

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

and

THEREDPIN, INC. and THE REDPIN.COM REALTY INC.

Respondents

**IN THE MATTER OF SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C-43, AS AMENDED**

MOTION RECORD

(returnable May 14, 2020)

Date: May 8, 2020

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Lawyers for MNP Ltd.

TO: ATTACHED SERVICE LIST

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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COURTS OF JUSTICE ACT, R.S.O. 1990, c. C-43, AS AMENDED**

**NOTICE OF MOTION
(returnable May 14, 2020)**

MNP Ltd. (“**MNP**”) in its capacity as the Court-appointed receiver (the “**Receiver**”), of the undertaking, property and assets of TheRedPin, Inc. (“**TRP**”) and The Redpin.Com Realty Inc. (“**TRP Realty**” and, together with TRP, the “**Debtors**”), will make a motion to a judge presiding over the Commercial List on Thursday, May 14, 2020 at 11:00 a.m., by judicial teleconference via Zoom at Toronto, Ontario. Please refer to the conference details attached as **Schedule “A”** hereto in order to attend the motion and advise if you intend to join the motion by emailing sbabe@airdberlis.com.

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

1. **THE MOTION IS FOR** an Order of the Court, in substantially the form set out as **Schedule “B”** hereto (the “**Order**”), among other things:
 - (a) approving the Receiver’s Second Report dated September 10, 2018, the Supplementary Report to the Second Report dated September 28, 2018, the Second Supplementary Report to the Second Report dated October 11, 2018 and the Third Supplementary Report to the Second Report dated October 19, 2018 (collectively, the “**Second Report**”) and the activities of the Receiver described in each;
 - (b) approving the Receiver’s Third Report dated May 6, 2020 (the “**Third Report**”) and the activities of the Receiver described therein;
 - (c) approving and authorizing the Receiver to makes interim distributions to Trilogy Growth Fund LP (“**Trilogy**”); and
 - (d) approving and authorizing the Receiver to makes interim distributions to FirePower Debt GP Inc. as agent for FirePower GAP Debt LP and FirePower GAP Debt II LP (collectively “**FirePower**” and, together with Trilogy, the “**Secured Creditors**”).

2. **THE GROUNDS FOR THE MOTION ARE:**
 - (a) pursuant to the Order of the Honourable Justice Hailey made June 14, 2018 (the “**Receivership Order**”), MNP was appointed as receiver, of the undertakings, properties and assets of the Debtors (the “**Property**”);
 - (b) the Receivership Order directs and empowers the Receiver to report to the Court in respect of these proceedings at such times and intervals as the Receiver may deem appropriate;
 - (c) the Receiver filed with the Court its Second Report in support of a motion for advice and direction returnable, and heard, on October 22, 2018, which motion

did not include any request for approval of the Second Report or the activities of the Receiver set out therein;

- (d) the Receiver now seeks approval of the Second Report and of its activities set out therein;
- (e) in support of the present motion, the Receiver has filed with the Court its Third Report outlining, among other things:
 - (i) its activities since its Second Report;
 - (ii) its receipts and disbursements as at April 30, 2020;
 - (iii) the status of realizations from commissions receivables;
 - (iv) the status of the Debtors' obligations that may have priority to its liabilities to the Secured Creditors (the "**Priority Payables**");

and seeks approval of the same;

- (f) pursuant to a loan agreement dated February 15, 2017, as amended, (the "**Firepower Loan Agreement**") TRP borrowed \$3,500,000 from the Applicant, Firepower, which indebtedness, as at April 30, 2020 amounted to \$4,602,098 in principle, interest and fees (excluding legal costs);
- (g) as security for its obligations under the Firepower Loan Agreement, TRP granted a general security agreement and TRP Realty granted an unlimited guarantee backed by a general security agreement which general security agreements are hereinafter collectively referred to as the "**Firepower Security**";
- (h) pursuant to a loan agreement dated January 23, 2018 (the "**Trilogy Loan Agreement**"), TRP borrowed a total of \$2,500,000 from Trilogy in two tranches of \$2,000,000 (the "**Trilogy Tranche A Loan**") and \$500,000 (the "**Trilogy**

Tranche B Loan”), which indebtedness, as at April 30, 2020 amounted to \$2,422,935 in principle, interest and fees;

- (i) as security for its obligations under the Trilogy Loan Agreement, TRP granted a general security agreement and TRP Realty granted an unlimited guarantee backed by a general security agreement which general security agreements are hereinafter collectively referred to as the “**Trilogy Security**”;
- (j) pursuant to an Intercreditor Agreement dated January 23, 2018 between Trilogy, FirePower, TRP, TRP Realty and certain other guarantors, the parties agreed that the FirePower Loan is subordinate to the Trilogy Tranche A Loan and senior to the Trilogy Tranche B Loan;
- (k) the Receiver has obtained independent legal opinions from its counsel, Aird & Berlis LLP, confirming the validity, enforceability and perfection of each of the Firepower Security and the Trilogy Security, subject to standard assumptions and qualifications;
- (l) other than the registrations in respect of the Firepower Security and the Trilogy Security, searches of the Ontario Personal Property Registration System in respect of the Debtors reveal only the following registrations:
 - (i) a registration against TRP in favour of National Leasing Group Inc. (“**National Leasing**”), predating those in favour of the Secured Creditors, covering the collateral classification “Equipment” and having a general collateral description detailing specific equipment;
 - (ii) a registration against TRP Realty in favour of Royal Bank of Canada (“**RBC**”), made subsequent to those in favour of the Secured Creditors, covering the collateral classification “Other” and having a general collateral description detailing a priority agreement between TRP Realty, Trilogy and RBC; and

- (iii) a registration against TRP Realty in favour of RBC, made subsequent to those in favour of the Secured Creditors, covering the collateral classification “Other” and having a general collateral description detailing a priority agreement between TRP Realty, Firepower and RBC;
- (m) National Leasing advised the Receiver that it was abandoning the equipment in respect of which its registration was made;
- (n) RBC previously held security over cash collateral in the form of a GIC in connection with a VISA facility, but the GIC was cashed and part of the proceeds were paid to RBC in satisfaction of the VISA debt, in or about the Summer of 2018, with the result that RBC is no longer a creditor;
- (o) the proposed distribution to Trilogy in the amount of \$1,629,446 from funds held by the Receiver is less than the amount of the secured debt owing to Trilogy and leaves sufficient reserves with the Receiver to pay the potential Priority Payables and costs of the Receivership plus an extra \$100,000 for contingencies;
- (p) there also remains approximately \$3,043,000 (inclusive of HST) of receivables yet to be collected;
- (q) authorizing the Receiver to make further distributions to Trilogy up to the amount of the secured debt owing to Trilogy and distributions to FirePower up to the amount of the secured debt owing to Firepower, while continuing to maintain sufficient reserves, will reduce interest expenses as well as the number and costs of court attendances;
- (r) the other grounds set out in the Third Report;
- (s) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (t) rules 1.04, 2.03, 3.02, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

(u) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

(a) the Third Report; and

(b) such further and other material as counsel may submit and this Honourable Court may permit.

Date: May 8, 2020

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Lawyers for MNP Ltd.

TO: ATTACHED SERVICE LIST

SCHEDULE "A"
ZOOM JUDICIAL CONFERENCE DETAILS

Topic: Firepower Debt GP Inc., as Agent v. TheRedPin Inc. and The Redpin.Com Realty Inc.
(Court File No. CV-18-599644-00CL)

Time: May 14, 2020 11:00 AM Eastern Time (US and Canada)

Join Zoom Meeting

<https://zoom.us/j/97638508444?pwd=TXJiRDd6bHRRUFZXRHN1YWttRy83Zz09>

Meeting ID: 976 3850 8444

Password: 5WTVay

One tap mobile

+15873281099,,97638508444#,,1#,312886# Canada

+16473744685,,97638508444#,,1#,312886# Canada

Dial by your location

+1 587 328 1099 Canada

+1 647 374 4685 Canada

+1 647 558 0588 Canada

+1 778 907 2071 Canada

+1 438 809 7799 Canada

Meeting ID: 976 3850 8444

Password: 312886

Find your local number: <https://zoom.us/u/aeC2dsVUZ9>

TAB 1(a)

SCHEDULE "A"
ZOOM JUDICIAL CONFERENCE DETAILS

Topic: Firepower Debt GP Inc., as Agent v. TheRedPin Inc. and The Redpin.Com Realty Inc.
(Court File No. CV-18-599644-00CL)

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TAB 1(b)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 14TH DAY
JUSTICE HAINEY) OF MAY, 2020

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THE REDPIN.COM REALTY INC.

Respondents

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990, C. C-43, AS AMENDED

**ORDER
(DISTRIBUTION)**

THIS MOTION, made by MNP Ltd. (“MNP”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of TheRedPin, Inc. and The Redpin.Com Realty Inc. (collectively, the “**Debtors**”), appointed pursuant to the Order of the Honourable Justice Hainey made June 14, 2018 (the “**Appointment Order**”), was heard this day by videoconference.

ON READING Receiver's Third Report to the Court dated May 6, 2020 (the "**Third Report**") and on hearing the submissions of counsel for the Receiver, counsel for FirePower Debt GP Inc. as agent for FirePower GAP Debt LP and FirePower GAP Debt II LP (collectively "**FirePower**"), counsel for Trilogy Growth Fund LP ("**Trilogy**"), _____ and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Sam Babe sworn May <*>, 2020 filed:

1. **THIS COURT ORDERS** that the time for service and filing of the Receiver's Notice of Motion and Motion Record, each dated May 7, 2020, is 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 Receiver's Second Report dated September 10, 2018, the Supplementary Report to the Second Report dated September 28, 2018, the Second Supplementary Report to the Second Report dated October 11, 2018 and the Third Supplementary Report to the Second Report dated October 19, 2018 and the activities of the Receiver described in each are hereby approved.
3. **THIS COURT ORDERS** that the Third Report and the activities of the Receiver described therein are hereby approved.
4. **THIS COURT ORDERS** that, subject to maintaining sufficient reserves to satisfy the Priority Payables (as defined in the Third Report) and claims subject to the Receiver's Charge (as defined in the Appointment Order), and to complete the administration of the receivership of the Debtors, the Receiver shall pay:

- (a) forthwith, an interim distribution of \$1,629,466 to Trilogy;
- (b) at its sole discretion, subject only to written consent of each of Trilogy and FirePower, or as otherwise ordered by the Court, from monies remaining in the Receiver's hands, if any, or any monies that come into the estates at a later date:
 - (i) one or more further interim distributions to Trilogy up to the amount of the Trilogy Secured Indebtedness (as defined in the Third Report); and
 - (ii) one or more interim distributions to FirePower, or as directed by FirePower, up to the amount of the FirePower Secured Indebtedness (as defined in the Third Report),

and all such distributions be and are hereby approved.

FIREPOWER DEBT GP INC., AS AGENT

and

THEREDPIN, INC. and THE REDPIN.COM REALTY INC.

Applicant

Respondents

Court File No. CV-18-599644-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

**NOTICE OF MOTION
(returnable May 14, 2020)**

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Lawyers for MNP Ltd.

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS
AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Respondents

**THIRD REPORT TO THE COURT SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

May 6, 2020

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED

BETWEEN :

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**THIRD REPORT TO THE COURT SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

May 6, 2020

I INTRODUCTION

1. On June 14, 2018 (the **"Date of Appointment"**), MNP Ltd. was appointed as receiver (the **"Receiver"**) without security, of all assets, undertakings and properties of TheRedPin, Inc. (**"TRP Inc."**) and Theredpin.Com Realty Inc. (**"TRP Realty"** and together with the TRP Inc., collectively hereinafter referred to as the **"Debtors"**) acquired for or used in relation of a business carried on by the Debtors, including all proceeds thereof (the **"Property"**) pursuant to an Order, dated June 14, 2018 (the **"Appointment Order"**) issued by the Ontario Superior Court of Justice (Commercial List) (the **"Court"**). A copy of Appointment Order is attached hereto as **Appendix "A"**.

2. On July 26, 2018, the Court Ordered the scheduling of the (i) Representation Order Motion (as such term is later defined) to be heard on September 11, 2018, and (ii) the Advice and Direction Motion (as such term is later defined) to be heard on October 22, 2018.
3. On August 15, 2018, Adair Goldblatt Bieber LLP ("**AGB**") served material in connection with its Motion (returnable September 11, 2018) for an Order, *inter alia*, to appoint representative agents on behalf of all of the TRP Salespersons (as such term is later defined) and to appoint AGB as counsel to the representative agents (the "**Representation Order Motion**").
4. On August 23, 2018, the Receiver filed its first report to the Court (the "**First Report**"), wherein it sought an Order, *inter alia*, approving and authorizing a sale of certain of the Debtors' Property. (the "**Purchased Assets**"). On September 4, 2018, the Receiver filed with the Court its Supplementary Report to the First Report, dated August 31, 2018 for the purpose of informing the Court that the Purchaser had advised the Receiver that title to the Purchased Assets is being taken in the name of 2653047 Ontario Inc. A copy of the First Report is enclosed as **Appendix "B"**.
5. On September 4, 2018, the Court ordered, *inter alia*, the approval to the Receiver's activities and the contemplated sale of the Purchased Assets. A copy of the September 4, 2018 Court Orders and the endorsement of Madam Justice Chiappetta are attached as **Appendix "C"**.
6. Subsequent to the completion of sale transaction, TRP Inc. and TRP Realty each filed articles of amendment to change their name to 7328168 Canada Inc. and 7895216 Canada Inc., respectively.
7. On September 11, 2018, on the Representation Order Motion, the Court ordered (the "**September 11th Order**"), *inter alia*:
 - (a) that Dennise Paccione and Michael Sotoadeh are hereby appointed as representatives of the TRP Agents (the "**Representative TRP Agents**") in respect of their entitlement to real estate commissions paid or to be paid to TRP Realty;

- (b) AGB be appointed as counsel to the Representative TRP Agents; and
- (c) that the Representative TRP Agents shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order, or any subsequent Order in these proceedings, save and except for liability arising out of gross negligence or willful misconduct.

A copy of the September 11th Order is attached as **Appendix “D”**.

Motion for Advice and Directions

8. On September 10, 2018, the Receiver filed motion materials, including its second report to the Court of same date (the **“Second Report”**) seeking the advice and directions of the Court with respect to whether any or all of the Third-party Commissions (namely, commissions owing by TRP Realty to the Outside Brokerages, the TRP Salespersons, the Assignees and Cashback Buyers) collected and to be collected by the Receiver are held and to be held in trust for benefit of the TRP Salespersons, the Outside Brokerages, the Assignees and/or the Cashback Buyers. The Second Report (without exhibits) is attached as **Appendix “E”**.
9. Subsequently, on September 28, 2018, October 12, 2018 and October 19, 2018 the Receiver served its Supplementary Report to the Second Report, the Second Supplementary Report to the Second Report and Third Supplementary Report to the Second Report (collectively, the **“Supplementary Second Reports”**), respectively, wherein they provided the Court with updated information concerning issues raised in the Second Report, as well as additional information identified since the filing of the Second Report. The Supplementary Second Reports (without exhibits) are enclosed as **Appendix “F”**.
10. On November 30, 2018, the Court released its decision (the **“Commission Trust Decision”**) wherein it concluded that “commissions, while clearly a debt owing to the agents, are not held in trust, and, therefore, not excluded from TRP Realty’s available assets subject to the Applicant’s security.” Notwithstanding that the decision was in favour of the Secured Creditors (as such term is later defined), the Court awarded costs in the amount of \$45,000 in favour of the TRP Agents

to be paid from the available assets of TRP Realty (the “**Agent’s Costs Award**”). A copy of the Commission Trust Decision is attached as **Appendix “G”**.

11. In his January 2, 2019 endorsement, Justice Penney ordered Lloyd’s (defined below) to pay \$16,000 to FirePower and \$6,000 to Trilogy, noting that Lloyd’s should be responsible for a portion of the Secured Creditors’ costs on the basis the Lloyd’s policy of insurance covers the losses of the TRP Agents’ commissions due to insolvency. In determining the quantum of this costs award, Justice Penney noted that “since Lloyd’s is exposed to roughly half of the commission shortfall, it should be responsible for roughly half the costs of the successful parties.”
12. Certain of the Third-Party Agents appealed the Commission Trust Decision (the “**Appeal**”), with the Appeal being heard on September 27, 2019. The Court of Appeal reserved its decision.
13. On November 15, 2019, the Court of Appeal released its decision wherein it dismissed the Appeal and awarded costs of \$20,000 and \$6,000 in favour of FirePower and Trilogy (as such terms are each later defined), respectively.

The Co-Operating Brokers/Outside Brokerages

14. On August 22, 2019, ClaimsPro LP (“**ClaimsPro**”) on behalf of Certain Underwriters at Lloyd’s (“**Lloyd’s**”), the insurer of the Commission Protection Policy of former real estate agents and cooperating brokerages of TRP Realty, brought a motion, returnable September 10, 2019, to have the Receiver pay certain cooperating brokers’ the commissions they were due in satisfaction of the amounts owed to those cooperating brokers.
15. On September 10, 2019, the Court ordered that the Receiver be authorized to pay the cooperating brokers or Outside Brokerages (the “**September 10th Order**”). The September 10th Order is enclosed as **Appendix “H”**.

II PURPOSE OF THIS REPORT

16. The purpose of this Report (the “**Third Report**”) is to:

- (a) update the Court on the:
 - (i) activities of the Receiver since the Second Report and the Supplementary Second Reports;
 - (ii) the status of realizations from the Commissions Receivables, as defined below, and the Debtors’ other assets;
 - (iii) the Debtors’ obligations (the “**Priority Payables**”) that may have priority to the liabilities due to FirePower Asset Management Inc.¹ and FirePower GAP Debt LP (collectively “**FirePower**”) and Trilogy Growth Fund LP (“**Trilogy**” and collectively with FirePower, the “**Secured Creditors**”);
- (b) provide support for the Receiver’s motion for an order, among other things:
 - (i) approving an interim distribution to Trilogy in the amount of \$1,629,466 (the “**Proposed Distribution**”);
 - (ii) approving further distributions to Trilogy, to the extent of the Trilogy Secured Indebtedness (as such term is later defined), and to FirePower to the extent of the FirePower Secured Indebtedness (as such term is later defined), at the sole discretion of the Receiver, subject only to written consent of each of Trilogy and FirePower or further Order of the Court, from monies remaining in the Receiver’s hands, if any, or any monies that come into the estates at a later date;
 - (iii) approving the Second Report, the Supplementary Second Reports and the Third Report (collectively, the “**Reports**”) and the activities of the Receiver as set out in the Reports; and
 - (iv) such other relief as the Court deems just.

¹ As of June 15, 2018, FirePower Asset transferred its interest in the Loan Agreement to FirePower GAP Debt II LP.

III TERMS OF REFERENCE

17. In preparing the Third Report, the Receiver has relied on information (the “**Information**”) regarding the Debtors and the Property:
- (a) included in the Application/Motion Record(s) and other materials filed with the Court in connection with these proceedings;
 - (b) provided by the Debtors’ directors and management, the Applicant and their respective legal counsel;
 - (c) supplied by the Secured Creditors;
 - (d) TRP Realty’s available books and records; and
 - (e) as otherwise made available or provided to the Receiver and its counsel.
18. Except as described in the Third Report, the Receiver has not audited, reviewed 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 of the Chartered Professional Accountants of Canada Handbook.
19. All references contained herein to a real estate salesperson(s) also include a broker(s) as such terms are defined in the Ontario *Real Estate and Business Brokers Act, 2002* and associated regulations (collectively, “**REBBA 2002**”), unless otherwise specified.
20. All currency references contained herein are in Canadian Dollars, unless otherwise specified. All capitalized terms not otherwise defined herein shall have the meanings as defined in the Appointment Order, unless otherwise specified.

IV BACKGROUND

General

21. In Ontario, REBBA 2002 is the provincial legislation that establishes the rules by which all real estate salespersons, brokers and brokerages must follow. The Real Estate Council of Ontario (“**RECO**”) is the body that is responsible for the administration of REBBA 2002 and regulates that activity of trading real estate in the province of Ontario. Further, all brokerages, brokers and real estate salespersons working in Ontario must be registered with RECO and meet all of the requirements for registration under the REBBA 2002.

22. As noted on the First Report, TRP Realty was a wholly owned subsidiary of TRP Inc., providing real estate brokerage services utilizing TRP Inc.'s technology platform. TRP Realty was an Ontario real estate brokerage registered with and regulated by RECO pursuant to REBBA 2002. TRP Realty's revenues were primarily derived from real estate commissions generated from the activities of its licensed/registered salespersons or "agents" (the "**TRP Salespersons**" or individually, the "**TRP Salesperson**") earned on the closing of leasing, purchasing and sale transactions of principally residential properties.
23. TheRedPin Mortgage Brokerage Inc. ("**TRP Mortgage**") and The RedPin Brokerage, BC Inc. ("**TRP BC**") were also subsidiaries of TRP Inc. Based on recent corporate profile searches, each of TRP Mortgage and TRP BC is in the process of being dissolved for non-compliance with filing annual returns.

V THE RECEIVER'S ACTIVITIES

The Commissions Collected or To Be Collected

24. As at the Date of Appointment and based on the information provided to the Receiver by TRP Realty and extracted from its computer systems, the Receiver understood that there were commissions receivable due to the brokerage totaling approximately \$6.65 million relating to more than 730 properties and more than 940 trades (the "**Commissions Receivables**"); the Commissions Receivables were not expected to be fully collected until sometime in 2023 due to a portion of the trades being associated with pre-construction condominium transactions ("**Pre-Construction Receivables**").
25. As reported in the Second Report, as at August 21, 2018, the Receiver had collected a total of approximately \$907,600 (inclusive of HST) of the Commissions Receivable, which was in addition to the \$131,210.95, inclusive of HST that was in TRP Realty's commission account maintained at Royal Bank of Canada.
26. Since August 21, 2018, the Receiver has collected an additional \$2,249,840 (inclusive of HST) for a total of approximately \$3,157,440 (inclusive of HST) of the Commissions Receivable. In order to collect these commissions, the Receiver employed several techniques, including:

- (a) where TRP Realty was the listing brokerage and acted for the Seller, monitored closings of the various trades and administering funds in TRP Realty's Real Estate Trust Account and Commissions Account accordingly;
 - (b) where TRP Realty acted as the co-operating brokerage and acted for the buyer, sent demand letters and a follow up letter ("**Demand Letters**") to each of the builders, developers or realtor brokerages advising each of the receivership and the need to remit the commissions to the Receiver;
 - (c) responded to inquiries and information received in relation to the Demand Letters;
 - (d) Arranged for Aird & Berlis LLP ("**A&B**"), the Receiver's independent legal counsel, to send a further demand letter to each of the builders, developers and/or realtors; and
 - (e) Telephone calls and email correspondence to certain of the builders, developers and/or realtor brokerages to follow up on the status of payment of commissions due.
27. Based on the responses it received from the Demand Letters and its own investigations, the Receiver learned that the Debtors' records did not always identify the correct party responsible for payment of the Commissions Receivable. This prompted the Receiver spending considerable time reviewing the Debtors' books and records to determine the proper debtor, which, in turn, resulted in the Receiver sending further demand letters to those parties identified by its review. These investigations also determined: (i) errors in the TRP Realty's books and records with regards to the Commissions Receivable; and (ii) certain pre-construction condominium projects were cancelled or delayed, resulting in changes in the extent and/or timing of Commissions Receivable.
28. There remains approximately \$3,043,616 (inclusive of HST) in Commissions Receivable due to collect. The Receiver anticipates that certain closings will be delayed as a result of the COVID-pandemic, which in turn, will delay collection of certain Commissions Receivable.

Other Activities

29. Following the Second Report, the Receiver's other activities concentrated on the following:
- (a) reviewing and considering the materials filed in relation to the Appeal and the Cooperating Brokers Motion;

- (b) vetting the accuracy of the trust claims filed by the various agents in relation to the Cooperating Brokers Motion and subsequently distributing funds pursuant to the September 10th Order;
- (c) administering the Wage Earner Protection Program (“WEPP”) for 12 former employees;
- (d) filing HST returns, both with respect to periods prior to and after the date of the Receiver’s appointment;
- (e) cooperating with, and responding to Canada Revenue Agency (“CRA”) in connection with its HST audit/trust examinations conducted in respect of TRP Realty and TRP Inc;
- (f) arranging for the preparation and filing of T4s for the Debtors’ former employees;
- (g) updating the case website, as necessary;
- (h) reporting to, meeting with and discussing with representatives of the Secured Creditors, the Representative TRP Agents, and their respective counsel, on matters relating to the receivership;
- (i) Reconciling the bank accounts on a monthly basis;
- (j) Reporting from time to time to RECO, Lloyd’s and ClaimsPro, and/or their respective counsel; and
- (k) Responding to numerous creditor inquiries, including inquiries from TRP Realty’s agents requesting information on the status of their receiving payments of commissions.

30. The Receiver has not previously sought the approval of the Second Report and the Supplementary Second Reports and the Receiver’s activities set out therein. The Receiver now seeks the approval of the Reports and the activities of the Receiver set out in the Reports.

VI STATEMENT OF RECEIPTS AND DISBURSEMENTS

31. The Receiver’s Interim R&D as at April 30, 2020, attached as **Appendix “I”**, which reflects an excess of receipts over disbursements of \$2,575,691.45 (the “**Excess Funds**”).

VII INDEBTEDNESS TO SECURED CREDITORS

32. As reported in the First Report, the Receiver has obtained an opinion from A&B confirming the validity and enforceability of the GSAs held by the FirePower and Trilogy.
33. As further reported in the First Report, the Receiver has been advised by its independent legal counsel that the FirePower and Trilogy each hold perfected GSAs covering all of the assets, property and undertakings of TRP Realty, including TRP Realty's interest in the Commissions Receivables.
34. An Ontario *Personal Property Security Act* ("**PPSA**") registry search conducted (file currency date: May 5, 2020) on TRP Inc. identified three (3) registrations:
- (a) National Leasing Group Inc. ("**National Leasing**") – one (1) registration;
 - (b) FirePower – one (1) registration; and
 - (c) Trilogy – one (1) registration.
35. An Ontario PPSA registry search conducted (file currency date: May 5, 2020) on TRP Realty identified five (5) registrations:
- (a) FirePower – one (1) registration;
 - (b) Trilogy – one (1) registration; and
 - (c) RBC – two (2) registrations.
- As noted in the First Report, RBC is secured over the GIC held in connection with the RBC VISA Facility. The indebtedness to RBC in connection with the RBC VISA Facility amounted to \$9,025.17 and was repaid/offset by RBC when the net amount of the GIC was remitted to the Receiver.
36. Copies of the PPSA registry searches on TRP Inc. and TRP Realty (file currency date: May 5, 2020) are attached hereto as **Appendix "J"** and **"K"**, respectively.
37. Based on information in the Application Record, FirePower and Trilogy loaned TRP Inc. \$3,500,000 (the "**FirePower Loan**") and \$2,500,000, respectively. Trilogy's loan was structured as a term loan

in the amount of \$2,000,000 (the “**Trilogy Tranche A Loan**”) and a term loan in the amount of \$500,000 (the “**Trilogy Tranche B Loan**”).

38. Pursuant to an Intercreditor Agreement, dated January 23, 2018 between Trilogy, FirePower, TRP Inc., TRP Realty and certain other guarantors, the parties agreed that:

- (a) The FirePower Loan was subordinate to the Trilogy Tranche A Loan; and
- (b) The FirePower Loan is senior in rank to the Trilogy Tranche B Loan.

39. Based on information provided by the Secured Creditors, as at April 30, 2020, FirePower is owed \$4,602,098 (exclusive of legal costs) (the “**FirePower Secured Indebtedness**”) and Trilogy is owed approximately \$2,422,935 (the “**Trilogy Secured Indebtedness**”).

VIII RESERVES AND PRIORITY PAYABLES

40. The Excess Funds and the claims of the Secured Creditors are potentially subject to the Priority Payables, each of which is described in greater detail below. The Receiver is proposing to distribute the net Excess Funds after deducting a reserve (the “**Reserves**”) established to address the Priority Payables and the Contingency Reserve (as such term is later defined).

41. The Receiver notes that it has yet to run a claims process and the establishment of the Reserves is based largely based on the Information. The Reserves is subject to redetermination, from time to time, as facts and/or circumstances dictate. Accordingly, the Receiver proposes the establishment of a general reserve of \$100,000 (the “**Contingency Reserve**”).

Employee Claims

42. As noted above, the Receiver administered the WEPP for the Debtors’ former employees. Based on Service Canada’s payouts, the payouts to the Debtor’s former employees is summarized below:

Entity	# of former employees	Amount Paid by Service Canada	Nature of Payment
TRP Realty	9	\$25,552	Termination Pay/Unsecured
TRP Inc.	3	\$11,470	Termination Pay/Unsecured

43. The above-noted claims represent ordinary unsecured creditors and do not have priority over the claims of the Secured Creditors.

Canada Revenue Agency – Source Deduction Arrears

44. On August 16, 2018, CRA conducted an audit of the Debtors’ payroll records and determined that each of TRP Realty and TRP Inc. was current in its remittances of payroll source deductions.

Canada Revenue Agency – HST

45. Prior to the Date of Appointment, TRP Realty owed CRA an assessed amount of \$36,963.15 on account of unpaid HST (the “**Assessed HST Liability**”). As at the Date of Appointment, TRP Inc. was not in arrears to CRA on account of HST.
46. As noted above, CRA carried out an audit of the Debtors’ HST accounts. CRA has issued its audit finding for consideration by the Receiver and provided the Receiver with the opportunity to respond to its findings before raising an assessment.
47. In connection with TRP Realty’s audit, which covered the period January 1, 2016 to June 14, 2018, CRA sent the Receiver a letter, via fax, dated November 4, 2019, advising it that CRA was proposing adjustments to TRP Realty’s HST account as follows:

Nature of Finding	Amount
Unreported sales – Sales reported in HST returns differed from amounts reported in the General Ledger	\$37,059.64
Unpaid A/P claimed as Input Tax Creditors	2,548.66
Six (6) agents did not have valid business numbers	36,068.52
Total	\$75,676.82

48. On January 9, 2020, the Receiver responded to the proposed changes relating to TRP Realty, by disputing approximately \$63,195 of the \$75,676 proposed adjustment, providing further documentation for CRA to consider, including five of the six business numbers for TPR Realty’s agents. CRA has since verbally advised that it accepts approximately \$35,990 of the Receiver’s dispute.

49. Regarding TRP Inc., on December 2, 2019, CRA faxed a letter to the Receiver asking that it provide CRA with copies of 37 invoices relating to ITC's claimed by TRP Inc. in the period starting April 1, 2017 and ending December 31, 2017.
50. On January 9, 2020, the Receiver responded to CRA by providing copies of 36 invoices. The Receiver was unable to locate one invoice, which invoice charged TRP Inc. an amount of \$1,300 on account of HST.
51. In March 2020, CRA sought further particulars from the Receiver concerning an invoice where TRP Inc. was charged HST of \$1,210.30.
52. At this time, CRA has not completed its audit of the Debtors' HST account.
53. In summary, CRA proposed making the following adjustments to the Debtors' HST accounts:

TRP Realty	\$75,676
TRP Inc.	\$2,510

54. If assessed, these amounts, together with the Assessed HST Liability of \$36,963.15, would represent a deemed trust claim ranking in priority to the claims of the Secured Creditors. Accordingly, the Receiver proposes to create a reserve in the amount of \$115,149 against the Excess Funds in respect of the HST (the "**HST Reserve**").
55. The Receiver has been and will continue remitting HST payments to CRA on account of its activities subsequent to the Date of Appointment.

Costs Award

56. The Agent's Cost Award is to be paid out of the assets of TRP Realty. The Commission Trust Decision was not reduced to a formal Court Order.
57. Counsel for the TRP Agents has repeatedly asked that the Receiver remit payment of the \$45,000 to the TRP Agents. The Receiver's counsel advised the Secured Creditors of this request, as the funds in the receivership are subject to the claims of the Secured Creditors.

58. The Secured Creditors take the position that the Agent's Cost Award is an ordinary unsecured claim, ranking subordinate to the Secured Creditors.
59. The Receiver proposes to establish a reserve in the amount of \$45,000 (the "Costs Reserve") against the Excess Funds pending direction of the Court or mutual agreement between the TRP Agents and the Secured Creditors.

Instalment Payments – Referral Fees on Pre-Construction Projects

60. As noted above, the Pre-Construction Receivables derive from pre-construction (new, still to be built) condominium transactions where the buyer transacts directly with the builder/developer.
61. In pre-construction transactions, the builder/developer and TRP Realty will enter into an agreement, often referred to as "Referral Agreement" or "Agreement to Cooperate", governing the payment of commissions as between the parties. These are not standardized agreements such as those developed by Ontario Real Estate Association. Accordingly, the terms governing these arrangements vary.
62. A common feature of these agreements is a provision that the commission fee is paid in installments based on certain milestones, with the final payment on closing of the transaction. The agreements generally provide that notwithstanding any of the provisions of the agreement, the commission is not earned until the closing of the underlying transaction. Certain agreements state that should the pre-construction sale transaction identified in the agreement not close for any reason whatsoever, any "FEE" or monies previously paid under the agreement must be refunded upon written notice to TRP Realty.
63. In two (2) transactions, totaling \$9,040.77 (inclusive of HST) in commissions, the Receiver, in order to collect the instalment due under the agreements, undertook to repay the commissions it received associated with these two transactions, if the transactions did not close.
64. Even in those instances where the Receiver did not specifically undertake to repay the counterparty, throughout the receivership, the Receiver collected advance commissions of \$2,151,857 (inclusive of HST) against final commissions in the ordinary course of operating TRP Realty's business. There remains \$485,283 (inclusive of HST) collected in instalment payments against transactions that have yet to close.

65. The counterparty to the TRP Realty agreement made payments to the Receiver on the expectation that it would be refunded if the transaction does not close. Accordingly, the Receiver proposes to create a reserve in the amount of \$485,283 (the “**Pre-Construction Commission Reserve**”) against the Excess Funds.

The Assignees

66. Certain of the TRP Salespersons sought advances on their commissions and have entered into Commission Advance Agreements (as such term is later defined) with the AccessEasyFunds Limited (“**AccessEasy**”) and 1834176 Ontario Inc. o/a Agent’s Equity (“**Agent’s Equity**” and together with AccessEasy collectively, the “**Assignees**”). The total amount owing in respect of the six (6) trades involving the Assignees in connection these Commission Advance Agreements total approximately \$31,968 (assuming all related trades close).
67. Each of the Assignees have their own respective Commission Advance Agreements, which include trust provisions. The trust provision language in each of the respective Commission Advance Agreements differ as follows:
- (a) With respect to the Commission Purchase Agreement (the “**AccessEasy Agreement**”) of AccessEasy there is a trust provision which states:

“The Broker hereby acknowledges the Sales Representative’s entitlement to the Sales Commission and acknowledges receipt of the foregoing irrevocable authorization and direction and hereby undertakes to pay the Payment Obligations to AccessEasy out of the Sales Commission immediately following receipt of the commission and finalization of the related commission reconciliations and agrees that after the Closing Date all amounts it may hold on account of the Sales Commission will be held in trust for the benefit of AccessEasy until disbursed by it to AccessEasy in accordance with this Agreement.”
 - (b) Similarly, with respect to the Commission Sale Agreement (the “**Agent’s Equity Agreement**” and together with the AccessEasy Agreement, collectively referred to as “**Commission Advance Agreements**”) of Agent’s Equity there is a trust provision which states:

“...the Commission Purchased will be held by the Broker in trust pending immediate payment to “Agent's Equity, that there are no disputes, claims, setoff, counterclaims, judgments or garnishees against the Commission Purchased, or any other matter which the Sellers are aware of which would affect the payment of the Commission Purchased to Agent's Equity.”

and

“Upon acceptance of this agreement, and receipt of the Net Advance, notwithstanding that the Purchaser and/or Vendor of the "Property" may change, the Broker agrees to collect and hold in trust for Agent's Equity, the Commission Purchased upon successful completion of the sale...”

68. Based on the Receiver’s review of each of the respective Commission Advance Agreements, that in addition to the TRP Salesperson, the Broker of Record or Associated Broker of Record appear to have executed the documents on behalf of TRP Realty.
69. On June 18, 2018, AccessEasy put the Receiver on notice of its trust claim and advised that “we expect MNP Ltd., as the receiver, to ensure that any and all payment and trust obligations that TheRedPin has to AccessEasy, as provided in the Commission Purchase Agreements, will be carried out in a timely manner and in full without setoff, deduction or holdback of any kind by you”.
70. The Secured Creditors take the position that the TRP Agent’s commission is subject to the Commission Trust Decision and that the Assignee’s entitlement to the commissions is subordinate to the claim of the Secured Creditors.
71. The Commission Trust Decision did not specifically address the priority of the Assignees’ claim vis-à-vis the Secured Creditors.
72. The Receiver proposes to create a reserve in the amount of \$31,968 (the “**Assignees Reserve**”) against the Excess Funds pending direction of the Court or mutual agreement between the Assignees and the Secured Creditors.

The Outside Brokerages

73. As noted above, the September 10th Order directed the Receiver to pay certain cooperating brokers in satisfaction of commissions owed to these cooperating brokers. On September 19, 2019, the Receiver paid these parties \$318,255.53 (inclusive of HST).
74. The Receiver is not aware of claims being filed with ClaimsPro claims for two (2) trades² (the “**Remaining Trades**”) where cooperating brokers are owed commissions on completed trades and where funds (i.e. purchase deposits) to satisfy payment of these commissions were held in trust on the date of receivership.
75. The Secured Creditors have previously acknowledged the Outside Brokerages have a trust claim in respect of those trades. Accordingly, the Receiver proposes to reserve an amount of \$30,368.75 for such trades and the associated HST (the “**ClaimsPro Reserve**”) against the Excess Funds pending receipt of a valid claim from ClaimsPro in respect of the Remaining Trades.

Cashback Buyers

76. As an incentive on certain real estate transactions, buyers who bought through TRP Realty were entitled to receive cash rebates (generally between 10% and 25%) of the net commissions³ earned on the real estate transaction (the “**Cashback Rebate**”) on the closing of the transaction and TRP Realty’s receipt of the commissions. In the ordinary course where a Cashback Rebate is due, once the net commission is received and deposited into TRP’s Commissions Account, the amount of the associated Cashback Rebate is transferred to TRP Realty’s operating account. It is from the operating account that a cheque is then issued to the Cashback Buyer. Based on the information made available to the Receiver by TRP Realty, the total Cashback Rebates outstanding amount to approximately \$443,000 (assuming all related trades close).
77. Under the terms of the arrangement, it appears as if parties entitled to a Cashback Rebate have an unsecured claim against TRP Realty.

² Associated with 150 East Liberty Street, Unit 1311 (World Class Realty Point) and 1420 Dupont Street, Unit 413 (Brad Lamb Realty Inc.)

³ Represents the percentage of the total commissions after the payment of the Outside Brokerage’s commissions

Cash in Bank – TRP BC and TRP Brokerage

78. Upon its appointment, the Receiver requested that the Debtors' bank freeze the Debtors bank accounts and transfer the funds to the Receiver. In addition to transferring the funds belonging to the Debtors at the Date of Appointment, the Royal Bank of Canada transferred \$1,398.94 and \$13,539.52 on deposit in favour of TRP Mortgage and TRP BC respectively. In addition, during the course of the receivership, the Receiver received monies totaling \$9,223.06 on account of TRP Mortgage.
79. The Receiver is not appointed over the property of TRP Mortgage and TRP BC and accordingly, is unaware of their financial position or of its debts to creditors. The Secured Creditors have security over the assets of TRP Mortgage and TRP BC. Nonetheless, given the foregoing, the Receiver is not able to distribute these funds to the Secured Creditors and is proposing to reserve an amount of \$24,161.52 (the "**Subsidiary Funds Reserve**").

Professional Fees and Disbursements

80. Pursuant to Paragraph 18 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable professional fees in each case at their standard rates and charges and the Receiver and counsel to the Receiver have been granted 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 as security for payment of the professional fees (the "**Receiver's Charge**").
81. Pursuant to paragraphs 19 and 20 of the Appointment Order, the Receiver and A&B shall pass their legal accounts as referred to this Court and is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the professional fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its professional fees when and as approved by the Court.
82. The Receiver and A&B's fees and disbursements are paid through January 31, 2019 and March 17, 2020, respectively, and remain subject to taxation.
83. The Receiver proposes to create a reserve in the amount of \$114,294 in respect of its unpaid fees and disbursements (the "**Professional Fees Reserve**").

IX DISTRIBUTION OF FUNDS

84. Given the foregoing, the Receiver seeks authorization to make the Proposed Distribution, representing the Excess Funds remaining after deducting the Reserves. The Proposed Distribution is calculated as follows:

Description	Amount
Excess Funds	\$2,575,691
Less:	
HST Reserve	\$115,149
The Costs Reserve	\$45,000
Pre-Construction Commissions Reserve	\$485,283
The Assignees Reserve	\$31,968
The ClaimsPro Reserve	\$30,369
Subsidiary Funds Reserve	\$24,162
Professional Fees Reserve	\$114,294
Contingency Reserve	\$100,000
Total Reserves	\$946,225
Proposed Distribution	<u>\$1,629,466</u>

85. The Receiver also seeks authorization for further interim distributions to be made from time to time, at its discretion and with the consent of the Secured Creditors or upon further Order of the Court. In exercising its discretion, the Receiver would consider, among other things, changes in

the quantum of the Reserves' components and the funds necessary to administer the receivership.

86. The Receiver recommends the Proposed Distribution for the following reasons:

- (a) the Receiver's counsel is of the opinion that, subject to certain standard assumptions and qualifications, the Secured Creditors have valid and enforceable security over all of the Debtor's assets;
- (b) the Proposed Distribution is less than the Trilogy Secured Indebtedness;
- (c) sufficient funds intend to be reserved to satisfy the Priority Payables and to fund the administration of the receivership; and
- (d) in addition of the Reserves, there remains approximately \$3,043,000 (inclusive of HST) to be collected in Pre-Construction Receivables to collect.

X CONCLUSION

87. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in paragraph 16 of the Third Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of May, 2020

MNP LTD.,

in its capacity as Court-appointed Receiver of
TheRedPin, Inc. and TheRedPin.com Realty Inc.
and not in its personal or corporate capacities
Per:



Sheldon Title
Licensed Insolvency Trustee

TAB 2(a)

Appendix "A"

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE *HAINES*)

THURSDAY, THE 14TH
DAY OF JUNE, 2018

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Respondents



ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing MNP Ltd. ("**MNP**") as receiver (the "**Receiver**") without security, of all of the assets, undertakings and properties of the Respondents, TheRedPin, Inc. and TheRedPin.com Realty Inc. (the "**Debtors**"), acquired for, or used in relation to a business carried on by the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Jared Kalish sworn June 13, 2018, including the exhibits thereto, and on hearing the submissions of counsel for the Applicant and such other counsel listed on the Counsel Slip, no one appearing for the other parties listed on the service list although duly served as appears from the affidavit of service of Aryan Ziaie sworn June 13, 2018, and on reading the consent of MNP to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, MNP is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**").

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 Debtors, 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 Debtors;
- (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 purchase such equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;

- (i) 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 Debtors, 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;
- (j) 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 and, without limiting the generality of the foregoing, the Receiver is hereby authorized to carry out a sales process for the Property in accordance with the steps and timelines set out in **Schedule "A"** attached hereto;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, with approval of this Court, and in such case notice under subsection 63(4) of the *Ontario Personal Property Security Act* shall not be required;
- (l) 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;
- (m) 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;
- (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 the Debtors;

- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (q) 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 Debtors, (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 Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the 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 5 or in paragraph 6 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.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, 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 Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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

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

CONTINUATION OF SERVICES

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

Order are paid by the Receiver in accordance with normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **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 in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees or independent contractors of the Debtors shall remain the employees or independent contractors of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees or independent contractors. 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

15. **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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **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

17. **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

18. **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, 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.

19. **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 Commercial List of the Ontario Superior Court of Justice.

20. **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.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or

otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL: mnpdebt.ca/theredpin

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

27. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Applicant's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the Electronic Commerce Protection Regulations, Reg. 81000-2-175 (SOR/DORS).

GENERAL

28. **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.

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

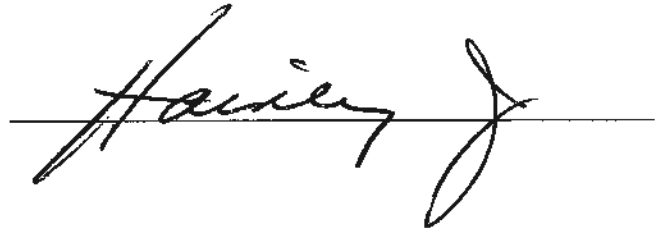
30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

31. **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.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, 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 Debtors' estate with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party

likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

A handwritten signature in cursive script, appearing to read "Haining J.", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 14 2018

PER / PAR: 

SCHEDULE "A"

SALE PROCESS AND TIME LINE

1. Definitions. All capitalized terms used but not defined herein shall have the meaning ascribed to them in the order of the Ontario Superior Court of Justice [Commercial List] (the "Court") dated June 14, 2018 (the "Receivership Order") authorizing, *inter alia*, the Receiver to conduct the marketing and sale of all or part of the Property of TheRedPin, Inc. and TheRedPin.com Realty Inc. (collectively the "Company") in accordance with the terms hereof.
2. Contacting Interested Parties. Commencing on the week of June 18, 2018 the Receiver shall contact potential purchasers of the Property or business of the Company and advise such parties of the opportunity to acquire the Property or business (the "Opportunity").
3. Advertisement. During the week of June 18, 2018, or as soon thereafter as practical, the Receiver shall advertise the Opportunity one time in The Globe and Mail (National Edition).
4. Due Diligence. During the week June 18, the Receiver shall make available to prospective purchasers (collectively, the "Prospective Purchasers"), upon receipt of an executed confidentiality agreement from a Prospective Purchaser, (a) a confidential information memorandum describing the Property and Opportunity in sufficient detail as is reasonably required by Prospective Purchasers to consider submitting an offer for the Property and facilitate the conduct of due diligence by Prospective Purchasers; and, (b) access to an electronic data room, prepared and maintained by the Receiver, containing documents and information pertaining to the Opportunity.
5. Offer Deadline. Any offers to purchase the Property must be submitted in writing to and received by the Proposal Trustee at 111 Richmond Street West, Suite 300, Toronto, ON, M5H 2G4, attention: Alan Shiner, by no later than 5:00pm (E.S.T.) on July 23, 2018 (the "Offer Deadline").
6. Qualifying Offers. The Receiver in consultation with FIREPOWER DEBT GP INC, AS AGENT and Trilogy Growth Fund LP the (the "Secured Creditors"), shall determine whether any offers are "Qualifying Offers". Qualifying Offers must, among other things, meet the following minimum criteria:
 - (a) the offer must be for a purchase price that the Receiver, in consultation with the Secured Creditors, would accept (subject to such further negotiation as may take place in accordance with this sales process);
 - (b) the offer must be accompanied by a deposit in the form of certified cheque payable to the Receiver in Trust which is equal to at least 10% of the aggregate purchase price payable under the offer;
 - (c) the offer must be open for acceptance until July 25, 2018
 - (d) the offer must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the offeror's obligation to complete the

transaction other than court approval;

- (e) the offeror must provide written evidence satisfactory to the Receiver of its ability to consummate the transaction;
 - (f) the offer must be accompanied by a copy of the offer blacklined to the form of purchase and sale agreement to be provided to Prospective Purchasers by the Receiver; and
 - (g) the offer must be on such terms and conditions as are typical in the context of sales in the context of court appointed receiver (and as will be set out in the form of sale agreement to be provided by the Receiver), which terms shall include without limitation: (i) the sale of the Property on an "as is, where is" basis, without any representations, warranties or conditions made or granted in connection therewith; (ii) that the completion of the transaction is conditional on the granting of an approval and vesting Order by the Court; and, (iii) a closing by no later than August 16, 2018.
7. Negotiation of Qualifying Offers. The receiver may, in consultation with the Secured Creditors, enter into negotiations with the offerors in respect of one or more of the Qualifying Offers in an effort to ascertain the highest and best offer. Additionally, it is open to the Receiver, in consultation with the Secured Creditors, to elect not to accept any of the Qualifying Offers, whether before or after negotiation of the same. The Receiver reserves the right to accept a qualifying offer prior to the offer deadline
8. Winning Offer. By no later than July 27, 2018, the Receiver shall, in consultation with the Secured Creditors, determine the highest and best offer with respect to the Property (the "**Winning Offer**"), at which point the Receiver shall enter into a definitive agreement in connection therewith (the "**Sale Agreement**"), subject to Court approval.
9. Court Approval of the Winning Offer. On or before August 10, 2018, the Receiver shall make a motion to the Court for approval of the Sale Agreement and vesting order in respect of the same.
10. Return of Deposits. All deposits received (except such deposit forming part of the Winning Offer) shall be held by the Receiver in Trust until the execution of the Sale Agreement and, thereafter, returned to the respective Prospective Purchasers thereafter. The deposit forming part of the winning Offer shall be dealt with in accordance with the Sale Agreement.

Modifications. The Receiver reserves the right to amend the sales process steps and time line.

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that MNP Ltd., the receiver (the "**Receiver**") of the assets, undertakings and properties of TheRedPin, Inc. and TheRedPin.com Realty Inc. (the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 14th day of June, 2018 (the "**Order**") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

MNP Ltd., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____

Name:

Title:

TAB 2(b)

Appendix “B”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Respondents

**FIRST REPORT TO THE COURT SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

August 23, 2018

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APPENDICES

- Appendix “A” Appointment Order, date June 14, 2018
- Appendix “B” Personal Property Registry search report (file currency date June 17, 2018) for TheRedPin, Inc.
- Appendix “C” Personal Property Registry search report (file currency date June 17, 2018) for TheRedPin.com Realty Inc.
- Appendix “D” Security opinion letter with respect to the security held by FirePower Debt GP Inc., as agent, as prepared by Aird & Berlis LLP, dated July 6, 2018
- Appendix “E” Security opinion letter with respect to the security held by Trilogy Growth Fund LP as prepared by Aird & Berlis LLP, dated July 6, 2018
- Appendix “F” Teaser letter
- Appendix “G” Advertisement of the Sales Process in the Globe & Mail (National Edition) newspaper – June 21, 2018
- Appendix “H” Agreement of Purchase and Sale dated August 21, 2018 entered into between the Receiver and Firepower Gap Debt II LP and Firepower Gap Debt Limited Partnership [REDACTED]
- Appendix “I” Receiver's Interim Consolidated Statement of Receipts and Disbursements, as at August 21, 2018
- Appendix “J” Affidavit of Matthew Lem (sworn August 23, 2018), in connection with Receiver's fees and disbursements for the period of June 1, 2018 to July 31, 2018
- Appendix “K” Affidavit of Sam Babe (sworn August 21, 2018), in connection with Receiver's legal counsel's fees and disbursements for the period of June 18, 2018 to July 31, 2018
-
- Confidential Appendix “1” Summary of Offers Received
- Confidential Appendix “2” Agreement of Purchase and Sale dated August 21, 2018 entered into between the Receiver and Firepower Gap Debt II LP and Firepower Gap Debt Limited Partnership

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
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Respondents

**FIRST REPORT TO THE COURT SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

August 23, 2018

I INTRODUCTION AND PURPOSE OF THIS REPORT

1. On June 14, 2018 (the “**Date of Appointment**”), MNP Ltd. was appointed as receiver (the “**Receiver**”) without security, of all assets, undertakings and properties of TheRedPin, Inc. (“**TRP Inc.**”) and Theredpin.Com Realty Inc. (“**TRP Realty**” and together with the TRP Inc., collectively hereinafter referred to as the “**Debtors**”) acquired for or used in relation of a business carried on by the Debtors, including all proceeds thereof (the “**Property**”) pursuant to an Order, dated June 14, 2018 (the “**Appointment Order**”) issued by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”). A copy of Appointment Order is attached hereto as **Appendix “A”**.
2. The purpose of this report (the “**First Report**”) is to:

- (a) inform the Court on the activities of the Receiver since its appointment and to provide background information about the Debtors, the Property and the results of the Sales Process (as such term is later defined);
- (b) provide support for the Receiver's request for an Order(s) of the Court, *inter alia*:
 - (i) approving the Agreement of Purchase and Sale dated August 21, 2018 (the "**APS**") entered into between the Receiver and Firepower Gap Debt II LP and Firepower Gap Debt Limited Partnership (collectively, the "**Purchaser**"), and authorizing the Receiver to take all steps necessary to complete the transaction contemplated under the APS;
 - (ii) vesting title in and to the Purchased Assets (as such term is defined in the APS) in the Purchaser or as it may direct, free and clear of any encumbrances, save and except as otherwise contemplated by the APS;
 - (iii) sealing certain commercially sensitive documents, pending the closing of the contemplated APS; and
 - (iv) approving the Receiver's activities to date and those of its independent legal counsel, Aird & Berlis LLP ("**A&B**"), as set out in this Report, and the fees and disbursements of the Receiver and A&B.

II TERMS OF REFERENCE

3. In preparing this Report, the Receiver has relied on information regarding the Debtors and the Property:

- (a) included in the motion records and other materials filed with the Court by the Applicant in connection with these proceedings. In particular, information included in:

- (i) the affidavit of Jared Kalish sworn June 13, 2018 (the “**Kalish Affidavit**”), which was Tab 2 to the Application Record, dated June 13, 2018, filed with this Court in support of the application for the Appointment Order;
 - (ii) information provided by the Debtors’ directors and management, the Applicants and their respective legal counsel; and
 - (b) as otherwise made available or provided to the Receiver and its counsel.
4. Except as described in this Report, the Receiver has not audited, reviewed 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 of the Chartered Professional Accountants of Canada Handbook.
5. All references contained herein to a buyer(s) also include a tenant(s) and all references contained herein to a seller(s) also include a landlord(s), unless otherwise specified. Accordingly, and in the context of TRP Realty’s operations, all references contained herein to an agreement(s) of purchase and sale also include a lease agreement(s), unless otherwise specified.
6. All currency references contained herein are in Canadian Dollars, unless otherwise specified. All capitalized terms not otherwise defined herein shall have the meanings as defined in the Appointment Order, unless otherwise specified.

III BACKGROUND – THE DEBTORS AND THE PROPERTY

7. TRP Inc. and TRP Realty are both federally incorporated pursuant to the *Canada Business Corporations Act* and operated from leased offices located at 5 Church St., Toronto, Ontario (the “**Premises**”).

8. Founded in 2012, TRP Inc. developed a technology-enabled real estate brokerage that provided an online platform to consumers, facilitating intelligent and simple home buying (the “**Tech Platform**”), that allowed users looking to lease or buy a property to search, save and share listings, as well as connect with real estate agents through an online and searchable database of active residential listings, including listings for new and pre-construction projects.
9. TRP Realty is a wholly owned subsidiary of TRP Inc., providing real estate brokerage services and utilizing TRP Inc.’s technology platform. TRP Realty is a real estate brokerage registered under Ontario’s *Real Estate and Business Brokers Act, 2002*. TRP Realty generated its revenues through real estate commissions it earned on the leasing, purchasing and sale of properties. At the Date of Appointment, there were sixty-three (63) active real estate salespersons operating under TRP Realty’s real estate brokerage (collectively, the “**TRP Salespersons**” or individually, the “**TRP Salesperson**”) and one (1) Broker of Record.
10. It is the Receiver’s understanding that the Debtors tried to raise debt and equity since the beginning of 2018 to cover the negative cash flows the Debtors were experiencing and to fund further software development. Unfortunately, the Debtors were unable to raise any funds.

IV RECEIVER’S ACTIVITIES

11. Since its appointment, the Receiver’s activities have included:
 - (a) Preserving and protecting the Property, including taking possession and control of the Premises, changing of locks, access and alarm codes, the backing-up and the securing of data and the source code located in the “cloud”, continuation of data service (e.g. Google, Amazon Web Services, brokerWolf, Quickbooks, etc.), redirection of mail, arranging the insurance coverage, etc.;

- (b) posting information, Court materials and other documents relating to the receivership on the Receiver's Case Website at: www.mnpdebt.ca/theredpin;
- (c) preparing and issuing the statutory Notice and Statement of the Receiver (the "**Receiver's Notice**"), pursuant to s. 245 and s. 246 of the *Bankruptcy and Insolvency Act*. The Receiver's Notice was mailed to all known creditors and faxed to the Office of the Superintendent of Bankruptcy on June 25, 2018;
- (d) carrying out the marketing and sales process and the preparing of materials related thereto, as approved and outlined in Schedule "A" of the Appointment Order (the "**Sales Process**"), which will be discussed in greater detailed later in this Report;
- (e) retaining of professionals to complete the necessary corporate income tax returns and supporting material in connection with TRP Inc.'s federal Scientific Research and Experimental Development and related provincial tax refund claims ("**SR&ED**");
- (f) retaining of key employees on a contractual and interim basis in order to assist with the Sales Process, preparation of the SR&ED claim, and/or the collection of the commissions receivables owing to TRP Realty;
- (g) arranging for and obtaining an appraisal of the tangible capital assets of TRP Inc. by Canam-Appraiz Inc.;
- (h) realizing on the Property, including the collection of commissions, as more particularly described later in this Report. To that end, the Receiver has not continued the operations of TRP Realty but rather has settled existing trades previously generated under the brokerage, including collecting commissions due and disbursing funds to the sellers or buyers in connection with deposits received on agreements of purchase and sale;

- (i) opening of new bank accounts for the commissions collections, real estate trust deposits, and for receivership operations;
- (j) issuing a final payroll, including vacation pay to the remaining employees, as well as the issuing of Records of Employment to same employees;
- (k) commencing the administration of the Wage Earner Protection Program (“**WEPP**”), including obtaining an extension of time to submit the information forms;
- (l) facilitating and assisting the Real Estate Council of Ontario (“**RECO**”) with its inspection of TRP Realty’s books and records and bank accounts;
- (m) notifying and advising Dundead Summer 2011 Collection (GP) Inc., landlord of the office space municipally known at 36 Toronto Street, Suite 1100, Toronto, Ontario (the “**Subleased Space**”), and hear.com-Simply Good Hearing Inc., the subtenant for the Subleased Space, that the Receiver would not be performing TRP Inc.’s obligations under the respective contracts pursuant to paragraph 3(c) of the Appointment Order;
- (n) vacating of the Premises as of July 31, 2018 and returned possession to the landlord;
- (o) entering into various communications with the TRP Salespersons, Outside Brokerages (as such term is later defined), the Lenders (as such term is later defined) and other creditors in connection with the receivership proceeding; and
- (p) preparing this Report.

12. The Receiver has engaged A&B as its independent legal counsel and has obtained from A&B a legal opinion in respect of the validity and enforceability of the security held by the Applicant and Trilogy (as such term is later defined).

V THE DEBTORS' PROPERTY

TRP Inc.'s Property

13. At the Date of Appointment, TRP Inc. had two (2) general operating bank accounts, one at Royal Bank of Canada ("**RBC**") the other at The Toronto- Dominion Bank ("**TD Bank**") that had balances of approximately \$97,100 and \$7,300, respectively.
14. TRP Inc.'s primary asset is the Tech Platform and associated source code and other intellectual property it developed.
15. In addition to the Tech Platform, TRP Inc.'s other assets are prepaids/deposits, various office equipment, furniture and capitalized leasehold improvements (net book value as at May 31, 2018 of approximately \$93,200), as well as anticipated SR&ED gross refund (estimated to amount to approximately \$125,000) and a Harmonized Sales Tax ("**HST**") refund (estimated to amount to approximately \$17,470).
16. Included in the office furniture and equipment is a Xerox copier associated with an unperfected security of National Leasing (as such term is later defined). National Leasing has confirmed and acknowledged to the Receiver that it does not enjoy any priority such equipment as a consequence.
17. TRP Inc. has in addition to TRP Realty, two (2) other wholly owned subsidiaries: TheRedPin Mortgage Brokerage Inc. ("**TRP Mortgage**") and TheRedPin Brokerage, BC Inc. ("**TRP BC**").

TRP Realty's Property

18. At the Date of Appointment, TRP Realty had a general operating bank account at RBC that had a balance of approximately \$122,200. In addition, RBC held a Guaranteed Investment Certificate

("GIC") in the amount of \$25,000 in support of the VISA credit card facility (the "**RBC VISA Facility**") that RBC had provided to TRP Realty.

19. TRP Realty's primary asset is its commissions receivables due in connection with leasing, purchase and listing transactions associated with resale, new and pre-construction condominium properties (the "**Commissions Receivables**"). The Commissions Receivables outstanding at the Date of Appointment, as advised by TRP Realty, totaled approximately \$6.65 million, and covered over 730 properties; some of the Commissions Receivables are not expected to be collected until sometime in 2023 due to being associated with pre-construction condominium transactions.
20. As will be discussed in greater detail in a report to be separately filed with this Court in connection with an Advice and Direction Motion¹, the Commissions Receivables are subject to potential interests of (i) the co-operating brokerages (the "**Outside Brokerages**" or individually, the "**Outside Brokerage**") where TRP Realty was the listing brokerage, (ii) the TRP Salespersons, and (iii) TRP Realty itself, based on the commission split as set out in various agreements. TRP Realty had a separate bank account at RBC where it deposited and distributed commissions from (the "**Commissions Account**"). At the Date of Appointment, the Commissions Account had a balance of approximately \$118,800, which has since been collected by the Receiver and deposited into a separate bank account.
21. In addition to the Commissions Account and TRP Realty's general operating account, TRP Realty maintained a designated trust account at TD Bank for deposits received on real estate agreements of purchase and sale, where TRP Realty was the listing brokerage (the "**Real Estate Trust**")

¹ Pursuant to timetable agreed to by certain stakeholders, the Receiver's Second Report to the Court in connection with the Advice and Direction Motion is to be served by August 24, 2018, with the expected Motion to be heard on October 22, 2018.

Account”). At the Date of Appointment, the Real Estate Trust Account had a balance of approximately \$707,900, which has since been collected by the Receiver and deposited into a separate bank account. RECO has reviewed this account and determined that all funds were accounted for.

Property Realizations

22. In addition to the Purchased Assets which are subject to the APS discussed later in this Report, the Receiver has, as of the date of this Report, realized the following:

- (a) Collected monies in the various accounts of the Debtors, TRP Mortgage and TRP BC held at RBC and TD Bank;
- (b) Collected approximately \$15,970 representing the GIC from RBC net of the indebtedness owing on the RBC VISA Facility;
- (c) Collected Commissions Receivables of approximately \$907,600; and
- (d) Miscellaneous refunds of approximately \$1,460;

VI THE DEBTORS' LIABILITIES

Deposits Held in Trust and Commissions Payables

23. As mentioned above, TRP Realty maintained the Real Estate Trust Account in connection with deposits received on agreements of purchase and sale where it was the listing brokerage. These deposit funds were held in trust pending the settlement of the related real estate transactions – closing of a sale/lease or termination of the agreement.

24. The largest group of TRP Realty's creditors are the TRP Salespersons and the Outside Brokerages for their commissions on real estate transactions. As will be discussed in detail in a report to be

separately filed with this Court, there are competing and opposing positions being taken with respect to whether the commissions collected and to be collected by TRP Realty are impressed with a trust or not. In addition, certain of the commissions have been assigned by certain TRP Salespersons to third party lenders in connection with commission advance arrangements.

Secured Creditors

25. An Ontario *Personal Property Security Act* (“**PPSA**”) registry search conducted (file currency date: June 17, 2018) on TRP Inc. identified three (3) registrations:
 - (a) National Leasing Group Inc. (“**National Leasing**”) – one (1) registration;
 - (b) The Applicant – one (1) registration; and
 - (c) Trilogy Growth Fund LP (“**Trilogy**”) – one (1) registration.
26. An Ontario PPSA registry search conducted (file currency date: June 17, 2018) on TRP Realty identified five (5) registrations:
 - (a) The Applicant – one (1) registration;
 - (b) Trilogy – one (1) registration; and
 - (c) RBC – three (3) registrations.
27. Copies of the PPSA registry searches on TRP Inc. and TRP Realty (file currency date: June 17, 2018) are attached hereto as **Appendix “B”** and **“C”**, respectively.
28. As set out in the Kalish Affidavit:
 - (a) Pursuant to a loan agreement dated February 15, 2017, as amended (the “**Loan Agreement**”), the Applicant, acting as agent for FirePower Asset Management Inc.² (“**FirePower Asset**”) and FirePower GAP Debt LP (“**FirePower GAP Debt**”) and together

² As of June 15, 2018, FirePower Asset transferred its interest in the Loan Agreement to FirePower GAP Debt II LP.

with the Applicant and FirePower Asset, collectively the “**Lenders**”) loaned \$3,500,000 to TRP Inc. As at June 7, 2018 the indebtedness (principal and accrued interest) owing by the Debtors to the Applicant and the Lenders amounted to \$3,711,479.96.

- (b) In support of TRP Inc.’s obligations under the Loan Agreement, TRP Inc. granted in favour of the Applicant, as agent for itself and the Lenders, a General Security Agreement (“**GSA**”);
 - (c) In further support of the TRP Inc.’s obligations under the Loan Agreement, TRP Realty granted an unlimited secured guarantee and a GSA, as guarantor, in favour of the Applicant, as agent for itself and the Lenders;
 - (d) Chaitons LLP (“**Chaitons**”) is legal counsel to the Lenders;
 - (e) Pursuant to a term loan agreement dated January 23, 2018 (the “**Trilogy Agreement**”) entered into between Trilogy and TRP Inc., Trilogy loaned a total of \$2,500,000 to TRP Inc. As at June 8, 2018 the indebtedness (principal, accrued interest and costs) owing by the Debtors to the Applicant and the Lenders amounted to \$2,685,432.68;
 - (f) An intercreditor agreement exists between Trilogy, the Applicant as agent for the Lenders, TRP Inc., TRP Realty and certain other guarantors; and
 - (g) Fasken Martineau DuMoulin LLP (“**Faskens**”) is legal counsel to Trilogy.
29. As noted earlier in this Report, the Receiver has obtained a legal opinion from A&B, which has confirmed the validity and enforceability of the security held by the Lenders and Trilogy. Copies of the legal opinions on the security of the Lenders and Trilogy are attach hereto as **Appendix “D”** and **“E”**, respectively.

30. National Leasing is secured over certain telephone equipment leased by TRP Inc. Notwithstanding, National Leasing has subsequently (after the Appointment Date) notified the Receiver that it is abandoning such equipment.
31. RBC is secured over the GIC held, as noted earlier in this report, in connection with the RBC VISA Facility. The indebtedness to RBC in connection with the RBC VISA Facility amounted to \$9,025.17 and was repaid/offset when the net amount of the GIC was remitted to the Receiver.
32. A detailed discussion of the secured creditors and the ranking of their security will be provided to the Court prior to any proposed distribution to any creditor.

Unsecured Creditors

33. Based on the information provided to the Receiver by TRP Inc., TRP Inc.'s unsecured creditors, excluding employees, amount to approximately \$400,000.
34. Based on the information provided to the Receiver by TRP Realty, TRP Realty's unsecured creditors, excluding agents and employees, amount to approximately \$85,000.

Contingent Creditor

35. Notwithstanding the stay of proceedings established by the Appointment Order, on July 17, 2018 Tarik Gidamy filed a Statement of Claim in the Ontario Superior Court of Justice claiming damages for breach of contract, wrongful dismissal, unjust enrichment and common law damages against the Debtors, as well as TRP Mortgage and TRP BC.

Employee Claims

36. On July 15, 2018, the Receiver allowed the payrolls for the Debtors to go through the Debtors' existing bank accounts; such payrolls amounted to approximately \$48,500 and \$50,000 for TRP

Inc. and TRP Realty, respectively. As all of the employees of the Debtors were paid their outstanding wages, including vacation pay, the only employee claims that remain outstanding are with respect to termination (the “**Wage Amounts**”). The Wage Amounts for TRP Inc. and TRP Realty are estimated to amount to approximately \$29,000 and \$52,100, respectively, and may be recovered³ by the Debtors’ employees through the WEPP.

CRA Claims

37. A trust examination has been arranged for August 13, 2018 in connection with the Debtors’ HST and source deductions accounts. Based on the Receiver’s review of the Debtors’ books and records, the Receiver believes that, as at the date of this Report, there exists only a net HST liability of approximately \$36,150 by TRP Realty in connection with the May 2018 and June 2018 stub periods.

VII THE SALES PROCESS

The Receiver’s Sales Process

38. Being offered for sale by the Receiver were the Debtors’ right, title and interest in and to:
- (a) The proprietary source code for the Tech Platform;
 - (b) The web addresses/domain names, phone numbers and fax number;
 - (c) The Debtors’ databases;

³ The WEPP covers eligible wages up to an amount equal to four times the maximum weekly insurable earnings under the *Employment Insurance Act* (\$3,976.92 for 2018), minus the amounts prescribed by the *Wage Earner Protection Program Regulations*.

- (d) The office furniture, computers, handheld electronic devices, excluding leased or financed assets; and
- (e) The Premises lease, subject to the landlord's approval.

(collectively, the "**Property For Sale**")

39. The following steps were taken by the Receiver in connection with the Sales Process:

- (a) On June 16, 2018, the Receiver distributed via email a brief interest solicitation letter (the "**Teaser**") to 86 prospective purchasers. The distribution list included:
 - (i) Companies identified by TRP Inc. as potentially having an interest in the business;
 - (ii) Established Canadian and US-based technology and real estate brokerage companies;
 - (iii) Canadian and US-based venture capital firms; and
 - (iv) Companies identified by the Receiver and its MNP Corporate Finance colleagues who were known to invest in technology companies.
- (b) The teaser was also sent to all MNP LLP partners and managers across Canada for further distribution to their clients and contacts. A copy of the teaser is attached as **Appendix "F"**.
- (c) On June 21, 2018, the Receiver advertised the acquisition opportunity in the National Edition of the Globe & Mail newspaper. A copy of the advertisement is attached as **Appendix "G"**.

- (d) An online data room was set up containing additional information and documents in respect of the Debtors and their assets, including a Confidential Information Memorandum (“**CIM**”). Access to the online data room was provided to all interested parties once they had signed a confidentiality and non-disclosure agreement (“**NDA**”).
 - (e) In addition to the CIM and other relevant information concerning the Sales Process and the Property For Sale, was a template version of an asset purchase agreement and instructions for submitting same by the offer deadline of 5:00 PM (Toronto time) on July 23, 2018 (the “**Offer Deadline**”).
40. Twenty-nine (29) interested parties executed NDAs and were provided access to the online data room and six (6) interested parties ultimately proceeded with a meeting with management of the Debtors, a site visit of the Premises and a demonstration of Tech Platform technology, all of which the Receiver facilitated.
41. By the Offer Deadline, the Receiver had received two (2) formal offers and an offer in a brief email. However, and pursuant to the Sales Process, following consultation with the Lenders, the Receiver determined that none of the offers received constituted Qualifying Offers (as such term is defined in Schedule “A” of the Appointment Order) and as a result rejected all of the offers received and returned the deposits. A summary of the offers received by the Offer Deadline is attached as **Confidential Appendix “1”**.

FirePower Offer

42. As no Qualifying Offers were received, the Purchaser, who is also the Lenders, submitted an offer.

VIII THE APS

43. A redacted copy of the signed APS is attached hereto **Appendix “H”**, with a full unredacted copy of the signed APS is attach as **Confidential Appendix “2”**.
44. Under the APS, the Purchased Assets are defined as “all the undertaking, property and assets of each of the Companies [the Debtors], of whatever nature or kind, that relate to or are used in connection with the operation of the Business (other than the Excluded Assets) wheresoever situated”. The Excluded Assets (as such term is defined in the APS) includes all:
- (i) tax refunds and claims, including SR&ED claims;
 - (ii) tax loss carry-forwards;
 - (iii) investment and other tax credits;
 - (iv) cash and cash equivalents on hand or in banks or other depositories, life insurance proceeds receivable and income taxes refundable;
 - (v) the current and future accounts receivable, including the Commissions Receivables;
 - (vi) any and all contracts or agreements of the Debtors with the exception of the agreements identified to be assumed by the Purchaser;
 - (vii) any assets that the Purchaser notifies the Receiver, at any time prior to Closing, that the Purchaser wishes to exclude from the Purchased Assets (which exclusion, for greater certainty, shall not result in an adjustment to the Purchase Price); and
 - (viii) the shares owned by TRP Inc. in the capital of TRP Realty and any other subsidiary affiliate of TRP Inc., including TRP Mortgage and TRP BC.

45. The APS contemplates the Purchase Price being paid through the extinguishment of a portion of the debt due to the Lenders equal to the Purchase Price.
46. The Receiver is of the opinion that the transaction negotiated with the Purchaser, as detailed in the APS, is more than what a third party and the market is prepared to pay for the Purchased Assets and should be approved for the following reasons:
- (a) A broad marketing of the Property For Sale was conducted by the Receiver in accordance with the Sales Process approved by the Appointment Order;
 - (b) The Purchase Price (as such term is defined in the APS) is significantly higher than the two (2) offers received through the Sales Process;
 - (c) The appraisal of the Debtors' realizable office furniture and equipment obtained by the Receiver indicated such assets had a gross forced liquidation value of approximately \$24,255; and
 - (d) Trilogy, as first secured creditor, is supportive of the contemplated transaction.
47. As part of the APS, the Purchaser requires an Order approving the sale and vesting title to the Purchased Assets in the Purchaser, free and clear of any and all encumbrances.
48. Pursuant to Paragraph 3(k) of the Appointment Order, the Receiver requires Court approval to sell the Purchased Asset and it therefore requests the authorization of the Court to enter into and complete the APS and vest title in the Purchased Assets in favour of the Purchaser or as it may direct, free and clear of any encumbrances, save and except as otherwise contemplated by the APS.

49. Given the commercially sensitive nature of certain documents and the potential impact on the closing of the contemplated transaction, the Receiver is requesting that certain documents identified as “Confidential Appendix” be sealed pending the closing of a transaction contemplated under the Sales Process.

IX STATEMENT OF RECEIPTS AND DISBURSEMENTS

50. Attached hereto as **Appendix “I”** is the Receiver’s consolidated interim statement of receipts and disbursements as at August 21, 2018 (the “**R&D**”). The R&D reflects the Debtors’ consolidated net receipts over disbursements of \$991,606.17, including the amounts held with respect to the Real Estate Trust Account, Commissions Account, TRP Mortgage and TRP BC.

X PROFESSIONAL FEES

51. Pursuant to Paragraph 18 of the Appointment Order, the Receiver and its counsel are to be paid their reasonable professional fees and disbursements and are granted a charge on the Property for such professional fees and disbursements. Pursuant Paragraph 20 of the Appointment Order, the Receiver is entitled to apply reasonable amounts out of the monies in its hands to satisfy its professional fees and disbursements and those of its counsel, and such amounts are to constitute advances against its remuneration and disbursements when and as approved by the Court.
52. Attached hereto as **Appendix “J”** is the Affidavit of Matthew Lem, (sworn August 23, 2018) in support of the fees and disbursement of the Receiver for the period from June 1, 2018 to July 31, 2018, totaling \$167,139.50, exclusive of HST.
53. Attached hereto, as **Appendix “K”** is the Affidavit of Sam Babe (sworn August 21, 2018), in support of the fees and disbursements of the Receiver's legal counsel, A&B, for the period from June 18, 2018 to July 31, 2018, totaling \$19,255.25, exclusive of HST.

54. As of the date of this Report, the Receiver has drawn interim payments in respect of its professional fees and disbursements, which have yet to be taxed by this Honourable Court, in the amounts of \$167,139.50, exclusive of HST.

55. The Receiver respectfully requests this Honourable Court's approval of its professional fees and disbursements, along with the professional fees and disbursements of A&B (the "**Professional Accounts**"), as set out in the aforementioned Affidavits.

XI CONCLUSION AND RECOMMENDATIONS

56. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in paragraph 2.

All of which is respectfully submitted this 23rd day of August, 2018.

MNP LTD.,
in its capacity as Court-appointed Receiver of
TheRedPin, Inc. and TheRedPin.com Realty Inc.
and not in its personal or corporate capacities
Per:



Matthew Lem, CIRP
Licensed Insolvency Trustee

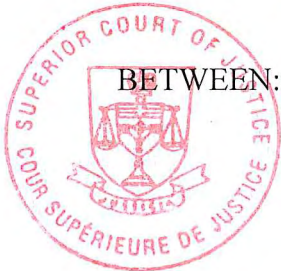
TAB 2(c)

Appendix "C"

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

THE HONOURABLE) TUESDAY, THE 4th DAY
JUSTICE *Chi'appetty*) OF SEPTEMBER, 2018



BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THE REDPIN.COM REALTY INC.

Respondents

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990, C. C-43, AS AMENDED

APPROVAL AND VESTING ORDER

THIS MOTION, made by MNP Ltd. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of TheRedPin, Inc. (“**TRP**”) and The Redpin.Com Realty Inc. (“**TRP Realty**” and, together with TRP, the “**Debtors**”) for an order, among other things: (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Purchase Agreement**”) between the Receiver and Firepower Gap Debt II LP and Firepower Gap Debt Limited Partnership (collectively, the “**Purchaser**”) made as of August 21, 2018 and appended as Confidential Appendix “2” to the First Report of the Receiver dated August 23, 2018, filed (the “**Report**”); (ii) vesting in the Purchaser the Debtors’ right, title and interest in and to the assets described in the Purchase Agreement (the “**Purchased Assets**”); (iii) sealing Confidential Appendix “1”, Confidential

Appendix “2” to the Report (collectively, the “**Confidential Appendices**”); and (iv) authorizing and directing the Receiver to file articles of amendment changing the corporate names of the Debtors, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and the Receiver’s Supplementary Report dated August 31, 2018 and being advised that the Purchaser has advised the Receiver that title is being taken in the name of 2653047 Ontario Inc. (“**2653047**”) and on hearing the submissions of counsel for the Receiver, counsel for the Purchaser and 2653047, counsel for Trilogy Growth Fund LP, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Sam Babe sworn August 28, 2018 filed:

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The 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 2653047, including, without limitation, executing any required conveyances of registered intellectual property on behalf, and/or as authorized signatory, of the Debtors.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the 2653047 substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”), all of the Debtors’ right, title and interest in and to the Purchased Assets described in the Purchase Agreement shall vest absolutely in the 2653047, 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) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated June 14, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of 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 shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the 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 Receiver to file with the Court a copy of the Receiver’s Certificate, forthwith after delivery thereof.
6. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed, upon filing of the Receiver’s Certificate, to complete, execute and file articles of amendment for and on behalf of each of the Debtors and any officer and director of each Debtor (each such articles of amendment to be deemed to have been signed by a director or an officer of the applicable Debtor and executed in accordance with the *Canada Business Corporation Act* (the “CBCA”) when so signed by the Receiver as directed by this Court) for the sole purpose of changing the corporate name of TRP to 732816-8 Canada Inc. and TRP Realty to 789521-6 Canada Inc. (and such amendments shall be deemed to have been duly authorized by Section 173 of the CBCA without any shareholder or director resolution approving such amendment being required), and this Court hereby directs the Director (as defined in the CBCA) to endorse thereon a certificate of amendment upon receipt from the Receiver of two duplicate originals of

such articles of amendment together with the prescribed fees and any other required documents under the CBCA (which the Receiver be and is hereby authorized and directed to complete, execute and file for and on behalf of the Debtors and any officer and director of the Debtors, if and as required) except for any such documents as have been dispensed or otherwise dealt with pursuant to the deeming provisions contained herein.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the 2653047 all customer and human resources and payroll information in the Debtors' records pertaining to the Debtor's past and current customers and employees. The 2653047 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 Debtors.
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 either Debtor and any bankruptcy order issued pursuant to any such applications; and
 - (c) any assignment in bankruptcy made in respect of either Debtor;

the vesting of the Purchased Assets in the 2653047 pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of either of the Debtors and shall not be void or voidable by creditors of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance 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** that, until such time as the transaction contemplated in the Purchase Agreement is completed, the Confidential Appendices to the Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon filing of the Receiver's Certificate.
10. **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.

Guipetto



**SCHEDULE A
FORM OF RECEIVER'S CERTIFICATE**

Court File No. CV-18-599644-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THE REDPIN.COM REALTY INC.

Respondents

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990, C. C-43, AS AMENDED.

RECEIVER'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Hainey of the Ontario Superior Court of Justice (the "**Court**") dated June 14, 2018, MNP Ltd. was appointed as the receiver (the "**Receiver**") of the undertaking, property and assets of TheRedPin, Inc. and The Redpin.Com Realty Inc. (collectively, the "**Debtors**").
- B. Pursuant to an Order of the Court dated August 29, 2018, the Court approved the agreement of purchase and sale made as of August 21, 2018 (the "**Purchase Agreement**") between the Receiver and Firepower Gap Debt II LP and Firepower Gap Debt Limited Partnership (collectively, the "**Purchaser**") and provided for the vesting in the 2653047 of the Debtors' 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

Receiver to the 2653047 of a certificate confirming (i) that the Purchase Price for the Purchased Assets has been dealt with in accordance with the provisions of the Purchase Agreement; (ii) that the conditions to Closing as set out in Article 5 of the Purchase Agreement have been satisfied or waived by the Receiver and the 2653047; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchase Price for the Purchased Assets has been dealt with in accordance with provisions of the Purchase Agreement;
2. The conditions to Closing as set out in Article 5 of the Purchase Agreement have been satisfied or waived by the Receiver and the 2653047; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ on September <*>, 2018.

MNP LTD., in its capacity as Receiver of the undertaking, property and assets of **THEREDPIN, INC.** and **THE REDPIN.COM REALTY INC.**, and not in its personal capacity

Per: _____
Name:
Title:

FIREPOWER DEBT GP INC., AS AGENT

and

THEREDPIN, INC. and THE REDPIN.COM REALTY INC.

Applicant

Respondents

Court File No. CV-18-599644-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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Lawyers for MNP Ltd.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

THE HONOURABLE) TUESDAY, THE 4th DAY
JUSTICE *Chiappetta*) OF SEPTEMBER, 2018

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THE REDPIN.COM REALTY INC.

Respondents

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990, C. C-43, AS AMENDED

ORDER

THIS MOTION, made by MNP Ltd. (“MNP”) in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of TheRedPin, Inc. (“**TRP**”) and The Redpin.Com Realty Inc. (“**TRP Realty**” and, together with TRP, the “**Debtors**”) for an order, among other things: (i) approving the First Report of the Receiver dated August 23, 2018, filed (the “**Report**”) and the Receiver’s activities set out therein; (ii) approving the accounts of the Receiver and its legal counsel; and (iii) approving the Receiver’s receipts and disbursements, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and the Supplementary Report to the First Report dated August 31, 2018 (the “**Supplementary Report**”) and on hearing the submissions of counsel for the Receiver, counsel for Firepower Debt GP Inc., counsel for Trilogy Growth Fund LP, and no



one appearing for any other person on the service list, although properly served as appears from the affidavit of Sam Babe sworn August 28, 2018 filed:

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is 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 and the Supplementary Report be and are hereby approved and the activities of the Receiver described therein be and are hereby approved.
3. **THIS COURT ORDERS** that the fees and disbursements with respect to the Debtors of MNP for the period ending July 31, 2018, in the amount of \$167,139.50 (excluding HST), be and the same are hereby approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, Aird & Berlis LLP, for the period ending July 31, 2018, in the amounts of \$19,165.00 for fees and \$90.25 for disbursements (both excluding HST), be and the same are hereby approved.
5. **THIS COURT ORDERS** that the Receiver's Statement of Receipts and Disbursements for the period to August 21, 2018 be and the same is hereby approved.

Guiggerty



FIREPOWER DEBT GP INC., AS AGENT

Applicant

and

THEREDPIN, INC. and THE REDPIN.COM REALTY INC.

Respondents

Court File No. CV-18-599644-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

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Lawyers for MNP Ltd.

Court File Number: CW-18-599644-0002

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Firepower
Plaintiff(s)
AND
Thereapin
Defendant(s)

Case Management Yes No by Judge: _____

Counsel	Telephone No:	Facsimile No:
# . Fogal		
#. Chaiton A. Kauffman		

- Order Direction for Registrar (No formal order need be taken out)
 Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
 Adjourned to: _____
 Time Table approved (as follows):

I am satisfied that the Receiver's fees + disbursements for the period to July 31, 2018 as set out in the affidavit of Matthew Lem sworn Aug 23, 2018 (Exhibit A) are reasonable. I am further satisfied that the fees and disbursements of the Receiver's legal counsel Aird & Berli's LLP for the period to July 31 2018 as set out in the affidavit of Sam Baber sworn

Sept 4, 2018
Date

MJ Chiappetta
Judge's Signature

Additional Pages 1

Superior Court of Justice
Commercial List

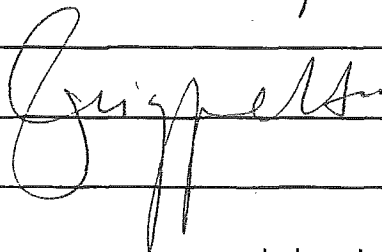
FILE/DIRECTION/ORDER

August 23, 2018 Judges Endorsment Continued

(Exhibit A) are reasonable.

Finally, I am satisfied that the Purchase Agreement is commercially reasonable and in the best interests of the debtors and their stakeholders and necessary to complete the transaction. To this end, a sale approval and vesting order in favour of the Purchaser is in order. A sealing order is also in order because the confidential appendices contain commercially sensitive information, the release of which would prejudice the stakeholders of the debtors.

Orders to go in accordance with the drafts attached and signed by me today.



TAB 2(d)

Appendix “D”



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE *Chiappetta*)
TUESDAY, THE 11TH
DAY OF SEPTEMBER, 2018

B E T W E E N:

(Court Seal)

FIREPOWER DEBT GP INC., AS AGENT

Applicant

and

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c.C.43, AS AMENDED

ORDER

THIS MOTION, brought by thirty-eight real estate agents formerly providing services to TheRedPin.com Realty Inc. ("TRP Realty"), as set out at Schedule "A" to the Notice of Motion, in respect of an order appointing Dennise Paccione and Michael Sotoadeh as representative agents of all real estate agents who contracted with TRP Realty for the provision of realtor services prior to June 14, 2018 (collectively the "TRP Agents"), was heard this day at the Court House, 330 University Ave., Toronto, Ontario, M5G 1R7.

ON READING the affidavit of Dennise Paccione, sworn August 15, 2018, and the affidavits of Molly Warwick affirmed August 23, 2018 and September 5, 2018, and on hearing submissions of counsel for the moving parties, and, on being advised by counsel that the motion is proceeding unopposed,

1. THIS COURT ORDERS that service of the herein motion on the TRP Agents is validated.
2. THIS COURT ORDERS that Dennise Paccione and Michael Sotoadeh are hereby appointed as representatives of the TRP Agents (the "Representative TRP Agents") in respect of their entitlement to real estate commissions paid or to be paid to TRP Realty.
3. THIS COURT ORDERS that Adair Goldblatt Bieber LLP shall be appointed as counsel to the Representative TRP Agents ("Representative Counsel").
4. THIS COURT ORDERS that Representative Counsel may rely on and act on the instruction of the Representative TRP Agents in the course of their engagement without further communication from the TRP Agents, except as may otherwise be ordered by this Honourable Court.
5. THIS COURT ORDERS that the Representative TRP Agents, or Representative Counsel on their behalves, are authorized to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order on behalf of the TRP Agents, including, without limitation, by:
 - (a) filing and preparing materials, including any appeal materials, and advancing submissions in respect of a motion determining competing entitlements to the Commissions, currently scheduled to be heard October 22, 2018 (the "Commissions Motion");

- (b) negotiating, as may be appropriate, any resolution to the Commissions Motion; and
- (c) bringing any motion as may be required to advance the interests of the TRP Agents, including (without limiting the generality of the foregoing), a motion directing that the fees, expenses and disbursements incurred by the TRP Agents in respect of the Commissions Motion form a charge against the assets of the Respondents (the “Charge Motion”).

6. THIS COURT ORDERS that Representative Counsel shall be entitled to apply to this Court for advice and direction in the discharge or variation of its powers of duties set out under this Order.

7. THIS COURT ORDERS that the Representative TRP Agents shall have no personal liability or obligations as a result of the performance of their duties in carrying out the provisions of this Order, or any subsequent Order in this proceedings, save and except for liability arising out of gross negligence or willful misconduct.

8. THIS COURT ORDERS that no proceeding may be commenced against the Representative TRP Agents or Representative Counsel in respect of the performance of duties under this Order without leave of this Court, and on at least seven days’ notice to the Representative TRP Agents or Representative Counsel.

9. THIS COURT ORDERS that a copy of this Order shall be forthwith delivered to all TRP Agents by way of e-mail, and, a copy of this Order shall forthwith be posted on the web-site of the Receiver, MNP Ltd.

10. THIS COURT ORDERS that any TRP Agent who does not wish to be bound by this Order shall notify Representative Counsel by email to jgoldblatt@agblip.com by no later than September 21, 2018, and thereafter, shall not be bound by this Order and shall be responsible for representing themselves, personally or through counsel, as an independent individual party to the extent they wish to appear in this proceeding.

11. THIS COURT ORDERS that this Order is without prejudice to the positions to be taken by any party in connection with the Charge Motion that may be brought by the Representative TRP Agents seeking payment of their legal fees, expenses and costs from the property, assets and undertakings of the Respondents and/or seeking a charge over the property, assets and undertakings of the Respondents to secure payment of their legal fees, expenses and costs in priority to the interests of the Respondents' secured creditors.

12. THIS COURT ORDERS that there shall be no Order as to costs, other than as may be determined in respect of the Charge Motion.



(Signature of Judge)

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 11 2018

PER / PAR:



FIREPOWER DEBT GP INC., AS AGENT
Applicant

-and- THEREDPIN, INC. et al.
Respondents

Court File No. CV-18-59964400CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ORDER

ADAIR GOLDBLATT BIEBER LLP

95 Wellington Street West
Suite 1830, P.O. Box 14
Toronto ON M5J 2N7

Jordan Goldblatt (50755H)

Email: jgoldblatt@agblp.com

Tel: 416.920.9777

Fax: 647.689.2059

Lawyers for the Moving Parties

RCP-E 4C (May 1, 2016)

TAB 2(e)

Appendix "E"

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Respondents

**SECOND REPORT TO THE COURT SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

September 10, 2018

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TABLE OF APPENDICES

Appendix "A"	The Appointment Order, date June 14, 2018
Appendix "B"	Advice and Direction Motion case timetable
Appendix "B"	Court Orders, dated September 4, 2018 and Endorsement of Madam Justice Chiappetta dated September 4, 2018
Appendix "D"	A copy of a blank Listing Agreement – OREA Form 200
Appendix "E"	A copy of a blank MLS Data Information Form
Appendix "F"	A copy of a blank Buyer Representation agreement – OREA Form 300
Appendix "G"	A copy of a blank Agreement of Purchase and Sale – OREA Form 100
Appendix "H"	A copy of a blank Confirmation of Co-operation and Representation agreement – OREA Form 320
Appendix "I"	Excerpts from MLS Rules and Regulations (rev December 2015)
Appendix "J"	A sample copy of the Trade Record sheet [Redacted]
Appendix "K"	An example of brokerWOLF's Transaction Record Sheet report
Appendix "L"	A copy of a blank Trade Record Sheet – OREA Form 640
Appendix "M"	A sample copy of the EFT remittance advice [Redacted]
Appendix "N"	A sample copy of Sales Representative Independent Contractor's Agreement, without Schedule "A" (Confidentiality and Intellectual Property Assignment Agreement) – February 2018 [Redacted]
Appendix "O"	A sample copy of a blank Royal Bank of Canada cheque for the commission account
Appendix "P"	Comerica Bank of Canada - Business Account Statement for the period from February 28, 2018 to March 28, 2018
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Appendix "R"	TD Canada Trust – Business Chequing Account for the period from August 29, 2014 to December 31, 2014
Appendix "S"	Letter from Adair Goldblatt Bieber LLP, dated June 15, 2018
Appendix "T"	Letter from Adair Goldblatt Bieber LLP, dated June 22, 2018
Appendix "U"	A sample copy of AccessEasyFunds Limited's Commission Purchase Agreement [Redacted]
Appendix "V"	A sample copy of 1834176 Ontario Inc. o/a Agent's Equity's Commission Sale Agreement [Redacted]
Appendix "W"	A sample copy of the Cashback Agreement [Redacted]

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

BETWEEN :

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Respondents

**SECOND REPORT TO THE COURT SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

September 10, 2018

I INTRODUCTION

1. On June 14, 2018 (the **"Date of Appointment"**), MNP Ltd. was appointed as receiver (the **"Receiver"**) without security, of all assets, undertakings and properties of TheRedPin, Inc. (**"TRP Inc."**) and Theredpin.Com Realty Inc. (**"TRP Realty"** and together with the TRP Inc., collectively hereinafter referred to as the **"Debtors"**) acquired for or used in relation of a business carried on by the Debtors, including all proceeds thereof (the **"Property"**) pursuant to an Order, dated June 14, 2018 (the **"Appointment Order"**) issued by the Ontario Superior Court of Justice (Commercial List) (the **"Court"**). A copy of Appointment Order is attached hereto as **Appendix "A"**.

2. At a 9:30 AM hearing held on July 26, 2018, the Court Ordered the scheduling of the (i) Representation Order Motion (as such term is later defined) to be heard on September 11, 2018, and (ii) the Advice and Direction Motion (as such term is later defined) to be heard on October 22, 2018. In connection with the Advice and Direction Motion, a case timetable was agreed to by the parties and is attached hereto as **Appendix "B"**.
3. On August 15, 2018, Adair Goldblatt Bieber LLP ("**AGB**") served material in connection with its Motion (returnable September 11, 2018) for an Order, *inter alia*, to appoint representative agents on behalf of all of the TRP Salespersons (as such term is later defined) and to appoint AGB as counsel to the representative agents (the "**Representation Order Motion**").
4. On August 23, 2018, the Receiver filed its first report to the Court (the "**First Report**"), wherein it sought an Order, *inter alia*, approving and authorizing a sale of certain of the Debtors' Property. (the "**Purchased Assets**"). On September 4, 2018, the Receiver filed with the Court its Supplementary Report to the First Report, dated August 31, 2018 for the purpose of informing the Court that the Purchaser had advised the Receiver that title to the Purchased Assets is being taken in the name of 2653047 Ontario Inc.
5. On September 4, 2018, the Court ordered, *inter alia*, the approval to the Receiver's activities and the contemplated sale of the Purchased Assets. A copy of the September 4, 2018 Court Orders and the endorsement of Madam Justice Chiappetta are attached as **Appendix "C"**.

II PURPOSE OF THIS REPORT

6. The purpose of this Report is to provide the Court with information in support of the Receiver's Motion for advice and direction (the "**Advice and Direction Motion**") concerning whether any or all of the Third-party Commissions (as such term is later defined) collected and to be collected by

the Receiver are held and to be held in trust for benefit of the TRP Salespersons, the Outside Brokerages, the Assignees and/or the Cashback Buyers (as all such terms are later defined).

III TERMS OF REFERENCE

7. In preparing this Report, the Receiver has relied on information (the “**Information**”) regarding the Debtors and the Property:

(a) included in the Application/Motion Record(s) and other materials filed with the Court in connection with these proceedings. In particular, information included in:

(i) the affidavit of Jared Kalish sworn June 13, 2018, which was Tab 2 to the Application Record, dated June 13, 2018, filed with this Court in support of the application for the Appointment Order;

(ii) the affidavit of Dennise Paccione sworn August 15, 2018 (the “**Paccione Affidavit**”), which was Tab 2 to the Motion Record, dated August 15, 2018, filed with this Court in support of the Representation Order Motion;

(b) information provided by the Debtors’ directors and management, the Applicant and their respective legal counsel;

(c) TRP Realty’s available books and records (“**Books & Records**”); and

(d) as otherwise made available or provided to the Receiver and its counsel.

8. Except as described in this Report, the Receiver has not audited, reviewed 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 of the Chartered Professional Accountants of Canada Handbook.

9. All references contained herein to a buyer(s) also include a tenant(s) and all references contained herein to a seller(s) also include a landlord(s), unless otherwise specified. Accordingly, and in the context of TRP Realty's operations, all references contained herein to an agreement(s) of purchase and sale also include a lease agreement(s), unless otherwise specified.
10. All references contained herein to a real estate salesperson(s) also include a broker(s) as such terms are defined in the Ontario *Real Estate and Business Brokers Act, 2002* and associated regulations (collectively, "**REBBA 2002**"), unless otherwise specified.
11. All currency references contained herein are in Canadian Dollars, unless otherwise specified. All capitalized terms not otherwise defined herein shall have the meanings as defined in the Appointment Order, unless otherwise specified.
12. Subject to further information being filed with the Court by the Competing Parties, as well as additional information being received and/or identified by the Receiver leading up to this Motion being heard on October 22, 2018, the Receiver intends to file with this Court one or more supplemental reports, as appropriate.
13. Certain of the documents provided in this Report have been redacted by the Receiver in order address potential personal privacy issues.

IV BACKGROUND

General

14. In Ontario, REBBA 2002 is the provincial legislation that establishes the rules by which all real estate salespersons, brokers and brokerages must follow. The Real Estate Council of Ontario ("**RECO**") is the body that is responsible for the administration of REBBA 2002 and regulates that activity of trading real estate in the province of Ontario. Further, all brokerages, brokers and real

estate salespersons working in Ontario must be registered with RECO and meet all of the requirements for registration under the REBBA 2002.

15. With respect to the roles of the real estate brokerage, broker and salesperson:
 - (a) It is the real estate brokerage that is the party that is authorized to trade in real estate on behalf of buyers or sellers;
 - (b) every brokerage must designate a broker as its broker of record to ensure that the brokerage complies with REBBA 2002; and
 - (c) it is generally the brokers and salespersons, who are employed by the brokerage, that perform the listing and selling activities that generate the trades.

16. As noted on the First Report, TRP Realty is a wholly owned subsidiary of TRP Inc., providing real estate brokerage services utilizing TRP Inc.'s technology platform. TRP Realty is an Ontario real estate brokerage registered with and regulated by RECO pursuant to REBBA 2002. TRP Realty's revenues are primarily derived from real estate commissions generated from the activities of its licensed/registered salespersons or "agents" (the "**TRP Salespersons**" or individually, the "**TRP Salesperson**") earned on the closing of leasing, purchasing and sale transactions of principally residential properties.

17. Generally speaking, TRP Realty acted either for a buyer(s), where it was the co-operating brokerage, or for a seller(s), where it was the listing brokerage. To give some context to the relevancy or impact of this distinction on the matters at issue in this Advice and Direction Motion, of the approximately 730 pending transactions to be settled by the Receiver, only 28 trades related to transactions where TRP Realty was the listing brokerage. In addition, where TRP Realty was the listing brokerage, it received deposits from the buyers pursuant to their respective

agreements of purchase and sale, which were deposited into the Real Estate Trust Account (as such term is later defined).

18. At the Date of Appointment, there were sixty-three (63) active TRP Salespersons and forty-three (43) former TRP Salespersons who still had pending commissions.
19. Following the execution of either a Buyer Rep Agreement or Listing Agreement (as such terms are later defined), an agency relationship is created between the buyer or seller, respectively, and the brokerage, TRP Realty, and not with the TRP Salesperson(s). Accordingly, all commissions on trades earned are paid to and collected by the brokerage, TRP Realty, and not the individual TRP Salesperson(s).

Real Estate Transaction Documents

20. As TRP Realty was a real estate brokerage operating in Ontario and regulated by RECO pursuant to REBBA 2002, many of the documents used by TRP Realty were the forms developed by Ontario Real Estate Association (“OREA”) and are the standard, particularly within the resale market.
21. However, in connection with pre-construction (new, still to be built) condominium transactions where the buyer transacts directly with the builder/developer, the transaction documents (i.e. the agreement of purchase and sale and co-operating brokerage/referral agreement) are specific to the builder/developer and the project/development.
22. To give context to the implications and relevancy of the distinction between resale and pre-construction transactions, the Receiver estimates that approximately 21% or approximately \$1.42 million of the Commissions Receivables (as such term is later defined) owing to TRP Realty at the Date of Appointment relate to resales, including leases, and where the OREA forms would be applicable. The balance of 79% or approximately \$5.23 million of the Commissions Receivables

owing to TRP Realty at the Date of Appointment are estimated to relate to pre-construction/new development transactions (where the OREA forms would not be applicable – notwithstanding there may be exceptions). In these types of transactions, TRP Realty receives a commission or referral fee as based on the co-operating brokerage/referral agreement with the builder/developer.

23. Some of the key OREA documents used in TRP Realty's day-to-day brokerage operations when representing buyers and sellers are as follows:

- (a) Working with a REALTOR – OREA Form 810 – Outlines the relationships between the real estate brokerage (listing or co-operating), the salesperson and the customer (buyer or seller);
- (b) Listing Agreement – OREA Form 200 (the "**Listing Agreement**") – Is the contract between the seller and the listing brokerage that outlines the terms of the listing, including the rate of commission to be paid to the listing brokerage and the co-operating brokerage, as well as gives permission to the listing brokerage to act on the seller's behalf. A copy of a blank Listing Agreement is attached hereto as **Appendix "D"**;
- (c) MLS Data Information Form (the "**MLS Info Form**") – Is the input form used to capture all relevant data on the listing if it is to be posted on the Multiple Listing Service ("**MLS**") in order to increase the property's exposure. Included in the information captured by this form, which is then posted on the MLS listing is the rate of commission to be paid to the listing brokerage and the co-operating brokerage. A copy of a blank Listing Agreement is attached hereto as **Appendix "E"**);

- (d) Buyer Representation Agreement - OREA Form 300 (the "**Buyer Rep Agreement**") - Is the contract between the buyer and the real estate brokerage that outlines the terms of the relationship, including the rate of commission to be paid to the brokerage, as well as gives permission to the brokerage to act on the buyer's behalf. A copy of a blank Buyer Rep Agreement is attached hereto as **Appendix "F"**;
- (e) Agreement of Purchase and Sale – OREA Form 100¹ (the "**Residential APS**") - Is the contract between the buyer and the seller in connection with a real estate transaction for a residential property. Although the document is focused on the details of the transaction between the buyer and seller, it does however have a section marked "FOR OFFICE USE ONLY COMMISSION TRUST AGREEMENT", wherein the listing brokerage agrees to a trust arrangement with the co-operating brokerage in connection with the commission to paid. In the context of this Advice and Direction Motion, the relevancy of this commission trust section appears to be only applicable where TRP Realty is the listing brokerage, as it establishes a trust obligation on the part of the listing brokerage (for the benefit of the co-operating brokerage). A copy of a blank Residential APS is attached hereto as **Appendix "G"**; and
- (f) Confirmation of Co-operation and Representation – OREA Form 320 (the "**Co-operation Agreement**") – Is the document that identifies all the parties and their respective relationships in the real estate transaction and also stipulates the commission arrangements as between the listing brokerage and the co-operating brokerage. Almost mirroring the "Commission Trust Agreement" section in the

¹ In connection with a residential leasing transaction the agreement is the Agreement to Lease – OREA Form 400

Residential APS, the Co-operation Agreement includes a similar section but again, this section appears to be only relevant to the issue at hand where TRP Realty was/is the listing brokerage, since it only establishes a trust obligation on the part of the listing brokerage (for the benefit of the co-operating brokerage). A copy of a blank Co-operation Agreement is attached hereto as **Appendix "H"**.

Other Trade/Commission Related Documents

24. In the various OREA forms, the MLS Rules and Regulations (the "**MLS Rules**") are referenced. In particular, Article 13 of the **MLS Rules** covers commission trusts. Attached hereto as **Appendix "I"** is an excerpt from the **MLS Rules** with respect to commission trusts.

25. Based on the Receiver's review of the Books & Records, including TRP Realty's real estate back office software ("**brokerWOLF**") and the documents it prepared, issued and executed in connection with the trades completed by TRP Realty, the Receiver has identified the following additional documents relevant to determining the respective Competing Parties' claims:
 - (a) Trade Record sheet produced from brokerWOLF (the "**Trade Record**") – Pursuant to Section 17(1) of the Ontario Regulations 579/05 of the REBBA 2002 ("**O. Reg. 579/05**"), a trade record sheet is required to be produced by the brokerage for each trade. Section 17(1) of O. Reg. 579/05 sets out the minimum information requirements to be contained on the trade record sheet, including but not limited the nature of the trade, the property, the parties to the transaction (i.e. buyer, seller, their respective legal counsel, TRP Salesperson(s), and the Outside Brokerage(s), details of the transaction (e.g. selling price, the commissions, deposits, status of conditions, etc.), as well as the receipt and disposition of deposit funds received by the brokerage. Pursuant to Section 17(3) of O. Reg 579/05, the salesperson is to sign

the trade record sheet once all conditions of the agreement of purchase and sale are satisfied. Pursuant to Section 17(5) of O. Reg 579/05, the brokerage's broker of record is to sign the trade record if it is satisfied that all information contained therein is accurate. Notwithstanding the above, the Receiver was advised by the Deal Administrator (defined later) that the Trade Record was typically signed by the TRP Salesperson(s) and the TRP Realty's Broker of Record just prior to the commission being paid to the TRP Salesperson(s); usually once the trade was completed/closed and TRP Realty was in funds.

The Trade Record is the form of trade record sheet used by TRP Realty. A sample copy of the Trade Record issued by TRP Realty is attached hereto as **Appendix "J"**. Based on the Receiver's review of brokerWOLF's on-line support manual and other documentation/promotional material² created by brokerWolf, the preset report called the "Transaction Record Sheet" is one and the same as the Trade Record. A copy of brokerWOLF's "Transaction Record Sheet" is attached hereto as **Appendix "K"**.

Although there is no prescribed form for the trade record sheet set-out in O. Reg 579/05 as noted by RECO³, OREA has produced a standardized trade record form (OREA Form 640) that brokerages may choose to use. TRP Realty did not use this form of trade record sheet. A copy of the Trade Record Sheet – OREA Form 640 is attached hereto as **Appendix "L"**.

² See brokerWOLF – Sample Reports – CANADA (modified:17/04/20), p. 23 (<http://get.lwolf.com/rs/803-SUI-561/images/brokerWOLFSampleReportsCAMARKED.pdf>)

³ RECO's Inspections Kit July 2016 - A Guide to Brokerage Inspections, p. 8

As noted by Jordan Goldblatt (“**Goldblatt**”) of AGB in the June 22nd AGB Letter (as such term is later defined), the Trade Record includes the following language: “It is understood between all parties that this agreement shall constitute a Commission Trust Agreement as set out in the contract.” Based on the Receiver’s review of brokerWolf’s sample “Transaction Record Sheet” report (see Appendix “K”), it would appear to the Receiver that this phrase is standard to this preset report. As such, it is unclear to the Receiver what specific contract this statement is supposed to be referring to. The Receiver has in an attempt to try and clarify this and other issues, emailed Vincenzo (Enzo) Ceniti, TRP Realty’s broker of record just prior to the Date of Appointment (the “**Broker of Record**”), but has not yet received a response. Additionally, in order to further try and clarify this issue, the Receiver has contacted Lone Wolf Technologies Inc., the maker of brokerWOLF, but has not yet received a response.

Based on the Receiver’s review of brokerWOLF⁴, the reference to “Rbc-Commission Trust Activity” on the Trade Record, as also noted by Goldblatt, appears to be reflective of the “Short Name” entered by TRP Realty in brokerWOLF associated with the bank account in use at such time. The reference on the Trade Records now indicates “Rbc – Commission Activity”;

⁴ In brokerWOLF’s Bank Account Information [E.1.4] set-up screen, to set-up a bank account, users must select an Account Type from one of only three available types (General, Trust or Commission Trust). The users must then enter a Short Name, Name, Address and G/L Account associated with the bank account. Additionally, the Short Name is a user defined field, and is the reference name that appears on various documents produced using brokerWOLF.

- (b) The Electronic Funds Transfer (“EFT”) remittance advices – Similar to the situation with the Trade Record, the “Rbc-Commission Trust Activity” references on the EFT remittance advices, as also noted by Goldblatt, as well appears to be reflective of the “Short Name” entered in brokerWOLF based on the Receiver’s review of brokerWOLF as noted in above. A sample copy of an EFT remittance advices issued by TRP Realty is attached hereto as **Appendix “M”**; and

- (c) Sales Representative Independent Contractor’s Agreement, without Schedule “A” - Confidentiality and Intellectual Property Assignment Agreement (the “**Contractor’s Agreement**”) – Is the contract between TRP Realty and the TRP Salesperson, which among other things, details the TRP Salesperson’s commission split with TRP Realty, but does not include any trust provisions. A sample copy of the February 2018 version of the Contractor’s Agreement is attached hereto as **Appendix “N”**.

The Bank Accounts

26. Section 27(1) of REEBA 2002, states:

Every brokerage shall,

- (a) *maintain in Ontario an account designated as a trust account, in,*
 - (i) *a bank, or an authorized foreign bank, within the meaning of section 2 of the Bank Act (Canada),*
 - (ii) *a corporation registered under the Loan and Trust Corporations Act, or*
 - (iii) *a credit union within the meaning of the Credit Unions and Coisses Populaires Act, 1994;*

- (b) *deposit into the account all money that comes into the brokerage’s hands in trust for other persons in connection with the brokerage’s business;*

- (c) *at all times keep the maney separate and apart from money belonging to the brokerage; and*

(d) *disburse the money only in accordance with the terms of the trust.*

27. In connection with its brokerage activities, TRP Realty maintained three (3) bank accounts:

- (a) The real estate trust account – a designated trust account, as required to be set-up pursuant to Section 27(1) of REEBA 2002, where TRP Realty acted as the listing brokerage and where deposits provided by buyers pursuant to agreements of purchase and sale were deposited (the “**Real Estate Trust Account**”). The Real Estate Trust Account was set-up by TRP Realty and held at The Toronto- Dominion Bank (“**TD Bank**”);
- (b) The commissions account – the separate bank account in which all commissions due to TRP Realty were received and then paid out (the “**Commissions Account**”) to the co-operating brokerages (the “**Outside Brokerages**” or individually, the “**Outside Brokerage**”), if applicable, the TRP Salespersons and TRP Realty itself (collectively, the “**Total Commissions**”). The Commission Account was set-up by TRP Realty and held at Royal Bank of Canada (“**RBC**”). This RBC bank account was opened on or about January 19, 2018, with activity starting February 2018 and was the only commission bank account of TRP Realty known to be active at the Date of Appointment.

Keith McSpurren, the CEO of the Debtors from June 2017 to June 2018, has advised the Receiver that the Commissions Account was not a trust account, nor did he open any trust accounts. In addition, the Receiver has reached out to the Broker of Record on the circumstance surrounding the accounts set-up for commissions and other issues but has not yet received a response.

In order to try and clarify this issue, the Receiver has contacted RBC but has not yet received a response.

The Receiver notes that, notwithstanding the reference on the EFT remittances advices, the pre-printed blank cheques for the Commission Account at RBC contain the notation "COMMISSION TRUST" on it. A sample copy of the blank RBC cheque for the Commission Account is attached hereto as **Appendix "O"**.

Prior to this, TRP Realty maintained from March 2014 until March 8, 2018 a "Business Account" at Comerica Bank of Canada ("**Comerica Bank**"), which included "COMMISSION TRUST" in the mailing address line of the statement. Attached to this Report as **Appendix "P"** is a copy of the February 28, 2018 to March 28, 2018 Comerica Bank statement.

The Receiver notes that on the pre-printed blank cheques for the commission account at Comerica Bank also contain the notation "COMMISSION TRUST" on it. A sample copy of the blank Comerica Bank cheque for the commission account is attached hereto as **Appendix "Q"**.

Apart from the notation on the mailing address line of the bank statement and the pre-printed cheques, based on the Receiver's review of the Books & Records, it has not yet found any evidence that TRP Realty designated this account as a trust account or not. In order to try and clarify this issue, the Receiver has contacted Comerica Bank but has not yet received a response.

The Receiver's review of Books & Records revealed that prior to Comerica Bank, TRP Realty maintained an account at TD Bank (up until August 28, 2014), which included

“TRUST ACCT” in the mailing address line of the statement. Attached to this Report as **Appendix “R”** is a copy of the August 29, 2014 to December 31, 2014 TD Bank statement. This bank account appears to have been inactive/closed since August 29, 2014. Apart from the “TRUST ACCT” notation, the Receiver has not yet found any evidence that TRP Realty designated this account as a trust account or not. In order to try and clarify this issue, the Receiver has contacted TD Bank. TD Bank has advised that it can’t validate if the account was designated as a trust or not; despite requests to have the documentation pulled, TD Bank has advised that the information isn’t catalogued on its system and could not be located.

Although Section 27(1) of REEBA 2002 (as noted earlier in this Report) requires that “all money that comes into the brokerage’s hands in trust for other persons in connection with the brokerage’s business” be deposited in a trust account, the Receiver has confirmed with RECO that there is no requirement for a brokerage to maintain a designated trust account for commissions. Notwithstanding, in one of RECO’s resource materials for brokerages, it states that an:

“account that most brokerages maintain is a commission trust account, which is used to process commission payments owing to registrants of the brokerage and to co-operating brokerages.”⁵

- (c) The general operating account – the account from which TRP Realty’s operating expenses (e.g. payroll, service providers, Canada Revenue Agency (“CRA”))

⁵ RECO’s Inspections Kit July 2016 - A Guide to Brokerage Inspections, p. 9

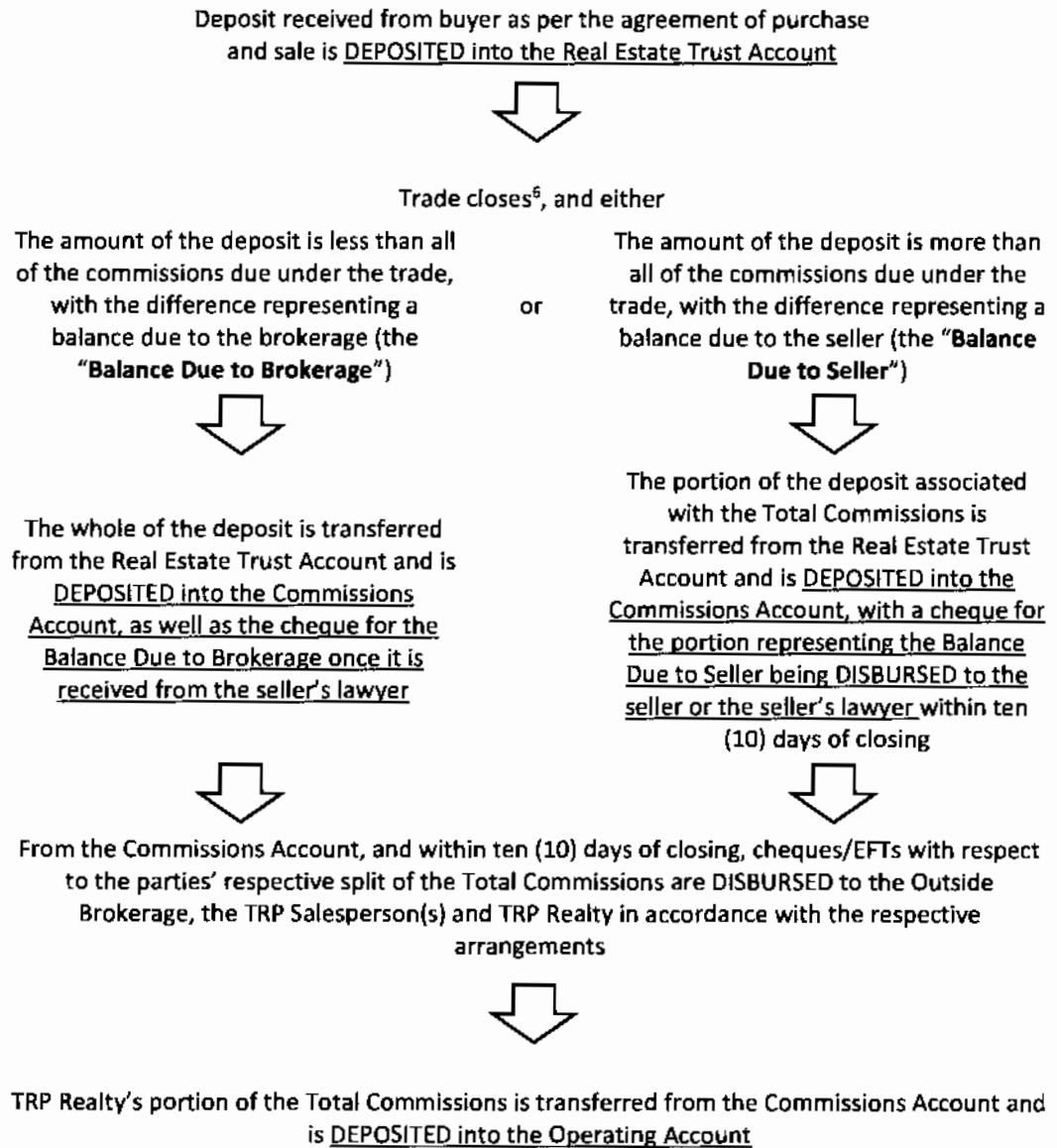
remittances, etc.) were paid from (the “**Operating Account**”), including the Cashback Rebates (as such term is later defined). The Operating Account was set-up by TRP Realty and held at RBC. Prior to then, TRP Realty had its general operating account at Comerica Bank as well.

28. A reconciliation of the Real Estate Trust Account prepared by the BrightIron Consulting Corp. (the “**Bookkeepers**”), TRP Realty’s external bookkeepers, and reviewed by RECO’s inspector indicated that no shortage existed.
29. A reconciliation of the Commissions Account prepared by the Bookkeepers indicated that a small deficiency of approximately \$3,200 existed as at the Date of Appointment. The deficiency appears to relate to potential overpayments to certain TRP Salespersons and bank charges incurred on the Commissions Account. As per the Bookkeepers, deficiencies in the commission account were addressed through a transfer of funds from the general operating account.

Commission Collection Flow

30. From the Receiver’s discussions with Raenae Paton (the “**Deal Administrator**”), TRP Realty’s former deal administrator, the basic flow (the receipts and distribution) of monies in and out of the aforementioned bank accounts in connection with the settlement of trades and the payment of commissions generally follows one of the following two (2) paths:

(a) Where TRP Realty was the listing brokerage and acted for the seller



⁶ If the trade does not close the deposit is returned to the party who provided the deposit, usually the prospective buyer(s), once a Mutual Release is executed by all parties – buyer, seller, listing brokerage and co-operating brokerage.

- (b) Where TRP Realty was the co-operating brokerage and acted for the buyer⁷

The trade closes and a cheque payable to TRP Realty is received from the listing broker or builder and is DEPOSITED into the Commissions Account and represents the commissions due on the trade to the TRP Salesperson(s) and TRP Realty (collectively, the **“Co-operating TRP Brokerage Commissions”**)



From the Commissions Account, and within ten (10) days of closing, cheques/EFTs with respect to the parties' respective split of the Co-operating TRP Brokerage Commissions are **DISBURSED** to the TRP Salesperson(s) and TRP Realty in accordance with the respective arrangements



TRP Realty's portion of the Co-operating TRP Brokerage Commissions is transferred from the Commissions Account and is DEPOSITED into the Operating Account

31. As mentioned earlier in this Report, approximately 96% of the number of outstanding trades to be settled by the Receiver are where TRP Realty is the co-operating brokerage (approximately 4% where TRP Realty is the listing brokerage).

The Commissions Collected or To Be Collected

32. As at the Date of Appointment and based on the information provided to the Receiver by TRP Realty and extracted from its computer systems, the Receiver understands that there were commissions receivable due to the brokerage totaling approximately \$6.65 million (the **“Commissions Receivables”**); the Commissions Receivables are not expected to be fully collected until sometime in 2023 due to a portion of the trades being associated with pre-construction condominium transactions.

⁷ Includes pre-construction condominium transactions, however in such transactions the builder/developer/vendor will pay TRP Realty, the co-operating brokerage its commission in two (2) or more installments based on certain milestones, with the final payment on closing of the transaction.

33. Based on a spreadsheet maintained by TRP Realty with respect the Commissions Receivables, the Receiver's comments and analysis of such spreadsheet are as follows:

Projected Year of Collection	Projected Total Commissions to be Collected	Projected Portion of Commissions due to the Outside Brokerages, TRP Salespersons, Assignees and Cashback Buyers	Projected Portion of Commissions due to TRP Realty
2018	\$ 3,004,495	\$ 1,760,637	\$ 1,243,858
2019	1,825,283	794,519	1,030,764
2020	938,554	573,617	364,937
2021	438,584	271,484	167,100
2022	361,721	253,846	107,874
2023	84,478	52,841	31,637
Total	\$ 6,653,115	\$ 3,706,944	\$ 2,946,170

NOTES TO ABOVE CHART: This chart is based on information prepared by TRP Realty's Deal Administrator. The above collection figures assume that all known transactions close. In addition, the above timing for the collections was based on the anticipated closing date of resale transactions, but with respect to pre-construction condominium transactions such timing was based on her best estimate for the closing date and payout of the final instalment. Accordingly, the actual timing and amount of the collections could be different, and such difference could be material. The above figures are exclusive of Harmonized Sales Tax ("HST").

- (a) It was projected that 72.6% of the Commissions Receivables would be collected by December 31, 2019;
- (b) A total of approximately \$3.7 million of the Commissions Receivables relates to commissions owing by TRP Realty to the Outside Brokerages, the TRP Salespersons, the Assignees and Cashback Buyers (the "Third-party Commissions"); and
- (c) The Commissions Receivables relates to more than 730 properties and more than 940 transactions or trades, due to there being multiple commission instalments on pre-construction condominium properties.

34. As of August 21, 2018, the Receiver had collected a total of approximately \$907,600 (inclusive of HST) of the Commissions Receivables, which was in addition to the \$131,210.95, inclusive of HST,

that was in the Commissions Account held at RBC. All of the aforementioned monies have been deposited in a separate bank account held by the Receiver (separate from the receivership operating account and the monies relating to the deposits held in trust).

The Competing Parties⁸

35. In connection with the Total Commissions collected and to be collected, the following parties have been identified by the Receiver as having claims to same:

- (a) The secured creditors – the Applicant, acting as agent for FirePower Asset Management Inc.⁹ and FirePower GAP Debt LP (collectively the “Lenders”) and Trilogy Growth Fund LP (“Trilogy”) hold perfected general security agreements (“GSAs”) covering all of TRP Realty’s assets, property and undertakings, including its interest in the Commissions Receivables (collected and to be collected);
- (b) The Outside Brokerage – The obligation to the Outside Brokerage by TRP Realty exists only where TRP Realty is the listing brokerage. In such cases the split of the Total Commissions between TRP Realty, as the listing brokerage, and the Outside Brokerage is set-out in the Listing Agreement and, if the property is listed on the MLS system, on the MLS Info Form and on the Co-operation Agreement, if the property not listed on the MLS system;
- (c) The TRP Salespersons – The TRP Salespersons commissions are internally set between TRP Realty and the TRP Salespersons pursuant to the Contractor’s Agreement and are reflected as a percentage of the Total Commissions after the payment of the Outside

⁸ Excludes other potential priority payable parties (e.g. CRA) or parties with subrogated claims (e.g. Underwriters of Lloyds – ClaimsPro LP), as detailed in the First Report

⁹ As of June 15, 2018, FirePower Asset transferred its interest in the Loan Agreement to FirePower GAP Debt II LP.

Brokerage's commissions (the "**Net Commissions**") or where the trade was subject to a "Cashback" program, as a percentage of the Net Commissions after deducting the Cashback Rebate (as such term is later defined);

- (d) TRP Realty – Regardless of whether the TRP Realty acted as the listing brokerage when acting for a seller or as the co-operating brokerage when acting for a buyer, all commissions on trades earned are paid to and collected by the brokerage, as noted earlier in this Report, and are set-out in the Listing Agreement (if applicable), Buyer Rep Agreement and the Co-operation Agreement. As the real estate brokerage under which all real estate transactions or trades are conducted, the commissions earned are split between the Outside Brokerage, the TRP Salespersons and TRP Realty itself, as discussed above. As noted above, TRP Realty's interest is subject to the security interest of Trilogy and the Lenders pursuant their respective GSAs;
- (e) AccessEasyFunds Limited ("**AccessEasy**") and 1834176 Ontario Inc. o/a Agent's Equity ("**Agent's Equity**") and together with AccessEasy collectively, the "**Assignees**") – Certain of the TRP Salespersons sought advances on their commissions and have entered into Commission Advance Agreements (as such term is later defined) with the Assignees. The total amount owing to the Assignees in connection these Commission Advance Agreements total approximately \$32,000 (assuming all related trades close); and
- (f) Buyers under TRP Realty's "Cashback" programs (the "**Cashback Buyers**") – As an incentive on certain real estate transactions, buyers who bought through TRP Realty were entitled to receive cash rebates (generally between 10% and 25%) of the Net Commissions earned on the real estate transaction (the "**Cashback Rebate**") on the

closing of the transaction and TRP Realty's receipt of the commissions. In the ordinary course where a Cashback Rebate is due, once the Net Commission is received and deposited into the Commissions Account, the amount of the associated Cashback Rebate is transferred to the Operating Account. It is from the Operating Account that a cheque is then issued to the Cashback Buyer. Based on the information made available to the Receiver by TRP Realty, the total Cashback Rebates outstanding amount to approximately \$443,000 (assuming all related trades close).

36. The Lenders, Trilogy, the TRP Salespersons, the Outside Brokerages, the Assignees and the Cashback Buyers are hereinafter collectively referred to as, the "**Competing Parties**".

37. The quantum and split of the commissions earned on real estate transactions varied according to the type of the transaction and when the trade was initiated. For example, for the majority of the transactions¹⁰:

- (a) In a purchase or listing transaction, the total commission on the real estate transaction was typically between 4.25% and 5.0% of the gross sale price of the property for sale. In such cases the Outside Brokerage's commissions are typically around 2.5% of the gross sale price of the property, with the balance of between 1.75% and 2.5% being split between TRP Realty and the TRP Salesperson(s). Historically, there was a broad range of splits depending on the particular TRP Salesperson, the nature of the transaction and when the transaction was initiated. More recently in February 2018, TRP Realty implemented a new and simplified

¹⁰ Excluding transactions where the buyer or seller are related to the TRP Salesperson. In such cases, the split between TRP Realty and the TRP Salesperson(s) ranged anywhere from a flat amount for TRP Realty (\$150 to \$500) with the balance to the TRP Salesperson(s).

commissions structure with its TRP Salespersons; in the case of purchase and listing transactions (excluding certain situations), the split was 30/70 (30% for TRP Realty, 70% for the TRP Salesperson(s)); and

- (b) In a leasing transaction the total commission on the real estate transaction was typically one month's lease payment. In such cases the Outside Brokerage's commissions are typically one half of one month's lease payment. For the last several years the split on leasing transactions was 20/80 (20% for TRP Realty, 80% for the TRP Salesperson(s)) with a minimum fee for TRP Realty of \$250.

38. As noted in the Paccione Affidavit, AGB has been retained by a number of the TRP Salespersons to represent them in connection with the TRP Salespersons' trust claim for a portion of the Third-party Commissions, as outlined above.

39. As noted in the First Report, Chaitons (as such term is defined in the First Report) is legal counsel for the Lenders and Faskens (as such term is defined in the First Report) is legal counsel to Trilogy.

V THE ISSUE

40. The Receiver is not aware of any concerns with respect to whether the Competing Parties, as outlined earlier in this Report, have a legitimate claim against TRP Realty. Rather the key issues is:

whether any or all of the Third-party Commissions collected and to be collected by the Receiver are held and to be held in trust for benefit of the TRP Salespersons, the Outside Brokerages, the Assignees and/or the Cashback Buyers.

VI THE PARTIES' POSITIONS TAKEN AND/OR CONSIDERATIONS TO BE TAKEN INTO ACCOUNT

The TRP Salespersons

41. In AGB's letter to the Receiver dated June 15, 2018 (the "**June 15th AGB Letter**"), Goldblatt asserted that it his clients' position that the commissions received by TRP Realty are "impressed with a trust in favour of the Agents [the TRP Salespersons]" and referred to the Court's decision in *Eu v. Rosedale Realty Corp (Trustee of)* in support of this position. The Receiver leaves it the Competing Parties to argue the merits and/or the distinguishing factors of the aforementioned case with respect to the issue to be addressed in this motion. A copy of the June 15th AGB Letter is attached hereto as **Appendix "S"**.
42. In the June 15th AGB Letter, Goldblatt further asserts that the "commissions were paid to a commission trust account, and then paid out to the Agents [the TRP Salespersons]."
43. On June 22, 2018, Goldblatt wrote to the Receiver's independent legal counsel (the "**June 22nd AGB Letter**"), Harry Fogul of Aird & Berlis LLP ("**A&B**"), wherein he enclosed two (2) types of documents: sample executed Trade Records, as well as sample EFT remittance advices; all relating to trades initiated in 2017 or prior. A copy of the June 22nd AGB Letter, together with the enclosures, is attached hereto as **Appendix "T"**. In the June 22nd AGB Letter, Goldblatt writes:
- "Second, I enclose, by way of example only, trade records reflecting commissions paid to my clients. As you can see, each statement evidences that the funds were being paid pursuant to a "Commission Trust Agreement". Further, electronic transfer fund statements also evidence these amounts being paid from what I understand to be a segregated "RBC Commission Trust Account" account, and these words are literally used on the ETFs. While I understand the Receiver is unlikely to weigh in on the trust/commissions issue, if the Receiver's review of TRP Realty's books and records suggests my clients were somehow uniquely treated, I trust you will let me know."*

44. As referenced in the June 22nd AGB Letter, the Trade Record (attached hereto this Report as Appendix "J") includes the following language:

"It is understood between the parties that this agreement shall constitute a Commission Trust Agreement as set-out in the contract."

45. The Contractor's Agreements between the TRP Salespersons and TRP Realty sets out, among other things, the TRP Salespersons remuneration, the commissions structure and split under various transaction categories, but it does not contain any trust provisions or language.

The Assignees

46. Notwithstanding the TRP Salespersons' potential trust claim and the possible implications of such a determination for the Assignees, each of the Assignees have their own respective Commission Advance Agreements, which include trust provisions. The trust provision language in each of the respective Commission Advance Agreements differ as follows:

- (a) With respect to the Commission Purchase Agreement (the "**AccessEasy Agreement**") of AccessEasy (a sample of which is attached to this Report as **Appendix "U"**) there is a trust provision which states:

"The Broker hereby acknowledges the Sales Representative's entitlement to the Sales Commission and acknowledges receipt of the foregoing irrevocable authorization and direction and hereby undertakes to pay the Payment Obligations to AccessEasy out of the Sales Commission immediately following receipt of the commission and finalization of the related commission reconciliations and agrees that after the Closing Date all amounts it may hold on account of the Sales Commission will be held in trust for the benefit of AccessEasy until disbursed by it to AccessEasy in accordance with this Agreement."

- (b) Similarly, with respect to the Commission Sale Agreement (the “**Agent’s Equity Agreement**” and together with the AccessEasy Agreement, collectively referred to as “**Commission Advance Agreements**”) of Agent’s Equity (a sample of which is attached to this Report as **Appendix “V”**) there is a trust provision which states:

“...the Commission Purchased will be held by the Broker in trust pending immediate payment to “Agent’s Equity, that there are no disputes, claims, setoff, counterclaims, judgments or garnishees against the Commission Purchased, or any other matter which the Sellers are aware of which would affect the payment of the Commission Purchased to Agent’s Equity.”

and

“Upon acceptance of this agreement, and receipt of the Net Advance, notwithstanding that the Purchaser and/or Vendor of the “Property” may change, the Braker agrees to collect and hold in trust for Agent’s Equity, the Commission Purchased upon successful completion of the sale...”

47. Based on the Receiver’s review of each of the respective Commission Advance Agreements, that in addition to the TRP Salesperson, the Broker of Record or Associated Broker of Record appear to have executed the documents on behalf of TRP Realty.

The Outside Brokerages

48. Notwithstanding the TRP Salespersons’ potential trust claim and the possible implications of such a determination for the Outside Brokerages, the Outside Brokerages and TRP Realty execute the Co-operation Agreement, which among other things, which as noted earlier in this Report, is used to reassure the parties to the transaction that they will be treated fairly. In the Co-operation Agreement there is trust provision, which states:

"COMMISSION TRUST AGREEMENT: If the above Co-operating Brokerage is receiving payment of commission from the Listing Brokerage, then the agreement between Listing Brokerage and Co-operating Brokerage further includes a Commission Trust Agreement, the consideration for which is the Co-operating Brokerage procuring an offer for a trade of the property, acceptable to the Seller. This Commission Trust Agreement shall be subject to and governed by the MLS® rules and regulations pertaining to commission trusts of the Listing Brokerage's local real estate board, if the local board's MLS® rules and regulations so provide. Otherwise, the provisions of the OREA recommended MLS® rules and regulations shall apply to this Commission Trust Agreement. For the purpose of this Commission Trust Agreement, the Commission Trust Amount shall be the amount noted in Section 3 above. The Listing Brokerage hereby declares that all monies received in connection with the trade shall constitute a Commission Trust and shall be held, in trust, for the Co-operating Brokerage under the terms of the applicable MLS® rules and regulations."

49. The Receiver notes that although the Co-operation Agreement has TRP Realty named as one of the parties to the agreement (the other is the brokerage on the other side of the transaction), a review of executed copies of this document by the Receiver indicate that such document is frequently executed by the TRP Salesperson and not the Broker of Record or Associated Broker of Record. As noted earlier in this Report, the Receiver has reached out to the Broker of Record on a number of issues, including this one, but has not yet received a response.

50. In addition, and as noted earlier in this Report, where TRP Realty is the listing brokerage, the Residential APS includes a trust provision, which states:

"In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust."

51. The Receiver notes that although the Residential APS appears to establish a trust obligation by TRP Realty, the Receiver's review of executed copies of this document indicate that such document is frequently executed by the TRP Salesperson and not the Broker of Record or Associated Broker of Record. As noted earlier in this Report, the Receiver has reached out to the Broker of Record on a number of issues, including this one, but has not yet received a response.

Cashback Buyers

52. Cashback Rebates were taken off the top of the Net Commissions and paid out to the Cashback Buyers from the general operating account. As a result, both the TRP Salespersons and TRP Realty effectively shared in the cost of the Cashback Rebate, based on their respective percentage split of the Net Commissions.
53. Based on the Receiver's review of the Books & Records and discussions with Cashback Buyers, the agreement between TRP Realty and the Cashback Buyer outlining the terms of the Cashback Rebate (the "**Cashback Agreement**") is limited to a one (1) page document that was emailed to the Cashback Buyer and required the Cashback Buyer to complete a short customer satisfaction survey and sign the document. A sample copy of the Cashback Agreement is attached to this Report as **Appendix "W"**.
54. Copies of the Cashback Agreement reviewed by the Receiver were executed by TRP Realty's broker of record.

The Lenders and Trilogy

55. As reported in the First Report, the Receiver has obtained an opinion from A&B, the Receiver's independent legal counsel, confirming the validity and enforceability of the GSAs held by the Lenders and Trilogy.

56. As reported in the First Report, the Receiver has been advised by its independent legal counsel that the Lenders and Trilogy each hold perfected GSAs covering all of the assets, property and undertakings of TRP Realty, including TRP Realty's interest in the Commissions Receivables.
57. The Lenders and Trilogy are asserting that unless the Third-party Commissions collected or to be collected were being held or are to be held in trust for other parties, including the TRP Salespersons, the Outside Brokerages, the Assignees and the Cashback Buyers, such funds are subject to the security interest of the Lenders and Trilogy.

VII ALLOCATION OF THE COSTS OF THE RECEIVERSHIP AND DISTRIBUTIONS

58. If all or certain of the Competing Parties are determined to be entitled to receive a portion of the Third-party Commissions collected by the Receiver, the Receiver believes that such parties should bear a portion of the Receiver's professional fees in connection with the set-up and collection of the Commissions Receivables, as well as the distribution of monies to them, as they would be the beneficiaries of such efforts.
59. As the collection of the Commissions Receivables is expected to run until sometime in 2023 and as it unreasonable for those parties entitled to such funds, if so determined, to wait until the conclusion of these receivership proceedings for the proportional application of the total actual costs incurred, the Receiver proposes that the Receiver's cost should be applied on a standard cost and transactional or on a per trade basis.
60. Prior to the Advice and Direction Motion being heard on October 22, 2018, the Receiver intends to file a supplemental report outlining its proposed standard cost allocation methodology and rate structure to be approved by the Court.

61. Additionally, once a determination is made on the Advice and Direction Motion, the Receiver anticipates being in a position to make distributions. Accordingly, as part of the aforementioned supplemental report the Receiver intends to file with the Court, the Receiver will also outline its proposed distribution methodology to be approved by the Court and seek its authorization to make distributions according to same.

VIII RELIEF REQUESTED BY THE RECEIVER

62. Based on the foregoing, the Receiver seeks the advice and directions of the Court with respect to whether any or all of the Third-party Commissions collected and to be collected by the Receiver are held and to be held in trust for benefit of the TRP Salespersons, the Outside Brokerages, the Assignees and/or the Cashback Buyers.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of September, 2018

MNP LTD.,
in its capacity as Court-appointed Receiver of
TheRedPin, Inc. and TheRedPin.com Realty Inc.
and not in its personal or corporate capacities
Per:

A handwritten signature in blue ink, appearing to read 'M. Lem', is written over a light blue horizontal line.

Matthew Lem, CIRP
Licensed Insolvency Trustee

TAB 2(f)

Appendix “F”

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Respondents

**SUPPLEMENTARY REPORT TO THE SECOND REPORT TO THE COURT SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

September 28, 2018

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

BETWEEN:

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**SUPPLEMENTARY REPORT TO THE SECOND REPORT TO THE COURT SUBMITTED BY MNP LTD.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

September 28, 2018

I INTRODUCTION AND PURPOSE OF THIS REPORT

1. On June 14, 2018 ("**Date of Appointment**"), MNP Ltd. was appointed as receiver (the "**Receiver**") without security, of all assets, undertakings and properties of TheRedPin, Inc. ("**TRP Inc.**") and Theredpin.Com Realty Inc. ("**TRP Realty**" and together with the TRP Inc., collectively hereinafter referred to as the "**Debtors**") acquired for or used in relation of a business carried on by the Debtors, including all proceeds thereof (the "**Property**") pursuant to an Order, dated June 14, 2018 (the "**Appointment Order**") issued by the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

2. On September 10, 2018, the Receiver filed its second report to the Court (the “**Second Report**”), wherein it to provided the Court with information in support of the Advice and Direction Motion concerning whether any or all of the Third-party Commissions collected and to be collected by the Receiver are held and to be held in trust for benefit of the TRP Salespersons, the Outside Brokerages, the Assignees and/or the Cashback Buyers.
3. This supplementary report (the “**Supplementary Report**”) is to be read in conjunction with the Second Report. All defined terms are as defined in the Second Report
4. The purpose of the Supplementary Report is to consider the responding materials filed by the TRP Salespersons, as well as additional information being received and/or identified by the Receiver after the filing of the Second Report. The Receiver intends on filing a further supplemental report outlining its proposed standard cost allocation methodology and rate structure to be approved by the Court.

II **TERMS OF REFERENCE**

5. In preparing the Supplementary Report, the Receiver has relied on information regarding the Debtors and the Property:
 - (a) included in the motion records and other materials filed with the Court by the Applicant in connection with these proceedings. In particular, information included in:
 - (i) the affidavit of Jared Kalish sworn June 13, 2018, which was Tab 2 to the Application Record, dated June 13, 2018, filed with this Court in support of the application for the Appointment Order;

- (ii) the affidavits of Tarik Gidamy and Dennise Paccione, which are included as Tab 1 and Tab 2 of the Responding Motion Record, dated September 19, 2018, of Dennise Paccione and Michael Sotoadeh, respectively, representatives of the TRP Salespersons; and
- (iii) information provided by the Debtors' directors and management, the Applicants and their respective legal counsel; and

(b) as otherwise made available or provided to the Receiver and its counsel.

- 6. Except as described in the Supplementary Report, the Receiver has not audited, reviewed 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 of the Chartered Professional Accountants of Canada Handbook.
- 7. All currency references contained herein are in Canadian Dollars, unless otherwise specified. All capitalized terms not otherwise defined herein shall have the meanings as defined in the Second Report and the Appointment Order, unless otherwise specified.

III BANK ACCOUNTS – THE COMMISSION ACCOUNT

- 8. As noted in the Second Report, on the Date of Appointment, TRP Realty operated a commission account at RBC, which account was opened early in 2018. Previously, TRP Realty maintained its commission account at Comerica Bank and TD Bank. The Receiver sought confirmation from each of these banks as to whether TRP Realty designated the commission account as a trust account and at the date of the Second Report was waiting on receipt of information from RBC and Comerica Bank.
- 9. On September 13, 2018, RBC advised the Receiver that it could not find any other documentation related to the account set up apart from an Appointment of Agent/Third Party Service Provider

form. The RBC advised it was still attempting to locate documentation that may assist the Receiver in clarifying this issue.

10. Comerica has to date not responded to the Receiver's request for information.
11. As noted in the Second Report, the Receiver had also reached out to the Broker of Record on the circumstance surrounding the accounts set-up for commissions and other issues but at the date of the Second Report had not had a response. The Receiver has since followed up with the Broker of Record and has yet to receive a response.

IV COMMISSION PROTECTION INSURANCE

12. Section 11(1) of the O. Reg. 579/05 requires that "All registrants shall be insured under a group insurance policy that is arranged and administered by the board of the administrative authority and provides for the following (*inter alia*): Commission protection insurance that provides coverage of at least \$100,000 in respect of any particular claim under the insurance and at least \$1 million for all claims under the insurance in respect of the same occurrence." For the purposes of O. Reg. 579/05, commission protection insurance "means insurance to pay claims made by a registrant for commission or remuneration in relation to a trade in real estate, if the claims arise out of money or other property entrusted to or received by another registrant in the course of trading real estate."
13. RECO confirmed to the Receiver that while all registrants are required to maintain a group insurance program that includes commission protection coverage, it "does not require registrants to maintain a commission trust account, however, some of the local real estate boards do require registrants to maintain such accounts. Coverage is not dependent upon the existence of a commission trust account, the insurer encourages the use of such accounts because it makes claim management more efficient."

14. The Receiver confirmed with a representative of the Toronto Real Estate Board that it does not have rules requiring brokerages to maintain commission trust accounts.

V FINANCIAL STATEMENT DISCLOSURE

15. KPMG LLP (“KPMG”) audited the Debtors’ consolidated financial statements (the “**Audited Statement**”), which comprise the consolidated statement of financial position as at December 31, 2016, the consolidated statements of income and comprehensive income, changes in shareholder equity (deficiency) and statement of cash flows for the year then ended. The Debtors’ financial statements since December 31, 2016 have been unaudited. A copy of the Audited Statement is included as **Appendix “A”**.
16. The notes to the financial statements provide the basis on which the Debtors’ financial statements are presented, including the Debtors’ revenue recognition policies and the basis on which it discloses its cash and cash equivalents and restricted cash.
17. Cash and cash equivalents are defined to “include cash on hand, demand deposits that can be withdrawn without penalty, and short-term highly liquid securities, such as debt securities with an initial maturity date of not more than three months from the date of acquisition that can be readily be converted into known amounts of cash and are subject to an insignificant risk of change in value”.¹ The balances on deposit in the Operating Account and Commission Accounts were included as Cash and Cash Equivalents in the Audited Statement.
18. Excluded from cash and cash equivalents “are amounts held in trust as required by various purchase and sales agreements, which are separately disclosed as restricted cash.” Accordingly, only the Real Estate Trust Account is shown as being restricted on the Audited Statement.

¹ Note 4(d) to the Audited Consolidated Statement

VI TRADE RECORD SHEET

19. As noted in the Second Report, the Trade Record includes the following language: "It is understood between all parties that this agreement shall constitute a Commission Trust Agreement as set out in the contract." At the date of the Second Report, the Receiver noted that it appeared to the Receiver that this phrase is standard to this preset report.
20. The Receiver has since confirmed with brokerWolf, the software developer, that the wording in the Trade Record "are the default lines that are part of the original set up/install of brokerWolf. It is also editable and can be changed...".

All of which is respectfully submitted this 28th day of September 2018

MNP LTD.

in its capacity as Court-appointed Receiver of
TheRedPin, Inc. and TheRedPin.com Realty Inc.
and not in its personal or corporate capacities
Per:



Matthew Lem, CIRP
Licensed Insolvency Trustee

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Respondents

**SECOND SUPPLEMENTARY REPORT TO THE SECOND REPORT TO THE COURT
SUBMITTED BY MNP LTD., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

October 11, 2018

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

- and -

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Respondents

**SECOND SUPPLEMENTARY REPORT TO THE SECOND REPORT TO THE COURT
SUBMITTED BY MNP LTD., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

October 11, 2018

I INTRODUCTION AND PURPOSE OF THIS REPORT

1. On June 14, 2018 ("**Date of Appointment**"), MNP Ltd. was appointed as receiver (the "**Receiver**") without security, of all assets, undertakings and properties of TheRedPin, Inc. ("**TRP Inc.**") and Theredpin.Com Realty Inc. ("**TRP Realty**" and together with the TRP Inc., collectively hereinafter referred to as the "**Debtors**") acquired for or used in relation of a business carried on by the Debtors, including all proceeds thereof (the "**Property**") pursuant to an Order, dated June 14, 2018 (the "**Appointment Order**") issued by the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

2. On September 10, 2018, the Receiver filed its second report to the Court (the **"Second Report"**), wherein it to provided the Court with information in support of the Advice and Direction Motion concerning whether any or all of the Third-party Commissions collected and to be collected by the Receiver are held and to be held in trust for benefit of the TRP Salespersons, the Outside Brokerages, the Assignees and/or the Cashback Buyers.
3. On September 28, 2018, the Receiver served its supplementary report to the Second Report (the **"Supplementary Report"**) wherein it provided the Court with updated information concerning issues raised in the Second Report, as well as additional information identified since the filing of the Second Report.
4. On October 3, 2018 the affidavit of William Durrell, sworn October 3, 2018 (the **"Durrell Affidavit"**) was served by AGB on behalf of Jeff Klein in response to the Supplementary Report.
5. On October 9, 2018 the affidavit of Jared Kalish, sworn October 9, 2018 (the **"2nd Kalish Affidavit"**) was served by Counsel for the Lenders in response to the Supplementary Report.
6. This second supplementary report to the Second Report (the **"2nd Supplementary Report"**) is to be read in conjunction with the Second Report and the Supplementary Report.
7. The purpose of the 2nd Supplementary Report is to:
 - (a) Update the Court on information received in connection with issues raised in the Second Report and any comments in response to the Durrell Affidavit and the 2nd Kalish Affidavit;

- (b) provide support for the Receiver's request for an Order of the Court, authorizing the payment from the Third-party Commissions funds in the Receiver's Commission Account of the Receiver's Net HST Obligation (defined below), *nunc pro tunc*; and
- (c) should it be determined that all or part of the Competing Parties are entitled to a priority to all or part of the Third-party Commissions, provide support for the Receiver's request for an Order of the Court, *inter alia*:
 - (i) approving the methodology for the application of certain costs of the receivership administration to the respective successful Competing Parties; and
 - (ii) approving and authorizing the Receiver to make distributions to such Competing Parties net of the respective parties' portion of the Proposed Standard Cost (as such term is later defined) without further Orders of this Court.

II TERMS OF REFERENCE

8. In preparing the 2nd Supplementary Report, the Receiver has relied on information regarding the Debtors and the Property:

- (a) included in the motion records and other materials filed with the Court by the Applicant in connection with these proceedings. In particular, information included in:

- (i) the affidavit of Jared Kalish sworn June 13, 2018, which was Tab 2 to the Application Record, dated June 13, 2018, filed with this Court in support of the application for the Appointment Order;
- (ii) the affidavits of Tarik Gidamy and Dennise Paccione, which are included as Tab 1 and Tab 2 of the Responding Motion Record, dated September 19, 2018, of Dennise Paccione and Michael Sotoadeh, respectively, representatives of the TRP Salespersons; and
- (iii) information provided by the Debtors' directors and management, the Applicants and their respective legal counsel; and

(b) as otherwise made available or provided to the Receiver and its counsel.

9. Except as described in the 2nd Supplementary Report, the Receiver has not audited, reviewed 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 of the Chartered Professional Accountants of Canada Handbook.

10. All currency references contained herein are in Canadian Dollars, unless otherwise specified. All capitalized terms not otherwise defined herein shall have the meanings as defined in the Second Report and the Appointment Order, unless otherwise specified.

III UPDATE

11. As outlined in footnote 4 (page 11) of the Second Report, the Receiver has now confirmed with brokerWolf that the bank account types (General, Trust and Commission Trust) are preset in the program and can't be changed.

IV HST DUE ON COMMISSION COLLECTIONS

12. In carrying out its duties pursuant to the Appointment Order, the Receiver is controlling TRP Realty's receipts and disbursements, including the collection of HST. The Receiver is responsible for remitting to CRA the net tax (the "**Receiver's Net HST Obligation**"), representing the difference between the HST collected on Total Commissions and any HST paid and payable (the "**ITCs**") to the Competing Parties.
13. Prior to the Date of Appointment, TRP Realty calculated the net tax as being equal to the difference between:
 - (a) Actual HST collected on the Total Commissions in the period; essentially HST collected was on a cash basis and not an accrual basis;
 - (b) All ITCs claimed, with the primary ITC associated with commissions being paid to the Outside Brokerages and the TRP Salespersons from the Commissions Account;
 - (c) Historically, the payment of these commissions and therefore the generation of ITCs usually occurred in the same period, resulting in a lower amount being remitted to CRA; and
 - (d) The net tax was then paid from TRP Realty's Operating Account, as the net amount due to CRA represented only the HST on the amount TRP Realty received as its share.
14. Since the Date of Appointment, all HST on the Commissions Receivables collected have been deposited into the Commissions Account, but due to the competing positions being asserted as part of the Advice and Direction Motion no ITCs have been generated to be claimed or offset

against the HST collected, as no commissions have been paid out to the Outside Brokerages or the TRP Salespersons.

15. In order to properly match the payment of HST to CRA to the HST actually collected/received, the Receiver has drawn from the Commissions Account the HST collected in connection with such Commissions Receivables collections. For the period from the Date of Appointment to the HST reporting period ending August 31, 2018, a total of \$129,492.12 of HST has been paid from the Commissions Account to satisfy the Receiver's HST obligations to CRA.
16. As the Third-party Commissions in the Commissions Account are subject to the Advice and Direction Motion, the Receiver is seeking the Court's approval of the Receiver's actions with respect to the HST remittance, *nunc pro tunc*.

V ALLOCATION OF THE COLLECTION COSTS AND DISTRIBUTIONS

Methodology

17. If all or certain of the Competing Parties¹ are determined to be entitled to receive a portion of the Total Commissions collected by the Receiver, the Receiver believes that such parties should bear a portion of the Receiver's professional fees and costs in connection with the set-up, collection and distribution of the Commissions Receivables (collectively, the "**Commissions Costs**"), as they would be the beneficiaries of such efforts.
18. For the purposes of these discussions, the TRP Salespersons also includes the Assignees, unless otherwise noted.

¹ Alternatively, if the Lenders and Trilogy are ultimately successful in asserting their claim over the Commissions Receivables, no cost allocation is necessary as all set-up, collection and distribution costs would be borne by the Lenders and Trilogy.

19. As the collection of the Commissions Receivables is expected to run until sometime in 2023 and as it unreasonable for those parties entitled to such funds, if so determined, to wait until the conclusion of these receivership proceedings for the proportional application of the total actual costs incurred, the Receiver proposes that the Commissions Costs should be applied on a standard cost and transactional basis or on a per trade basis.
20. To that end, the Receiver has developed and proposes a standard cost for the Commission Costs (the “**Proposed Standard Cost**”) to be used and applied. The Proposed Standard Cost takes into account the tasks required in the commission collection and distribution process and the level of professional performing such tasks. Additionally, the Receiver has also taken into consideration the situations where the particular Commissions Receivable is shared or alternatively belongs almost entirely to TRP Realty². In such situations where the particular Commissions Receivable is subject only to interest of TRP Realty³, not all of the tasks will be required to be performed given no interest in same by the TRP Salesperson(s).
21. The Proposed Standard Cost’s estimated number of standard hours by task and by professional staff level is set-out below in Table 1.

² For 157 trades where TRP Realty is expected to receiver 80% to 100% of the Commissions Receivables. Such trades are primarily associated with “New Development” or pre-construction trades and have been denoted in the Proposed Standard Cost table as “All TRP Commissions”.

³ As will be discussed later in this report these trades will be reflected in Tier 1 (as such term is later defined).

Table 1.

Task	Standard Hours per Trade			
	Commissions Shared		All TRP Realty Commissions	
	Manager	Administrator	Manager	Administrator
Collection follow-up	0.10	0.15	0.10	0.15
Receivable tracking and trade identification	0.05	0.15	0.05	0.15
Documentation provision	0.05	0.20	0.05	0.20
Deposit to Commissions Account	0.05	0.30	0.05	0.30
Other*	0.10	0.20	0.10	0.20
Cheque to TRP Salesperson(s)	0.05	0.20	0.00	0.00
Agent correspondence re: commission	0.05	0.20	0.00	0.00
Transfer to TRP Operating Account	0.05	0.20	0.05	0.20
RECO information provision for TRP Salesperson(s)	0.05	0.05	0.00	0.00
TOTAL	0.55	1.65	0.40	1.20

* - Includes cheque to Outside Brokerage and/or Seller(s)/Balance due re: deposit held, cash back cheque to Seller(s), etc.

22. The manager's role is supervisory in nature, including oversight of the collections process and the approval of the payments (only certain officers of the Receiver are authorized to sign cheques and transfer monies). The bulk of the work is performed by an administrator of the Receiver. The professional fee hourly rates⁴ of the manager and administrator that have been applied for the Proposed Standard Cost is \$395 and \$245 (both excluding HST), respectively (average hourly rate per trade \$282.50, excluding HST).
23. The standard hours per trade have been developed by the Receiver based its on actual collection experience and takes into account the complexities and the nature of the task to be performed. For some of the tasks, the standard hours or length of time to complete the task may seem significant; however, the Receiver notes that in addition to the Receiver's less familiarity⁵ with

⁴ The professional hourly rates to be applied takes into account inflationary changes in the current rates over the contemplated collection period.

⁵ The Receiver originally sought to hire the Deal Administrator to collect the Commissions Receivables, however the Deal Administrator declined the offer.

the accounts and parties, it has different record keeping requirements as part of its fiduciary duties and regulatory requirements, which adds to the level of work to be performed.

24. In addition to the standard hours associated with each task, the Receiver has taken into consideration who (TRP Realty and/or the TRP Salespersons) proportionately benefits from the each of the above tasks. Based on information provided by the Deal Administrator, the Receiver has categorized the Commissions Receivables into three (3) tiers:

- (a) Trades where TRP Realty is expected to receive 80% to 100% of the Commissions Receivables (“**Tier 1**”);
- (b) Trades where TRP Realty is expected to receive 50% or more but less than 80% of the Commissions Receivables (“**Tier 2**”); and
- (c) Trades where TRP Realty is expected to receive less than 50% of the Commissions Receivables (“**Tier 3**”).

25. The above categorization of the Commissions Receivables into three (3) tiers was necessary in order to simplify the application of the Proposed Standard Cost, while maintaining a fair and equitable application of such costs.

26. As of the Date of Appointment and based on information provided by the Deal Administrator, details about each of the tiers associated with the 731⁶ properties to be settled are as follows:

⁶ The Commissions Receivables relates to more than 730 properties and more than 940 transactions, due to there being multiple commission instalments on pre-construction condominium properties

Tier 1	<ul style="list-style-type: none"> Represents 157 trades, of which 144 are a 0/100 split (i.e. TRP Salespersons 0%/TRP Realty 100%); Principally "New Development" trades (152 out of 157 trades); Commissions Receivables in this tier total \$1,152,078;
Tier 2	<ul style="list-style-type: none"> Represents 156 trades, of which 110 trades are a 50/50 split; Principally "New Development" trades (151 out of 156 trades); Includes Commissions Receivables in this tier total \$1,436,176;
Tier 3	<ul style="list-style-type: none"> Represents 418 trades, of which 225 trades are less than, 187 trades equal to, and 6 trades are more than (but less than 50%) a 70/30 split; Combination of "New Development" (298 trades), "Resale" trades (90 trades) and other (30 trades); Includes Commissions Receivables in this tier total \$4,064,861;

27. The Receiver's proposed percentage allocation of the time/cost for each task by tier is set-out below in Table 2.

Table 2.

Task	Percentage Allocation per Task					
	Tier 1		Tier 2		Tier 3	
	TRP Salesperson	TRP Realty	TRP Salesperson	TRP Realty	TRP Salesperson	TRP Realty
Collection follow-up	0%	100%	46%	54%	75%	25%
Receivable tracking and trade identification	0%	100%	46%	54%	75%	25%
Documentation provision	0%	100%	46%	54%	75%	25%
Deposit to Commissions Account	0%	100%	46%	54%	75%	25%
Other*	0%	100%	46%	54%	75%	25%
Cheque to TRP Salesperson(s)	0%	0%	100%	0%	100%	0%
Agent correspondence re: commission	0%	0%	100%	0%	100%	0%
Transfer to TRP Operating Account	0%	100%	0%	100%	0%	100%
RECD information provision for TRP Salesperson(s)	0%	0%	100%	0%	100%	0%

* - Includes cheque to Outside Brokerage and/or Seller(s)/Balance due re: deposit held, cash back cheque to Seller(s), etc.

28. The above splits were developed based on the Receiver's analysis of the Commissions Receivables and the commissions splits as per the information provided by the Deal Administrator and TRP Realty, including the Contractor's Agreement in effect at the Date of Appointment.

29. Under the Proposed Standard Cost, the Receiver proposes that for Tier 2 and Tier 3 the total cost per trade of \$621.50, plus HST, would be allocated⁷ to the TRP Salespersons and TRP Realty (effectively the Lenders and Trilogy) on a per trade basis as follows:

- Tier 2 - TRP Salespersons - \$345.80 plus HST, and TRP Realty - \$275.70 plus HST; and
- Tier 3 - TRP Salespersons - \$456.94 plus HST, and TRP Realty - \$164.56 plus HST.

For Tier 1, the Receiver proposes that the total cost per trade of \$452.00⁸, plus HST, would be allocated solely to TRP Realty.

30. Attached hereto as **Appendix "A"** is a copy of the Receiver's Proposed Standard Cost Summary summarizing the above figures.

31. The Receiver notes that as of September 30, 2018, the Receiver has settled 91 trades (primarily associated with "Resales") and have expended 146.5 hours in connection with such trades; however, this does not include certain anticipated additional time associated with distributions and potential RECO claims or information provision requests associated with the TRP Salespersons. Based on the Proposed Standard Cost and after adjusting for tasks not completed (as noted above), the total adjusted hours that would be estimated to be expended for the 91 trades has been calculated to amount to 141.05 hours.

Proposed Distributions of Third-party Commissions

32. As noted earlier in this Report, it is expected that the collection of the Commissions Receivables will run until sometime in 2023. As it would seem unreasonable for the parties entitled to the

⁷ According to the commission split rates noted above in Table 2

⁸ The lower figure reflects the elimination of the tasks that would not be applicable given the TRP Salespersons' lack of financial interest in such Commissions Receivables.

Commissions Receivables, once and if determined, to wait until the conclusion of these receivership proceedings to receive a distribution of their respective share of such Commissions Receivables monies collected, the Receiver proposes that such a distribution be made as soon as practically possible once the monies are in the hands of the Receiver in respect to each trade.

33. The Receiver further proposes that the allocation of the Total Commissions between the respective parties shall be based on the Trade Record Sheet⁹ as per TRP Realty's books and records, unless mutually agreed upon between the party or parties and the Receiver (the "**Party's Share of Commissions**").

34. In connection with the Receiver's administration of this commissions collection and disbursement process, the Receiver has and will continue to incur out-of-pocket costs, including but not limited to postage on distribution cheques, photocopying, bank charges and monthly software licensing fees for brokerWolf¹⁰ (collectively, the "**Administrative Disbursements**"). In order to equitably share the burden of the Administrative Disbursements, the Receiver proposes a flat fee of \$35, plus HST (the "**Administrative Disbursement Fee**") be charged by the receivership estate to defray such costs.

35. The Receiver proposes that the amounts to be distributed of the Third-party Commissions, subject to the outcome of the Advice and Direction Motion, shall be as follows:

⁹ The details of which have been confirmed with other supporting documents and information available to the Receiver.

¹⁰ The cost of the brokerWolf software license is \$592.40 plus HST per month (over 5 years - \$35,544.00 plus HST)

- (a) In the case of the TRP Salespersons and Assignees, the amount distributed shall be equal to the Party's Share of Commissions, less the TRP Salesperson's share of the Proposed Standard Cost¹¹ and the Administrative Disbursement Fee;
- (b) In the case of Outside Brokerages, the amount distributed shall be equal to the Party's Share of Commissions, without deduction for a portion of the Proposed Standard Cost, but less the Administrative Disbursement Fee; and
- (c) In the case of Cashback Buyers, the amount distributed shall be equal to the Party's Share of Commissions, without deduction for a portion of the Proposed Standard Cost but less the Administrative Disbursement Fee.

36. Given the quantum of the potential gross amounts (inclusive of HST, if applicable) distributable to the Outside Brokerages and the Cashback Buyers of approximately \$117,000 (or 1.75% Total Commissions) and \$443,000 (or 6.66% Total Commissions), respectively, the Receiver believes that it is not material and the time/cost to administer the pro-ration of the Proposed Standard Cost against such parties outweighs the benefits of doing so.

VI CONCLUSION AND RECOMMENDATION

37. Based on the foregoing, the respectfully recommends that, subject to the outcome of the Advice and Direction Motion, the Court make an order granting the relief detailed in paragraph 7(b) and (c) of this Report.

¹¹ Plus applicable HST

All of which is respectfully submitted this 11th day of October 2018

MNP LTD.

in its capacity as Court-appointed Receiver of
TheRedPin, Inc. and TheRedPin.com Realty Inc.
and not in its personal or corporate capacities
Per:



Matthew Lem, CIRP
Licensed Insolvency Trustee

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O 1990 C. C.43, AS AMENDED**

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

and

THEREDPIN, INC. and THEREDPIN.COM REALTY INC.

Respondents

**THIRD SUPPLEMENTARY REPORT TO THE SECOND REPORT TO THE COURT
SUBMITTED BY MNP LTD., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

October 19, 2018

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3,
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SUBMITTED BY MNP LTD., IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.**

October 19, 2018

I INTRODUCTION AND PURPOSE OF THIS REPORT

1. On June 14, 2018 (“**Date of Appointment**”), MNP Ltd. was appointed as receiver (the “**Receiver**”) without security, of all assets, undertakings and properties of TheRedPin, Inc. (“**TRP Inc.**”) and Theredpin.Com Realty Inc. (“**TRP Realty**” and together with the TRP Inc., collectively hereinafter referred to as the “**Debtors**”) acquired for or used in relation of a business carried on by the Debtors, including all proceeds thereof (the “**Property**”) pursuant to an Order, dated June 14, 2018 (the “**Appointment Order**”) issued by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”).
2. On September 10, 2018, the Receiver filed its second report to the Court (the “**Second Report**”), wherein it to provided the Court with information in support of the Advice and Direction Motion

concerning whether any or all of the Third-party Commissions collected and to be collected by the Receiver are held and to be held in trust for benefit of the TRP Salespersons, the Outside Brokerages, the Assignees and/or the Cashback Buyers.

3. On September 28, 2018, the Receiver served its supplementary report to the Second Report (the "**Supplementary Report**") wherein it provided the Court with updated information concerning issues raised in the Second Report, as well as additional information identified since the filing of the Second Report.
4. On October 3, 2018 the affidavit of William Durrell, sworn October 3, 2018 (the "**Durrell Affidavit**") was served by AGB on behalf of Jeff Klein in response to the Supplementary Report.
5. On October 9, 2018 the affidavit of Jared Kalish, sworn October 9, 2018 (the "**2nd Kalish Affidavit**") was served by Counsel for the Lenders in response to the Supplementary Report.
6. On October 12, 2018 the Receiver served its Second Supplementary Report to the Second Report wherein it provided the Court with updated information concerning issues raised in the Second Report, as well as additional information identified since the filing of the Second Report.
7. This Third Supplementary Report to the Second Report (the "**3rd Supplementary Report**") is to be read in conjunction with the Second Supplementary Report to the Second Report and the Supplementary Report to the Second Report and the Second Report.
8. The purpose of the 3rd Supplementary Report is to:
 - (a) update the Court on information received in connection with the Commissions Account that TRP Realty had at Comerica Bank but held at the Royal Bank and the replacement Commissions Account held at the Royal Bank.

II TERMS OF REFERENCE

9. In preparing the 3rd Supplementary Report, the Receiver has relied on information regarding the Debtors and the Property:

(a) included in the motion records and other materials filed with the Court by the Applicant and other parties in connection with these proceedings;

(b) information provided by the Royal Bank; and

(c) as otherwise made available or provided to the Receiver and its counsel.

III UPDATE

10. As set out in paragraph 27(b) of the Receiver's Second Report, the Receiver previously contacted the Royal Bank with respect to the opening of the Commissions Account.

11. The Receiver only received a response from the Royal Bank on Thursday, October 18, 2018.

12. The initial response from the Royal Bank was circulated to counsel for each of the TRP Salespersons, Lloyds Underwriters and the Secured Creditors.

13. A further question arose by counsel for the TRP Salespersons and it was forwarded to the Royal Bank.

14. The full email exchange between the Receiver and the Royal Bank with respect to both the TRP Realty Comerica Bank account at the Royal Bank and its replacement Royal Bank account is attached hereto as **Appendix "A"**.

All of which is respectfully submitted this 19th day of October 2018.

MNP LTD.

in its capacity as Court-appointed Receiver of
TheRedPin, Inc. and TheRedPin.com Realty Inc.
and not in its personal or corporate capacities

Per:

A handwritten signature in black ink, appearing to read 'Alan Shiner', with a long horizontal flourish extending to the right.

Alan Shiner, CIRP
Licensed Insolvency Trustee

TAB 2(g)

Appendix "G"

CITATION: Firepower Debt GP Inc. v. TheRedPin, Inc. 2018 ONSC 7182
COURT FILE NO.: CV-18-599644CL
DATE: 20181130

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Firepower Debt GP Inc., as Agent, Applicant

AND:

TheRedPin, Inc. and TheRedPin.com Realty Inc., Respondents

BEFORE: Penny J.

COUNSEL: *Harry Fogul* for the Receiver, MNP Ltd.

Harvey Chaiton for Firepower Debt GP Inc.

A. Kauffman for Trilogy Growth Fund LP

J. Goldblatt and I. Graham for the Agents

J.S. Klein for Certain Underwriters at Lloyds

HEARD: October 22, 2018

ENDORSEMENT

Overview

[1] TheRedPin Inc. and TheRedPin.com Realty Inc. operated a technology assisted real estate brokerage that provided an online platform to consumers which included listings for new and pre-construction projects. These companies will be referred to as TRP and TRP Realty.

[2] In June 2018, MNP Ltd. was appointed Receiver of TRP and TRP Realty. In this motion, the Receiver seeks the advice and direction of the Court about whether certain third party commissions to be collected by the Receiver are held in trust for the benefit of TRP Realty's agents (the "Agents"), outside brokers and certain assignees and "cashback" buyers.

[3] The parties agree that commissions of approximately \$3.7 million are owing to the Agents. TRP and TRP Realty, however, are insolvent. TRP Realty is indebted to Firepower Debt GP Inc. and Trilogy Growth Fund LP in an amount exceeding \$6.4 million; this is a secured obligation. If the Agents' commissions are not subject to a trust, these funds will form part of the debtors' assets subject to Firepower and Trilogy's security, leaving the Agents with unsecured claims against TRP Realty's estate, *Ontario Ministry of Consumer and Commercial Relations v. Safeguard Real Estate Ltd.*, (1994) 114 D.L.R. (4th) 546 (Gen. Div.) [Commercial List], at paras. 13-14.

[4] The parties also agree that there is no statutory or regulatory requirement to hold the Agents' commissions in trust. The Real Estate Council of Ontario confirmed to the Receiver that all registrants are, however, required to maintain a group insurance program that includes commission protection coverage. Coverage against this type of loss is not dependent upon the existence of a commission trust account, although the insurer says that it encourages the use of commission trust accounts as a prudent claims management tool.

[5] The parties further agree there is no definitive document which unambiguously establishes a trust in favour of the Agents. Rather, the existence of a trust, the Agents submit, must be implied from surrounding circumstances, transaction documents and TRP Realty's conduct. The parties agree that the determination of whether there is a trust depends on the application of the "three certainties:" certain of subject matter, certainty of object and certainty of intention.

[6] Finally, the parties agree that, of the three certainties, it is the certainty of intention that is in issue in this case. In other words, the parties agree there is certainty of subject matter (the commissions themselves) and certainty of object (TRP Realty and the Agents). The parties disagree about whether TRP Realty intended to establish a trust over the commissions on behalf of the Agents.

[7] Thus, the issue for determination on this motion for directions is whether TRP Realty intended to establish a trust in favour of the Agents over commissions payable to TRP Realty from purchasers of condominiums, most of which are scheduled to close in the future over a period that will run from 2018 until 2023.

Background

[8] The *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30 Sch. C, establishes the rules which all real estate salespersons, brokers and brokerages must follow. The Real Estate Council of Ontario is the body responsible for the administration of *REBBA* and regulates the activity of trading real estate in Ontario. All brokerages, brokers and real estate salespersons must be registered and meet all the requirements for registration. In particular:

- (a) the brokerage is the entity authorized to trade in real estate, not the salesperson or the broker of record;
- (b) every brokerage must designate a broker as its broker of record to ensure that the brokerage complies with the *REBBA*; and
- (c) it is the brokers and salespersons who perform the listing and selling activities that generate the trades.

[9] TRP Realty's revenues are primarily derived from real estate commissions generated from the activities of its licensed salespersons, or "agents." As of the date of the Receiver's appointment, there were 63 active Agents and 43 former Agents who still had pending commissions owing. Because TRP Realty dealt heavily with the new and future condominium market, these pending commissions are in respect of real estate deals that are scheduled to close anywhere between 2018 and 2023.

[10] TRP Realty acted either for a buyer, in which case it was the co-operating brokerage, or for a seller, in which case it was the listing brokerage. Of the 730 pending transactions to be settled by the Receiver, only 28 trades relate to transactions where TRP Realty was the listing brokerage. In all the rest, it was a co-operating brokerage.

[11] Where TRP Realty is the listing brokerage, it received deposits from the buyers under the agreements of purchase and sale. These deposits were required by regulatory rules to be deposited into the brokerage's real estate trust account. This meant the commission on these sales were also paid into the trust account because, as a practical matter, the deposit was used to satisfy the seller's obligation to the brokers to pay the commission. For this reason, most of the commissions due from TRP Realty to third parties (co-operating brokers who were not TRP Realty Agents) were lodged in the real estate trust account. This is because TRP Realty only dealt with third party brokerages on the relatively small number of occasions when it was the listing (or selling) agent.

[12] Some of the documents used by TRP Realty were standard forms developed by the Ontario Real Estate Council. These were commonly used in connection with re-sales. However, in connection with pre-construction deals, the transaction documents were usually specific to the builder or particular project. For example, of the over \$6.6 million in pending commissions as of the date of the receivership, 21% or \$1.4 million, were for resales, whereas 79%, or about \$5.2 million, were future commissions owing to TRP Realty relating to pre-construction or new development transactions where the OREC forms were typically not used.

Certainty of Intention

Legal Framework

[13] A trust is a relationship which arises whenever a person (called the trustee) is compelled in equity to hold property for the benefit of some other person (called the beneficiary) in such a way that the real benefit of the property accrues not to the trustee but to the beneficiary.

[14] As noted above, a valid trust exists where there the three certainties are satisfied: certainty of intent, certainty of subject matter and certainty of object. The issue in this case is certainty of intent.

[15] Certainty of intent requires that it be clear that the donor or settlor intended to create a trust; i.e., that the settlor intended for the property in question to be held for the benefit of another. No formal document evidencing the creation of a trust is required. Nor is it necessary that the settlor use any specific language - even the use of the word "trust" is not necessarily dispositive one way or the other. The question is one of substance - did the settlor evidence an intention that the property be held by one person for another person's benefit? This intention may be express or implied and may be determined from words or acts.

[16] Where a trust is to be implied, however, effect must be given to inferences as to the intention of the parties which a reasonable person would draw from the words or conduct of the parties and not to any subjective or other intention which was not made manifest at the time. Certainty of intention cannot solely derive from a "moral obligation as to what is to be done with the property," *Bank of Nova Scotia v. Atcon Group Inc.* 2012 NBCA 57, at para. 18 and *Waters' Law of Trusts in Canada* (4th ed.) at para. 5.1.

The Bank Accounts

[17] TRP Realty maintained three bank accounts:

- (1) a real estate trust account which is where TRP Realty deposited buyer deposits, as required under s. 27(1) of *REBBA*;
- (2) a commission account which is where all commissions earned by TRP Realty on transactions were ultimately deposited and from which commissions belonging to TRP Realty and third parties such as cooperating brokers and the Agents were paid; and
- (3) an operating account into which TRP Realty transferred the commissions it earned on transactions from the commission account and from which it paid its operating expenses such as payroll and overhead.

[18] Neither the real estate trust account nor the commission account bore interest. Service fees for these accounts were always paid from TRP Realty's operating account.

[19] Prior to August 2014, the commission account was held at TD Bank. Statements from this account contained the reference "TRUST ACCT" on the mailing line of the statement.

[20] From March 2014 to March 2018, TRP Realty banked with Comerica Bank (through the facilities of the Royal Bank of Canada). Bank statements from Comerica stated "COMMISSION TRUST" on the mailing line. Similarly, cheques drawn on the commission account contained the notation "COMMISSION TRUST" on them. When TRP Realty paid commissions to Agents through electronic transfers, it did so through an account described as "RBC – Commission Trust." This notation on the account was changed by RBC in 2018 to read only "RBC – Commission."

[21] According to information obtained by the Receiver from the Royal Bank, TRP Realty's commission account was provided with a description, on opening, of "Realty Commission." Most likely, this nomenclature was requested by the client, TRP Realty, since the bank does not normally assign nomenclature of this kind to any account. In any event, from the bank's perspective, the account is a standard operating account, not a trust account. According to the Royal Bank, among other things a Trust "know your client" form and a Trust Agreement are typically required to open and operate a trust account. No such documents were provided to or held by the Royal Bank in relation to TRP Realty's commission account.

[22] The Agents rely on an affidavit filed by Tarik Gidamy, who is a founder of TRP Realty and served as its broker of record until May 2017. Mr. Gidamy has sworn that he set up the commission account on the basis that the commissions TRP Realty was obliged to pay out to others did not belong to TRP Realty and that TRP Realty could only use money that was to TRP Realty's credit in the commission account when transferring funds to its operating account. He claims that TRP Realty had no expectation that it could use funds in its commission account owing to others, such as Agents, in the ordinary course of its business.

The Transaction and Other Documents

[23] Each TRP salesperson (Agent) entered into an 11 page contract with TRP Realty under which the Agent agreed to provide real estate services to TRP Realty (the "Contract"). Each Agent specifically agreed that his or her relationship with the company is that of independent contractor. In this Contract, TRP Realty agreed to pay commission on all transactions executed through the company provided the company received a minimum of \$500 per executed transaction to cover administrative costs. The Agent agreed that the company will receive the greater of \$500 or the company portion of the listed commission split. The company agreed to issue commission cheques each Wednesday for transactions closed where final payment was received the previous week. Commissions for pre-construction transactions were to be paid in accordance with the builder's payment schedule. The Contract contained an entire agreement clause which, among other things, provided that the Contract superseded all prior agreements. There is no provision in the Contract that commissions are to be held in trust by TRP Realty for the benefit of the Agents, nor is there any language that could reasonably be construed as having this meaning or intent.

[24] The Agents point to a number of transaction documents which, they argue, show that the commission account was intended to be a trust account. First, when an agreement of purchase and sale had "gone firm," TRP Realty provided the Agent with a trade record sheet setting out information about the transaction and the specific commission split between TRP Realty and the TRP agent.

[25] The trade record sheet is a standard form document provided through a "back office" software provider called "brokerWolf." The trade record sheet is required by regulation to contain certain specified information. The particular form of trade record sheet provided by brokerWolf included the following language (which is not prescribed by regulation): "It is understood between all parties that this agreement shall constitute a commission trust agreement *as set out in the contract*" [emphasis added]. BrokerWolf confirmed to the Receiver that this wording is in one of the "default lines that are part of the original set up/install of brokerWolf."

[26] The Agents argue that "the contract" in this report means the Contract between the Agents and TRP Realty. As noted above, however, the Contract makes no mention of, and no provision for, holding Agents' commissions in trust, nor does it contain any language from which an intention or obligation to do so could reasonably be inferred.

[27] It is common ground that certain "cooperating" broker agreements expressly contemplate TRP Realty holding commissions for cooperating brokerages in trust. The Agents reason that, if TRP Realty's commission account contained cooperating broker commissions that were held in trust, then all commissions, including TRP Realty's and the Agents', must also be held in trust.

[28] There are two difficulties with this argument. First, the documents employed in the limited number of transactions involving cooperating brokers specifically contemplated that cooperating broker commissions will be held in trust pending payment out to the cooperating brokerage. There is no similar explicit language regarding the Agents. The second problem with this argument is that it is only when TRP Realty is the listing broker that there are any cooperating brokers. The buyer's deposit, which is intended to cover agents' commissions following the closing of the transaction, is, by statute, required to be held by the listing brokerage in trust. The circumstances

of a cooperating brokerage, therefore, are simply not relevant to the treatment of Agents' commissions where, in the cases in dispute in this proceeding, TRP Realty was not the listing brokerage and did not receive any deposit on the trade.

The Flow of Funds

[29] In the 3% of cases where TRP Realty was the listing broker acting for the seller, TRP Realty received a deposit which was placed in TRP Realty's real estate trust account. When the deal closed, if the amount of the deposit was less than all of the commissions due, the whole of the deposit was transferred from the real estate trust account into the commission account. The remaining payment for the balance of the commission due to the brokerage was also deposited to the commission account once received from the seller.

[30] If the amount of the deposit was more than all commissions due, the portion of the deposit associated with the total commissions was transferred from the real estate trust account into the commission account and a cheque for the portion representing the balance due to seller was dispersed to the seller within 10 days.

[31] In either case, within 10 days of closing, cheques or electronic transfers with respect to the parties' respective split of total commissions were dispersed to the outside brokerage, the TRP salespersons and TRP Realty in accordance with the agreed commission split. TRP Realty's portion of the commission was transferred from the commission account into TRP's operating account.

[32] Where TRP Realty was the cooperating brokerage and acted for the buyer (as it was in about 97% of cases), when the trade closed a cheque payable to TRP Realty was received from the listing broker or (in most cases) the builder and then deposited into the commission account. This represented the commissions due on the transaction to TRP Realty and the Agents.

[33] Within 10 days of closing, cheques or electronic transfers with respect to the parties' respective split of the cooperating brokerage commission were dispersed from the commission account to the Agent and to TRP Realty in accordance with the agreed commission split. As with the first scenario, TRP Realty's portion of the cooperating brokerage commission was transferred from the commission account and deposited into TRP Realty's operating account.

The Audited Financial Statements and Other Financial Presentations

[34] KPMG LLP audited TRP and TRP Realty's consolidated financial statements. The last audited financial statements are for the year ended December 31, 2016. KPMG's audit opinion was signed July 10, 2017 for that year and expresses the opinion that the consolidated financial statements present fairly, in all material respects, the consolidated financial position as at December 31, 2016.

[35] The notes to the financial statements provide the basis on which the consolidated financial statements were presented, including TRP Realty's revenue recognition policies and the basis on which it disclosed its cash and cash equivalents and restricted cash.

[36] Cash and cash equivalents are defined to include “cash on hand, demand deposits that can be withdrawn without penalty, and short-term highly liquid securities, such as debt securities with an initial maturity date of not more than three months from the date of acquisition that can be readily converted into known amounts of cash and are subject to an insignificant risk of change in value.” Balances on deposit in TRP Realty’s operating account and commission account are included as cash and cash equivalents in the audited financial statements.

[37] Excluded from cash and cash equivalents are “amounts held in trust as required by various purchase and sale agreements, which are separately disclosed as restricted cash.” This category was identified as comprising only TRP Realty’s real estate trust account.

[38] To similar effect, the consolidated statements of income and comprehensive income show “Revenue” amounts and “Cost of Revenue” amounts. Note 12 to the statements indicates that the “Revenue” amount reflects the “total commission revenue.” Note 4(c) to the statements provides that “Cost of Revenue” includes agents’ “salaries, bonuses and commissions.” Note 4(c) goes on to stipulate that “agent commissions are generally paid at the time of closing on resale units and at the time the Company receives the first instalment on new units.” It is clear from the amounts in issue that total commission income included in TRP Realty’s revenue includes the Agents’ commissions. This is distinguished from “Restricted Cash.” Note 4(d) states that excluded from cash “are amounts held in trust as required by various purchase and sale agreements, which are separately disclosed as restricted cash.” Again, it is clear from the amounts in issue that “restricted cash” includes only the amounts representing buyer deposits where TRP Realty is the listing brokerage.

[39] Firepower and Trilogy point out that Mr. Gidamy, as a member of the Board of TRP and TRP Realty, not only approved the financial statements but executed management’s letter to KPMG in October 2016. The management letter signed by Mr. Gidamy represented and confirmed that:

- (a) the debtors have satisfactory title to all assets indicated;
- (b) there are no liens or encumbrances on the debtor’s assets except those disclosed in notes to the financial statements;
- (c) there are no side agreements with any parties that have not been disclosed; and
- (d) management had no knowledge of any material unrecorded assets or liabilities or contingent assets or liabilities.

[40] The applicant’s loan documentation, signed by Mr. Gidamy on behalf of TRP and TRP Realty, contains similar representations and warranties.

[41] The evidence also contains a presentation made by Mr. Gidamy to the Board of Directors regarding the fourth-quarter performance of the 2016 year, which was also delivered to Firepower and Trilogy in February 2017. That presentation reflects “gross receivables” of \$11 million (that is, a figure which included all of the amount credited to the commission account, not just the TRP Realty portion) securing Comerica debt of \$1.5 million and the Firepower debt of \$3.5 million.

Agents' commissions are show as a "cost of sales," in other words, as an unsecured debt obligation of TRP Realty.

[42] Firepower and Trilogy thus argue that the audited financial statements, the information provided by management to KPMG as auditor, as well as the information provided to the Board of Directors and to the secured creditors when negotiating the terms of their loans, all confirm that gross commissions are assets of TRP Realty and that commissions owed to the Agents are simply an unsecured debt of TRP Realty. The audited financial statements recognize that purchaser deposits (where TRP Realty is the listing brokerage) are 'restricted cash' held in trust. Nothing in the presentation of TRP Realty's financial statements or other financial presentations reflects a similar designation for Agents' commissions.

[43] The Agents rely heavily on the decision of Mr. Justice Cameron in *Eu v. Rosedale Realty Corp. (Trustee of)* (1997), O.R. (3d) 666 (Gen. Div.) [Commercial List] and a decision from the B.C.S.C., *Midland Pacific Properties Corp. (Trustee of), Re*, (1999), 69 B.C.L.R. (3d) 187, which followed *Eu*.

[44] In *Eu*, the agents had an agreement with the predecessor brokerage, First District, which specified that monies received on account of commissions earned by a salesperson "shall be paid by the Broker in trust." There was an agreement requiring First District to hold all commissions it received in a "commission trust account" in which it would hold the commissions for various persons or entities, including the employed and independent salespersons "under trust arrangements" other than the statutory real estate trust account. When the First District business was transferred to a new brokerage, Rosedale, the agents carried on as they had before. It appeared that neither the sale of assets from First District to Rosedale nor the contractual relationship between Rosedale and its agents was formalized to any great extent. In these circumstances, Cameron J. found that it made no business sense to place commissions into the commission trust account if they were not intended to be held in trust. Cameron J., therefore, found as a fact that the agents' relationships with Rosedale were "essentially the same as they had been with" First District, i.e., the explicit agreement between First District and its agents continued when Rosedale became the brokerage such that Rosedale held all pending commissions in a commission trust account explicitly designated and used for the benefit of Rosedale's agents.

[45] There are, in my view, three critical elements which distinguish the case at bar from the circumstances before Cameron J. in *Eu*:

- (1) the absence of any obligation on TRP Realty under its Contract with the Agents to hold commissions beneficially for the agents. Here, the Contract is clear that the relevant split of commissions earned are *owing* to the Agents once the deal closes but is conspicuously silent on how those funds will be held by the brokerage before becoming due and payable;
- (2) the absence of evidence that the commission account at TD/Comerica/RBC was, in fact, a trust account. The evidence is that the word "trust" appeared in the address line of the bank statements for a period of time but the evidence from RBC is that, as a matter of substance, the commission account was not, in fact, a trust account; and

- (3) the audited financial statements and other financial presentations made to the Board of TRP Realty and to commercial third parties unambiguously classify the commissions owing to TRP Realty and the Agents as gross revenues of TRP Realty and the Agents' split of those commissions as a cost of sales, that is, an unsecured debt owed to the Agents. This is clearly distinguished in the audited financial statements and other presentations from the treatment of purchaser deposits which are categorized as "restricted cash" and subject to a trust in favour of third parties.

[46] The court must act on such a preponderance of evidence as to show whether the conclusion the Agents seek to establish is substantially the most probable of the possible views of the facts, *Clarke v. The King* (1921), 61 S.C.R. 608 at p. 616. The question of the intention of TRP Realty in this case is a question of fact to be determined on the basis of the objective evidence, not subjective intentions formulated with the benefit of hindsight now that an unforeseen problem has arisen.

[47] Supporting the Agents' argument that the commissions were held in trust is:

- (a) the commissions were placed in a separate account which earned no interest and in respect of which there were no bank charges or fees;
- (b) statements of this account sent to TRP Realty had the words "commission trust" in the address line for a period of time; and
- (c) some of the standard form transaction documents contained reference to commissions being in a trust as provided in the Agents' agreement (although the Contract does not provide for any trust).

[48] While there is arguably scope for some ambiguity around the standard form transaction documents and bank records used in the business, these are relatively weak indicators of an inference of TRP Realty's intention. The best evidence of TRP Realty's intention is to be found in the company's Contract with the Agents and in the company's audited financial statements.

[49] The Contract does not require TRP Realty to hold commissions in trust for the Agents.

[50] There is a gravity and a formality to the presentation of audited financial statements which transcends ambiguity or inference. TRP Realty's management (Mr. Gidamy) was required to represent and confirm to the auditors that the information provided was accurate and not misleading. The auditors performed a review of the books and records of TRP Realty and provided a professional opinion that the financial statements fairly represent the financial position of TRP Realty. These financial statements were approved by the TRP Realty Board of Directors.

[51] What could be a clearer statement of TRP Realty's intention than the representations to the world in its audited financial statements that all the pending commissions in respect of transaction in which TRP Realty was not the listing broker:

- (a) are not held in trust (in contrast to deposits where TRP Realty is the listing brokerage);

- (b) are included in TRP Realty's gross revenues; and
- (c) to the extent of the Agents' split of the commissions, represent an unsecured debt owing to the Agents (a cost of sales)?

When weighed against the ambiguous inferences sought to be drawn from standard form documents provided by someone else (broker Wolf, not TRP Realty), notations included on address lines in bank statements and Mr. Gidamy's after the fact characterization of the status of the commissions (a characterization totally at odds with the representations he made to the company's auditors, to the Board of Directors and to entities such as the applicant), I am unable to conclude that the requisite intention to hold the commissions in the commission account in trust has been established.

[52] Unlike the factual conclusion reached by Cameron J. in *Eu*, the operation of TRP Realty's commission account does not make "commercial sense" only if it is a trust account. Commissions are important – they are the lifeblood of the business of TRP Realty and its only source of revenue. Commissions are the basis for the Agents' remuneration for the services they perform for the business. There is no doubt that when deals closed, the commissions were "earned" and the relevant split of this money was owed by TRP Realty to the Agents. There were, therefore, in these circumstances ample commercial, accounting and cash tracking and management reasons to direct the commissions into a separate account, altogether apart from whether they were being held in trust.

[53] In all of the circumstances, based on the objective evidence, I am unable to agree with the Agents that the requirement for certainty of intention to create a trust has been established. I conclude that the commissions, while clearly a debt owing to the Agents, are not held in trust and are, therefore, not excluded from TRP Realty's available assets subject to the Applicants' security.

Costs

[54] The Agents submit that if they do not succeed on their motion, they will lose millions of dollars in commissions, commissions that they have clearly earned. Through no fault of their own, resulting only from TRP's insolvency, the amount of the purchase price allocated to commissions (both TRP Realty's commissions and the Agents' commissions) will accrue to the benefit of the secured creditors.

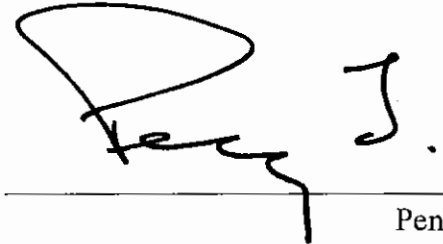
[55] The Agents further submit that they participated responsibly in advancing and pursuing their claims in a structured and orderly way. It was necessary, in any event, for this issue to be resolved for the benefit of all stakeholders, including affected persons not represented on this motion.

[56] As a result, the Agents ask that they be awarded their costs in any event.

[57] Neither the secured creditors nor the Receiver made any submissions on this point.

[58] I am in agreement with the Agents that an orderly, expeditious process for the resolution of this dispute was in the interests of all stakeholders. The Agents' participation has been responsible and of great assistance to the Court.

[59] In all of the circumstances, I find that costs shall be awarded to the Agents in the amount of \$45,000 to be paid out of the assets of TRP Realty. No costs are awarded against the Agents. The costs of the Receiver, and the allocation of the costs, shall be the subject of a subsequent application.



Penny J.

Date: November 30, 2018

TAB 2(h)

Appendix “H”

**ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List**

THE HONOURABLE JUSTICE)
T McGowan) TUESDAY, THE 10TH DAY OF
))
)) SEPTEMBER, 2019

BETWEEN:

FIREPOWER DEBT GP INC., AS AGENT

Applicant

-and-



THEREDPIN, INC. AND THEREDPIN.COM REALTY INC.

Respondent

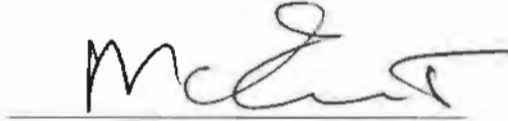
**IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF
JUSTICE ACT*, R.S.O. 1990, c.C-43, AS AMENDED**

ORDER

THIS MOTION brought by ClaimsPro LP on behalf of Certain Underwriters of Lloyds for an Order that the Receiver MNP Inc., of the assets, property undertaken of TheRedPin.com Realty Inc., (“TRP Realty”) and TheRedPin, Inc., pay those cooperating brokers’ commissions held by the Receiver as set out in Exhibit “E” in the Affidavit of Lori Bardos sworn on the 22nd day of August, 2019, from funds the Receiver is holding in the amount as indicated in the “Total Claimed” column of Exhibit “E” in satisfaction of the amounts owed to the cooperating brokers on those transactions indicated therein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavits of Lori Bardos, sworn the 22nd day of August, 2019, and being advised that the Receiver, MNP Inc., consents to the Order and that the Secured Debtors, Firepower Debt GP Inc., as agents for Firepower Asset Management Income Inc., and Firepower GPA Debt LOP ("Firepower") and Trilogy Growth Fund LP ("Trilogy") do not oppose the Order sought, and upon hearing submissions from counsel for the moving party and Counsel for the Receiver.

1. **THIS COURT ORDERS** that the Receiver, MNP Inc., pay to those cooperating brokers listed in Exhibit "E" of the Affidavit of Lori Bardos ^{PM which is attached as Schedule A to this order PM} those amounts indicated in the "Total Claimed" column of Exhibit "E" in satisfaction of the amounts owed to the cooperating brokers on those transactions indicated therein with the exception of Royal LePage Signature Realty (regarding 439 Champlain Avenue), to whom the Receiver shall pay the sum of \$10,000.
2. **THIS COURT ORDERS** that there shall be no costs of this motion.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

SEP 10 2019

PER / PAR: 

ID#	TRANS TYPE	AGENT	AGENT EMAIL	COM% Total	REAL ADDRESS	UNIT	APR 2018	APR 2018	APR 2018	APR 2018	APR 2018	APR 2018	APR 2018	APR 2018	APR 2018	APR 2018
CP2017-014-006	Residential	PSR Brokerage	kimberlymarcell@gmail.com	2.5%	25 Stafford St., Toronto, ON	308	11-Jun-18	30-Jul	2018	495,000.00	12,375.00	1,608.75	13,983.75			
CP2017-014-031	Residential	Re/Max Professionals Inc.	mrussell@remaxprofessionals.ca	2.5%	2120 Rathburn Road East, Mississauga, ON	38	20-May-18	29-Jun	2018	582,000.00	14,550.00	1,891.50	16,441.50			
CP2017-014-037	Residential	HomeLife Romano Realty	jacox@homelifero.com	2.5%	44 Chiara Drive, Vaughan, ON		16-Mar-18	28-Jun	2018	775,000.00	19,375.00	2,518.75	21,893.75			
CP2017-014-040	Residential	Sutton West Realty Inc.	virgad@hotmail.com	2.5%	9560 St. Clair Ave. E., Toronto, ON	405	22-Apr-18	25-May	2018	495,000.00	10,875.00	1,418.75	12,293.75			
CP2017-014-046	Residential	HomeLife/Gold/Trade Realty Ltd.	alexwy@infinity.net	2.5%	972 Highway 7E, Richmond Hill, ON	903	11-May-18	21-Jun	2018	438,000.00	10,950.00	1,423.50	12,373.50			
CP2017-014-051	Residential	Right At Home Realty Inc.	lindalinhunh@hotmail.ca	2.5%	4798 Auckland Ave., Mississauga, ON		11-Apr-18	10-Jul	2018	914,000.00	22,850.00	2,970.50	25,820.50			
CP2017-014-064	Residential	Xlogsway Real Estate	selves@xlogsway.com	2.5%	1420 Dupont Street, Toronto, ON	1509	12-May-18	15-Aug	2018	430,000.00	10,750.00	1,397.50	12,147.50			
CP2017-014-065	Residential	Property.ca Realty Inc.	peddie@condos.ca	1/2 month rent	21 Widmer St., Toronto, ON	4205	2-May-18	18-Jun	2018	2250/month	1,125.00	146.25	1,271.25			
CP2017-014-070	Residential	Real Estate Homeview	homenewagents@rogers.com	2.5%	481 Main Street, Toronto, ON		24-May-18	22-Jun	2018	790,000.00	19,750.00	2,567.50	22,317.50			
CP2017-014-122	Residential	Forest Hill Real Estate Inc.	accounting@foresthill.com	2.5%	1299 Glenanna Road, Pickering, ON	TH 18	3-May-18	31-Jul	2018	625,000.00	15,625.00	2,031.25	17,656.25			
CP2017-014-124	Residential	HomeLife Miracle Realty	choreahorndrogagent@gmail.com	3.0%	75 King St. E., Mississauga, ON	1412	10-May-18	4-Jul	2018	367,000.00	11,010.00	1,431.30	12,441.30			
CP2017-014-129	Residential	Realosophy Realty Inc.	john@realosophy.com	2.5%	39 Queens Quay East, Toronto, ON	433	5-Apr-18	31-Jul	2018	614,800.00	15,370.00	1,998.10	17,368.10			
CP2017-014-189	Residential	Re/Max Realtron Realty Inc.	wallins@remaxrealtron.com	2.25%	688 Woodbine Ave., Toronto, ON		14-Apr-18	11-Jun	2018	800,000.00	18,000.00	2,340.00	20,340.00			
CP2017-014-190	Lease	Re/Max Realtron Realty Inc.	wallins@remaxrealtron.com	1/2 mth rent	9 Valhalla Inn Road, Toronto, ON	1102	19-Apr-18	1-Jul	2018	2200/month	1,100.00	143.00	1,243.00			
CP2017-014-292	Residential	Search Realty Corp.	joseph@searchrealty.ca	2.50%	12 Crandall Court, Brampton, ON		8-Jun-18	29-Aug	2018	710,000.00	17,750.00	2,307.50	20,057.50			
CP2017-014-494	Residential	Re/Max. Hallmark	sarah@remaxhallmark.com	2%	547 Milverton Blvd., Toronto, ON		12-May-18	5-Jul	2018	980,000.00	19,600.00	2,548.00	22,148.00			
CP2017-014-503	Residential	Century 21 New Age Realty	alaydubey.mysalesrep@gmail.com	2.50%	8256 Tulip Tree Drive, Niagara Falls, ON		31-Mar-18	28-Aug	2018	374,500.00	9,362.50	1,217.13	10,579.63			
CP2017-014-522	Residential	Royal LePage Signature Realty	susanquota@royallepage.ca	2.50%	439 Champlain Ave., Woodstock, ON		17-May-18	31-Jul	2018	482,000.00	12,050.00	1,566.50	13,616.50			
CP2017-014-526	Lease	DL Realty Inc. Brokerage	madetoronto@gmail.com	1/2 of 1 mth rent	Core Condos, 68 Shuter Street, Toronto, ON	1808	30-May-18	15-Jun	2018	2150/month	1,075.00	139.75	1,214.75			
CP2017-014-535	Residential	The Diamond Realty Inc.	gary@thediamondrealty.ca	2.50%	Pantages Tower Condos, 210 Victoria St., Toronto, ON	915	15-Feb-18	6-Jul	2018	342,000.00	8,550.00	1,111.50	9,661.50			
CP2017-014-643	Residential	Sutton Group Tower Realty	admin@suttongrouptower.ca	2.50%	24 Anson Avenue, Toronto, ON		7-May-18	29-Jun	2018	690,000.00	17,250.00	2,252.50	19,492.50			
CP2017-014-644	Residential	Royal LePage New Concept	johnchu@royallepage.ca	2.50%	20 Olive Avenue, Toronto, ON	308	16-May-18	18-Jun	2018	479,000.00	11,975.00	1,556.75	13,531.75			
CP2017-014-656	Lease	McCann Realty Group	ales@cherimcann.com	1/2 month rent	42 Keewatin Avenue, Toronto, ON		8-Jun-18	1-Jul	2018	3650/month	1,825.00	237.25	2,062.25			
CP2017-014-659	Lease	Sutton Group Admiral Realty	agmral@teamadmiral.com	1/2 month rent	36 Canelli Heights Court, Thornhill, ON		4-Jun-18	1-Jul	2018	3400/month	1,700.00	221.00	1,921.00			

**FIREPOWER DEBT GP INC., AS AGENT vs. THEREDPIN,
INC. AND THEREDPIN.COM REALTY INC.**

Court File No.: CV-18-599644-00CL

*ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List*

IN THE MATTER OF SECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, C.B-3, AS AMENDED, AND SECTION 101
OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C.C.43, AS AMENDED

PROCEEDING COMMENCED AT TORONTO

ORDER

KLEIN & SCHONBLUM ASSOCIATES
Barristers and Solicitors
Yonge-Eglinton Centre, Box 2406
2300 Yonge Street, Suite 2901
Toronto, Ontario
M4P 1E4

Jeffrey S. Klein (LSO#17824W)
416- 480-0221 Telephone
416- 480-0017 Fax
jklein@ksalaw.com Email

Lawyers for Certain Underwriters of Lloyds

TAB 2(i)

Appendix "I"

7328168 Canada Inc. formerly TheRedPin, Inc. and 7895216 Canada Inc., formerly TheRedPin.com Realty Inc.
The Receiver's Consolidated Interim Statement of Receipts and Disbursements
As of April 30, 2020

	TRP Realty and TRP Inc.			TRP Mortgage		TRP BC		Total
	Real Estate Trust	Commissions	Receivership	Operating	Commission	Real Estate Trust	Operating	
RECEIPTS								
Cash in Bank ^{1,4}	\$ 687,918.27	\$ 118,789.45	\$ 129,812.56	\$ 1,398.94	\$ 3.17	\$ 2.84	\$ 13,533.51	\$ 951,458.74
GIC, net of Visa charges	-	15,082.19	15,983.33	-	-	-	-	31,065.52
Net Commissions collected from third-parties ²	-	2,794,194.82	-	9,160.00	-	-	-	2,803,354.82
Net Commissions transferred from Realty Trust Account ^{2,3}	-	406,661.15	-	-	-	-	-	406,661.15
TRP Realty's portion of commissions collected	-	-	1,011,287.84	-	-	-	-	1,011,287.84
Miscellaneous refunds and receipts	-	-	92,786.71	63.06	-	-	-	92,849.77
Corporate tax refund (SR&ED)	-	-	128,310.78	-	-	-	-	128,310.78
HST Collected	-	416,111.28	-	-	-	-	-	416,111.28
Transfers to Commissions Account on the settlement of trades ^{4,5}	(459,527.09)	-	-	-	-	-	-	(459,527.09)
Transfers to Receivership Account on the settlement of trades ^{2,6}	-	(1,011,287.84)	-	-	-	-	-	(1,011,287.84)
Total Receipts	228,391.18	2,739,551.05	1,378,181.22	10,622.00	3.17	2.84	13,533.51	4,370,284.97
DISBURSEMENTS								
OR filing fees	-	-	(140.00)	-	-	-	-	(140.00)
Taking possession	-	-	(299.00)	-	-	-	-	(299.00)
Occupation costs								
Rent	-	-	(13,549.89)	-	-	-	-	(13,549.89)
Utilities	-	-	(662.45)	-	-	-	-	(662.45)
Insurance	-	-	(4,807.88)	-	-	-	-	(4,807.88)
Sales process disbursements	-	-	(2,920.00)	-	-	-	-	(2,920.00)
Consultants and bookkeeping	-	-	(49,260.77)	-	-	-	-	(49,260.77)
Appraisal fees	-	-	(1,000.00)	-	-	-	-	(1,000.00)
Data services and storage	-	-	(29,345.25)	-	-	-	-	(29,345.25)
Payroll	-	-	(85,909.62)	-	-	-	-	(85,909.62)
Postage	-	-	(2,423.99)	-	-	-	-	(2,423.99)
Photocopies	-	-	(31.50)	-	-	-	-	(31.50)
Bank charges	-	-	(1,586.96)	-	-	-	-	(1,586.96)
Receiver's remuneration	-	-	(377,673.15)	-	-	-	-	(377,673.15)
Receiver's legal counsel	-	-	(182,308.89)	-	-	-	-	(182,308.89)
HST paid and remitted	-	(444,712.85)	(84,472.08)	-	-	-	-	(529,184.93)
Distribution to Co-operating Brokerages (Trust Claim) per Order dated September 10, 2019 ²	-	(281,642.06)	-	-	-	-	-	(281,642.06)
Distribution to secured creditors ⁷	-	-	(3,456.00)	-	-	-	-	(3,456.00)
Distribution to vendors on the settlement of trades or return of deposits on cancelled trades	(228,391.18)	-	-	-	-	-	-	(228,391.18)
Total Disbursements	(228,391.18)	(726,354.91)	(839,847.43)	-	-	-	-	(1,794,593.52)
NET RECEIPTS OVER DISBURSEMENTS	\$ -	\$ 2,013,196.14	\$ 538,333.79	\$ 10,622.00	\$ 3.17	\$ 2.84	\$ 13,533.51	\$ 2,575,691.45

TAB 2(j)

Appendix “J”

RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084549.83

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(4014)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

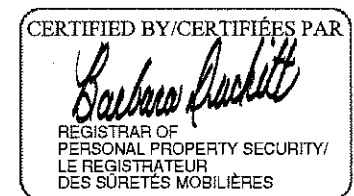
SEARCH CONDUCTED ON : THEREDPIN, INC.

FILE CURRENCY : 05MAY 2020

ENQUIRY NUMBER 20200506084549.83 CONTAINS 9 PAGE(S), 3 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

AIRD & BERLIS LLP
ATTN: SHANNON MORRIS
HOLD FOR PICK UP
TORONTO ON M5J2T9



(crf5 06/2019)

CONTINUED... 2

Ontario 

RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084549.83

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 2
(4015)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN, INC.
FILE CURRENCY : 05MAY 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
735883182

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNGER	REGISTRATION PERIOD
	001	001		20180123 1243 1862 4692	P PPSA	10

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
-------------	---------------	------------------	---------	---------

02	DEBTOR NAME	BUSINESS NAME	THEREDPIN, INC.		ONTARIO CORPORATION NO.
04	ADDRESS	5 CHURCH STREET		TORONTO	ON M5E 2T3

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
-------------	---------------	------------------	---------	---------

05	DEBTOR NAME	BUSINESS NAME			ONTARIO CORPORATION NO.
07	ADDRESS				

08	SECURED PARTY / LIEN CLAIMANT	TRILOGY GROWTH FUND LP			
----	-------------------------------	------------------------	--	--	--

09	ADDRESS	161 BAY STREET, SUITE 4720		TORONTO	ON M5J 2T3
----	---------	----------------------------	--	---------	------------

COLLATERAL CLASSIFICATION					MOTOR VEHICLE	AMOUNT	DATE OF	NO. FIXED
CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS	OTHER	INCLUDED		MATURITY OR	MATURITY DATE
X	X	X	X	X	X			

MOTOR VEHICLE	YEAR	MAKE	MODEL	V.I.N.
---------------	------	------	-------	--------

11 MOTOR VEHICLE

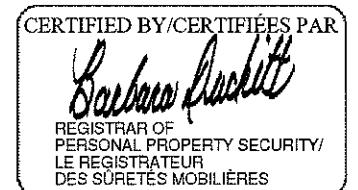
13 GENERAL COLLATERAL DESCRIPTION

16 REGISTERING AGENT : TORYS LLP - K. MILNE

17 ADDRESS : 79 WELLINGTON STREET WEST, SUITE 3000 TORONTO ON M5K 1N2

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 3



(crjfu 06/2019)



RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084549.83

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(4016)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN, INC.
FILE CURRENCY : 05MAY 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
724499262

00
01 CAUTION FILING PAGE NO. TOTAL OF PAGES MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER PERIOD

02 DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 THEREDPIN, INC.
04 5 CHURCH STREET TORONTO ONTARIO CORPORATION NO. ON M5E 1M2

05 DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 BUSINESS NAME
07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / LIEN CLAIMANT FIREPOWER DEBT GP INC., AS AGENT

09 ADDRESS 3 CHURCH STREET, SUITE 601 TORONTO ON M5E 1M2

10 COLLATERAL CLASSIFICATION CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO. FIXED MATURITY DATE

11 MOTOR VEHICLE YEAR MAKE MODEL V.I.N.

13 GENERAL COLLATERAL DESCRIPTION

16 REGISTERING AGENT WILDEBOER DELLELCE LLP (PA-M)
17 ADDRESS 365 BAY STREET, SUITE 800 TORONTO ON M5H 2V1

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 4

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(crjtfu 06/2019)



RUN NUMBER : 127
 RUN DATE : 2020/05/06
 ID : 20200506084549.83

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PSSR060
 PAGE : 4
 (4017)

TYPE OF SEARCH : BUSINESS DEBTOR
 SEARCH CONDUCTED ON : THEREDPIN, INC.
 FILE CURRENCY : 05MAY 2020

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	001	001		20170803 1051 1862 1463	
21	RECORD REFERENCED	FILE NUMBER	724499262		
22	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	X	CHANGE REQUIRED A AMENDMENT	RENEWAL YEARS
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	THEREDPIN, INC.		
25	OTHER CHANGE REASON/ DESCRIPTION	AMENDED TO UPDATE THE SECURED PARTY'S ADDRESS			
02/	DEBTOR/ TRANSFEREE	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
03/	DEBTOR/ TRANSFEREE	BUSINESS NAME			
04/07	ADDRESS	ONTARIO CORPORATION NO.			
29	ASSIGNOR	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE			
08		FIREPOWER DEBT GP INC., AS AGENT			
09	ADDRESS	47 FRONT STREET EAST, SUITE 200	TORONTO	ON	M5E 1B3
10	COLLATERAL CLASSIFICATION	CONSUMER	MOTOR VEHICLE	DATE OF MATURITY OR	NO. FIXED MATURITY DATE
11	MOTOR VEHICLE GENERAL	YEAR MAKE	MODEL	V. I. N.	
14	COLLATERAL DESCRIPTION				
16	REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT	ADDRESS	WILDEBOER DELLELCE LLP (PA-M)	TORONTO	ON M5H 2V1
17		ADDRESS	365 BAY STREET, SUITE 800	TORONTO	ON M5H 2V1

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 5

CERTIFIED BY/CERTIFIÉES PAR
Barbara Luckitt
 REGISTRAR OF
 PERSONAL PROPERTY SECURITY/
 LE REGISTRATEUR
 DES SÛRETÉS MOBILIÈRES

(crj2fu 06/2019)



RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084549.83

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 5
(4018)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN, INC.
FILE CURRENCY : 05MAY 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
701012088

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	001	2		20141027 1602 6005 6238	P PPSA	06

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
-------------	---------------	------------------	---------	---------

02 DEBTOR NAME
03 BUSINESS NAME THEREDPIN, INC.

04 ADDRESS 5 CHURCH STREET WEST TORONTO ONTARIO CORPORATION NO. M5E 1M2

DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
-------------	---------------	------------------	---------	---------

05 DEBTOR NAME
06 BUSINESS NAME

07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / LIEN CLAIMANT NATIONAL LEASING GROUP INC.

09 ADDRESS 1525 BUFFALO PLACE WINNIPEG MB R3T 1L9

COLLATERAL CLASSIFICATION				MOTOR VEHICLE	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE
CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	INCLUDED			

11 MOTOR VEHICLE YEAR MAKE MODEL VIN

13 GENERAL COLLATERAL DESCRIPTION ALL TELEPHONE SYSTEMS AND VOIP OF EVERY NATURE OR KIND DESCRIBED IN LEASE NUMBER 2688919, BETWEEN FIBERNETICS CORPORATION, AS ORIGINAL LESSOR AND THE DEBTOR, AS LESSEE, WHICH LEASE WAS ASSIGNED BY THE

16 REGISTERING AGENT ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTREUR
DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)



RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084549.83

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 6
(4019)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN, INC.
FILE CURRENCY : 05MAY 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER
701012088

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
002 2 20141027 1602 6005 6238

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
03 NAME BUSINESS NAME

04 ADDRESS ONTARIO CORPORATION NO.

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
06 NAME BUSINESS NAME

07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY /
09 LIEN CLAIMANT ADDRESS

10 COLLATERAL CLASSIFICATION:
CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO ELIEXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

11 MOTOR YEAR MAKE MODEL V.I.N.
12 VEHICLE

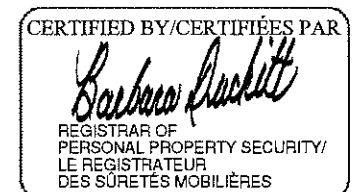
13 GENERAL ORIGINAL LESSOR TO THE SECURED PARTY, AS AMENDED FROM TIME TO TIME,
14 COLLATERAL TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND SUBSTITUTIONS.
15 DESCRIPTION

16 REGISTERING
17 AGENT ADDRESS

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

7



(crjfu 06/2019)

RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084549.83

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 7
(4020)

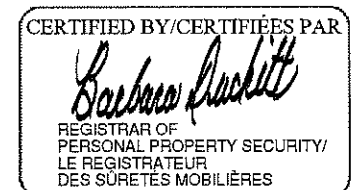
TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN, INC.
FILE CURRENCY : 05MAY 2020

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER
01	001	2		20141216 1324 6005 7380	
21	RECORD REFERENCED	FILE NUMBER	701012088		
22	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	CHANGE REQUIRED A AMENDMENT	RENEWAL YEARS	CORRECT PERIOD
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME	
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	THEREDPIN INC.		
25	OTHER CHANGE REASON/ DESCRIPTION	CANCEL-REBOOK. LEASE NUMBER HAS CHANGED FROM 2688919 TO 2698774. UPDATING GENERAL COLLATERAL DESCRIPTION TO READ THE NEW LEASE NUMBER.			
02/	DEBTOR/ TRANSFEREE	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME
05					
03/		BUSINESS NAME			
06					ONTARIO CORPORATION NO.
04/07		ADDRESS			
29	ASSIGNOR	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE			
08					
09		ADDRESS			
10	COLLATERAL CLASSIFICATION	CONSUMER GOODS	MOTOR VEHICLE INCLUDED	DATE OF MATURITY OR	NO FIXED MATURITY DATE
11	MOTOR VEHICLE	YEAR MAKE	MODEL	V. I. N.	
12	GENERAL COLLATERAL DESCRIPTION	ALL TELEPHONE SYSTEMS AND VOIP OF EVERY NATURE OR KIND DESCRIBED IN LEASE NUMBER 2698774, BETWEEN FIBERNETICS CORPORATION, AS ORIGINAL LESSOR AND THE DEBTOR, AS LESSEE, WHICH LEASE WAS ASSIGNED BY THE REGISTERING AGENT OR NATIONAL LEASING GROUP INC.			
16	REGISTERING AGENT OR SECURED PARTY/ LIEN CLAIMANT	ADDRESS	1525 BUFFALO PLACE	WINNIPEG	MB R3T 1L9

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 8



(crj2fu 06/2019)

RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084549.83

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 8
(4021)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN, INC.
FILE CURRENCY : 05MAY 2020

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO.	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	
01	002	2		20141216 1324 6005 7380		
21	RECORD REFERENCED	FILE NUMBER	701012088			
22	PAGE AMENDED	NO. OF PAGES	NO. SPECIFIC PAGE AMENDED	CHANGE REQUIRED	RENEWAL YEARS	CORRECT PERIOD
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME		
24	DEBTOR/ TRANSFEROR	BUSINESS NAME				
25	OTHER CHANGE REASON/ DESCRIPTION					
02/05	DEBTOR/ TRANSFEREE	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
03/06	TRANSFEREE	BUSINESS NAME				ONTARIO CORPORATION NO.
04/07		ADDRESS				
29	ASSIGNOR					
08	SECURED PARTY/LIEN CLAIMANT/ASSIGNEE					
09		ADDRESS				
10	COLLATERAL CLASSIFICATION	CONSUMER GOODS	MOTOR VEHICLE	DATE OF ACQUISITION	NO. FIXED	
		INVENTORY	EQUIPMENT	ACCOUNT'S OTHER	INCLUDED	AMOUNT MATURITY OR MATURITY DATE
11	MOTOR VEHICLE	YEAR	MAKE	MODEL	V.I.N.	
13	GENERAL COLLATERAL DESCRIPTION	ORIGINAL LESSOR TO THE SECURED PARTY, AS AMENDED FROM TIME TO TIME, TOGETHER WITH ALL ATTACHMENTS, ACCESSORIES AND SUBSTITUTIONS.				
16	REGISTERING AGENT OR SECURED PARTY/LIEN CLAIMANT	ADDRESS				

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED...

9

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(crj2fu 06/2019)

Ontario 

RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084549.83

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

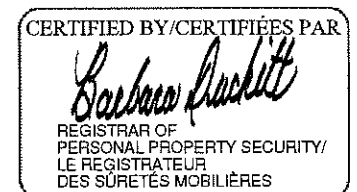
REPORT : PSSR060
PAGE : 9
(4022)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN, INC.
FILE CURRENCY : 05MAY 2020

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
735883182	20180123 1243 1862 4692			
724499262	20170131 1551 1862 6783	20170803 1051 1862 1463		
701012088	20141027 1602 6005 6238	20141216 1324 6005 7380		

5 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



(erj5 06/2019)

TAB 2(k)

Appendix “K”

RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084543.79

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 1
(4007)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

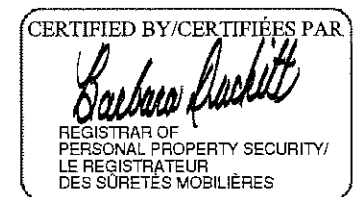
SEARCH CONDUCTED ON : THEREDPIN.COM REALTY INC.

FILE CURRENCY : 05MAY 2020

ENQUIRY NUMBER 20200506084543.79 CONTAINS 7 PAGE(S), 4 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

AIRD & BERLIS LLP
ATTN: SHANNON MORRIS
HOLD FOR PICK UP
TORONTO ON M5J2T9



(crfj5 06/2019)

CONTINUED... 2

Ontario 

RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084543.79

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 2
(4008)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN.COM REALTY INC.
FILE CURRENCY : 05MAY 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
736522011

00

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	01	001		20180215 1929 1531 2067	P PPSA	5

01

DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

02

DEBTOR NAME

BUSINESS NAME

THEREDPIN.COM REALTY INC.

03

ADDRESS

5 CHURCH STREET

TORONTO

ONTARIO CORPORATION NO.

ON M5E 1M2

04

DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

05

DEBTOR NAME

BUSINESS NAME

06

ADDRESS

ONTARIO CORPORATION NO.

07

SECURED PARTY / LIEN CLAIMANT

ROYAL BANK OF CANADA

08

ADDRESS

36 YORK MILLS ROAD, 4TH FLOOR

TORONTO

ON M2P 0A4

09

COLLATERAL CLASSIFICATION

CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR	NO FIXED MATURITY DATE
				X			

10

MOTOR VEHICLE YEAR MAKE MODEL V.I.N.

11

VEHICLE

12

GENERAL COLLATERAL DESCRIPTION PRIORITY AGREEMENT DATED FEBRUARY 1, 2018 BETWEEN TRILOGY GROWTH FUND LP AND ROYAL BANK OF CANADA, IN FAVOR OF SECURITY AGREEMENT BETWEEN ROYAL BANK OF CANADA AND THEREDPIN.COM REALTY INC.

13

14

15

REGISTERING AGENT CANADIAN SECURITIES REGISTRATION SYSTEMS

16

ADDRESS 4126 NORLAND AVENUE BURNABY BC V5G 3S8

17

*** FOR FURTHER INFORMATION CONTACT THE SECURED PARTY ***

CONTINUED... 3

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(crjfu 06/2019)

Ontario 

RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084543.79

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 3
(4009)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN.COM REALTY INC.
FILE CURRENCY : 05MAY 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
736522029

CAUTION FILING	PAGE NO.	TOTAL OF PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	REGISTRATION PERIOD
	01	001		20180215 1929 1531 2068	P PPSA	5

DEBTOR NAME	DATE OF BIRTH	BUSINESS NAME	FIRST GIVEN NAME	INITIAL	SURNAME	ONTARIO CORPORATION NO.
		THEREDPIN.COM REALTY INC.				
		ADDRESS	5 CHURCH STREET		TORONTO	ON M5E 1M2

DEBTOR NAME	DATE OF BIRTH	BUSINESS NAME	FIRST GIVEN NAME	INITIAL	SURNAME	ONTARIO CORPORATION NO.
		ADDRESS				
SECURED PARTY / LIEN CLAIMANT			ROYAL BANK OF CANADA			
		ADDRESS	36 YORK MILLS ROAD, 4TH FLOOR		TORONTO	ON M2P 0A4

COLLATERAL CLASSIFICATION						
CONSUMER GOODS	INVENTORY	EQUIPMENT	ACCOUNTS OTHER	MOTOR VEHICLE INCLUDED	AMOUNT	DATE OF MATURITY OR NO FIXED MATURITY DATE
				X		

MOTOR VEHICLE	YEAR MAKE	MODEL	V.I.N.

GENERAL COLLATERAL DESCRIPTION: PRIORITY AGREEMENT DATED FEBRUARY 13, 2018 BETWEEN FIREPOWER DEBT GP INC. AND ROYAL BANK OF CANADA, IN FAVOR OF SECURITY AGREEMENT BETWEEN ROYAL BANK OF CANADA AND THEREDPIN.COM REALTY INC.

REGISTERING AGENT: CANADIAN SECURITIES REGISTRATION SYSTEMS
ADDRESS: 4126 NORLAND AVENUE BURNABY BC V5G 3S8

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 4

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
REGISTRAR OF PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES

(crj1fu 06/2019)

RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084543.79

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 4
(4010)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN.COM REALTY INC.
FILE CURRENCY : 05MAY 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
735883173

CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
01 001 001 20180123 1243 1862 4691 P PPSA 10

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
03 NAME BUSINESS NAME THEREDPIN.COM REALTY INC.
04 ADDRESS 5 CHURCH STREET TORONTO ONTARIO CORPORATION NO. ON M5E 2T3

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME
06 NAME BUSINESS NAME
07 ADDRESS ONTARIO CORPORATION NO.

08 SECURED PARTY / TRILOGY GROWTH FUND LP
09 LIEN CLAIMANT ADDRESS 161 BAY STREET, SUITE 4720 TORONTO ON M5J 2T3

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE
X X X X X

11 MOTOR YEAR MAKE MODEL VEHICLE
12 VEHICLE

13 GENERAL
14 COLLATERAL
15 DESCRIPTION

16 REGISTERING TORYS LLP - K. MILNE
17 AGENT ADDRESS 79 WELLINGTON STREET WEST, SUITE 3000 TORONTO ON M5K 1N2

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 5

CERTIFIED BY/CERTIFIÉES PAR
Barbara Luckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(crj)fu 06/2019)



RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084543.79

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 5
(4011)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN.COM REALTY INC.
FILE CURRENCY : 05MAY 2020

FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER
724499379

00
01 CAUTION FILING PAGE NO. OF TOTAL PAGES MOTOR VEHICLE SCHEDULE REGISTRATION NUMBER REGISTERED UNDER REGISTRATION PERIOD
001 001 20170131 1551 1862 6785 P PFSA 5

02 DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME THEREDPIN.COM REALTY INC.

04 ADDRESS 5 CHURCH STREET TORONTO ONTARIO CORPORATION NO. ON M5E 1M2

05 DEBTOR NAME DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 BUSINESS NAME

07 ADDRESS

08 SECURED PARTY / LIEN CLAIMANT FIREPOWER DEBT GP INC., AS AGENT

09 ADDRESS 3 CHURCH STREET, SUITE 601 TORONTO ON M5E 1M2

10 COLLATERAL CLASSIFICATION CONSUMER GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER MOTOR VEHICLE INCLUDED AMOUNT DATE OF MATURITY OR NO FIXED MATURITY DATE
X X X X X

11 MOTOR VEHICLE YEAR MAKE MODEL VIN

12 VEHICLE

13 GENERAL COLLATERAL DESCRIPTION

16 REGISTERING AGENT WILDEBOER DELLELCE LLP (PA-M)

17 ADDRESS 365 BAY STREET, SUITE 800 TORONTO ON M5H 2V1

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 6

CERTIFIED BY/CERTIFIÉES PAR
Barbara Duckitt
REGISTRAR OF
PERSONAL PROPERTY SECURITY/
LE REGISTRATEUR
DES SÛRETÉS MOBILIÈRES

(c/jtfu 06/2019)



RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084543.79

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 6
(4012)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN.COM REALTY INC.
FILE CURRENCY : 05MAY 2020

FORM 2C FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION FILING	PAGE NO. OF	TOTAL PAGES	MOTOR VEHICLE SCHEDULE	REGISTRATION NUMBER	REGISTERED UNDER	
01	001	001		20170803 1051 1862 1461		
21	RECORD REFERENCED	FILE NUMBER	724499379			
22	PAGE AMENDED	NO SPECIFIC PAGE AMENDED	X	CHANGE REQUIRED A AMENDMENT	RENEWAL YEARS	CORRECT PERIOD
23	REFERENCE	FIRST GIVEN NAME	INITIAL	SURNAME		
24	DEBTOR/ TRANSFEROR	BUSINESS NAME	THEREDPIN.COM REALTY INC.			
25	OTHER CHANGE REASON/ DESCRIPTION	AMENDED TO UPDATE THE SECURED PARTY'S ADDRESS				
02/05	DEBTOR/ TRANSFEREE	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	
03/06	TRANSFEREE	BUSINESS NAME				
04/07	ADDRESS					ONTARIO CORPORATION NO.
29	ASSIGNOR	SECURED PARTY/LEEN CLAIMANT/ASSIGNEE				
08		FIREPOWER DEBT GP INC., AS AGENT				
09	ADDRESS	47 FRONT STREET EAST, SUITE 200	TORONTO	ON	M5E 1B3	
10	COLLATERAL CLASSIFICATION	CONSUMER	MOTOR VEHICLE	DATE OF MATURITY OR	NO. FIXED MATURITY DATE	
11	MOTOR VEHICLE GENERAL DESCRIPTION	YEAR	MAKE	MODEL	V.I.N.	
14	COLLATERAL DESCRIPTION					
15	REGISTERING AGENT OR SECURED PARTY/LEEN CLAIMANT	ADDRESS	365 BAY STREET, SUITE 800	TORONTO	ON	M5H 2V1

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***

CONTINUED... 7

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(c)2fu 06/2019)

Ontario 

RUN NUMBER : 127
RUN DATE : 2020/05/06
ID : 20200506084543.79

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 7
(4013)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : THEREDPIN.COM REALTY INC.
FILE CURRENCY : 05MAY 2020

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
736522011	20180215 1929 1531 2067			
736522029	20180215 1929 1531 2068			
735883173	20180123 1243 1862 4691			
724499379	20170131 1551 1862 6785	20170803 1051 1862 1461		

5 REGISTRATION(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.

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(crfj5 06/2019)

Ontario 

TAB 3

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FIREPOWER DEBT GP INC., AS AGENT

and

THEREDPIN, INC. and THE REDPIN.COM REALTY INC.

Applicant

Respondents

Court File No. CV-18-599644-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceedings commenced at Toronto

MOTION RECORD

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