

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF AN APPLICATION**

pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as am.,  
section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and the *Personal Property Security  
Act*, R.S.O. c. P.10

BETWEEN:

DAVINCI CAPITAL PARTNERS INC. IN ITS CAPACITY AS TRUSTEE OF  
DAVINCI CAPITAL PRIVATE DEBT FUND

Applicant

-and-

9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE

Respondent

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**MOTION RECORD  
Returnable: July 11, 2017**

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**Date: July 6, 2017**

**REGENT LAW PROFESSIONAL CORPORATION**  
1401-150 Metcalfe Street  
Ottawa, ON K2P 1P1

Justin R. Fogarty, LSUC # 29488G  
Jason Dutrizac, LSUC # 50004T  
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Tel: 613.319.9997  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF AN APPLICATION**

pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as am.,  
section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and the *Personal Property Security  
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BETWEEN:

DAVINCI CAPITAL PARTNERS INC. IN ITS CAPACITY AS TRUSTEE OF  
DAVINCI CAPITAL PRIVATE DEBT FUND

Applicant

-and-

9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE

Respondent

**NOTICE OF MOTION**

**TAKE NOTICE** that Link & Associates Inc. (the “**Receiver**”) in its capacity as Interim Receiver of the Respondent 9584358 Canada Ltd. o/a Eastway Fire and Rescue (“**Eastway**”) will make a motion to a Judge of the Superior Court of Justice on the 11<sup>th</sup> day of July, 2017 at 10:00 a.m. or as soon after that time as the motion can be heard, at the Ottawa Courthouse, 161 Elgin St. Ottawa, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An Order, substantially in the form attached as **Schedule “A”**, which order shall, *inter alia*:
  - (a) abridge the time for, and validate the service of, the First Report, the Notice of Motion and the motion materials filed in support of this motion and dispense with further service of same

- (b) accept the First Report of the Receiver dated July 6, 2017 (the “**First Report**”) and approve the activities of the Receiver described therein;
- (c) extend the duration of the Receiver’s appointment as set out at paragraph 2 of the June 23, 2017 order appointing it as Interim Receiver (the “**Appointment Order**”) for a further ninety (90) days to October 23, 2017, inclusive;
- (d) direct Michael Cappy (“**Cappy**”) to deliver to the Receiver \$17,463.55 USD (the “**Funds**”) which monies Cappy caused Eastway to transfer to Cappy directly or indirectly, to be held in trust by the Receiver pending determination of rights thereto;
- (e) prohibit Michael Cappy and/or Gibraltar Management Services from directly or indirectly interfering with the operation of the Company’s website, email and servers and directing Michal Cappy and/or Gibraltar Management Services to provide all necessary cooperation to transfer the Company’s domain name eastwayfireandrescuevehicles.com and website and server backups to the Receiver; and,
- (f) such further and other relief as this Honourable Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

**Approve activities of the Interim Receiver and accept First Report**

2. On June 23, 2017 the Receiver was appointed pursuant to the Appointment Order.
3. The activities of the Receiver up to July 6, 2017 are set out in the First Report. The majority of the activities of the Receiver discussed in the First Report relate to its gathering of information, taking control of the property of the Debtor and stabilizing the company’s operations.
4. The Receiver seeks approval of its activities referenced in the First Report and ratification of the First Report.

## **Extend the Appointment of the Interim Receiver**

5. Paragraph 2 of the Appointment Order reads as follows:

2. THIS COURT ORDERS that pursuant to section 47 (1) of the BIA and section 101 of the CJA, in respect of the Debtor, Link & Associates Inc. is hereby appointed Receiver, without security, of all of the Debtor's assets, undertakings and properties of every nature and kind whatsoever, and wherever located, including all proceeds thereof, acquired for, or used in relation to a business carried on by the Debtor (collective the "Property"), until the earlier of:

- a. the taking of possession by a receiver, within the meaning of subsection 243(2) of the BIA, of the Debtor's property over which the interim receiver was appointed,
- b. the taking of possession by a trustee of the Debtor's property over which the interim receiver was appointed, or
- c. the expiry of 30 days after the day on which the interim receiver was appointed or of any period specified by the court.

6. The Receiver requires a further ninety (90) days, or such further time as the Court may direct, to take such further and other actions as permitted by the Appointment Order.

## **The Funds**

7. The Interim Receiver has disclosed in the First Report its discovery of the three payments by Eastway to a third-party entity on the eve of the Appointment Order, such payments totalling \$17,463.55 USD.

8. Cappy, the principal and controlling mind of Eastway, directed the payments listed above to Gibraltar Management Services, a company controlled by him.

9. The payments listed above appear to be transfers of property that are void pursuant to section 95 of the BIA, the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 and/or the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33.

10. The Receiver requests an Order directing Cappy to pay to it the sum of \$17,463.55 USD to be held in trust pending the determination of whether the payments listed above constitute transfers contrary to section 95 of the BIA, the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 and/or the *Assignments and Preferences Act*, R.S.O. 1990, c. A.33.

### **The Website**

11. The Interim Receiver has disclosed in the First Report, just prior to the Appointment Order, Cappy proposed to Davinci that Eastway's website and server backups be taken down.

12. The Receiver believes it is appropriate and necessary to obtain an order prohibiting Michael Cappy and/or Gibraltar Management Services from directly or indirectly interfering with the operation of the Company's website, email and servers and directing them to provide all necessary cooperation to transfer the Company's domain name eastwayfireandrescuevehicles.com and website and server backups to the Receiver.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- The First Report of the Interim Receiver, dated July 6, 2017 with attached exhibits;
- Such further materials as counsel may advise.

**Date: July 6, 2017**

**REGENT LAW PROFESSIONAL CORPORATION**  
1401-150 Metcalfe Street  
Ottawa, ON K2P 1P1

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Lawyers for the Interim Receiver

**TO: TIERNEY STAUFFER LLP**  
510-1600 Carling Avenue  
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Michael Ng

Tel: 613-623-3177  
Fax: 613-623-9166

[mng@tslawyers.ca](mailto:mng@tslawyers.ca)

Lawyers for the Respondent

*(via e-mail in accordance with  
para. 20 of the June 23/17 Appointment Order)*

**DAVINCI CAPITAL PARTNERS INC. et al**  
Applicants

-and- **9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE**  
Respondents

Court File No... 17-73088

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**OTTAWA**

**NOTICE OF MOTION**  
**(Returnable: July 11, 2017)**

**REGENT LAW PROFESSIONAL CORPORATION**  
1401-150  
Metcalfe Street  
Ottawa, ON  
K2P 1P1

Justin R. Fogarty, LSUC # 29488G  
Jason Dutrizac, LSUC #50004T  
Ryan E. Flewelling, LSUC #49009W

Tel:613.319.9997  
Fax: 416.943.6270

Lawyers for the Applicant

RCP-E 4C (July 1, 2007)



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
 )  
JUSTICE MACLEOD ) TUESDAY, THE 11<sup>th</sup>  
 DAY OF JULY, 2017

**IN THE MATTER OF AN APPLICATION**

pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as am.,  
section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and the *Personal Property Security  
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BETWEEN:

DAVINCI CAPITAL PARTNERS INC. IN ITS CAPACITY AS TRUSTEE OF  
DAVINCI CAPITAL PRIVATE DEBT FUND

Applicant

-and-

9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE

Respondent

**ORDER**

**THIS MOTION**, made by Link & Associates Inc. (the “**Receiver**”) in its capacity as Interim Receiver of the Respondent 9584358 Canada Ltd. o/a Eastway Fire and Rescue (“**Eastway**”) for an Order extending the duration of the interim receivership pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), and for such further and other relief as set out in the Notice of Motion dated July 6, 2017, was heard this day at 161 Elgin Street, Ottawa, Ontario.

**ON READING** the Notice of Motion and the First Report of the Receiver dated July 6, 2017 (the “**First Report**”), and on hearing the submissions of counsel for Receiver and the Respondent,

1. **THIS COURT ORDERS** that the time for and method of service of the Notice of Motion and the First Report are hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
  2. **THIS COURT ORDERS** that the First Report is hereby accepted and approved and the Receiver's activities as set out in the First Report be and are hereby approved.
  3. **THIS COURT ORDERS** that the duration of the Receiver's appointment as set out in paragraph 2 of the June 23, 2017 Order appointing it as Interim Receiver (the "**Appointment Order**") is hereby extended for a further ninety (90) days to October 23, 2017, inclusive.
  4. **THIS COURT ORDERS** and hereby directs Mr. Michael Cappy ("**Cappy**") to deliver to the Receiver \$17,463.55 USD (the "**Funds**") forthwith, which the Receiver shall hold in trust pending this Court's final determination of rights to said Funds.
  5. **THIS COURT ORDERS** and hereby directs Cappy to refrain from directly or indirectly interfering with the operation of the Eastway's website, email and servers and to provide all necessary cooperation to the Receiver to transfer the Eastway' domain name eastwayfireandrescuevehicles.com, website and server backups to the Receiver.
-

**DAVINCI CAPITAL PARTNERS INC. et al**  
Applicants

-and- **9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE**  
Respondents

Court File No...17-73088

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT  
OTTAWA

**ORDER**

**REGENT LAW PROFESSIONAL CORPORATION**  
1401-150  
Metcalfe Street  
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Lawyers for the Applicant

RCP-E 4C (July 1, 2007)

TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DAVINCI CAPITAL PARTNERS INC. IN ITS CAPACITY AS TRUSTEE OF  
DAVINCI CAPITAL PRIVATE DEBT FUND

Applicant

-and-

9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE

Respondent

**FIRST REPORT OF THE INTERIM RECEIVER  
LINK & ASSOCIATES INC.**

**July 6, 2017**

## **INDEX OF APPENDICES**

- A. Order Appointing Interim Receiver dated June 23, 2017
- B. Affidavit of Wayne Ehgoetz dated June 22, 2017
- C. Supplementary Affidavit of Wayne Ehgoetz dated June 23, 2017
- D. Demand Letter to Michael Cappy and Gibraltar Management Services dated June 30, 2017 with email and fax delivery receipts

## **INTRODUCTION**

1. This is the first report (the “**First Report**”) of Link & Associates Inc., filed in its capacity as the Court-Appointed Interim Receiver (in such capacity, the “**Receiver**”) of 9584358 Canada Ltd. o/a Eastway Fire and Rescue (“**Eastway**” or the “**Debtor**”).
2. The Receiver was appointed pursuant to the Order of the Honourable Mr. Justice Macleod of the Ontario Superior Court of Justice (the “**Court**”) dated June 23, 2017 (the “**Appointment Order**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.

### **Purpose of this First Report**

3. The purpose of this First Report is to seek from this Honourable Court:
  - (a) an order extending the appointment of the Receiver for a further 90 days, to October 23, 2017.
  - (b) an order directing Michael Cappy and/or Gibraltar Management Services to repay the sum of \$17,463.55 United States Dollars to the Receiver, to be held pending a further determination of rights to said funds by this Honourable Court;
  - (c) an order prohibiting Michael Cappy and/or Gibraltar Management Services from directly or indirectly interfering with the operation of the Company’s website, email and servers and directing Michael Cappy and/or Gibraltar Management Services to provide all necessary

cooperation to transfer the Company's domain name [eastwayfireandrescuevehicles.com](http://eastwayfireandrescuevehicles.com) and website and server backups to the Receiver;

- (d) an order accepting the First Report and approving the actions, activities, conduct and findings of the Receiver as described therein; and
- (e) such further and other relief as to this Honourable Court may seem just and appropriate.

#### **Notice to Reader**

4. In preparing this First Report and making the comments herein the Receiver has relied upon information prepared or provided by the Debtor and information from other third-party sources (collectively, the “**Information**”). Certain of the information contained in this First Report may refer to, or is based on, the Information. As the Information has been provided by various third parties or has been obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, has reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook and accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.



5. Unless otherwise stated, all dollar amounts set out in this First Report are expressed in Canadian dollars.

## **BACKGROUND**

6. Eastway is a federally incorporated company that operates its business out of leased premises located at 100 Industrial Avenue, Units B and C, Carleton Place, Ontario, (the “**Carleton Place Premises**”). Eastway is in the business of designing and manufacturing “built-to-order” pumper trucks, tanker trucks, and rescue, wildlands and hazmat vehicles.

7. In December 2014 Eastway Emergency Vehicles Inc. (“**EEVI**”) was acquired by Michael Cappy (“**Cappy**”) and re-branded as Eastway911 Emergency Vehicles Ltd. (“**Eastway911**”).

8. In November, 2015 Eastway911 ceased production when the landlord (and former owner of EEVI) locked the doors for non-payment of rent.

9. On January 3, 2016 Eastway 911 filed a Notice of Intention to Make a Proposal and through a Court-approved stalking horse bid process, 9584358 Canada Ltd. acquired the assets of Eastway911 on or about March 18, 2016.

10. On May 25, 2017, Eastway acquired certain assets of competitor Arnprior Fire Trucks Corp. (“**Arnprior**”) from Plaintree Systems Inc. for nominal cash consideration and assumption of certain liabilities, including an agreement to lease the Arnprior premises (the “**Arnprior Premises**”) for one year.

11. The assets purchased from Arnprior included the rights to five (5) contracts to build rescue vehicles for various municipalities in Canada and the United States, in various stages of completion. The assumed liabilities include customer deposits associated with these contracts.

### **DaVinci Loan to Eastway**

12. On or about March 15, 2016, Eastway entered into a loan agreement with DaVinci for working capital and term loan facilities totalling \$1.9 million. The purpose of the loans was to provide Eastway with funds to acquire the operating assets of EEVI and to provide working capital to finance the day to day operations of Eastway.

13. The Receiver understands that Cappy is the sole or majority shareholder of Eastway and the personal guarantor (up to \$1 million) of the indebtedness of Eastway to DaVinci under the provisions of the loan agreement between DaVinci and Eastway.

14. The loan advances from DaVinci to Eastway have been continuously increasing and are presently in the range of \$3.8 million.

15. In January 2017, Mr. Terry Kruk (“**Kruk**”) was appointed by DaVinci to monitor the Eastway loan, which included attendances at the Carleton Place Premises.

16. Kruk’s role evolved into more of an interim CFO role for a period of time, until recently when his signing authority and electronic access to the bank accounts were revoked by Cappy, thereby removing visibility of the Company’s financial position to DaVinci.

17. Efforts by DaVinci to regularize the loan in a forbearance agreement were not successful.

18. Further background information regarding the dispute between DaVinci and Cappy is more fully documented in the Application Record and specifically the affidavit of Wayne Ehgoetz (“**Ehgoetz**”) dated June 22, 2017 and the supplementary affidavit of Ehgoetz dated June 23, 2017, copies of which are attached hereto as **Appendix “B”** and **Appendix “C”**, respectively.

#### **Appointment of Interim Receiver**

19. The relationship between Cappy and DaVinci continued to deteriorate, resulting in DaVinci bringing an application for the appointment of the Receiver.

20. The Receiver was appointed on Friday, June 23, 2017, such appointment to be for a period of 30 days or further order of the Court.

#### **ACTIVITIES OF THE RECEIVER**

21. In accordance with the provisions of the Order, the Receiver immediately contacted the Bank of Nova Scotia (Carleton Place branch) (“**BNS**”) on June 23, 2017 to serve the Appointment Order and freeze the accounts.

22. On June 26, 2017 the Receiver met with the BNS to commence the process of changing signing authorities and on-line banking access such that the bank accounts will be under the control of the Receiver.

23. The Receiver attended at the Company's two business premises in Carleton Place and Arnprior, Ontario on June 26 and 27, 2017 to meet with key employees, review the status of jobs in progress, and commence its review and evaluation of financial position and operational issues.

24. Given his familiarity with the business and its employees, and his accounting and finance background, the Receiver has designated Kruk as the manager of the day-to-day business operations.

25. It is evident that the very recent acquisition of Arnprior will require a much more in-depth evaluation of the viability of the business going forward, and determination and implementation of the steps required to integrate Eastway and Arnprior, which will extend beyond the Receiver's initial 30 day mandate.

#### **Outgoing Wire Payments on Return Date of Motion**

26. The Receiver has identified three (3) payments totalling \$17,463.55 USD made from the Company's US Dollar bank account at Bank of Nova Scotia between 7:03 a.m. and 7:08 a.m. EST on June 23, 2017, such payments being made by wire transfer to Gibraltar Management Services ("**Gibraltar**") and electronically authorized by Cappy.

27. The Receiver understands that Gibraltar is a US-based company owned and/or controlled by Cappy. The payments made to Gibraltar equate to approximately \$23,000 CAD.

28. A wire payment of \$4,000 was also made to a law firm from the Company's CAD Dollar bank account at Bank of Nova Scotia on June 22, 2017.

29. The total of these payments on the eve, and morning, of the return of the motion is approximately \$27,000.

30. According to DaVinci, it agreed to provide additional working capital based upon specific funding requests from Eastway. At the time of the application for the appointment of the Receiver, the rent for the Arnprior Premises was 3 months in arrears, a total of \$26,950.50 and DaVinci had provided funding to pay same.

31. DaVinci had also providing funding for critical supplier payments for the completion of a fire truck, and such payment was not made.

32. The foregoing payments diverted funds away from the Company which had been loaned by DaVinci for the purpose of paying the rent and key suppliers.

33. On June 30, 2017, the Receiver wrote to Cappy and Gibraltar and demanded the return of these funds. A copy of the Receiver's demand, along with email and fax delivery confirmation receipts, are attached as **Appendix "D"**.

34. Subsequent to its appointment, the Receiver arranged for the payment of the rent arrears for the Arnprior Premises on June 28, 2017.

### **Servers and Website**

35. According to an email from Cappy to Ehgoetz dated June 19, 2017 which is contained within the affidavit of Ehgoetz dated June 22, 2017, Cappy states that as part of a proposed deal between him and DaVinci:

*“The company’s website and server backups would be immediately removed from Gibraltar’s accounts and servers”*

36. The Receiver believes it is appropriate and necessary to obtain an order prohibiting Michael Cappy and/or Gibraltar Management Services from directly or indirectly interfering with the operation of the Company’s website, email and servers and directing them to provide all necessary cooperation to transfer the Company’s domain name [eastwayfireandrescuevehicles.com](http://eastwayfireandrescuevehicles.com) and website and server backups to the Receiver.

37. The Receiver notes that the Company’s website is no longer accessible.

#### **ASSETS OF THE DEBTOR**

38. The assets of the Debtor consist primarily of contracts, work in progress, and a quantity of materials inventory and equipment.

39. The Receiver is currently evaluating the economic feasibility of each of the five (5) contracts included in the assets purchased from Arnprior.

40. The Company has one truck nearing completion which will generate \$267,000 and is also in advanced discussions with a municipality in Southwest Ontario to sell one demo pumper truck and one demo mini-rescue vehicle for a total of approximately \$670,000.

41. The ability to sell the demo vehicles in the near terms will be key to generating cash flow for the continued operation of the business.

## **FINANCIAL POSITION**

42. The nature of the Eastway business model is that it generally requires the customer to pay in full upon delivery of a completed vehicle, which means it must carry the costs of a build and overheads for several months until completion, although in certain instances partial deposits are paid, and/or the customer purchases the chassis.

43. The Company does not currently have sufficient contract volume to be profitable. Without sufficient contracts, there is excessive downtime and inefficiencies, and a large amount of fixed and variable overheads draining cash flow; such shortfalls to date have been covered primarily via additional DaVinci loan advances.

44. Since the date of the Appointment Order, DaVinci has continued to fund the critical operating expenses of the Company.

45. The Receiver is in the process of preparing an updated cash flow forecast and viability assessment and will report on same in its next report to Court.

## **SECURITY AND LEGAL OPINION**

46. Security was granted by Eastway to DaVinci in the form of a General Security Agreement dated March 15, 2016 (the “**GSA**”), as well as a share pledge and a personal guarantee from Cappy. The GSA was registered pursuant to the *Personal Property Security Act* (“**PPSA**”) on March 18, 2016.

47. The Receiver has retained the law firm of Spark LLP to provide an independent legal opinion on the security held by DaVinci and will file a copy of the legal opinion in its next report to Court.

#### **SUMMARY AND RECOMMENDATIONS**

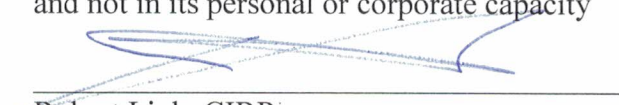
48. Given the recent acquisition of the assets of Arnprior and the need to integrate two different operations, premises, and employees, and the amount of additional funding potentially needed, and lack of lender confidence in ownership, the oversight of the Receiver is necessary and should continue.

49. The Receiver recommends an extension of its mandate for a period of 90 days from the original expiry date in the Appointment Order.

All of which is respectfully submitted this 6<sup>th</sup> day of July, 2017.

#### **LINK & ASSOCIATES INC.**

Court-Appointed Interim Receiver of  
9584358 Canada Ltd. o/a Eastway Fire and Rescue  
and not in its personal or corporate capacity



---

Robert Link, CIRP  
Licensed Insolvency Trustee



## APPENDIX A

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )

FRI DAY, THE 22<sup>d</sup>

JUSTICE C. MACLEOD )

DAY OF JUNE, 2017

**IN THE MATTER OF AN ANTICIPATED APPLICATION**

pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as am.,  
section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and the *Personal Property Security Act*, R.S.O. c. P.10

**BETWEEN:**

**DAVINCI CAPITAL PARTNERS INC. IN ITS CAPACITY AS TRUSTEE OF  
DAVINCI CAPITAL PRIVATE DEBT FUND**

Applicant

-and-

**9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE**

Respondent

**ORDER APPOINTING INTERIM RECEIVER**

THIS MOTION, made by the Applicant Davinci Capital Partners Inc. in its capacity as trustee of Davinci Capital Private Debt Fund (the "**Applicant**") for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**"), appointing Link & Associates Inc. as Interim Receiver (the "**Receiver**") without security, of all the assets, undertakings and properties of 9584358 Canada Ltd. o/a Eastway Fire and Rescue (the "**Debtor**") was heard this day at 161 Elgin Street, Ottawa, Ontario.

ON READING the Notice of Application dated June 22, 2017, the Affidavit of Wayne Ehgoetz sworn June 22, 2017, the consent of Link & Associates Inc. to act as the Interim Receiver and on hearing the submissions of Counsel for the Applicant, no on appearing for the Respondent although duly served with the Notice of Application as evidence by an affidavit of service, filed,

## **SERVICE**

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

## **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 47 (1) of the BIA and section 101 of the CJA, in respect of the Debtor, Link & Associates Inc. is hereby appointed Receiver, without security, of all of the Debtor's assets, undertakings and properties of every nature and kind whatsoever, and wherever located, including all proceeds thereof, acquired for, or used in relation to a business carried on by the Debtor (collective the "**Property**"), until the earlier of:

- a. the taking of possession by a receiver, within the meaning of subsection 243(2) of the BIA, of the Debtor's property over which the interim receiver was appointed,
- b. the taking of possession by a trustee of the Debtor's property over which the interim receiver was appointed, or
- c. the expiry of 30 days after the day on which the interim receiver was appointed or of any period specified by the court

## **RECEIVER'S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security

personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

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

such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding ~~\$250,000~~ <sup>\$100,000</sup>, provided that the aggregate consideration for all such transactions does not exceed ~~\$750,000~~; and ~~\$~~ 500,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

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

(l) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of Eastway;

(o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

(p) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

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

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may

not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

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

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court.

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

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing

in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

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

#### **RECEIVER TO HOLD FUNDS**

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

#### **EMPLOYEES**

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



## PIPEDA

13. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

14. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

15. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

16. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, to a maximum of \$100,000.00, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

18. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **SERVICE AND NOTICE**

19. **THIS COURT ORDERS** that the Receiver be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true

copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

20. **THIS COURT ORDERS** that the Applicants, the Receiver, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time.

#### **GENERAL**

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

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

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

24. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, as provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to

be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine or may be agreed between the parties.

25. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver, the Applicants and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

**SEALING OF COURT DOCUMENTS**

26. **THIS COURT ORDERS** that the Application Record be sealed and not form part of the public record until such further order of the Court.

<b>ENTERED AT OTTAWA INSCRIT A OTTAWA</b>	
ON/LE	<b>JUN 23 2017</b>
<b>DOCUMENT #</b>	<u>GH1</u>
<b>IN BOOK NO. 73-13</b>	
<b>AU REGISTRE NO. 73-13</b>	



**MR. JUSTICE C. MACLEOD**

**DAVINCI CAPITAL PARTNERS INC. et al**  
Applicants

-and- **9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE**  
Respondents

Court File No. **17-33088**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT  
OTTAWA

**ORDER APPOINTING INTERIM RECEIVER**

**REGENT LAW PROFESSIONAL CORPORATION**  
1401-150  
Metcalfe Street  
Ottawa, ON  
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Lawyers for the Applicant

RCP-E 4C (July 1, 2007)

## APPENDIX B

Court File No. : \_\_\_\_\_

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF AN ANTICIPATED APPLICATION**  
pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as am.,  
section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and the *Personal Property Security  
Act*, R.S.O. c. P.10

**BETWEEN:**

**DAVINCI CAPITAL PARTNERS INC. IN ITS CAPACITY AS TRUSTEE OF  
DAVINCI CAPITAL PRIVATE DEBT FUND**

Applicant

-and-

**9584358 CANADA INC. o/a EASTWAY FIRE AND RESCUE**

Respondent

**AFFIDAVIT OF WAYNE EHGOETZ  
(SWORN JUNE 22, 2017)**

I, WAYNE EHGOETZ, of the City of Toronto, Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Managing Director of Waygar Capital Inc., an agent for Davinci Capital Private Debt Fund (the “**Fund**”) one of several investment funds administered by the Applicant Davinci Capital Partners Inc. (“**Davinci**”, the “**Applicant**” or the “**Lender**”) and as such have knowledge of the matters to which I hereinafter depose and where based upon information received from others, I have indicated the source of this information and verily believe it to be true.

2. I swear this affidavit in support of an application for (i) the appointment of an interim receiver over the assets and undertakings and property of 9584358 Canada Inc. o/a Eastway Fire and Rescue (“**Eastway**”) and (ii) an order declaring and directing that the Applicant is entitled to remove, possess and preserve the Collateral pledged by Eastway, under an executed and registered Security Agreement.

### ***The Parties***

3. The Applicant is an investment fund. The investments include private debt, private equity, mortgages, real estate, and or sophisticated hedging strategies. Investments are made through investment pools. I work with the Applicant by sourcing and managing loans through Waygar Capital Inc., a company I founded several years ago which serves as agent of the Applicant.

4. The Respondent Eastway is a federally incorporated company that operates its business out of the leased premises located at 100 Industrial Avenue, Units B and C, Carleton Place, Ontario, K7C 3V7 (the “**Property**”). Eastway is in the business of designing and manufacturing “built-to-order” pumpers, tankers, rescues, wildlands and hazmat vehicles.

### ***Other interested parties***

5. Mr. Michael Cappy (“**Cappy**”) is the majority shareholder of Eastway and the guarantor of the indebtedness of Eastway under the provisions of the loan agreement. Over the course of the past several months, Cappy and I have spoken on the phone on almost a daily basis regarding the business and financial affairs of Eastway.

### ***The Loan Agreement and the Security Agreement***

6. On March 15, 2016, the Applicant and Eastway entered into a loan agreement whereby the Applicant offered and Eastway accepted the following credit facilities:

- a. A working capital revolving loan facility not to exceed the principal amount of \$300,000 (the “**Working Capital Loan**”)
- b. A term loan facility in the amount of \$600,000 (the “**Term Loan A**”); and



- c. A term loan facility in the amount of \$1,000,000 (the “**Term Loan B**” and collectively referred to as the “**Credit Facility**”).

7. The purpose of the loans was to provide Eastway with funds to acquire the operating assets of Eastway Emergency Vehicles Inc. and to provide working capital to finance the day to day operations of Eastway. Attached hereto as **Exhibits “A” and “B”** are copies of the loan agreement dated March 15, 2016, the Promissory Note dated March 18, 2016, respectively.

8. As a condition to extending credit to Eastway, the Applicant required that Eastway grant security interests in all of the undertaking, property and assets, present and future, real and personal of Eastway (the “**Collateral**”) to the Applicant as security for the obligations of Eastway to the Applicant arising out the Agreement. Attached hereto as **Exhibit “C”** is a copy of the General Security Agreement dated March 15, 2016 (the “**Security Agreement**”).

9. In accordance with paragraph 2 of the Security Agreement, the Collateral includes:

- a. All Accounts and all goods whose sale, lease or other disposition by Eastway has given rise to Accounts and has been returned to or repossessed or stopped in transit by Eastway;
- b. All chattel paper, instruments, documents of title and Intangibles (all patents, patent applications, trademarks, trademark applications, tradenames, trade secrets, goodwill, copyrights, registrations, licenses, franchises, customer lists, tax refund claims, claims against carriers and shippers, guarantee claims, contract claims, security interests, security deposits and any rights to indemnification);
- c. All Inventory;
- d. All goods (other than Inventory), including Equipment, vehicles, and other rolling stock and fixtures...

10. On or about March 18, 2016, Eastway purchased the assets of Eastway911 Emergency Vehicles Ltd. from Doyle Salewski Inc. in its capacity as interim receiver of Eastway911 Emergency Vehicles Ltd. Attached hereto as **Exhibit “D”** is a copy of the Bill of Sale/Assignment with attached Order of the Honourable Mr. Justice Hackland.

11. On March 18, 2016 the Applicant registered the Security Agreement in accordance with the *Personal Property Securities Act*. Attached hereto as **Exhibit “E”** is a copy of the Ontario PPSA Registration Verification Search.

***Default of payment obligations under the Credit Facility***

12. Almost from very beginning, Eastway has been in default of its payment obligations under the terms of the Credit Facility and the Applicant faces a significant loss given its prior advances to the company, which significantly exceed what was anticipated by the terms of the Credit Facility.

13. As of June 14, 2017, Eastway’s indebtedness to the Applicant under the Credit Facility is \$3,736,151.00 (the “**Indebtedness**”), which is particularized as follows:

Term Loan A:	\$ 677,473.00
Term Loan B:	\$1,139,501.00
Chasis Loan:	\$ 219,798.00
Operating Line:	\$1,447,760.00
Advanced in June:	\$ 251,619.00
<hr/> TOTAL:	<hr/> \$3,736,151.00

Attached hereto as **Exhibit “F”** is a copy of Eastway Loan Schedule as of June 14, 2017.

14. On June 16, 2017, I delivered a Forbearance Agreement to Cappy by email which was to be signed back to the Applicant on or before June 20, 2017. Attached hereto as **Exhibit “G”** is a copy of the Forbearance Agreement presented to Eastway,

15. Before he signed back the Forbearance Agreement, Cappy called me advised me that he did not see the need for a Forbearance Agreement. He also confirmed receipt of the Acknowledgement and Waiver attached to the Forbearance Agreement at Schedule B regarding Davinci’ Notice of Intention to Enforce its Security in accordance with s. 244 of the BIA and the time period that applied to the Notice. He told me that he needed independent legal advice and asked for a copy of the Security Agreement, which was provided.

16. On June 19, 2017, Cappy wrote me (and Messrs. Jim Goren and Mark Irwin of Davinci) and email confirming that he understood the terms of the Forbearance Agreement. He wrote:

I understand the following:

- DaVinci is prepared to fund Eastway/Arnprior ONLY for the next 90 days (the "Forbearance Period")
- During the Forbearance Period, Waygar will work with Eastway/Arnprior to find new sources of financing in order for the company to go forward beyond the Forbearance Period
- During the Forbearance Period, DaVinci will fund only "Critical Payments" including Payroll, Source Deductions, HST, Rent and any payments required to complete the existing WIP
- The existing WIP that will be funded is: Ocean Wave, 2 mini-rescue demos and Mississippi Mills. No other contracted or demo builds will be funded

17. Later in the day, Cappy wrote me the following email:

Wayne,

I understand. However, as everyone knows I have a company-wide teleconference/update in an hour. I sent the "talking points" memo for this call to you last week and Wayne and I discussed them over the weekend. He indicated Jim and Mark had seen this memo as well. I have also reviewed the draft Forbearance Agreement which seems to indicate exactly what I tried to summarize.

While immediate decisions may be impractical and unrealistic, it is now the 11th hour and we just can't remain in suspended animation any longer. Beckwith is on our shop floor right now going through build specs as I write this, Welland will be in tomorrow to finalize the PT unit (we can't mount the mini-rescue body until we take delivery of the 2 AB Ford 550's). We cannot ethically sign contracts with Welland, Beckwith or ANY customer that include our warranty provisions, unless we add an appropriate disclaimer. I can't be involved in misleading our customers, employees and suppliers. It is certainly grossly unfair at best, and unethical and fraudulent at worst, to keep everyone in the dark and string our customers and employees along.

If you see it some other way or want to play the hand yourself however you like, say so now. From where I sit right now with the business on the brink of imploding, it is really hard for me to

sympathize with how busy you guys are or how impractical you feel my urgent need for direction is.

All I asked for is confirmation of 4 bullet points, nothing more. I assume the draft forbearance agreement you sent me last week is consistent with Davinci's position so will use this for guidance.

By the way, NONE of the 5 of 6 agreed items have yet been addressed beyond repeatedly telling me that they are agreed. I'm tired of bringing it up. These required nothing more than a simple phone call or email to Terry and a reminder to Jim. Everyone is just too busy, I suppose. Me too.

Attached hereto as **Exhibit "H"** is a copy of the email chain between Cappy and I on June 19, 2017.

18. Following receipt of this email, I spoke with Cappy and we discussed the forbearance option. Cappy maintained that he wanted forgiveness on his guarantee and indemnity on the critical payments. Then we discussed a second option, which resulted in the following email:

Wayne,

Here you go:

- I would receive a USD5,000/month management fee through December 31 of this year
- Davinci would release me from my personal guarantees
- Davinci would purchase my shares in 9584358 Canada Ltd for \$1.00
- I would waive all claims against DaVinci, its partners, Waygar and its partners.
- DaVinci, its partners, Waygar and its partners would waive all claims against me
- At closing, DaVinci would appoint at least one director for 9584358 Canada Ltd and I would then immediately resign as a Director
- DaVinci would indemnify me for any and all Directors liabilities (e.g. Employment claims, CRA filings, HST, etc.)
- I would close the existing bank accounts for 9584358 Canada Ltd at Scotiabank and DaVinci could open new accounts for the Company
- I would make myself available for 30 days for transitional support if requested

- I will make myself available to support the arbitration at USD1,000/day plus travel expenses
- David Smiley would need to be settled to his satisfaction and he would need to release me from any deficiency claims for Eastway work
- DaVinci would reimburse me for the legal costs for the Shares transfer documentation and mutual releases agreements
- At the end of 2 years, the enterprise value of 9584358 Canada Ltd would be calculated at 5X EBITDA and I would receive 50% of any enterprise value in excess of CAD2 million
- The Company's website and server backups would be immediately removed from Gibraltar's accounts and servers
- My Canadian cellphone number would be transferred to me
- John Kooiman would be paid his expenses and additional time that was authorized by me
- Davinci, its partners, Waygar, its partners and I would enter into a mutual a non-disparagement agreement
- We avoid theme and expense of a forbearance agreement as it would be moot under DOOR B and, in any case, I would likely NOT agree to be an individual party to the forbearance agreement as I have zero economic stake to protect by agreeing to reaffirm or waive anything.

This is a draft outline of what could work and possible if we can put it together within a week or so. Beyond that, I believe the Company will be in an irreversible downward spiral. [emphasis added]

Mike

Attached hereto as **Exhibit "I"** is a copy of the email from Cappy re "Door B" dated June 19, 2017.

19. Cappy's last email set out what I believe to be a completely unrealistic list of demands, which included cash. He wanted the entire guarantee to go away, except \$200,000 **with no forbearance.**

20. As recent as two weeks ago, we had the ability to access the bank accounts and write cheques. Now, Cappy has shut us out of the business with no access to the bank accounts. He has basically taken over the company with no money to run it.

21. On June 20, 2017, I spoke with Cappy again. During our telephone conversation, Cappy told me that he (i) was not sure if Davinci or Eastway should put in a receiver and (ii) had talked to an Ottawa lawyer about filing a Notice of Intention to Make a Proposal (“**NOI**”) in accordance with the BIA. Yesterday, Cappy called me again. He reiterated these statements and threatened to bankrupt the company.

22. There are currently three (3) finished trucks that are going to be delivered to customers within the next 30 days, worth a combined \$900,000. A portion of these funds would pay down the loan. I am aware that one (1) of the trucks was in fact delivered yesterday to the customer and there is \$20,000 coming to Eastway as early as tomorrow on that transaction. I believe that Cappy has not billed the customer on that transaction, there is a strong possibility that no invoice will be generated, and the funds will be lost to Cappy.

#### *The Necessity of Appointing an Interim Receiver*

23. The failure to make its ongoing payments under the terms of the Credit Facility is an “Event of Default” under article 1.23 (a) of the Loan Agreement. Please see “Event of Default” provisions contained and defined in the Agreement at **Exhibit “A”**.

24. Davinci’s security interest in the Collateral has crystallized and all conditions precedent to the exercise of its rights in respect of the Collateral have been fulfilled.

25. The key issue of urgency is that Eastway has run out of money and has over fifteen (15) employees. As stated above, some of the trucks are ready for delivery. If the receiver is not appointed the very existence of the company, the employees’ jobs and the prospect of delivering the trucks will be in serious jeopardy.

26. The value of the Collateral lies in the ability of Eastway to process orders and based on Eastway continuing to be a going concern. Simply put, Eastway is out of money. As more time passes and Eastway is unable to continue to fund its operations, it is likely that the business will fail and there will be a significant diminution in the value of the pledged Collateral.

27. Additionally, based on my daily and ongoing conversations with Cappy over the course of the past several days, weeks and months, I am concerned that the value of the Collateral is being significantly reduced by the actions of Cappy exercising “self-help” remedies in the face of Eastway’s current financial difficulties, to the detriment of Eastway and in violation of the BIA. I verily believe that realizable value of the Collateral will be significantly higher under the protection of a court officer; Cappy has all but acknowledged and confirmed the financial plight of Eastway and the need for court supervision.

**Conclusion**

28. Out of an abundance of caution and notwithstanding Cappy’s acknowledgement of receipt of our section 244 notice contained in the Forbearance Agreement, we will attempt to deliver a fresh Notice of Intention to Enforce Security today and provide confirmation of delivery at the hearing of this Application.

29. It is the intention of Davinci to stabilize the business to see if a restructuring plan is possible and Davinci will continue to fund necessary and critical payments, including employee salaries, over the next 30 days if not longer.

30. Davinci has serious concerns that the assets of Eastway are in jeopardy and believes that the appointment of a receiver is necessary for the protection of both Eastway’s estate and the interests of Davinci as a secured creditor.

**SWORN BEFORE ME**  
at the City of Ottawa,  
in the Province of Ontario  
this 22<sup>nd</sup> day of June, 2017.

  
A Commissioner, etc.

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Wayne Ehgoetz

**EXHIBIT "A"**

**This is Exhibit "A" referred to in the  
affidavit of:**

**WAYNE EHGOETZ**

**Sworn before me, this 22<sup>nd</sup> day of  
June, 2017.**



A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the Commissioner.

**A Commissioner for Taking Affidavits**



## LOAN AGREEMENT

March 15, 2016

9584358 Canada Ltd. o/a Eastway Fire and Rescue  
100 Industrial Avenue, Units B and C  
Carleton Place, Ontario  
K7C 3V7

Attention: Michael Cappy

Dear Sir:

**DAVINCI CAPITAL PRIVATE DEBT FUND** (the "**Lender**") hereby offers to the Borrower the following credit facilities ("**Credit Facilities**") on the terms and conditions set out herein.

**1.01 BORROWER:**

9584358 Canada Ltd. o/a Eastway Fire and Rescue (the "**Borrower**").

**1.02 GUARANTORS:**

Michael Cappy (the "**Guarantor**")

**1.03 LOANS:**

The Lender shall make available to the Borrower the following:

- (a) a working capital revolving loan not to exceed the principal amount of Three Hundred Thousand Dollars (\$300,000.00) (the "**Working Capital Loan**");
- (b) a term loan facility in the amount of Six Hundred Thousand Dollars (\$600,000.00) (the "**First Term Loan**");
- (c) a term loan facility in the amount of One Million Dollars (\$1,000,000.00) (the "**Second Term Loan**")

for the purposes set out below, subject to the terms and conditions of this agreement (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time, (the "**Loan Agreement**"). The Working Capital Loan, the First Term Loan and the Second Term Loan are herein referred to collectively as the "**Loans**".

**1.04 ADVANCES:**

The Working Capital Loans shall be advanced as follows:

- (a) The Working Capital Loan will be advanced in increments of Ten Thousand Dollars (\$10,000.00) or less at the Lender's discretion, commencing on Closing;
- (b) The First Term Loan and the Second Term Loan, may be advanced from time to time after Closing, at the Lender's absolute discretion; and
- (c) Unless otherwise agreed by the parties, the borrowing limits and the applicable time periods in (a) and (b) *supra*, will remain the same in the Renewal Period.

The parties acknowledge and agree that the principal amount of the Working Capital Loan to be made available is calculated on the basis of Availability. The Lender shall monitor the Availability on a monthly basis. In the event that the Availability is calculated to be less than the amount of the Working Capital Loan then outstanding, the Borrower shall repay the portion of the Working Capital Loan required to reduce the outstanding balance of the Loans to an amount not exceeding such calculated Availability. Any amount repaid by the Borrower to comply with the Availability requirement shall not be reborrowed by the Borrower without the Lender's prior written consent, which consent shall be in the Lender's sole discretion.

#### 1.05 PURPOSE:

The purpose of the Loans is to provide financing for the acquisition of Eastway911 Emergency Vehicles Ltd. and to provide a working capital facility to finance the day to day operations of the Borrower.

#### 1.06 DEFINITIONS:

In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

- (a) "**Additional Closing Documents**" has the meaning attributed thereto in Paragraph 1.13(b) of this Agreement
- (b) "**Affiliate**" has the meaning specified in the Business Corporations Act (Ontario).
- (c) "**Applicable Laws**" means, with respect to any person, property, transaction or event, all present or future statutes, regulations, rules, orders, codes, treaties, conventions, judgments, awards, determinations and decrees of any governmental, regulatory, fiscal or monetary body or court of competent jurisdiction, in each case, having the force of law in any applicable jurisdiction.
- (d) "**Availability**" has the meaning thereto in Paragraph 1.07 of this Agreement.
- (e) "**Borrowing**" means each use of the Credit Facilities and all such usages outstanding at any time are "Borrowings".

- (f) "**Borrowing Base Report**" has the meaning attributed thereto in Paragraph 1.07 of this Agreement and forming Schedule "F".
- (g) "**Business Day**" means any day other than a Saturday or a Sunday or any other day on which banks are closed business in Toronto, Ontario.
- (h) "**Closing**" means the 17th day of March, 2016 or on such other day as the parties agree.
- (i) "**Collateral**" means all of the personal property, assets and undertaking of the Borrower, including, without limitation, the Eligible Accounts Receivable and Eligible Inventory together with the collateral charge on the Property.
- (j) "**Compliance Certificate**" means Schedule "G" a compliance certificate in the form satisfactory to the Lender, executed by a senior officer of the Borrower.
- (k) "**Credit Documents**" means this Agreement, the Security Agreements and all other documents to be executed and delivered to the Lender by the Borrower and the Guarantors or any other person pursuant to the terms of this Agreement, as the case may be, as the same have been or may at any time and from time to time hereafter be amended, restated, supplemented, modified or replaced.
- (l) "**Default**" means an event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.
- (m) "**Disclosure Schedule**" means Schedule "A" attached hereto as amended from time to time with the written consent of the Lender.
- (n) "**Distribution**" means, in respect of any person, the amount of (i) any dividend or other distribution on issued shares or other equity interests of such person; and (ii) the purchase, redemption or retirement amount of any issued shares, warrants or any other options or rights to acquire shares of the person redeemed, retired or purchased by such person.
- (o) "**EBITDA**" means, as to the Borrower, with respect to any period, an amount equal to the net income of the Borrower for such period determined in accordance with GAAP, plus or minus, to the extent deducted or added in determining such net income for such period, without duplication:
- (i) depreciation, amortization, and stock option expense;
  - (ii) interest expenses;
  - (iii) extraordinary gains or losses as disclosed on the unaudited monthly financial statements and the annual audited financial statements and approved by Lender; and
  - (iv) the provision for taxes owing for such period.

(p) **"Eligible Accounts Receivable"** means accounts receivable of the Borrower from arm's length third parties that:

- (i) arise from actual and bona fide rendering of services by the Borrower in the ordinary course of its business;
- (ii) are less than ninety (90) days past the date of the applicable invoice;
- (iii) do not have more than twenty-five percent (25%) of the aggregate amount owing outstanding for longer than the period referred to in paragraph (ii) above;
- (iv) are not deposits or prepaid amounts or otherwise on account of deferred revenue;
- (v) are not subject to any disputes, contra, set-offs, hold-backs, warranty claims or right of return;
- (vi) are owed by account debtors deemed creditworthy at all times by the Lender, in its sole discretion;
- (vii) are owed by account debtors located in Canada or in the United States of America;
- (viii) are subject to a first priority security interest in favour of the Lender; and
- (ix) are and continue to be acceptable to the Lender, in its sole discretion, for margining purposes; for greater certainty, and without limiting the foregoing, the Lender may deem a particular business sector of the Borrower as being ineligible.

(q) **"Eligible Inventory"** means Inventory consisting of finished goods held for resale in the ordinary course of the business of the Borrower, goods in transit of the Borrower, and raw materials for such finished goods, which are acceptable to Lender based on the criteria set forth below. In general, Eligible Inventory shall not include (a) spare parts for equipment; (b) packaging and shipping materials; (c) supplies used or consumed in Borrower's business; (d) Inventory at premises which are not owned and controlled by Borrower, except if Lender shall have received an agreement in writing from the person in possession of such Inventory and/or the owner or operator of such premises in form and substance satisfactory to Lender acknowledging Lender's first priority security interest in the Inventory, waiving security interests, hypothecs and claims by such person against the Inventory and permitting Lender access to, and the right to remain on, the premises so as to exercise Lender's rights and remedies and otherwise deal with the Collateral; (e) Inventory subject to a security interest, hypothec or lien in favour of any person other than Lender except those permitted in this Agreement; (f) bill and hold goods; (g) unserviceable, obsolete or slow moving Inventory; (h) Inventory which is not subject to the first priority, valid and perfected security interest, lien or

hypothec of Lender; (i) Inventory that is in transit; (j) returned, damaged and/or defective Inventory; and (k) Inventory purchased or sold on consignment. General criteria for Eligible Inventory may be established and revised from time to time by the Lender. Any Inventory which is not Eligible Inventory shall nevertheless be part of the Collateral.

(r) "**Encumbrances**" means any mortgage, lien, pledge, assignment, charge, security interest, title retention agreement, hypothec, levy, execution, seizure, attachment, garnishment, right of distress or other claim in respect of property of any nature or kind whatsoever howsoever arising (whether consensual, statutory or arising by operation of law or otherwise) and includes arrangements known as sale and lease-back, sale and buy-back and sale with option to buy-back or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the PPSA or Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

(s) "**Environmental Laws**" means with respect to any person all federal, provincial, local, municipal and foreign laws, statutes, rules, regulations, ordinances, orders, directives, permits, licenses and consent decrees relating to health, safety, hazardous, dangerous or toxic substances, waste or material, pollution and environmental matters, as now or at any time hereafter in effect, applicable to such person and/or its business and facilities (whether or not owned by it), including laws relating to emissions, discharges, releases or threatened releases of pollutants, contamination, chemicals, or hazardous, toxic or dangerous substances, materials or wastes into the environment (including, without limitation, ambient air, surface ground water, land surface or subsurface strata) or otherwise relating to the generation, manufacture, processing, distribution, use, storage, disposal, transport or handling of pollutants, contaminants, chemicals, or hazardous, toxic or dangerous substances, materials or wastes.

(t) "**ET**" means eastern daylight savings or standard time, as the case may be.

(u) "**Event of Default**" has the meaning attributed thereto in Paragraph 1.23 of this Agreement.

(v) "**GAAP**" means generally accepted accounting principles in effect from time to time in Canada applied in a consistent manner from period to period.

(w) "**Governmental Entity**" means any (i) multinational, federal, provincial, state, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any crown corporation incorporated by the foregoing; (iii) any subdivision or authority of any of the foregoing; or (iv) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority or for the account of any of the above.

(x) "**Hazardous Materials**" means any hazardous, toxic or dangerous substances, materials and wastes, including, without limitation, hydrocarbons (including naturally occurring or man-made petroleum and hydrocarbons), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, biological substances, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (including, without limitation, materials which include hazardous constituents), sewage, sludge, industrial slag, solvents and/or any other similar substances, materials, or wastes and including any other substances, materials or wastes that are or

become regulated under any Environmental Law (including, without limitation any that are or become classified as hazardous or toxic under any Environmental Law).

(y) "**Indemnified Person**" has the meaning attributed thereto in Paragraph 1.20(b) of this Agreement.

(z) "**Information Certificate**" means the information certificate dated on or about the date hereof delivered by the Borrower to the Lender (as amended from time to time).

(aa) "**Inventory**" means all of Borrower's, now owned and hereafter existing or acquired raw materials, work in process, finished goods and all other inventory of whatsoever kind or nature, wherever located.

(bb) "**Lien**" means any mortgage, charge, pledge, hypothecation, security interest, assignment, encumbrance, lien (statutory or otherwise), charge, title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition that in substance secures payment or performance of an obligation.

(cc) "**Margined Collateral Pool**" means the sum of Eligible Accounts Receivable, Eligible Inventory, at the advance rates specified herein, plus cash or equivalent instruments.

(dd) "**Material Adverse Change**" means any change, condition or event which, when considered individually or together with other changes, conditions, events or occurrences could reasonably be expected to have a Material Adverse Effect.

(ee) "**Material Adverse Effect**" means a material adverse effect (i) on the business, revenues, operations, assets, liabilities (contingent or otherwise) or financial condition of the Borrower; (ii) on the rights and remedies of the Lender under the Credit Documents; (iii) on the ability of the Borrower to perform its obligations under the Credit Documents; or (iv) on the Liens created by the Agreements.

(ff) "**Permitted Encumbrances**" means, without Lender having or being deemed to have acknowledged, acquiesced or agreed to the quantum of such Encumbrances or to the priority, enforceability, or validity of same:

- (i) any "purchase money security interests" or vendor's hypothecs or other Encumbrances, in each case on equipment (as defined in the PPSA) used by the Borrower in the operation of its business and which is not for resale, lease or rental to its customers which is assumed, created or reserved to secure the unpaid purchase price of such equipment after the date hereof provided that any such Encumbrance is limited to the equipment so acquired and any proceeds thereof (including, without limitation, capital leases);
- (ii) any Statutory Encumbrances;
- (iii) the encumbrances in favour of the secured creditors listed in Schedule "B" hereto;

- (iv) the lien of any judgment rendered, or claim filed, against the Borrower or the Guarantor which is being contested in good faith by appropriate proceedings if during such contestation there is no risk of forfeiture of any material property because of a stay of enforcement of such judgment or claim (if enforceable by seizure, sale or other remedy against any property), as the case may be, is in effect; provided that any judgment or claim filed that calls into question the title of any Collateral shall not constitute a Permitted Encumbrance;
  - (v) security given to a public utility or any municipality or governmental or public authority when required by such public utility or municipality or other governmental authority in the ordinary course of the business of the Borrower or the Guarantor provided such security does not either alone or in the aggregate materially detract from the value of the property affected thereby or materially impair its use;
  - (vi) Encumbrances in favour of the Lender pursuant to any of the Credit Documents; and
  - (vii) all such other claims and encumbrances as are specifically disclosed by notice in writing from the Borrower to the Lender to the extent that the Lender, by specific notice in writing to the Borrower, as applicable, advises the Borrower that it agrees to accept such claims and encumbrances as Permitted Encumbrances for the purposes of this Agreement.
- (gg) "person" includes a natural person, a partnership, a joint venture, a trust, a fund, an unincorporated organization, a company, a corporation, an association, a government or any or agency thereof, and any incorporated or unincorporated entity.
- (hh) "PPSA" means the Personal Property Security Act (Ontario) or the personal property security legislation of any other applicable jurisdiction as in effect from time to time.
- (ii) "**Principals**" means **[TO BE COMPLETED]**.
- (jj) "**Priority Claims**" means the aggregate of any amounts accrued or payable by the Borrower or the Guarantor which under any law may rank prior to or pari passu with any of the Security Agreements or otherwise in priority to any claim by the Lender for payment or repayment of any amount owing under this Agreement, including, without limitation: (i) wages, salaries, commissions or other remuneration; (ii) vacation pay; (iii) pension plan contributions, (iv) amounts required to be withheld from payments to employees or other persons for federal and provincial income taxes, employee Canadian Pension Plan contributions and employee Employment Insurance premiums, additional amounts payable on account of employer Canada Pension Plan contributions and employer Employment Insurance premiums; (v) federal goods and services tax; (vi) provincial sales or other consumption taxes; (vii) Workers' Compensation Board and Workplace Safety and Insurance Board premiums or similar premiums; (viii) real property taxes (except to the extent that any such taxes have been waived pursuant to settlement arrangements); (ix) rent and other amounts payable in respect of the use of real property; (x) amounts payable for repair, storage, transportation

or construction or other services which may give rise to a possessory or registerable lien; (xi) claims which suppliers could assert pursuant to Section 81.1 or Section 81.2 of the Bankruptcy and Insolvency Act (Canada) or comparable legislation; and (xii) WEPPA Claims.

(kk) "**Properties**" means the real property set out in Schedule "E" attached hereto;

(ll) "**Repayment Date**" has the meaning thereto in Paragraph 1.08(a) of this Agreement.

(mm) "**Security Agreements**" means, collectively, the agreements referred to in Paragraph 1.13(a) and any other security granted to the Lender, as security for the obligations of the Borrower under this Agreement and the other Credit Documents, as the same have been or may at any time and from time to time hereafter be amended, restated, supplemented, otherwise modified or replaced.

(nn) "**Statutory Encumbrances**" means any Encumbrances in respect of any Collateral arising by operation of Applicable Laws, including, without limitation, for carriers, warehousemen, repairers', taxes, assessments, statutory obligations and government charges and levies for amounts not yet due and payable or which may be past due but which are being contested in good faith by appropriate proceedings (and as to which there are no other enforcement proceedings or they shall have been effectively stayed).

(oo) "**Tangible Net Worth**" means, with respect to the Borrower on a consolidated basis, shareholders' equity (including retained earnings) less the book value of all intangible assets (including, without limitation, goodwill and licenses), leasehold improvements, prepaid expenses, deferred assets, any capitalized costs related to the completion of the transaction contemplated by this Agreement and amounts owing from affiliates and other related persons of the Borrower (including, without limitation, officers and employees), on a consistent basis in accordance with GAAP, plus the amount of any debt of the Borrower subordinated to Lender on terms and conditions acceptable to Lender, in its sole discretion.

(pp) "**Term of this Agreement**" means the period from and including the date on which this Agreement is executed to and including the date on which all amounts owing by the Borrower to the Lender hereunder have been paid in full and the Lender has no further obligations hereunder.

(qq) "**WEPPA Claims**" means any claims made against the Borrower pursuant to the Wage Earner Protection Program Act, S.C. 2005, c. 47, s.1, as the same may be amended, restated or replaced from time to time.

Words importing the singular include the plural thereof and vice versa and words importing gender include the masculine, feminine and neuter genders.

## 1.07 AVAILABILITY

The maximum amount that shall be available under the Working Capital Loan at any time and from time to time will, subject to the maximum amount contemplated at Paragraph 1.03 hereunder, be determined by the Lender on the first Business Day of each month (or more frequently as determined by the Lender) in accordance with the following formula (the "Availability") being the aggregate of:



- (a) (i) Ninety percent (90%) of Investment Grade Eligible Accounts Receivable that are insured by an insurer that is acceptable to the Lender;
- (ii) Eighty percent (80%) of all other Eligible Accounts Receivable (assuming dilution is not greater than five percent (5%)), plus
- (b) The lesser of Fifty percent (50%) of Eligible Inventory at cost or Eighty-five percent (85%) of Net Orderly Liquidation Value (as determined by an appraiser acceptable to the Lender),
- (c) in each case as reflected in the then current Borrowing Base Report;

LESS the aggregate of:

- (a) the amount of the Working Capital Loan then outstanding, together with all amounts owing by the Borrower to the Lender under this Agreement (including, without limitation, interest owing on the amount of the Working Capital Loan then outstanding) or under any other Credit Document;
- (b) reserves, determined by the Lender in its sole discretion, in respect of actual and/or potential Priority Claims and/or Statutory Encumbrances against the Borrower;
- (c) additional reserves, determined by the Lender in its sole discretion, to the extent that the Lender determines that the dilution with respect to the Eligible Accounts Receivable for any period (based, in each case, on the ratio of (1) the aggregate amount of reductions in accounts receivable other than as a result of payments in cash to (2) the aggregate amount of total sales) has increased in any material respect or may be anticipated to increase in any material respect above historical levels; and
- (d) any other reserves, determined by the Lender in its sole discretion, acting on a commercially reasonable basis.

On the fifteenth (15<sup>th</sup>) day following each month end, or the next Business Day if the fifteenth day is not a Business Day, prior to 1:00 p.m. ET of such day, the Borrower will provide a report (a '**Borrowing Base Report**') to the Lender (in the form attached hereto as Schedule "F" hereto or in such form as the Lender shall reasonably require) providing, as at the end of the preceding month, a listing of all of the Borrower's accounts receivable, inventory and accounts payable, a listing of future cash flows by segment, details of any than existing or potential Priority Claims, and any other information that may be reasonably required by the Lender.

#### 1.08 TERM AND REPAYMENT OF THE WORKING CAPITAL LOAN:

The Loans (together with all accrued interest and all other amounts payable hereunder) shall be repaid in full (and any obligation of the Lender to make advances hereunder shall be permanently cancelled) upon the earlier of:

- (a) the second anniversary date of the Working Capital Loan being advanced hereunder (the "Repayment Date"); or

(b) the occurrence of an Event of Default.

**1.09 INTEREST RATE FOR THE WORKING CAPITAL LOAN AND TERM LOANS:**

(a) Interest on the principal amount of the Working Capital Loan outstanding from time to time shall be calculated at a rate of fifteen percent (15.0%) per annum. Interest only payments, calculated monthly, not in advance shall be payable by the Borrower to the Lender on the 15<sup>th</sup> day of each month. ;

(b) Interest on the principal amount of the First Term Loan shall be calculated at a rate of fifteen percent (15.0%) per annum. Interest only payments of five percent (5.0%) of the total First Term Loan amount shall be payable monthly of the 15<sup>th</sup> day of each month. The remaining ten percent (10.0%) shall be deferred for a period of 24 months from Closing, and payable at maturity.

(c) Interest on the principal amount of the Second Term Loan shall be calculated at a rate of fifteen percent (15.0%) per annum. Interest only payments of four percent (4.0%) of the total Second Term Loan amount shall be payable monthly on the 15<sup>th</sup> day of each month. The remaining eleven percent (11.0%) shall be deferred for a period of 24 month from Closing, and payable at maturity.

(d) For purposers of disclosure under the Interest Act (Canada), where in this Agreement or in any Security Agreement an annual rate of interest is to be calculated during a leap year, the yearly rate of interest to which such rate is equivalent is such rate multiplied by 366 and divided by 365.

(e) For greater certainty, whenever any amount is payable under any Credit Document as interest or as a fee which requires the calculation of an amount using a percentage per annum, each party to this Agreement acknowledges and agrees that such amount shall be calculated as of the date payment is due without application of the "deemed reinvestment principle" or the "effective yield method".

**1.10 MAKE-WHOLE FEE:**

Prepayment of the Loans in part or in full (together with all accrued interest and other amounts payable hereunder) is permitted provided that if the Loans are repaid in full and the Borrower terminates the Credit Facilities prior to the Repayment Date, the Borrower shall pay to the Lender a make-whole fee in an amount equal to interest at the rate of ten percent ten percent (10%) per annum on the principal amount outstanding under the Working Capital Loan, calculated and compounded monthly, not in advance, for the period between the date of repayment and the Repayment Date. In the event this Agreement is terminated, whether by payout by another lender or otherwise, the make-whole fee shall be accelerated and shall be due and payable upon payout or termination as applicable.

This make-whole fee is in view of the impracticality and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a calculation of Lender's lost profits as a result thereof. Such fee shall be presumed to be the amount of damages sustained by Lender as a result of such early termination and the Borrower agrees that it is reasonable under the circumstances currently existing.

**1.11 CLOSING FEE:**

The Borrower shall pay a non-refundable closing fee in the amount of .25% of the Loans , which fee shall be payable and shall be fully earned at the time of the execution of this Agreement, payable in two (2) equal instalments, with the first payment being due six months after Closing, and the second payment due 12 months after Closing..

#### 1.12 MONTHLY MONITORING FEE:

The Borrower shall pay a monitoring fee in the amount of Five Hundred Dollars (\$500) for each month, or pro-rated for any partial month, until the Loans are repaid in full and this Agreement is permanently cancelled. The aforesaid fee shall be paid to the Lender, monthly on the last Business Day of each month during which such fee is payable, as provided herein, and upon repayment of the Loans and permanent cancellation of any obligation of the Lender to make advances hereunder in respect of the final month in question.

#### 1.13 SECURITY:

(a) The Loans shall be evidenced or secured by the following documents, made by the Borrower, which shall be provided contemporaneously with the execution of this Agreement, shall be in form and substance satisfactory to the Lender and shall be supported by all resolutions and opinions (each in form and substance satisfactory to the Lender and the Lender's counsel):

- (i) general security agreement from the Borrower, in favour of the Lender granting a first-ranking security interest in all of its present and after-acquired personal property, assets and undertaking subject only to Permitted Encumbrances;
- (ii) assignment of business insurance from the Borrower covering fire and such other risks (including without limitation public liability insurance) and in such form and amount as the Lender may require in respect of all of the Collateral and in respect of which the Lender is shown as first loss payee;
- (iii) assignment of receivable insurance from the Borrower covering receivables and in such form and amount as the Lender may require in respect of all of the Collateral and in respect of which the Lender is shown as first loss payee;
- (iv) limited guarantee from the Guarantor in favour of the Lender with respect to the obligations of the Borrower limited to One Million Dollars (\$1,000,000.00);
- (v) subordination and postponement agreements from each of the Principals and the Guarantor in favour of the Lender;
- (vi) assignment of key man life insurance from the Borrower held on the Guarantor, in the minimum amount of One Million Dollars (\$1,000,00.00); and
- (vii) an assignment of all shares held by the Guarantor Michael Cappy in the Borrower corporation.

(b) In addition, the Borrower shall provide the Lender with the following (the "**Additional Closing Documents**"), in form and substance satisfactory to the Lender:

- (i) such consents, instruments and other documents as listed in the closing checklist relating to the Loans.

(c) The Borrower will from time to time at its expense duly authorize, execute and deliver to the Lender such further instruments and documents and take such further action as the Lender may reasonably request for the purpose of obtaining or preserving the full benefits granted or intended to be granted to the Lender by the Security Agreements and of the rights and remedies therein granted to the Lender, including without limitation, the filing of financing statements or other documents under any Applicable Law with respect to the Liens created thereby. Unless prohibited by Applicable Law, the Borrower authorizes the Lender to file any such financing statement or similar documents without the signature of the Borrower.

(d) The Borrower acknowledges that changes to Applicable Law may require the execution and delivery of different forms of documentation, and accordingly the Lender shall have the right to reasonably require that the Security Agreements be amended, supplemented or replaced (and the Borrower shall duly authorize, execute and deliver to the Lender on request any such amendment, supplement or replacement with respect to any of the Security Agreements to which the Borrower is a party): (i) to reflect any change in Applicable Law, whether arising as a result of statutory amendments, court decisions or otherwise; or (ii) to facilitate the creation and registration of appropriate forms of security in all applicable jurisdictions.

#### 1.14 **CONDITIONS:**

(a) Each of the following is a condition precedent to the advance of the Working Capital Loan, First Term Loan and the Second Term Loan hereunder:

- (i) The Lender shall have received from all of the secured creditors who have registered against the Borrower pursuant to the PPSA and who are listed in Schedule "C" discharges of such registrations (or letters/undertakings to discharge, as applicable);
- (ii) The Lender shall have received from all of the secured creditors who have registered against the Borrower pursuant to the PPSA and who are listed in Schedule "D" acknowledgements in favour of the Lender and its successors and assigns, in a form reasonably acceptable to the Lender, specifying the collateral which is the subject matter of such registration in its favour, and confirming that such secured creditor will not take any new security which ranks or purports to rank ahead of the Security Agreements pursuant to such registration;
- (iii) The Security Agreements shall have been duly executed and delivered and, where required, registered;

- (iv) The Lender shall have received the Additional Closing Documents listed in Paragraph 1.13 through 1.14(b)(iii);
  - (v) At or prior to the time the advance in question is to be made, no Default or Event of Default shall have occurred and be continuing;
  - (vi) The Lender shall have completed all of its due diligence investigations and shall, in its sole discretion, be satisfied with the results of same;
  - (vii) The Lender shall have received evidence satisfactory to it that all insurance coverage contemplated in this Agreement is then in place;
  - (viii) The Lender shall have received satisfactory confirmation and disclosure that the Borrower has identified all environmental liability issues and has funding available to deal with this liability, including pursuant to the terms of Paragraph 1.22 hereof;
  - (ix) The Lender shall have received payment of all fees (including all legal fees of the Lender), expenses and other amounts then payable under the Credit Documents;
- (x) The Lender shall have received financial statements to the end of January 31, 2016, and Borrowing Base Certificate in the form attached hereto as Schedule "I" or in such form as the Lender shall reasonably require, as of a date not more than Five (5) days before funding;
- (xi) The Lender has received a personal net worth statement from the Guarantor satisfactory to the Lender;
  - (xii) The Lender shall have received a Landlord's Waiver from the Borrower's Landlords, in a form acceptable to the Lender, with respect to the Properties waiving all interest to the Collateral the Landlord may have in favour of the Lender;
  - (xiii) There shall not have occurred or become known any Material Adverse Change or any condition or event that could reasonably be expected to result in a Material Adverse Change, in each case, since the date of the last field examination, and
  - (xiv) At or prior to the time of Closing, the Lender shall receive a 15% interest in the equity of the Borrower.
- (b) Each of the following is a condition precedent to any subsequent advance to be made hereunder:
- (i) All of the conditions contained in Paragraph 1.14(a) shall have been satisfied and shall as at the time of the making of the subsequent advance in question continue to be satisfied;

- (ii) All of the representations and warranties of the Borrower and/or the Guarantor herein are true and correct on and as of such date as though made on and as of such date (except where such representation and warranty refers expressly to a different date);
- (iii) No event or condition has occurred and is continuing, or would result from such Borrowing, which constitutes or which, with notice, lapse of time, or both, would constitute, a breach of any covenant or other term or condition of this Agreement or of any Credit Document;
- (iv) Such Borrowing will not violate any Applicable Law then in effect;
- (v) No Default or Event of Default shall have occurred and be continuing; and
- (vi) No other event shall have occurred that, in the Lender's sole discretion, acting reasonably, materially adversely affects or could materially adversely affect either: (i) the business, assets, liabilities, prospects, financial condition or operations of the Borrower, or (ii) the value of the Collateral.

The making of Borrowings hereunder, without the fulfillment of one or more conditions set forth in Paragraphs 1.14(a) or 1.14(b), shall not constitute a waiver of any such condition, and the Lender reserves the right to require fulfillment of such condition in connection with any subsequent Borrowing.

**1.15 [INTENTIONALLY DELETED]**

**1.16 REPRESENTATIONS OF BORROWER:**

The Borrower represents and warrants, which representations and warranties are deemed to be repeated at the time of each advance hereunder as though made at such time, as follows:

- (a) it is a corporation existing under the laws of its jurisdiction of incorporation and has all necessary corporate power and authority to own or lease its property and to own its business as now being conducted by it, and to authorize, create, execute, deliver and perform all of its obligations under the Credit Documents to which it is a party in accordance with their respective terms;
- (b) it has duly authorized, executed and delivered the Credit Documents to which it is a party, and each such Credit Document constitutes a legal, valid and binding obligation of it enforceable against it in accordance with its respective terms;
- (c) the financing hereunder (i) do not require any material consent or approval of, or filing with, or any other action by, any Governmental Entity, except such as have been obtained or made and are in full force and effect, (ii) will not violate in any material respect any Applicable Law or regulation applicable to the Borrower and will not violate the charter, by-laws or other organizational or constitutional documents of the Borrower, as applicable, or any order of any Governmental Entity, (iii) will not violate or result in a default under any material indenture, agreement or other instrument binding upon the Borrower or its assets, or give rise to a right thereunder to require any payment to be

made by the Borrower, and (iv) will not result in the creation or imposition of any lien on any asset of the Borrower or the Guarantor (other than Permitted Encumbrances);

(d) it owns, or is licensed to use, all trademarks, tradenames, copyrights, patents, and other intellectual material to its business, and the use thereof by them does not infringe upon the rights of any other person;

(e) it maintains, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar business operating in the same or similar locations;

(f) except as listed in the Disclosure Schedule, it is not in default under any of its obligations and there are no actions, suits or proceedings, pending or threatened, against or affecting any of them that could reasonably be expected to have a Material Adverse Effect on the business or assets of the Borrower;

(g) it is in compliance with all laws, regulations and orders of any Governmental Entity applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property;

(h) it has good title to its property, free and clear of all Encumbrances other than Permitted Encumbrances;

(i) it possesses all licenses and permits necessary to properly conduct its business. Except as listed in the Disclosure Schedule, each such license and permit is (i) in full force and effect; and (ii) not subject to any dispute. No event has occurred which, with the giving of notice, lapse of time or both, would constitute a default under, or in respect of, any such license or permit;

(j) the Disclosure Schedule sets forth the commitments of any lender (other than the Lender) for all debt for borrowed money, and all debt for borrowed money outstanding, of the Borrower;

(k) it is not aware of any acts or circumstances which would have a Material Adverse Effect on the value of the Collateral;

(l) as of the date hereof, both before and after giving effect to (i) the financing transactions to be consummated on the date hereof and (ii) the payment and accrual of all fees, costs and expenses in connection therewith, the Borrower is and will be solvent;

(m) as of the hereof, adequate provision has been made for the payment of all Priority Claims and potential Priority Claims, whether or not payable and whether or not disputed; and

(n) all information furnished by or on behalf of the Borrower in writing to the Lender in connection with this Agreement or any transaction contemplated hereby, is true and correct in all material respects and does not omit any fact necessary in order to make such information not misleading. To the knowledge of the Borrower after due inquiry, no event or circumstance has occurred which has had or could reasonably be expected to have a Material Adverse effect on the

business or assets of the Borrower which has not been fully and accurately disclosed to the Lender in writing.

The representations and warranties in this Agreement and in any certificates or documents delivered to the Lender shall not merge in or be prejudiced by and shall survive any Borrowing and shall continue in full force and effect for the Term of this Agreement

#### 1.17 COVENANTS:

(a) The Borrower and Guarantors covenant and agree with the Lender that:

- (i) the Borrower will (A) keep and maintain all property material to the conduct of its business in good working order and condition (ordinary wear and tear and casualty events excepted), and (B) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations;
- (ii) the Borrower will comply with all Applicable Laws;
- (iii) the Borrower shall maintain a Tangible Net Worth in an amount to be mutually agreed upon. No distribution, other than normal management fees, salaries, wages and dividends that are fully set out in projections and do not put the Borrower in default, will be allowed without the Lender's prior consent;
- (iv) the Borrower shall make all of its payments and disbursements only from its Disbursement Account;
- (v) the Borrower shall deliver to the Lender copies of all account statements with respect to the Disbursement Account;
- (vi) the Borrower shall pay or cause to be paid, when due (A) all taxes, assessments and governmental charges or levies (including interest and penalties) imposed upon such person or upon such person's income, sales, capital or profit or any other property belonging to such person, and (B) Priority Claims;
- (vii) the Borrower shall keep proper books of record and account, in which full and correct entries shall be made of all of its financial transactions and its assets and business in accordance with GAAP;
- (viii) the Borrower shall promptly cure or cause to be cured any defects in the execution and delivery of any of the Credit Documents or any defects in the validity or enforceability of any of the Security Agreements and, at its expense, execute and deliver or cause to



be executed and delivered, all such agreements, instruments and other documents as the Lender may consider necessary or desirable for the foregoing purposes;

- (ix) at the Borrower's cost and expense, upon reasonable request of the Lender, the Borrower and Guarantor shall execute and deliver to the Lender such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the Lender to carry out more effectually the provisions and purposes of the Credit Documents;
  - (x) the Borrower will maintain EBITDA at all times at a level of not less than 80% of the forecast/Borrower budgets provided on a rolling forward monthly basis for the one year term of the Loans and any additional extensions, as set out in the Cash Flow Projections attached at Schedule H hereto. The Borrower will furnish monthly forecasts within 45 days of funding in accordance with this subsection 1.17(a)(x).
  - (xi) the Borrower will, at all times during the term of this Agreement, maintain in good standing all of the licenses and permits necessary to properly conduct its business, and will take all reasonable steps available to it for renewal of same from time to time.
  - (xii) The Borrower shall execute a Block Account Agreement based upon the Working Capital Loan in favour of the Lender within forty-five (45) days of Closing, substantially in the form of the Bank of Nova Scotia's Block Account Agreement attached hereto as Schedule "J", or in such form as the Lender may require.
- (b) The Borrower and Guarantor agree that they shall not, at any time without the prior written consent of the Lender:
- (i) permit any change of control of the Borrower any material change in the Borrower's business or operations;
  - (ii) create, grant, assume or permit to exist any Encumbrance (excluding Priority Claims) on any of the Borrower's property or shares in the capital of the Borrower other than Permitted Encumbrances;
  - (iii) sell, assign, lease, or otherwise dispose of any of the Borrower's assets, other than in the ordinary course of business;
  - (iv) dispose of, acquire or establish any subsidiary;
  - (v) redeem or repurchase any securities issued by the Borrower;

- (vi) declare, make or pay any Distribution in excess of Five Thousand Dollars (\$5,000.00) per month without the prior written consent of the Lender;
- (vii) make, directly or indirectly, any payments, not in the ordinary course of business, of management, consulting or other fees for management or similar services, to any of the Borrower's directors, officers, shareholders or anyone not at arm's-length to any of them.
- (viii) reimburse any expenses paid or otherwise incurred by anyone, except to the extent that those expenses were incurred in the ordinary course of business and are reasonable in amount;
- (ix) have any place of business or keep or store any material tangible personal property outside of those jurisdictions (or registration within such jurisdictions) set forth in the, Disclosure Schedule (A) except upon thirty (30) days' written notice to the Lender; and (B) unless the Borrower, as applicable, has done or caused to be done all such acts and things and executed and delivered or caused to be executed and delivered all such deeds, transfers, assignments and instruments (including opinions of counsel to the Borrower) as the Lender may reasonably require such that the Lender shall continue to have a first priority perfected security interest (whether by way of registration or otherwise and subject only to Permitted Encumbrances) over all of the personal property of such person except where the Lender, acting reasonably, determines that the cost of obtaining such perfected security interest over an asset exceeds the benefit to it of obtaining such security interest;
- (x) enter into or amend or terminate any material contract otherwise than in the ordinary course of business or, in respect of those not in the ordinary course of business, without the prior written consent of the Lender;
- (xi) change the Borrower's name, or the location of its place of business, if it has only one place of business, or its chief executive office without giving the Lender thirty (30) days prior written notice;
- (xii) enter into any transaction (whether by way of amalgamation, merger, winding-up, consolidation, reorganization, sale, lease or otherwise) whereby all or substantially all of the Borrower's undertaking, properties, rights or assets would become the property of any other person or entity, or in the case of amalgamation, of the continuing corporation resulting therefrom;
- (xiii) permit the insurance coverage, as required in this Agreement, to lapse at any time;

- (xiv) make a payment to any shareholder in respect of any shareholder loan owing to such shareholder or make a payment to any Affiliate in respect of any intercompany loan owing to such Affiliate;
  - (xv) make a loan to or investments in any person, or give guarantees on behalf of any person;
  - (xvi) incur or repay any indebtedness of the Borrower, other than pursuant to or as otherwise expressly permitted under this Agreement, except for arm's length trade debts, obligations or other liabilities incurred in the ordinary course of business; or
  - (xvii) make any payments or transfer any of the Borrower's undertaking, properties, rights or assets to any person without due which in any manner diverts, or results or could result in the diversion of, assets and/or opportunities of it to such other person.
- (c) On request by the Lender from time to time, the Borrower shall give Canada Revenue Agency and other Governmental Entities written authorization to disclose to the Lender the of any Priority Claims. The Borrower hereby grants its consent (such grant to remain in force as long as this Agreement is in effect or any Borrowings are outstanding) to any person having information relating to any potential Priority Claim to release such information to the Lender at any time upon its request for the purpose of assisting the Lender to evaluate the financial condition of the Borrower.

#### 1.18 REPORTS:

The Borrower shall continue to furnish the Lender with all financial information, projections, budgets, business plans, cash flows and such other information as the Lender may reasonably request from time to time. Specifically, the Borrower shall, in a form and manner prescribed by the Lender (which may include by fax and/or e-mail), deliver to the Lender the following signed by a senior officer of the Borrower:

##### Monthly Collateral Reporting

- (a) Monthly, within twenty (20) days of the end of the month being reported, or such other day as agreed between the Lender and the Borrower,;
  - (i) A list of total invoiced sales completed during the preceding month and a list of credit notes and cash receipts received by the Borrower from its customers during the preceding month;
  - (ii) the monthly invoice register, credit note register and cash receipts register in respect of the preceding month;

- (iii) together with each Borrowing Base Report in the form attached hereto as Schedule F (with such amendments to form as may be reasonably required by the Lender), a Compliance Certificate;
- (iv) an aged accounts receivable schedule, aged accounts payable schedule and summary trial balance;
- (v) internally prepared financial statements for the preceding month and internally prepared financial statements for the year to date, in each case including a balance sheet, actual versus budgeted income statement, statement of changes in financial position, statement of retained earnings as at the end of such period, all prepared in accordance with GAAP, consistently applied; any and other such schedules required by the Borrower from time to time.
- (vi) a cash flow projection detailing projected monthly operating cash receipts, projected monthly operating cash disbursements and projected monthly borrowings for the Borrower for the next following three (3) months (the "Rolling Cash Flow Projection") and
- (vii) evidence that the Borrower is current in its lease payments to the landlords of all leased premises.

(b) Monthly, within thirty (30) days of the end of the month being reported, variance reports reflecting: (i) the actual cash receipts, disbursements and borrowings for the preceding month (and on a cumulative basis since the date of the first advance hereunder); (ii) the dollar amount and percentage variance of such actual amounts from those set forth on the Rolling Cash Flow Projection for the previous month; and containing narrative analysis of the Borrower's performance for the preceding month and any variance from such period in the Rolling Cash Flow Projections for the preceding month.

(c) Annually, within ninety (90) days of the Borrower's financial year end in respect of the preceding financial year, audited consolidated financial statements for the Borrower that were audited by external auditors, including a balance sheet, a profit and loss statement, and statement of changes in financial position as at the end of such fiscal year, all prepared in accordance with GAAP, consistently applied. (d) Such additional financial information with respect to the Borrower as and when requested by the Lender.

(d) Forthwith, particulars of any occurrence which constitutes an Event of Default hereunder or of any action, suit or proceeding, pending or to the Borrower's knowledge threatened against the Borrower.

#### 1.19 FIELD EXAMINATIONS APPRAISALS:

The Borrower acknowledges that the Lender and its examiners shall, during regular business hours and on reasonable prior notice, be permitted to conduct field examinations of the Collateral and

operations of the Borrower at all reasonable times and as a condition precedent to the renewal of this Agreement in its sole discretion.

**1.20 EXPENSES:**

(a) The Borrower and the Guarantor agree to pay on demand all reasonable legal and other professional fees and disbursements and all reasonable expenses in respect of the Loans, the preparation and issuance of the Credit Documents, the conduct by the Lender of its due diligence, ongoing monitoring by the Lender of the Loans, the enforcement and preservation of the Lender's rights and remedies, discharge of the Security Agreements, all appraisals, all field examinations contemplated in Paragraph 1.19, insurance consultation and related fees and all other fees and disbursements of the Lender, whether or not any funds are advanced under the Credit Facilities.

(b) The Borrower and the Guarantor shall indemnify and hold the Lender and each of its shareholders officers, directors, employees and agents (each an "Indemnified Person") harmless from, and shall pay to such Indemnified Person on demand any reasonable amounts required to compensate the Indemnified Person for, any claim or loss suffered by, imposed on, or asserted against, the Indemnified Person as a result of, connected with or arising out of (i) conducting a due diligence investigation of the operations and undertakings of the Borrower, (ii) the preparation, execution and delivery of, preservation of rights under, enforcement of, or refinancing, renegotiation or restructuring of, the Credit Documents and any related amendment, waiver or consent; (iii) the cost of any advice of counsel as to the rights and duties of the Lender with respect to the administration of the Credit Facilities, the Credit Documents or any transaction contemplated under the Credit Documents; (iv) a default by the Borrower or Guarantor(s) hereunder and any enforcement proceedings relating to any of the Credit Documents; (v) any proceedings brought against the Indemnified Person due to the Lender entering into any of the Credit Documents performing its obligations under the Credit Documents, providing any Borrowing or any use of any Borrowing by the Borrower; provided that the Borrower shall have no obligation to indemnify any Indemnified Person for any of the foregoing to the extent determined by a judgment of a court of competent jurisdiction to have arisen from such Indemnified Person's gross negligence, willful misconduct or fraud or default by the Lender or such other Indemnified Person under any of the Credit Documents or breach of Applicable Law by the Lender or such other Indemnified Person.

(c) The provisions of this Paragraph 1.20 shall survive the termination of this Agreement, the repayment of all amounts owing hereunder and the cancellation of the Credit Facilities.

**1.21 DEPOSIT:**

A deposit of Thirty Thousand Dollars (\$30,000.00) shall be deducted from the first advance under the Working Capital Loan, to be applied against the Lender's field examination, financial analysis and appraisal expenses as well as legal and closing expenses, including those set out in Paragraph 1.20.,

**1.22 INDEMNITY FOR TRANSACTIONAL AND ENVIRONMENTAL LIABILITY:**

(a) Borrower hereby agrees to indemnify, exonerate and hold each Indemnified Person free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection therewith, including, without limitation, reasonable legal fees and out of pocket disbursements, and amounts paid in settlement of any and every kind whatsoever (collectively, the "Indemnified Liabilities"), paid, incurred or suffered by, or asserted against, the Indemnified Parties or any of them for, with respect to, or as a direct or indirect result of, (i) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, any real property legally or beneficially owned (or any estate or interest which is owned), leased, used or operated by Borrower of any Hazardous Material or (ii) the breach or violation of any Environmental Law by Borrower regardless of whether caused by, or within the Borrower, except for any such Indemnified Liabilities which a court of competent determined pursuant to a final non-appealable order arose on account of the relevant Indemnified Person's gross negligence or willful misconduct.

(b) All obligations provided for in this Paragraph 1.22 shall survive the payment of the Loans and the termination and non-renewal of this Agreement and shall not be reduced or impaired by any investigation made by or on behalf of the Lender.

(c) Borrower and Guarantor agree that, for the purposes of effectively allocating the risk of loss placed on Borrower by this Paragraph 1.22, Lender shall be deemed to be acting as the agent or trustee on behalf of and for the benefit of its shareholders, officers, directors, employees and agents.

(d) If, for any reason, the obligations of Borrower and Guarantor pursuant to this Paragraph 1.22 shall be unenforceable, Borrower agrees to make the maximum contribution to the payment and satisfaction of each obligation that is permissible under applicable law, except to the extent that a court of competent jurisdiction determines such obligations arose on account of the gross negligence or willful misconduct of any Indemnified Person.

### 1.23 EVENTS OF DEFAULT:

Without limiting any other rights of the Lender under this Agreement, if any one or more of the following events (herein an "Event of Default") has occurred and is continuing:

(a) the Borrower fails to pay within three (3) days of the due date, by acceleration or otherwise, any payment of principal, interest, fees, commissions or other amounts payable to the Lender;

(b) there is a breach by the Borrower or the Guarantor of any other term or condition contained in any Credit Document or in any other agreement with the Lender to which the Borrower or such Guarantor is a party and such breach continues for seven (7) days after the Borrower or such Guarantor shall have received written notice of same;

(c) any default occurs under any other agreement for borrowed money or related security agreement to the Borrower or the Guarantor is a party and such breach continues for seven (7) days after the Borrower or such Guarantor shall have received written notice of same;

(d) a petition, case or proceeding under the bankruptcy laws of Canada or similar laws of any foreign jurisdiction now or hereafter in effect or under any insolvency, arrangement, reorganization,

moratorium, receivership, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction now or hereafter in effect (whether at law or in equity) is filed or commenced against the Borrower or any Guarantor or all or any part of its properties and such petition or application is not dismissed within thirty (30) days after the date of its filing or the Borrower or such Guarantor shall file any answer admitting or not contesting such petition or application or indicates its consent to, acquiescence in or approval of, any such action or proceeding or the relief requested is granted sooner;

(e) if a final judgment or decree for the payment of money due is obtained or entered against the Borrower or the Guarantor, except in respect of a judgment which (i) was the subject of a bona fide dispute, (ii) is not material to the financial condition, business or operations of the Borrower or such Guarantor (and without restricting the generality of the foregoing, a judgment of One Hundred Thousand Dollars (\$100,000.00) or more shall be deemed to be and (iii) is paid in full within the later of thirty (30) days judgment or the number of days set out in such judgment or decree (or with respect to which the applicable insurer has committed to pay in accordance with standard industry practice);

(f) a Material Adverse Change shall have occurred since the date of this Agreement;

(g) any audited consolidated financial statements of the Borrower are qualified in any respect by the Borrower's independent auditors;

(h) a receiver is appointed over any property of the Borrower or any judgment or order or process of any court becomes enforceable against the Borrower or any property of the Borrower or any creditor takes possession of any property of the Borrower;

(i) the Borrower makes a payment to any Affiliate in respect of any loan owing to such Affiliate, except as otherwise permitted hereunder;

(j) any course of action is undertaken by the Borrower which would result in its reorganization, amalgamation or merger with another entity or the of all or substantially all of its assets;

(k) any Security Agreement is or becomes illegal, invalid, prohibited or unenforceable and/or ceases to rank in the priority contemplated herein against the property charged thereunder;

(l) any representation or warranty made by the Borrower or the Guarantor in any Credit Document or in any certificate or other document delivered to the Lender in connection herewith is false or misleading in any material respect;

(m) in the opinion of the Lender, any Material Adverse Change has occurred in the financial condition or business of the Borrower which may impair its ability or willingness to perform any of its obligations to the Lender or the Lender considers the security held to secure the Loan to be in jeopardy or the Lender considers itself insecure; or

(n) the Borrower performs at less than 80% of EBITDA as set out in the cash flow projections attached at Schedule "H" hereto,

then in such event, the ability of the Borrower to make further Borrowings under this Agreement shall immediately terminate and the Lender may, by written notice to the Borrower, declare the Borrowings outstanding hereunder to be immediately due and payable. Upon receipt of such written notice, the Borrower shall immediately pay to the Lender all Borrowings outstanding under this Agreement and all other obligations of the Borrower to the Lender in connection therewith;

Upon a declaration that the Borrowings outstanding hereunder are immediately due and payable pursuant to this Paragraph 1.23, the Lender may commence such legal action or proceedings as the Lender in its sole discretion deems expedient, including the commencement of enforcement proceedings under the Credit Documents, all without any additional notice, presentation, demand, protest, notice of dishonor, entering into of possession of any property or assets, or any other action or notice, all of which are expressly waived by the Borrower and the Guarantor;

The rights and remedies of the Lender under the Credit Documents are cumulative and are in addition to, and not in substitution for, any other rights or remedies.

**1.24 GENERAL:**

(a) The Security Agreements contain covenants, representations, warranties and events of default to which the Borrower shall be bound, in addition to any covenants, representations, warranties and events of default herein contained.

(b) The terms and conditions of this Agreement shall not be merged in, and shall survive, the execution of the Credit Documents. In the event of any conflict or inconsistency between any provision of this Agreement and any of the other Credit Documents, the provisions of this Agreement shall govern and prevail.

(c) All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another shall be given in by personal delivery or by facsimile transmission addressed to such other party or delivered to such other party as follows:

to the Borrower at:

9584658 Canada Ltd.  
100 Industrial Avenue, Units B and C  
Carleton Place, Ontario  
K7C 3V7

Attention: Michael Cappy, *PRESIDENT*  
Email: \* *MLC@CAPPY.IT*  
\*  
Email: \*

to the Lender at:

Waygar Capital Inc. as agent for Davinci Capital Private Debt Fund



240 Duncan Mill Road, 806  
Toronto, Ontario  
M2B 3S6

Attention: Wayne R. Ehgoetz  
Email: [wchgoetz@waygarcapital.com](mailto:wchgoetz@waygarcapital.com)

And to: Jim Goren  
Email:

And to: Mark Irwin  
Email:

or at such other address or facsimile number as may be given by any of them to the others in writing from time to time and such notices, requests, demands or other communications shall be deemed to have been received when delivered, or, if sent by facsimile transmission on the date of transmission unless sent on a day which is not a Business Day or after 5:00 p.m. (local time of the recipient) on a Business Day, in which case it shall be deemed to have been received on the next Business Day following the day of such transmission.

(d) Any and all payments made at any time in respect of the Working Capital Loan or any other obligation hereunder and the proceeds realized from any security held therefor may be applied and reapplied from time to time notwithstanding any previous application) to such part or parts of the indebtedness of the Borrower as the Lender sees fit.

(e) Time shall be in all respects of the essence hereof.

(f) The Lender and/or its agent, Waygar Capital Inc., may use the names, logos and other insignia of the Borrower in any "tombstone" or comparable advertising, on its website or in its marketing materials.

(g) Any provision of this Agreement which is invalid or unenforceable under the laws of any jurisdiction in which this Agreement is sought to be enforced shall, as to such jurisdiction and to the extent such provision is invalid or unenforceable, be deemed severable and shall not affect any other provision of this Agreement.

(h) In no event shall the interest and all other charges provided for hereunder exceed the maximum aggregate amount that the Lender may collect in compliance with Applicable Law. Notwithstanding anything to the contrary herein contained, if at any time implementation of any provision hereof results in a payment in contravention of the preceding sentence, the amount of the excess shall be applied as a partial prepayment of principal.

(i) The Lender will not be considered to have waived compliance with or amended any part of this Agreement or any obligations of the Borrower or Guarantor hereunder or under any other document unless such waiver or amendment is specifically set out in writing. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given. The Lender

shall not be deemed to have waived compliance with any obligation of the Borrower or Guarantor simply because it does not exercise any of its rights or remedies immediately upon the occurrence of a breach thereof.

(j) No representation or warranty or other statement made by the Lender concerning the Loan shall be binding on the Lender unless made by it herein or in writing as a specific amendment to this Agreement.

(k) The Lender's records constitute, in the absence of manifest error, prima facie evidence of the indebtedness of the Borrower to the Lender.

(l) All financial or accounting determinations, reports and statements provided for in this Agreement shall be made or prepared in accordance with GAAP applied in a consistent manner.

(m) The Borrower and Guarantor consent to the obtaining from any credit reporting agency or from any person or entity of such information as the Lender may require at any time, and consents to the disclosure at any time of any information concerning the Borrower or Guarantor to any credit grantor with whom the Borrower has financial relations or to any credit reporting agency; provided that the Lender acknowledges that additional consents from third parties may be required to be obtained pursuant to applicable privacy laws.

(n) This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery by facsimile or by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement.

(o) This Agreement shall be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.


(p) The Borrower, Guarantors and Lender irrevocably consent and submit to the non-exclusive jurisdiction of the Ontario Superior Court of Justice and waive any objection based on venue or forum non convenes with respect to any action instituted therein arising under this Agreement or any of the other Security Agreements or in any way connected with or related or incidental to the dealings of the parties hereto in respect of this Agreement or any of the other Security Agreements or the transaction related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that Lender shall have the right to bring any action or proceeding against the Borrower or Guarantor or their respective property in the courts of any other jurisdiction which Lender deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against the Borrower or Guarantor or their property).

(q) Except as otherwise expressly provided herein, all dollar amounts herein are in Canadian Dollars.

(r) Agreement may be amended only with the prior written consent of all parties hereto.

If this arrangement set out in this Loan Agreement are acceptable to you, please sign the enclosed copy of this Loan Agreement in the space indicated below and return a fully executed copy to us.

**DAVINCI CAPITAL PRIVATE DEBT FUND**


Per:   
Name: MARK IRWIN

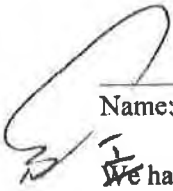
\_\_\_\_\_  
Name:

*We have the authority to bind the Corporation.*

The arrangements set out above are hereby acknowledged and accepted this 8<sup>th</sup> day of March, 2016.

**9584358 CANADA LTD.**

  
Name: MICHAEL CAPPY, President

  
Name: \_\_\_\_\_

*We have the authority to bind the Corporation.*

If this arrangement set out in this Loan Agreement are acceptable to you, please sign the enclosed copy of this Loan Agreement in the space indicated below and return a fully executed copy to us.

**DAVINCI CAPITAL PRIVATE DEBT FUND**

Per: \_\_\_\_\_

Name: MARK LEWIN

\_\_\_\_\_  
Name:

*We have the authority to bind the Corporation.*

The arrangements set out above are hereby acknowledged and accepted this 18<sup>th</sup> day of March, 2016.

**9584358 CANADA LTD.**

\_\_\_\_\_  
Name: MICHAEL CAPPY, President

\_\_\_\_\_  
Name:

I  
*We have the authority to bind the Corporation.*

**SCHEDULE "A"**  
**DISCLOSURE SCHEDULE**

See attached Disclosure Schedule, which is incorporated by reference herein

**SCHEDULE "B"**

**PERMITTED ENCUMBRANCES**

Permitted Encumbrances in favour of secured creditors

**SCHEDULE "C"**

**SECURED CREDITORS TO BE DISCHARGED (1.14 (a)(i))**

**SCHEDULE "D"**

**SECURED CREDITORS (1.14 (a)(ii))**



**SCHEDULE "E"**

**REAL PROPERTY**

**SCHEDULE "F"**

**BORROWING BASE REPORT**

## BORROWING BASE CERTIFICATE

TO: \_\_\_\_\_

Date: \_\_\_\_\_

Report #: \_\_\_\_\_

We refer to the Loan Agreement between ("Borrower") and Lender dated \_\_\_\_\_ (the "Loan Agreement"). Terms used but not otherwise defined in this Certificate have the meaning provided for in the Loan Agreement.

Borrower hereby certifies and warrants to you that the following is a true and correct computation as of the date set forth above (the "Computation Date") of the Borrowing Base, and Inventory and Account balance changes since the previous Borrowing Base Certificate provided to you (the "Prior Certificate").

		COLLATERAL ACTIVITY		
		Facility Limit:		
Facility #:	Date of Collateral	01	02	03
1	Balance Carried Forward from Line 4 of Prior Certificate			
2	Additions Since Prior Certificate (Gross Sales / Purchases)			
3	Subtractions Since Prior Certificate (Gross Collections / Sales)			
3a	Credit notes			
3b	Non A/R Cash			
3c	Other Adjustments (Decreases)/ Increases since Prior Certificate (FX)			
4	Balance at Computation Date (1+2+3)			
5	Less Ineligibles			
6	Net Eligible Collateral (4-5)			
7	Advance Rate			
8	Borrowing Base Availability (6*7)			
9	Sublimit Per Collateral Category			
10	Net Borrowing Base Availability (Lessor of 8 or 9)			

AVAILABILITY		CAD\$
		FX Rate
		Equivalent
11	Total Borrowing Base in CAD\$ Equivalent (Total of 10 at FX rate) - To Maximum of \$1,000,000	
12a	WEPPA Reserve	
12b	Rent Reserve	
12c	Estimated Payout at Dec 31	
12d	Closing Fees	
12e	Reserve	
12f	Priority Payables (TED)	
13	Total Reserves (CAD\$ Equiv.) (Total of 12)	
14	Total Available Net of Reserves	
15	Total Loans at Computation Date (18-22*/21)	
16	Excess Available for Borrowing (14-15)	

Borrower hereby further certifies and warrants to you that no Event of Default or event which with the passage of time would be an event of Default has occurred.

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE "G"**

**COMPLIANCE CERTIFICATE**

**Schedule G**  
**Compliance Certificate**

To: Davinci Capital Private Debt Fund

Ladies and Gentlemen:

I hereby certify to you pursuant to Section 1.18 of the Loan Agreement (as defined below) as follows:

1. I am the duly authorized signing officer of 9584358 Canada Ltd. o/a Eastway Fire and Rescue, (the "**Borrower**"). Capitalized terms used herein without definition shall have the meanings given to such terms in the loan agreement dated as of March 15, 2016, between the Lender and the Borrower (as such Loan Agreement is amended, modified or supplemented, from time to time, (the "**Loan Agreement**").
2. I have reviewed the terms of the Loan Agreement, and have made, or have caused to be made under my supervision, a review on reasonable detail of the transactions and the financial condition of the Borrower and each of the Obligor, during the immediately preceding month.
3. The review described in Section 2 above did not disclose the existence during or at the end of such month, and I have no knowledge of the existence and continuance on the date hereof, of any condition or event which constitutes an Event of Default except as set forth in Schedule I attached hereto. Described on Schedule I attached hereto are the exceptions, if any, to this Section 3 listing, in detail, the nature of the condition or event, the period during which it existed and the action which the Borrower or an Obligor (as applicable) has taken, is taking, or proposes to take with respect to such condition or event.
4. I further certify that, based on the review described in Section 2 above, the Borrower has not at any time during or at the end of such month, except as specifically described on Schedule II attached hereto, or as permitted by the Loan Agreement, done any of the following:
  - (a) changed its corporate name, or transacted business under any trade name, style, or fictitious name, other than those previously described to you and set forth in the Financing Agreements;
  - (b) changed the location of its chief executive office, changed its jurisdiction of incorporation, changed its type of organization or changed the location of or disposed of any of its properties or assets (other than in the ordinary course of its

business or as otherwise permitted by the Loan Agreement), or established any new asset locations;

- (c) permitted or suffered to exist any security interest in or liens upon any of its properties, whether real or personal, other than as specifically permitted in the Financing Agreements; or
- (d) became aware of, obtained knowledge of, or received notification of, any breach or violation of any material covenant contained in any Financing Agreement.

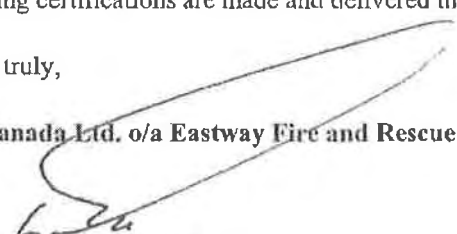
5. Attached hereto as Schedule III are the calculations used in determining, as of the end of such month, whether the Borrower is in compliance with the covenants set forth in Section 1.17 of the Loan Agreement for such month.

6. I further certify that, other than as set out in Schedule IV hereto, Borrower has paid in full all rents and other amounts due and payable with respect to any premises leased or occupied by Borrower during such month, including without limitation any charges for warehousing or storing Inventory.

The foregoing certifications are made and delivered this day of 18<sup>th</sup> March, 2016.

Yours very truly,

9584358 Canada Ltd. o/a Eastway Fire and Rescue

By:   
Name: Melissa CAPPY  
Title: Proprietor

**Schedules**

SCHEDULE 1 – Events of Default (Section 3)

SCHEDULE II – Changes (Section 4)

SCHEDULE III – Financial Test Calculation (Section 5)

SCHEDULE IV – Rent Roll (Section 6)

SCHEDULE 1 – Events of Default (Section 3)

SCHEDULE II - Changes (Section 4)



SCHEDULE III - Financial Test Calculation (Section 5)

SCHEDULE IV - Rent Roll (Section 6)

**SCHEDULE "H"**  
**CASH FLOW PROJECTIONS**

**9584358 Canada Holding LLC**  
 Balance Sheet as of Feb.23, 2016 (03/14/16 Version)

**ASSETS**

**Current Assets**

<b>Chequing/Savings</b>	
10020 · BNS CAD	5,453.30
10030 · BNS USD	<u>89.22</u>
<b>Total Chequing/Savings</b>	<b>5,541.52</b>

<b>Accounts Receivable</b>	
12000 · Accounts Receivable	<u>4,576.41</u>
<b>Total Accounts Receivable</b>	<b>4,576.41</b>

<b>Inventories</b>	
14100 · Inventory - Raw Materials	60,000.00
14105 · Inventory Reserve	0.00
15000 · Work in Progress	0.00
15020 · Uxbridge - 140010	0.00
15023 · Laurentian - 140013	120,000.00
15027 · Ocean Wave Pumper NB - 150095	40,000.00
15032 · Algonquin Highlands - 150189	30,000.00
15033 · Algonquin Highlands - 150203	15,000.00
15034 · Mississippi Mills Tanker-150225	0.00
15035 · Mississippi Mills Rescue-150225	0.00
15036 · Town of Harvard	0.00
South Dundas Trade-In	<u>20,000.00</u>
<b>Total Inventories</b>	<b>285,000.00</b>

**Total Current Assets** 295,117.93

**Fixed Assets**

<b>19000 · Machinery &amp; Equipment - Shop &amp; Facility</b>	
19030 · Accum Dep'n- Machinery&Equip	<u>0.00</u>
<b>Total 19000 · Machinery &amp; Equipment</b>	<b>110,000.00</b>
<b>19040 · Rolling Stock - Vehicles</b>	
19060 · Accum Dep'n - Vehicles	<u>0.00</u>
<b>Total 19040 · Rolling Stock</b>	<b>25,000.00</b>
<b>19070 · Other Fixed Assets - Furniture, Computers &amp; Office Equipr</b>	
19090 · Accum Dep'n-Furn & Equipment	<u>0.00</u>
<b>Total 19070 · Other Fixed Assets</b>	<b>10,000.00</b>

**Total Fixed Assets** 145,000.00

**Other Assets**

19080 · Goodwill	<u>334,883.07</u>
<b>Total Other Assets</b>	<b>334,883.07</b>

**TOTAL ASSETS** 775,001.00

**LIABILITIES & EQUITY**

**Liabilities**

**Current Liabilities**

<b>Accounts Payable</b>	
20100 · Accounts Payable-Trade	0.00
20101 · Provision for trade credit	<u>75,000.00</u>
<b>Total Accounts Payable</b>	<b>75,000.00</b>

<b>Other Current Liabilities</b>	
16150 · HST Payable	0.00
24000 · Customer Deposits	<u>0.00</u>
<b>Total Other Current Liabilities</b>	<b>0.00</b>

<b>22000 · Accrued Expenses</b>	
20760 · Accrued Payroll	0.00
20781 · Accrued Vacation	0.00
20762 · Accrued WSIB	<u>0.00</u>
<b>Total 22000 · Accrued Expenses</b>	<b>0.00</b>

<b>Total Current Liabilities</b>	
26000 · Davinci Capital	<u>700,000.00</u>

**Total Liabilities** 775,000.00

**Equity**

30001 · 9584358 Canada Holding LLC	1.00
Net Income	<u>0.00</u>
<b>Total Equity</b>	<b>1.00</b>

**TOTAL LIABILITIES & EQUITY** 775,001.00

**SCHEDULE "J"**  
**BLOCK ACCOUNT AGREEMENT**

**SCHEDULE "I"**  
**BORROWING BASE CERTIFICATE**

**EXHIBIT "B"**

**This is Exhibit "B" referred to in the  
affidavit of:**

**WAYNE EHGOETZ**

**Sworn before me, this 22<sup>nd</sup> day of  
June, 2017.**

A handwritten signature in blue ink, appearing to be 'W. Ehgoetz', is written over a horizontal line.

**A Commissioner for Taking Affidavits**

**PROMISSORY NOTE**

**PRINCIPAL AMOUNT:** **CDN\$1,900,000.00**

**INTEREST RATE:**

- (a) **Working Capital Loan** **Fifteen percent (15.0%) per annum**
- (b) **First Term Loan** **Fifteen percent (15.0%) per annum**
- (c) **Second Term Loan** **Fifteen percent (15.0%) per annum**

**TERM:** **Twenty-four (24) Months**

**PAYMENTS:** **Monthly (Interest only)**

**MATURITY DATE:** **March 17, 2018**

**FOR VALUE RECEIVED**, the undersigned, **9584358 CANADA LTD...** (the "Borrower"), a corporation incorporated under the laws of Canada, unconditionally promises to pay to **DAVINCI CAPITAL PRIVATE DEBT FUND** (the "Lender"), a corporation incorporated under the laws of Canada, the principal amount of **ONE MILLION NINE HUNDRED THOUSAND DOLLARS (\$1,900,000.00)**, in Canadian currency, interest only on the principal amounts, calculated on the monthly balance of such sum, and payable as set out below at the same place, both before and after maturity, default and judgment, at a rate per annum as more particularly set out .

- (a) Interest on the principal amount of the Working Capital Loan outstanding from time to time shall be calculated at a rate of fifteen percent (15.0%) per annum. Interest only payments, calculated monthly, not in advance shall be payable by the Borrower to the Lender on the 15th day of each month;
- (b) Interest on the principal amount of the First Term Loan shall be calculated at a rate of fifteen percent (15.0%) per annum. Interest only payments of five percent (5.0%) of the total First Term Loan amount shall be payable monthly of the 15th day of each month. The remaining ten percent (10.0%) shall be deferred and payable at maturity;
- (c) Interest on the principal amount of the Second Term Loan shall be calculated at a rate of fifteen percent (15.0%) per annum. Interest only payments of four percent (4.0%) of the total Second Term Loan amount shall be payable monthly on the 15th day of each month. The remaining eleven percent (11.0%) shall be deferred and payable at maturity.

Payments received shall first be applied to the payment of any unpaid interest and the balance, if any, applied to the unpaid principal.



In the event of default in any payment when due or any other Event of Default (as defined in the Loan Agreement), the entire unpaid balance of the principal amount and any accrued interest shall be immediately due and payable, without notice or demand. The obligation to pay interest shall not merge on any judgment or judgments in regard to any of the obligations hereunder.

This Note may be prepaid with interest accrued thereon to the date of payment by the Borrower, in whole or in part, and subject to the Make-Whole Fee as outlined at Section 1.10 of the Loan Agreement.

The Borrower hereby waives presentment for payment, notice of non-payment, protest and notice of protest and any other condition precedent to action against it for the payment of this Promissory Note. The failure of the Lender to exercise any of the Lender's rights hereunder in any instance shall not constitute a waiver thereof in that or any other instance.

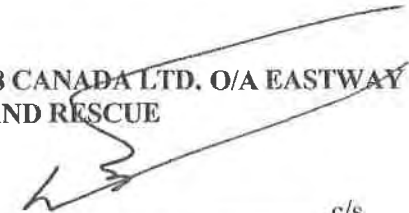
This Promissory Note shall be binding upon and shall enure to the benefit of the Lender and the Borrower and their respective heirs, estate trustees, personal legal representatives, successors and permitted assigns.

In the event that any one or more of the provisions of this Promissory Note shall be held to be illegal, invalid or unenforceable in any respect, the same shall not in any respect affect the validity, legality or enforceability of the remainder of this Promissory Note.

This Promissory Note shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein

DATED AT LONDON, as of the 18<sup>th</sup> day of March, 2016.

9584358 CANADA LTD. O/A EASTWAY  
FIRE AND RESCUE

Per:  c/s

Name: MICHAEL CAPPY

Title: President

*"I have the authority to bind the Corporation"*

**EXHIBIT "C"**

**This is Exhibit "C" referred to in the  
affidavit of:**

**WAYNE EHGOETZ**

**Sworn before me, this 22<sup>nd</sup> day of  
June, 2017.**



---

**A Commissioner for Taking Affidavits**

## SECURITY AGREEMENT

**THIS SECURITY AGREEMENT** (this “**Agreement**”) made as of the 15<sup>th</sup> day of March 2016 by and between 9584358 Canada Ltd. o/a Eastway Fire and Rescue (referred to herein as the “**Borrower**”, with its principal place of business at 100 Industrial Avenue, Units B & C, Carleton Place, Ontario, K7C 3V7 and Davinci Capital Private Debt Fund, with its principal place of business at 806-240 Duncan Mill Road, Toronto, Ontario M3B 3S6 (referred to herein as the “**Lender**”) and Mr. Michael Cappy, with his principal place of business at • (referred to herein as the “**Guarantor**”)

### WITNESSETH:

**WHEREAS**, the Borrower is, or is about to become indebted to the Lender;

**AND WHEREAS**, as a condition to extending credit to the Borrower, the Lender has required that the Borrower grant security interests in the Collateral (defined hereinafter) to the Lender as security for the Liabilities (as hereinafter defined);

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Borrower, the parties agree as follows:

#### 1. Definitions

“**Affiliate**” shall mean any Person directly or indirectly controlling, controlled by or under common control with the Borrower.

“**Collateral**” shall mean all of the undertaking, property and assets, present and future, real and personal of the Borrower, including that specifically described in paragraph 2 hereof.

“**Liabilities**” shall mean the obligations of the Borrower to the Lender arising out of the Loan Agreement.

“**Loan Agreement**” shall mean the Loan Agreement dated as of March 15, 2016 between the Borrower and the Lender as it may be amended, supplemented, extended or restated from time to time.

“**Other Agreements**” shall mean all agreements, instruments and documents including loan agreements, guarantees, mortgages, trust deeds, pledges, powers of attorney, consents, assignments, contracts, notices, security agreements, leases, financing statements and all other writings heretofore, now or from time to time hereafter executed by or on behalf of the Borrower or any other Person and delivered to the Lender or to any parent, affiliate or subsidiary of the Lender in connection with the Liabilities or the transactions contemplated hereby or in the Loan Agreement.

“**Parent**” shall mean any Person now or at any time or times hereafter owning or controlling (alone or with any other Person) at least a majority of the issued and outstanding stock of the Borrower or any Subsidiary.

“**Permitted Encumbrances**” shall have the meaning attributed to it in the Loan Agreement.

“**Person**” shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, institution, entity, party or foreign or local government (whether federal, provincial, county, city, municipal or otherwise), including, without limitation, any instrumentality, division, agency, body or department thereof.

“**Subsidiary**” shall mean any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time stock of any other class of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned by the Borrower or by any partnership or joint venture of which more than fifty percent (50%) of the outstanding equity interests are at the time, directly or indirectly, owned by the Borrower.

Unless otherwise defined in this Agreement, defined terms used herein shall have the meaning set out in the Loan Agreement.

## 2. Grant of Security Interest to the Lender

As security for the payment or other satisfaction of all of the Liabilities, the Borrower hereby charges, mortgages and assigns to the Lender and grants to the Lender a continuing security interest in all of the undertaking, property and assets of the Borrower, both present and future, real and personal, including the following property of the Borrower, whether now or hereafter owned, existing, acquired or arising and wherever now or hereafter located:

- (a) all Accounts and all goods whose sale, lease or other disposition by the Borrower has given rise to Accounts and have been returned to or repossessed or stopped in transit by the Borrower;
- (b) all chattel paper, instruments, documents of title and Intangibles (including, without limitation, all patents, patent applications, trademark application, tradenames, trade secrets, goodwill, copyrights, registrations, licenses, franchises, customer lists, tax refund claims, claims against carrier and shippers, guarantee claims, contracts right, security interests, security deposits and any rights to indemnification);
- (c) all Inventory;

- (d) all goods (other than Inventory) including, without limitation, Equipment, vehicles and other rolling stock and fixtures;
- (e) all deposits and cash and any other property of the Borrower now or hereafter in the possession, custody or control of the Lender or any agent or any parent, affiliate or subsidiary of the Lender or any participant with the Lender in the loans to the Borrower for any purpose (whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise); and
- (f) all additions and accessories to, substitutions for, and replacements, products and proceeds of the foregoing property including, without limitation, proceeds of all insurance policies insuring the foregoing property, and all of the Borrower's books and records relating to any of the foregoing and to Borrower's business.

The last day of any term reserved by any lease, oral or written, or any agreement therefor, now held or hereafter acquired by the Borrower, and whether falling within the general or particular description of the Collateral, is hereby and shall be excepted out of the mortgages, charges and security interests granted hereby or by any other instrument created, but the Borrower shall stand possessed of the reversion of one day remaining in the Borrower in respect of any such term, for the time being demised, as aforesaid, upon trust to assign and dispose of the same as any purchaser of such term shall direct. There shall also be excluded from the security interests granted in this Agreement any property of the Borrower that constitutes consumer goods.

3. **Preservation of Collateral and Perfection of Security Interests Therein**

The Borrower shall, at the Lender's request, at any time and from time to time, execute and deliver to the Lender such financing statements, documents and other agreements and instruments (and pay the cost of filing or recording the same in all public offices deemed necessary or desirable by the Lender) and do such other acts and things as the Lender may deem necessary or desirable in order to establish and maintain a valid, attached and perfected security interest in the Collateral in favour of the Lender (free and clear of all other liens, claims and rights of third parties whatsoever, whether voluntarily or involuntarily created, except Permitted Encumbrances) to secure payment of the Borrower's Obligations, and in order to facilitate the collection of the same. Borrower shall make appropriate entries on its books and records disclosing the Lender's security interests in the Collateral. Following the occurrence of an Event of Default, upon the Lender's request, the Borrower shall deliver to the Lender any other Collateral in its possession. The Borrower irrevocably hereby makes, constitutes and appoints the Lender (and all Persons designated by the Lender for that purpose) as the Borrower's true and lawful attorney and agent-in-fact to execute such financing statements, documents and other agreements and instruments and do such other acts and things as may be necessary to preserve and perfect the Lender's security interest in the Collateral.

4. **Possession of Collateral and Related Matters**

Until an Event of Default has occurred, the Borrower shall have the right, except as otherwise provided in this Agreement, in the ordinary course of the Borrower's business, to:

- (a) Sell, lease or furnish under contracts of service any of the Borrower's Inventory normally held by the Borrower for any such purpose, and
- (b) Use and consume any raw materials, work in process or other materials normally held by the Borrower for such purpose; provided, however that a sale in the ordinary course of business shall not include any transfer or sale in satisfaction, partial or complete, of a debt owed by the Borrower, or a transfer, sale or other disposition to any Parent, Subsidiary, Affiliate, shareholder, person in whom the Borrower holds any interest or related party, which is at a price or on terms more favourable than would be given to an unrelated party.

5. **Release of Security Interest**

Upon satisfaction of all the Borrower's liabilities under the Loan Agreement, the Borrower shall deliver to the Lender a release in form and substance satisfactory to the Lender, of all obligations and liabilities of the Lender and its officers, directors, employees, agents, parents, subsidiaries and affiliates to the Borrower. Upon payment in full of all Liabilities outstanding under the Loan Agreement and release of the Borrower's Obligations, the Lender shall, at the Borrower's sole cost and expense, execute and deliver to the Borrower all termination statements, assignments and other instruments as may be necessary or proper to re-vest in the Borrower full title to the Collateral, subject to any disposition thereof which may have been made by the Lender pursuant hereto.

6. **Remedies Upon an Event of Default**

- (a) Upon the occurrence of an Event of Default described in the Loan Agreement and the expiration of any cure period applicable thereto, all amounts outstanding under the Loan Agreement shall immediately and automatically become due and payable, ten (10) days after giving notice of an Event of Default to Michael Cappy by mailing such notice to **Suite 100-166, 12123 Shelbyville Road, Louisville, Kentucky, USA, 40023** and by also sending such notice by telecopy to telecopy number ~~1-347-412-5440~~ [Insert the Correct Number]. Upon the occurrence of an Event of Default, the Lender may proceed to realize its security hereunder and to enforce its rights by:

- (i) entry;

- (ii) the appointment by instrument in writing of a receiver or receivers of the Collateral or any part thereof (which receiver or receivers may be any person or persons, whether an officer or officers or employee or employees of the Lender or not and the Lender may remove any receiver or receivers so appointed and appoint another or others in his or their stead);
- (iii) proceedings in any court of competent jurisdiction for the appointment of a receiver or receivers or for sale of the Collateral or any part thereof; or
- (iv) any other action, suit, remedy or proceeding authorized or permitted hereby or by law or by equity.

Any receiver or receivers so appointed shall have power to:

- (a) take possession of and to use the Collateral or any part thereof;
- (b) carry on the business of the Borrower (including, but not limited to, the taking or defending of any actions or legal proceedings, and the doing or refraining from doing all other things as to the receiver may seem necessary or desirable in connection with the business, operations and affairs of the Borrower);
- (c) borrow money required for the maintenance, preservation or protection of the Collateral or any part thereof or the carrying on of the business of the Borrower;
- (d) further charge the Collateral in priority to the security interests of this Agreement as security for money so borrowed; and
- (e) sell, lease or otherwise dispose of the whole or any part of the Collateral on such terms and conditions and in such manner as the receiver shall determine.

The Lender shall not be responsible for any actions or errors of omission by the receiver or receivers in exercising any such powers.

In addition, the Lender may enter upon, use, occupy and possess the Collateral or any part thereof, free from all encumbrances, liens and charges, except for Permitted Encumbrances, without hindrance, interruption or denial of the same by Borrower or by any other person or persons save only a landlord pursuant to its rights of reversion under any lease of real property on expiry of its term, and may lease or sell the whole or any part or parts of the Collateral. Any sale hereunder may be made by public auction, by public tender or by private contract, with or without notice and with or without advertising and without any other formality (except as required by law), all of which are hereby waived by the Borrower. Such sale shall be on such terms and conditions as to credit or otherwise and as to upset or reserve bid or price as to the Lender in its sole discretion may seem advantageous. Such sale may take place whether or not the Lender has taken possession of the Collateral.

No remedy for the realization of the security interests granted herein or for the enforcement of the rights of the Lender shall be exclusive of or dependent on any other such remedy, but any one or more of such remedies may from time to time be exercised independently or in combination. The term "receiver" as used in this Agreement includes a receiver and manager.

At the Lender's request, the Borrower shall, at the Borrower's expense, assemble the Collateral and make it available to Lender at one or more places to be designated by the Lender and reasonably convenient to the Lender and the Borrower. The Borrower recognizes that if the Borrower fails to perform, observe or discharge any of its Liabilities under this Agreement or the Other Agreements, no remedy at law will provide adequate relief to the Lender, and agrees that the Lender shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages. Any notification of intended disposition of any of the Collateral required by law will be deemed reasonably and properly given if given at least fifteen (15) calendar days before such disposition. Any proceeds of any disposition by the Lender of any of the Collateral shall be applied by the Lender to the payment of expenses and any borrowings in connection with the Collateral and its realization including, without limitation, reasonable legal fees and disbursements (on a substantial indemnity basis) (both outside and in-house), and any balance of such proceeds shall be applied by the Lender toward the payment of such of the Liabilities, and in such order of application, as the Lender may from time to time elect or re-elect.

#### 7. Indemnification

The Borrower agrees to defend (with counsel satisfactory to the Lender), protect, indemnify and hold harmless the Lender, each affiliate or subsidiary of the Lender, and each of their respective officers, directors, employees, attorneys and agents (each an "**Indemnified Party**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature (including, without limitation, the disbursements and the reasonable fees (on a substantial indemnity basis) of counsel for each Indemnified Party in connection with any investigative, administrative or judicial proceedings, whether or not the Indemnified Party is designated a party thereto), which may be imposed on, incurred by, or asserted against, any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state, provincial or local laws or regulations, including, without limitation, securities, environmental and commercial laws and regulations, under common law or in equity, or based on contract or otherwise) in any manner relating to or arising out of this Agreement or any Other Agreement, or any act, event or transaction related or attendant thereto; provided, however, that Borrower shall not have any obligation hereunder to any Indemnified Party with respect to matters caused by or resulting from the willful misconduct, gross negligence or breach of the terms of this Agreement, the Loan Agreement or any other agreement between or among the parties of such Indemnified Party. To the extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, Borrower shall satisfy such



undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to each Indemnified Party on demand, and, failing prompt payment, shall, together with interest thereon at the highest rate then applicable in respect of Borrower's credit facilities with Lender from the date incurred by each Indemnified Party until paid by Borrower, be added to the Liabilities of Borrower and be secured by the Collateral. The provisions of this paragraph 7 shall survive the satisfaction and payment of the other Liabilities and the termination of this Agreement.

8. Rights of the Secured Party

The Lender may pay and satisfy the whole or any part of any liens, taxes, rates, charges or encumbrances now or hereafter existing in respect of any of the Collateral and such payments together with all costs, charges and expenses which may be incurred in connection with making such payments shall form part of the Liabilities and shall be secured by the security interests granted herein. In the event of the Lender satisfying any such lien, charge or encumbrance, it shall be entitled to all the equities and securities of the person or persons so paid and are hereby authorized to obtain any discharge thereof and hold such discharge without registration for so long as it may deem advisable to do so.

The Lender, without exonerating in whole or in part the Borrower, may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any or all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Borrower and all other persons and securities as the Lender may see fit.

Nothing herein shall obligate the Lender to extend or amend any credit to the Borrower or to any other Person.

9. Notice

All written notices and other written communications with respect to this Agreement shall be sent by ordinary or registered mail, by telecopy or delivered in person, and in case of the Lender shall be sent to it at the address on the first page hereof and if by telecopy to telecopy number 1-888-622-1123, and in the case of the Borrower shall be sent to it at its principal place of business set forth on the first page of this Agreement (if by telecopy to telecopy number (•), together with a copy to Michael Cappy at Suite 100-166, 12123 Shelbyville Road, Louisville, Kentucky, USA, 40023 and by telecopy to telecopy number 1-347-412-5440 [Insert the Correct Number]. The notice of other communication so sent shall be deemed to be received on the day of personal delivery or telecopy, or if mailed, three (3) days following the date of such mailing.

10. Choice of Governing Law; Construction; Forum Selection

THIS AGREEMENT AND THE OTHER AGREEMENTS SHALL BE GOVERNED AND CONTROLLED BY THE LAWS OF THE PROVINCE OF ONTARIO AND THE LAWS OF CANADA APPLICABLE THEREIN AS TO INTERPRETATION, ENFORCEMENT, VALIDITY, CONSTRUCTION, EFFECT, AND IN ALL OTHER RESPECTS, INCLUDING, WITHOUT LIMITATION, THE LEGALITY OF THE INTEREST RATE AND OTHER CHARGES, BUT EXCLUDING PERFECTION OF THE SECURITY INTERESTS IN THE COLLATERAL, WHICH SHALL BE GOVERNED AND CONTROLLED BY THE LAWS OF THE RELEVANT JURISDICTION. If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or remaining provisions of this Agreement.

To induce the Lender to accept this Agreement, the Borrower irrevocably agrees that, subject to the Lender's sole and absolute election, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT, THE OTHER AGREEMENTS OR THE COLLATERAL SHALL BE LITIGATED IN COURTS HAVING SITUS WITHIN THE CITY OF TORONTO, PROVINCE OF ONTARIO. THE BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, PROVINCIAL OR FEDERAL COURTS LOCATED WITHIN SAID CITY AND PROVINCE. THE BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST THE BORROWER BY THE LENDER IN ACCORDANCE WITH THIS PARAGRAPH.

11. **Modification and Benefit of Agreement**

This Agreement and any Other Agreements may not be modified, altered or amended except by an agreement in writing signed by the Borrower and the Lender. The Borrower may not sell, assign or transfer this Agreement, or the Other Agreements or any portion thereof, including, without limitation, the Borrower's right, title, interest, remedies, powers or duties thereunder. The Borrower hereby consents to the Lender's sale, assignment, transfer or other disposition, at any time thereof, or participation therein including, without limitation, the Lender's right, title, interest, remedies, powers and/or duties and agrees that it shall execute and deliver such documents as Lender may request in connection with any such sale, assignment, transfer or other disposition.

12. **Headings of Subdivisions**

The headings of subdivisions in this Agreement are for convenience of reference only, and shall not govern the interpretation of any of the provisions of this Agreement.

13. **Power of Attorney**

The Borrower acknowledges and agrees that its appointment of the Lender as its attorney and agent-in-fact for the purposes specified in this Agreement is an appointment coupled with an interest and shall be irrevocable until all of the Liabilities are paid in full and this Agreement is terminated.

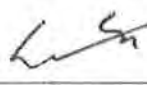
14. **Waiver of Jury Trial: Other Waivers**

- (a) THE LENDER AND THE BORROWER HEREBY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDINGS WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, ANY OF THE OTHER AGREEMENTS, THE LIABILITIES, THE COLLATEAL, ANY ALLEGED TORTIOUS CONDUCT BY THE BORROWER OR THE LENDER OR WHICH, IN ANY WAY, DIRECTLY OR INDIRECTLY, ARISES OUT OF OR RELATES TO THE RELATIONSHIP BETWEEN THE BORROWER AND THE LENDER. IN NO EVENT SHALL THE LENDER BE LIABLE FOR LOST PROFITS OR OTHER SPECIAL OR CONSEQUENTIAL DAMAGES.
- (b) The Borrower hereby waives demand, presentment, protest and notice of non-payment, and further waives the benefit of all valuation, appraisal and exemption laws.
- (c) THE BORROWER HEREBY WAIVES ALL RIGHTS TO NOTICE AND HEARING OF ANY KIND PRIOR TO THE EXERCISE BY THE LENDER OF ITS RIGHTS TO REPOSSES THE COLLATERAL OF THE BORROWER WITHOUT JUDICIAL PROCESS OR TO REPLEVY, ATTACH OR LEVY UPON SUCH COLLATERAL WITHOUT PRIOR NOTICE OF HEARING.
- (d) The Lender's failure, at any time or times hereafter to require strict performance by the Borrower of any provision of this Agreement or any of the Other Agreements shall not waive, affect or diminish any right of the Lender thereafter to demand strict compliance and performance therewith. Any suspension or waiver by the Lender of an Event of Default under this Agreement or any default under any of the Other Agreements shall not suspend, waive or affect any other Event of Default under this Agreement or any other default under any of the Other Agreements, whether the same is prior or subsequent thereto and whether of the same or of a different kind of character. No delay on the part of the Lender in the exercise of any right or remedy under this Agreement or any Other Agreement shall preclude other or further exercise thereof or the exercise of any right or remedy. None of the undertakings, agreements, warranties, covenants and representations of the Borrower contained in this Agreement or any of the Other Agreements and no Event of Default under this Agreement or default under any of the Other Agreements shall be deemed to have been suspended or waived by the Lender unless such suspension or waiving is in writing, signed by a duly

authorized officer of the Lender and directed to the Borrower specifying such suspension or waiver.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date set out in the first page hereof.

**9584358 CANADA LTD o/a EASTWAY  
FIRE AND RESCUE**

By:  \_\_\_\_\_

Its: *Michael Coffey*  
*President*

**DAVINCI CAPITAL PRIVATE DEBT FUND**

By:  \_\_\_\_\_

Its: *MARK LAWIN*  
*MANAGING DIRECTOR*

**EXHIBIT "D"**

**This is Exhibit "D" referred to in the  
affidavit of:**

**WAYNE EHGOETZ**

**Sworn before me, this 22<sup>nd</sup> day of  
June, 2017.**

A handwritten signature in blue ink, appearing to be "W. Ehgoetz", written over a horizontal line.

**A Commissioner for Taking Affidavits**

**BILL OF SALE**

THIS BILL OF SALE is made the 18<sup>th</sup> day of March, 2016

BETWEEN

**Doyle Salewski Inc. in its capacity as interim receiver of  
Eastway911 Emergency Vehicles Ltd., and not in its personal capacity  
(hereinafter called the "Seller")**

AND

**9584358 Canada Ltd. o/a Eastway Fire and Rescue  
(hereinafter called the "Buyer")**

WHEREAS the Seller has contracted and agreed with the Buyer for the absolute sale to the Buyer of certain assets of Eastway911 Emergency Vehicles Ltd. ("Eastway911"), for the consideration hereinafter mentioned;

NOW THIS BILL OF SALE WITNESSETH that in consideration of the sum of One Million Six Hundred Thousand Dollars (\$1,600,000.00) of lawful money of Canada, which purchase price is hereby acknowledged to have been satisfied at or before the delivery of this Bill of Sale, the Seller transfers all of Eastway911's right, title and interest in and to the Purchased Assets described in Schedule B to the Order of Hackland, J. dated February 4, 2016, (the "Vesting Order") (attached hereto as Schedule "A"), which assets exclude the arbitration proceedings filed by Eastway911 with the Arbitration Service of Portland, Oregon, bearing file number ASP No. 150923. The Purchased Assets shall vest absolutely in the Buyer, free and clear from any and all security interests (whether contractual, statutory or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory or otherwise), liens, executions, levies, charges or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing all charges, security interests or claims evidence by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (collectively referred to as the "Encumbrances"), and for greater certainty of all Encumbrances affecting or relating to the Purchased Assets as defined in

the Vesting Order are expunged and discharged as against the Purchased Assets, pursuant to the Vesting Order.

The Seller makes no warranties, covenants or promises as to the Purchased Assets, except with respect to its rights to transfer the Purchased Assets as set out in the Vesting Order.

It is agreed that this Bill of Sale and everything herein contained shall enure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.

This Bill of Sale may be executed and delivered by electronic means and the addressees may rely on such electronic execution as though it were an original hand-written signature.

IN WITNESS WHEREOF the Seller has executed this Bill of Sale.

Doyle Salewski Inc. in its capacity as interim receiver of Eastway911 Emergency Vehicles Ltd., and not in its personal capacity

  
\_\_\_\_\_  
Per: Tracey Toman, Vice-President

SCHEDULE "A"

The Order of Hackland, J. dated February 4, 2016



Court File No.:  
15-66980  
Estate No.:  
33-2073560

ONTARIO  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

THE HONOURABLE MR. ) THURSDAY, THE 4TH DAY OF  
JUSTICE CHARLES T. HACKLAND ) FEBRUARY, 2016

IN THE MATTER OF AN APPLICATION  
pursuant to Section 47 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as am, section  
101 of the *Courts of Justice Act*, R.S.O 1990, c. C.43 and the *Personal Property Securities Act*,  
R.S.O c. P.10

AND IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF  
EASTWAY911 EMERGENCY VEHICLES LTD. OF THE MUNICIPALITY OF CARLETON  
PLACE IN THE PROVINCE OF ONTARIO

THIS MOTION, made by Doyle Salewski Inc. in its capacity as the Interim Receiver ("DSI" or the "Interim Receiver") of Eastway911 Emergency Vehicles Ltd. ("Eastway911" or the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between Eastway911 and 9584358 Canada Ltd. (the "Purchaser") signed January 19, 2016 and appended to the First Report of the Interim Receiver dated January 14, 2016 (the "First Report") and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at the Courthouse, 161 Elgin Street, Ottawa, Ontario.

ON READING the Second Report dated February 2, 2016 (the "Second Report") and on hearing the submissions of counsel for the Interim Receiver, counsel for the Debtor, counsel for the Purchaser, counsel for the Davinci Private Capital Debt Fund ("Davinci"), counsel for Kilkee Corporation ("Kilkee"), no one appearing for any other person on the service list,

SERVICE

1. THIS COURT ORDERS that the time for service of the Motion Record and the Second Report is hereby abridged so that this motion is properly returnable today and hereby dispenses with

further service thereof.

**VESTING OF EASTWAY911's ASSETS**

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Interim Receiver is hereby authorized and approved, with such minor amendments as the Interim Receiver may deem necessary. The Interim Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
  
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Interim Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Interim Receiver's Certificate") and upon distribution of the Proceeds (defined in paragraph 5 below) in accordance with paragraph 10 hereof, all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing:
  - (i) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; which are collectively referred to as the ("Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.
  
4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets (the "Proceeds") shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Interim Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the

possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Interim Receiver to file with the Court a copy of the Interim Receiver's Certificate, forthwith after delivery thereof.
  
6. **THIS COURT ORDERS** the following in connection with two truck chassis, bearing Vehicle Identification Numbers 1FD0W5HT6GEA76681 and 1FD0W5HT4GEA94497 (the "Chassis"), which Chassis are currently in the possession of Campbell Ford Sales Ltd. ("Campbell"):
  - a) The issue of whether the Chassis form part of the Purchased Assets vested in the Purchaser hereunder, as raised in Campbell's Notice of Motion filed this day, is reserved to be determined on a date to be agreed upon by the parties and/or fixed by this Court;
  - b) Pending the return of and disposition of Campbell's motion, or written agreement between Campbell, Davinci, the Interim Receiver and the Purchaser, Campbell shall remain in possession of the Chassis; shall continue to store the Chassis at its lot located at 1500 Carling St., Ottawa; and shall not take any steps to dispose of the Chassis; and
  - c) In the event that Campbell consents in writing to the Chassis forming part of the Purchased Assets, and file such consent with the Court, then the Chassis shall be deemed to have vested in the Purchaser, nunc pro tunc, on the terms of this Order.
  
7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Interim Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.
  
8. **THIS COURT ORDERS** that, notwithstanding:
  - (a) the pendency of these proceedings;
  - (b) any applications for a bankruptcy order now or hereafter issued pursuant to the

*Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and

- (c) any assignment in bankruptcy made in respect of the Debtor;

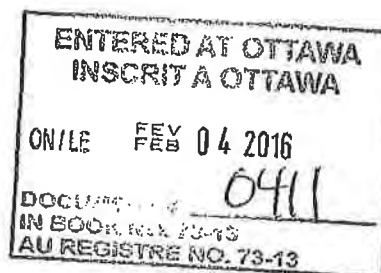
the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).
10. **THIS COURT ORDER AND DECLARES** that the Stalking Horse Asset Purchase Agreement signed January 19, 2016 be sealed pending the completion of the transaction, or further Court order and not be part of the public record.
11. **THIS COURT ORDERS** that upon receipt by the Interim Receiver from the Purchaser of the cash portion of the Purchase Price, as defined in the Sale Agreement, and upon filing the Interim Receiver's Certificate, the Interim Receiver shall be and is hereby authorized to make distribution out of the Proceeds as follows:
  - (a) The Interim Receiver shall place \$50,084.51 in a segregated account (the "Hale Account") subject to final determination of the right to Hale to the Hale Account.
  - (b) Pay the amount of \$1,549,915.49 to Davinci.

GENERAL

12. **THIS COURT ORDERS AND DECLARES** that the additional activities of the Interim Receiver and its counsel, up to and including the date of this Order, as set out in the First Report of the Proposal Trustee and proposed Interim Receiver dated January 14, 2016 and the Second Report of the Interim Receiver and Proposal Trustee dated February 2, 2016, are hereby approved. *noted and approval of which is deferred to further order of the court.*
13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Interim Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Interim Receiver and its agents in carrying out the terms of this Order.

*Roell Q. J.*



SCHEDULE "A"

Court File No.: 16-66980  
Estate No.: 33-1868884

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE INTERIM RECEIVERSHIP  
OF EASTWAY911 EMERGENCY VEHICLES LTD.  
OF THE TOWN OF CARLETON PLACE  
IN THE PROVINCE OF ONTARIO

INTERIM RECEIVER'S CERTIFICATE

**RECITALS**

A. Pursuant to an Order of the Honourable Mr. Justice Hackland of the Ontario Superior Court of Justice (the "**Court**") dated January 15, 2016 Doyle Salewski Inc. was appointed as the Interim Receiver (the "**Interim Receiver**") of the undertaking, property and assets of Eastway911 Emergency Vehicles Ltd. ("Eastway911" or the "**Debtor**").

B. Pursuant to an Order of the Court dated February 4, 2016 the Court approved the agreement of purchase and sale signed January 19, 2016 (the "**Sale Agreement**") between the Debtor and 9584358 Canada Ltd. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Interim Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Debtor and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Interim Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE INTERIM RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Interim Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement:
2. The conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Interim Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Interim Receiver.
4. This Certificate was delivered by the Interim Receiver at \_\_\_\_\_ am/pm on \_\_\_\_\_, 2016

**[NAME OF INTERIM RECEIVER], in its  
capacity as Interim Receiver of the  
undertaking, property and assets of  
EASTWAY911 EMERGENCY VEHICLES  
LTD., and not in its personal capacity**

Per:

Name:

Title:

### **Schedule B - Purchased Assets**

As set out in the sale agreement between Doyle Salewski Inc., as interim receiver, and 9584358 Canada Ltd. signed January 19, 2015, save and except for the following:

- i. The arbitration proceedings filed by the Debtor with the Arbitration Service of Portland, Oregon, bearing file number ASP No. 150923.



**DAVINCI CAPITAL PARTNERS INC. et al.**  
Applicant

and **EASTWAY911 EMERGENCY VEHICLES LTD. et al.**

Court File No. 15-66980

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at  
OTTAWA

**ORDER**

**MEROVITZ POTECHIN LLP**

Baristers & Solicitors  
300-1565 Carling Avenue  
Ottawa, ON K1Z 8R1

**Robert J. De Toni**

LSUC No. 37571C

Tel: 613-563-7544

Fax: 613-563-4577

Lawyers for the Interim Receiver, Doyle Salewski  
Inc.

BOX NO. 64

RCP-E-4C (July 1, 2007)

**EXHIBIT "E"**

**This is Exhibit "E" referred to in the  
affidavit of:**

**WAYNE EHGOETZ**

**Sworn before me, this 22<sup>nd</sup> day of  
June, 2017.**



A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the Commissioner.

**A Commissioner for Taking Affidavits**



## VERIFICATION



### Document Details

Registration Date: **18 MAR 2016**  
Expiry Date: **18 MAR 2018**  
Registration Number: **20160318 1614 1793 2110**  
File Number: **714884481**

Transaction ID: **001-495-284**



### General

Reference Number: **EASTWAY**  
Registration Period (Years): **2**

Caution Filing: **No**  
Perform a Post Search: **No**  
Register Immediately: **Yes**



### Business Debtor

9584358 CANADA LTD. O/A EASTWAY FIRE AND RESCUE 9584358  
100 INDUSTRIAL AVENUE, UNITS B AND C  
CARLETON PLACE ON K7C3V7



### Individual Debtor

*No Individual Debtor*



### Secured Party

DAVINCI CAPITAL PRIVATE DEBT FUND  
240 DUNCAN MILL ROAD, SUITE 806  
TORONTO ON M2B3S6



### Collateral Classification

Consumer Goods: **No** Inventory: **Yes** Equipment: **Yes** Accounts: **Yes** Other: **Yes**  
Motor Vehicle Included: **No**  
Principal Amount: **\$1,600,000.00** Date of Maturity: **17-MAR-2018**



### Serial Numbered Collateral

*No Serial Numbered Collateral*



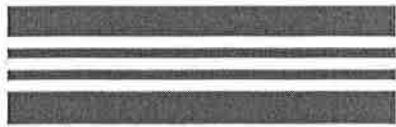
### General Collateral

SECURED IN ACCORDANCE WITH THE SECURITY AGREEMENT DATED MARCH 15, 2016 AND THE PROMISSORY NOTE DATED MARCH 18, 2016



### Registering Agent

DAVINCI CAPITAL PRIVATE DEBT FUND  
240 DUNCAN MILL ROAD, SUITE 806  
TORONTO ON M2B3S6



**UCC FINANCING STATEMENT**

Name and address of filer:  
  
**Law Office of Athena Basta  
343 Preston Street, 11th floor  
Ottawa, ON K1S1R4**

**2016-2819614-40.01**  
**Kentucky Secretary of State**  
File Date 3/18/2016 4:51:20 PM  
Status Active  
Fee \$5.00

**This document is a representation of a filing made electronically at the Kentucky Secretary of State's web site**

**DEBTOR'S EXACT FULL LEGAL NAME**

a. ORGANIZATION'S NAME				
b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
<b>Cappy</b>		<b>Michael</b>		
c. MAILING ADDRESS		CITY	POSTAL CODE	COUNTRY
<b>Suite 100-166, 12123 Shelbyville Road</b>		<b>Louisville</b>	<b>KY 40023</b>	<b>US</b>

**SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY)**

a. ORGANIZATION'S NAME				
<b>Davinci Capital Private Debt Fund</b>				
b. INDIVIDUAL'S SURNAME		FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
c. MAILING ADDRESS		CITY	POSTAL CODE	COUNTRY
<b>240 Duncan Mill Road, Suite 806</b>		<b>Toronto</b>	<b>ON M2B3S6</b>	<b>Canada</b>

4. This FINANCING STATEMENT covers the following collateral:

**Secured in accordance with the Share Pledge Agreement dated March 16, 2016.**

**EXHIBIT "F"**

**This is Exhibit "F" referred to in the  
affidavit of:**

**WAYNE EHGOETZ**

**Sworn before me, this 22<sup>nd</sup> day of  
June, 2017.**



---

**A Commissioner for Taking Affidavits**

**From:** Mike Jiang  
**To:** [Mark Jiro](#)  
**Subject:** eastway June  
**Date:** June 14, 2017 12:44:44 PM  
**Attachments:** [101324.1.xlsx](#)

6/1/2017	Purchase Cash Settlement	101324.1	DaVinci Private Debt Fund PRI CAD	22,948.06	-22,948.06	958358 CANADA INC (EASTWAY) LOAN
6/5/2017	Purchase Cash Settlement	101324.1	DaVinci Private Debt Fund PRI CAD	1,258.73	-1,258.73	958358 CANADA INC (EASTWAY) LOAN
6/6/2017	Purchase Cash Settlement	101324.1	DaVinci Private Debt Fund PRI CAD	6,737.00	-6,737.00	958358 CANADA INC (EASTWAY) LOAN
6/6/2017	Purchase Cash Settlement	101324.1	DaVinci Private Debt Fund PRI CAD	34,070.00	-34,070.00	958358 CANADA INC (EASTWAY) LOAN
6/8/2017	Purchase Cash Settlement	101324.1	DaVinci Private Debt Fund PRI CAD	39,720.61	-39,720.61	958358 CANADA INC (EASTWAY) LOAN
6/8/2017	Purchase Cash Settlement	101324.1	DaVinci Private Debt Fund PRI CAD	5,000.00	-5,000.00	958358 CANADA INC (EASTWAY) LOAN
6/8/2017	Purchase Cash Settlement	101324.1	DaVinci Private Debt Fund PRI CAD	141,884.38	-141,884.38	958358 CANADA INC (EASTWAY) LOAN

Total: \$251,618.78

**Mike Jiang** | Fund Accountant | DaVinci Capital Partners  
 240 Duncan Mill Rd Suite 808, Toronto, Ontario M3B 3S8  
 P: 647-260-3388 x225  
 C: 647-456-8991  
 W: <http://davincicapital.com>  
 E: [mike.jiang@davincicapital.com](mailto:mike.jiang@davincicapital.com)

1



**EXHIBIT "G"**

**This is Exhibit "G" referred to in the  
affidavit of:**

**WAYNE EHGOETZ**

**Sworn before me, this 22<sup>nd</sup> day of  
June, 2017.**



---

**A Commissioner for Taking Affidavits**



**FORBEARANCE AGREEMENT**

THIS AGREEMENT is dated the \_\_\_\_\_ day of June, 2017.

BETWEEN:

**DAVINCI CAPITAL PRIVATE DEBT FUND  
(the "Lender")**

-and-

**9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE  
(the "Borrower")**

-and-

**MICHAEL CAPPY  
(the "Guarantor")**

WHEREAS as of June \_\_, 2017, the Borrower acknowledges being indebted to the Lender pursuant to various loans ("**Credit Facilities**") made pursuant to a loan agreement ("**Loan Agreement**") dated March 15, 2016.

AND WHEREAS the Borrower acknowledges that its indebtedness to the Lender under the Credit Facilities as of June 14, 2017 is as particularized as follows, along with further fees and interest in accordance with the terms of the Loan Agreement, and costs (the "**Indebtedness**"):

Term Loan A:	\$ 677,473.00
Term Loan B:	\$1,139,501.00
Chasis Loan:	\$ 219,798.00
Operating Line:	\$1,447,760.00
Advanced in June:	\$ 251,619.00
<hr/>	
TOTAL:	\$3,736,151.00

AND WHEREAS the Guarantor has guaranteed to the Lender the Indebtedness owed by the Borrower to the Lender as follows:

1. Guarantee dated March 15, 2016 in the amount of \$300,000.00
2. Guarantee dated December 2, 2014 in the amount of \$700,000.00
3. Guarantee of July 2016 in the amount of \$100,000.00
4. Guarantee of August 2016 in the amount of \$100,000.00

AND WHEREAS the Borrower acknowledges that it is presently in default of the Credit Facilities and Loan Agreement;

AND WHEREAS the Lender has been granted and holds the security listed in Schedule "A" attached hereto (hereinafter collectively referred to as the "Security") as security for the repayment of the Indebtedness;

AND WHEREAS the Borrower acknowledges that the Lender has delivered to it a Notice of Intention to Enforce Security (the "Notice") pursuant to section 244 of the Bankruptcy and Insolvency Act, that the time-period imposed by section 244 of the Bankruptcy and Insolvency Act has expired, that the Borrower does not request that the Lender withdraw the Notice and that the Borrower has waived the notice required by section 244 of the Bankruptcy and Insolvency Act as more particularly set out at Schedule "B" hereto;

NOW THEREFORE in consideration of the acknowledgments, agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

- (a) the Lender agrees with the Borrower and Guarantor to forbear with respect to enforcement of the Credit Facilities and Security in accordance with the terms of this agreement (the "Agreement") so that the Borrower will have the opportunity to remain in business with a view to, among other things, repaying the Lender in full at the end of the Forbearance Period (as hereinafter defined);
- (b) the Borrower and the Guarantor agree to execute this Agreement in order to confirm to the Lender the continuing nature of their obligations to the Lender; and
- (c) the parties hereto undertake, agree to, acknowledge and confirm the terms outlined below.

1. Forbearance

For the period commencing on the date of execution of this Agreement by the Borrower and the Guarantor and terminating on the earlier of the date on which the Lender delivers a notice terminating this Agreement as herein provided, or ninety (90) days after the date of execution of the Agreement (the "Forbearance Period"), the occurrence of which shall be referred to as the "Termination", and subject to the Borrower's compliance with and satisfaction of the terms, provision and conditions contained in this Agreement, and subject to any further extensions of time in accordance with paragraph 14 below, the Lender shall forbear from enforcing its Security.

2. Conditions of Forbearance by the Lender and Acknowledgments by the Borrower and the Guarantor

In consideration of the Lender's forbearance and the covenants and agreements of the Lender, Borrower and Guarantor contained herein, the Borrower and the Guarantor agree, acknowledge and confirm as follows:

- a. The Borrower shall designate a representative of the Lender, as the Lender shall direct, as a signing officer on the Borrower's banking facilities for the purposes of making the all payments including Critical Payments as required by paragraph 3(a) herein.
- b. The Borrower shall use funds advanced by the Lender during the Forbearance Period only for the purposes of completing the work-in-progress ("WIP") identified as the "First Four" and listed in Schedule "C" hereto.
- c. The Borrower shall direct all purchasers of the WIP to pay the purchase funds directly to the Lender.
- d. The Borrower shall obtain a new Key Man insurance policy on the Guarantor in the amount of \$700,000.00 underwritten by Transamerica Insurance and shall assign the benefit of said policy to the Lender.
- e. In the event that the Borrower and/or the Guarantor fail to comply with any of the requirements of this Agreement, the Credit Facilities, the Loan Agreement and/or the Security, the Lender, in addition to any other rights or remedies it might have pursuant to this Agreement, the Credit Facilities, the Loan Agreement and/or the Security, shall be entitled to immediately deliver to the Borrowers and/or the Guarantors a notice terminating this Agreement in accordance with the terms of this Agreement.
- f. The Borrower and the Guarantor acknowledge that as at June 14, 2017, the Borrower was indebted to the Lender pursuant to the Credit Facilities in the amounts outlined in the preamble above.
- g. The Borrower and the Guarantor confirm that they do not dispute the Borrower's liability to pay the Indebtedness, and acknowledge that the Indebtedness is correctly stated and remains outstanding and unpaid.
- h. The Borrower and the Guarantor confirm that the Security has not been discharged, waived or varied, that it is binding upon the Borrower and it is valid and enforceable in accordance with its written terms.
- i. The Borrower and the Guarantor acknowledge that defaults (the "**Defaults**") have occurred under the Credit Facilities which entitle the Lender to, amongst other things, declare the Indebtedness immediately due and payable and to proceed to the enforcement of its Security. More specifically, the Borrower and the Guarantor acknowledge that the

Borrower has defaulted in its repayment obligations to the Lender and there has been a material adverse change in the financial condition of the Borrower. By executing this Agreement, the Borrower and the Guarantor acknowledge the Defaults and further acknowledge and agree that the Borrower is liable to the Lender for the full amount of the Indebtedness, which is due and payable in full and is not subject to any set-off, defence or counterclaim on the part of the Borrower and/or the Guarantor.

- j. The Borrower and the Guarantor shall not attempt to sell or dispose of any of their assets, other than in the ordinary course of business or without the prior written consent of the Lender.
- k. All other terms, conditions, undertakings and acknowledgements contained in the Credit Facilities and the Security shall remain in full force and effect to the extent that they are not inconsistent with the terms, conditions, undertakings and acknowledgements contained herein.
- l. There will be no payments or settlements with any other current or future creditor of the Borrower, other than in the ordinary course of business, without first obtaining the written consent of the Lender in advance.
- m. Borrower and the Guarantor agree, acknowledge and affirm that, except as herein expressly provided, the Lender has not been required nor has it made any commitment to provide any further financing or credit facilities, and that the Lender reserves its rights and remedies should the Borrower and/or the Guarantor fail to comply with the provisions of this Agreement.
- n. Should the Lender exercise its rights and remedies, the Borrower and their management agree and undertake to cooperate with the Lender to maximize the Lender's recovery and, without limitation, shall cooperate with the Lender in disposing of assets.
- o. The Borrower and the Guarantor acknowledge that the recitals herein before set forth are true and correct and shall form an integral part of this Agreement.
- p. The Borrower and Guarantor confirm that entering into this Agreement does not vitiate, alter, release or discharge them from their obligations pursuant to any security given in favour of the Lender and confirm that the Security remains in full force and effect and continues to be binding against them.

### 3. Obligations of the Lender

In consideration of the covenants and agreements of the Borrower and Guarantor contained herein, the Lender agrees, acknowledge and confirm as follows:

- a. During the Forbearance Period the Lender shall make, on behalf of the Borrower, all critical payments (the “**Critical Payments**”) listed in Schedule “D” hereto;

- b. The Lender shall release any claim or interest it has in a policy of Key Man insurance on the Guarantor previously assigned by the Borrower to the Lender on or around March 15, 2016 pursuant to the Loan Agreement;
- c. The Lender shall indemnify the Borrower and Guarantor from and against any claims made by third parties with respect to non-payment by the Lender of the Critical Payments required by paragraph 3(a) herein; and,
- d. The Lender shall have the option, at its sole and absolute discretion which may be exercised unreasonably, to advance funds to the Borrower for completion of the WIP identified as the "Next Four" and set out at Schedule "C" hereto, provided that the Borrower satisfies the Lender that said WIP can be completed on a profitable basis (profitability to be in the sole and absolute determination of the Lender);

4. Expenses and Legal Fees

The Borrower and/or the Guarantor shall pay to the Lender, as and when incurred, all of its fees, costs, expenses, disbursements and taxes, of every nature and kind, incurred by the Lender in the negotiation, preparation and implementation of this Agreement, and all other aspects of the relationship between the Borrower and/or the Guarantor and the Lender, including the enforcement by the Lender of the Credit Facilities and/or the Security. In this regard, the Borrower and the Guarantor agree and acknowledge that the Lender is to be fully indemnified by them for and of the Lender's costs, disbursements, fees, taxes, etc.

5. Representations and Warranties

The Borrower and the Guarantor represent and warrant to the Lender that the execution and delivery of this Agreement has been duly authorized by all necessary actions and does not violate any laws or any provision of its constating documents or by-laws or any unanimous shareholders' agreement to which it is subject, or result in the creation of any encumbrance on its properties and assets except as contemplated hereunder.

6. Covenants

The Borrower and the Guarantor covenant and agree with the Lender that, so long as the Indebtedness has not been repaid to the Lender in full, they shall:

- a. Continue to comply with all covenants and to perform or observe all obligations and conditions contained in the Credit Facilities and the Security except as varied herein;

- b. Not interfere with the Lender's right to realize upon the Security and the assets secured thereby upon termination of this Agreement, on reasonable commercial terms as would otherwise be required of a secured party in comparable circumstances;
- c. Not make a proposal or an assignment for the general benefit of their creditors or an assignment in bankruptcy, or issue a Notice of Intention or any of proposal under the Bankruptcy and Insolvency Act or the Companies' Creditors Arrangement Act;
- d. Not create or permit to exist any mortgage, hypothec, charge, pledge, lien, encumbrance or other security interest, or allow to arise any statutory trusts, upon or against the collateral charged in favour of the Lender, unless such mortgage, charge or interest is subordinate to the Security or the Lender has consented in advance thereto;
- e. To carry on business in the usual course and in a reasonable and prudent manner;
- f. To refrain from paying any bonuses or salary increases (or making any capital expenditures) or selling, transferring, releasing, settling, assigning or moving any of their property or assets out of the ordinary course of business, except with the Lender's written consent;
- g. To ensure that all assets subject to the Lender's Security are fully insured for all risks and that the Lender's interest therein is reflected on all such insurance coverage, and to ensure that all premiums are paid for the said insurance when due and to provide proof of payment of same to the Lender upon request;
- h. To immediately notify the Lender of any Event of Default as detailed below;
- i. To immediately notify the Lender of any claims, actions or suits brought against them or any orders, demands, claims or garnishments from any governmental authorities; and,
- j. To not dispose of any assets without the Lender's prior written approval and upon the disposition of any such assets, the full proceeds of same shall be paid to the Lender to be applied as against the Indebtedness.

## 7. Events of Default

The following events shall constitute an event of default ("Event of Default") under this Agreement:

- a. Any default in the observance or performance of any covenant, agreement or undertaking contained in this Agreement, the Credit Facilities, the Security or any other agreement between the Borrower and/or the Guarantor and the Lender except as the same may have been modified herein;

- b. The Borrower and/or the Guarantor fail to pay any principal, interest, fees, costs or other amounts payable by the Borrowers under the Credit Facilities and/or this Agreement, as and when due;
- c. The terms of the Credit Facilities and Security continue to apply to the Borrower and the Guarantor as applicable and any breach of those terms entitles the Lender to terminate this Agreement forthwith and exercise its rights under the terms of this Agreement, the Credit Facilities and/or Security;
- d. In the opinion of the Lender, acting reasonably, there is a material adverse change in the financial condition, ownership or operation of the Borrower or the Guarantor, or the ability of the Borrower and/or the Guarantor to pay amounts owing has been impaired, worsened or diminished or threatens to further deteriorate;
- e. The Borrower and/or the Guarantor cease to carry on business, make an assignment for the general benefit of their creditors, file a proposal, deliver a notice of intention to make a proposal or initiate any similar or other type of proceedings pursuant to the Bankruptcy and Insolvency Act (Canada), or make an application for relief under the Companies' Creditors Arrangement Act, or a receiver, interim receiver, receiver and manager, trustee, manager, consultant, liquidator, agent or other similar party is appointed in respect of their property or any material part thereof;
- f. Any person takes possession of a material part of the property of the Borrowers and/or the Guarantors, by way of or in contemplation of enforcement of security, or a distress, execution or similar process is levied or enforced against any such property;
- g. If any Notice of Intention to Enforce Security pursuant to s. 244 of the BIA is issued by any other of the creditors of the Borrower and/or Guarantor; and,
- h. If any stay of proceedings of any kind shall be in effect with respect to the Borrower and/or Guarantor, or their assets, which in the Lender's sole and absolute discretion and opinion, affects the Lender's rights pursuant to its Security or the prospect of complete repayment of the Indebtedness.

8. Remedies of the Lender

Upon the occurrence of an Event of Default or the Termination or expiry of this Agreement:

- a. The Forbearance Period shall terminate and the Indebtedness shall, at the option of the Lender, become immediately due and payable;
- b. The Lender shall be entitled to immediately enforce this Agreement, the Credit Facilities and/or the Security and enforce any of its remedies without issuance of any further notice as per the terms of this Agreement, the Credit Facilities and/or the Security;

- c. The Lender shall be immediately entitled to commence proceedings and rely upon the covenants, admissions, undertakings and obligations of the Borrower and Guarantor as set forth herein; and
- d. This Agreement, the Credit Facilities and/or the Security shall become enforceable, and the Lender may, in addition to any remedy set forth in this Agreement, the Credit Facilities and/or the Security, realize upon all or any part of the Security and commence such legal action or other proceedings against the Borrower and/or the Guarantor or their property or assets, and may appoint a private or Court appointed Receiver, as may be permitted under the terms or provisions of this Agreement, the Credit Facilities and/or the Security, or at law or in equity, all at such times and in such manner as the Lender may in its sole discretion deem expedient, and all without any additional notice, presentation, demand, entering into possession of any properties or assets charged by or subject to security interests contained in the Security or any other similar proceedings, all of which are hereby expressly waived.

#### 9. Lender's Rights

It is understood and agreed that nothing contained in this Agreement and no negotiations, correspondence or discussions among the parties hereto, shall prejudice, affect or waive any of the Lender's rights under the terms of the Credit Facilities and/or the Security, except as those rights may have been modified by this Agreement.

#### 10. Affirmation by the Guarantor

The Guarantor who has previously agreed to act as Guarantor hereby ratifies his covenants contained in the Guarantees, and hereby confirms to the Lender that the Guarantees shall be and remain good, valid, and binding upon and enforceable against him. It is further understood and agreed that nothing contained in this Agreement and no negotiations or discussions among the parties hereto shall prejudice the right of the Lender to pursue its remedies against the Guarantor, except as those rights may have been modified by this Agreement.

#### 11. Waivers

No delay on the part of the Lender in exercising any remedy or any waiver of the rights given to it hereunder or under the Credit Facilities and/or the Security shall operate as a waiver thereof, except as to a waiver which is specifically given in writing by the Lender to the Borrower.



12. Releases

The Borrower and the Guarantor hereby release and discharge the Lender and its officers, directors and employees together with the agents and representatives of the Lender of and from any and all claims or liability howsoever and whenever arising in relation to the Indebtedness or any other aspect of the relationship between the Lender and the Borrower and/or Guarantor.

13. Entire Agreement in Writing

This Agreement, the Credit Facilities and the Security and the documents contemplated thereby or taken in support thereof, constitute the entire agreement between the Borrower, the Guarantor and the Lender as to the matters dealt with herein. There are not and shall not be any oral statements, representations, warranties, undertakings or agreements between the Borrower, Guarantor and the Lender.

14. Amendments

This Agreement may be modified, cancelled, or extended at any time, but only with the written consent and agreement of the Lender.

15. Further Assurances

The Borrower and the Guarantor shall from time to time and at all times hereafter, at every request of the Lender, make, do, execute and deliver, or cause to be made, done, executed and delivered, all such further acts, deeds and assurances and things as may be necessary or desirable in the sole opinion of the Lender for more effectually implementing the true intent and meaning of this Agreement.

16. Successors and Assigns

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their successors and assigns.

17. Severability

The parties acknowledge and agree that if any provision of this Agreement or any Schedules attached hereto or the application thereof becomes illegal or unenforceable, it shall during such period be considered severable from the remaining provisions of this Agreement or any Schedules thereto, which shall remain in force and be binding as though the said provision had never been included.

18. Contra Proferentem Rule

This Agreement and all Schedules attached hereto have been drafted with the equal participation of all parties hereto and the parties hereto hereby acknowledge and agree that the contra proferentem rule has no application.

19. Date for Acceptance

This Agreement shall be open for acceptance by the Borrower and Guarantor until 5:00 p.m. on June 20, 2017 by which date if not executed and received by the Lender it shall be considered withdrawn.

20. Execution

The parties hereby agree that this Agreement may be executed in counterparts, and further that communication of the execution of the document may be made by facsimile or email transmittal, and such executed and faxed or emailed versions of the document shall be deemed to be originals of the Agreement.

21. Legal Advice

The Borrower and the Guarantor also acknowledge and agree that they have received independent legal advice with respect to the terms and provisions of this Agreement or have been advised to obtain the same and have declined to do so. They further agree and acknowledge that they have freely elected to enter into this Agreement without any form of duress and that they have not been induced or coerced to enter into this Agreement.

All of the above is agreed to by the undersigned as of the date recited above.

**DAVINCI CAPITAL PRIVATE DEBT FUND**

\_\_\_\_\_  
Name:

Title:

I have authority to bind the Lender

**9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE**

\_\_\_\_\_  
Name:

Title:

I have authority to bind the Corporation

**MICHAEL CAPPY**

\_\_\_\_\_

**SCHEDULE "A"**  
**SECURITY**

The Security includes the following instruments, amongst others:

1. Loan Agreement between Borrower and Lender dated March 15, 2016
2. General Security Agreement from Borrower in favour of Lender dated March 15, 2016
3. Assignment of business insurance by Borrower in favour of Lender
4. Assignment of receivable insurance by Borrower in favour of Lender
5. Guarantees of Michael Cappy dated December 2, 2014, March 15, 2016, July 2016 and August 2016
6. Subordination and Postponement Agreement from Guarantor in favour of Lender
7. Assignment of key man life insurance held on the Guarantor from Borrower to Lender
8. Share Pledge Agreement by Guarantor in favour of Lender dated March 16, 2016
9. Promissory Note from Borrower in favour of Lender dated March 18, 2016

**SCHEDULE "B"**  
**ACKNOWLEDGMENT AND WAIVER**

9584358 Canada Ltd. ("**Borrower**") does hereby acknowledge that the Davinci Capital Private Debt Fund ("**Lender**") has delivered to it a Notice of Intention to Enforce Security (the "**Notice**") pursuant to section 244 of the Bankruptcy and Insolvency Act ("**the Act**"). The Borrower further acknowledges that the time-period imposed by section 244 of the Act has expired. The Borrower does not request that the Lender withdraw the Notice. The Borrower does hereby waive the notice required by section 244 of the Act.

**DATED** at            this     day of            , 2017

**9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE INC.**

\_\_\_\_\_  
Per: Michael Cappy  
Title: President  
I have authority to bind the Company

**SCHEDULE "C"**  
**BORROWER'S WORK-IN-PROGRESS**

**"First Four"**

1. Ocean Wave
2. Mini Rescue One
3. Atomic Power
4. Mississippi Mills Anchor

**"Next Four"**

1. Beckwith
2. Woolwich
3. Harvard
4. Tay Valley

**SCHEDULE "D"**  
**CRITICAL PAYMENTS**

Payroll

Source deductions

HST

Rent on business premises

Any payments required to complete WIP

**EXHIBIT "H"**

**This is Exhibit "H" referred to in the  
affidavit of:**

**WAYNE EHGOETZ**

**Sworn before me, this 22<sup>nd</sup> day of  
June, 2017.**



\_\_\_\_\_

**A Commissioner for Taking Affidavits**



**From:** Wayne Ehgoetz  
**To:** [Jason Dutrizac](#)  
**Subject:** Fw: Direction  
**Date:** June 21, 2017 4:24:47 PM

---

Wayne Ehgoetz, President & CEO  
Waygar Capital Inc.

---

**From:** wehgoetz@waygarcapital.com  
**Sent:** June 21, 2017 4:13 PM  
**To:** justin.fogarty@regentlaw.ca  
**Subject:** Fw: Direction

---

Wayne Ehgoetz, President & CEO  
Waygar Capital Inc.

---

**From:** mlc@cappy.it  
**Sent:** June 19, 2017 2:42 PM  
**To:** wehgoetz@waygarcapital.com; jim.goren@davincicapital.com; mark.irwin@davincicapital.com  
**Cc:** jkooiman@bell.net  
**Subject:** Re: Direction

---

Wayne,

I understand. However, as everyone knows I have a company-wide teleconference/update in an hour. I sent the "talking points" memo for this call to you last week and Wayne and I discussed them over the weekend. He indicated Jim and Mark had seen this memo as well. I have also reviewed the draft Forbearance Agreement which seems to indicate exactly what I tried to summarize.

While immediate decisions may be impractical and unrealistic, it is now the 11<sup>th</sup> hour and we just can't remain in suspended animation any longer. Beckwith is on our shop floor right now going through build specs as I write this, Welland will be in tomorrow to finalize the PT unit (we can't mount the mini-rescue body until we take delivery of the 2 AB Ford 550's). We cannot ethically sign contracts with Welland, Beckwith or ANY customer that include our warranty provisions, unless we add an appropriate disclaimer. I can't be involved in misleading our customers, employees and suppliers. It is certainly grossly unfair at best, and unethical and fraudulent at worst, to keep everyone in the dark and string our customers and employees along.

If you see it some other way or want to play the hand yourself however you like, say so now. From where I sit right now with the business on the brink of imploding, it is really hard for me to sympathize with how busy you guys are or how impractical you feel my urgent need for direction is.

All I asked for is confirmation of 4 bullet points, nothing more. I assume the draft forbearance agreement you sent me last week is consistent with Davinci's position so will use this for guidance.

By the way, NONE of the 5 of 6 agreed items have yet been addressed beyond repeatedly telling me that they are agreed. Im tired of bringing it up. These required nothing more than a simple phone call or email to Terry and a reminder to Jim. Everyone is just too busy, I suppose. Me too.

//Mike

---

**From:** Wayne Ehgoetz <[wehgoetz@waygarcapital.com](mailto:wehgoetz@waygarcapital.com)>

**Date:** Monday, June 19, 2017 at 10:47 AM

**To:** Michael Cappy <[mlc@cappy.it](mailto:mlc@cappy.it)>, Jim Goren <[jim.goren@davincicapital.com](mailto:jim.goren@davincicapital.com)>, Mark Irwin <[mark.irwin@davincicapital.com](mailto:mark.irwin@davincicapital.com)>

**Subject:** Re: Direction

Mike I appreciate the email, I cannot speak for Mark and Jim, but we all are busy with other issues and frankly are not sitting around waiting to respond to your emails. A demand for "immediately" is frankly impractical and not realistic. I will not see Mark or Jim until tomorrow, suggest that 1 pm is appropriate.

Wayne Ehgoetz, President & CEO  
Waygar Capital Inc.

---

**From:** [mlc@cappy.it](mailto:mlc@cappy.it)

**Sent:** June 19, 2017 1:16 PM

**To:** [wehgoetz@waygarcapital.com](mailto:wehgoetz@waygarcapital.com); [jim.goren@davincicapital.com](mailto:jim.goren@davincicapital.com); [mark.irwin@davincicapital.com](mailto:mark.irwin@davincicapital.com)

**Subject:** Direction

---

Gentlemen,

I want to confirm my understanding of Davinci's decision and position regarding the finding of Eastway Fire & Rescue/Arnprior Fire Trucks ("Eastway/Arnprior" or the "Company").

I understand the following:

- DaVinci is prepared to fund Eastway/Arnprior ONLY for the next 90 days (the "Forbearance Period")
- During the Forbearance Period, Waygar will work with Eastway/Arnprior to find new sources of financing in order for the company to go forward beyond the Forbearance Period
- During the Forbearance Period, DaVinci will fund only "Critical Payments" including Payroll, Source Deductions, HST, Rent and any payments required to complete the existing WIP
- The existing WIP that will be funded is: Ocean Wave, 2 mini-rescue demos and Mississippi Mills. No other contracted or demo builds will be funded

Unless I hear from you immediately that the above is NOT a materially correct summary of Davinci's position, I will operate on the basis of the above understanding.

//Mike

**EXHIBIT "I"**

**This is Exhibit "I" referred to in the  
affidavit of:**

**WAYNE EHGOETZ**

**Sworn before me, this 22<sup>nd</sup> day of  
June, 2017.**



**A Commissioner for Taking Affidavits**

**From:** [Justin Fogarty](#)  
**To:** [Jason Dutrizac](#)  
**Subject:** Fwd: DOOR B option  
**Date:** June 21, 2017 4:16:34 PM

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Justin R. Fogarty B.A , LL.B , LL.M  
President and Chairman  
Regent Law Professional Corporation  
Toronto Office :  
372 Bay Street Suite 901;  
Toronto, Ontario ,  
Ottawa Office:  
200 Elgin Street , Suite 600;  
Ottawa , Ontario  
Office: 416 840 8991  
Cell : 416 722 0123  
Email: [Justin.Fogarty@Regentlaw.ca](mailto:Justin.Fogarty@Regentlaw.ca)

Begin forwarded message:

**From:** Wayne Ehgoetz <[wehgoetz@waygarcapital.com](mailto:wehgoetz@waygarcapital.com)>  
**Date:** June 19, 2017 at 8:50:56 PM EDT  
**To:** Mark Irwin <[mark.irwin@davincicapital.com](mailto:mark.irwin@davincicapital.com)>, Jim Goren  
<[jim.goren@davincicapital.com](mailto:jim.goren@davincicapital.com)>, Terry Kruk <[terry.kruk@gmail.com](mailto:terry.kruk@gmail.com)>, Justin  
Fogarty <[Justin.Fogarty@regentlaw.ca](mailto:Justin.Fogarty@regentlaw.ca)>  
**Subject: Fw: DOOR B option**

I FYI.

Wayne Ehgoetz, President & CEO  
Waygar Capital Inc.

---

**From:** [mlc@cappy.it](mailto:mlc@cappy.it)  
**Sent:** June 19, 2017 8:24 PM  
**To:** [wehgoetz@waygarcapital.com](mailto:wehgoetz@waygarcapital.com)  
**Subject:** DOOR B option

---

Wayne,

Here you go:

- I would receive a USD5,000/month management fee through December 31 of this year
- Davinci would release me from my personal guarantees
- Davinci would purchase my shares in 9584358 Canada Ltd for \$1.00
- I would waive all claims against DaVinci, its partners, Waygar and its partners.

- DaVinci, its partners, Waygar and its partners would waive all claims against me
- At closing, DaVinci would appoint at least one director for 9584358 Canada Ltd and I would then immediately resign as a Director
  - DaVinci would indemnify me for any and all Directors liabilities (e.g. Employment claims, CRA filings, HST, etc.)
  - I would close the existing bank accounts for 9584358 Canada Ltd at Scotiabank and DaVinci could open new accounts for the Company
  - I would make myself available for 30 days for transitional support if requested
  - I will make myself available to support the arbitration at USD1,000/day plus travel expenses
  - David Smiley would need to be settled to his satisfaction and he would need to release me from any deficiency claims for Eastway work
  - DaVinci would reimburse me for the legal costs for the Shares transfer documentation and mutual releases agreements
  - At the end of 2 years, the enterprise value of 9584358 Canada Ltd would be calculated at 5X EBITDA and I would receive 50% of any enterprise value in excess of CAD2 million
  - The Company's website and server backups would be immediately removed from Gibraltar's accounts and servers
  - My Canadian cellphone number would be transferred to me
  - John Kooiman would be paid his expenses and additional time that was authorized by me
  - Davinci, its partners, Waygar, its partners and I would enter into a mutual a non-disparalgment agreement
  - We avoid theme and expense of a forbearance agreement as it would be moot under DOOR B and, in any case, I would likely NOT agree to be an individual party to the forbearance agreement as I have zero economic stake to protect by agreeing to reaffirm or waive anything.

This is a draft outline of what could work and possible if we can put it together within a week or so. Beyond that, I believe the Company will be in an irreversible downward spiral.

Mike

## APPENDIX C

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF AN ANTICIPATED APPLICATION**

pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as am.,  
section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 and the *Personal Property Security  
Act*, R.S.O. c. P.10

**BETWEEN:**

**DAVINCI CAPITAL PARTNERS INC. IN ITS CAPACITY AS TRUSTEE OF  
DAVINCI CAPITAL PRIVATE DEBT FUND**

Applicant

-and-

**9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE**

Respondent

**AFFIDAVIT OF WAYNE EHGOETZ  
(SWORN JUNE 23, 2017)**

I, WAYNE EHGOETZ, of the City of Toronto, Province of Ontario, **MAKE OATH AND SAY:**

1. This affidavit is supplemental to the affidavit that I swore on the afternoon of June 22, 2017.
2. At approximately 5 pm on June 21, 2017, I spoke with Michael Cappy by telephone. During that conversation, I advised him that the "Door B" proposal that he made to Davinci was not acceptable. There were several non-starter demands in Cappy's proposal, such as a significant (if not full) release of his guarantee, payment to him of cash-money of \$35,000.00 and an equity participation in the business in the event we can turn it around. Mr. Cappy has not put any capital into this business and it has been fully funded by Davinci from the beginning.
3. Cappy asked me to convey to the two principals of Davinci, being Messrs. Jim Goren and Mark Irwin, that unless they can get a deal done, he would "exercise the nuclear option." When I

asked him what that meant he said "go bankrupt." It was after having that conversation and me relaying it to Davinci that it became apparent to us that we needed to do everything we could to protect the company and that Cappy was using improper leverage to try and extract personal benefit for himself at the expense of the enterprise. His threatened actions jeopardize the very collateral that Davinci has funded millions of dollars to support. In addition, the jobs of some fifteen employees are at risk, the value of the collateral is being threatened and the existence of the enterprise is being undermined by someone who for all intents and purposes has no "skin in the game."

4. I learned from speaking with Mr. David Watson, the principal of the landlord for the company, that although Davinci had earmarked and approved the payment of \$25,000.00 for three (3) months' rent, that payment has not been made and the funds may have been diverted for other purposes. It will be the intention of Davinci to ensure that once a receiver is appointed that the landlord's rent will be paid.

5. I have subsequently learned today at approximately 11 am, after speaking with Terry Kruk, who is at the premises today on behalf of Davinci, that Cappy instructed Eastway's administrative assistant, Chantal, to divert funds that were earmarked for priority payables such as the landlord for other purposes. What is particularly troubling is that after I spoke with Mr. Cappy yesterday evening at 4:20 pm and after he was served with our materials, and knowing the company is in a precarious situation, he directed a wire of \$18,000.00 to his personal holding company Gibraltar. Because of the exigencies of time, I will provide my counsel with a copy of those wiring instructions to be handed up. He also made other wiring instructions to pay off personal obligations, which obligations were part of the proposal Davinci rejected because they would not benefit the business.

6. Mr. Kruk also advised that Mr. Cappy gave Chantal several blank cheques, signed by Mr. Cappy, and he instructed her to hold them and only release them on his direction. It is important to emphasize that all monies the company is using at this stage are not from generated sales but rather from cash advances from Davinci made for specific payables that he has now ignored. In the face of these actions, Mr. Cappy appears to have been making payments that can only be



characterized as fraudulent based on my understanding of s. 95(1) of the Bankruptcy and Insolvency Act.

7. In addition, payroll of ~\$40,000 is due on Monday June 26<sup>th</sup>. Davinci is reluctant to fund this given that Cappy has diverted other monies as described above. Davinci would fund the payroll if a Receiver was put in place.

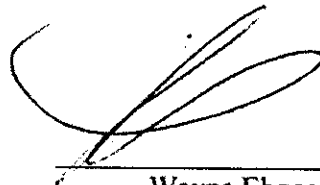
8. From the lender's perspective, Cappy is playing Russian roulette with the company, the customers, the employees and indeed the company's bankers. It is for this reason, amongst many others, that Davinci has lost all and complete confidence in Cappy's ability to manage this business and why the appointment of a receiver is fundamentally important.

**SWORN BEFORE ME**  
at the City of Ottawa,  
in the Province of Ontario  
this 23<sup>rd</sup> day of June, 2017.



A Commissioner, etc.

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)  
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)  
)  
)  
)  
)



Wayne Ehgoetz

**DAVINCI CAPITAL PARTNERS INC. et al**  
Applicants

-and-

**9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE**  
Respondents

Court File No. ....

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**PROCEEDING COMMENCED AT**  
**OTTAWA**

**AFFIDAVIT OF WAYNE EHGOETZ**

**REGENT LAW PROFESSIONAL CORPORATION**  
1401-150  
Metcalfe Street  
Ottawa, ON  
K2P 1P1

Justin R. Fogarty, LSUC # 29488G  
Jason Dutrizac, LSUC #50004T  
Ryan E. Flewelling, LSUC #49009W

Tel: 613.319.9997  
Fax: 416.943.6270

Lawyers for the Applicant

RCP-E 4C (July 1, 2007)

## APPENDIX D

Link & Associates Inc.  
Receivers + Trustees

VIA EMAIL [mlc@cappy.it](mailto:mlc@cappy.it)  
VIA FACSIMILE (347) 412-5440  
VIA REGISTERED MAIL

Michael L. Cappy  
Suite 100-166, 12123 Shelbyville Road  
Louisville, Kentucky  
USA 40023

-and-

Gibraltar Management Services  
Suite 200, 1133 NW Wall Street  
Bend, Oregon  
USA 19801

Dear Sirs:

**Re: Receivership of 9584358 Canada Ltd. and Demand for Payment**

As you are aware, Link & Associates Inc. is the Court-Appointed Interim Receiver (the “Receiver”) of 9584358 Canada Ltd. o/a Eastway Fire and Rescue (“Eastway” or the “Debtor”) pursuant to the Order of the Honourable Justice Macleod dated June 23, 2017, a copy of which is attached hereto.

The Receiver has identified three (3) payments totalling \$17,463.55 USD made from the Company’s US Dollar bank account at Bank of Nova Scotia between 7:03 a.m. and 7:08 a.m. EST on June 23, 2017, such payments being authorized by you and made by wire transfer to Gibraltar Management Services (“Gibraltar”), as follows:

9584358 CANADA LTD 501460094617 Jun 23, 2017 - Jun 23, 2017							
Account Name	Account Number	Currency	Account Type	Balance			
9584358 CANADA - USD	50146 00946 17	USD	DDA	\$2,735.38			
Date/Time(EST)	Description	Transit	Debit	Credit	Balance		
06/23/2017 06:00	Balance Forward			-	-	\$20,198.93	
06/23/2017 07:03	OUTGOING WIRE TRANSFER~CA170623014803~Transfer Ref: GIBRALTAR MANAGEMENT SERVICES 12123 SHELBYVILLE STE 100 166 LOUISVILLE,KY UNITED STATES-US BANK NA 102 NW OREGON AVE BEND,OR UNITED STATES~PAYMENT DETAILS: ~CA170623014803 ~~	52712	\$2,793.86	-			
06/23/2017 07:08	OUTGOING WIRE TRANSFER~CA170623014754~Transfer Ref: GIBRALTAR MANAGEMENT SERVICES 12123 SHELBYVILLE STE 100 166 LOUISVILLE,KY UNITED STATES-US BANK NA 102 NW OREGON AVE BEND,OR UNITED STATES~PAYMENT DETAILS: MACTEK PHYSICAL ACCESS TO SERVER ~CA170623014754 ~~	52712	\$3,419.69	-			
06/23/2017 07:08	OUTGOING WIRE TRANSFER~CA170623014830~Transfer Ref: GIBRALTAR MANAGEMENT SERVICES 12123 SHELBYVILLE STE 100 166 LOUISVILLE,KY UNITED STATES-US BANK NA 102 NW OREGON AVE BEND,OR UNITED STATES~PAYMENT DETAILS: MANAGEMENT FEE, IT SERVER, WEBSITE ~CA170623014830 ~~	52712	\$11,250.00	-		\$2,735.38	
<b>Total</b>			<b>\$17,463.55</b>				

At the time of making these payments you were aware of, and indeed had been served with, notice of a court application to be heard at 10:00 am that same day for the appointment of a Receiver.

Transactions by an insolvent debtor such as these payments by Eastway to Gibraltar, which have the effect of either giving a creditor a preference over the debtor's other creditors, or which represent a gratuitous payment for no consideration, constitute a preference and/or a transfer at undervalue under *Bankruptcy and Insolvency Act* (the "Act").

**Pursuant to Section 95 (1) and Section 96 (1) of the Act, the Receiver hereby demands upon you for the repayment of \$17,463.55 to the Receiver, by certified cheque or bank draft in US funds, immediately and within no later than 10 days from the date of this letter.**

If you do not repay these funds to the Receiver in accordance with this demand, the Receiver will report this matter to the Court and will seek directions to take further proceedings for the recovery of these monies as deemed necessary and appropriate.

We will provide notice of our motion to the Court to you at the address in this letter. If you wish our correspondence to be directed elsewhere, please advise the undersigned.

**LINK & ASSOCIATES INC.**  
Court-Appointed Interim Receiver of  
9584358 Canada Ltd. o/a Eastway Fire and Rescue

Per:   
Robert G. Link, CIRP, LIT

**From:** [Microsoft Outlook](#)  
**To:** [mlc@cappy.it](mailto:mlc@cappy.it)  
**Subject:** Relayed: Receivership of 9584358 Canada Ltd. o/a Eastway Fire and Rescue  
**Date:** Friday, June 30, 2017 6:01:02 PM  
**Attachments:** [Receivership of 9584358 Canada Ltd. oa Eastway Fire and Rescue.msg](#)

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Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:  
mlc@cappy.it (mlc@cappy.it) <mailto:mlc@cappy.it>  
Subject: Receivership of 9584358 Canada Ltd. o/a Eastway Fire and Rescue

**From:** [VoIP.ms](#)  
**To:** [Robert Link](#)  
**Subject:** VoIP.ms - Your Fax Message to number 13474125440 has been sent successfully.  
**Date:** Friday, June 30, 2017 6:21:15 PM

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Dear Customer,

The following Fax Message has been successfully sent:

Contact : 13474125440  
From Name : 6475581365  
From Number : 16475581365  
Num pages : 15

You can review the details of your Fax message via the customer portal under the "DID Numbers" tab and clicking on "Virtual Fax"

If you have any questions please open a ticket from within your customer portal, or alternatively by sending an email to [support@voip.ms](mailto:support@voip.ms)

Sincerely,  
VoIP.ms Support

**DAVINCI CAPITAL PARTNERS INC. et al**  
Applicants

-and- **9584358 CANADA LTD. o/a EASTWAY FIRE AND RESCUE**  
Respondents

Court File No...17-73088

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
OTTAWA

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**MOTION RECORD**

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**REGENT LAW PROFESSIONAL CORPORATION**  
1401-150  
Metcalf Street  
Ottawa, ON  
K2P 1P1

Justin R. Fogarty, LSUC # 29488G  
Jason Dutrizac, LSUC #50004T  
Ryan E. Flewelling, LSUC #49009W

Tel:613.319.9997  
Fax: 416.943.6270

Lawyers for the Applicant

RCP-E 4C (July 1, 2007)