

2164566 ONTARIO INC.
(hereinafter “VENDOR”)

AND

2462357 ONTARIO INC.
(hereinafter “OWNER”)

AND

PACE DEVELOPMENTS INC.
(hereinafter “DEVELOPER”)

AND

MARSHALLZEHR GROUP INC.
(hereinafter “LENDER”)

DEVELOPMENT, CONSTRUCTION MANAGEMENT

and

PROFIT PARTICIPATION AGREEMENT
(Mont Palais Development)

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SCHEDULE A: LANDS

THIS AGREEMENT made as of April ●, 2015.

AMONG:

2164566 ONTARIO INC.
(hereinafter “**VENDOR**”)

of the First Part

AND

2462357 ONTARIO INC.
(hereinafter “**OWNER**”)

of the Second Part

AND

PACE DEVELOPMENTS INC.
(hereinafter “**DEVELOPER**”)

of the Third Part

AND

MARSHALLZEHR GROUP INC.
(hereinafter “**LENDER**”)

of the Fourth Part

WHEREAS:

The Vendor, the Owner, the Lender and the Developer have agreed to enter into this Agreement to confirm the role of the Developer as the exclusive Developer and construction manager for the Project (as hereinafter defined) on the terms and conditions set forth below and to set out the rights of both the Vendor and the Owner in relation to the profits to be earned from the development of the Project.

The Vendor has, with the support and agreement of the Lender, sought and received the protection of the Ontario Superior Court of Justice (“**Court**”) under and pursuant to the *Companies’ Creditors Arrangement Act (Canada)* pursuant to which the Project was transferred from the Vendor to the Owner by order of the Court (the “**Vesting Order**”).

The Lender consented to the Vesting Order and has agreed to provide funding for the Project provided that it is transferred to the Owner with the approval of the Court and this agreement has been entered into contemporaneously therewith.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and the sum of \$10.00 paid by each party to the other party and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each party), the parties covenant and agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

Unless there is something in the subject matter or context inconsistent therewith, the terms defined in this Agreement shall have the meaning attributed to them and the following words shall have the respective meanings set forth in this Section 1.1:

“**Agreement**” means this Development, Construction Management and Profit Participation Agreement, as amended, supplemented and restated from time to time.

“**Applicants**” means Hush Homes Inc., Hush Inc., 2122763 Ontario Inc. and 2142301 Ontario Inc.

“**Approval**” means an approval in writing by the Lender.

“**Approved**” means an Approval that has been given.

“**Article**”, “**Section**” and “**Subsection**” mean and refer to the specified article, Section and Subsection of this Agreement, respectively.

“**Authorities**” means the federal, provincial, and municipal governments, the courts, administrative and quasi-judicial boards and tribunals and any other organizations or entities with the lawful authority to regulate, or having a power or right conferred at law or by or under a statute over, the Lender and Developer, the Project or the Lands, including the businesses carried on therein.

“**Build-out Value**” means the total value realized from the build-out of the Project net of the cost to the Owner of acquiring the Project inclusive of interest and financing fees thereon and all Development Costs associated with the Project.

“**Business Day**” means a day which is neither a Saturday, Sunday nor a day observed as a holiday under the laws of the Province of Ontario and “**Business Days**” means more than one Business Day.

“**CCAA Plan**” means the plan of compromise or arrangement to be filed by the Applicants and the Vendor for the consideration of creditors and the Court in the CCAA Proceedings.

“**CCAA Proceedings**” means the proceedings commenced by the Vendor under the *Companies' Creditors Arrangement Act* (Canada);

“**Claims**” has the meaning set forth in Section 7.1.

“Commitment Letter” means the financing commitment letter agreement entered into by the Owner and the Lender dated April 13, 2015 as the same may be amended from time to time.

“Consultants” means the independent architects, engineers and project managers (all of whom are not employees of the Developer) and other consultants (including, without limitation, such sub-consultants as are retained by the Consultants) as the Owner and Developer may appoint from time to time on the consent of the Lender in connection with the Project and **“Consultant”** means any one Consultant.

“Contracts” means all contracts and agreements entered into by the Developer within the scope of its authority granted under and pursuant to Section 3.1 and renewals thereof and amendments thereto.

“Court” means the Ontario Superior Court of Justice;

“Development Costs” means the total costs, fees, charges and expenses to be paid or incurred following the Effective Date in connection with the planning, development, servicing, design, construction, use and marketing of the Project including, without limitation and without duplication, the following hard costs and soft costs:

- (a) Hard Construction Costs;
- (b) Project Management Fees;
- (c) costs for testing and inspection;
- (d) costs and fees for the administration and supervision of the construction by the Consultants, including, without limitation, the inspection of the work, the curing of defaults and the settlement of accounts and enforcement of any construction contracts relating thereto;
- (e) fees and expenses for architectural, engineering, planning, land surveying, landscaping, accounting, legal and other professional or consulting services (including, without limitation, the cost of preparing and finalizing all drawings, plans and specifications);
- (f) costs of all approvals, permits, charges, application fees, bonds, letters of credit, taxes, assessments, rates, fees, levies and related charges imposed by the Authorities;
- (g) costs for insurance, bonds, letters of credit and other incidental expenses;
- (h) costs for opening, promotion and marketing including, without limitation, the cost of the sales centre, brochures, advertising and computer communications and related expenses;
- (i) costs for safety measures and programs (including, without limitation, all applicable equipment) and related expenses;

- (j) taxes and duties including, without limitation, HST and sales taxes, net of input tax credits received or receivable by the Owner and Developer;
- (k) interim and permanent financing interest and all financing fees whether accrued or deferred; and
- (l) sales and brokerage fees.

“**Development Management Fee**” shall be the amount governed by Section 4.2 hereof which the Owner is entitled to receive on Substantial Completion and shall be separate and apart from the Phase One Project Management Fee and the Phase Two Project Management Fee payable by the Owner to the Developer.

“**Development Period**” means the period commencing on the Effective Date and ending twenty-four (24) months following the date on which all contracts for the supply of services, supplies and materials for the Project are Totally Completed.

“**Development Plan**” means a plan for the development of the Lands proposed by the Developer and acceptable to the Lender, in its sole and unfettered discretion, and which, for each phase of the Project, shall include a Pro-Forma Budget and a Development Schedule for such plan.

“**Development Schedule**” means a graphical representation or chart prepared in respect of a plan for the development of the Lands indicating the timing of the major activities relating to the scope of work for such plan which shall provide sufficient details of the actual events and their interrelationship to demonstrate that the scope of work will be performed in conformity with the Development Period.

“**Effective Date**” means the date of this Agreement.

“**Emergency**” means a condition or circumstance occurring in or about the Lands or the Project which, if not remedied immediately, would result, with reasonable certainty, in damage to the Lands or the Project or damage to other property or in physical injury or death.

“**Event of Default**” means, in the case of the Developer:

- (a) the failure of the Developer to perform its duties and discharge its obligations under this Agreement, provided that the Vendor, the Owner or the Lender has delivered notice to the Developer specifying in reasonable detail the particulars thereof and, within thirty (30) days of receipt of such notice, the Developer has not cured such failure in a reasonable manner (or, if more than thirty (30) days are required to cure such failure, the Developer fails to commence and continue diligently to cure or give reasonable assurances to the Lender that such failure will be cured within a reasonable period of time); or
- (b) a breach by the Owner of the Developer of any trust or fiduciary duty created by this Agreement for funds received by it on account of the Development Costs to be paid to contractors, Consultants, and suppliers retained in connection with the Project or the Developer’s refusal to account for such funds; or

- (c) a breach by the Owner or the Developer of any trust or fiduciary duty created by this Agreement for funds received by it attributable to the Vendor Profit Participation to be paid to Vendor, or the Owner's or the Developer's refusal to account for such funds.

“Event of Insolvency” does not mean the CCAA Proceedings but does mean the occurrence of any one or more of the following events:

- (a) if the Owner or the Developer, other than in connection with a *bona fide* corporate reorganization, shall:
 - (i) be wound-up, dissolved or liquidated, or become subject to the provisions of the *Winding-up and Restructuring Act* (Canada) or any successor legislation thereto or have its existence terminated or have any resolution passed therefore; or
 - (ii) make a general assignment for the benefit of its creditors or a proposal or file a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada) or any successor legislation thereto or be adjudged by a court of competent jurisdiction to be bankrupt or insolvent or acknowledge its insolvency in writing.
- (b) if a court of competent jurisdiction enters an order, judgment or decree approving a petition or application filed against the Owner or the Developer 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 (i) the Owner or Developer shall acquiesce in the entering of such order, judgment or decree, or (ii) if there is no such acquiescence, the order, judgement or decree remains unvacated or unstayed for an aggregate of forty-five (45) days (whether or not consecutive) from the date of entry thereof; or
- (c) if any trustee in bankruptcy, receiver, receiver and manager, liquidator or any other officer with similar powers is appointed in respect of the Owner or the Developer or of all or any substantial part of the property of either and (i) the Owner or Developer, as applicable, shall consent to or acquiesce in such appointment or (ii) if there is no such acquiescence or consent, such appointment remains unvacated or unstayed for an aggregate of forty-five (45) days (whether or not consecutive).

“Hard Construction Costs” means:

- (i) the cost to the Owner of all materials acquired and all on-site labour utilized in connection with the construction of the Lands and shall include, without limitation, the cost of site preparation, servicing, excavation, disposal, building construction, landscaping, paving and site-finishing costs, contractors' profit, the cost of machinery, plant, apparatus and

equipment (rental or otherwise) acquired or used in the construction or subsequent operation of the Lands and including the costs of all change orders; and

- (ii) the cost of general conditions and the Developer furnished items, set out in the Pro Forma Budget.

For clarity, Hard Construction Costs shall exclude without limitation the land cost, fees payable hereunder, legal fees, interest on borrowed money, other soft costs and work performed by a tenant of the Lands at its own cost and expense.

“**HST**” means the goods and services tax and/or harmonized sales tax as more fully described in Part IX of the *Excise Tax Act* (Canada), as amended or re-enacted from time to time, provided that in the event that any similar tax exists or is introduced in any Province, all references to “HST” shall apply *mutatis mutandis* with respect to such tax and its payment or any similar tax.

“**Lands**” means the lands known as the Mont Palais Project as described in Schedule A.

“**Lender**” means MarshallZehr Group Inc.

“**Lender Prepayment**” means the prepayment by the Owner on or before April 31, 2015 of all amounts owing to the Lender, inclusive of all principal, accrued interest and fees payable to the Lender.

“**Monitor**” means the monitor of the Vendor appointed by the Court in the CCAA Proceedings;

“**Notice**” has the meaning set forth in Section 8.1.

“**Notice of Termination**” has the meaning ascribed thereto in Section 6.1.

“**Owner**” means 2462357 Ontario Inc. and its successors and assigns.

“**Party**” means any party to this Agreement and “**Parties**” means more than one of them.

“**Prime Rate**” means the rate of interest per annum established and published as its prime lending rate from time to time by Royal Bank of Canada or its successors as a reference rate of interest for Canadian dollar loans made by it in Canada and shall be adjusted automatically upon any change in such rate of interest.

“**Pro-Forma Budget**” means the pro-forma budget prepared in respect of a plan for the development of the Lands which includes, without limitation, the projected Development Costs of such plan.

“**Project**” means the development of the Lands as decided by the Owner and Developer and approved by the Lender at their sole discretion.

“**Project Management Fees**” means either or both of the Phase One Project Management Fee and the Phase Two Project Management Fee as defined in Section 3.1.

“**Substantial Completion**” wherever used herein shall have the same meaning as “substantially performed” in the *Construction Lien Act* (Ontario).

“**Term**” means the period of time commencing on the Effective Date and ending on the last day of the Development Period.

“**Totally Completed**” or “**Total Completion**” means “Completed” as defined in Subsection 2.3 of the *Construction Lien Act* (Ontario), including the completion of all construction deficiencies.

“**Unavoidable Delay**” means any prevention, delay, stoppage or interruption in the performance of any obligation of a party hereto due to a strike, lockout, slow down, labour dispute, act of God, inability to obtain or supply any service, equipment, utility, labour or materials, laws, statutes, ordinances, rules, regulations or orders of governmental authorities, enemy or hostile action, civil commotion, war or other casualty, default by the other party or any condition or cause beyond the reasonable control of the party obligated to perform, but shall not include any inability by the party to perform because of lack of its own funds where such funds are required to permit it to perform the obligation in question, provided, that in connection with all of the foregoing, with respect to the Owner and Developer, the Owner and Developer has acted in a reasonable manner with respect to such conditions or cause.

“**Vendor**” means 2164566 Ontario Inc. and its successors and assigns.

“**Vendor Profit Participation**” means the right of the Vendor to receive seventy percent (70%) of the Build-out Value of the Project on Substantial Completion of the Project in accordance with Section 4.2 which right shall, to the extent of any charge granted as security by order of the Court in respect of the assets of the Vendor in the CCAA Proceedings, survive and remain an asset of the Vendor notwithstanding any abandonment or termination of the CCAA Proceedings or any failure of the Vendor’s creditors or of the Court to approve the CCAA Plan but only to the extent provided in Section 6.1 hereof.

“**Vesting Order**” means the order of the Court made in respect of the Lands being bought on April 24, 2015 vesting title in and to the Lands in the Owner.

“**Written Order**” has the meaning set forth in Section 4.4.

ARTICLE 2 RETAINER OF DEVELOPER

2.1 Confirmation of and Acceptance by both Owner and Developer

- (a) The Vendor and the Lender hereby consent to the Owner retaining the Developer to provide the development and construction management services set out in Section 3.3 of this Agreement in connection with the administration and management of the completion of the Project on its own behalf and on behalf of the Lender on and subject to the terms and conditions and for the remuneration provided for in this Agreement.

- (b) The Owner and Developer agree to perform their obligations under this Agreement and covenant and agree to carry out such obligations hereunder in a competent, honest, diligent and efficient manner in accordance with the terms of this Agreement.

2.2 Representations and Warranties by Developer

The Developer represents and warrants that as of the date of this Agreement:

- (a) it is a corporation, duly organized, validly subsisting and in good standing under the laws of the Province of Ontario and has all necessary power and authority to enter into this Agreement and to perform or cause to be performed its obligations contained herein and to carry on its business as such business is presently carried on or proposed to be carried on by it;
- (b) it has and will have throughout the Term, all of the requisite skills and experience to carry out the Owner and Developer's obligations and duties under this Agreement;
- (c) it has taken all necessary action to authorize the execution and delivery by it of this Agreement and the performance by it of the provisions of this Agreement in accordance with its terms; and
- (d) its personnel are qualified and that it possesses the necessary experience and expertise to enable it to perform the services and duties hereunder.

2.3 Duty of Care

- (a) The Owner and Developer shall carry out its duties under this Agreement diligently and expeditiously and with due care, and time shall in all respects hereof be of the essence. The Owner and Developer will carry out its duties in an efficient manner in keeping with the standards of Developers of comparable, similar quality developments in the city in which the Lands are located, taking into account size, age and location.
- (b) The Owner and Developer will not be responsible for matters beyond their reasonable control (including, without limitation, delay in the completion of the Project and any unforeseen increases in the cost to complete the Project) or for matters involving the expenditure of funds which are not made available by the Lender.

2.4 Term of Agreement

This Agreement shall be in force and effect for the Term, unless sooner terminated pursuant to this Agreement.

2.5 Independent Contractor

The parties acknowledge that the Owner and Developer shall undertake its duties hereunder as an independent contractor and not as agent or in any other way representative of the Lender except as herein expressly provided. It is further acknowledged that nothing in this Agreement or in any acts of the parties hereto shall be deemed to create a partnership relationship between the Owner, the Developer and the Lender.

ARTICLE 3 SERVICES

3.1 Development Plans

Within thirty (30) days following the Execution Date or on such later date agreed to by the Lender in its sole discretion, the Developer shall deliver to the Lender for its Approval, a Development Plan related to the first phase of the development of the Project including the work of servicing the Lands, securing final plan of subdivision approval for the Project, and marketing homes and lots in the draft plan approved subdivision for sale, as well as an update from time to time of the Development Plan (including the related Pro-Forma Budget and Development Schedule) which has been Approved by the Lender, if any. The Development Plan for phase one and, in particular, the Pro-Forma Budget will include a monthly project management fee payable to the Owner and Developer from funds advanced by the Lender intended to cover the Developer's actual costs of executing the Development Plan during phase one (the "**Phase One Project Management Fee**").

When requested by the lender and prior to the Owner receiving conditional draft plan approval in respect of the Project being secured, the Developer shall deliver to the Monitor for its review and the Lender for its Approval, a Development Plan related to the second phase of the development of the Project including the continuing to market homes and lots within the Project and constructing homes within the Project. The Development Plan for phase two and, in particular, the Pro-Forma Budget will include a per door project management fee payable to the Owner and Developer from funds advanced by the Lender intended to cover the Developer's actual costs of executing the Development Plan during phase two of the Project (the "**Phase Two Project Management Fee**").

3.2 Scope of Authority

Upon the Approval of a Development Plan by the Lender after review by the Monitor in accordance with Section 3.1, in connection with the performance by the Developer of its duties under this Agreement, the Developer shall have the authority and the obligation on behalf of the Owner:

- (a) to negotiate, settle and, subject to Subsection, execute, without personal liability except as herein provided, all Contracts provided that, subject to Subsection 3.2(d), the aggregate amount of the expenses to be incurred thereunder are provided for in the Pro-Forma Budget or have otherwise been Approved by the Lender;

- (b) to retain all the necessary Consultants and apply on behalf of the Owner in the name of the Owner, as agent for the Owner and without personal liability except as herein provided, to Authorities for, and obtain, all land use classification amendments, applications, licences, permits and approvals necessary or required for the Project (including, without limitation, demolition, excavation, site plan and building permits and their related agreements in final form);
- (c) to incur on behalf of the Owner all Development Costs, whether or not of a capital nature, so long as the expenses incurred and projected to be incurred do not exceed the aggregate amount of the expenses provided for in the Pro-Forma Budget or have otherwise been Approved by the Lender; and
- (d) in the event of an Emergency, to proceed (and the Developer is hereby authorized and instructed to proceed) with such steps as in its discretion are deemed necessary for the protection or preservation of the Project or other property, of the Owner or the Developer, as the case may be, or from any penalty or other liability or the prevention of injury, or death to person. Upon the happening of any such event, the Developer shall promptly give notice thereof to the Lender, the Owner and the Monitor.

The Developer acknowledges and agrees that its authority under this Agreement is subject to first obtaining Approval from the Owner and the Lender of all major decisions as contemplated herein. Subject only to the foregoing, the Developer is authorized to perform the duties in Section 3.3 and/or related to its duties herein without the requirement of further Approval of the Lender.

3.3 Development and Construction Management Services

Upon the Approval of a Development Plan by the Lender in accordance with Section 3.1, the Owner and Developer shall in a proper and efficient manner, but subject always to the terms and provisions of Section 3.2, carry out the following development and construction management services in connection with the Project funded by the Lender:

- (a) Contractors: (i) select and enter into, as agent for the Owner and without personal liability except as herein provided, contracts in respect of the Project on behalf of the Lender with contractors, Consultants, suppliers and others; and (ii) co-ordinate, direct and supervise their work, scrutinize and settle their accounts and supervise and use its commercially reasonable efforts to ensure their performance;
- (b) Layout, Design: direct the layout, design and engineering for the Project including, without limitation, the preparation of all drawings and specifications for homes to be built for buyers on lots of the Project;
- (c) Construction Management: co-ordinate and direct to completion, the construction aspects of the Project in accordance with the requirements of all site plan agreements, property development agreements, construction contracts and applicable laws, including without limitation the following:

- (i) establish and implement appropriate administrative, financial and cost controls for the construction aspects of the Project and make suggestions or requests for specific design improvements, cost savings and efficiencies;
- (ii) as the design proceeds, evaluate possible alternatives in order to permit the selection of the most suitable and economical material and methods that will satisfy both the architectural concept and the Lender's budget;
- (iii) supervise all construction aspects of the Project in accordance with the requirements of applicable statutes, laws, by-laws, building codes, ordinances and agreements;
- (iv) expedite building permits required for the construction of the work and ensure that all other approvals, permits and licenses are obtained;
- (v) plan all necessary construction facilities and services for the Project in order to avoid duplication of costs;
- (vi) pre-qualify contractors and subcontractors;
- (vii) prepare all documents for the purpose of calling tenders for various contracts and subcontracts;
- (viii) administer the tendering process and monitor the flow of information between the consultants and the bidders;
- (ix) receive and analyse tenders and make recommendations for the contract awards;
- (x) prepare the contract documents for all successful contractors and subcontractors and ensure that all applicable legal requirements are complied with;
- (xi) ensure that all bonds from contractors and subcontractors are provided when required by the agencies financing the Project and inspect all insurance policies and workmen's compensation certificates;
- (xii) provide planning, scheduling, expediting, technical co-ordination, and supervision necessary for the proper execution of the work of all contractors and subcontractors;
- (xiii) ensure that construction warranties and guarantees that would be obtained by a prudent Developer/owner of buildings comparable to the Project are obtained from the contractors/subcontractors, and that such warranties and guarantees are capable of assignment;
- (xiv) provide technical and financial administration with respect to progress payments, updating cash flow requirements and holdback releases;

- (xv) evaluate and process all change orders;
 - (xvi) examine claims by the contractors and subcontractors to ensure that they are reasonable and in accordance with the contract documents;
 - (xvii) take the necessary action to facilitate the settlement of contract disputes; and
 - (xviii) such other duties as are normally carried out by a construction manager in connection with the construction of buildings of a size, type and location similar to the Project.
- (d) Material Changes: notify the Lender and the Monitor promptly of material changes or developments affecting the Project including, without limitation, material changes to the Pro-Forma Budget or Development Schedule;
- (e) Safety: use commercially reasonable efforts to cause all contractors employed on the Project to be responsible for the safety of all workers and equipment on the Project in accordance with all applicable legislation governing construction safety;
- (f) Liens: throughout the Development Period, use commercially reasonable efforts, to require all contractors employed in respect of the Project to cause any and all construction liens and other liens for labour, services or materials alleged to have been furnished to or to have been charged to or for the Owner and Developer, any Consultant, any subcontractor or any of them or on their or its behalf in respect of the Project which may be registered against or otherwise affect the Lands to be released, discharged and/or vacated forthwith by all appropriate means, including payment of funds into court, if necessary;
- (g) Legal Actions: monitor and notify the Lender of legal actions affecting the Project arising from the registration of construction liens or otherwise;
- (h) Insurance:
- (i) use all reasonable efforts to place or cause to be placed such policies of insurance in respect of the Project as necessary or desirable to protect the Lender, the Owner and Developer, contractors, suppliers, Consultants and their property and interests from liability, damage or loss, including builders' risk insurance, liability insurance, errors and omissions insurance and delayed start-up/business interruption insurance in each case to the extent such insurance and bonding is available in the marketplace at a cost acceptable to the Lender; and
 - (ii) the Lender shall be named as additional insured under any liability insurance and mortgagee and loss payee under any property insurance. In addition, the Owner and Developer shall notify the Lender upon receipt of any notice or communication from an insurance carrier regarding adverse change in coverage or the uninsurability of the Project;

- (i) Notification: promptly give the Lender notice of any material damage to the Project when the Owner and Developer becomes aware of such damage or notice of any circumstance which may give rise to a claim, including, without limitation in respect of any employment, workplace health and safety and environmental matters;
- (j) Books of Account, Information: at all times during the Development Period, maintain at the Lands and/or its office at 75 International Blvd #400, Toronto, ON M9W 6L9 appropriate books of account and records with respect to the Project and in accordance with generally accepted accounting principles and practices applicable to the development and construction management industry in Canada and applied on a consistent basis. The Lender and the Monitor may, acting reasonably and at reasonable times, with reasonable notice in the circumstances (and under supervision of the Owner and Developer), examine and access such books of account and records and cause to be undertaken by auditors, at the cost of the Lender, inspections and audits of such books of accounts and records;
- (k) Compliance with Court Order: at all times comply strictly with the terms of any Order of the Court in the CCAA Proceedings and co-operate with the Monitor and the Lender in the performance and fulfillment of its or their duties pursuant thereto;
- (l) Warranty Work: co-ordinate and supervise rectification of all deficiencies and administration of all warranties, including arranging and supervising technical audit requirements, if any;
- (m) Financial Statements and Reporting: not less than monthly during the CCAA Proceedings and quarterly thereafter the Developer shall make a presentation to the Lender detailing the status of the Project and the performance of the Owner and Developer's duties hereunder at such locations as may from time to time be designated by notice to the Owner and Developer by the Lender including, without limitation, an analysis as to the progress relative to the most recent Pro Forma Budget and Development Schedule and provide a copy of the presentation to the Monitor. In addition, the Owner and Developer shall prepare such quarterly reports and financial statements as are reasonably required from time to time by the Monitor or Lender, in form and substance satisfactory to the Lender;
- (n) Inspection: allow the Lender, the Monitor and their representative(s) upon appointment to have access at their own risk to the Project during the construction of the Project;
- (o) Banking:
 - (i) Banking: open a separate bank account for the Project in the name of the Owner and thereafter handle all banking necessary for the due performance of the accounting and administrative functions of the Owner and Developer under this Agreement in connection with the Project, all as

required pursuant to any Order of the Court or as may be subject to the supervision of the Monitor and likewise for the receipt and disbursements of all monies of the pertaining to the Project required to be attended to by the Owner and Developer under this Agreement. The Owner and Developer shall forthwith deposit in the separate bank account for the Project maintained by the Owner and Developer all cash, cheques and other negotiable instruments received by the Owner and Developer pursuant to this Agreement;

- (ii) Provision of Funds: not at any time be requested to and shall not overdraw the bank account or accounts operated by it in connection with the Project, and if the amount of the expenditures authorized to be made pursuant to this Agreement exceed at any time the amount held by the Owner and Developer for the Project, the Lender, shall furnish to the Owner and Developer sufficient funds to enable it to make such expenditures based on the total amount being applied for pursuant to Section 4.4. If the Lender fails to furnish such funds, the Owner and Developer shall not be required, in its capacity as Developer, to expend its own funds and shall have no other liability whatsoever for any consequences arising from failure by the Lender to furnish funds. The Owner and Developer shall (other than in circumstances of an Emergency) provide no less than five (5) Business Days' prior written notice of any requirement of the Lender to provide funds pursuant to this Subsection 3.3(o). All funds in this account until disbursed for the purposes of and in accordance with this Agreement are held in trust for the Lender;

- (p) Security: arrange security for the physical protection of the Project and, when necessary, for the control of vehicular and pedestrian access and egress;

- (q) Personnel: engage (either as employees of the Owner and Developer or by contractual arrangements to which the Lender has consented on the recommendation of the Monitor) such persons as shall be necessary and desirable for the continued and uninterrupted performance by the Owner and Developer of its obligations under this Agreement. The Owner and Developer shall be solely responsible for all employment matters relating to such employees, including hiring, training, discipline, dismissal and administration of any such employees; and

- (r) Meeting: attend the meetings described in Section 5.1.

ARTICLE 4 FEES

4.1 Fees and Out-of-Pocket Expenses

In consideration of the development and construction management services to be performed by the Developer under this Agreement, the Developer shall be entitled to the Phase One Project Management Fee to be drawn monthly during phase one and, during phase two, the Phase Two

Project Management Fee to be paid on Substantial Completion of each lot in the Project provided that the Lender may advance such Phase Two Project Management Fee to the Developer prior to Substantial Completion in its discretion. All reasonable out-of-pocket expenses and site costs incurred by the Owner and Developer in the performance of its duties hereunder shall be funded by the Lender from time to time as part of the Written Order referred to in Section 4.4.

4.2 Profit Participations

Separate and apart from the Project Management Fee, through which Developer shall be entirely compensated for the cost of its services to the Owner, the Owner shall be entitled to receive thirty percent (30%) of the Build-out Value of the Project for its own benefit and account on Substantial Completion of the Project (the “**Development Management Fee**”).

The Vendor, in partial consideration of the transfer of the Lands to the Owner in accordance with the Vesting Order shall be entitled, on Substantial Completion of the Project, to receive the Vendor Profit Participation for the benefit of its creditors and the creditors of the Applicants as contemplated by the CCAA Plan to be filed in connection with the CCAA Proceedings. If a CCAA Plan is approved, such amount shall be paid to the Monitor to be distributed in accordance with the CCAA Plan. The Vendor shall be entitled to security from the Owner for amounts owing in respect of the Vendor Profit Participation by way of a subordinate charge/mortgage in land in respect of the Project and, further, shall be entitled to register the security interest hereby created and granted by the Owner in respect of such amounts owing under and pursuant to the Personal Property Security Act (Ontario) subject to an obligation to postpone and subordinate such security interest to any security in favour of the Lender for all amounts advanced by the Lender to the Owner in respect of the Project.

4.3 Payment of Development Costs

The Lender shall be responsible for funding all Development Costs as reviewed by the Monitor in consultation with the Lender and, for greater certainty, the Lender acknowledges and agrees that the Owner and Developer shall not at any time, be required to use their own funds, other than those borrowed from the Lender, to pay any Development Costs.

4.4 Written Order

- (a) The Owner and Developer shall be entitled to apply to the Lender at any time (but no more frequently than once weekly) for payment of:
 - (i) the Development Costs set forth in the then current Approved Pro-Forma Budget; and
 - (ii) out-of-pocket expenses pursuant to Sections 4.1,by delivering to the Lender a written order (herein referred to as a “**Written Order**”) with a copy being provided to the Monitor, for payment thereof not more often than weekly.
- (b) Each Written Order shall:

- (i) state the aggregate of the amounts set forth in the Pro-Forma Budget previously paid to or as directed by the Owner and Developer under this Section 4.4;
 - (ii) state the costs that require payment in the Written Order, which costs shall be either: (i) paid or payable by the Owner and Developer on behalf of the Lender at the date of the Written Order; or (ii) payable within the next twenty (20) Business Days in accordance with the then current Pro-Forma Budget and which costs shall not include amounts under Subsection 4.4(b)(i); and
 - (iii) state that all costs included in such Written Order are costs contemplated by the then current Pro-Forma Budget and describing the items constituting such costs in reasonable detail.
- (c) Each Written Order shall be delivered to the Lender with a copy to the Monitor as aforesaid and shall be signed by an officer of the Owner and Developer.
 - (d) Within ten (10) Business Days after the receipt of such Written Order, the Lender shall pay, to or as directed by the Owner and Developer, the amount of the costs requested for payment in such Written Order and in respect of which payment is requested by the Owner and Developer.
 - (e) All payments to be made pursuant to this Section 4.4 will be subject to any applicable hold back requirements under the construction lien legislation under the laws of the Province in which the Project is located.\

4.5 Commencement of Funding Obligations

Notwithstanding Sections 4.1, 4.3 and 4.4, the Lender shall not be responsible for funding of any Development Costs, Development Management Fee or other fees, expenses or any costs until the Approval of a Development Plan in accordance with Section 3.1 and otherwise only in accordance with the Commitment Letter.

4.6 Reporting to the Monitor

All Parties agree that, in order to monitor and report upon the realization and payment of the Vendor Profit Participation, the Monitor and the Vendor shall be (a) given reasonable access to the books and records of the Owner and the Developer in relation to the Project; (b) entitled to receive copies of all Pro Forma Budgets in respect of the Project provided to the Lender and (c) given quarterly financial statements reconciling actual revenues and costs of the Project to those set out in the Pro Forma Budgets. Additionally, within thirty (30) days of Substantial Completion, the Owner shall be entitled to receive a final financial report from the Owner in respect of the Project setting out the final amount owing to the Vendor pursuant to the Vendor Profit Participation.

ARTICLE 5 CLIENT

5.1 Meetings

At the reasonable request of either one of any officer or director of the Lender or the Lender, from time to time, the Lender and the Developer shall meet at the principal offices of the Developer in Richmond Hill, Ontario or another mutually agreed upon location upon ten (10) Business Days' notice, on the date specified by the requesting party or on another mutually agreed upon date, provided such meetings shall not take place more often than on a monthly basis except in the case of an Emergency.

5.2 Approvals by the Lender/Authority of Developer

Subject to compliance with the provisions of Subsections 2.1(b), 2.3(a) and 3.1 of this Agreement, the Owner and Developer shall have authority to take all actions necessary to complete the Project and the Lender hereby approves such actions.

5.3 Approvals

All requests for Approvals by the Developer shall be in writing and all Approvals of the Lender shall be in writing, it being understood and agreed that if such request or Approval is reflected in an e-mail sent by the Lender to the Developer or by the Developer to the Lender, as the case may be, such request or Approval shall be deemed to be in writing. The Lender understands and agrees that all Approvals given by the Lender must first be given to the Lender by the Lender and that the Lender shall have the benefit of all the provisions of this Agreement as secured party.

5.4 Obligations of the Owner and Developer

The Owner and Developer each shall, all without personal liability as contemplated by Section 3.2(a):

- (a) complete its obligations hereunder;;
- (b) promptly make all decisions required under this Agreement and seek all Approvals required hereunder;
- (c) promptly execute and deliver such evidence of the Owner and Developer's authority as may be required by third parties and/or as the Monitor may require; and;
- (d) make all expenditures in respect of the Project as may be approved by the Owner and the Lender in accordance with this Agreement.

ARTICLE 6 TERMINATION

6.1 Termination of Agreement

- (a) Default by the Owner and Developer: If the event that the Lender determines that an Event of Default has occurred, which such determination shall be at the sole and unfettered discretion of the Lender, the Lender shall have the right to terminate this Agreement by Notice (a “**Notice of Termination**”) to the Owner and Developer stating that this Agreement is terminated and the reason for termination. Such termination shall be effective as of the date on which the Notice of Termination is received by the Developer.
- (b) Pre-emptive Termination: In the event that an Event of Insolvency or a Lender Prepayment has occurred, in respect of any Party other than the Vendor, any other Party may terminate this Agreement by Notice to the insolvent Party and all other Parties, stating that this Agreement is terminated and the reason for termination, with such termination to be effective as of the date immediately prior to the date upon which the Event of Insolvency has occurred.
- (c) Conclusion of CCAA Proceedings: In the event that the CCAA Proceedings are concluded for any reason without a CCAA Plan being approved by the Court, the rights of the Vendor under this Agreement shall be terminated automatically except to the extent of any charge granted as security by order of the Court in respect of the assets of the Vendor in the CCAA Proceedings and any other charge granted by the Owner in favour of the Vendor in respect of the Project to secure the obligations of the Owner to the Vendor arising hereunder shall be discharged forthwith upon the conclusion of the CCAA Proceedings without a CCAA Plan being approved by the Court provided that all obligations secured by any such charge granted as security by Order of the Court in the CCAA Proceedings in respect of the assets of the Vendor have first been satisfied.
- (d) Termination by the Lender: The Lender shall have the right, in the event of default of the Owner or the Developer, to terminate this Agreement at any time and from time to time by Notice to the Owner or the Developer, as the case may be, stating that this Agreement is terminated. Such termination shall be effective as of the date on which the Notice thereof is received by the Owner and Developer.
- (e) Survival of Vendor Profit Participation: Notwithstanding any termination of this Agreement other than pursuant to Subsection 6.1(c) hereof, the Vendor Profit Participation shall survive any termination of this Agreement.

6.2 Delivery of Records, etc.

If this Agreement is terminated or expires for any reason other than a Lender Prepayment, the Owner and Developer shall, notwithstanding such termination or expiry, forthwith upon such termination or expiry and from time to time thereafter deliver to the Lender or any representative

of the Lender including any receiver of the Project appointed privately or by the Court at its instance, copies of all records and documents in an organized manner, including, without limitation the following:

- (a) document plans and specifications;
- (b) the Development Plans, including the Pro-Forma Budget and Development Schedule;
- (c) all Contracts;
- (d) all operating records;
- (e) books of account;
- (f) all supplies, services and materials (to the extent paid for by the Lender if the same have been acquired by the Developer in accordance with the terms of this Agreement), keys, garage cards, parking permits and passes; and
- (g) all pending development applications and all development approvals relating to the Lands,

and ancillary documents maintained with respect to the Project (whether on or off-site) which are then in the possession or control of the Owner and Developer which the Lender or any receiver of the Project appointed at its instance may reasonably requires in order to engage another Developer to complete the Project and which relate directly or indirectly to the Project; provided that the Owner and Developer may elect to retain copies of such records, books of account and documents and notwithstanding such expiry or termination The Owner and Developer shall keep all such information confidential.

Upon termination or expiration of this Agreement, the Owner and Developer shall also deliver to both the Lender and the Monitor the following with respect to the Project:

- (i) a final accounting of the Development Costs as of the date of termination to be delivered within thirty (30) days after such termination; and
- (ii) any balance of monies advanced by the Lender and held by the Owner and Developer with respect to, or for the benefit of, the Project to be delivered immediately upon such termination.

6.3 Effect of Continued Performance

If this Agreement is terminated, the Lender shall not be under any obligation to pay to the Owner and Developer any amount whatsoever for services performed by the Owner and Developer after the effective date of termination unless such performance has been expressly Approved by the Lender and, in that event, the Owner and Developer shall be entitled to be paid on a *quantum meruit* basis.

6.4 Duties of the Owner and Developer Flowing From Termination

Upon termination of this Agreement in accordance with Section 6.1 (a), (b) or (e), the Owner and Developer shall, as requested by the Lender:

- (a) to the extent necessary, assign the Contracts entered into by the Owner or Developer as directed in writing by the Lender if such Contracts have been entered into in accordance with the terms and provisions of this Agreement and indemnify and save the Lender harmless against any liability by reason of anything done or required to be done under any such Contract after the effective date of termination of the Agreement;
- (b) pay for and indemnify and save the Lender harmless from and against the costs of all services, materials and supplies ordered by the Owner or Developer in accordance with the Pro Forma Budget and paid in accordance with the Development Schedule or otherwise in accordance with the terms and provisions of this Agreement but which may not have been charged to and paid by the Owner or Developer at the time of termination;
- (c) pay the Development Costs recoverable under Section 4.4 to the effective date of termination; and
- (d) be entitled to conduct a post-termination financial audit of the Project at its own expense, and the Developer shall co-operate with respect to same.

6.5 Rights on Termination

Any termination of this Agreement shall terminate all rights and obligations under this Agreement from and after the date of such termination except rights and obligations with respect to matters to be performed to such date and all legal remedies available at such date for any breach of this Agreement. In addition, Sections 6.1, 6.2, 6.3, 6.4, 7.1, 7.2, 9.7, 9.9 and 9.18 shall survive any termination of this Agreement and shall remain in full force and effect thereafter. Notwithstanding anything to the contrary contained herein and for greater certainty, the Development Management Fee is payable only after Substantial Completion of the Project. If this Agreement is terminated for any reason prior to Substantial Completion of the Project, no Development Management Fee shall be deemed earned by the Developer or owing to the Developer.

ARTICLE 7 INDEMNITIES AND LIABILITY

7.1 Indemnity by the Owner and Developer

During the Term and thereafter, and after the termination of this Agreement, the Owner and the Developer shall and do hereby jointly and severally indemnify and save the Lender harmless from any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever at law or in equity (collectively, “**Claims**”) in connection with the performance by the Owner and/or Developer of any and all of its obligations under this Agreement or pursuant to the policies,

limitations, instructions and procedures of the Owner and/or Developer and all obligations incurred by the Owner and/or Developer in connection with the Project pursuant to this Agreement, including, without limitation, any liability in respect of hazardous substances, any damage or injury whatsoever to any employee or other person or property in connection with the Project or any other assets of the Owner and/or Developer relating to the Project during the Term.

The indemnity provided under this Section 7.1 shall not extend to any Claims for which insurance proceeds have been recovered by the Lender and shall not override any provision of this Agreement that allocates responsibility or obligations to the Lender.

7.2 Exculpation

Notwithstanding any other provision in this Agreement, the Lender acknowledges that so long as the Owner and/or Developer, its officers and servants have acted in good faith and have exercised reasonable care and due diligence in the performance of its duties hereunder, the Owner and/or Developer shall not be liable for any loss of revenue or consequential damages by reason of vacancies or by reason of any tenant or occupant failing to pay rent or for any damage to or destruction of any part of the Project or for the injury to persons or property or for loss of life and the Lender further acknowledges that the Owner and/or Developer shall not be liable for any depreciation in the value of the Project or the Lands nor shall the Owner and/or Developer be liable for any error in judgment of its officers, servants, agents or independent contractors provided that the Owner and/or Developer has acted in good faith and has exercised reasonable care in the selection of its officers, servants, agents or independent contractors and due diligence in their supervision, guidance and control.

ARTICLE 8 NOTICES

8.1 Notices

Any notice (hereinafter referred to as a “**Notice**”) to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery, courier or by facsimile which results in a written or printed notice being given, addressed or sent as set out below or to such other address or electronic number as may from time to time be the subject of a Notice:

(a) in the case of the Vendor:

2164566 Ontario Inc.
c/o Hush Inc.
75 International Blvd #400,
Toronto, ON
M9W 6L9

Attention: Naheel Suleman
Telephone: 416-768-6800
Email: naheel@hush.ca

with a copy to the Monitor:

The Fuller Landau Group Inc.
151 Bloor Street West
12th Floor
Toronto, ON
M5S 1S4

Attention: Gary Abrahamson
Telephone: 416-645-6560
Email: gabrahamson@FullerLLP.com

(b) in the case of the Lender:

MarshallZehr Group Inc.
465 Phillip St, Suite 206
Waterloo, ON, N2L6C7

Attention: Murray Snedden

Telephone: 519-342-1000 x 232
Email: msnedden@marshallzehr.com

(c) in the case of the Owner and the Developer:

Pace Developments Inc.
30 Wertheim Cr.
Richmond Hill, ON
L4B 1B9

Attention: Dino Sciavilla
Telephone: 905-731-5069 x30
Email: dino@pacedev.ca

(d) in the case of the Monitor:

The Fuller Landau Group Inc.
151 Bloor Street West
12th Floor
Toronto, ON
M5S 1S4

Attention: Gary Abrahamson
Telephone: 416-645-6560
Email: gabrahamson@FullerLLP.com

Any Notice, if delivered personally or by courier, shall be deemed to have been validly and effectively given and received on the date of delivery and if sent by facsimile or other electronic communication, shall be deemed to have been validly and effectively given and received on the Business Day next following the day it was received. Any Notice given by any party under or in connection with this Agreement, if addressed to less than all of the parties to this Agreement, shall also be concurrently copied and given to the parties to this Agreement to whom the Notice is not addressed.

Any party may at any time and from time to time, change its address for delivery for the purposes of this Section by giving at least ten (10) days' Notice to the other parties.

ARTICLE 9 GENERAL

9.1 Gender and Number

Words importing the singular include the plural and vice versa. Words importing gender include all genders.

9.2 Captions, Table of Contents and Legislation

The captions and table of contents contained herein are for reference only and in no way affect this Agreement or its interpretation. Any reference in this Agreement to any act or statute or any Section thereof shall be deemed to be a reference to such act or statute or Section thereof as amended or re-enacted from time to time.

9.3 Obligations as Covenants

Each obligation of a party hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

9.4 Applicable Law

This Agreement shall be construed and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contract.

9.5 Invalidity

If any covenant, obligation or agreement or part thereof 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 or agreement or part thereof to any person or circumstance other than those to which it is held invalid or unenforceable shall not be affected thereby. Each covenant, obligation and agreement in this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

9.6 Amendment of Agreement

No supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the party hereto to be bound thereby.

9.7 Successors and Assigns

All of the provisions of this Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall enure to the benefit of and be enforceable by the parties hereto and the successors and assigns of any party hereto only to the extent that they are permitted successors and assigns pursuant to this Agreement and any assignee of the rights of the Lender under this Agreement pursuant to any plan of compromise or arrangement implemented by the Lender shall be a permitted assignee of the Lender with all of the Lender's rights pursuant hereto,

9.8 Accounting Principles

Except as specifically provided otherwise in this Agreement, all calculations referred to in this Agreement shall be made in accordance with generally accepted accounting principles and practices applicable to the public real estate industry in Canada and applied on a consistent basis.

9.9 HST

The parties acknowledge that all fees and other amounts payable under this Agreement shall bear HST and each party to this Agreement covenants to remit any HST owing when due under applicable law.

9.10 Schedules

The Schedules attached hereto form part of this Agreement.

9.11 Time

Except as specifically provided otherwise in this Agreement, time shall be of the essence of this Agreement. When any period of time provided for herein expires on a day other than a Business Day, such period of time shall automatically be extended to the next following Business Day and, when any action or requirement provided for herein is to occur on a day other than a Business Day, the time for such action or requirement shall automatically be extended to the next following Business Day.

9.12 Non-Waiver

No consent to or waiver of any breach or Event of Default by any party hereto in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such party hereto of the same or any other obligations of such party hereto hereunder. Failure on the part of any party hereto to complain of any act or failure to act of any other party hereto or to declare any other party hereto in breach or default, irrespective of how long such failure continues, shall not constitute a waiver by such party hereto of its rights hereunder.

9.13 Rights of Parties Independent

The rights available to each party hereto under this Agreement and at law shall be deemed to be several and not dependent on each other and each such right shall be accordingly construed as complete in itself and not by reference to any other such right. Any one or more and/or any combination of such rights may be exercised by a party hereto from time to time and no such exercise shall exhaust the rights or preclude such party hereto from exercising any one or more of such rights or combination thereof from time to time thereafter or simultaneously.

9.14 Status Reports

Each party hereto agrees, upon the reasonable request of any other party hereto or the Monitor, made from time to time, to furnish promptly a written statement on the status of any matter pertaining to the requesting party hereto to the best of the knowledge and belief of such other party hereto at the cost of the requesting party hereto.

9.15 No Representations

Except as specifically set forth herein, the parties agree that there are no representations and warranties by any of them with respect to this Agreement.

9.16 Further Assurances

Each of the parties hereto shall, from time to time and upon every reasonable written request of any other party hereto, give, execute and deliver all such further assurances as may be required for more effectually implementing and carrying out the true intent and meaning of this Agreement.

9.17 Unavoidable Delay

Whenever in this Agreement it is provided that anything is to be done or performed and the doing or performance thereof is impossible or delayed due to Unavoidable Delay, neither the Lender nor the Owner and Developer shall be regarded as being in default in the performance of any obligation hereunder during the period of any Unavoidable Delay relating thereto and each of them shall notify the other in writing of the commencement, duration and consequences (so far as the same is within the knowledge of the party in question) of any Unavoidable Delay affecting the performance of any of its obligations hereunder and shall use all commercially reasonable efforts to minimize the effect of the same. In the event of such Unavoidable Delay or non-performance by either party, then such obligated party, so long as any such impediment

exists, shall be relieved from its duties in respect thereto and the other party shall not be entitled to compensation for any damages, inconveniences, nuisance or discomfort thereby occasioned or be entitled to terminate this Agreement as a result thereof.

9.18 Confidentiality

- (a) The Owner and Developer shall keep in strict confidence and shall not disclose to any person who is not a party hereto except as necessary to discharge its obligations hereunder, this Agreement and any and all information obtained with respect to the Project, or the Lender or of either of them unless and until Approval of the Lender is obtained or such disclosure is, in connection with proceedings between the parties hereto or is otherwise required by law including, without limitation, the securities laws or the policies, rules or by-laws, as applicable, of any securities commission or similar body having jurisdiction over a party hereto and of any stock exchange on which any securities issued by such party are traded. All reports and other information referable to the Project received by the Owner and Developer or any one of its officers, directors or shareholders shall be considered to have been received on an absolutely confidential basis and accordingly shall, subject to Subsection 9.18(c), not be disclosed to any other person whatsoever other than to the Monitor and the Court as may be necessary for the Owner, the Developer or the Monitor to discharge its obligations hereunder.
- (b) The Lender shall keep in strict confidence and shall not disclose to any person who is not a party hereto, this Agreement and any and all information obtained with respect to the Owner and Developer, unless and until the consent of the Owner and Developer is obtained or such disclosure is, in connection with the CCAA Proceedings or any other proceedings between the parties hereto, ordered by the Court or is otherwise required by law including, without limitation, securities laws or the policies, rules or by-laws, as applicable, of any securities commission or similar body having jurisdiction over a party hereto and of any stock exchange on which any securities issued by such party are traded. All reports and other information referable to the Owner and Developer received by the Lender or any one of its officers, directors or shareholders shall be considered to have been received on an absolutely confidential basis and accordingly, shall, subject to Subsection 9.18(c), not be disclosed to any other person whatsoever.
- (c) Nothing in this Section shall preclude disclosure by the Lender or the Owner and Developer of information referable to the Project (including projections), on a confidential basis, as aforesaid:
 - (i) to its officers, directors, employees, servants, agents, shareholders, tenants, 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 such parties to comply with the applicable provisions of this Section;

- (ii) necessary or desirable to assist in a financing, refinancing or sale of the Lands or an interest therein;
 - (iii) 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 the Lender or Owner and Developer is obliged to disclose such information;
 - (iv) to contractors, Consultants, suppliers and others in connection with the Project or the Owner and Developer's performance of its obligations hereunder and it shall instruct such parties to comply with the applicable provisions of this Section;
 - (v) as may be required by law or by any governmental authority having jurisdiction over the Lender or the Owner and Developer and being entitled in law to receive such information, nor shall the Lender or the Owner and Developer be precluded from extracting from such information financial data necessary to report on the status of the Owner and Developer's investment in the Lands to its shareholders, lenders, professional advisers and such other persons as a prudent investor of real estate would determine acting reasonably; or
 - (vi) otherwise with the consent of the other parties hereto.
- (d) The obligations contained in this Section shall survive the expiry or termination of this Agreement.

9.19 Entire Agreement

This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, whether oral or written, of the parties hereto with respect thereto.

9.20 Canadian Dollars

All monetary references in this Agreement are to Canadian dollars.

[Execution on following page]

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the date hereof.

~~2164566~~ ONTARIO INC.

By: _____
Name: _____
Title: _____

I/We have the authority to bind the Corporation/Partnership.

2462357 ONTARIO INC.

By: _____
Name: _____
Title: _____

I/We have the authority to bind the Corporation/Partnership.

PACE DEVELOPMENTS INC.

By: _____
Name: _____
Title: _____

I/We have the authority to bind the Corporation/Partnership.

MARSHALLZEHR GROUP INC.

(By: _____
Name: GREGORY ZEHR
Title: PRESIDENT

I/We have the authority to bind the Corporation/Partnership.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the date hereof.

2164566 ONTARIO INC.

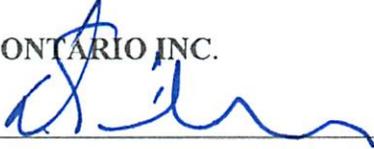
By: _____

Name:

Title:

I/We have the authority to bind the Corporation/Partnership.

2462357 ONTARIO INC.

By: _____ 

Name:

Title:

I/We have the authority to bind the Corporation/Partnership.

PACE DEVELOPMENTS INC.

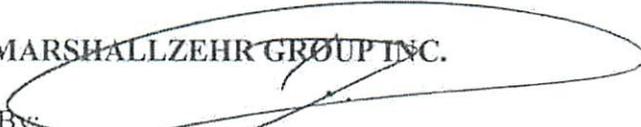
By: _____ 

Name:

Title:

I/We have the authority to bind the Corporation/Partnership.

MARSHALLZEHR GROUP INC.

(By: _____ 

Name: GREGORY ZEHR

Title: PRESIDENT

I/We have the authority to bind the Corporation/Partnership.

Schedule "A"

LANDS

4583, 4589, and 4601 Mississauga Road, Mississauga and having the legal description set out in Schedule more particularly described as Part of Lts 3 and 4, Range 5, North of Dundas Street, City of Mississauga, Region of Peel.