HUSH HOMES INC. and 2142301 ONTARIO INC.  
(as "OWNERS")

AND

DAVID GILMORE MARSHALL
in trust for a corporation to be formed  
(as "DEVELOPER")

AND

ABERDEEN HOMES LIMITED  
(as "CONSTRUCTION MANAGER")

AND

MARSHALLZEHR GROUP INC.  
(as "LENDER")

CONSTRUCTION MANAGEMENT
AGREEMENT

(Coronation Garden and Silverthorn Mills Projects)
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SCHEDULE A: LANDS
SCHEDULE B: LAND COSTS
SCHEDULE C: DEVELOPMENT MANAGEMENT FEE PAYMENT SCHEDULE
THIS AGREEMENT made as of November 18, 2015.

AMONG:

HUSH HOMES INC. and 2142301 ONTARIO INC.
(hereinafter “OWNERS”) of the First Part

AND

DAVID GILMORE MARSHALL
(hereinafter “DEVELOPER”) of the Second Part

AND

ABERDEEN HOMES LIMITED
(hereinafter “CONSTRUCTION MANAGER”) of the Third Part

AND

MARSHALLZEHFR GROUP INC.
(hereinafter “LENDER”) of the Fourth Part

WHEREAS:

The Owners, as of the date hereof, are the registered and beneficial owners of Silverthorn Mills and Coronation Gardens, two residential development projects more particularly described herein;

The Owners, the Developer, the Construction Manager and the Lender have agreed to enter into this Agreement to confirm the respective roles of the Developer, as the Owner’s representative and developer, and the Construction Manager, as the exclusive manager for both Projects (as hereinafter defined) on the terms and conditions set forth below and to set out the rights of each of the Owners, the Developer, the Construction Manager and the Lender in relation to the profits to be earned from the build-out of such Projects;

The Owners have, 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) (“CCAA”);
The Lender, as an alternative to enforcement of its security in respect of the assets of the Owners, has agreed to provide interim funding for the completion of the Projects by way of debtor-in-possession financing approved by the Court while the Owners remain in possession of their assets subject to the supervision of the Court;

At the request of the Lender, the Developer has been appointed by the Owners to act as agent on their behalf in relation to the supervision and oversight of the Construction Manager and the completion of the Projects and

The Lender has further agreed to provide new financing to the Owners for the completion of such projects by the Construction Manager under the supervision of the Developer, all subject to the Court’s approval and to implementation of a plan of compromise or arrangement in respect of the Owners pursuant to the CCAA, as filed with the Court as of the date hereof ("CCAA Plan").

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 Construction Management Agreement, as amended, supplemented and restated from time to time.

"Applicants" means the Owners, Hush Inc., 2122763 Ontario Inc. and 2164566 Ontario Inc.

"Approval" means an approval in writing.

"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, the CRA 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 Construction Manager, the Project or the Lands, including the businesses carried on therein.

"Build-out Costs" means, in respect of either Project, the Construction Costs in respect of such Project and includes, without limitation, all financing or debt service costs (inclusive of interest and fees, whether paid, accrued or deferred) associated with any financing of the foregoing.

"Build-out Plan" means a plan for the build-out of the Projects 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, on the advice and recommendation of the Construction Manager, a Pro-Forma Budget and a Construction Schedule for such plan.

“Build-out Value” means, in respect of each Project, the difference between the gross revenue realized by the owner of such Project from the orderly build-out of such Project, less the Land Costs and the Build-out Costs attributable to such 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” means the Companies’ Creditors Arrangement Act (Canada)

“CCAA Plan” means the plan of compromise or arrangement filed on November 6, 2015 by the Applicants for the consideration of creditors and the Court in the CCAA Proceedings.

“CCAA Proceedings” means the proceedings commenced by the Applicants under the CCAA;

“CCDC” means Canadian Construction Documents Committee.

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

“Construction Agreement” means an agreement to construct a home on one of the lots of a Project between the Developer and a third party purchaser under a Lot Purchase Agreement in respect of such lot.

“Construction Costs” means, without limitation and without duplication, the Financed Construction Costs and the Other Construction Costs being the total costs, fees, charges and expenses to be paid or incurred following the Effective Date in connection with the servicing, design, construction, use and marketing of any Project.

“Construction Management Fee” has the meaning ascribed thereto in Section 3.1 and shall be governed by Section 4.1 hereof.

“Construction Manager” means Aberdeen Homes Limited.

“Construction Period” means, for each Project, the period commencing on the Effective Date and ending on the date on which all Contracts for the supply of services, supplies and materials in accordance with the Build-out Plan are Totally Completed.

“Construction Plan” means, for each Project, a plan for the orderly build-out of such Project 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 Construction Schedule for such plan.

Construction Schedule” means a graphical representation or chart prepared in respect of a plan for the build-out of the Projects 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 Construction Plan within the Construction Period.

“Consultants” means the independent architects, engineers and project managers and other consultants (including, without limitation, such sub-consultants as are retained by the Consultants) as the Developer may appoint from time to time on the advice and recommendation of the Construction Manager and 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 Owner on the advice and recommendation of the Construction Manager pursuant to Section 3.2 and renewals thereof and amendments thereto including, without limitation, any Construction Agreement.

"Coronation Project" means the development, build-out and sale of constructed homes on the lands owned by Hush Homes Inc. known as "Coronation Gardens" being a residential infill housing development that consists of a 14 lot subdivision that, as at the Plan Implementation Date, will be partially built and sold. Of the 14 building lots, 4 lots (nos. 1, 5, 9 and 10) are sold, on the real property in the Town of Oakville having the legal description set out in Schedule "A" hereto.

"Court" means the Ontario Superior Court of Justice.

"CRA" means the Canada Revenue Agency.

"Developer" means David Gilmore Marshall in trust for a new Ontario corporation to be formed.

"DIP Facility" means the debtor-in-possession financing facility provided by the Lender to the Applicants in the CCAA Proceedings;

"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 or the Construction Manager:

(a) the failure of the Developer or the Construction Manager, as the case may be, to perform its duties and discharge its obligations under this Agreement, provided that any party terminating this Agreement in accordance herewith has delivered notice to the Developer or the Construction Manager, as the case may be, specifying in reasonable detail the particulars thereof and, within thirty (30) days of receipt of such notice, the Developer or the Construction Manager, as the case may be, has not cured such failure in a reasonable manner (or, if more than thirty (30) days are required to cure such failure, the Developer or the Construction Manager, as the case may be, 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 Owners, the Developer or the Construction Manager of any trust or fiduciary duty created by this Agreement for funds received by it on account of the Construction Costs to be paid to contractors, Consultants, and suppliers retained in connection with either Project or the Developer’s or the Construction Manager’s refusal, as the case may be, to account for such funds;

(c) a breach by the Developer or the Construction Manager of any trust or fiduciary duty created by this Agreement for funds received by it attributable to the Profit Participation to be paid to the Owners or as they may direct, or the Developer’s or Construction Manager’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 an Owner, the Developer or the Construction Manager, 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 an Owner, the Developer or the Construction Manager 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) an Owner, the Developer or the Construction Manager 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 an Owner, the Developer or the Construction Manager or of all or any substantial part of the property of either an Owner, the Developer or the Construction Manager and (i) such Owner, the Developer or the Construction Manager, 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).

“Financed Construction Costs” means:

(a) Hard Construction Costs;

(b) Construction Management Fees;

(c) costs for testing and inspection;

(d) fees and expenses for architectural, engineering, planning, land surveying, landscaping, legal and other professional or consulting services (including, without limitation, the cost of preparing and finalizing all drawings, plans and specifications);

(e) costs of all approvals, permits, charges, application fees, bonds, letters of credit, taxes, assessments, rates, fees, levies and related charges imposed by the Authorities;

(f) 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;

(i) taxes and duties including, without limitation, HST and sales taxes, net of input tax credits received or receivable by the Owners or the Construction Manager;

(j) interim and permanent financing interest and all financing fees whether accrued or deferred;

(k) sales and brokerage fees; and

(l) any fees due to a third party other than the Construction Manager the payment for which is funded by the Lender.

“Hard Construction Costs” means:

(i) the cost to the Owner of the Project of all materials acquired and all on-site labour utilized in connection with the construction of residential homes on the Lands and shall include, without limitation, the cost of site preparation, servicing, excavation, disposal, building construction, landscaping, paving and site-finishing costs, 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, as evidenced by third party invoices; and

(ii) the cost of general conditions and the Construction Manager furnished items, set out beforehand 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, and other soft costs.

“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.

“HUSH Distribution Fund” means the trust account established for the benefit of creditors of the Applicants pursuant to the CCAA Plan, to be opened by the Monitor on or before the implementation of the CCAA Plan.

“Land Costs” means, in respect of any Project at any time on or after the implementation of the CCAA Plan and without duplication, the aggregate of all costs then incurred by the Owner of such Project in acquiring and holding such Project in accordance with the CCAA Plan, all other interest, fees or other charges, whether accrued or accruing thereon or deferred in respect thereof, in connection with the financing of such costs from the date of implementing the CCAA Plan to and until Substantial Completion of such Project and the repayment in full of all indebtedness secured against such Project or monies advanced in respect of such Project in accordance with this Plan and includes, for greater certainty and without limitation, all amounts then owing to the Lender, as a result of the refinancing of any Restructuring Costs inclusive of any amounts owing under the DIP Facility or under previous mortgages in favour of the Lender in respect of such Project or on account of amounts owing to the Lender or earned and accrued by the Lender upon implementation of the CCAA Plan in respect of such Project together with all property taxes, land transfer taxes, other charges or amounts related to carrying the land that are paid or payable prior to, on or after the date upon which the CCAA Plan is implemented, all as allocated
in respect of each Project in Schedule “B” annexed hereto.

“Lands” means the lands known, respectively, as the Coronation Project and the Silverthorn Project as described, respectively, in Schedule “A”.

“Lender” means MarshallZehr Group Inc.

“Lot Purchase Agreement” means an agreement to purchase a lot in one of the Projects between the Owner of such Project and a third party purchaser of such lot.

“Model Home” means the property known municipally as 128 Paliser Court, Oakville, Ontario.

“Monitor” means The Fuller Landau Group Inc., in its capacity as monitor of the Owners appointed by the Court in the CCAA Proceedings.

“MZ Refinancing Agreements” means the new financing commitments from the Lender in favour of each of the Owners pursuant to which the Land Costs and the Restructuring Costs will be refinanced and pursuant to which the Construction Costs shall be funded by the Lender.

“New MZ Mortgages” means the new mortgages in favour of the Lender secured against the Projects to be registered against the Lands pursuant to the MZ Refinancing Agreements upon implementation of, and in accordance with, the CCAA Plan.

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

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

“Other Construction Costs” means all:

(a) costs and fees for the supervision of the construction by the Consultants, including, without limitation, the inspection of the work;

(b) expenses for the Construction Manager’s accounting, reporting, and filing any and all returns or reports with CRA, or any other Authorities, as may be required from time to time;

(c) incidental expenses that are not Financed Construction Costs incurred by the Construction Manager in connection with the fulfillment by the Construction Manager of its obligations pursuant to this Agreement;

(d) commercial or other liability insurance related to the operations of the Construction Manager related to the Projects;

(e) costs for computer communications and related expenses required by the Construction Manager in connection with its obligations pursuant to this Agreement;

(f) costs for safety measures and programs (including, without limitation, all applicable equipment) required of the Construction Manager and related expenses; and

(g) any expenses not specifically related to the Projects as are or may be required to be incurred by the Construction Manager that are related to the maintenance of its
corporate status and existence, or its ability and that of its personnel to perform the obligations of the Construction Manager generally under this Agreement, as well as the Construction Manager’s compliance generally with all applicable law.

"Owners" means, at any time, the registered holder of legal title to both of the Projects, currently being Hush Homes Inc. and its successors and assigns in respect of the Coronation Project and 2142301 Ontario Inc. and its successors and assigns in respect of the Silverthorn Project, irrespective of their beneficial ownership in either case and “Owner” means either one of them.

"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.

"Profit Participation" means the right of the HUSH Distribution Fund, on the irrevocable direction of and as beneficiary of the Owners, to receive one hundred percent (100%) of the Build-out Value of the Projects upon and subject to Substantial Completion of the Projects in accordance with Section 4.2.

"Pro-Forma Budget" means, in respect of any Project, the pro-forma budget prepared in respect of a plan by the Developer, on the advice and recommendation of the Construction Manager for the build-out of such Project, which includes, without limitation, the projected Construction Costs of such plan.

"Project" means either of (a) the Silverthorn Project or (b) the Coronation Project, and “Projects” means both of them.

"Restructuring Costs" means, in respect of each Project, amounts payable to Lender on account of (i) all advances under the DIP Facility as allocated to such Project, inclusive of interest and fees thereon, whether accrued, paid or deferred, (ii) fees, interest or other charges, whether paid, accrued or deferred, payable under the New MZ Mortgages in respect of such Project pursuant to the MZ Refinancing Agreements and (iii) the restructuring fee of $500,000 allocated to and payable in respect of each such Project pursuant to the MZ Refinancing Agreements;

"Silverthorn Project" means the marketing, build-out and sale of constructed homes on the lands currently owned by 2142301 Ontario Inc. known as “Silverthorn Mills”, being a residential infill housing development that consists of a 13 lot subdivision that, as of the Plan Implementation Date, will be partially built and sold, on real property in the City of Mississauga having the legal description set in Schedule “A” hereto.

"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 Construction Period.

"Totally Completed" or “Total Completion” means “Completed” as defined in Subsection 2.4 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 an Owner or the Construction Manager, an Owner or the Construction Manager, as applicable, has acted in a reasonable manner with respect to such conditions or cause.

"Written Order" has the meaning set forth in Section 4.4.

ARTICLE 2
RETAINER OF DEVELOPER AND CONSTRUCTION MANAGER

2.1 Confirmation of and Acceptance by Owners, Developer and Construction Manager:

(a) The Lender hereby consents to the Owners retaining both the Developer and Construction Manager, and the Owners hereby retain them, to provide, respectively, 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. The Developer is further hereby assigned all of the Owners' rights to control and improve the Lands and to convey such improvements, on behalf of and as attorney for the Owners, to third party purchasers in accordance with this Agreement and the CCAA Plan.

(b) The Developer and the Construction Manager each hereby accept their respective retainers and agree to perform their respective 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.

(c) Each home constructed on behalf of and under the supervision of the Developer by the Construction Manager, if constructed on a lot in the Project pursuant to a separate Construction Agreement between the Developer and a third party purchaser, shall be completed subject to and contemporaneously with the completion of the Lot Purchase Agreement between the Owner and such third party purchaser in respect of the lot to which the Construction Agreement relates.

(d) The completion of any Lot Purchase Agreement by the Owner will, unless waived by the third party purchaser, be conditional upon the prior completion of the Developer's obligations to such purchaser under the Construction Agreement in respect of the home on the lot to which such Lot Purchase Agreement relates.

(e) All work performed by the Construction Manager pursuant to this Agreement which:

(i) is pursuant to a Construction Agreement with the Developer; or

(ii) is apart from and in addition to work performed under any Construction Agreement including, without limitation, all servicing work in respect of the Projects,

will be performed by the Construction Manager, paid for by the Developer and financed by the Lender pursuant to the terms hereof.
2.2 Representation and Warranty by the Developer

The Developer hereby represents and warrants that he has agreed to act on behalf of the Owners on the consent of the Lender to perform the obligations and duties of Developer pursuant to this Agreement and, in relation to all unsold lots, to do so under and pursuant to a valid Tarion license.

2.3 Representation and Warranty by the Construction Manager

The Construction Manager hereby 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 its 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.

2.4 Duty of Care

(a) The Developer and Construction Manager shall each carry out its duties under this Agreement diligently and expeditiously and with due care, and time shall in all respects hereto be of the essence. The Developer and Construction Manager will each carry out its duties in an efficient manner in keeping with the standards of developers and construction managers of comparable, similar quality developments in the city in which the Lands are located, taking into account size, age and location.

(b) Neither the Developer nor the Construction Manager will be responsible for matters beyond its 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.

2.5 Term of Agreement

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

2.6 Independent Contractor

The Owners and the Lender, each being at arms' length, hereby acknowledge that each of the Developer and the Construction Manager shall undertake its duties hereunder as an independent contractor and not as agent or in any other way as representative of the Owners or 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 among the Owners or the Lender, on the one hand, and either the Developer or the Construction Manager, on the other hand.

**ARTICLE 3**
**SERVICES**

### 3.1 Construction 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, on behalf of the Owner, shall deliver to the Lender, for its Approval, and to the Monitor, for its review, a Construction Plan related to the completion of home construction on the unsold lots in each Project to be prepared on the advice and recommendation of the Construction Manager, as well as a plan for the marketing and sale of constructed homes on unsold lots in each Project. Such Approval shall be at the sole and unfettered discretion of the Lender and the Monitor and without liability to the Developer or the Construction Manager. The Developer, with the assistance of the Construction Manager, shall provide an update from time to time as to the progress of the Construction Plan (including the related Pro-Forma Budget and Construction Schedule) which has been reviewed by the Monitor and Approved by the Lender, if any. The Construction Plan and, in particular, the Pro-Forma Budget shall include a per door construction management fee payable by the Developer to the Construction Manager from funds advanced by the Lender as set out in Section 4.1 hereof (the “Construction Management Fee”).

### 3.2 Scope of Authority

Upon the Approval of a Construction Plan by the Lender after review by the Monitor in accordance with Section 3.1, in connection with the performance by each of the Developer and the Construction Manager of its duties under this Agreement, the Developer, on the advice and recommendation of the Construction Manager, shall have, and is hereby given, the authority, as it deems requisite:

(a) to negotiate, settle and, subject to Subsection 3.2(c), 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 Owners in the name of the Owners, as agent for the Owners and without personal liability except as herein provided, to Authorities for, and obtain all such 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 Owners, all Construction 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 Construction Manager, as delegate of 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 Owners or the Construction Manager, 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 Construction Manager shall promptly give notice thereof to the Lender, the Owners, the Developer and the Monitor.
(c) to apply for and file required CRA business accounts and to correspond with the CRA in respect of the Projects on the matter of HST filings as agent for the Owners, provided that the Owners shall retain all authority and responsibility in relation to their own corporate income tax filings.

The Developer acknowledges and agrees that its authority under this Agreement and any authority that it may delegate to, or exercise based on the advice and recommendation of, the Construction Manager, is subject to first obtaining Approval from the Owners, as applicable, 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 Construction Plan recommended by the Developer and approved by the Lender in accordance with Section 3.1, the Developer and the Construction Manager 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 each Project funded by the Lender:

(a) **Contractors:** (i) the Construction Manager shall review and recommend to the Developer, in its capacity as agent for the Owners, without personal liability except as herein provided, contracts in respect of the Project to be entered into by the Owner, in each case, with contractors, Consultants, suppliers and others; (ii) the Construction Manager shall co-ordinate, direct and supervise their work, scrutinize and approve the settlement of their accounts by the Owner and supervise and use its commercially reasonable efforts to ensure their performance; and (iii) the Developer shall, in its discretion, oversee and approve such activities by the Construction Manager;

(b) **Layout, Design:** the Construction Manager shall recommend to the Developer, the layout, design and engineering for each Project including, without limitation, the preparation of all drawings and specifications for homes to be built for buyers on unsold lots of the Project or otherwise at the request of the Developer and any lot servicing to be completed in connection therewith and the Developer shall, in its discretion, oversee and approve such activities by the Construction Manager;

(c) **Construction Management:** the Construction Manager shall, subject to the oversight and approval of the Developer, co-ordinate and direct to completion, all 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 Pro-forma Budget;
(iii) supervise all construction aspects of the Project in accordance with the requirements of the Developer and of all applicable statutes, laws, by-laws, building codes, ordinances and agreements;

(iv) provide direction and assistance to the Developer with respect to any applications for 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 for consideration by the Developer;

(vii) prepare all documents for the purpose of the Developer calling tenders for various contracts and subprocesses;

(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;

(xviii) inspect and assure the quality of the workmanship of contractors and subcontractors; and
(xix) 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:** the Construction Manager shall notify the Owners, the Developer, 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 Construction Schedule;

(e) **Safety:** all Contracts shall require all Consultants to use commercially reasonable efforts to ensure the safety of all workers and equipment on the Project in accordance with all applicable legislation governing construction safety and the Construction Manager shall use commercially reasonable efforts to ensure that all contractors employed on the Project are acting in a manner as to ensure the safety of all workers and equipment on the Project in accordance with all applicable legislation governing construction safety;

(f) **WSIB:** the Construction Manager shall be responsible for the payment of its own WSIB Premium, and review and maintain records as to the status of all contractors on site;

(g) **Liens:** throughout the Construction Period, the Developer shall use commercially reasonable efforts 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 Owners or the 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 required, provided that the Developer shall not be responsible for any construction liens and other liens which result from the Owner’s failure to pay or fund such items or the Lender’s failure to advance funds to enable the Owner to do so;

(h) **Legal Actions:** the Construction Manager shall monitor and notify the Owner, the Developer and the Lender if it becomes aware of any legal actions affecting either Project arising from the registration of construction liens or otherwise;

(i) **Insurance:**

(i) the Developer shall use all reasonable efforts to cause to be placed by the Developer such policies of insurance in respect of the Project as necessary or desirable to protect the Lender, the Owners, the Developer the Construction Manager, 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 Developer shall ensure that the Lender is named as additional insured under any liability insurance and mortgagee and loss payee under any property insurance. In addition, the Developer shall notify the Owners and the Lender upon receipt of any notice or communication from an insurance carrier regarding adverse change in coverage or the un-insurability of the Project;
(j) **Notification:** the Construction Manager shall promptly give the Owners, the Developer, the Monitor and the Lender notice of any material damage to the Project when the Construction Manager 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;

(k) **Books of Account Information:** the Developer shall at all times during the Construction Period, maintain at the Lands and/or its office at 465 Phillip St #206, Waterloo, ON, N2L 6C7 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. Each of the Owners, the Lender and the Monitor may, acting reasonably and at reasonable times, with reasonable notice in the circumstances (and under supervision of the 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;

(l) **Compliance with Court Order:** the Developer and the Construction Manager shall at all times comply strictly with the terms of any Order of the Court in the CCAA Proceedings and co-operate with the Owners, the Monitor and the Lender in the performance and fulfillment of its or their duties pursuant thereto;

(m) **Warranty Work:** the Developer shall co-ordinate and supervise the activity of the Construction Manager in ensuring a rectification of all deficiencies and administration of all warranties, including arranging and supervising technical audit requirements, if any, the cost of which shall be borne by the Developer provided that the Developer shall not be responsible for the costs of any performance audit(s) required pursuant to the *Condominium Act, 1998*, S.O. 1998, c. 19;

(n) **Financial Statements and Reporting:** not less than monthly during the CCAA Proceedings and quarterly thereafter, the Construction Manager shall make a presentation to the Owners, the Monitor, the Developer and the Lender detailing the status of the Project and the performance of the Construction Manager’s duties hereunder at such locations as may from time to time be mutually agreed upon by the Construction Manager, the Developer and the Lender. In addition, the Developer shall prepare such quarterly reports and financial statements as are reasonably required from time to time by the Monitor, the Owners or the Lender, in a form to be mutually agreed upon;

(o) **Inspection:** the Developer and the Construction Manager, shall allow the Lender, the Owners, the Monitor and their respective representative(s) upon appointment to have access at their own risk to each Project during the construction of such Project;

(p) **Banking:**

(i) **Banking:** the Developer shall manage a separate bank account for each Project opened in the name of the Owner and thereafter handle all banking necessary for the due performance of the accounting and administrative functions of the Developer under this Agreement in connection with such 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 pertaining to such Project required to be administered by the Developer on behalf of the Owner under this Agreement. The Developer shall forthwith deposit in the
separate bank account for the Project maintained by the Developer all cash, cheques and other negotiable instruments received by the Owner, the Developer or the Construction Manager in relation to such Project pursuant to this Agreement;

(ii) Provision of Funds: the Developer shall not at any time be requested to and shall not overdraw the bank account or accounts operated by it in connection with each 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 Developer for the Project, the Lender shall furnish to the Developer sufficient funds to enable it to make such expenditures based on the total amount being drawn from the Lender for such Project pursuant to Section 4.4. If the Lender fails to furnish such funds, the Developer shall not be required 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 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 (p). All funds in this account may be disbursed by the Developer in accordance with this Agreement and without further Approval of the Owners, the Lender or Monitor, provided that such funds until disbursed for the purposes of and in accordance with this Agreement are held in trust for the Lender;

(q) Security: the Construction Manager shall make recommendations to the Developer with respect to measures required to ensure the security for the physical protection of the Project and, when necessary, for the control of vehicular and pedestrian access and egress; and the Construction Manager shall implement those measures for the security for the physical protection of the Project and, when necessary, for the control of vehicular and pedestrian access and egress as have been Approved by the Developer;

(r) Management Personnel: the Construction Manager shall engage (either as employees of the Construction Manager or by contractual arrangements to which each of the Owners and 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 Construction Manager of its construction management obligations under this Agreement. The Construction Manager shall be solely responsible for all employment matters relating to such employees, including hiring, training, discipline, dismissal and administration of any such employees;

(s) Construction Personnel: the Construction Manager shall recommend the engagement by the Developer, on behalf of the Owner, of such other persons as shall be necessary to perform construction and/or servicing work under the supervision of the Construction Manager in relation to each Project. The Developer, on behalf of the Owner, shall be solely responsible for all employment matters relating to such employees, including hiring, training, discipline, dismissal and administration of any such employees;

(t) Holdbacks: the Developer shall maintain a record of all construction lien and other holdbacks and keep record of same on behalf of the Owner and the Developer for review and release according to CCDC contract requirements and the Construction Lien Act (Ontario); and

(u) Meeting: the Developer and the Construction Manager shall attend the meetings described in Section 5.1.
ARTICLE 4
FEES

4.1 Fees and Out-of-Pocket Expenses

In consideration of the development services to be performed by the Developer under this Agreement, the Developer shall be indemnified for, and reimbursed in respect of, its actual out-of-pocket costs. In consideration of the construction management services to be performed by the Construction Manager under this Agreement, the Developer shall pay to the Construction Manager the Construction Management Fee in six instalments upon substantial completion of the stages set out in Schedule “C” attached hereto for each unsold lot or unit in each Project. The Construction Manager shall be responsible for out-of-pocket expenses incurred by the Construction Manager in the performance by the Construction Manager of its obligations pursuant to this Agreement, unless the Construction Manager, Lender, and Monitor agree in advance that an out-of-pocket expense shall be funded by the Lender. Such pre-approved out-of-pocket expenses shall be paid by the Developer on behalf of the Owner with funding from the Lender pursuant to a Written Order referred to in Section 4.4. The Construction Management Fee, through which the Construction Manager shall be entirely compensated for its services in respect of each of the Projects, shall be $85,000.00 per door for the unsold lots only plus an amount equal to 10% of net sales for upgrades, paid in stages as completed pursuant to Schedule “C”.

4.2 Profit Participation

Separate and apart from the Construction Management Fee through which the Construction Manager shall be entirely compensated for the cost of its services to the Owners and the Lender pursuant to this Agreement, the Owners for the benefit of the HUSH Distribution Fund, shall be entitled, on Substantial Completion of the Project, to receive the Profit Participation for the benefit of its creditors and the creditors of the Applicants as contemplated by the CCAA Plan filed in connection with the CCAA Proceedings. If the CCAA Plan is approved by the Court and implemented, such amount shall be paid by the Developer on behalf of the Owners to the Monitor to be held in the HUSH Distribution Fund distributed in accordance with the CCAA Plan pursuant to the irrevocable direction of the Owners.

4.3 Payment of Construction Costs

The Lender shall be responsible for funding all Financed Construction Costs as reviewed by the Monitor in consultation with the Lender and, for greater certainty, the Lender acknowledges and agrees that neither the Developer nor the Construction Manager shall at any time be required to use their own funds, to pay any Financed Construction Costs.

The Construction Manager shall be responsible for funding all Other Construction Costs as determined on its own, unless those expenses are pre-approved out-of-pocket expenses as per Section 4.1

4.4 Written Order

(a) The Developer, on behalf of the Owner, shall be entitled to apply to the Lender at any time (but no more frequently than once weekly and no less frequently than once monthly) for payment of:

(i) the Financed Construction Costs set forth in the then current Approved Pro-Forma Budget; and

(ii) out-of-pocket expenses pursuant to Sections 4.1; and

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(iii) Construction Management Fee pursuant to Schedule “C”,

by delivering to the Lender a written order (herein referred to as a “Written Order”) in a form to be mutually agreed upon, 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 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 Developer on behalf of the Owner as funded by 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);

(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;

(iv) state the funds received between the application of the current Written Order and the previous Written Order specifically, but not limited to customer deposits, and HST rebates. Customer deposits held in trust shall not be included as funds received, but noted as fund held in trust.

(c) Each Written Order shall be delivered to the Lender with a copy to the Owners and the Monitor as aforesaid and shall be prepared by the Construction Manager and Approved and signed by the Developer.

(d) Within ten (10) Business Days after the receipt of such Written Order, the Lender shall pay, to or as directed by the Developer, the amount of the costs requested for payment in such Written Order and in respect of which payment is requested by the 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 Construction Costs, Construction Management Fee or other fees, expenses or any costs until the Approval of a Construction Plan in accordance with Section 3.1.

4.6 Reporting to the Monitor

All Parties agree that, in order to monitor and report upon the realization and payment of the Profit Participation, the Monitor and the Owners shall be (a) given reasonable access to the books and records of 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. Within thirty (30) days of Substantial Completion of each Project, the Owner and the Lender shall be entitled to receive a final
accounting prepared by the Developer with respect to all Construction Costs incurred in respect of the Project. Within sixty (60) days of receiving such report, the Owner shall provide the Monitor with a final financial report in respect of such Project that has been Approved by the Lender setting out the Profit Participation to which the HUSH Distribution Fund shall be entitled pursuant to this Agreement.

ARTICLE 5
CLIENT

5.1 Meetings

At the reasonable request of either one of the Developer, the Monitor or any officer or director of the Lender, from time to time, the Lender, the Developer and the Construction Manager shall meet at the principal offices of the Construction Manager in Kitchener, 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 the Developer

Subject to compliance with the provisions of Subsections 2.1(b), 2.4(a) and 3.1 of this Agreement, the Owners and the Developer, to the extent only of any Lot Purchase Agreements and any Construction Agreements entered into by the Owner or the Developer, shall have authority to take all actions necessary to complete the Project in accordance therewith and the Lender hereby approves such actions.

5.3 Approvals

All requests for Approvals by the Developer or the Construction Manager 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 the Construction Manager or by the Developer or the Construction Manager to the Lender, as the case may be, such request or Approval shall be deemed to be in writing.

The Construction Manager shall have the authority to approve any and all upgrade sales from the upgrade price list that has been approved by the Developer, the Lender and the Monitor. The Developer, the Lender, the Monitor, and the Construction Manager shall agree on the net sales amount applicable to any custom or other upgrade which is not contained on any standard upgrade pricing list approved by the Lender within 10 days of the Construction Manager receiving a request for an upgrade and the buyer’s deposit being paid in respect thereof, failing which the net sales amount applicable to such upgrade will be and be deemed to be two thirds (2/3rds) of the gross sales amount applicable to such upgrade.

5.4 Obligations of the Developer

The Developer, on behalf of the Owner and on Approval of the Lender, shall enter into agreements with one or more listing brokers for the sale of lots and units within each Project. During the Term, the Developer shall secure the use of the Model Home to its realtors for the purpose of marketing and selling lots and homes in the Projects on the basis of a month to month lease of same at a rate of $15,500 per month, terminable on thirty (30) days’ written notice from the Lender. Lease payments in respect of the Model Home shall be allocated to the Projects on the basis of the number of units for sale or under construction in each up to Stage 3 as per Schedule “C”. Routine maintenance of the Model Home shall be the responsibility of the Developer and the Lender, at the expense of the Lender.
5.5 Obligations of the Owners, the Developer and the Construction Manager

The Owners, the Developer and the Construction Manager each shall, all without personal liability (other than for damages or loss occasioned by gross negligence, fraud or other criminal action or neglect) 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 Owners', the Developers' and the Construction Manager's authority as may be required by third parties in connection with the entering into of any Contracts or the securing of any permits, licenses, certificates or approvals and/or as the Monitor may require; and

(d) make all expenditures in respect of the Project as may be Approved by the Lender in accordance with this Agreement.

ARTICLE 6
TERMINATION

6.1 Termination of Agreement

(a) Default by the Construction Manager: If 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, with a copy of same being provided to the Owners and the Monitor (a “Notice of Termination”) to the Developer and the Construction Manager 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 and the Construction Manager.

(b) Pre-emptive Termination: In the event that an Event of Insolvency has occurred, the Lender may terminate this Agreement by Notice to the Owners, the Developer and the Construction Manager, with a copy of same being provided to the Monitor, 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 this Agreement shall be terminated automatically at the option of the Lender on notice in writing to the Owners, the Developer and the Construction Manager.

(d) Termination by the Developer or the Construction Manager: The Developer or the Construction Manager shall have the right to terminate this Agreement at any time on thirty (30) days’ prior written Notice to the Lender provided that, to the extent that the Developer has, subject to the supervision of the Construction Manager, commenced construction on any lot or unit in the Project or otherwise has any obligations pursuant to any Construction Agreement for any lot or unit which extend beyond such thirty (30) day period, this Agreement and/or any Construction Agreement shall survive the termination
of this Agreement insofar as they relate to such obligations. In addition, the Construction Manager shall have the right to terminate this Agreement by notice to the Lender if the Lender refuses to fund the Financed Construction Costs or the Construction Management Fee in respect of the Project. Such Termination shall be effective on the last day of the month during which such Notice is delivered provided that Notice has been given no less than ten (10) days' prior to such date. If at least ten (10) days' Notice has not given prior to the last day of the month during which such Notice is delivered, then such Termination shall be effective on the last day of the month following the month during which such Notice is delivered.

(e) Limited Termination: All rights of termination pursuant to Section 6.1(a), (b) or (d) hereof may be limited in scope to one of the Projects, in which case this Agreement shall continue to be in force and effect and binding on the parties hereto in relation to the other Project.

(f) Survival of Rights: Notwithstanding any termination of this Agreement, the Profit Participation, the Developer's obligation to pay the Construction Management Fee and the obligation of the Lender to make payment by the Developer to enable the Developer to pay the Construction Management Fee to the Construction Manager and to fund any Financed Construction Costs incurred by the Developer for any work completed prior to termination of this Agreement shall survive any termination of this Agreement.

6.2 Delivery of Records, etc.

If this Agreement is terminated or expires for any reason, the Developer and the Construction Manager shall, notwithstanding such termination or expiry, forthwith upon such termination or expiry and from time to time thereafter deliver to the Owners or any representative of the Owners 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 Construction Plans, including the Pro-Forma Budget and Construction 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 or the Construction Manager 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 each Project (whether on or off-site) which are then in the possession or control of the Developer or the Construction Manager which the Owner, as applicable or any receiver of the Project, as applicable, appointed at its instance may reasonably require in order to engage another Developer or Construction Manager to complete the Projects and which relate directly or indirectly to the Projects; provided that the Construction Manager may elect to retain copies of such
records, books of account and documents and notwithstanding such expiry or termination the Developer and the Construction Manager shall keep all such information confidential.

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

(i) a final accounting of the Financed Construction 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 Developer with respect to, or for the benefit of, such Project to be delivered immediately upon such termination.

6.3 Effect of Continued Performance

If this Agreement is terminated, neither the Owner nor the Developer shall be required to pay and the Lender shall not be under any obligation to fund the payment of, any amount whatsoever to the Construction Manager for services performed by the Construction Manager after the effective date of termination unless such performance has been expressly Approved by the Lender and, in that event, the Construction Manager shall be entitled to be paid on a *quantum meruit* basis and the Lender shall fund such payment.

6.4 Duties of the Owners and the Developer Flowing From Termination

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

(a) to the extent necessary, assign the Contracts entered into by the Developer or such Owner 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 Developer or such Owner in accordance with the Pro Forma Budget and paid to the Developer or such Owner by the Lender in accordance with the Construction 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 Developer or such Owner at the time of termination;

(c) pay the Financed Construction Costs recoverable under Section 4.3 to the effective date of termination;

(d) be entitled to conduct a post-termination financial audit of each Project at its own expense, and the Owner of such Project and the Developer shall co-operate with respect to same; and

(e) surrender control of any customer deposits paid in respect of the Project, to the Monitor or otherwise as the Monitor and the Lender may jointly in writing direct.
6.5 Rights on Termination

Any termination of this Agreement in respect of either or both of the Projects shall terminate all rights and obligations under this Agreement in respect of such Project 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, 9.4, 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 Construction Management Fee is payable in stages only after substantial completion of a stage for any lot or unit within the Project. If this Agreement is terminated for any reason prior to substantial completion of any stage for any lot or unit within the Project, the Construction Management Fee shall be deemed earned by the Construction Manager or owing to the Construction Manager pro-rata based on the percentage of completion by the Construction Manager of such stage of construction as of the date of termination.

6.6 CCAA Plan

Each of the parties acknowledges that this Agreement shall be and form a part of the CCAA Plan in respect of the Applicants.

Although the Monitor is not a party to this Agreement, the Owners agree that any Order of the Court sanctioning the CCAA Plan shall confirm the rights, roles and responsibilities of the Monitor hereunder.

Notwithstanding any failure of the Court to sanction the CCAA Plan, both:

(a) the obligations of the parties to the IUSH Distribution Trust; and

(b) the responsibilities of the parties to the Monitor under and pursuant to this Agreement, as well as the rights and responsibilities of, the Monitor under and pursuant to this Agreement,

shall be and remain subject to any Order made by the Court in relation to the CCAA Proceedings.

ARTICLE 7
INDEMNITIES AND LIABILITY

7.1 Indemnity by the Developer and the Construction Manager

During the Term and thereafter, and after the termination of this Agreement, provided that the Lender performs its obligations under this Agreement, each of the Developer and the Construction Manager severally covenant and agree to 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 it of any and all of its respective obligations under 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.

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 Indemnity of the Developer and the Construction Manager

The Lender and each of the Owners hereby jointly and severally covenant and agree to indemnify the Developer and the Construction Manager and hold each harmless in respect of any and all costs incurred by the Developer or the Construction Manager, or for which the Developer or the Construction Manager is otherwise liable, in relation to all work performed in respect of any Project pursuant to this Agreement including under any Construction Agreement assigned to any third-party purchase under a Lot Purchase Agreement provided that all such costs have been provided for in a Pro-Forma Budget as Approved by the Lender, inclusive of contingencies for unanticipated overages, or otherwise Approved by the Lender. During the Term and thereafter, and after the termination of this Agreement, provided that the Developer or the Construction Manager, as the case may be, performs its obligations under this Agreement and/or the applicable Construction Agreement, the Lender and each of the Owners shall jointly and severally indemnify and save the Developer and the Construction Manager harmless from any action, cause of action, suit, debt, cost, expense, claim or demand whatsoever at law or in equity connection with this Agreement and/or any Construction Agreement or other Contract entered into by the Developer.

7.3 Exculpation

Notwithstanding any other provision in this Agreement, the Lender acknowledges that so long as the Developer and the Construction Manager, their respective officers and servants have acted in good faith and have exercised reasonable care and due diligence in the performance of its duties hereunder, neither the Developer nor the Construction Manager, as the case may be, shall be liable for any loss of revenue or consequential damages for any reason whatsoever and the Lender further acknowledges that neither the Developer nor the Construction Manager, as the case may be, shall be liable for any depreciation in the value of the Projects or the Lands or for any error in judgment of their respective officers, servants, agents or independent contractors provided that the Developer or Construction Manager, as the case may be, 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 Owners:

Hush Homes 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 Developer:

465 Phillip St, Suite 206
Waterloo, ON, N2L6C7

Attention: David Gilmore Marshall
Telephone: 519-342-1000
Email: dmarshall@marshallzehr.com

(c) 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 Construction Manager:

Aberdeen Homes Limited
20 Crestview Place
Kitchener, ON
N2B 0A2

Attention: Nathan Halman
Telephone: 519-744-1991  
Email: NHallman@aberdeenhomes.ca

with a copy to:

McCarter Grespan Beynon Weir PC  
Attention: Avril Lavallee and Paul Grespan  
675 Riverbend Drive  
Kitchener, ON  
N2K 3S3

(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: g Abrahamson@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 reenacted 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 in addition to the amounts specified herein 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 save and
except for a termination of this Agreement by the Developer or the Construction Manager pursuant to Section 6.1(d) if the Lender refuses to fund the Financed Construction Costs or the Construction Management Fee which termination shall be effective on the last day of the month regardless of whether the last day of the month is a 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, none of the Lender, the Owners or the Construction Manager 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 Construction Manager shall keep in strict confidence and shall not disclose to any person who is not a party hereto except as necessary to obtain legal, accounting or other professional advice and/or to discharge its obligations hereunder, this Agreement and any and all information obtained with respect to the Project, the Owners and the Lender or of any of them unless and until Approval of the Owners and 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 Construction Manager 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(d), not be disclosed to any other person whatsoever other than to the Monitor and the Court as may be necessary for the Owners, the Construction Manager 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 Owners or the Construction Manager, unless and until the consent of the Owners and the Construction Manager 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 Owners or Construction Manager 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(d), not be disclosed to any other person whatsoever.

(c) The Owners 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 Lender or the Construction Manager, unless and until the consent of the Lender and the Construction Manager 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 Lender or Construction Manager received by the Owners 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(d), not be disclosed to any other person whatsoever.

(d) Nothing in this Section shall preclude disclosure by the Owners, the Construction Manager or the Lender 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, the Owners or the Construction Manager is obliged to disclose such information;

(iv) to contractors, Consultants, suppliers and others in connection with the Project or the Construction Manager'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, the Owners or the Construction Manager, as applicable, and being entitled in law to receive such information, nor shall the Lender, the Owners or the Construction Manager be precluded from extracting from such information financial data necessary to report on the status of the Lender or an Owner'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.

(c) 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 supersedes 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.

HUSH HOMES INC.
By: 
Name: NAHEEL SULEMAN
Title: PRESIDENT
I/We have the authority to bind the Corporation.

ONTARIO INC.
By: 
Name: NAHEEL SULEMAN
Title: PRESIDENT
I/We have the authority to bind the Corporation.

Witness David G. Marshall in trust for a corporation to be formed.

ABERDEEN HOMES LIMITED
By: 
Name: NATHAN NAELM
Title: PRESIDENT
I/We have the authority to bind the Corporation.

MARSHALL-ZEHRL GROUP INC.
By: 
Name: GREGORIO ZEHRL
Title: PRESIDENT
I/We have the authority to bind the Corporation.
Schedule "A"

LANDS

Coronation: Municipal Description:
417 Lakeshore Rd W., Oakville, Ontario.

Legal Description:
Lots 2, 3, 4, 6, 7, 8, 11, 12 and 13, Plan 20M1105, Town of Oakville, Region of Halton, a portion of which is now described as Plan 20M1105 together with an undivided common interest in Halton Common Elements Condominium Corporation No. 622, subject to Easements in Gross registered as Instrument No. HR986468, HR986471 and HR986477; and subject to an Easement registered as Instrument No. HR1151798.

Silverthorn: Municipal Description:
Silverthorn Mill Avenue, Mississauga, Ontario.

Legal Description:
Lots 3, 4, 5, 6, 8, 9 and 10 Plan 43M1843, City of Mississauga, Region of Peel with registration of common elements Condominium Corporation pending.
Schedule “B”

LAND COSTS

Land Costs as at the date of implementation of the CCAA Plan, to the extent of those amounts owing under existing mortgages to be refinanced on the implementation of the CCAA Plan, will be proportionately allocated to the unsold lots within each Project based on the chart below which, in turn, is based on the appraisal values adjusted as indicated below.

<table>
<thead>
<tr>
<th>Description</th>
<th>Silverthorn</th>
<th>Coronation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appraisal Value (Antec as revised)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sold Lots</td>
<td>6,930,000</td>
<td>9,610,000</td>
</tr>
<tr>
<td>Unsold Lots</td>
<td>2,975,000</td>
<td>5,375,000</td>
</tr>
<tr>
<td>Appraisal Value</td>
<td>3,955,000</td>
<td>4,235,000</td>
</tr>
<tr>
<td>Less: Discharged Lots (11, 3) (as appraised)</td>
<td>-1,690,093</td>
<td>-696,154</td>
</tr>
<tr>
<td>Add: Upgrades</td>
<td>334,730</td>
<td>9,092</td>
</tr>
<tr>
<td>Less: Cost to Complete (MZ Estimate)</td>
<td>-487,249</td>
<td>-696,154</td>
</tr>
<tr>
<td>Less: Deposits Spent</td>
<td>-447,254</td>
<td>-156,106</td>
</tr>
<tr>
<td>Less: HST on Closing</td>
<td>-363,779</td>
<td>-580,449</td>
</tr>
<tr>
<td>Less: Closing (Legals, DD, LTT, and Title Ins)</td>
<td>-10,000</td>
<td>-15,000</td>
</tr>
<tr>
<td>Less: Closing (Legals, DD, LTT, and Title Ins)</td>
<td>-92,950</td>
<td>-119,140</td>
</tr>
<tr>
<td>Less: Commissions</td>
<td>-66,656</td>
<td>-100,195</td>
</tr>
<tr>
<td>Transfer Price</td>
<td>1,234,699</td>
<td>2,696,188</td>
</tr>
<tr>
<td></td>
<td>2,777,925</td>
<td>5,067,735</td>
</tr>
</tbody>
</table>
Schedule “C”

CONSTRUCTION MANAGEMENT FEE PAYMENT SCHEDULE

Payment Schedule: Unsold Lots

<table>
<thead>
<tr>
<th>Stage</th>
<th>Milestone: Requirements</th>
<th>Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>SALE</td>
<td>Firm Sale Contract &amp; Collection of 1st deposit</td>
<td>1/6 of per door fee or 14,500</td>
</tr>
<tr>
<td>1</td>
<td>Pouring and Setting of Foundation and receipt of fully approved building permit, and payment of Development Charge</td>
<td>1/6 of per door fee or 14,100</td>
</tr>
<tr>
<td>2</td>
<td>Weather proofing of exterior including shingling of roof, installation of windows and doors</td>
<td>1/6 of per door fee or 14,100</td>
</tr>
<tr>
<td>3</td>
<td>Completion of Interior walls: plumbing, electrical, HVAC, and drywall, and passing of required inspections.</td>
<td>1/6 of per door fee or 14,100</td>
</tr>
<tr>
<td>4</td>
<td>Occupancy of Sale including pre closing walk through with purchaser and handover of keys. Completion of Upgrades and Landscaping</td>
<td>1/6 of per door fee or 14,100 + 10% of Net Upgrade Sales.</td>
</tr>
<tr>
<td>5</td>
<td>Paid on Closing. Subject to Payment Holdback over both sites until reduction of City securities. Paid for Warranty Work.</td>
<td>1/6 of per door fee or 14,100</td>
</tr>
</tbody>
</table>

Payment Rules: Unsold Lots

Each numerical stage shall only be considered completed if the requirements of that stage and all the previous numerical stages have been completed. Payment related to the “SALE” stage of any unsold lot shall be made once per lot, and only following the expiry of any buyer rescission right and receipt of confirmation that the buyer’s deposit cheque that is not certified has cleared.

Payment Holdback: Unsold Lots

A total of $85,000.00, being the total amount of the Construction Management Fee payable hereunder in respect of one (1) unit shall be held back in the final payment made to the Construction Manager in respect of any Project until the release or reduction of securities required to be posted in respect of such Project and subject to the Construction Manager satisfying the Lender, if such securities are not released, that it then has the ability to perform the duties required to obtain the release of such securities. Any reduction of posted securities from current levels shall result in a proportionate reduction in the amount of such final unity holdback.

The Lender shall be responsible for all legal costs related to the registration of all subdivision and condominium plans. The Lender shall also be responsible for the Construction Manager’s legal expenses in connection with this Agreement and the matters contemplated there in up to $15,000.