendor and Purchaser(s) jointly pursuant to Subsection 9.6(a) hereof. If both the Vendor and the Purchaser(s) fail to appoint their respective Accredited Appraiser within such ten (10) day period, then a single Accredited Appraiser shall be appointed by a Judge of the Superior Court of Justice upon the application of either the Vendor or the Purchaser(s) for the purpose of determining the Fair Market Value of the Applicable Interest;
- (d) if the two appraisers fail to appoint a third Accredited Appraiser within the time period prescribed in Subsection 9.6(b) hereof, an Accredited Appraiser shall be



appointed by a Judge of the Superior Court of Justice upon the application of either of the Purchaser(s) or the Vendor;

- (e) within thirty (30) days after the date that the single or third appraiser is appointed, each appraiser shall prepare and submit to the Vendor and the Purchaser(s) a written report setting forth the Fair Market Value of the Applicable Interest on the Applicable Date in his opinion;
- (f) in conducting their appraisals, the appraisers shall take into account:
 - (i) reasonable actual market data from the sales within the preceding year, if any, of lands closely comparable to the Lands in size, location, type and quality, purchased on comparable terms, all as reported by reputable market data sources such as "Real Net" or any successor service;
 - (ii) all agreements and rights with respect to such Tenancy Interest to which the applicable Member is then a party or entitled, including agreements of purchase and sale for condominium units;
 - (iii) the cost of Development to date; and
 - (iv) the value of the business of the Joint Venture, as a going concern,but no allowance shall be made for the goodwill of the Joint Venture;
- (g) in preparing their reports, the appraiser(s) shall have access to all books of account and records and all vouchers, cheques, papers and documents of the Joint Venture. The Members shall co-operate with the appraiser(s) for such purpose and shall provide all information and documents requested by him or them;
- (h) for the purposes hereof, the Fair Market Value of the Applicable Interest shall be the amount set forth in the single appraisal; or if there are three appraisals, the average of the two appraisals which have the closest Fair Market Values set forth in the three appraisals;
- (i) the determination of the Fair Market Value of the Applicable Interest pursuant to this Section shall, in the absence of fraud or clerical error, be final and binding on the Vendor and the Purchaser(s) and on all other persons affected thereby and there shall be no appeal therefrom; and
- (j) the Vendor shall bear all the fees and expenses reasonably attributed to the sale including the Joint Venture's legal and accounting fees and disbursements, the Purchaser's legal costs, the Purchaser's land transfer tax, the costs of all appraisals, the cost of obtaining approvals of Lenders and all other transaction costs. The said costs shall be set off against the Purchase Price payable.

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9.7 Closing

The date of closing of the transaction of purchase and sale herein contemplated (hereinafter in this Article called the "**Date of Closing**") shall be the date being ninety (90) days after the Purchase Price for the Tenancy Interest is finally determined as provided in Section 9.6 hereof or such earlier date stipulated by the Purchaser(s) on at least five (5) Business Days' notice or such earlier or later date upon which the Vendor and Purchaser(s) may mutually agree.

The closing of the transaction of purchase and sale herein contemplated shall take place at the offices of the solicitor for the Purchaser(s) (the "**Place of Closing**") at the Date of Closing on the Date of Closing or at such other time and place as the parties may mutually agree upon.

9.8 Documents

The Vendor and the Purchaser(s) shall each execute and deliver and cause to be executed and delivered all such documents and do and perform and cause to be done and performed all such acts and things as may be necessary or desirable in order to give effect to the provisions of this Article.

9.9 Separate Rights

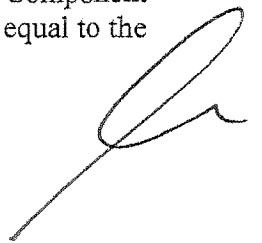
The rights of any Member under this Article 9 and at law or in equity are separate and are not dependent on one another and each such right is complete in itself and not by reference to any other such right. Any of such rights or any combination of such rights may be exercised by a Member from time to time and no such exercise shall exhaust such rights or preclude such Member from exercising any other rights or any combination of such rights from time to time thereafter or simultaneously.

ARTICLE 10 BUY/SELL ARRANGEMENTS

10.1 Buy/Sell Notice

At any time following the Freeze Period, any one or more Members who is not a Defaulting Member (in this Article called the "**Offeror**") is entitled to give notice in writing (in this Article called the "**Buy/Sell Notice**") to the other Member (in this Article sometimes referred to as the "**Offeree**"), which Buy/Sell Notice shall be signed by the Offeror and shall contain the following:

- (a) the price for a one per cent (1%) interest in the Project;
- (b) an unconditional offer to purchase (hereinafter in this Article referred to as the "**Offer to Purchase**") all, but not less than all of the Tenancy Interest of the Offeree in the Project and the entirety of the Non-Residential Component (collectively, the "**Remaining Component**") at a total Purchase Price equal to the



product obtained by multiplying the Share of the Offeree, by the price referred to in Subsection 10.1(a) hereof; and

- (c) an unconditional offer to sell (hereinafter in this Article referred to as the "**Offer to Sell**") the Offeror's entire Tenancy Interest in the Remaining Component to the Offeree, at a Purchase Price equal to the Offeror's Share multiplied by the price referred to in Subsection 10.1(a) hereof.

10.2 Options of Offeree

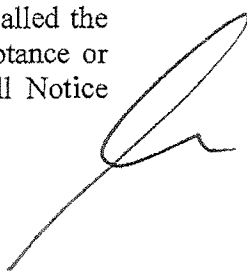
- (a) The Offeree shall be entitled to accept either of the offers contained in the Buy/Sell Notice within forty-five (45) days of the receipt by the Offeree of the Buy/Sell Notice.
- (b) If Offeree accepts the Offer to Sell, the Offeree accepting such Offer to Sell (hereinafter in this Article sometimes referred to as the "**Purchaser**") shall purchase from the Offeror (hereinafter in this Article sometimes referred to as the "**Vendor**") and the Vendor shall sell to the Purchaser all of its Tenancy Interest in the Remaining Component owned by the Vendor at the price set forth in the Buy/Sell Notice.
- (c) If the Offeree does not accept the Offer to Sell, then the Offeree (hereinafter in this Article sometimes referred to as the "**Vendor**") shall sell to the Offeror (hereinafter in this Article sometimes referred to as the "**Purchaser**") and the Purchaser shall purchase from the Vendor the Tenancy Interest in the Remaining Component owned by the Vendor at the price set forth in the Buy/Sell Notice.
- (d) If an Offeree does not accept either of the said Offers within the said forty-five (45) day period, such Offeree shall be deemed, for purposes hereof, to have accepted the Offer to Purchase on the last day of the said forty-five (45) day period.

10.3 Purchase Price

Notwithstanding anything in the Buy/Sell Notice to the contrary, the aggregate Purchase Price for the Tenancy Interest in the Remaining Component of any Vendor shall be paid by the assumption *pro tanto* of such Vendor's Share of the Joint Venture's liabilities at the Date of Closing and the balance shall be paid in full at such time by certified cheque payable at par at the Town of Innisfil, Ontario, subject to the adjustments set forth in Article 11.

10.4 Closing Date

The closing of the transaction of purchase and sale herein contemplated shall take place at the Place of Closing, at the Time of Closing, on the date (hereinafter in this Article called the "**Date of Closing**") which is one hundred and twenty (120) days following the acceptance or deemed acceptance by the Offeree(s) of one of the offers contained in the Buy/Sell Notice



provided that the Purchaser shall have the right to extend the Date of Closing in order to obtain financing if reasonable efforts have been made to obtain same for an additional sixty (60) days, provided, however, that a Purchaser shall have the right to advance the Date of Closing upon at least fifteen (15) Business Days' notice from the Purchaser or the Purchaser's solicitors to the Vendor(s) or the Vendors' respective solicitors.

10.5 Default by Purchaser

In the event the Purchaser defaults on or before the Date of Closing, the Vendor shall have the option to purchase the Purchaser's interest in the Remaining Component for a purchase price of Seventy-Five (75) percent of the price that the Purchaser would have paid to the Vendor if the Purchaser had not defaulted. The Vendor shall have thirty (30) days from the date of default by the Purchaser to notify the Purchaser in writing that it wishes to purchase the Remaining Component and shall proceed on the same terms and conditions as set forth in this Article 10.

ARTICLE 11 GENERAL SALE PROVISIONS

11.1 Application

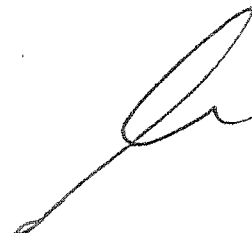
Except as may otherwise be provided in this agreement, the provisions of this Article shall apply to any sale of a Tenancy Interest pursuant to Article 9 or Article 10 hereof in each case mutatis mutandis provided that in the event of any conflict between the provisions of this Article 10 and the provisions of any offer referred to in Article 9 hereof, the provisions of such offer shall prevail.

11.2 Priorities

The following respective provisions contained in this Agreement shall rank in the following order of priority:

- (a) First Priority: the Sale of a Defaulting Member's Interest in the Joint Venture;
- (b) Second Priority: the Buy/Sell Provisions;

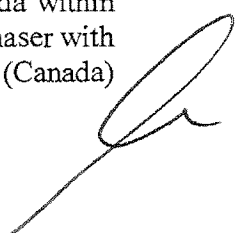
In the event that a Member exercises one of the rights above-listed (the "**Effective Right**"), the other Member may not exercise any right of lesser priority until the completion of the exercise of that right and any purported exercise of any right of lesser priority shall be deemed null and void. However, the exercise of any right having a higher priority than the Effective Right prior to the completion of the exercise of the Effective Right, shall take priority and shall nullify the exercise of the Effective Right.



11.3 Implied Condition

It shall be an implied condition precedent of any closing that any required consent of a Permitted Encumbrancer to the transfer shall be obtained prior to Closing. The Purchaser shall be liable to pursue the consent at its expense with cooperation of the Vendor.

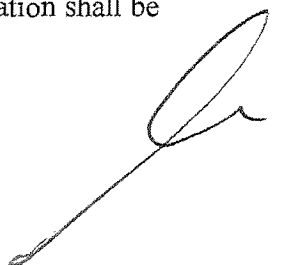
11.4 Closing Requirements

- (a) At the Time of Closing, the Vendor shall:
- (i) deliver to the Joint Venture and the Nominee signed resignations by all of its nominees, as employees, directors and officers thereof, as the case may be;
 - (ii) assign and transfer to the Purchaser the Tenancy Interest being sold to it or them, as the case may be, and deliver all necessary instruments and conveyances for the purpose of effecting the assignment of such Tenancy Interest to the Purchaser including, inter alia, a transfer of the shares of the Vendor in the Nominee;
 - (iii) do all other things required in order to deliver good and marketable title to the Tenancy Interest to the Purchaser, free and clear of any Encumbrances whatsoever, save and except for Permitted Encumbrances. Provided that, if at the Date of Closing the Tenancy Interest is not free and clear of all other Encumbrances whatsoever, the Purchaser may, without prejudice to any other rights which it may have, purchase the Tenancy Interest subject to such Encumbrances. In that event, the Purchaser shall, at the Time of Closing, assume all obligations and liabilities with respect to such Encumbrances and the Purchase Price payable by the Purchaser for the Tenancy Interest shall be satisfied, in whole or in part, as the case may be, by such assumption. The amount so assumed shall reduce that portion of the Purchase Price payable at the Date of Closing and thereafter shall reduce payments on account of the said Purchase Price in the order of maturity;
 - (iv) deliver to the Purchaser a release by the Vendor of all its claims against the Purchaser, its principals and the Nominee and each of their respective directors and officers with respect to any matter or thing relating to the Joint Venture up to and including the Date of Closing but excluding any claims for payment of the balance, if any, of the Purchase Price for its Tenancy Interest and the indemnity referred to in Section 11.6 hereof; and
 - (v) either provide the Purchaser with evidence reasonably satisfactory to the Purchaser that the Vendor is not then a "non-resident" of Canada within the meaning of the *Income Tax Act* (Canada) or provide the Purchaser with a certificate pursuant to Subsection 116(2) of the *Income Tax Act* (Canada)
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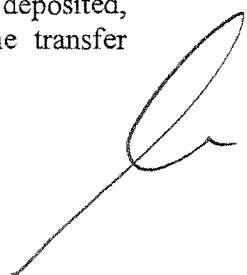
with a certificate limit in an amount not less than the Purchase Price for the Tenancy Interest; provided that if such evidence or certificate is not forthcoming, the Purchaser shall be entitled to make the payment of tax required under Section 116 of the *Income Tax Act* (Canada) and to deduct such payment from the Purchase Price for the Tenancy Interest, the amount deducted to reduce that part of the Purchase Price payable at the Date of Closing and thereafter to reduce payments on account of the said Purchase Price in the order of maturity.

- (b) At the Time of Closing, the Purchaser shall deliver its certificate in form prescribed by the *Excise Tax Act* (Canada), or, if no such form is prescribed, then in reasonable form, certifying that, where permitted by such legislation with respect to the Tenancy Interest, if applicable, the Purchaser shall be liable for, shall self-assess and shall remit to the appropriate Government Authority all HST payable in respect to the transaction contemplated hereunder. The Purchaser's certificate shall also include certification of the Purchaser's HST registration number. If the Purchaser shall fail to deliver its certificate, then the Purchaser shall tender to the Vendor, at Closing, in addition to the balance due at Closing, an amount equal to the HST that the Vendor shall be obligated to collect and remit in connection with the said transaction.
- (c) Unless otherwise specifically provided hereunder, any purchase and sale effected in accordance with the provisions of this Article 10 shall be subject to the following express provisions:
 - (i) upon a sale being effected of the Tenancy Interest of any Member, adjustments shall be made as of the Date of Closing of all items of income and expense and in accordance with the usual practice or as provided for in this Agreement. In addition, the Purchase Price shall be increased by the amount of:
 - (A) any Excess Loans owing by the Purchaser to the Vendor;
 - (B) if the Purchaser is Ballymore, the outstanding Sussman Deemed Equity Amount, if any plus any accrued interest at the same interest rate as set forth in Section 3.3(b).

In the event that the final cost or amount of an item which is to be adjusted, or whether an amount should be adjusted, has not been determined at Closing, then an initial adjustment for such item shall be made at Closing, such amount to be estimated by the Project Accountants, acting reasonably, and shall be subject to adjustment upon the final amount being determined by the Accountant whose determination shall be binding;

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- (ii) any tender of documents or money may be made on the parties or their respective solicitors and money may be tendered by bank draft or certified cheque drawn on a Canadian Schedule I chartered bank;
- (iii) the Vendor shall and does hereby agree to indemnify and hold the Purchaser harmless for its Share of any claims by any third party resulting from the business carried on by the Joint Venture prior to such sale and the Purchaser shall and does hereby agree to indemnify and hold the Vendor harmless for any claims by any third party resulting from the business carried on by the Purchaser after such sale as well as for such liabilities as accrued before Closing to the extent credited in favour of the Purchaser against the Purchase Price and/or to the extent that such liabilities were incurred in the ordinary course of the business of the Joint Venture and in accordance with the provisions of this Agreement;
- (iv) if the Vendor is not represented at the Closing or is represented but fails for any reason whatsoever to produce and deliver the transfer documents to the Purchaser, then the Purchase Price (or an estimate thereof) may be deposited by the Purchaser to their own solicitors trust account to be held in escrow for the Vendor. Each such deposit shall constitute valid and effective payment of the Purchase Price the Vendor even if the Vendor has, in breach of this Agreement, voluntarily encumbered or disposed of any of its Tenancy Interest and notwithstanding the fact that a transfer of any of such Tenancy Interest, may have been delivered or made in breach of this Agreement to any alleged encumbrancer, transferee or other party having or claims any interest, legal or equitable, therein or thereto;
- (v) from and after the date on which the Purchaser pays the Purchase Price and assumes the Vendor's Share of the liabilities of the Joint Venture on the Closing, and even though the transfer documents have not been delivered to the Purchaser, at the option of the Purchaser, the purchase of the Joint Venture Interest shall be deemed to have been fully completed and all right, title, benefit and interest, both at law and in equity, in and to such Tenancy Interest shall be conclusively deemed to have been transferred and assigned to and become vested in the Purchaser and all right, title, benefit and interest, both in law and in equity, of the Vendor, or of any encumbrancer, transferee or other party having or claiming any interest, legal or equitable, therein or thereto shall cease and determine upon delivery of the Purchase Price to the Purchaser's solicitors, to be held in trust pending delivery of the transfer documents or upon the Purchase Price being paid into court by the Purchaser; provided, however, that the Vendor shall be entitled to receive the Purchase Price so deposited, without interest, only upon delivery to the Purchaser of the transfer documents as prepared by the Purchaser's solicitor;

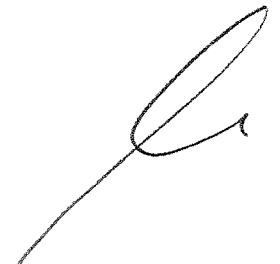
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- (vi) upon the completion of a sale, all rights or privileges accruing to the Vendor hereunder in regard to the Development and the right to have any say in or participate in the Management Committee shall terminate and be of no further force or effect, Provided that in the event of a sale pursuant to Article 9 the said rights are suspended effective as of the date the Default Notice is delivered to the Defaulting Member;
- (vii) any sale pursuant to Article 9 or Article 10 hereto shall be effective to create an interest in the Lands, only if the subdivision control provisions of the Planning Act of Ontario are complied with by the Vendor on or before completion and the Vendor hereby covenants, with the assistance of the Purchaser, to proceed diligently at its expense to obtain any necessary consent on or before completion.

11.5 Prior Guarantees, Securities, Covenants, etc.

If, at the Time of Closing, the Vendor or any person, firm or partnership for or on behalf of the Vendor shall have any guarantees, securities or covenants lodged with:

- (a) any Lender, and/or
- (b) any other Person, firm or partnership to secure any indebtedness, liability or obligation of the Joint Venture permitted hereunder the following shall apply:
 - (i) with respect to any guarantees, securities or covenants lodged with any Lender, the Purchaser shall use best efforts to cause the same to be cancelled or delivered up to the Vendor at the Time of Closing, as the case may be. If the Lender will not release such guarantees, securities or covenants:
 - (A) in the event of a sale Under Article 9, the Purchaser shall provide to the Vendor or to its Affiliate who provided such guarantees, securities or covenants, an indemnity in writing in a form satisfactory to the Purchaser's solicitors indemnifying them from any and all claims, demands, costs, expense damages, liabilities and suits paid or suffered or incurred by them with respect to the said guarantees securities or covenants; or
 - (B) in the event of any other sale the Vendor shall have the right to terminate the transaction or accept the indemnity of the Purchaser as in (A) above.

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11.6 Indemnity

At the Time of Closing, the Purchaser shall indemnify the Vendor from any and all manner of claims and causes of action arising thereafter relating to the Vendor's Tenancy Interest save and except any claims arising out of breach by the Vendor of the terms of this Agreement.

11.7 Power of Attorney

If, at the Time of Closing the Vendor fails to complete the transaction of purchase and sale, the Purchaser shall have the right, without prejudice to any other rights which it may have, upon payment of that part of the Purchase Price payable to the Vendor at the Date of Closing to the Purchaser's lawyer's trust account to be held in escrow for the Vendor, or to pay the amount into Court and then to execute and deliver, on behalf of and in the name of the Vendor such deeds, transfers, resignations or other documents that may be necessary to complete the subject transaction and the Vendor hereby irrevocably appoints the Purchaser its attorney in that behalf.

11.8 Failure to Close

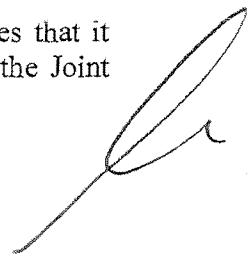
If, for any reason the Purchaser fails to complete the transaction of purchase and sale contemplated in Article 10, as and when required (the "**Substituted Vendor**"), the Vendor (hereinafter referred as the "**Substituted Purchaser**") shall have the option exercisable by notice in writing within ninety (90) days of the Date of Closing, to purchase the Tenancy Interest of the Substituted Vendor on the same terms *mutatis mutandis*, save that the Substituted Purchaser shall only be responsible for using its reasonable efforts to satisfy the obligations under Section 10.5, and failing same, it shall provide an indemnity to the Substituted Vendor with respect to any remaining guarantees and covenants not released as per Section 11.5(b). The Purchase Price shall be 85% of the original Purchase Price determined in accordance with Section 10.1 and Closing shall be on the Date of Closing to be set by the Substituted Purchaser in the said notice.

All of the other provisions of this Article 11 shall apply *mutatis mutandis*. The Substituted Purchaser is hereby irrevocably appointed and authorized as the attorney of the Substituted Vendor to execute any deeds, transfers, conveyances, assignments, assurances and other documents and to do all other things which the Substituted Vendor is required to do pursuant to the terms hereof, if the Substituted Vendor fails to do so on the new Date of Closing.

ARTICLE 12 THE NOMINEE

12.1 General Provisions

- (a) The Members shall appoint the Nominee to acquire and hold title to the Lands, and all other Lands, assets and rights of the Joint Venture as bare trustee for each of the Members, as set out in section 2.1 hereof.
- (b) The Nominee accepts such appointment and acknowledges and declares that it agrees to hold the Lands and all other property, assets and rights of the Joint

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Venture as bare trustee for the Members in accordance with the provisions hereof and that the Nominee has no beneficial interest, right or title to or in the Lands, or other property, assets or rights, or any part thereof of the Joint Venture except as otherwise set out herein.

- (c) The Nominee also agrees that it will perform such activities and enter into such agreements in connection with Development of the Lands for the Project as the Management Committee may request from time to time.

12.2 General Duties

The Nominee shall:

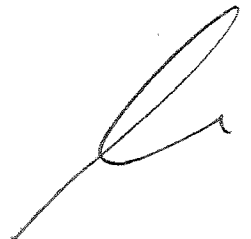
- (a) at all times comply with the provisions of this Agreement and follow the directions of the Management Committee;
- (b) act solely on the directions of the Management Committee and/or the Project Manager as otherwise provided herein and not on the directions of an individual Member;
- (c) not acquire or hold any Lands, incur any liability, undertake any obligation or perform any activity except on the directions of the Management Committee and in connection with the Lands;
- (d) save as expressly provided herein, the Nominee shall have no further obligation to advance funds under this Agreement as a Member and shall have no rights to vote or otherwise under this Agreement..

12.3 Duties re: the Lands

- (a) The Nominee shall cause to be provided to each Member such information relating to the Property as the Member may reasonably request.
- (b) The Nominee shall cause to be maintained appropriate and proper books of account and records with respect to the Property.
- (c) Each Member shall have the right from time to time and at all reasonable times during usual business hours to audit, examine and make copies of or extracts from the records relating to the Property. Such right may be exercised through any Person designated by the Member. Each Member shall bear all expenses of any such examination.

12.4 Organization of the Nominee

The Nominee shall be organized or re-organized, as the case may be, as follows:



- (a) The business and affairs of the Nominee shall be managed by the Board of Directors of the Nominee. There shall be two (2) Directors, being one (1) nominee of Sussman and one (1) nominee of Ballymore. The authorized number of directors of the Nominee shall be increased or decreased accordingly. Should any vacancy occur on the Board of Directors for any reason, such vacancy shall forthwith be filled by a nominee to be appointed by the Member which is then not represented by the nominee to which it is entitled and until such vacancy is filled, the Board of Directors shall not transact any business or exercise any of the powers or functions except as may be necessary to qualify or elect a new director. There should be no casting vote by any director in the event of a tie in any vote.
- (b) At all times, the following Members shall have the right to be represented on and have elected to the Board of Directors of the Nominee, the following respective number of nominees:

MEMBER	# OF NOMINEES	INITIAL DIRECTOR
Sussman	One (1)	Sandy Sussman
Ballymore	One (1)	Louie Morra

Each of the Members expressly covenants and agrees to vote or cause to be voted, its respective Shares at all meetings of the shareholders, or to consent to all resolutions of the shareholders, as the case may be, respecting the election or appointment of Directors, to give full effect to the provisions of this Section.

- (c) Subject to the provisions herein in an Event of Default, the Nominee shall have two (2) Officers, namely a President and a Secretary, the first officers of which shall be the following respective nominees:

POSITION	NAME OF NOMINEE
President	Louie Morra
Secretary	Sandy Sussman

In the event of the resignation, removal or death of any of the above-named officers, the Members whose nominee such officer was shall have the sole and exclusive right to appoint a replacement for such officer.

- (d) All documents, instruments or agreements to be signed by the Nominee shall be signed as required by Section 7.5 hereof.
- (e) Each Member shall subscribe for and there shall be issued to each of the Members common shares at the rate of \$0.01 per share in the capital of the Nominee as follows:



Member	No. and Class of Shares
Sussman	10 Common Shares
Ballymore	10 Common Shares

It is expressly understood and agreed that, without the unanimous consent of the Members, the Nominee shall not allot or issue any additional shares in the capital thereof.

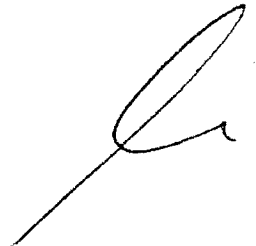
- (f) All share certificates issued or to be issued by the Nominee shall be endorsed with a memorandum as follows:

"This certificate is issued to and held by the party to whom it is issued, subject to the terms of an agreement made as of the ____ day of _____, 201__, among _____, _____, _____ and _____."

- (g) The Members hereby agree that this Section shall constitute a unanimous shareholders agreement and that, for so long as this Section is in force, the directors of the Nominee are hereby relieved of all of their rights, duties, powers, obligations and discretion as directors with respect to the management of the business and affairs of the Nominee including, without limitation, all of their rights, duties, powers, obligations and discretions as directors pursuant to the provisions of the *Business Corporations Act* (Ontario) and any amendments thereto, and all such rights, duties, powers, obligations and discretions are hereby entrusted to the Members of the Joint Venture.
- (h) Unless expressly provided to the contrary herein, the rules and procedures and the organization of the Board of Directors of the Nominee shall, *mutatis mutandis*, be identical to that of the Management Committee, and for all purposes of this Agreement, any duly constituted meeting of the Management Committee shall be deemed to be a duly constituted meeting of the Board of Directors of the Trustee, and vice versa, as it relates to the Nominee's involvement in the Development, and any resolution duly passed by the Board of Directors of the Nominee as it relates to the Development and the Co-Tenancy shall be deemed to be a resolution duly passed by the Management Committee and vice versa.

12.5 Indemnity by Members

Each Member hereby irrevocably and unconditionally undertakes and agrees to severally indemnify and save harmless the directors and officers of the Nominee from and against any and all liability, loss, harm, damage, cost or expense, including legal fees, which they may suffer, incur or sustain as a result of any suit, claim or demand, brought or made against them and arising out of the due and proper performance by them of their duties as directors and officers of the Nominee.



12.6 Obligations of Members

- (a) The Members covenant and agree to and with each other that they shall cause their respective nominees on the Board of Directors of the Nominee to cause it to follow the directions of the Management Committee properly given pursuant to this Agreement and to comply with the provisions of this Agreement.
- (b) The Members, in their capacity as shareholders of the Nominee, shall do, or cause to be done, all such acts and things as shall be necessary or desirable to give effect to the provisions of this Agreement including, without limiting the generality of the foregoing, voting or causing to be voted the shares in the capital of the Nominee beneficially owned by them.
- (c) The Members, in their capacity as shareholders of the Nominee, agree from time to time to transfer their interest in the shares in the capital of the Nominee whenever such transfer is required in connection with the transfer of a Tenancy Interest under or by virtue of this Agreement and to do all acts and things as may be necessary, desirable or useful for such purpose. In the event of the refusal or failure of a Member to transfer its shares in the Nominee as aforesaid, each of the other Members may, as attorney for the Member refusing or failing to transfer its shares, transfer such shares as required to comply with this agreement and to execute and deliver all necessary documents or writings and to do all such acts as are necessary to give effect to the foregoing and for such purpose only each Member is irrevocably constituted and appointed the attorney of each of the other Members.

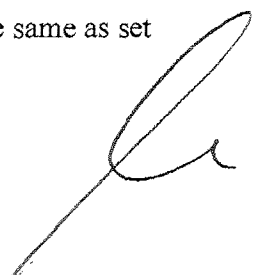
12.7 Fiscal Year

The financial year of the Nominee shall be the same as the accounting period of the Joint Venture Accounting Period

12.8 By-Laws of the Nominee

The by-laws of the Nominee shall give effect to the foregoing provisions of this Article and shall provide, among other things, as follows:

- (a) subject to the provisions regarding Defaulting Members, the provisions for quorum of the Board Directors meetings shall be the same as set out in Section 5.10 hereof;;
- (b) any resolution of the Board of Directors shall require the affirmative votes of all directors;
- (c) the provisions for quorum of the shareholders at meetings shall be the same as set out in Section 5.10 hereof;

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- (d) any director shall have the right any time and from time to time to call a meeting of the Board of Directors;
- (e) any shareholder holding one (1) or more shares in the Nominee entitled to voting rights at such meeting shall have the right at any time or from time to time to call a meeting of the shareholders;
- (f) the chairman presiding at directors' meetings shall have the right to vote in his/her capacity as a director in the first instance, but shall have no second or casting vote in case of an equality of votes; and
- (g) the chairman presiding at shareholders' meetings shall have the right to vote in the first instance in his/her capacity as a shareholder, and as a proxy if so appointed, but shall have no second or casting vote in case of an equality of votes.

12.9 Restricted Activity

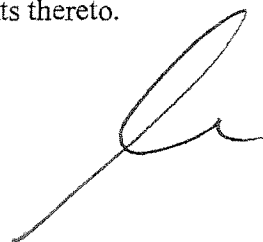
The Nominee shall not carry on, nor be permitted to carry on, any business of any nature or kind whatsoever in its own right, and shall be restricted in all of its activities to the performance of its function as Nominee as herein set forth. Notwithstanding that the ownership of the Lands may be registered in the name of the Nominee, the true and beneficial ownership thereof shall for all purposes be vested in each of the Members as original beneficial owners.

ARTICLE 13 GENERAL CONTRACT PROVISIONS

13.1 Arbitration

If, at any time or from time to time during the continuance of the Joint Venture or after the dissolution or other termination thereof, any material dispute, difference, or question shall arise between or among any of the Members, their heirs, executors, administrators, successors, assigns or nominees or any of them, touching or concerning the Joint Venture or the Lands, meaning or effect of this Agreement or any provision hereof, save and except for any deadlock as between the Members with respect to Major Decisions, such material dispute, difference or question shall be submitted to and settled by arbitration and the decision of the arbitrator appointed as hereinafter provided, to deal with such matter shall be final and binding upon all the Members, their representatives, the Nominee, and there shall be no appeal therefrom.

The arbitration shall be conducted by a single arbitrator agreed upon by the Members. If, within five (5) days after notice of the matter has been given by one of the Members to the other Member, the Members cannot agree upon a single arbitrator, then, a single arbitrator shall be appointed by a Judge of the Superior Court of Justice (Ontario) on the application of any one of the Members, upon notice to the other Member. The arbitration shall be conducted in accordance with the provisions of the *Arbitration Act*, R.S.O. 1990 and any amendments thereto.



13.2 Notice

All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another shall be given in writing by personal delivery, by registered mail, postage prepaid, email or by telecopier addressed to the other party or delivered to such other party as follows:

Sussman	129 Dunlop Street East Barrie, Ontario L4M 1A6 Attention: Sandy Sussman Fax: Email: ssussman@rogers.com
Ballymore	12840 Yonge Street, Suite 200 Richmond Hill, Ontario L4E 4H1 Attention: Louie Morra Fax: Email: lmorra@ballymorehomes.com

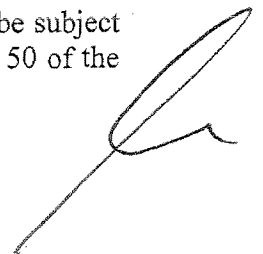
or at such other address as may be given by any of them to the others in writing from time to time, not to exceed two at any particular time, and such notices, requests, demands, acceptances and other communications shall be deemed to have been received when delivered (if personally delivered), or if mailed, on the fifth (5th) Business Day after the mailing thereof or on the Business Day following transmission if sent by telecopier; provided that in the event of a strike or other interruption in the normal delivery of mail after the mailing of any notice, request, demand, acceptance or other communication hereunder but before the deemed receipt thereof as provided herein, such notice, request, demand, acceptance or other communication shall not be deemed to be received by the party for whom the same is intended unless the same is delivered to such party as contemplated herein.

13.3 Additional Lands

The Joint Venture may, through the Nominee, or otherwise, enter into such further agreements for the purchase and development of lands as may be deemed appropriate by the Management Committee, all of which further lands and projects in respect thereof, shall be governed by the provisions of this Agreement.

13.4 Planning Act

Where applicable, the provisions of this Agreement requiring compliance with section 50 of the *Planning Act*, R.S.O. 1990, c.P.13, and any amendments thereto, are agreed to be subject to the condition that the provisions shall be effective only if the provisions of section 50 of the



Planning Act are complied with and the parties agree to use their best efforts to cause such compliance.

13.5 Further Assurances

Each of the parties shall from time to time and at all times do such further acts and deliver all such further assurances, deeds and documents as shall be reasonably required in order to fully perform and carry out the terms of this Agreement.

13.6 Accounting Principles

All calculations made or referred to herein shall be made in accordance with GAAP. Where GAAP would permit more than one basis for calculation, the applicable basis shall be selected by the Management Committee. Notwithstanding the foregoing, each Member may account for its participation in the Joint Venture in its own financial statement as it sees fit, in its sole and absolute discretion, unless otherwise required by law.

13.7 HST

The Members agree to execute an election in the prescribed form under Section 273 of the Excise Tax Act (Canada) to permit accounting by the Nominee for all HST in connection with the operation of the Lands while such election is in effect.

13.8 Currency

All payments contemplated herein shall be made in Canadian funds.

13.9 Gender and Number

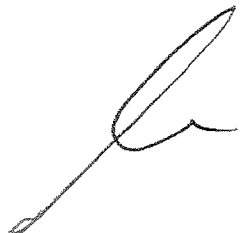
Words importing the singular number only shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine gender and neuter gender, and words importing persons shall include firms and corporations, and vice versa where the context so requires.

13.10 Articles and Section Numbers

The division of this Agreement into Parts, Articles and Sections and the Table of Contents preceding are for convenience of reference only and shall not affect the interpretation or construction of this Agreement.

13.11 Table of Contents

The table of contents preceding this Agreement but under the same cover is included for convenience of reference only and is not to be deemed or construed in any way as part of this Agreement, nor as supplemental hereto or amendatory hereof.

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13.12 Business Days

If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day must be made or taken by no later than 5:00 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

13.13 Governing Law

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties agree that the courts of the province of Ontario will have exclusive jurisdiction to determine all disputes and claims arising between the parties.

13.14 Severable Covenants

If any covenant, obligation or agreement set forth herein or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation and agreement to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each such covenant, obligation and agreement shall be separately valid and enforceable to the fullest extent permitted by law.

13.15 Entire Agreement

This Agreement constitutes the entire Agreement between the parties relating to the Joint Venture and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, among the parties with respect thereto.

13.16 Amendments

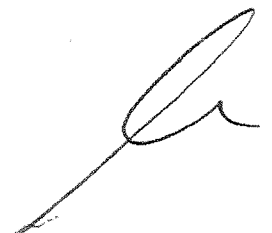
No amendment or modification of this Agreement shall be binding unless in writing and signed by the parties.

13.17 Waiver

No waiver by any Member of any breach of any of the provisions of this Agreement by the other Member shall take effect or be binding upon the Party unless in writing and signed by such Member. Unless otherwise provided therein, such waiver shall not limit or affect the rights of the Members with respect to any other breach.

13.18 Time of the Essence

Time shall be the essence of this Agreement.

A handwritten signature in black ink, consisting of a stylized, cursive letter 'A' followed by a horizontal line extending to the right.

13.19 Heirs, Successors and Assigns

Subject to the provisions of Article 8 hereof, this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

13.20 Counterparts

This Agreement may be executed in any number of counterparts provided each party executes a counterpart and all of the counterparts taken together shall for all purposes constitute one agreement, binding on the parties notwithstanding that all parties are not signatory to the same counterpart.

13.21 Statute References

Any reference in this Agreement to any statute or any section thereof shall, unless otherwise expressly stated, be deemed to be a reference to such statute or section, and the regulations promulgated pursuant thereto or thereunder, as amended, restated or re-enacted from time to time.

13.22 One Voice

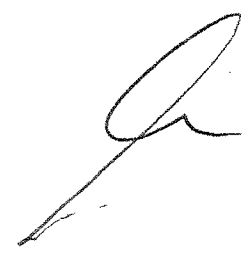
Each Member agrees that it will speak and act in respect of all Joint Venture matters with one voice through its Representative on the Management Committee. The other Members shall be entitled to require and to rely on decisions made by such representatives of a Member.

13.23 Non-Registration

The parties covenant and agree that this Agreement shall not be registered on title to the Lands and the covenant may be pleaded as an estoppel in any injunction proceedings resulting from a breach hereof.

13.24 Confidentiality

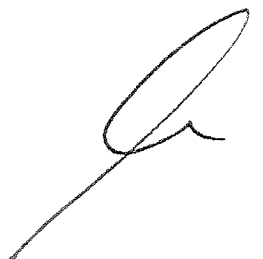
- (a) Each Member shall keep in strict confidence and shall not disclose to any person who is not a party hereto except as necessary to discharge their obligations hereunder, this Agreement and any and all information obtained with respect to the Project, unless and until written approval of the other Member is obtained or such disclosure is, in connection with proceedings between the Member hereto or is otherwise required by law. All reports and other information referable to the Project received by the Member shall be considered to have been received on an absolutely confidential basis and accordingly shall, not be disclosed to any other person whatsoever other than as necessary to discharge its obligations hereunder.

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- (b) Nothing in this Section shall preclude disclosure by a Member of information referable to the Project (including projections), on a confidential basis, as aforesaid:
- (i) to its officers, directors, employees, agents, shareholders, lenders or prospective lenders, and purchasers, or any of their respective advisors, and then only as and to the extent necessary and it shall instruct the aforesaid to comply with the applicable provisions of this section;
 - (ii) subject to reasonable notice to the other parties hereto, in pleadings or in evidence in the course of any legal or administrative proceedings under circumstances whereby such Member is obliged to disclose such information;
 - (iii) to contractors, consultants, suppliers and others in connection with the Project;
 - (iv) as may be required by law or by any governmental authority having jurisdiction over such Member and being entitled in law to receive such information, nor shall any Member be precluded from extracting from such information financial data necessary to report on the status of such Member's investment in the Project to its lenders, professional advisers and such other persons as a prudent Member of real estate would determine acting reasonably; or
 - (v) otherwise with the consent of the other parties hereto.

The obligations contained in this section shall survive the expiry or termination of this Agreement.

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13.25 Conditional

This agreement is conditional upon the successful completion of the Purchase Agreement.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto the day and year first above written.

2486976 ONTARIO INC.

By: 

Name: **Sandy Sussman**

Title: **President**

I have authority to bind the Corporation

BALLYMORE DEVELOPMENT (INNISFIL) CORP.

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

I/We have authority to bind the Corporation

2499948 ONTARIO INC.

By: 

Name: **Sandy Sussman**

Title: **Secretary**

By: _____

Name: _____

Title: _____

I/We have authority to bind the Corporation

13.25 Conditional

This agreement is conditional upon the successful completion of the Purchase Agreement.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto the day and year first above written.

2486976 ONTARIO INC.

By: _____

Name:

Title:

I have authority to bind the Corporation

BALLYMORE DEVELOPMENT (INNISFIL) CORP.

By: _____

Name:

Title:

*LOUIE MORRA
PRESIDENT.*

By: _____

Name:

Title:

I/We have authority to bind the Corporation

2499948 ONTARIO INC.

By: _____

Name:

Title:

*LOUIE MORRA
PRESIDENT.*

By: _____

Name:

Title:

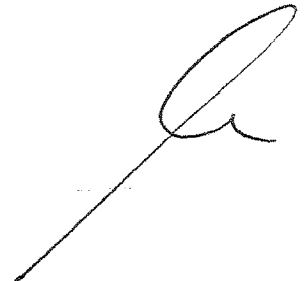
I/We have authority to bind the Corporation

SCHEDULE "A"

LANDS

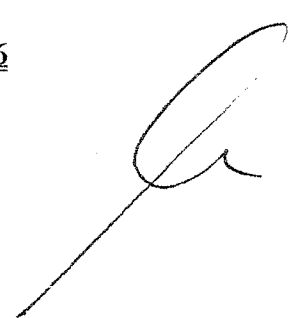
LEGAL DESCRIPTION:

1. PIN No. 58056-0089: Part Lt 22, Concession 3 Innisfil being Parts 1 & 2, Plan 51R-5794
2. PIN No. 58056-0092: Part Lot 22, Concession 3 Innisfil as in RO1093769
3. PIN No. 58056-0119: Part Lots 21 & 22, Concession 3 Innisfil being Part 2, Plan 51R36429, Part Lot 22, Concession 3 Innisfil Part 3, 51R36429, Innisfil
4. PIN No. 58056-0124: Part Lot 22, Con 3 Innisfil being Part 1, 51R37693, Town of Innisfil
5. PIN No. 58056-0127: Blocks A, B & C, Plan 973 and Part Lot 22 Concession 3 Innisfil being Part 1, 51R36429 except Part 3, 51R37693; Town of Innisfil
6. PIN No. 58065-0457: Part Lot 21 Con 4 Innisfil being Part 1, Plan 51R38206; Innisfil
7. PIN No. 58066-0222: Part of Lots 23 & 24, Concession 4 Innisfil being Part 1 on Plan 51R35702; Innisfil.

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SCHEDULE "B"
DUE DILIGENCE COSTS

<u>DATE</u>	<u>PAYABLE TO</u>	<u>AMOUNT</u>
Oct. 28, 2015	Peter Campbell	\$ 5,000.00
Nov. 23, 2015	Peter Campbell	\$ 10,336.94
Dec. 2, 2015	Cole Engineering	\$ 15,704.18
Dec. 2, 2015	Henry Kortekaas	\$ 4,520.00
Dec. 9, 2015	Soil Engineers	\$ 1,711.95
Dec. 11, 2015	Davies Howe/MMM	\$ 23,934.00
Jan. 6, 2016	Peter Campbell	\$ 9,901.69
Jan. 7, 2017	Emily Street (Phase 1 Report)	\$ 3,000.00
TOTAL		<u>\$ 74,108.76</u>

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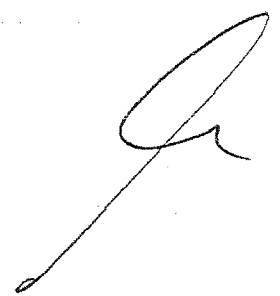
SCHEDULE "C"
INTEREST PAYMENTS

Oct. 1, 2015	KingSett	\$ 46,581.66
Oct. 1, 2015	Pacific & Western	\$ 26,394.31
Nov. 2, 2015	KingSett	\$ 48,389.31
Nov. 2, 2015	Pacific & Western	\$ 19,693.35
Dec. 1, 2015	KingSett	\$ 46,898.93
Dec. 1, 2015	Pacific & Western	\$ 19,052.49
Jan. 1, 2016	KingSett	\$ 48,462.23
Jan. 1, 2016	Pacific & Western	\$ 19,690.48

TOTAL

\$275,162.76

Plus any further interest payments made prior to Closing

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JOINT VENTURE AMENDING AGREEMENT

THIS AGREEMENT made as of the ^{31st} day of March, 2016

AMONG:

2486976 ONTARIO INC.,
a corporation incorporated under the laws of the Province of Ontario,
("Sussman")
- and -

BALLYMORE DEVELOPMENT (INNISFIL) CORP.,
a corporation incorporated under the laws of the Province of Ontario,
("Ballymore")
- and -

BALLYMORE BUILDING (INNISFIL) CORP.,
(formerly 2499948 Ontario Inc.)
a corporation incorporated under the laws of the Province of Ontario,
(the "Nominee")

WHEREAS:

- A. The parties hereto are parties to a joint venture agreement dated January 19, 2016 (the "Joint Venture Agreement");
- B. The parties hereto wish to enter into this Agreement for the purpose of amending the Joint Venture Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the sum of ONE DOLLAR (\$1.00) now paid by each of the parties hereto to each of the other parties hereto, and of other good and valuable consideration (the receipt and sufficiency whereof by each of the parties hereto is hereby acknowledged), the parties hereto, for themselves, their heirs, executors, administrators, successors and assigns, covenant and agree to and with each other as follows:

ARTICLE 1.00 - AMENDMENT

1.1 Amendment

The Joint Venture Agreement is amended as follows:

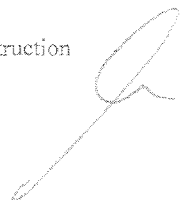
- (a) Delete the words "and which shall be discharged immediately after Closing" from the definition of "VTB".
- (b) The following definition shall be added under Section 1.1 Definitions:

"Construction Lender" shall mean any Lender providing construction financing to the Project;

"First Advance" shall have the meaning set forth in Section 3.2(a)(i);

"First Mortgage" shall mean Laurentian Bank of Canada;

"Lien Discharge Costs" means the costs to vacate or discharge the construction lien registered on title to the Lands in the amount of \$125,000.00;



"**Remainder Amount**" shall have the meaning set forth in Section 3.4.2(a)(i);

"**Second Mortgagee**" shall mean Cameron Stephens Financial Corporation;

"**SMFI**" shall have the meaning set forth in Section 3.4.1(a);

"**SMFI Interest Rate**" shall have the meaning set forth in Section 3.4.1(b);

"**Sussman Third Mortgage**" shall have the meaning set out in Section 3.2(a)(v);

"**Sussman Mortgages**" shall mean collectively, the Sussman Third Mortgage and the VTB;

- (c) by deleting Section 3.2(a)(i) in its entirety and inserting the following:

3.2(a)(i) up to an amount not to exceed the Deemed Value, the Joint Venture shall advance the amounts obtained from the First Mortgagee and the Second Mortgagee (collectively, the "**First Advance**").

- (d) by deleting Section 3.2(a)(iv) and inserting the following:

3.2(a)(iv) The balance due on Closing, after credit for the First Advance and any deposits paid in accordance with the Purchase Agreement, required to be paid by Sussman for the aggregate of the following:

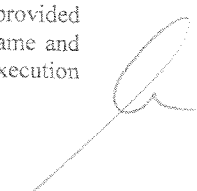
- (A) the remaining amounts to discharge the mortgages held by Mortgagees on the Lands; plus
- (B) the commission owing to CBRE Limited being 2% of the original purchase price under the Purchase Agreement of \$21,000,000.00, but not to exceed \$420,000.00 plus HST, in accordance with the Purchase Agreement; plus
- (C) any realty taxes payable under the Purchase Agreement and not otherwise included in the amounts payable to the Mortgagees,

The sum of (A), (B) and (C) shall be the "**Sussman Purchase Funds**".

- (e) by deleting Section 3.2(a)(v) and inserting the following:

3.2(a)(v) It is understood and agreed that Sussman may arrange private financing or financings or related party financings (the "**Sussman Third Mortgage**") which together with a portion of the VTB will secure repayment of a total principal amount (the "**Maximum Principal Amount**") equal to the sum of the Sussman Purchase Funds, any interest payments made to the Mortgagees from and including October 1, 2015 to the Closing in accordance with Schedule "C" (the "**Interest Payments**"), the Lien Discharge Costs and the amount SMFI paid to the Mortgagees to pay down their mortgages totalling \$1,750,000 prior to Closing. The terms of repayment of the Maximum Principal Amount are set forth in Section 3.4.1.

It is further understood and agreed that the Sussman Third Mortgage shall be non-recourse against Ballymore or its principals and shall have recourse only against the Lands and Project assets. The Joint Venture shall consent to the registration of the Sussman Third Mortgage to secure the Sussman Purchase Funds, provided that the First Mortgagee and Second Mortgagee permit same and on such terms as they may require including, inter alia, execution



of postponement/standstill agreements in their favour and containing the usual development provisions.

- (f) All other references in the Joint Venture Agreement to "**Second Mortgage**" shall be deleted and replaced with "Sussman Third Mortgage".

- (g) by deleting Section 3.2(c) in its entirety and inserting:

"It is acknowledged that the First Mortgagee shall post a letter of credit in the sum of \$367,000 to replace the Letter of Credit ("**PW LC**") presently lodged with the Town of Innisfil by Pacific and Western Bank of Canada, for pre-servicing of the Lands.

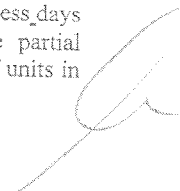
- (h) by deleting Section 3.4 in its entirety and inserting the following:

3.4.1 Sussman Third Mortgage

On Closing, and in accordance with Section 3.2(a)(v), Sussman Mortgage Funding Inc. ("**SMFI**") shall be granted the Sussman Third Mortgage to secure a portion of the Maximum Principal Amount equal to the Sussman Purchase Funds.

The Sussman Third Mortgage shall bear interest at a rate of 200 basis points over the rate of interest payable by the Joint Venture to the First Mortgagee for the financing of the Land acquisition (the "**SMFI Interest Rate**") calculated and payable monthly and not in advance for a term of seven (7) years from Closing except for any principal amount securing the Deemed Equity.

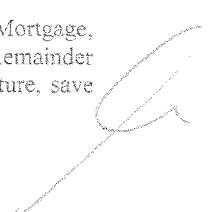
3.4.2 Vendor/Take Back Mortgage

- (a) On Closing, the fourth VTB (estimated to be \$ _____) shall be registered on title to the Lands and assigned, as per the Purchase Agreement, to SMFI, securing the following amounts:
- (i) the Maximum Principal Amount less the amount secured under the Sussman Third Mortgage, and which amount shall accrue interest at the SMFI Interest Rate unless otherwise provided herein and be repayable as per the amounts secured under the Sussman Third Mortgage (the "**Remainder Amount**"); and
 - (ii) the Sussman Deemed Equity, which amount shall not bear interest and is repayable in accordance with the terms of the Joint Venture Agreement.
- (b) Sussman shall cause SMFI on or before Closing, to provide an acknowledgement to the Members, confirming:
- (i) the Priority of Distributions set out in Section 4.1 herein shall supersede any priority entitlement or recovery pursuant to the registration of the Sussman Mortgages;
 - (ii) it shall provide all postponements, standstill agreements, partial discharges and all other documents required by any Lender to the Joint Venture in regards to the Sussman Mortgages;
 - (iii) in the event of any transfer of the Sussman Mortgages, it shall require the transferee to execute all documents as required by the Members herein;
 - (iv) SMFI will forthwith upon request and within two (2) business days after request and without payment or charge, execute partial discharges that are necessary in order to complete sales of units in
- 

the Project;

- (v) SMFI shall only be entitled to repayment of its mortgages in accordance with the Priority of Distributions as and when Cash Flow is available for distribution to Sussman in accordance with priority of distributions set forth in Section 4.1;
- (vi) SMFI will, provided Section 50 Planning Act is complied with and without charge, execute such documentation that may be required to grant easements to any governmental authority or private utility for walkways, utilities or any other purpose such authority or the Mortgagor may require.
- (vii) SMFI will, forthwith upon request and within 2 days after request and payment by the Mortgagor, execute partial discharges of any lands provided Section 50 of the Planning Act (Ontario) is complied with which required for any governmental purposes (including conservation authorities) or as required in any conditions relating to draft plan approval or as contained in any subdivision agreement, including, inter alia, parks, schools, and road widening, or which are required to be conveyed to any abutting land owner for common use or benefit of owners in the area of the such lands to be discharged such as but no limited to storm water management ponds and bus stations;
- (viii) SMFI shall from time to time, without charge, within 2 days after request, execute any and all plans and documents required to facilitate the registration of the lands or a part thereof as a plan of subdivision pursuant to the Planning Act, to rezone the lands or any part thereof herein and to do everything to facilitate same, including the execution of agreements with any governmental authority which may be required for such registration or rezoning and which agreements may include a provision that in the event the undersigned transfers the equity of redemption in the lands under the Sussman Third Mortgage or the VTB, the title thereto shall be subject to the terms thereof in the same manner as if the new Sussman Third Mortgage mortgagee or the new VTB mortgagee had executed the agreement with the governmental authority as a developer
- (c) The VTB shall remain on title to the Lands as long as it is required by the First Mortgagee. It is anticipated that the VTB shall be discharged within sixty (60) days of the first advance by the Construction Lender of any Construction Finances to the Project at no cost to the Joint Venture.
- (d) At the time the VTB is discharged pursuant to Section 3.4.2(c), the Sussman Third Mortgage will be amended so that the principal amount secured under the Sussman Third Mortgage shall be increased by the Remainder Amount to an amount equal to the Maximum Principal Amount.
- (e) The total of the Sussman Third Mortgage, VTB and the First Advance shall not exceed the Deemed Value and it is understood that the total principal amount secured under the Sussman Mortgages shall not exceed the sum of Five Million and Five Hundred Thousand (\$5,500,000.00) Dollars.

3.4.3 Costs re Financing to the Project

- (a) The parties agree that the interest and principal of the First Mortgage, Second Mortgage, the Sussman Third Mortgage and the Remainder Amount secured under the VTB will be paid by the Joint Venture, save
- 

and except that Sussman shall be responsible for all interest costs owing to the Second Mortgagee, the Sussman Third Mortgage and on the Remainder Amount, in excess of the SMFI Interest Rate.

4.1 **Priority**

By deleting Section 4.1 and inserting the following:

- 4.1 The cash surplus ("**Cash Surplus**") of the Joint Venture arising from the receipt of any Project Revenue (save for collateralization of any Letters of Credit, approved reserves for warranty claims, unpaid Project Costs or other reserves approved by the Joint Venture) shall be distributed to the Members, as and when funds become available for distribution, in the priority and manner as follows (the "**Priority of Distributions**"), without duplication, no distribution being made in any category set forth below unless and until the preceding category has been satisfied in full, unless the Members otherwise agree in writing:
- (a) firstly, to SMFI in reduction of the Maximum Principal Amount owing under the Sussman Mortgages, any refund from Canada Revenue Agency with respect to the input tax credit to be earned with respect to the payment of the CBRE Limited commission payable under subsection 3.2(a)(iv)(B) which the Joint Venture expects to receive upon filing of the appropriate HST return with respect to this payment;
 - (b) secondly, to Lenders for the repayment of any financing or any other financing obtained by the Joint Venture for the Development of the Project;
 - (c) thirdly, to repay the Sussman Third Mortgage, as same may be increased as per Section 3.4 2(d) or if not so increased and, the Remainder Amount secured under the VTB;
 - (d) fourthly, any unpaid Project Costs including the Project Management Fee, as defined at Section 6;
 - (e) fifthly, the Sussman Deemed Equity secured by the VTB;
 - (f) sixthly, payment to the applicable Member any Excess Loans pro rata together with accrued interest;
 - (g) seventhly, payment of any equity owing to the Members pro rata in accordance with their Shares; and
 - (h) eighthly, to the Members pro rata in accordance with their Shares.

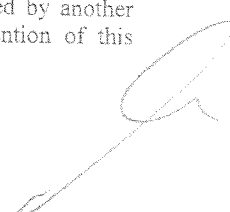
ARTICLE 2.00 - GENERAL

2.1 Joint Venture Agreement Confirmed

This Agreement shall be read together with the Joint Agreement and the parties confirm that, except as modified herein, all terms, agreements, covenants and conditions in the Joint Venture Agreement remain unchanged, unmodified and in full force and effect.

2.2 Further Assurances

The parties agree to do or cause to be done, from time to time, all such things, and shall execute and deliver all such documents, agreements and instruments reasonably requested by another party, as may be necessary or desirable to carry out the provisions and intention of this Agreement.



2.3 Counterparts and Electronic Execution

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together will constitute one and the same instrument and an executed facsimile or electronic copy will be deemed for all purposes hereunder to be valid and executed original copy hereof.

2.4 Enurement

The provisions of this Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective personal representatives, heirs, successors and permitted assigns.

2.5 Schedules

Schedules "B" and "C" shall be replaced with the Schedules attached hereto.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto the day and year above first written.

2486976 ONTARIO INC.

By: _____

Name: Sandy Sussman

Title: A.S.O.

I have authority to bind the Corporation

BALLYMORE DEVELOPMENT (INNISFIL) CORP.

By: _____

Name:

Title:

I have authority to bind the Corporation

BALLYMORE BUILDING (INNISFIL) CORP.

By: _____

Name: Sandy Sussman

Title: A.S.O.

I have authority to bind the Corporation

By: _____

Name:

Title: A.S. O.

I have authority to bind the Corporation

2.3 Counterparts and Electronic Execution

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2486976 ONTARIO INC.

By: _____

Name: Sandy Sussman

Title: A.S.O.

I have authority to bind the Corporation

BALLYMORE DEVELOPMENT (INNISFIL) CORP.

By: _____

Name: _____

Title: _____

I have authority to bind the Corporation

BALLYMORE BUILDING (INNISFIL) CORP.

By: _____

Name: Sandy Sussman

Title: A.S. O.

I have authority to bind the Corporation

By: _____

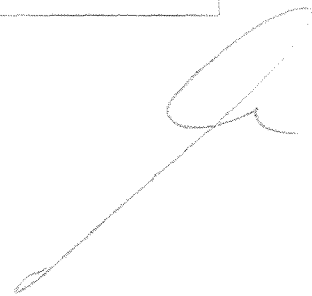
Name: Louie Morra

Title: A.S. O.

I have authority to bind the Corporation

SCHEDULE "B"

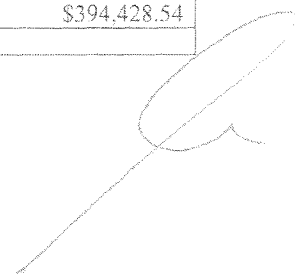
SUSSMAN OUT OF POCKET COSTS TO DATE		
DATE	PAYABLE TO	AMOUNT
OCT. 28, 2015	PETER CAMPBELL	\$5,000.00
NOV. 23, 2015	PETER CAMPBELL	\$ 10,336.94
DEC. 2, 2015	COLE ENGINEERING	\$15,704.18
DEC. 2, 2015	HENRY KORTEKAAS	\$4,520.00
DEC. 9, 2015	SOIL ENGINEERS	\$1,711.95
DEC. 11, 2015	DAVIES HOWE/MMM	\$23,934.00
JAN. 6, 2016	CARSWELL LEGAL	\$ 47.12
JAN. 6, 2016	PETER CAMPBELL	\$9,901.69
JAN. 7, 2016	EMILY STREET	\$3,000.00
JAN. 20, 2016	TOWN OF INNISFIL	\$3,613.43
FEB. 2, 2016	PINCHIN	\$4,972.00
FEB. 2, 2016	MCCLYMONT & RAK	\$3,390.00
FEB. 5, 2016	PETER CAMPBELL	\$10,588.55
FEB. 10, 2016	LAURENTIAN BANK 1ST	\$25,000.00
MAR. 7, 2016	CAMERON STEPHENS	\$25,000.00
MAR. 9, 2016	PETER CAMPBELL	\$9,931.66
MAR. 10, 2016	LAURENTIAN BANK 2ND	\$25,000.00
MAR. 11, 2016	TOWN OF INNISFIL	\$644.11
	TOTAL	\$182,295.63



SCHEDULE "C"

SUSSMAN MORTGAGE PAYMENTS TO DATE		
DATE	PAYABLE TO	AMOUNT
OCT. 1, 2015	KINGSETT	\$46,581.66
OCT. 1, 2015	PACIFIC & WESTERN	\$ 26,394.31
NOV. 2, 2015	KINGSETT	\$48,389.31
NOV. 2, 2015	PACIFIC & WESTERN	\$19,693.35
DEC.1, 2015	KINGSETT	\$46,898.93
DEC.1, 2015	PACIFIC & WESTERN	\$19,052.49
JAN.1, 2016	KINGSETT	\$48,462.23
JAN.1, 2016	PACIFIC & WESTERN	\$19,690.48
FEB. 1, 2016	KINGSETT	\$46,280.64
FEB. 1, 2016	PACIFIC & WESTERN	\$18,786.42
MAR. 1, 2016	PACIFIC & WESTERN	\$14,689.58
MAR. 1, 2016	KINGSETT	\$39,509.14
	TOTAL	\$394,428.54

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Chief Executive Officer Of The
Financial Services
Regulatory Authority Of Ontario

-and-

Sussman Mortgage Funding Inc., 2486976
Ontario Inc. and 1981361 Ontario Inc.

Applicant

Respondents

Court File No.: CV-25-00741044-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT **TORONTO**

**AIDE MEMOIRE OF BALLYMORE BUILDING
(INNISFIL) CORP. AND BALLYMORE
DEVELOPMENT (INNISFIL) CORP.**

(Hearing Returnable July 25, 2025)

ROBINS APPLEBY LLP

Barristers + Solicitors
2600 - 120 Adelaide Street West
Toronto, ON M5H 1T1

Samuel Mosonyi LSO No.: 78085A

Tel: (416) 360-3356

Email: smosonyi@robapp.com

Lawyers for Ballymore Building (Innisfil) Corp. And
Ballymore Development (Innisfil) Corp.