

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF Section 101 of the *Courts of Justice Act*,  
R.S.O. 1990 c. C.43, as amended.

BETWEEN:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**MOTION RECORD  
(Second Interim Distribution – returnable December 21, 2011)**

Date: December 20, 2011

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## INDEX

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# TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF Section 101 of the *Courts of Justice Act*,  
R.S.O. 1990 c. C.43, as amended.

BETWEEN:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**NOTICE OF MOTION**  
(Second Interim Distribution Order)

**DELOITTE & TOUCHE INC.** in its capacity as receiver (the “**Receiver**”) of all the lands and premises known municipally as 5789, 5811, 5933, 5945 and 5951 Steeles Avenue East, Toronto, Ontario (the “**Lands**”) and all of the assets, undertakings and properties of the respondent 2811 Development Corporation (the “**Debtor**”) acquired for, or used in relation to, the development of the Lands and construction of improvements thereon, will make a motion before a Judge presiding over the Commercial List on Wednesday, the 21st day of December, 2011 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR AN ORDER** substantially in the form of the draft attached as Schedule "A" hereto (the "**Draft Order**");

- (a) if necessary, abridging the time for service of this motion so that it is properly returnable on Wednesday, December 21, 2011 and dispensing with further service thereof;
- (b) authorizing the Receiver to make the distributions from the net proceeds of sale of the Lands to Mady Steeles 2011 Ltd. to the creditors holding mortgage security over such proceeds as set forth in the Draft Order; and
- (c) such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) the Receiver was appointed by Order of The Honourable Mr. Justice C. L. Campbell dated June 29, 2011;
- (b) the order of The Honourable Mr. Justice Morawetz dated August 10, 2011 (the "**Sale Process Approval Order**") approved a marketing and sale process with respect to the Lands (the "**Sales Process**");
- (c) the Receiver implemented the Sales Process in accordance with the Sale Process Approval Order and entered into an agreement of purchase and sale, dated as of October 3, 2011 (the "**Mady Agreement**"), between the Receiver as vendor and Mady

Development Corporation as purchaser (the "**Purchaser**") for the sale of the Lands as defined in the agreement, subject to the approval of this Honourable Court;

(d) by an Approval, Vesting and Interim Distribution Order dated November 15, 2011, The Honourable Mr. Justice Morawetz approved the Mady Agreement, directed that upon the completion of the transaction title to the Lands be vested in the Purchaser and authorized the payment of the Receiver's fees and disbursements from the proceeds of sale on closing;

(e) by an order dated December 5, 2011, The Honourable Mr. Justice Morawetz amended the Approval, Vesting and Interim Distribution Order of November 15, 2011 by substituting Mady Steeles 2011 Ltd. as the Purchaser of the Assets;

(f) by an Interim Distribution Order dated December 7, 2011, The Honourable Mr. Justice Morawetz authorized the Receiver, upon completion of the Mady Agreement, to make certain uncontested payments to creditors holding security over the Net Sale Proceeds (as defined in the Fifth Report) and directed that the Receiver or any of those secured creditors bring a motion to have determined certain contested claims (the "**Contested Amounts Motion**");

(g) the Contested Amounts Motion was scheduled to be heard on December 21, 2011;

(h) the secured creditors have settled their dispute and have agreed upon the distribution of the remaining Net Sale Proceeds, subject to the holdbacks referred to in the Draft Order, and the Contested Amounts Motion is no longer necessary;

- (i) the sale transaction was completed on December 15, 2011 and the Receiver received payment of the purchase price; and
- (j) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) The Fifth Report of the Receiver dated December 20, 2011;
- (b) The Fourth Report of the Receiver dated December 1, 2011; and
- (c) such further and other material as counsel may advise and this Honourable Court may permit.

December 20, 2011

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# **SCHEDULE "A"**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. ) WEDNESDAY THE 21st DAY  
JUSTICE MORAWETZ ) OF DECEMBER, 2011

**IN THE MATTER OF section 101 of  
the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

BETWEEN:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**SECOND INTERIM DISTRIBUTION ORDER**

**THIS MOTION**, made by DELOITTE & TOUCHE INC. in its capacity as the court-appointed receiver (the "**Receiver**") of certain of the assets, undertaking and property (the "**Assets**") of 2811 Development Corporation (the "**Debtor**"), for directions respecting (i) certain disputes between Lombard General Insurance Company of Canada ("**Lombard**"), Firm Capital Mortgage Fund Inc. ("**Firm Capital**"), White Bear Developments Inc. ("**White Bear**") and Key Pendragon Enterprises Inc. ("**Key Pendragon**"), (ii) distribution of the proceeds of sale of the

Assets, and (iii) other relief as set forth below was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the appointment order herein of the Honourable Mr. Justice C.L. Campbell dated June 29, 2011 (the "**Appointment Order**"), the Approval, Vesting and Interim Disbursement Order of the Honourable Mr. Justice Morawetz dated November 15, 2011 (the "**Vesting Order**"), the Third Report of the Receiver dated November 3, 2011 (the "**Third Report**"), the Supplement to the Third Report dated November 11, 2011 (the "**Supplementary Report**") the Fourth Report of the Receiver dated December 1, 2011 (the "**Fourth Report**"), the interim distribution order of the Honourable Mr. Justice Morawetz herein dated December 7, 2011 (the "**Interim Distribution Order**") the Fifth Report of the Receiver dated December 20, 2011 (the "**Fifth Report**"), the affidavits of Anthony O'Brien sworn November 2, 2011 and December 2, 2011 respectively, and on hearing the submissions of counsel for the Receiver, Firm Capital, Key Pendragon, White Bear, Lombard, Con-Drain Company (1983) Limited ("**Con-Drain**") and Mady Contract Division Ltd., no one appearing for any other person on the service list, although properly served as appears from the affidavit of Chun Ying Wang sworn December 20, 2011, filed, and having been advised that Lombard, Firm Capital, White Bear and Key Pendragon have settled their disputes and the Contested Amounts Motion contemplated in paragraph 6 of the Interim Distribution Order will therefore not proceed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record dated December 20, 2011 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 capitalized words herein shall have the meaning attributed to them in the Vesting Order, the Interim Distribution Order and the Fifth Report.
3. **THIS COURT ORDERS** that the Receiver is hereby authorized to distribute the following amounts from the Net Sale Proceeds as defined in the Interim Distribution Order:
  - (a) to Firm Capital the amount of \$329,574.00 in full satisfaction of its claims with respect to the loan renewal fee and interest pursuant to section 17 of the Ontario *Mortgages Act*



referred to in subparagraph 4(a), and the legal fees and disbursements and other costs referred to in subparagraph 5(a), of the Interim Distribution Order,

(b) to White Bear the amount of \$156,024.24 in full satisfaction of its claims with respect to the forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* referred to in clause 4(b)(i), and the legal fees and disbursements and other costs referred to in subparagraph 5(b), of the Interim Distribution Order;

(c) to Key Pendragon the amount of \$288,512.31 in full satisfaction of its claims with respect to the forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* referred to in clauses 4(c)(i), 4(d)(i) and 4(e)(i), and the legal fees and disbursements and other costs referred to in subparagraph 5(b), of the Interim Distribution Order,;

(d) to Lombard the amount of \$ 2,253,345.74 on account of the indebtedness owing to it by the Debtor for principal, interest and costs secured by the Lombard mortgages registered against title to the Assets as Instrument No.s AT974288, AT1085822 and AT1187188 plus interest thereon in the amount of \$1,141.01 per day from and including November 2, 2011 to the date of payment.

(e) to Con-Drain the amount of \$57,314.12 on account of the indebtedness owing to it by the Debtor and secured by the Con-Drain mortgage registered against title to the Assets as Instrument No. AT2561525.

4. **THIS COURT ORDERS** that the Receiver shall no longer be obliged to maintain the holdbacks referred to in paragraphs 4 and 5 of the Interim Distribution Order.

5. **THIS COURT ORDERS** that subject to the holdbacks referred to in paragraph 6 below the Receiver is hereby authorized to distribute the balance of the Net Sale Proceeds to the law firm of Harris Sheaffer LLP, in trust on the following terms.

(a) All funds received by Harris Sheaffer LLP pursuant to this order (the “**Unit Purchaser Deposit Trust Funds**”) shall be held in trust for the benefit of Unit Purchasers entitled to claim refunds of deposits paid to the Debtor pursuant to agreements to purchase

condominium units from the Debtor as described in the Receiver's Fifth Report ("**Deposit Refund Claims**").

(b) The Unit Purchaser Deposit Trust Funds shall also be held in trust for the benefit of Lombard to the extent that Lombard becomes entitled thereto as a result of its payment to Unit Purchasers of any Deposit Refund Claims pursuant to the Deposit Insurance Policy issued by Lombard and referred to in the Fifth Report. The terms and conditions governing payments to be made from the Unit Purchaser Deposit Trust Funds to Lombard shall be agreed upon between Lombard and Harris Sheaffer LLP without requiring further approval of the Receiver or this court. Harris Sheaffer LLP shall provide Con-Drain's lawyers, Stevensons LLP, with notice and particulars of any payments made to Unit Purchasers or Lombard from the Unit Purchaser Deposit Trust Funds as they are made.

(c) The amount or amounts and timing of any distribution hereunder by the Receiver to Harris Sheaffer LLP shall be entirely within the unfettered discretion of the Receiver in order to permit the Receiver to maintain sufficient reserves from the Net Sale Proceeds to cover any claims, fees, costs and disbursements that may be incurred prior to the discharge of the Receiver.

(d) If upon the expiry of the period of 2 years following the date of notice given to condominium purchasers as contemplated at paragraph 14 of the Vesting Order of the Honourable Mr. Justice Morawetz herein dated November 15, 2011 there are Unit Purchaser Deposit Trust Funds, and after payment of all of Lombard's reasonable expenses to administer Refund Claims, the Unit Purchaser Deposit Trust Funds remaining in the possession of Harris Sheaffer LLP after the payment of all legitimate Deposit Refund Claims made prior to the expiry of that 2 year period (the "**Trust Surplus**") is in excess of \$50,000, Lombard shall make a motion to this court for directions respecting the distribution of the Trust Surplus, such motion to be made on notice to the Receiver (if not then discharged), Con-Drain, Mady Contract Division Ltd., the Debtor and any other person appearing to have an interest in, or claim to, the Trust Surplus, and Harris Sheaffer LLP shall hold the Trust Surplus and not distribute any portion thereof except in accordance with such directions or further order of this Court.

(e) If upon the expiry of the period of 2 years following the date of notice given to condominium purchasers as contemplated at paragraph 14 of the Vesting Order of the

Honourable Mr. Justice Morawetz herein dated November 15, 2011, the Trust Surplus contemplated in paragraph 5(d) above is \$50,000 or less, the Court directs Lombard to cause the full amount of the Trust Surplus remaining in Harris Sheaffer LLP's trust account to be paid to Con-Drain directly, on notice to the Receiver (if not then discharged), Mady Contract Division Ltd., the Debtor and any other person appearing to have an interest in, or claim to, the Trust Surplus.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized to retain from the Net Sale Proceeds a holdback or holdbacks in an amount or amounts entirely within its unfettered discretion as a reserve for any outstanding or future claims, fees, disbursements or other costs that may be incurred prior to the discharge of the Receiver.

7. **THIS COURT ORDERS** that clause 4 (b)(i) of the Interim Disbursement Order be amended to read as follows:

“(i) the sum of \$382,141.28 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by White Bear pursuant to the White Bear Second Mortgage that are contested by Lombard; and”

**FIRM CAPITAL MORTGAGE FUND INC.**

- and -

**2811 DEVELOPMENT CORPORATION**

**Applicant**

**Respondent**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
PROCEEDINGS COMMENCED AT  
TORONTO**

**SECOND INTERIM DISTRIBUTION  
ORDER**

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FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

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

PROCEEDINGS COMMENCED AT  
TORONTO

**NOTICE OF MOTION**  
**(Second Interim Distribution)**

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# **TAB 2**

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

**IN THE MATTER OF SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O. 1990 C.C.43, AS AMENDED**

**BETWEEN:**

**FIRM CAPITAL MORTGAGE FUND INC.**

**Applicant**

**- and -**

**2811 DEVELOPMENT CORPORATION**

**Respondent**

**FIFTH REPORT OF THE RECEIVER  
DATED DECEMBER 20, 2011**

**INTRODUCTION**

1. By Order of the Court dated June 29, 2011 (the "Appointment Order"), Deloitte & Touche Inc. was appointed as receiver (the "Receiver") of all of the lands and premises known municipally as 5789, 5811, 5933, 5945 and 5951 Steeles Avenue East, Toronto, Ontario and more particularly described in Schedule "A" to the Appointment Order (the "Lands") and all of the assets, undertakings and properties of 2811 Development Corporation (the "Debtor") acquired for, or used in relation to, the development of the Lands and construction of improvements thereon, including all proceeds thereof (collectively, the "Property"). A copy of the Appointment Order is attached hereto as Appendix "A".

2. On November 3, 2011, the Receiver issued its Third Report to the Court (the "**Third Report**") in support of its sale approval motion returnable November 15, 2011 (the "**November 15 Motion**") for an order, *inter alia*:
  - (a) authorizing and directing the Receiver to enter into and carry out the terms of the Mady Agreement (as defined below) together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Lands in Mady (as defined below) upon closing of the Mady Agreement and the delivery of the Receiver's Certificate (as defined below) to Mady; and
  - (b) approving an interim distribution of certain of the net proceeds of sale of the Lands to the Applicant and other secured lenders, in the event that the sale transaction contemplated by the Mady Agreement was completed.
3. On November 11, 2011, the Receiver filed with the Court a Supplement to the Third Report (the "**Supplement to the Third Report**") in connection with the November 15 Motion, which provided the Court with additional information with respect to the charges, mortgages and claims registered against the Property. A copy of the Third Report (without attachments) is attached as **Appendix "B"**. A copy of the Supplement to the Third Report (without attachments) is attached as **Appendix "C"**.
4. On November 15, 2011, The Honourable Justice Morawetz granted the Approval, Vesting and Interim Disbursement Order (the "**AVID Order**") authorizing the Receiver to, among other things, enter into and carry out the terms of the Mady Agreement. A copy of the AVID Order is attached as **Appendix "D"**.
5. At the request of Lombard Insurance Company of Canada ("**Lombard**"), the Receiver's motion for an order approving an interim distribution of certain net proceeds was adjourned to December 5, 2011 to allow Lombard the opportunity to review the secured claims of Firm Capital Mortgage Fund Inc. ("**Firm Capital**"), White Bear Developments Inc. ("**White Bear**") and Key Pendragon Enterprises Inc. ("**Pendragon**"), being the parties holding the first through fifth mortgages on the Lands.



6. On December 1, 2011, the Receiver issued its Fourth Report to the Court (the "**Fourth Report**"), a copy of which (without appendices) is attached as **Appendix "E"**, in support of its motions returnable December 5, 2011 (the "**December 5 Motion**"), for orders, *inter alia*:
  - (a) authorizing an interim distribution of certain of the net proceeds of sale of the Lands to Firm Capital and other secured lenders, as agreed upon by Firm Capital, White Bear, Pendragon and Lombard, in the event that the sale transaction contemplated by the Mady Agreement is completed; and
  - (b) amending the AVID Order to vest title in Mady Steeles (as defined below).
7. On December 5, 2011, The Honourable Justice Morawetz granted the Order Amending the Approval, Vesting and Interim Disbursement Order dated November 15, 2011 (the "**Amending Order**"), which provided that title to the Lands would vest in Mady Steeles upon the closing of the sale transaction contemplated by the Mady Agreement. A copy of the Amending Order is attached as **Appendix "F"**.
8. Prior to and during the hearing of the motion with respect to a proposed interim distribution, Lombard confirmed that it may challenge the ability of Firm Capital, White Bear and Pendragon to obtain payment for certain amounts in priority to the claims of Lombard with respect to certain portions of the Lands. The parties agreed to continue to negotiate the terms of a draft interim distribution order that would provide for payment of amounts owing to Firm Capital, White Bear and Pendragon that Lombard acknowledged were claims that stood in priority to its claims against certain portions of the Lands.
9. On December 7, 2011, The Honourable Justice Morawetz granted an interim distribution order that set out certain amounts to be distributed to the secured creditors and that had been agreed to by Firm Capital, White Bear, Pendragon and Lombard (the "**Interim Distribution Order**") upon the closing of the sale transaction contemplated by the Mady Agreement, and established certain holdbacks. A copy of the Interim Distribution Order is attached as **Appendix "G"**.

## PURPOSE OF THIS FIFTH REPORT

10. The purpose of this fifth report of the Receiver (the "**Fifth Report**") is to:
- (a) provide an update on the status of the Mady Agreement;
  - (b) provide an update with respect to distribution matters and the discussions amongst Lombard, Firm Capital, White Bear, Pendragon and Con-Drain Company (1983) Limited ("**Con-Drain**") since the granting of the Interim Distribution Order; and
  - (c) recommend the granting of an order:
    - (i) authorizing a second interim distribution of certain of the Net Sale Proceeds (as defined below) to the Applicant and other secured lenders, as more fully described herein; and
    - (ii) authorizing a distribution of certain of the Net Sale Proceeds to the law firm of Harris Sheaffer LLP, in trust, on the terms more fully described herein.

## TERMS OF REFERENCE

11. In preparing the Fifth Report and making the comments contained herein, the Receiver has been provided with and has relied upon unaudited financial information, the Debtor's books and records, financial information prepared by the Debtor and its advisors, and discussions with management of the Debtor, among other things. The Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in the Fifth Report.
12. Unless otherwise stated, all dollar amounts contained in the Fifth Report are expressed in Canadian dollars.

### **MADY AGREEMENT AND SALE OF THE LANDS**

13. As is described in greater detail in the Third Report, following the completion of a Court-approved marketing process, the Receiver entered into an agreement of purchase and sale for the Lands with Mady Development Corporation ("Mady") dated October 3, 2011 (the "Mady Agreement"). The Mady Agreement was conditional upon obtaining approval of this Honourable Court.
14. Pursuant to the terms of the AVID Order, this Honourable Court approved the sale of the Lands by the Receiver to Mady and the execution of the Mady Agreement by the Receiver. The transfer of the Debtor's right, title and interest in and to the Assets (as defined in the AVID Order) would vest in Mady free and clear of all claims and encumbrances upon the delivery to Mady by the Receiver of a certificate substantially in the form attached as a schedule to the AVID Order (the "Receiver's Certificate").
15. In connection with the Receiver's motion seeking approval of the Mady Agreement, the Receiver: (i) filed with the Court a redacted copy of the Mady Agreement, (ii) filed an unredacted copy of the Mady Agreement, among other documents, with the Court on a confidential basis, and (iii) sought a sealing order with respect to the unredacted Mady Agreement and other documents. The key provision of the Mady Agreement that had been redacted in the publicly filed copy of the agreement filed with the Court was the purchase price.
16. Pursuant to the terms of the AVID Order, the unredacted Mady Agreement, among other documents, were sealed by the Court pending the filing of the Receiver's Certificate or further order of the Court.
17. On November 18, 2011, the Debtor served a notice of appeal with respect to the AVID Order. Counsel to the Receiver informed counsel to the Debtor that it was the Receiver's intention to complete the sale contemplated in the Mady Agreement on December 8, 2011 unless the Debtor obtained an order staying the AVID Order and completion of the sale transaction before that date. The Debtor has not to date brought a motion seeking an order staying the enforcement of the AVID Order.

18. Following the granting of the AVID Order, Mady requested that the Lands vest in its affiliate, Mady Steeles 2011 Ltd. ("Mady Steeles"), under the AVID Order. As a result, the Receiver brought the December 5 Motion seeking, among other things, an amendment to the AVID Order to provide that the Lands vest in Mady Steeles upon the delivery of the Receiver's Certificate. On December 5, 2011, the Amending Order was granted by The Honourable Justice Morawetz, providing for the requested amendment to the AVID Order.
19. The Receiver previously reported to the Court during the November 15 Motion that the Mady Agreement was expected to close on or before December 8, 2011. Mady subsequently requested that the closing date be extended to December 14, 2011, which the Receiver agreed to. However, on December 14, 2011, due to a technical issue with regard to delivery of funds by Mady, the closing of the transaction occurred on December 15, 2011. Counsel to the Receiver informed counsel to the Debtor that the Mady Agreement sale transaction was set to close on December 15, 2011.
20. The Receiver reports to this Honourable Court that, on December 15, 2011, the sale of the Lands pursuant to the terms of the Mady Agreement was completed and the Receiver's Certificate was delivered to Mady and Mady Steeles. A copy of the Receiver's Certificate was also filed with the Court on December 15, 2011. The Receiver's Certificate, the AVID Order and the Amending Order have been registered against title to the Lands, as set out in the Application for Vesting Order registered against the Lands on December 15, 2011 as instrument AT2897037, a copy of which is attached as **Appendix "H"**.
21. As noted above, the purchase price under the Mady Agreement was sealed pursuant to the AVID Order until the filing of the Receiver's Certificate. As the Receiver's Certificate was delivered to Mady and Mady Steeles and filed with the Court on December 15, 2011, the Receiver reports that the purchase price for the Lands under the Mady Agreement was \$42,500,000. The Receiver further reports that, as a result of certain adjustments, the amounts received by the Receiver in respect of the Mady

Agreement was \$42,513,159.60, which includes the deposit of \$4,250,000 previously paid by Mady to the Receiver.

22. In connection with the completion of the sale of the Lands under the Mady Agreement, an aggregate amount of \$5,321.82 was paid to the Treasurer of the City of Toronto with respect to outstanding real property taxes on the Lands.
23. As a result, the aggregate amount of \$42,507,837.78 was realized by the Receiver in connection with the sale of the Lands under the Mady Agreement (the "Net Sale Proceeds").

#### CLAIMS AGAINST THE LANDS

24. As set out in further detail in the Third Report, the Supplement to the Third Report and the Fourth Report, Firm Capital, White Bear, Pendragon, Lombard, Con-Drain and Mady Contract Division Ltd. ("MCD") have registered charges/mortgages or claims against title to the Lands or against portions of the Lands.
25. The Receiver has been informed by these creditors that the following aggregate amounts were due to them for outstanding principal, interest, fees and other amounts:

Creditor	Outstanding Amount
Firm Capital	\$18,408,421.05 <sup>1</sup>
White Bear	\$2,327,207.96 <sup>2</sup>
Pendragon	\$7,892,465.38 <sup>3</sup>
Pendragon	\$1,417,761.67 <sup>4</sup>
Pendragon	\$1,250,125.22 <sup>5</sup>

<sup>1</sup> Amount owing as of December 8, 2011, with per diem of \$5,302.90 from and including December 9, 2011 to date of payment.

<sup>2</sup> Amount owing as of December 9, 2011, with per diem of \$1,080.86 per day from and including December 10, 2011 to date of payment.

<sup>3</sup> Amount owing as of December 9, 2011, with per diem of \$2,838.84 per day from and including December 10, 2011 to date of payment.

<sup>4</sup> Amount owing as of December 9, 2011, with per diem of \$436.21 per day from and including December 10, 2011 to date of payment.

Lombard	\$12,727,872.80 <sup>6</sup>
Con-Drain	\$1,743,008.13
MCD	\$429,190.00 <sup>7</sup>
<b>TOTAL</b>	<b>\$46,196,052.21</b>

26. As has been reported to the Court, the Receiver previously obtained from BLG, its independent legal counsel, security opinions that provide, subject to the qualifications and assumptions contained therein, which the Receiver understands are customary in security opinions granted in a receivership context, that each of Firm Capital, White Bear and Pendragon have valid and enforceable charges/mortgages against the Lands.

Lombard

27. As has previously been reported to the Court, Lombard provided a deposit insurance facility to the Debtor in connection with parts of the Lands pursuant to deposit insurance facility commitment letters dated May 3, 2005, February 27, 2006 and June 30, 2006 between Lombard and the Debtor (collectively, the "DIF Commitment"). In connection with the DIF Commitment, Lombard agreed to insure the purchasers of un-built condominium units (collectively, the "Unit Purchasers") in respect of the deposit funds delivered by the Unit Purchasers to the Debtor and subsequently released to the Debtor, pursuant to a Master Deposit Insurance Policy (Ontario) dated October 17, 2005 and executed by the Debtor and Lombard (the "Deposit Insurance Policy"). Copies of the DIF Commitment and the Deposit Insurance Policy are attached respectively as Appendix "I" and Appendix "J".
28. Lombard has filed affidavits in these proceedings confirming that, as of November 1, 2011, the aggregate amount of \$12,031,976.15 in deposit funds have been released to the Debtor, and that the total indebtedness owed to Lombard by the Debtor was in the

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<sup>5</sup> Amount owing as of December 9, 2011, with per diem of \$384.73 per day from and including December 10, 2011 to date of payment.

<sup>6</sup> Amount owing as of November 1, 2011.

<sup>7</sup> This amount is an estimate, as MDC's legal counsel has not rendered invoices with respect to services provided to date. An amount of \$40,000 is included as an estimate of unbilled legal fees incurred.

aggregate amount of \$12,727,872.80 as of November 1, 2011. Additionally, Lombard has confirmed that, as of November 29, 2011, Lombard has paid \$2,007,143.86 to Unit Purchasers pursuant to its obligations owing to the Unit Purchasers under the DIF Commitment and the Deposit Insurance Policy.

29. The Receiver understands that the Debtor is required to indemnify Lombard with respect to payment of amounts under the DIF Commitment and the Deposit Insurance Policy by Lombard, among other amounts, pursuant to the terms of the DIF Commitment, the Deposit Insurance Policy, and an indemnity agreement dated August 8, 2006 made in favour of Lombard by 2811, among others (the "**Indemnity**"). A copy of the Indemnity is attached as **Appendix "K"**.
  
30. The Receiver understands that in connection with the DIF Commitment and the Indemnity, Lombard was granted the following mortgages over certain portions of the Lands (collectively, the "**Lombard Charges**"), copies of which are attached as **Appendix "L"**:
  - (a) Charge/Mortgage of Land with respect to PIN 06050-0199 (LT) and PIN 06050-0266 (LT) of the Lands in favour of Lombard registered in the Land Registry Office for The Land Titles Division of the Toronto Registry Office No. 66 as instrument no. AT974288 on November 9, 2005 in the principal amount of \$75,000,000, and the schedules attached thereto (the "**\$75,000,000 Lombard Charge**");
  
  - (b) Charge/Mortgage of Land with respect to PIN 06050-0199 (LT), PIN 06050-0266 (LT) and PIN 06050-0264 (LT) of the Lands in favour of Lombard registered in the Land Registry Office for The Land Titles Division of the Toronto Registry Office No. 66 as instrument no. AT1085822 on March 14, 2006 in the principal amount of \$750,000, and the schedules attached thereto (the "**\$750,000 Lombard Charge**"); and
  
  - (c) Charge/Mortgage of Land with respect to PIN 06050-0199 (LT), PIN 06050-0266 (LT), PIN 06050-0263 and PIN 06050-0264 (LT) of the Lands in favour of

Lombard registered in the Land Registry Office for The Land Titles Division of the Toronto Registry Office No. 66 as instrument no. AT1187188 on June 30, 2006 in the principal amount of \$1,560,127, and the schedules attached thereto (the "\$1,560,127 Lombard Charge").

31. The Receiver requested BLG, as its independent legal counsel, to review the validity and enforceability of the Lombard Charges registered against title to certain portions of the Lands. The Receiver reports that, subject to the qualifications and assumptions contained in the opinion from BLG to the Receiver, which the Receiver understands are customary in security opinions granted in the context of a receivership proceeding, the Receiver understands that the Lombard Charges are valid and enforceable charges against the portions of the Lands that they are registered against.
32. The Receiver further understands that, as a result of postponements granted by Lombard:
  - (a) the \$75,000,000 Lombard Charge, the \$750,000 Lombard Charge and the \$1,560,127 Lombard Charge are the effective sixth-in-time, seventh-in-time and eighth-in-time charges/mortgages against PIN 06050-0199 (LT) and PIN 06050-0266 (LT) of the Lands, as they are subsequent to the charges registered in favour of Firm Capital, White Bear and Pendragon;
  - (b) the \$1,560,127 Lombard Charge is the effective sixth-in-time charge/mortgage against PIN 06050-0263 (LT) of the Lands, as it is subsequent to the charges registered in favour of Firm Capital, White Bear and Pendragon;
  - (c) the \$750,000 Lombard Charge and the \$1,560,127 Lombard Charge are the effective sixth-in-time and seventh-in-time charges/mortgages against PIN 06050-0264 (LT) of the Lands, as they remain subsequent to the charges registered in favour of Firm Capital, White Bear and Pendragon; and
  - (d) none of the Lombard Charges were registered against PIN 06050-0272 (LT) of the Lands.



Con-Drain

33. The Receiver understands that, pursuant to agreements dated October 31, 2006, June 22, 2007, February 2008, September 2009 and March 10, 2009 between the Debtor and Con-Drain, among others (collectively, the “**Con-Drain Servicing Agreement**”), Con-Drain supplied certain services and materials to the Debtor in connection with underground services and roadworks for the Lands. The Receiver further understands that, as collateral security for the payment of amounts due and owing to Con-Drain by the Debtor under the Con-Drain Servicing Agreement, the Debtor granted to Con-Drain a Charge/Mortgage of Land with respect to PIN 06050-0199 (LT), PIN 06050-0266 (LT), PIN 06050-0263 (LT), PIN 06050-0264 (LT) and PIN 06050-0272 (LT) of the Lands in favour of Con-Drain registered in the Land Registry Office for The Land Titles Division of the Toronto Registry Office No. 66 as instrument no. AT2561525 on November 26, 2010 in the principal amount of \$1,500,000, and the schedules attached thereto (the “**Con-Drain Charge**”). A copy of the Con-Drain Charge is attached as **Appendix “M”**.
34. The Receiver has been informed by Con-Drain that, as of November 11, 2011, the total indebtedness owed to Con-Drain by the Debtor, inclusive of principal, interest and applicable fees, was in the aggregate amount of \$1,743,008.13.
35. The Receiver requested BLG, as its independent legal counsel, to review the validity and enforceability of the Con-Drain Charge registered against title to the Lands. The Receiver reports that, subject to the qualifications and assumptions contained in the opinion from BLG to the Receiver, which the Receiver understands are customary in security opinions granted in the context of a receivership proceeding, the Receiver understands that the Con-Drain Charge is a valid and enforceable charge against the Lands.
36. The Receiver further understands that the Con-Drain Charge is the effective:
  - (a) ninth-in-time charge/mortgages against PIN 06050-0199 (LT) and PIN 06050-0266 (LT) of the Lands, as it is subsequent to the charges registered in favour of Firm Capital, White Bear, Pendragon and Lombard;

- (b) seventh-in-time charge/mortgage against PIN 06050-0263 (LT) of the Lands, as it is subsequent to the charges registered in favour of Firm Capital, White Bear and Pendragon and the \$1,560,127 Lombard Charge;
- (c) eighth-in-time charge/mortgage against PIN 06050-0264 (LT) of the Lands, as it is subsequent to the charges registered in favour of Firm Capital, White Bear and Pendragon and the \$750,000 Lombard Charge and the \$1,560,127 Lombard Charge; and
- (d) sixth-in-time charge/mortgage against PIN 06050-0272 (LT) of the Lands, as it is subsequent to the charges registered in favour of Firm Capital, White Bear and Pendragon.

#### **DISTRIBUTION MATTERS**

- 37. As described above and in greater detail in the Third Report, the Supplement to the Third Report, and the Fourth Report, the Receiver's original motion seeking an order approving an interim distribution was adjourned to December 5 and 7, 2011 to allow Lombard the opportunity to review the secured claims of Firm Capital, White Bear and Pendragon, being the parties holding the 1<sup>st</sup> through 5<sup>th</sup> mortgages on the Lands.
- 38. Lombard confirmed that it may challenge the ability of Firm Capital, White Bear and Pendragon to obtain payment, in priority to Lombard, on account of loan renewal fees, forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act*. However, Lombard did not challenge the majority of the amounts claimed to be secured by the charges held by Firm Capital, White Bear and Pendragon.
- 39. The parties negotiated an order, subsequently granted by the Honourable Justice Morawetz on December 7, 2011 as the Interim Distribution Order, which provided that, upon completion of the Mady Agreement, the Receiver was authorized to distribute the following amounts from the proceeds of sale after payment of all costs and disbursements related to the completion of the sale transaction:

- (a) to Firm Capital the amount of \$17,749,273.05 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the applicable Contested Amounts (defined below), plus \$5,302.90 per day from and including December 9, 2011 to the date of payment;
- (b) to White Bear the amount of \$1,972,566.68 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the applicable Contested Amounts, plus \$1,080.86 per day from and including December 10, 2011 to the date of payment;
- (c) to Pendragon the amount of \$7,401,274.40 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the applicable Contested Amounts, and secured by Pendragon's third mortgage on the Lands, plus \$2,838.84 per day from and including December 10, 2011 to the date of payment;
- (d) to Pendragon the amount of \$1,326,794.71 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the applicable Contested Amounts, and secured by Pendragon's fourth mortgage on the Lands, plus \$436.21 per day from and including December 10, 2011 to the date of payment; and
- (e) to Pendragon the amount of \$1,170,234.69 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the Contested Amounts, and secured by Pendragon's fifth mortgage on the Lands, plus \$384.73 per day from and including December 10, 2011 to the date of payment.

40. Pursuant to the terms of the Interim Distribution Order, the Receiver was required to hold back the following amounts (the "Contested Amounts"):

- (a) with respect to the Firm Capital charge the sum of \$659,148.00 on account of a loan renewal fee and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by Firm Capital pursuant to the Firm Capital charge;
- (b) with respect to the White Bear charge:

- (i) the sum of \$342,141.28 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by White Bear pursuant to the White Bear charge; and
  - (ii) the sum of \$12,500.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Lombard with respect to this proceeding;
- (c) with respect to the Pendragon third mortgage:
- (i) the sum of \$478,690.98 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by Pendragon pursuant to the Pendragon third charge; and
  - (ii) the sum of \$12,500.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Lombard with respect to this proceeding;
- (d) with respect to the Pendragon fourth charge:
- (i) the sum of \$78,466.96 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by Pendragon pursuant to the Pendragon fourth charge; and
  - (ii) the sum of \$12,500.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Lombard with respect to this proceeding;
- (e) with respect to the Pendragon fifth charge:
- (i) the sum of \$67,390.53 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by Pendragon pursuant to the Pendragon fifth charge; and

- (ii) the sum of \$12,500.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Lombard with respect to this proceeding;
  - (f) the sum of \$100,000.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Firm Capital with respect to this proceeding, and
  - (g) the sum of \$50,000 as a reserve for legal fees and disbursements and other costs that may be incurred by White Bear and Pendragon with respect to this proceeding.
- 41. The Receiver reports that, following the closing of the Mady Agreement on December 15, 2011, the following amounts (inclusive of per diem interest to the date of payment) were distributed to Firm Capital, White Bear and Pendragon from the Net Sale Proceeds in accordance with the Interim Distribution Order:
  - (a) to Firm Capital, the amount of \$17,781,090.45, with respect to the Firm Capital charge;
  - (b) to White Bear, the amount of \$1,977,970.98, with respect to the White Bear Charge;
  - (c) to Pendragon, the aggregate amount of \$9,916,602.70, with respect to the Pendragon third mortgage, fourth mortgage and fifth mortgage.
- 42. Following the granting of the Interim Distribution Order, the Receiver, Firm Capital, Lombard, White Bear, Pendragon and Con-Drain engaged in discussions regarding further distributions and the positions of the parties with respect to the Contested Amounts.
- 43. The Receiver reports that, as a result of discussions amongst the parties, the following distributions have been agreed to:
  - (a) a further distribution to Firm Capital, in the amount of \$329,574.00, in full satisfaction of its claims with respect to the loan renewal fee and interest pursuant

to section 17 of the Ontario *Mortgages Act* referred to in subparagraph 4(a), and the legal fees and disbursements and other costs referred to in subparagraph 5(a), of the Interim Distribution Order;

- (b) a further distribution to White Bear, in the amount of \$156,024.24, in full satisfaction of its claims with respect to the forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* referred to in clause 4(b)(i), and the legal fees and disbursements and other costs referred to in subparagraph 5(b), of the Interim Distribution Order;
  - (c) a further distribution to Pendragon, in the amount of \$288,512.31, in full satisfaction of its claims with respect to the forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* referred to in clauses 4(c)(i), 4(d)(i) and 4(e)(i), and the legal fees and disbursements and other costs referred to in subparagraph 5(b), of the Interim Distribution Order;
  - (d) a distribution to Lombard, in the amount of \$2,253,345.74, on account of the indebtedness owing to it by the Debtor for principal, interest and costs as of November 2, 2011 secured by the Lombard Charges registered against certain of the Lands, plus interest thereon up to the date of payment; and
  - (e) a distribution to Con-Drain, in the amount of \$57,314.12 on account of the indebtedness owing to it by the Debtor and secured by the Con-Drain Charge registered against the Lands.
44. In addition to the agreed upon distribution amounts, the parties have agreed that the Receiver shall no longer be obliged to maintain the holdbacks referred to in paragraphs 4 and 5 of the Interim Distribution Order.
45. With respect to distributions to Lombard, as noted above, the total indebtedness owed to Lombard by the Debtor was in the aggregate amount of \$12,727,872.80 as of November 1, 2011 and, as of November 29, 2011, Lombard has paid \$2,007,143.86 to Unit Purchasers pursuant to its obligations owing to the Unit Purchasers under the DIF Commitment and the Deposit Insurance Policy.

46. It is anticipated that Lombard will continue to receive claims from the Unit Purchasers for repayment of deposits under the terms of the DIF Commitment and the Deposit Insurance Policy.
47. At this time, the Receiver proposes that it be authorized by this Honourable Court to distribute the balance of the Net Sale Proceeds, subject to the creation of reserves by the Receiver for any outstanding or future claims, Receiver's fees and disbursements and the fees and disbursements of the Receiver's counsel or other costs that may be incurred prior to the discharge of the Receiver, to the law firm of Harris Sheaffer LLP, in trust, on the following terms:
- (a) all funds received by Harris Sheaffer LLP (the "**Unit Purchaser Deposit Trust Funds**") will be held in trust for the benefit of Unit Purchasers entitled to claim refunds of deposits paid to the Debtor pursuant to the DIF Commitment and the Deposit Insurance Policy (the "**Deposit Refund Claims**").
  - (b) the Unit Purchaser Deposit Trust Funds will also be held in trust for the benefit of Lombard to the extent that Lombard becomes entitled thereto as a result of its payment to Unit Purchasers of any Deposit Refund Claims pursuant to the Deposit Insurance Policy. The terms and conditions governing payments to be made from the Unit Purchaser Deposit Trust Funds to Lombard shall be agreed upon between Lombard and Harris Sheaffer LLP without requiring further approval of the Receiver or this Honourable Court.
  - (c) If, upon the expiry of the period of two (2) years following the date that notices are sent by the Receiver to the Unit Purchasers in accordance with paragraph 14 of the AVID Order, there are Unit Purchaser Deposit Trust Funds remaining in the possession of Harris Sheaffer LLP after the payment of all legitimate Deposit Refund Claims made prior to the expiry of that 2-year period (the "**Trust Surplus**"), Lombard shall make a motion to this Court for directions respecting the distribution of the Trust Surplus, with such motion to be made on notice to the Receiver (if not then discharged), Con-Drain, MCD, the Debtor and any other person appearing to have an interest in, or claim to, the Trust Surplus, and Harris

Sheaffer LLP shall hold the Trust Surplus and not distribute any portion thereof except in accordance with such directions or further order of this Honourable Court.

#### RECEIVER'S RECOMMENDATIONS

48. For the reasons set out above, the Receiver recommends that the Court make an order:
- (a) authorizing a second interim distribution of certain of the Net Sale Proceeds to the Applicant and other secured lenders as agreed upon by Firm Capital, White Bear, Pendragon, Lombard and Con-Drain; and
  - (b) authorizing a distribution of the Net Sale Proceeds, after creation of reserves by the Receiver for any outstanding or future claims, Receiver's fees and disbursements and fees and disbursements of the Receiver's legal counsel or other costs that may be incurred prior to the discharge of the Receiver, to Harris Sheaffer LLP, in trust, on the terms more fully described herein; and

All of which is respectfully submitted at Toronto, Ontario this 20<sup>th</sup> day of December, 2011.

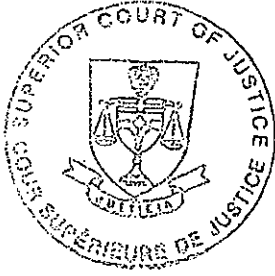
**Deloitte & Touche Inc.**  
solely in its capacity as the Court-appointed  
receiver of the Property (as defined herein)  
of 2811 Development Corporation and  
without personal or corporate liability

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

*for* Bryan A. Tannenbaum, FCA, FCIRP  
Senior Vice-President



# APPENDIX "A"



Court File No.: CV11-9242-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF Section 101 of the  
*Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended**

THE HONOURABLE MR. ) WEDNESDAY, THE 29<sup>th</sup>  
)  
JUSTICE CAMPBELL ) DAY OF JUNE, 2011

**BETWEEN:**

**FIRM CAPITAL MORTGAGE FUND INC.**

**Applicant**

**- and -**

**2811 DEVELOPMENT CORPORATION**

**Respondent**

**ORDER**

**THIS APPLICATION** made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Deloitte & Touche Inc. as receiver (in such capacity, the "Receiver") without security, of certain of the assets, undertakings and properties of 2811 Development Corporation (the "Debtor"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Michael Warner sworn May 30, 2011 (the "Warner Affidavit"), the supplementary affidavit of Michael Warner sworn June 28, 2011 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the Debtor, no one else appearing and on reading the consent of Deloitte & Touche Inc. 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 so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, Deloitte & Touche Inc. is hereby appointed Receiver, without security, of all of the lands and premises legally described in Schedule "A" hereto (the "**Lands**") and all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to, the development of the Lands and construction of improvements thereon, including all proceeds thereof (collectively, the "**Property**"). For greater certainty, Property includes Insurance Policies, Material Contracts, Permits, Personal Property, Plans and Specifications and Securities, as each such term is defined in Schedule "B" hereto.

## **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 of 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 Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (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 Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, in a manner approved by the Court, 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;

- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

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

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (t) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property,

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 Debtor, and without interference from any other Person.

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

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, 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.

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

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

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

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

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply to the Applicant or in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. Nothing contained in this paragraph shall prevent the registration of a Certificate of Action, service of a Statement of Claim by a lien claimant or delivery of a demand pursuant to section 39 of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended ("CLA").

**NO INTERFERENCE WITH THE RECEIVER**

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

**CONTINUATION OF SERVICES**

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor 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 Debtor 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 Debtor's 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 Debtor 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**

12. **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**

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. 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**

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not

complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. **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**

16. **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

17. **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, 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 charge on the Property ranking subsequent in priority to the security held by the Applicant with respect to the Property (including, without limitation, the Mortgage as defined in and as attached to the Warner Affidavit) and in priority to all other 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.

18. **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.

19. **THIS COURT ORDERS** that prior to the passing of its accounts and upon first obtaining the consent of the Applicant, 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 normal 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

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant 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 \$500,000 (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, ranking subsequent in priority to: i) the security held by the Applicant with respect to the Property (including, without limitation, the Mortgage as defined in and as attached to the Warner Affidavit); and ii) 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, but in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any other Person.

21. **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.

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

23. **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.

24. **THIS COURT ORDERS** that notwithstanding paragraphs 20 to 23 inclusive above, and as alternative thereto, the Receiver is hereby authorized to borrow money to fund the exercise of its powers and duties hereunder by way of advances from the Applicant, which advances shall be secured by the Applicant’s security on the Property (including, without limitation, the Mortgage as defined in and as attached as an exhibit to the Warner Affidavit), with the same priority that may attach to such security.

#### **GENERAL**

25. **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.

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

27. **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.

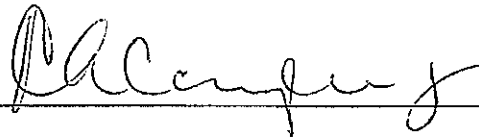
28. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is 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.

29. **THIS COURT ORDERS** that the Applicant and the Receiver and any party who has served a Notice of Appearance, may serve any materials in this proceeding by e-mailing a pdf or other electronic copy of such materials to counsels' e-mail addresses as recorded on the Service List from time to time, in accordance with the e-filing protocol of the Commercial List to the extent practicable and the Receiver may post a copy of any or all such material on its website at [www.deloitte.ca](http://www.deloitte.ca) (the "Website").

30. **THIS COURT ORDERS** that the Receiver shall, within five (5) business days of receipt of the Debtor's books and records with respect to the Property, send notice of this Order to any trade creditors of the Debtor in respect of the Property as disclosed in such books and records, other than employees and trade creditors to which the Debtor owes less than \$500, at their addresses as they appear in the Debtor's books and records, by prepaid ordinary mail, courier, personal delivery or electronic transmission, advising that such creditor may obtain a copy of this Order on the Website and if such creditor is unable to obtain it by that means, such creditor may request a copy from the Receiver, who shall promptly send a copy of this Order to any interested person so requesting.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security.

32. **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.



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

JUN 29 2011

PER/PAR: 

**SCHEDULE "A"**

**LEGAL DESCRIPTION OF THE LANDS**

The Lands comprising the Property are legally described as follows:

**PIN No. 06050-0199 (LT)**

Part Lots 18 and 19, Con 5; Part Road Allowance between Lots 18 and 19, Concession 5, as closed by By-Law 406 being Part of Part 1, 66R12477 lying north of Plan 66M1996, Save and Except Part of Lots 18 and 19, Con 5, Part 1, 66R16987

City of Toronto

Toronto Land Titles Office (No. 80)

Municipal Address: 5789 Steeles Avenue East, Toronto, Ontario M2M 3Y2

**PIN No. 06050-0266 (LT)**

Part Lot 20, Conc 5 Scarborough designated as Part 1, Plan 66R23210;

City of Toronto

Toronto Land Titles Office (No. 80)

Municipal Address: 5811 Steeles Avenue East, Toronto, Ontario M2M 3Y2

**PIN No. 06050-0263 (LT)**

Part Lot 19, Conc 5 Scarborough designated as Part 1, Plan 66R23217;

City of Toronto

Toronto Land Titles Office (No. 80)

Municipal Address: 5933 Steeles Avenue East, Toronto, Ontario M2M 3Y2

**PIN No. 06050-0264 (LT)**

Part Lot 18, Conc 5 Scarborough; Part RDAL between Lots 18 and 19, Con 5, Scarborough (Closed by By-Law 406 as in SC608215), designated as Part 2 on Plan 66R23217

City of Toronto

Toronto Land Titles Office (No. 80)

Municipal Address: 5945 Steeles Avenue East, Toronto, Ontario M2M 3Y2

**PIN No. 06050-0272 (LT)**

Part Lot 18, Conc 5 Scarborough, Part 3 Plan 66R23217 Save and Except Part 32, Plan 66R23655

City of Toronto

Toronto Land Titles Office (No. 80)

Municipal Address: 5951 Steeles Avenue East, Toronto, Ontario M2M 3Y2

## **SCHEDULE "B"**

### **DEFINED TERMS**

In the Order to which this Schedule "B" is attached, the following terms have the following meanings:

**"Construction Agreements"** means all construction contracts and subcontracts entered into by or on behalf of the Debtor for the supply of construction services or materials to all improvements constructed on or made to the Lands including, without limitation, all agreements, invoices and other documents related thereto, together with all bonds, guarantees, letters of credit and/or other securities issued with respect to the performance of such Construction Agreements and the supply of all work, labour and materials thereunder.

**"Insurance Policies"** means all policies of insurance insuring the Lands and the building improvements, fixtures and other properties situate in, on or under the Lands or arising out of the interest of the Debtor in the Lands including, without limitation, policies of insurance for property damage, loss of rental income, business interruptions, theft of property, professional liability, general liability, fire and extended perils and boiler and machinery.

**"Landmark Sale Agreements"** means any and all agreements of purchase and sale entered into between the Debtor and a purchaser of a condominium unit in the two-storey retail mall known as The Landmark to be constructed by the Debtor upon the Lands.

**"Material Contracts"** means all of the right, title and interest, but not the liabilities, obligations or burdens, of the Debtor in all contracts entered into by or on behalf of the Debtor for the development, servicing and management of any improvements constructed on or made to the Lands including, without limitation, any cost sharing agreements (except Construction Agreements which are expressly excluded herefrom), insurance, Permits and Plans and Specifications and Landmark Sale Agreements including, without limitation, any amendments, extensions, renewals and replacement which have been made to any of them, all proceeds therefrom, all benefits and advantages which now or hereafter may be derived therefrom, all debts, demands, choses in action and claims due, owing, or accruing due to or on behalf of the Debtor therefrom and all books, accounts, invoices, letters, papers, drawings, blueprints,



documents, records and data (including hard and soft copies thereof and all forms of magnetic, electronic and other means of data storage) in any way evidencing or relating thereto.

**"Permits"** means all present and future approvals, licenses, demolition permits, excavation permits, foundation permits, building permits, construction permits and other permits now or hereafter issued or required to be issued by any public or governmental authority in order to permit the construction of improvements to the Lands.

**"Personal Property"** means all personal property (including, without limitation, each account, chattel paper, document of title, equipment, instrument, intangible, inventory, money, security and goods) owned or acquired by or on behalf of the Debtor or in respect of which the Debtor has any rights and which is now located on, affixed or attached to, placed upon, situate in or on, or which may arise out of, from or in connection with the ownership, use or disposition of, the Lands or any part thereof, including, without limitation, all increases, additions, substitutions, repairs, renewals, replacements, accessions, accretions and any improvements to any such Personal Property and all proceeds and other amounts derived directly or indirectly from any dealings with any such Personal Property.

**"Plans and Specifications"** means all plans, specifications and drawings for the improvements constructed upon the Lands.

**"Securities"** means all monies evidenced or represented by certificates of deposit, guaranteed investment certificates or other interest bearing instruments or accounts issued to or registered in the name of the Debtor or its nominee and all renewals thereof and/or substitutions, replacements, additions of alterations thereto.

**SCHEDULE "C"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. **THIS IS TO CERTIFY** that Deloitte & Touche Inc., the receiver (the "**Receiver**") without security, of all of certain of the assets, undertakings and properties of 2811 Development Corporation (the "**Debtor**") acquired for, or used in relation to the development of the Lands and construction of improvements thereon, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 2011 (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 other than the Applicant, 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 upon first obtaining the prior consent of the Applicant.

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\_\_.

Deloitte & Touche Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

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

Name:

Title:

**FIRM CAPITAL MORTGAGE FUND INC.**

and

Applicant

**2811 DEVELOPMENT CORPORATION**

Respondent

Court File No.: CV11-9242-00CL

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

Proceedings commenced at **Toronto**

**ORDER**

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M5K 1K7

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Tel: 416-304-0592  
Fax: 416-304-1313

Lawyers for the Applicant

# **APPENDIX “B”**

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

**IN THE MATTER OF SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O. 1990 C.C.43, AS AMENDED**

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

**THIRD REPORT OF THE RECEIVER  
DATED NOVEMBER 3, 2011**

**INTRODUCTION**

1. By Order of the Court dated June 29, 2011 (the "**Appointment Order**"), Deloitte & Touche Inc. was appointed as receiver (the "**Receiver**") of all of the lands and premises known municipally as 5789, 5811, 5933, 5945 and 5951 Steeles Avenue East, Toronto, Ontario and more particularly described in Schedule "A" to the Appointment Order (the "**Lands**") and all of the assets, undertakings and properties of 2811 Development Corporation (the "**Debtor**") acquired for, or used in relation to, the development of the Lands and construction of improvements thereon, including all proceeds thereof (collectively, the "**Property**"). A copy of the Appointment Order is attached hereto as **Appendix "A"**.
2. The Appointment Order authorized the Receiver to, among other things, take possession of and exercise control over the Property and any and all proceeds, receipts and

disbursements arising out of or from the Property. In addition, the Receiver was authorized to sell, convey, transfer, lease or assign the Property or any part thereof out of the ordinary course of business:

- (a) without the approval of the Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
  - (b) with the approval of the Court in respect of any transaction exceeding \$100,000 or exceeding \$250,000 in the aggregate.
3. On July 15, 2011, the Receiver issued its First Report to the Court (the "**First Report**") in support of its motion returnable July 19, 2011 (the "**Withheld Records Motion**") for an order, *inter alia*, directing the Debtor to deliver to the Receiver all of the Debtor's books and records, including contact information for the Debtor's creditors. The Withheld Records Motion was adjourned until July 22, 2011 to permit the Debtor to file additional evidence in connection with that motion. A copy of the First Report, without attachments, is attached hereto as **Appendix "B"**. Copies of the handwritten and unofficial transcript of the endorsement of The Honourable Madam Justice Mesbur dated July 19, 2011 granting the adjournment is attached hereto as **Appendix "C"**.
4. On July 21, 2011, the Receiver issued its Second Report to the Court (the "**Second Report**") in support of its motion for an Order approving the Receiver's activities since June 29, 2011 and approving the marketing plan proposed by the Receiver for the sale of the Property (the "**Sale Process Motion**"). This motion was returnable on August 3, 2011. A copy of the Second Report, without attachments, is attached hereto as **Appendix "D"**.
5. On July 22, 2011 the Withheld Records Motion was heard by The Honourable Mr. Justice Perell, who, following the hearing of the motion, issued an order compelling the Debtor to comply with paragraph 30 of the Appointment Order and all other provisions of the Appointment Order, including the requirement to deliver all of the Debtor's books and records to the Receiver. A copy of the order of Justice Perell dated July 22, 2011 (the "**Perell J. Order**") is attached hereto as **Appendix "E"**.

6. On July 29, 2011, the Receiver filed with the Court a Supplement to the Second Report (the "**Supplementary Report**"). The purpose of the Supplementary Report was to provide the Court with a description of the Receiver's efforts to obtain the Debtor's books and records, including contact information for the Debtor's creditors in accordance with the Perell J. Order, and a description of the Debtor's failure to provide the Receiver with all of the Debtor's books and records in contravention of the Perell J. Order and the Appointment Order. A copy of the Supplementary Report is attached hereto as **Appendix "F"**.
7. As a result of the failure of the Debtor to comply with the Perell J. Order, the Receiver amended the relief it was seeking in the Sale Process Motion to include an order, *inter alia*, declaring the Debtor and the President of the Debtor, Mr. Charles Chan, to be in contempt of the Perell J. Order (the "**Contempt Motion**").
8. On August 3, 2011, the Sale Process Motion was adjourned by The Honourable Mr. Justice Wilton-Siegel until August 5, 2011. At the request of the Debtor, the Court directed the Receiver not to send any notices of the receivership to the approximately 400 persons who had purchased condominium units to be constructed in the Debtor's proposed development pending the hearing of the Sale Process Motion on August 5, 2011. In addition, Justice Wilton-Siegel compelled the Debtor to deliver all books and records to the Receiver prior to August 5, 2011 in accordance with the Perell J. Order. Copies of the handwritten and unofficial transcript of the endorsement of Justice Wilton-Siegel dated August 3, 2011 is attached hereto as **Appendix "G"**.
9. On August 5, 2011, the Sale Process Motion was adjourned again by Justice Wilton-Siegel to August 10, 2011 to permit stakeholders with an interest in the Property to meet with the Receiver to discuss various issues relating to the approach to the valuation of the Property and the proposed sale process. Copies of the handwritten and unofficial transcript of the endorsement of Justice Wilton-Siegel dated August 5, 2011 is attached hereto as **Appendix "H"**.
10. On August 9, 2011, the Receiver filed with the Court a Supplementary Motion Record in connection with the Sale Process Motion (the "**Supplementary Motion Record**"), which



contained a revised Marketing Flyer, a revised Form of Offer and Conditions of Sale and a revised form of the Notice of Receiver. A copy of the Supplementary Motion Record is attached hereto as **Appendix "I"**.

11. On August 10, 2011, the Sale Process Motion was heard by The Honourable Mr. Justice Morawetz, and following the hearing of the motion, Justice Morawetz granted an order (the "**Marketing Order**") approving the Receiver's plan for marketing the Property for sale (the "**Marketing Process**"). A copy of the Marketing Order is attached hereto as **Appendix "J"**.
12. In September, 2011, the Receiver and the Debtor, through their respective counsel, resolved the Contempt Motion, and the motion was subsequently dismissed without costs on consent by an order of Justice Morawetz dated October 17, 2011 (the "**Contempt Dismissal Order**"). A copy of the Contempt Dismissal Order is attached hereto as **Appendix "K"**.
13. The Appointment Order, together with related Court documents, additional Orders, the previous reports of the Receiver and the Notice to Creditors have been posted on the Receiver's website, which can be found at [www.deloitte.ca](http://www.deloitte.ca), and more specifically located under the related links title of Insolvency and Restructuring/current proceedings.

#### **PURPOSE OF THIS THIRD REPORT**

14. Upon completion of the Marketing Process, the Receiver received a number of offers to purchase the Property in accordance with the terms of the Marketing Order. The Receiver has now accepted one of those offers, subject to Court approval. The purpose of this third report of the Receiver (the "**Third Report**") is to:
  - (a) provide a summary of the Marketing Process and details of the marketing activities undertaken by the Receiver with respect to the Property since the granting of the Marketing Order on August 10, 2011; and
  - (b) recommend the granting of an order as follows:
    - (i) authorizing and directing the Receiver to enter into and carry out the terms of the agreement of purchase and sale between the Receiver and Mady

Development Corporation (“Mady”) dated October 3, 2011 (the “Mady Agreement”) together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Property in Mady, or as it may further direct in writing, upon closing of the Mady Agreement and the delivery of the Receiver’s Certificate to Mady;

- (ii) if the Mady Agreement is terminated in accordance with its terms, authorizing and directing the Receiver to commence negotiations with any other party or parties identified by the Receiver through the Marketing Process;
- (iii) approving the activities of the Receiver to November 3, 2011 and the activities of the Receiver as described in this Third Report including, without limitation, the steps taken by the Receiver pursuant to the Marketing Process;
- (iv) approving an interim distribution of certain of the net proceeds of sale of the Property to the Applicant and other secured lenders, as more fully described herein, in the event that the sale transaction contemplated by the Mady Agreement is completed;
- (v) approving the professional fees and disbursements of the Receiver for the period May 25, 2011 to October 15, 2011, and its independent legal counsel, Borden Ladner Gervais LLP (“BLG”), for the period from August 4, 2011 to October 31, 2011;
- (vi) approving the professional fees and disbursements of the Receiver’s legal counsel, Thornton Grout Finnigan LLP (“TGF”), for the period from June 30, 2011 to August 4, 2011; and
- (vii) approving the professional fees and disbursements of the Receiver’s independent real estate counsel, Meyer Wassenaar & Banach LLP (“MWB”), for the period July 14, 2011 to October 31, 2011.

**TERMS OF REFERENCE**

15. In preparing the Third Report and making the comments contained herein, the Receiver has been provided with and has relied upon unaudited financial information, the Debtor's books and records, financial information prepared by the Debtor and its advisors, and discussions with management of the Debtor, among other things. The Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in the Third Report.
16. Unless otherwise stated, all dollar amounts contained in the Third Report are expressed in Canadian dollars.
17. Unless otherwise provided, all other capitalized terms not otherwise defined in this Third Report are as defined in the First Report, the Second Report or the Appointment Order.

**BACKGROUND**The Property

18. The Debtor is a corporation governed by the laws of the Province of Ontario and is the registered owner of the Property, which is located in the City of Toronto and municipally known as:
  - (a) 5789 Steeles Avenue East (PIN 06050-199), acquired by the Debtor on or about December 15, 2004;
  - (b) 5811 Steeles Avenue East (PIN 06050-0266), acquired by the Debtor on or about September 20, 2004;
  - (c) 5933 Steeles Avenue East (PIN 06050-0263) acquired by the Debtor on or about June 30, 2006;
  - (d) 5945 Steeles Avenue East (PIN 06050-0264) acquired by the Debtor on or about March 14, 2006; and
  - (e) 5951 Steeles Avenue East (PIN 06050-0272) acquired by the Debtor on or about September 11, 2006.

19. Attached hereto as **Appendix "L"** is a partial copy of a survey of the Lands. Attached hereto as **Appendix "M"** are copies of Parcel Registers obtained on October 26, 2011 from Service Ontario with respect to the Lands (collectively, the "**Parcel Registers**").
20. The Lands are vacant serviced commercial/industrial land comprising approximately 39.01 acres located on the south side of Steeles Avenue East, just west of Markham Road, in the City of Toronto. The Lands are notionally divided into three sections as follows:
- |            |                                   |
|------------|-----------------------------------|
| Lands "A": | approximately 10.359 acres        |
| Lands "B": | approximately 20.775 acres        |
| Lands "C": | approximately <u>7.875 acres</u>  |
| Total:     | approximately <u>39.009 acres</u> |
21. Lands "B" comprise the bulk of the Property and were intended to be developed by the Debtor with a 1,090 unit two-storey retail condominium mall containing a gross floor area of 435,388 square feet and a saleable area of 228,907 square feet, known as "The Landmark". Lands "A" comprise parcels of land fronting Steeles Avenue East and were proposed to be improved by the Debtor with retail pads totalling approximately 89,000 square feet. Lands "C" were to be held for future development and are currently zoned as industrial.
22. As noted above, the Receiver was appointed over the Property on June 29, 2011. The Receiver understands that internal servicing of the Lands was completed by the Debtor prior to the granting of the Appointment Order, however no significant construction of The Landmark has commenced. Other than site plan approvals and building permits obtained in the normal course, together with payment of any applicable levies in connection with such building permits, the Receiver is not aware of any outstanding municipal approvals still required to commence construction of The Landmark.

#### Change of Solicitors

23. As noted in the Second Report, the Receiver retained the Applicant's solicitors, TGF, to act as its legal counsel. In late July 2011, it became clear to the Receiver that, due to anticipated contentious issues, it was necessary to retain independent legal counsel. As a

result, on August 4, 2011, the Receiver retained BLG to act as its independent legal counsel.

#### The Unit Purchasers

24. The Debtor's records indicate that prior to the date of the Appointment Order it entered into approximately 330 agreements of purchase and sale (individually, a "**Landmark Sale Agreement**", and collectively the "**Landmark Sale Agreements**") pursuant to which each purchaser (individually, a "**Unit Purchaser**", and collectively the "**Unit Purchasers**") agreed to purchase un-built condominium units in the Debtor's project at the Lands "B". Such purchases represented approximately 115,000 square feet of retail space. The Debtor has provided to the Receiver copies of the Landmark Sale Agreement for each of the 330 purchasers of condominium units. Copies of two forms of the standard sale agreements entered into by Unit Purchasers are respectively attached hereto as **Appendix "N"** and **Appendix "O"**.
25. The Receiver has been informed by the Debtor that all Unit Purchasers paid deposits to the Debtor upon execution of their respective Landmark Sale Agreement, and the deposits were paid to the Debtor's solicitors to be held in trust pursuant to the provisions of the *Condominium Act* (Ontario) (the "**Condominium Act**"). This arrangement is confirmed in article 58, Schedule "C" of the Landmark Sale Agreements.
26. Pursuant to article 58 of Schedule "C" to the Landmark Sale Agreements, the Debtor was entitled to withdraw from trust and use the deposits of the Unit Purchasers, so long as the Debtor obtained a condominium deposit insurance policy securing the deposits from an insurer authorized under the Condominium Act.
27. The Receiver understands that prior to the granting of the Appointment Order, Lombard General Insurance Company of Canada ("**Lombard**"), an insurer authorized under the Condominium Act, provided a deposit insurance facility for The Landmark to the Debtor in order to secure deposit monies that were released to the Debtor in accordance with the Condominium Act. Lombard has informed the Receiver that it provided insurance policies to Unit Purchasers to protect their right to a return of the deposit paid under the Landmark Sale Agreements in the event that the agreements were terminated.

28. Lombard has further informed the Receiver that approximately \$14.5 million of purchaser deposits was released and replaced by the Lombard's deposit insurance. Of the \$14.5 million, \$12.5 million was released directly to the Debtor and \$2 million was released to an escrow deposit agent pursuant to an escrow agreement dated November 25, 2010. Subsequently, approximately \$2 million was returned by the escrow deposit agent to Lombard's solicitor's trust account and used to fund Unit Purchasers' deposit refunds. The Receiver also understands that approximately \$167,500 remains in Lombard's solicitor's trust account.
29. The Receiver understands that upon the termination of any Landmark Sale Agreement, a Unit Purchaser is entitled to claim recovery of his or her deposit pursuant to the deposit insurance policy. Upon payment of any such claim by Lombard, Lombard would have a subrogated claim against the Debtor for the amount of the deposit. Lombard's subrogated claims against the Debtor are secured by mortgages registered in favour of Lombard against title to the Lands, which are referred to in more detail below.
30. Under the provisions of the Landmark Sale Agreements (see articles, 15 and 16 of Schedule "C" of the agreements), the Unit Purchasers have no interest in the Lands (see article 16), and their deposits are, in any event subordinated to the mortgages registered against title to the Lands (see article 15) and are insured by Lombard or remain held in trust.

#### **ATTEMPTS TO OBTAIN BOOKS AND RECORDS FROM THE DEBTOR**

31. As noted in the Receiver's First Report, Second Report and Supplement to the Second Report, the Receiver has expended an inordinate amount of time attempting to obtain the books and records from the Debtor. The Receiver was attempting to obtain, amongst other things, a listing, including the names and addresses of all purchasers of condominium units in order for the Receiver to be able to comply with its statutory obligations pursuant to sections 245 (1) and 246 (1) of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"). In addition, the Receiver also needed this information in order to include it in the Marketing Process. The failed attempts to obtain this information

resulted in the Receiver bringing the Contempt Motion, which motion, as noted above, was subsequently dismissed on consent.

32. As examples of its attempts to collect information from the Debtor, on July 29, 2011, the Receiver attended at the Debtor's premises to image the computers in an effort to retrieve any books and records of the Debtor that might be used by the Receiver in order to comply with its statutory obligations as noted above. A representative of the Debtor refused to allow the Receiver to image the computers on that day, since the representative claimed he needed to remove certain personal information from the computer server.
33. The representative also refused to provide specific information with respect to the existing active Landmark Sale Agreements claiming that the purchasers of condominium units are not creditors of the Debtor. As a result, the Receiver agreed to leave the premises temporarily and allowed the Debtor to remove personal information from the computer server, however the Receiver advised the Debtor that the Receiver would return the following business day to image the computers.
34. On August 2, 2011, representatives of the Receiver returned to the Debtor's premises and were able to image the Debtor's computer, however the Receiver was still not able to obtain current information with respect to the Landmark Sale Agreements.
35. It wasn't until August 10, 2011, the date the Sale Process Motion was heard that the Receiver was able to obtain the necessary information from the Debtor. This was as a result of the terms of the Marketing Order which provided that:  
  
*"with respect to Section 245 of the Act, such Notices shall be sent to all persons who, according to the books and records of the Debtor, have entered into agreements to purchase retail condominium units in the Property"*
36. As a result of the Marketing Order, the Debtor finally provided the Receiver with the information it needed in order to comply with its statutory obligations under the BIA as well as the information necessary to include in the Marketing Process.

## CLAIMS AGAINST THE PROPERTY

### Secured Creditors

37. The Receiver understands, based on its discussions with BLG, that the following chart represents a summary of the parties that have registered charges/mortgages against title to the Lands or against portions of the Lands as of October 26, 2011, and the order of registration against the Lands as a result of certain postponements granted amongst the parties:

Creditor	Amount of Charge Against Property	Nature of Obligation
Firm Capital Mortgage Fund Inc. ("Firm Capital")	\$17,500,000	First Mortgage Loan
White Bear Developments Inc. ("White Bear")	\$1,500,000	Conventional Mortgage
Key Pendragon Enterprises Inc. ("Pendragon")	\$5,500,000	Conventional Mortgage
Pendragon	\$1,100,000	Conventional Mortgage
Pendragon	\$1,000,000	Conventional Mortgage
Lombard	\$75,000,000	Collateral Charge
Lombard	\$750,000	Collateral Charge
Lombard	\$1,560,127	Collateral Charge
Con-Drain Company (1983) Limited ("Con-Drain")	\$1,500,000	Originally a construction lien, converted to a conventional mortgage.
Mady Contract Division Ltd. ("MCD")	\$386,190	Construction lien

38. The Receiver further understands, based on its discussions with BLG, that the following chart represents a summary of the parties that have registered financing statements against the personal property of the Debtor under the *Personal Property Security Act* (Ontario) ("PPSA"), and the order of registration as a result of certain postponements granted amongst the parties, as of October 25, 2011:

Creditor	Collateral Classifications
Firm Capital	Inventory, Equipment, Accounts, Other
The Toronto-Dominion Bank ("TD")	Accounts, Other
White Bear (Vector)	Inventory, Equipment, Accounts, Other
Pendragon	Inventory, Equipment, Accounts, Other, Motor Vehicle Included



Lombard	Accounts, Other
Con-Drain	Inventory, Equipment, Accounts, Other
An Yuan Lin c.o.b. as An-Dak Trading Company	Inventory, Equipment, Accounts, Other

39. Attached hereto as **Appendix "P"** is a copy of a PPSA Enquiry Response Certificate obtained from the Ontario Ministry of Government Services with respect to the Debtor, with a currency date of October 25, 2011.
40. The Receiver requested BLG, as its independent legal counsel to, among other things, review the validity and enforceability of the security held by each of Firm Capital, White Bear and Pendragon, being the parties that hold the first (1st) through fifth (5th) charges/mortgages registered against title to the Lands.
41. Subject to the qualifications and assumptions contained in the opinions from BLG to the Receiver, which the Receiver understands are customary in security opinions granted in the context of a receivership proceeding, the Receiver understands that:
- (a) Firm Capital has a valid and enforceable charge/mortgage against the Lands;
  - (b) Pendragon has valid and enforceable charges/mortgages against the Lands; and
  - (c) BLG is not in a position at this time to provide a definitive opinion with respect to the White Bear charge/mortgage.
42. As noted above, it appears that TD has the second-in-time PPSA registration against the personal property of the Debtor. The Receiver understands that TD issued letters of credit to the Debtor in connection with matters relating to the development of the Lands, and that cash collateral was posted as security for the letters of credit. The Receiver further understands that the interests of TD in the personal property of the Debtor will likely not extend to any sale proceeds from the sale of the Lands under the Mady Agreement discussed herein.

#### **RECEIVER'S MARKETING ACTIVITIES**

43. In accordance with the Marketing Order, the Receiver has carried out the Marketing Process with respect to the Property. The Receiver, with the assistance of Deloitte Real

Estate (“DRE”), has taken the following steps in accordance with the Marketing Order, all with a view to generating interest in the Property:

- (a) It developed a list of potential purchasers based on discussions with DRE, expressions of interest received by the Receiver and the Receiver’s experience and contacts. The Receiver asked all the secured lenders to provide a list of potential purchasers that might be interested in the Property. Lombard provided the Receiver with a list of contacts who it thought might be interested in the Property (the “**Lombard List**”). It should be noted that prior to the commencement of the Marketing Process, it became apparent to the Receiver that Lombard might become a bidder in the process. The Receiver therefore ensured that Lombard did not have access to any confidential information that could taint the Marketing Process.
- (b) On August 24, 2011, September 1, 2011 and September 8, 2011, the Receiver sent an information overview document (the “**Marketing Flyer**”) providing a description and other basic information regarding the Property to over 120 potential purchasers, including those on the Lombard List, along with a confidentiality agreement to be executed in order to receive further information in respect of the Property.
- (c) The Marketing Flyer along with the confidentiality agreement was also sent to 48 individuals who had made unsolicited enquiries or were contacts of the Receiver.
- (d) On September 1, 2011, an advertisement, offering the Property for sale, appeared in the Globe and Mail newspaper, Toronto edition. A copy of the advertisement is attached hereto as **Appendix “Q”**.
- (e) The Receiver obtained signed confidentiality agreements from 25 of the parties contacted.
- (f) The Receiver prepared a confidential information memorandum (the “**CIM**”) in accordance with the terms of the Marketing Order providing detailed information in respect of the Property, which was sent to all potential purchasers who signed a

confidentiality agreement. A copy of the CIM is attached as **Confidential Appendix "R"**.

- (g) The Receiver provided access to a password protected electronic data room to individuals who requested access and provided the Receiver with an executed Confidentiality Agreement. The data room contained detailed information with respect to the Property, including the Conditions of Sale and Form of Offer. A copy of each of the Conditions of Sale and Form of Offer is attached as **Appendix "S"**.
- (h) The Receiver responded to numerous prospective purchasers who contacted the Receiver with questions regarding the Property.
- (i) The Receiver followed up with numerous parties to whom the Marketing Flyer was sent to determine whether those parties had any interest in the Property.
- (j) Representatives of the Receiver met internally on a regular basis to discuss the status of the Marketing Process and to follow up on any potential leads with regard to prospective purchasers.
- (k) The Receiver prepared and posted to the electronic data room the Template Sale Agreement in respect of the Property. A copy of the Template Sale Agreement is attached as **Confidential Appendix "T"**.
- (l) The Receiver obtained from Cushman Wakefield ("**Cushman**") an appraisal valuation of the Property, a copy of which is attached hereto as **Confidential Appendix "U"**.
- (m) In accordance with the Marketing Order, the Receiver set 12:00 pm, October 3, 2011 as the deadline for submission of binding offers to purchase the Property (the "**Offer Date**").

#### **BINDING OFFERS RECEIVED**

- 44. Pursuant to the Marketing Process, prospective purchasers were required to submit bids by the Offer Date. A summary of the offers received is attached hereto as **Confidential**

**Appendix "V"**. The Receiver is requesting that this document, as well as other documents identified as a Confidential Appendix herein, be sealed pending completion of the Mady sale transaction, as the release of the information contained therein may jeopardize the ability to maximize realizations if the Mady transaction being proposed by the Receiver is not completed.

45. The Receiver met with three of the parties that had submitted binding offers on October 5, 6, and 7, 2011 respectively in order to obtain clarification with respect to those binding offers and to determine whether improvements to those offers could be negotiated.
46. After meeting with the three prospective purchasers and discussing the binding offers received, and after careful review and consideration, the Receiver determined that the offer from Mady was the highest and best offer submitted and, for the reasons noted below, the Receiver recommends that this offer be accepted and approved by the Court.
47. Northbridge Financial Corporation, the parent company of Lombard, has provided partial financing for the Mady offer.

#### **SALE OF THE PROPERTY**

48. The Mady offer contains no material amendments from the Template Agreement prepared by the Receiver. For the reasons set forth below, the Receiver accepted the Mady Agreement, subject to Court approval. An unredacted copy of the Mady Agreement is attached hereto as **Confidential Appendix "W"**, and a redacted copy of the Mady Agreement is attached hereto as **Appendix "X"**. The only information that has been redacted is the purchase price.
49. As noted above, the Receiver is proposing that the unredacted copy of the Mady Agreement be kept sealed and not form part of the public record until the transaction is completed so that the stakeholders are not prejudiced in the event that for any reason the transaction does not close and the Property must be re-marketed .
50. The Receiver recommends that this Honourable Court approve the Mady Agreement and authorize and direct the Receiver to complete the transaction for the following reasons:

- (a) The Marketing Process conducted by the Receiver resulted in a broad range and thorough exposure of the Property to the marketplace.
- (b) The Mady Agreement contains no conditions that would permit Mady to unilaterally terminate the Mady Agreement and also provides for a relatively quick closing date.
- (c) The Mady Agreement represents the highest and best offer, in terms of both price and conditions, received by the Receiver. The purchase price exceeds the purchase price of all other offers received by the Receiver and exceeds the appraised value contained in the Cushman appraisal (see Confidential Appendix "U"). The Receiver is reasonably confident that Mady has the financing necessary to close the transaction.
- (d) The next highest offer contained conditions that allowed the offeror to unilaterally terminate the agreement which was not acceptable to the Receiver, and although the third highest offer contained no conditions, the Mady purchase price was the highest offer.
- (e) Mady has familiarity with the Property since, according to Mady, it has been involved with the internal servicing of the Lands from the beginning of the development of the project. As noted above, MCD, a company related to Mady, has a construction lien against title to the Lands in the amount of \$386,190 for internal services provided.

#### **PROPOSED INTERIM DISTRIBUTION**

51. As described above in greater detail, the Receiver has obtained independent legal opinions on the validity and enforceability of the security held by Firm Capital, White Bear and Pendragon, being the mortgagees with the 1st through 5th registered mortgages on the Lands.

52. Upon the closing of the Mady Agreement, the Receiver will be in possession of sufficient funds to make payments to Firm Capital and Pendragon to satisfy their mortgages/charges against the Lands, and to maintain a reserve of funds to address additional claims against the Property in the future. At this time, the Receiver has requested that the purchase price under the Mady Agreement be sealed. As a result, the Receiver is not in a position to disclose the amount of proceeds it anticipates it will receive from Mady on closing. The Receiver proposes that the Court grant the Receiver the authority to, in its discretion, make distributions to Firm Capital and Pendragon on account of their claims against the Property, upon receiving written documentation satisfactory to the Receiver as to the amounts of principal, interest and costs owing to such creditors. The Receiver will publicly report to this Honourable Court following the closing of the Mady Agreement as to the amounts distributed to such creditors.
53. At this time, the Receiver continues to collect information from parties that potentially may have a claim to the proceeds of the Property (collectively, the "Claims"), including CRA for unpaid source deductions and unremitted HST (as defined below), former employees of the Debtor for unpaid wages under section 81.4 of the BIA, the City of Toronto for any unpaid municipal taxes, and the Government of Canada and the Province of Ontario for potential costs of remedying any environmental condition or environmental damage affecting the Lands.
54. The Receiver is of the view that, upon the completion of the Mady Agreement and the proposed distribution to secured creditors set out above, it will have sufficient funds in its possession to address and make payment of any potential Claims to the extent such claims are valid and have priority.

#### **PROFESSIONAL FEES**

55. The Receiver, BLG, TGF and MWB have maintained detailed records of their professional time and costs since the issuance of the Appointment Order. Pursuant to paragraph 18 of the Appointment Order, the Receiver and its legal counsel were directed to pass their accounts from time to time before this Honourable Court.

56. The total fees of the Receiver during the period from May 25, 2011 to October 15, 2011 amount to \$371,714.00, together with expenses and disbursements in the sum of \$1,060.89 and harmonized sales tax ("HST") in the amount of \$48,460.74, totalling \$421,235.63 (the "**Receiver's Fees**"). The time spent by the Receiver is more particularly described in the Affidavit of Bryan A. Tannenbaum of Deloitte & Touche Inc., sworn November 2, 2011 (the "**Tannenbaum Affidavit**") in support hereof and attached hereto as **Appendix "Y"**.
57. The total legal fees incurred by the Receiver during the period June 30, 2011 to August 4, 2011, for services provided by TGF as the Receiver's legal counsel amount to \$46,145.00, together with disbursements in the sum of \$1,905.02 and HST in the amount of \$6,207.00, totalling \$54,257.02. The time spent by TGF personnel is more particularly described in the Affidavit of Grant B. Moffat, a partner of TGF, sworn October 28, 2011 (the "**Moffat Affidavit**") in support hereof and attached hereto as **Appendix "ZZ"**.
58. The total legal fees incurred by the Receiver during the period August 4, 2011 to October 31, 2011, for services provided by BLG as the Receiver's independent legal counsel amount to \$105,237.50, together with disbursements in the sum of \$1,071.10 and HST in the amount of \$13,805.43 totalling \$120,114.03. The time spent by BLG personnel is more particularly described in the Affidavit of Sam Philip Rappos, an associate of BLG, sworn November 2, 2011 (the "**Rappos Affidavit**") in support hereof and attached hereto as **Appendix "AA"**.
59. The total legal fees incurred by the Receiver during the period July 14, 2011 to October 31, 2011, for services provided by MWB as the Receiver's independent real estate legal counsel amount to \$20,609.00, together with disbursements in the sum of \$809.66 and HST in the amount of \$2,776.63, totalling \$24,195.29. The time spent by MWB is more particularly described in the Affidavit of Joseph Fried, a Partner at MWB sworn November 2, 2011 (the "**Fried Affidavit**") in support hereof and attached hereto as **Appendix "BB"**.
60. The Receiver to date has not taken any interim draws on account of its fees or on account of the fees of its legal counsel BLG, TGF and MWB since, according to paragraph 17 of

the Appointment Order, the Receiver's charge ranks subsequent in priority to the Applicant.

#### **RECEIVER'S RECOMMENDATIONS**

61. For the reasons set out above, the Receiver recommends that the Court make an Order:
- (a) authorizing and directing the Receiver to enter into and carry out the terms of the Mady Agreement, together with any amendments thereto deemed necessary by the Receiver in its sole opinion and vesting title to the Property to Mady, or to such party as Mady directs in writing, upon the closing of the Mady Agreement;
  - (b) if the Mady Agreement is terminated in accordance with its terms, authorizing and directing the Receiver to commence negotiations with any other party or parties identified by the Receiver through the Marketing Process, subject to Court approval;
  - (c) approving the activities of the Receiver to date and the activities of the Receiver as described in the Third Report including, without limitation, the steps taken by the Receiver pursuant to the Marketing Process;
  - (d) approving the interim distribution of certain of the net proceeds of the Mady Agreement to the Applicant and other secured lenders, as more fully described herein, in the event the Mady Agreement is completed; and
  - (e) approving the professional fees and disbursements of the Receiver and its legal counsel set out herein and in the Tannenbaum Affidavit, the Moffat Affidavit, the Rappos Affidavit and the Fried Affidavit and authorizing the Receiver to pay all such fees and disbursements.

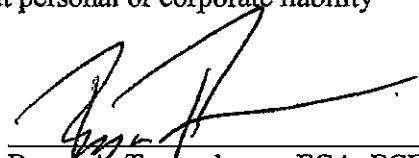


All of which is respectfully submitted at Toronto, Ontario this 3rd day of November, 2011.

**Deloitte & Touche Inc.**

solely in its capacity as the Court-appointed  
receiver of the Property (as defined herein)  
of 2811 Development Corporation and  
without personal or corporate liability

Per:



---

Bryan A. Tannenbaum, FCA, FCIRP  
Senior Vice-President

# APPENDIX “C”

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

**IN THE MATTER OF SECTION 101 OF THE  
COURTS OF JUSTICE ACT, R.S.O. 1990 C.C.43, AS AMENDED**

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

**SUPPLEMENT TO THE THIRD REPORT OF THE RECEIVER  
DATED NOVEMBER 11, 2011**

**PURPOSE OF THIS REPORT**

1. By Order of the Court dated June 29, 2011, Deloitte & Touche Inc. was appointed as receiver (the "Receiver") of all of the lands and premises known municipally as 5789, 5811, 5933, 5945 and 5951 Steeles Avenue East, Toronto, Ontario and more particularly described in Schedule "A" to the Appointment Order and all of the assets, undertakings and properties of 2811 Development Corporation acquired for, or used in relation to, the development of the Lands and construction of improvements thereon, including all proceeds thereof.
2. As set out in the Third Report of the Receiver dated November 3, 2011 (the "Third Report"), the Receiver is recommending, in a motion to be heard on November 15, 2011, that the Court grant an order, *inter alia*, authorizing and directing the Receiver to enter into and carry out the terms of the Mady Agreement and vesting title to the Property in

Mady, or as it may further direct in writing, upon closing of the Mady Agreement and the delivery of the Receiver's Certificate to Mady.

3. The purpose of this Supplement to the Third Report (the "**Supplementary Report**") is to:
  - (a) provide further information to the Court with respect to the charges, mortgages and claims registered against the Property; and
  - (b) recommend that, in the event that the Mady Agreement is approved by the Court and the Receiver's Certificate filed with the Court, the Court authorize and direct the Receiver to send a letter, substantially in the form of the draft attached as **Appendix "A"** hereto, to each of the Unit Purchasers at their last known addresses based on the books and records of the Debtor, in connection with the Unit Purchasers' potential rights to recover their deposits under the Lombard deposit insurance facility.

#### **TERMS OF REFERENCE**

4. In preparing the Supplementary Report and making the comments contained herein, the Receiver has been provided with and has relied upon unaudited financial information, the Debtor's books and records, financial information prepared by the Debtor and its advisors, and discussions with management of the Debtor, among other things. The Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in the Supplementary Report.
5. Unless otherwise provided, all capitalized terms not otherwise defined in this Supplementary Report are as defined in the Third Report.
6. The Supplemental Report should be read in conjunction with the Third Report.

**CLAIMS AGAINST THE LANDS**

7. As set out in greater detail in the Third Report, Firm Capital, White Bear, Pendragon, Lombard, Con-Drain and MCD have registered charges/mortgages or claims against title to the Lands or against portions of the Lands as of October 26, 2011.
8. The Receiver has been informed by these secured creditors that the following aggregate amounts are due to them for outstanding principal, interest, fees and other amounts as of November 15, 2011, unless otherwise stated:

<b>Creditor</b>	<b>Outstanding Amount</b>
Firm Capital	\$18,239,434.72
White Bear	\$ 2,347,200.33 <sup>1</sup>
Pendragon	\$ 7,801,962.99 <sup>2</sup>
Pendragon	\$ 1,405,631.72 <sup>3</sup>
Pendragon	\$ 1,239,776.35 <sup>4</sup>
Lombard	\$12,727,872.80 (as of November 2, 2011)
Con-Drain	\$ 1,743,008.13
MCD	\$ 429,190.00 <sup>5</sup>
<b>TOTAL</b>	<b>\$45,934,077.04</b>

9. The Receiver, through its counsel, has requested that each of the above-noted parties provide an affidavit confirming the amounts outstanding under their respective mortgages/claims. As the Receiver is seeking Court authorization to make certain disbursements to Firm Capital, Pendragon and White Bear, it has requested that such

<sup>1</sup> This amount is exclusive of legal fees that have been incurred by the creditor/mortgagee since September 10, 2011.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> This amount is an estimate, as MCD's legal counsel has not rendered invoices with respect to services provided to date. An amount of \$40,000 is included as an estimate of unbilled legal fees incurred.

parties provide sworn affidavits prior to the hearing of the Receiver's motion scheduled for November 15, 2011.

### THE UNIT PURCHASERS

10. As set out in greater detail in the Third Report, the Debtor entered into approximately 330 Landmark Sale Agreements prior to the date of the Appointment Order, pursuant to which each Unit Purchaser agreed to purchase un-built condominium units in the Debtor's project at the Lands "B".
11. The Receiver has been informed by the Debtor that: (i) all Unit Purchasers paid deposits to the Debtor upon execution of their respective Landmark Sale Agreement; (ii) the deposits were paid to the Debtor's solicitors to be held in trust pursuant to the provisions of the Condominium Act; (iii) the Debtor was entitled to withdraw from trust and use the deposits of the Unit Purchasers, as the Debtor obtained from Lombard a condominium deposit insurance policy securing the deposits; and (iv) the Lombard insurance policy protects the rights of the Unit Purchasers to a return of the deposit paid under their respective Landmark Sale Agreement in the event that the agreements are terminated.
12. In the event that the Mady Agreement is approved by this Honourable Court, all of the Debtor's right, title and interest in the Lands will vest in Mady, or such party that Mady directs in writing, upon the delivery of the Receiver's Certificate. As a result, following the completion of the Mady sale transaction, the Debtor will no longer have any interest in the Lands, and will no longer be in a position to perform the obligations owed to the Unit Purchasers under the Landmark Sale Agreements.
13. As part of the Mady Agreement, Mady has elected not to take an assignment of the Debtor's rights under the Landmark Sale Agreements. As a result, the Receiver is of the view that the Unit Purchasers should be notified of the sale of the Lands to Mady following the closing of the sale transaction and be made aware of the claims they may have for a return of their deposits under the Lombard insurance policy. Attached hereto as **Appendix "A"** is a draft form of letter that the Receiver proposes to send to the Unit Purchasers following the closing of the sale transaction with respect thereto.

14. As has been previously reported to this Court, the Receiver obtained the last known addresses of the Unit Purchasers from the books and records of the Debtor so that it could send to the Unit Purchasers, in accordance with the Marketing Order, the statutorily required notice under section 245 of the BIA. The Receiver proposes to send a copy of the draft letter attached hereto to the same addresses to which it sent the BIA notice.

**RECEIVER'S RECOMMENDATIONS**

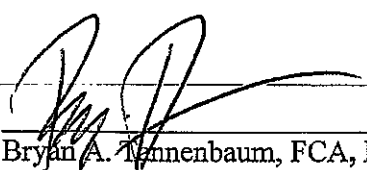
15. For the reasons set out above, the Receiver recommends that the Court make an order, in the event that the Mady Agreement is approved by the Court and the Receiver's Certificate filed with the Court, authorizing and directing the Receiver to send a letter following the closing of the sale transaction, substantially in the form of the draft attached as Appendix "A" hereto, to each of the Unit Purchasers at their last known addresses based on the books and records of the Debtor.

All of which is respectfully submitted at Toronto, Ontario this 11<sup>th</sup> day of November, 2011.

**Deloitte & Touche Inc.**

solely in its capacity as the Court-appointed  
receiver of the Property (as defined herein)  
of 2811 Development Corporation and  
without personal or corporate liability

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

  
Bryan A. Tennenbaum, FCA, FCIRP

**APPENDIX "A"**

**[LETTERHEAD OF DELOITTE & TOUCHE INC.]**

•, 2011

**DELIVERED BY REGULAR MAIL**

TO THE PARTIES LISTED ON SCHEDULE "A" HERETO

Dear Sirs/Mesdames,

**Re: Firm Capital Mortgage Fund Inc. v. 2811 Development Corporation  
Court File No. CV11-9242-00CL (the "Receivership Proceeding")**

**And Re: The Landmark Unit Condominiums**

On June 29, 2011, Deloitte & Touche Inc. was appointed by the Ontario Superior Court of Justice (Commercial List) (the "Court") in the Receivership Proceeding as receiver (the "Receiver") of all of the lands and premises known municipally as 5789, 5811, 5933, 5945 and 5951 Steeles Avenue East, Toronto, Ontario, commonly known as "The Landmark". A notice of the Receivership Proceeding was previously sent to you. Additional information with respect to the Receivership Proceeding can be found on the Receiver's website at [www.deloitte.ca](http://www.deloitte.ca), and more specifically located under the related links titles of "Services", then "Financial Advisory", then "Insolvency and Restructuring".

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We write to you in connection with your agreement to purchase a Landmark condominium unit from 2811 Development Corporation ("2811"). On November 15, 2011, the Court granted an Order in the Receivership Proceeding approving the sale of The Landmark to Mady Development Corporation ("Mady"). The sale of The Landmark to Mady was completed on •, 2011. As a result of the sale, 2811 no longer has any ownership interest in The Landmark and will not be in a position to satisfy its obligations to you under your purchase agreement.

In connection with your purchase agreement, you were required to provide a deposit to 2811. As you should be aware, 2811 obtained a condominium deposit insurance policy from Lombard General Insurance Company of Canada ("Lombard"), a copy of which is enclosed herewith (the "Policy"). The Receiver wishes to inform you that the deposit you paid to 2811 may be insured under the terms of the Policy and you may have the ability to recover your deposit by filing a proof of loss under the terms of the Policy with Lombard.

You may obtain further information directly from Lombard by contacting Mr. Ron Perfetti, National Director – Risk Solutions, at (416) 350-4449.



**Deloitte & Touche Inc.**

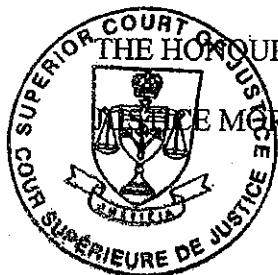
solely in its capacity as the Court-appointed  
receiver of the Property (as defined herein)  
of 2811 Development Corporation and  
without personal or corporate liability

Per:

\_\_\_\_\_  
Ira Gerstein, CA, CIRP  
Vice-President

# APPENDIX "D"

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST



THE HONOURABLE MR.  
JUSTICE MCGRAWETZ

)  
)  
)

TUESDAY THE 15<sup>th</sup> DAY  
OF NOVEMBER, 2011

IN THE MATTER OF section 101 of  
the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

BETWEEN:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**APPROVAL, VESTING and INTERIM DISBURSEMENT  
ORDER**

**THIS MOTION**, made by DELOITTE & TOUCHE INC. in its capacity as the Court-appointed receiver (the "**Receiver**") of certain of the assets, undertaking and property of 2811 Development Corporation (the "**Debtor**"), for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Mady Agreement**") between the Receiver and Mady Development Corporation (the "**Purchaser**") dated as of October 3, 2011 and attached in redacted form as Appendix "X" to the Third Report of the Receiver dated November 3, 2011 (the "**Third Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the Assets, as such term is defined in the Mady Agreement (the "**Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Third Report and the appendices attached thereto, including the affidavit of Bryan Tannenbaum sworn on November 2, 2011 (the "**Tannenbaum Fee Affidavit**"), the affidavit of Grant Moffat sworn on October 28, 2011 (the "**Moffat Fee Affidavit**"), the affidavit of Joseph Fried sworn on November 2, 2011 (the "**Fried Fee Affidavit**") and the affidavit of Sam P. Rappos sworn on November 2, 2011 (the "**Rappos Fee Affidavit**"), and the Supplement to the Third Report of the Receiver dated November 11, 2011 (the "**Supplementary Report**") and the appendices attached thereto, and on hearing the submissions of counsel for the Receiver, the Debtor, the Purchaser, Key Pendragon Enterprises Inc., White Bear Developments Inc., Lombard General Insurance Company of Canada, Con-Drain Company (1983) Limited, Mady Contract Division Ltd. and Terracap Investments Inc., no one appearing for any other person on the service list, although properly served as appears from the affidavit of Marie Pacheco sworn November 4, 2011, filed,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Amended Notice of Motion, the Motion Record dated November 3, 2011 and the Supplementary Motion Record dated November 11, 2011 is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

#### **APPROVAL AND VESTING**

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Mady 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 Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Assets described in the Mady Agreement and listed on Schedule "B" hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual,

statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Mr. Justice C. Campbell dated June 29, 2011; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Land Titles Act* (Ontario) or any other personal or real property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the assumed encumbrances listed on Schedule "D" hereto) and (iv) any other Claims registered or arising between November 13, 2011 and the registration of this Order (the "**Additional Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances and Additional Encumbrances affecting or relating to the Assets are hereby expunged and discharged as against the Assets.

4. **THIS COURT ORDERS** that upon the registration in the Toronto Land Titles Office (No. 80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule "C" hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the 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 Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the 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.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

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 Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

#### **APPROVAL OF FEES AND ACTIVITIES**

10. **THIS COURT ORDERS** that the First Report of the Receiver dated July 15, 2011, the Second Report of the Receiver dated July 21, 2011, the Supplement to the Second Report of the Receiver dated July 29, 2011, the Third Report of the Receiver dated November 3, 2011 and the Supplement to the Third Report dated November 11, 2011, and the activities of the Receiver described therein, be and are hereby approved.

11. **THIS COURT ORDERS** that the fees and the disbursements of the Receiver referred to in the Third Report, including its legal fees and disbursements, as set forth in the Tannenbaum Fee Affidavit, the Moffat Fee Affidavit, the Fried Fee Affidavit and the Rappos Fee Affidavit, are hereby approved.

#### **DISBURSEMENTS**

12. **THIS COURT ORDERS** that upon completion of the Transaction the Receiver is hereby authorized to disburse from the proceeds of sale of the Assets the full amount of the Receiver's fees and disbursements, including its legal fees and disbursements, as approved herein and described in greater detail in the Third Report. The Receiver shall continue to hold the balance of the sale proceeds pending further order of this court.

#### **SEALING**

13. **THIS COURT ORDERS** that the Confidential Information Memorandum, the Template Sale Agreement, the Cushman appraisal, the summary of the offers received and the unredacted version of the Mady Agreement, delivered to the Court as Confidential Appendices "R", "T", "U", "V" and "W" respectively to the Third Report, be and are hereby sealed until the filing with the Court of the Receiver's Certificate, or upon further order of the Court.

#### **NOTICE TO THE UNIT PURCHASERS**

14. **THIS COURT ORDERS** that the Receiver is directed, following the filing of the Receiver's Certificate with the Court as provided for in paragraph 6 hereof, to forthwith send a letter substantially in the form attached as Appendix "A" to the Supplementary Report to each of the Unit Purchasers (as such term is defined in the Third Report) at the last known addresses of the Unit Purchasers according to the books and records of the Debtor.

#### **AID AND RECOGNITION**

15. **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.

A handwritten signature in black ink, appearing to be "D. J. [unclear]", written over a horizontal line.

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

NOV 15 2011

PER/PAR: Handwritten initials, possibly "JD", written in black ink.



**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-11-9242-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF section 101 of the  
*Courts of Justice Act, R.S.O. 1990, c. C.43, as amended***

**BETWEEN:**

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of The Honourable Mr. Justice C. Campbell of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 2011, Deloitte & Touche Inc. was appointed as the receiver (the "**Receiver**") of certain of the undertaking, property and assets of 2811 Development Corporation (the "**Debtor**") as described in the said order.

B. Pursuant to an Order of the Court dated November 15, 2011, the Court approved the agreement of purchase and sale made as of October 3, 2011 (the "**Mady Agreement**") between the Receiver and Mady Development Corporation (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Assets as defined in the Mady Agreement, which vesting is to be effective with respect to the Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the

Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in section 4 of the Mady Agreement have been satisfied or waived by the Receiver and the Purchaser; 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 Mady Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Assets payable on the Closing Date pursuant to the Mady Agreement;
2. The conditions to Closing as set out in section 4 of the Mady Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**DELOITTE & TOUCHE INC., in its capacity  
as Receiver of certain of the undertakings,  
property and assets of 2811 Development  
Corporation, and not in its personal capacity**

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

Name:

Title:

## Schedule B –Assets

### The Lands

- (a) The right, title and interest of the Debtor in the real property described as PIN No.06050-0199 (LT) being Part Lots 18 and 19, Con 5; Part Road Allowance between Lots 18 and 19, Concession 5, as closed by By-Law 406 being Part of Part 1, 66R12477 lying north of Plan 66M1996, Save and Except Part of Lots 18 and 19, Con 5, Part 1, 66R16987; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5789 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (b) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0266 (LT) being Part Lot 20, Conc 5 Scarborough designated as Part 1, Plan 66R23210; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5811 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (c) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0263 (LT) being Part Lot 19, Conc 5 Scarborough designated as Part 1, Plan 66R23217; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5933 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (d) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0264 (LT) being Part Lot 18, Conc 5 Scarborough; Part RDAL between Lots 18 and 19, Con 5, Scarborough (Closed by By-Law 406 as in SC608215), designated as Part 2 on Plan 66R23217; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5945 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (e) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0272 (LT) being Part Lot 18, Conc 5 Scarborough, Part 3 Plan 66R23217 Save and Except Part 32, Plan 66R23655; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5951 Steeles Avenue East, Toronto, Ontario M2M 3Y2

### The Plans

**Schedule C – Claims to be deleted and expunged from title to Real Property**

**(a) Instruments to be deleted from PIN No. 06050-0199 (LT)**

<b>Reg. Num.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
AT974288	2005/11/09	Charge	\$75,000,000	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1085822	2006/03/14	Charge	\$750,000	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1187188	2006/06/30	Charge	\$1,560,127	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1787210	2008/05/26	Postponement (AT974288 to AT1787207)		Lombard General Insurance Company of Canada	Markham Steeles Realty Inc.
AT1787211	2008/05/26	Postponement (AT1085822 to AT1787207)		Lombard General Insurance Company of Canada	Markham Steeles Realty Inc.
AT1787212	2008/05/26	Postponement (AT1187188 to AT1787207)		Lombard General Insurance Company of Canada	Markham Steeles Realty Inc.
AT1842029	2008/07/23	Charge	\$17,500,000	2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842030	2008/07/23	No Assgn Rent Gen		2811 Development Corporation	Firm Capital Mortgage Fund Inc.

<b>Reg. Num.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
AT1842143	2008/07/23	Postponement (AT974288 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1842144	2008/07/23	Postponement (AT1085822 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1842145	2008/07/23	Postponement (AT1187188 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1903983	2008/09/23	Charge	\$5,500,000	2811 Development Corporation	Relmi Financial Corp.
AT1904325	2008/09/23	Postponement (AT974288 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT1904326	2008/09/23	Postponement (AT1085822 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT1904327	2008/09/23	Postponement (AT1187188 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT2098876	2009/06/19	Apl. Court Order		Ontario Superior Court of Justice	Terracap Investments Inc.
AT2205071	2009/10/16	Transfer of Charge		Relmi Financial Corp.	Key Pendragon

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
					Enterprises Inc.
AT2205083	2009/10/16	Notice (Re AT1903983)		Key Pendragon Enterprises Inc.	2811 Development Corporation
AT2205105	2009/10/16	Postponement (AT974288 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2205106	2009/10/16	Postponement (AT1085822 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2205107	2009/10/16	Postponement (AT1187188 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2259133	2009/12/16	Charge	\$1,500,000	2811 Development Corporation	Vector Financial Services Limited
AT2259134	2009/12/16	No Assign Rent Gen		2811 Development Corporation	Vector Financial Services Limited
AT2259190	2009/12/16	Postponement (AT974288 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259191	2009/12/16	Postponement (AT974288 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259192	2009/12/16	Postponement (AT1085822 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
AT2259193	2009/12/16	Postponement (AT1085822 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259194	2009/12/16	Postponement (AT1187188 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259195	2009/12/16	Postponement (AT1187188 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259196	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259133)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2259197	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259134)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2357840	2010/04/22	Charge	\$1,100,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2449883	2010/07/19	Charge	\$1,000,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2457585	2010/07/26	Postponement (AT974288 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457586	2010/07/26	Postponement (AT1085822 to		Lombard General Insurance Company of	Key Pendragon Enterprises Inc.

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
		AT2357840)		Canada	
AT2457587	2010/07/26	Postponement (AT1187188 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457588	2010/07/26	Postponement (AT1187188 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457589	2010/07/26	Postponement (AT1085822 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457590	2010/07/26	Postponement (AT974288 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2561525	2010/11/26	Charge	\$1,500,000	2811 Development Corporation	Con-Drain Company (1983) Limited
AT2565586	2010/11/30	Transfer of Charge		Vector Financial Services Limited	White Bear Developments Inc.
AT2565587	2010/11/30	No Assgn Rent Gen		Vector Financial Services Limited	White Bear Developments Inc.
AT2665134	2011/04/13	Construction Lien	\$386,190	Mady Contract Division Ltd.	
AT2742192	2011/07/05	Certificate (Re AT2665134)		Mady Contract Division Ltd.	The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd.



Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
					Con Drain Company (1983) Limited White Bear Developments Inc.
AT2755074	2011/07/05	App. Court Order		Ontario Superior Court of Justice (Commercial List)	Firm Capital Mortgage Fund Inc.
AT2864312	2011/11/08	Application to Change Name		Vector Financial Services Limited	Vector Financial Services Limited

(b) Instruments to be deleted from PIN No. 06050-00266 (LT)

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
AT969273	2005/11/02	Apl. Change Name Owner		1610607 Ontario Inc.	2811 Development Corporation
AT974288	2005/11/09	Charge	\$75,000,000	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1085822	2006/03/14	Charge	\$750,000	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1187188	2006/06/30	Charge	\$1,560,127	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1842029	2008/07/23	Charge	\$17,500,000	2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842030	2008/07/23	No Assgn Rent Gen		2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842143	2008/07/23	Postponement		Lombard General	Firm Capital Mortgage

		(AT974288 to AT1842029 & AT1842030)		Insurance Company of Canada	Fund Inc.
AT1842144	2008/07/23	Postponement (AT1085822 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1842145	2008/07/23	Postponement (AT1187188 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1903983	2008/09/23	Charge	\$5,500,000	2811 Development Corporation	Relmi Financial Corp.
AT1904325	2008/09/23	Postponement (AT974288 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT1904326	2008/09/23	Postponement (AT1085822 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT1904327	2008/09/23	Postponement (AT1187188 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT2205071	2009/10/16	Transfer of Charge		Relmi Financial Corp.	Key Pendragon Enterprises Inc.
AT2205083	2009/10/16	Notice (Re AT1903983)		Key Pendragon Enterprises Inc.	2811 Development Corporation

AT2205105	2009/10/16	Postponement (AT974288 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2205106	2009/10/16	Postponement (AT1085822 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2205107	2009/10/16	Postponement (AT1187188 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2259133	2009/12/16	Charge	\$1,500,000	2811 Development Corporation	Vector Financial Services Limited
AT2259134	2009/12/16	No Assign Rent Gen		2811 Development Corporation	Vector Financial Services Limited
AT2259190	2009/12/16	Postponement (AT974288 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259191	2009/12/16	Postponement (AT974288 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259192	2009/12/16	Postponement (AT1085822 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259193	2009/12/16	Postponement (AT1085822 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259194	2009/12/16	Postponement (AT1187188 to		Lombard General Insurance Company of	Vector Financial Services Limited

		AT2259133)		Canada	
AT2259195	2009/12/16	Postponement (AT1187188 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259196	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259133)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2259197	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259134)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2357840	2010/04/22	Charge	\$1,100,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2449883	2010/07/19	Charge	\$1,000,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2457585	2010/07/26	Postponement (AT974288 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457586	2010/07/26	Postponement (AT1085822 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457587	2010/07/26	Postponement (AT1187188 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457588	2010/07/26	Postponement (AT1187188 to		Lombard General Insurance Company of	Key Pendragon Enterprises Inc.

		AT2449883)		Canada	
AT2457589	2010/07/26	Postponement (AT1085822 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457590	2010/07/26	Postponement (AT974288 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2561525	2010/11/26	Charge	\$1,500,000	2811 Development Corporation	Con-Drain Company (1983) Limited
AT2565586	2010/11/30	Transfer of Charge		Vector Financial Services Limited	White Bear Developments Inc.
AT2565587	2010/11/30	No Assgn Rent Gen		Vector Financial Services Limited	White Bear Developments Inc.
AT2665134	2011/04/13	Construction Lien	\$386,190	Mady Contract Division Ltd.	
AT2742192	2011/07/05	Certificate (Re AT2665134)		Mady Contract Division Ltd.	The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. Con Drain Company (1983) Limited White Bear Developments Inc.
AT2755074	2011/07/05	App. Court Order		Ontario Superior Court of Justice (Commercial List)	Firm Capital Mortgage Fund Inc.
AT2864312	2011/11/08	Application to Change Name		Vector Financial Services Limited	Vector Financial Services Limited

(c) Instruments to be deleted from PIN No. 06050-00263 (LT)

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
AT1187188	2006/06/30	Charge	\$1,560,127	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1842029	2008/07/23	Charge	\$17,500,000	2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842030	2008/07/23	No Assgn Rent Gen		2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842145	2008/07/23	Postponement (AT1187188 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1903983	2008/09/23	Charge	\$5,500,000	2811 Development Corporation	Relmi Financial Corp.
AT1904327	2008/09/23	Postponement (AT1187188 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT2205071	2009/10/16	Transfer of Charge		Relmi Financial Corp.	Key Pendragon Enterprises Inc.
AT2205083	2009/10/16	Notice (Re AT1903983)		Key Pendragon Enterprises Inc.	2811 Development Corporation
AT2205107	2009/10/16	Postponement (AT1187188 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.

AT2259133	2009/12/16	Charge	\$1,500,000	2811 Development Corporation	Vector Financial Services Limited
AT2259134	2009/12/16	No Assign Rent Gen		2811 Development Corporation	Vector Financial Services Limited
AT2259194	2009/12/16	Postponement (AT1187188 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259195	2009/12/16	Postponement (AT1187188 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259196	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259133)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2259197	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259134)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2357840	2010/04/22	Charge	\$1,100,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2449883	2010/07/19	Charge	\$1,000,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2457587	2010/07/26	Postponement (AT1187188 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457588	2010/07/26	Postponement		Lombard General	Key Pendragon

		(AT1187188 to AT2449883)		Insurance Company of Canada	Enterprises Inc.
AT2561525	2010/11/26	Charge	\$1,500,000	2811 Development Corporation	Con-Drain Company (1983) Limited
AT2565586	2010/11/30	Transfer of Charge		Vector Financial Services Limited	White Bear Developments Inc.
AT2565587	2010/11/30	No Assgn Rent Gen		Vector Financial Services Limited	White Bear Developments Inc.
AT2665134	2011/04/13	Construction Lien	\$386,190	Mady Contract Division Ltd.	
AT2742192	2011/07/05	Certificate (Re AT2665134)		Mady Contract Division Ltd.	The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. Con Drain Company (1983) Limited White Bear Developments Inc.
AT2755074	2011/07/05	App. Court Order		Ontario Superior Court of Justice (Commercial List)	Firm Capital Mortgage Fund Inc.
AT2864312	2011/11/08	Application to Change Name		Vector Financial Services Limited	Vector Financial Services Limited

**(d) Instruments to be deleted from PIN No. 06050-0264 (LT)**

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
AT1085822	2006/03/14	Charge	\$750,000	2811 Development Corporation	Lombard General Insurance Company of Canada



AT1187188	2006/06/30	Charge	\$1,560,127	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1787211	2008/05/26	Postponement (AT1085822 to AT1787207)		Lombard General Insurance Company of Canada	Markham Steeles Realty Inc.
AT1787212	2008/05/26	Postponement (AT1187188 to AT1787207)		Lombard General Insurance Company of Canada	Markham Steeles Realty Inc.
AT1842029	2008/07/23	Charge	\$17,500,000	2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842030	2008/07/23	No Assgn Rent Gen		2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842144	2008/07/23	Postponement (AT1085822 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1842145	2008/07/23	Postponement (AT1187188 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1903983	2008/09/23	Charge	\$5,500,000	2811 Development Corporation	Relmi Financial Corp.
AT1904326	2008/09/23	Postponement (AT1085822 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.

AT1904327	2008/09/23	Postponement (AT1187188 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT2205071	2009/10/16	Transfer of Charge		Relmi Financial Corp.	Key Pendragon Enterprises Inc.
AT2205083	2009/10/16	Notice (Re AT1903983)		Key Pendragon Enterprises Inc.	2811 Development Corporation
AT2205106	2009/10/16	Postponement (AT1085822 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2205107	2009/10/16	Postponement (AT1187188 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2259133	2009/12/16	Charge	\$1,500,000	2811 Development Corporation	Vector Financial Services Limited
AT2259134	2009/12/16	No Assign Rent Gen		2811 Development Corporation	Vector Financial Services Limited
AT2259192	2009/12/16	Postponement (AT1085822 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259193	2009/12/16	Postponement (AT1085822 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259194	2009/12/16	Postponement (AT1187188 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited

AT2259195	2009/12/16	Postponement (AT1187188 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259196	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259133)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2259197	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259134)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2357840	2010/04/22	Charge	\$1,100,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2449883	2010/07/19	Charge	\$1,000,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2457586	2010/07/26	Postponement (AT1085822 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457587	2010/07/26	Postponement (AT1187188 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457588	2010/07/26	Postponement (AT1187188 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457589	2010/07/26	Postponement (AT1085822 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.

AT2561525	2010/11/26	Charge	\$1,500,000	2811 Development Corporation	Con-Drain Company (1983) Limited
AT2565586	2010/11/30	Transfer of Charge		Vector Financial Services Limited	White Bear Developments Inc.
AT2565587	2010/11/30	No Assgn Rent Gen		Vector Financial Services Limited	White Bear Developments Inc.
AT2665134	2011/04/13	Construction Lien °	\$386,190	Mady Contract Division Ltd.	
AT2742192	2011/07/05	Certificate (Re AT2665134)		Mady Contract Division Ltd.	The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. Con Drain Company (1983) Limited White Bear Developments Inc.
AT2755074	2011/07/05	App. Court Order		Ontario Superior Court of Justice (Commercial List)	Firm Capital Mortgage Fund Inc.
AT2864312	2011/11/08	Application to Change Name		Vector Financial Services Limited	Vector Financial Services Limited

(e) Instruments deleted from PIN No. 06050-0272 (LT)

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
AT1842029	2008/07/23	Charge	\$17,500,000	2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842030	2008/07/23	No Assgn Rent Gen		2811 Development Corporation	Firm Capital Mortgage Fund Inc.

AT1903983	2008/09/23	Charge	\$5,500,000	2811 Development Corporation	Relmi Financial Corp.
AT2205071	2009/10/16	Transfer of Charge		Relmi Financial Corp.	Key Pendragon Enterprises Inc.
AT2205083	2009/10/16	Notice (Re AT1903983)		Key Pendragon Enterprises Inc.	2811 Development Corporation
AT2259133	2009/12/16	Charge	\$1,500,000	2811 Development Corporation	Vector Financial Services Limited
AT2259134	2009/12/16	No Assign Rent Gen		2811 Development Corporation	Vector Financial Services Limited
AT2259196	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259133)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2259197	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259134)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2357840	2010/04/22	Charge	\$1,100,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2449883	2010/07/19	Charge	\$1,000,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2561525	2010/11/26	Charge	\$1,500,000	2811 Development Corporation	Con-Drain Company (1983) Limited

AT2565586	2010/11/30	Transfer of Charge		Vector Financial Services Limited	White Bear Developments Inc.
AT2565587	2010/11/30	No Assgn Rent Gen		Vector Financial Services Limited	White Bear Developments Inc.
AT2665134	2011/04/13	Construction Lien	\$386,190	Mady Contract Division Ltd.	
AT2742192	2011/07/05	Certificate (Re AT2665134)		Mady Contract Division Ltd.	The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. Con Drain Company (1983) Limited White Bear Developments Inc.
AT2755074	2011/07/05	App. Court Order		Ontario Superior Court of Justice (Commercial List)	Firm Capital Mortgage Fund Inc.
AT2864312	2011/11/08	Application to Change Name		Vector Financial Services Limited	Vector Financial Services Limited

**Schedule D – Assumed Encumbrances related to the Real Property**

**(unaffected by the Vesting Order)**

1. Unregistered Subsection 37(1) of the *Planning Act*, R.S.O. 1990, c.P.13 Agreement between 2811 Development Corporation and the City of Toronto dated the 26<sup>th</sup> day of July 2007.
  
2. Unregistered Amending Agreement between 2811 Development Corporation and the City of Toronto dated the 18<sup>th</sup> day of September 2008 amending certain provisions of the Subsection 37(1) agreement dated July 26<sup>th</sup>, 2007.
  
3. The following instruments registered on title against the Lands:

**(a) Permitted Encumbrances for PIN No. 06050-0199 (LT)**

<b>Reg. Num.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Parties From</b>	<b>Parties To</b>
66R17070	1995/09/15	Plan Reference		
C981858	1995/12/12	Transfer Easement	The Treewood Development Corporation	The Municipality of Metropolitan Toronto
AT1371078	2007/02/05	Notice	City of Toronto	2811 Development Corporation Markham Steeles Realty Inc. Steeles Markham Developments Limited Bradgate Investments Limited Runnymede Development Corporation Limited Tapscott Industrial Landowners Group Inc.
66R23193	2007/07/18	Plan Reference		
66R23655	2008/04/10	Plan Reference		

Reg. Num.	Date	Instrument Type	Parties From	Parties To
AT1787207	2008/05/26	Transfer Easement	2811 Development Corporation	Markham Steeles Realty Inc.
AT1787250	2008/05/26	Transfer Easement	Markham Steeles Realty Inc.	2811 Development Corporation
66R25114	2010/09/22	Plan Reference		
AT2616576	2011/02/07	Notice (Cost sharing Agreement re shared roadway)	Markham Steeles Realty Inc.	2811 Development Corporation

(b) Permitted Encumbrances for PIN No. 06050-0266 (LT)

Reg. Num.	Date	Instrument Type	Parties From	Parties To
AT496819	2004/05/28	Notice (Easement relating to development of land)	Norstar Commercial Developments Inc. Gawler Holdings Limited	
66R23210	2007/07/25	Plan Reference		
AT1517543	2007/07/25	Apl. Absolute Title	2811 Development Corporation	2811 Development Corporation

(c) Permitted Encumbrances for PIN No. 06050-0263 (LT)

Reg. Num.	Date	Instrument Type	Parties From	Parties To
AT1394850	2007/03/09	Bylaw	City of Toronto	
66R23217	2007/07/27	Plan Reference		



Reg. Num.	Date	Instrument Type	Parties From	Parties To
AT1520329	2007/07/27	Apl. Absolute Title	2811 Development Corporation	2811 Development Corporation
AT2616576	2011/02/07	Notice (Cost sharing Agreement re shared roadway)	Markham Steeles Realty Inc.	2811 Development Corporation

(d) **Permitted Encumbrances for PIN No. 06050-0264 (LT)**

Reg. Num.	Date	Instrument Type	Parties From	Parties To
66R23217	2007/07/27	Plan Reference		
AT1520329	2007/07/27	Apl. Absolute Title	2811 Development Corporation	2811 Development Corporation
66R23655	2008/04/10	Plan Reference		
AT1787207	2008/05/26	Transfer Easement	2811 Development Corporation	Markham Steeles Realty Inc.
66R25114	2010/09/22	Plan Reference		
AT2616576	2011/02/07	Notice (Cost sharing Agreement re shared roadway)	Markham Steeles Realty Inc.	2811 Development Corporation

(e) **Permitted Encumbrances for PIN No. 06050-0272 (LT)**

Reg. Num.	Date	Instrument Type	Parties From	Parties To
AT1309249	2006/11/17	Bylaw	City of Toronto	
66R23217	2007/07/27	Plan Reference		

<b>Reg. Num.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Parties From</b>	<b>Parties To</b>
AT1520329	2007/07/27	Apl. Absolute Title	2811 Development Corporation	2811 Development Corporation
66R23655	2008/04/10	Plan Reference		
AT1787207	2008/05/26	Transfer Easement	2811 Development Corporation	Markham Steeles Realty Inc.
AT1837423	2008/07/18	Land. Reg. Order (Correction of typographical error)	Land Registrar	
66R25114	2010/09/22	Plan Reference		

**FIRM CAPITAL MORTGAGE FUND INC.**

- and -

**2811 DEVELOPMENT CORPORATION**

Court File No. CV-11-9242-00CL

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST  
PROCEEDINGS COMMENCED AT TORONTO**

**APPROVAL, VESTING and DISBURSEMENT  
ORDER**

**BORDEN LADNER GERVAIS LLP**  
Barristers and Solicitors  
Scotia Plaza  
40 King Street West  
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M5H 3Y4

**John Marshall**  
Tel: (416) 367-6024  
Fax: (416) 361-2763  
(LSUC #169600)

Lawyers for the Receiver, Deloitte & Touche Inc.

TOR01: 4739087: v2

# **APPENDIX “E”**

Court File No. CV11-9242-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 101 OF THE  
*COURTS OF JUSTICE ACT, R.S.O. 1990 C.C.43, AS AMENDED*

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

**FOURTH REPORT OF THE RECEIVER  
DATED DECEMBER 1, 2011**

**INTRODUCTION**

1. By Order of the Court dated June 29, 2011 (the "**Appointment Order**"), Deloitte & Touche Inc. was appointed as receiver (the "**Receiver**") of all of the lands and premises known municipally as 5789, 5811, 5933, 5945 and 5951 Steeles Avenue East, Toronto, Ontario and more particularly described in Schedule "A" to the Appointment Order (the "**Lands**") and all of the assets, undertakings and properties of 2811 Development Corporation (the "**Debtor**") acquired for, or used in relation to, the development of the Lands and construction of improvements thereon, including all proceeds thereof (collectively, the "**Property**"). A copy of the Appointment Order is attached hereto as **Appendix "A"**.

2. On November 3, 2011, the Receiver issued its Third Report to the Court (the "**Third Report**") in support of its sale approval motion (the "**Sale Approval Motion**") returnable November 15, 2011 for an order, *inter alia*:
  - a) authorizing and directing the Receiver to enter into and carry out the terms of the agreement of purchase and sale between the Receiver and Mady Development Corporation ("**Mady**") dated October 3, 2011 (the "**Mady Agreement**") together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Lands in Mady upon closing of the Mady Agreement and the delivery of the Receiver's Certificate to Mady; and
  - b) approving an interim distribution of certain of the net proceeds of sale of the Lands to the Applicant and other secured lenders, as more fully described therein, in the event that the sale transaction contemplated by the Mady Agreement was completed.
3. On November 11, 2011, the Receiver filed with the Court a Supplement to the Third Report in connection with the Sale Approval Motion (the "**Supplement to the Third Report**"), which provided the Court with additional information with respect to the charges, mortgages and claims registered against the Property. A copy of the Third Report (without attachments) is attached as **Appendix "B"**. A copy of the Supplement to the Third Report (without attachments) is attached as **Appendix "C"**.
4. On November 15, 2011 the Honourable Justice Morawetz granted the Approval, Vesting and Interim Disbursement Order (the "**AVID Order**") authorizing the Receiver to, among other things, enter into and carry out the terms of the Mady Agreement. A copy of the AVID Order is attached as **Appendix "D"**.
5. At the request of Lombard Insurance Company of Canada ("**Lombard**"), the 6<sup>th</sup> ranking mortgagee over certain of the Lands, the Receiver's motion for an order approving an interim distribution of certain net proceeds was adjourned to December 5, 2011 to allow Lombard the opportunity to review the secured claims of Firm Capital Mortgage Fund Inc. ("**Firm Capital**"), White Bear Development Inc. ("**White Bear**") and Key

Pendragon Enterprises Inc. (“**Pendragon**”), being the parties holding the 1<sup>st</sup> through 5<sup>th</sup> mortgages on certain of the Lands.

#### **PURPOSE OF THIS FOURTH REPORT**

6. The Receiver understands that Lombard is still in the process of reviewing the claims of Firm Capital, White Bear and Pendragon and is partially satisfied with the quantum of those claims. The purpose of this fourth report of the Receiver (the “**Fourth Report**”) is to:
- a) provide a summary of the outstanding secured claims against the Lands; and
  - b) recommend the granting of an order:
    - i) authorizing an interim distribution of certain of the net proceeds of sale of the Lands to the Applicant and other secured lenders as agreed upon by Firm Capital, White Bear, Pendragon and, Lombard as more fully described herein and in the event that the sale transaction contemplated by the Mady Agreement is completed; and
    - ii) amending the AVID Order to vest title in Mady Steeles 2011 Ltd. (“**Mady Steeles**”).

#### **TERMS OF REFERENCE**

7. In preparing the Fourth Report and making the comments contained herein, the Receiver has been provided with and has relied upon unaudited financial information, the Debtor’s books and records, financial information prepared by the Debtor and its advisors, and discussions with management of the Debtor, among other things. The Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in the Fourth Report.
8. Unless otherwise stated, all dollar amounts contained in the Fourth Report are expressed in Canadian dollars.

9. Unless otherwise provided, all other capitalized terms not otherwise defined in this Fourth Report are as defined in the Appointment Order or previous reports of the Receiver.

**CLAIMS AGAINST THE LANDS AND PROPOSED INTERIM DISTRIBUTION**

10. As set out in greater detail in the Third Report, Firm Capital, White Bear, Pendragon, Lombard, Con-Drain Company (1983) Limited (“**Con-Drain**”) and Mady Contract Division Ltd. (“**MCD**”) (Collectively the “**Secured Creditors**”) have registered charges/mortgages or claims against title to the Lands or against portions of the Lands.
11. As noted in the Supplement to the Third Report, the Receiver was informed by the Secured Creditors that the aggregate amounts due to them for outstanding principal, interest, fees and other amounts as at November 15, 2011 are as follows:

<b>Creditor</b>	<b>Outstanding Amount</b>
Firm Capital	\$18,239,434.72
White Bear	\$2,347,200.33
Pendragon	\$7,801,962.99
Pendragon	\$1,405,631.72
Pendragon	\$1,239,776.35
Lombard	\$12,727,872.80 (as of November 2, 2011)
Con-Drain	\$1,743,008.13
MCD	\$429,190.00
<b>Total</b>	<b>\$45,934,077.04</b>



12. On or before November 15, 2011, at the request of the Receiver through its legal counsel, the Receiver received sworn affidavits from Firm Capital, White Bear and Pendragon as to the amounts owing by 2811 in respect of its indebtedness to each of Firm Capital, White Bear and Pendragon. The amounts set out in the sworn affidavits are the same as those amounts set out above. Attached as **Appendix "E"** is a copy of each of Firm Capital's, White Bear's and Pendragon's sworn affidavits.
13. As noted above, the Receiver's motion for an interim distribution was adjourned to December 5, 2011 pending a review by Lombard of the other Secured Creditors' claims.
14. The Receiver understands that since November 15, 2011, as a result of Lombard's review of the claims, Lombard may challenge the ability of Firm Capital, White Bear and Pendragon to obtain payment for certain amounts in priority to the claims of Lombard. As at the date of this Fourth Report, the Receiver is not aware of what amounts have been agreed to between Lombard, Firm Capital, White Bear and Pendragon.
15. Although the Receiver is not aware of the exact amounts, the Receiver does understand that there are undisputed amounts owing to Firm Capital, White Bear and Pendragon that Lombard acknowledges are claims that stand in priority to its claims against the Lands. These undisputed amounts could therefore be distributed after the Mady Agreement is completed.
16. The Receiver proposes that the Court grant the Receiver the authority to, in its discretion, make distributions of undisputed amounts owing to Firm Capital, White Bear and Pendragon on account of their claims against the Property and upon receiving written confirmation from Lombard, Firm Capital, and Pendragon as to their agreement of the undisputed amounts.
17. The Receiver will report to this Honourable Court following the closing of the Mady Agreement as to the amounts distributed to such creditors.
18. In the Third Report, the Receiver noted that Borden Ladner Gervais LLP ("BLG"), legal counsel to the Receiver, was not in a position to provide a definitive opinion with respect

to the White Bear charge/mortgage. The reason for this was that there was an inconsistency (being the inclusion of a period) between the chargee's name listed on the White Bear charge in the amount of \$1,500,000 registered on December 16, 2009, being "Vector Financial. Services Limited", and the name of the transferor on the Transfer of Charge registered on November 30, 2010 in favour of White Bear, being "Vector Financial Services Limited".

19. The Receiver understands that on November 8, 2011, an Application to Change Name-Instrument was registered on title to the Lands as instrument no. AT2864312, wherein it is indicated that the listing of "Vector Financial. Services Limited" as chargee under the charge was a typographical error and the name of the chargee was properly "Vector Financial Services Limited".
20. In a letter dated November 10, 2011, BLG wrote to counsel to White Bear, Pendragon, Lombard, Con-Drain and MCD and confirmed its view that the typographical error did not affect the validity or priority of the White Bear charge. However, BLG requested that the parties confirm in writing whether they took any issue with the amendment to the White Bear charge. A copy of the November 10, 2011 letter is attached as **Appendix "F"**.
21. The Receiver reports that none of the parties have indicated that they take issue with the amendment filed by White Bear.
22. As noted in the Third Report, the Receiver is of the view that upon the completion of the Mady Agreement, and the proposed distribution set out above, it will have sufficient funds in its possession to address and make payment of any other potential claims, such as those noted in the Third Report, to the extent that such claims are valid and have priority to the claims of Firm Capital, White Bear, Pendragon and Lombard.

#### **AMENDMENT OF THE AVID ORDER**

23. The Receiver understands that Mady has requested that the Mady Agreement be assigned to Mady Steeles pursuant to paragraph 6.22 of the Mady Agreement.

24. The Receiver has no objection to the assignment, however the AVID Order does not contemplate vesting title of the Lands to any person or entity other than Mady.
25. Accordingly, the Receiver respectfully requests that this Honourable Court amend the AVID Order allowing title to the Lands to be vested in Mady Steeles, in accordance with the terms of the Mady Agreement.

#### RECEIVER'S RECOMMENDATIONS

26. For the reasons set out above, the Receiver recommends that the Court make an Order:
- a) authorizing an interim distribution of certain of the net proceeds of sale of the Property to the Applicant and other secured lenders as agreed upon by Firm Capital, White Bear, Pendragon and Lombard in the event that the sale transaction contemplated by the Mady Agreement is completed; and
  - b) amending the AVID to vest title in Mady Steeles.

All of which is respectfully submitted at Toronto, Ontario this 1st day of December, 2011.

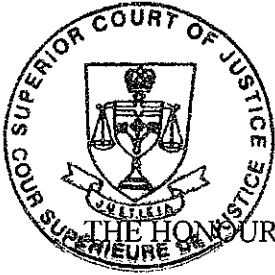
**Deloitte & Touche Inc.**

solely in its capacity as the Court-appointed receiver of the Property (as defined herein) of 2811 Development Corporation and without personal or corporate liability

Per: 

Bryan A. Tannenbaum, FCA, FCIRP  
Senior Vice-President

# APPENDIX "F"



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.  
JUSTICE MORAWETZ

)  
)  
)

MONDAY THE 5<sup>th</sup> DAY  
OF DECEMBER, 2011

**IN THE MATTER OF section 101 of  
the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

BETWEEN:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**ORDER AMENDING THE APPROVAL, VESTING and INTERIM  
DISBURSEMENT ORDER DATED NOVEMBER 15, 2011**

**THIS MOTION**, made by DELOITTE & TOUCHE INC. in its capacity as the court-appointed receiver (the "**Receiver**") of certain of the assets, undertaking and property of 2811 Development Corporation (the "**Debtor**"), including the Lands described in Schedule "A" attached hereto, granted pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for the relief set forth below was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Approval, Vesting and Interim Disbursement Order herein of the Honourable Mr. Justice Morawetz dated November 15, 2011 (the "**Vesting Order**"), the Fourth

Report of the Receiver dated December 1, 2011 (the "Fourth Report"), and on hearing the submissions of counsel for the Receiver, the Debtor, Firm Capital Mortgage Fund Inc., Key Pendragon Enterprises Inc., White Bear Developments Inc., Lombard General Insurance Company of Canada, Con-Drain Company (1983) Limited, Mady Contract Division Ltd., Terracap Investments Inc. and Mady Development Corporation, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Chun Ying Wang sworn December 2, 2011, filed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record dated December 2, 2011 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 Vesting Order be and it is hereby amended by deleting the words "the Purchaser" as they appear in paragraphs 3, 4 and 8 of the Vesting Order and replacing them with "Mady Steeles 2011 Ltd."



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

DEC 06 2011

PER/PAR:

NB

**Schedule A**

The Lands

- (a) The right, title and interest of the Debtor in the real property described as PIN No.06050-0199 (LT) being Part Lots 18 and 19, Con 5; Part Road Allowance between Lots 18 and 19, Concession 5, as closed by By-Law 406 being Part of Part 1, 66R12477 lying north of Plan 66M1996, Save and Except Part of Lots 18 and 19, Con 5, Part 1, 66R16987; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5789 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (b) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0266 (LT) being Part Lot 20, Conc 5 Scarborough designated as Part 1, Plan 66R23210; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5811 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (c) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0263 (LT) being Part Lot 19, Conc 5 Scarborough designated as Part 1, Plan 66R23217; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5933 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (d) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0264 (LT) being Part Lot 18, Conc 5 Scarborough; Part RDAL between Lots 18 and 19, Con 5, Scarborough (Closed by By-Law 406 as in SC608215), designated as Part 2 on Plan 66R23217; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5945 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (e) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0272 (LT) being Part Lot 18, Conc 5 Scarborough, Part 3 Plan 66R23217 Save and Except Part 32, Plan 66R23655, City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5951 Steeles Avenue East, Toronto, Ontario M2M 3Y2

**FIRM CAPITAL CORPORATION**

- and -

**2811 DEVELOPMENT CORPORATION**

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
PROCEEDINGS COMMENCED AT  
TORONTO**

**ORDER**

**BORDEN LADNER GERVAIS LLP**  
Barristers and Solicitors  
40 King Street West  
Toronto, Ontario M5H 3Y4

**John D. Marshall**  
Tel: (416) 367-6024  
Fax: (416) 361-2763  
(LSUC #: 16960Q)

**Sam P. Rappos**  
Tel. (416) 367-6033  
Fax: (416) 361-7306  
(LSUC#51399S)

Solicitors for Deloitte & Touche Inc. in its  
capacity as Receiver



# APPENDIX "G"



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.  
JUSTICE MORAWETZ

)  
)  
)

WEDNESDAY THE 7<sup>th</sup> DAY  
OF DECEMBER, 2011

**IN THE MATTER OF section 101 of  
the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

**BETWEEN:**

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**INTERIM DISTRIBUTION ORDER**

**THIS MOTION**, made by DELOITTE & TOUCHE INC. in its capacity as the court-appointed receiver (the "**Receiver**") of certain of the assets, undertaking and property (the "**Assets**") of 2811 Development Corporation (the "**Debtor**"), for the relief set forth below was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the appointment order herein of the Honourable Mr. Justice C.L. Campbell dated June 29, 2011 (the "**Appointment Order**"), the Approval, Vesting and Interim Disbursement Order of the Honourable Mr. Justice Morawetz dated November 15, 2011 (the

“Vesting Order”), the Third Report of the Receiver dated November 3, 2011 (the “**Third Report**”), the Supplement to the Third Report dated November 11, 2011 (the “**Supplementary Report**”) the Fourth Report of the Receiver dated December 1, 2011 (the “**Fourth Report**”), and on hearing the submissions of counsel for the Receiver, Firm Capital Mortgage Fund Inc. (“**Firm Capital**”), Key Pendragon Enterprises Inc. (“**Key Pendragon**”), White Bear Developments Inc. (“**White Bear**”), Lombard General Insurance Company of Canada, Con-Drain Company (1983) Limited (“**Lombard**”) and Mady Contract Division Ltd., no one appearing for any other person on the service list, although properly served as appears from the affidavit of Chun Ying Wang sworn December 2, 2011, filed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record dated December 2, 2011 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 capitalized words herein shall have the meaning attributed to them in the Vesting Order, the Third Report, the Supplementary Report and the Fourth Report.

3. **THIS COURT ORDERS** that upon completion of the Transaction the Receiver is hereby authorized to distribute the following amounts from the proceeds of sale of the Assets after payment of all costs and disbursements related to the completion of the Transaction (the “**Net Sale Proceeds**”):

(a) to Firm Capital the amount of \$17,749,273.05 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the Contested Amounts referred to in subparagraph 4(a) below, and secured by Firm Capital’s first mortgage on the Assets registered as Instrument no. AT1842029 (the “**Firm Capital First Mortgage**”). plus \$5.302.90 per day from and including December 9, 2011 to the date of payment;

(b) to White Bear the amount of \$1,972,566.68 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the Contested Amounts referred to in subparagraph 4(b) below, and secured by White Bear’s second mortgage on the Assets registered

as Instrument no. AT2259133 (the "**White Bear Second Mortgage**"), plus \$ 1,080.86 per day from and including December 10, 2011 to the date of payment;

(c) to Key Pendragon the amount of \$7,401,274.40 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the Contested Amounts referred to in subparagraph 4(c) below, and secured by Key Pendragon's third mortgage on the Assets registered as Instrument no. AT1903983 (the "**Key Pendragon Third Mortgage**"). plus \$2,838.84 per day from and including December 10, 2011 to the date of payment;

(d) to Key Pendragon the amount of \$1,326,794.71 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the Contested Amounts referred to in subparagraph 4(d) below, and secured by Key Pendragon's fourth mortgage on the Assets registered as Instrument no. AT2357840 (the "**Key Pendragon Fourth Mortgage**"), plus \$436.21 per day from and including December 10, 2011 to the date of payment; and

(e) to Key Pendragon the amount of \$1,170,234.69 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the Contested Amounts referred to in subparagraph 4(e) below, and secured by Key Pendragon's fifth mortgage on the Assets registered as Instrument no. AT2449883 (the "**Key Pendragon Fifth Mortgage**"), plus \$384.73 per day from and including December 10, 2011 to the date of payment.

4. **THIS COURT ORDERS** that subject to the distributions authorized by paragraph 3 above the Receiver shall hold back from the Net Proceeds the following amounts (the "**Contested Amounts**"):

(a) with respect to the Firm Capital First Mortgage the sum of \$659,148.00 on account of a loan renewal fee and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by Firm Capital pursuant to the Firm Capital First Mortgage that are contested by Lombard.

(b) with respect to the White Bear Second Mortgage:

- (i) the sum of \$342,141.28 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by White Bear pursuant to the White Bear Second Mortgage that are contested by Lombard; and
  - (ii) the sum of \$12,500.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Lombard with respect to this proceeding, including without limitation the Contested Amounts Motion referred to in paragraph 6 below (the "**Contested Amounts Motion**").
- (c) with respect to the Key Pendragon Third Mortgage:
  - (i) the sum of \$478,690.98 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by Key Pendragon pursuant to the Key Pendragon Third Mortgage and that are contested by Lombard; and
  - (ii) the sum of \$12,500.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Lombard with respect to this proceeding, including without limitation the Contested Amounts Motion;
- (d) with respect to the Key Pendragon Fourth Mortgage:
  - (i) the sum of \$78,466.96 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by Key Pendragon pursuant to the Key Pendragon Fourth Mortgage that are contested by Lombard; and
  - (ii) the sum of \$12,500.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Lombard with respect to this proceeding, including without limitation the Contested Amounts Motion; and
- (e) with respect to the Key Pendragon Fifth Mortgage:
  - (i) the sum of \$67,390.53 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by Key Pendragon

pursuant to the Key Pendragon Fifth Mortgage that are contested by Lombard;  
and

(ii) the sum of \$12,500.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Lombard with respect to this proceeding, including without limitation the Contested Amounts Motion; and

5. ~~THIS COURT ORDERS that subject to the distributions authorized by paragraph 3 above the Receiver shall hold back from the Net Sale Proceeds the following amounts:~~

(a) the sum of \$100,000.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Firm Capital with respect to this proceeding, including without limitation the Contested Amounts Motion; and

(b) the sum of \$50,000 as a reserve for legal fees and disbursements and other costs that may be incurred by White Bear and Key Pendragon with respect to this proceeding including without limitation the Contested Amounts Motion.

6. **THIS COURT ORDERS** that the entitlement, if any, of Lombard and the mortgagees referred to in paragraph 4 above to the Contested Amounts shall be determined on a further motion (the "**Contested Amounts Motion**") to be made by any of the Receiver, Firm Capital, White Bear, Key Pendragon or Lombard on a date to be scheduled by a judge presiding over the Commercial List.

7. **THIS COURT ORDERS** that the Receiver shall hold the balance of the Net Sale Proceeds in accordance with the Appointment Order subject to further order of this court.

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

DEC 08 2011

PER/PAR:

NB



**FIRM CAPITAL CORPORATION**

- and -

**2811 DEVELOPMENT CORPORATION**

**Applicant**

**Respondent**

*ONTARIO*  
**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
**PROCEEDINGS COMMENCED AT  
TORONTO**

**INTERIM DISTRIBUTION ORDER**

**BORDEN LADNER GERVAIS LLP**  
Barristers and Solicitors  
40 King Street West  
Toronto, Ontario M5H 3Y4

**John D. Marshall**  
Tel: (416) 367-6024  
Fax: (416) 361-2763  
(LSUC#: 16960Q)

**Sam P. Rappos**  
Tel: (416) 367-6033  
Fax: (416) 361-7306  
(LSUC#51399S)

Solicitors for Deloitte & Touche Inc. in its  
capacity as Receiver

# APPENDIX "H"



**Properties**

**PIN** 06050 - 0199 LT  
**Description** PT LOTS 18 & 19, CON 5; PT ROAD ALLOWANCE BETWEEN LOTS 18 & 19 CON 5, AS CLOSED BY BY-LAW 406 BEING PT OF PT 1 66R12477 LYING NORTH OF PLAN 66M1996; SAVE & EXCEPT PT OF LOTS 18 & 19 CON 5 PT 1 66R16987...SUBJ. TO EASE. OVER PTS 1 & 2 66R17070 AS IN C981858. SCARBOROUGH, CITY OF TORONTO; S/T EASEMENT OVER PART 37 PL 66R23655 AS IN AT1787207; TORONTO; T/W EASEMENT OVER PT 35 PL 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655 AS IN AT1787250  
**Address** 5789 STEELES AVENUE EAST  
TORONTO

**PIN** 06050 - 0266 LT  
**Description** PT LT 20 CON 5 SCARBOROUGH DESIGNATED AS PT 1 PL 66R23210; SCARBOROUGH; CITY OF TORONTO  
**Address** 5811 STEELES AVENUE EAST  
TORONTO

**PIN** 06050 - 0263 LT  
**Description** PART OF LOT 19 CON 5, SCARBOROUGH, DESIGNATED AS PART 1 ON PLAN 66R-23217, CITY OF TORONTO; T/W EASEMENT OVER PT 35 PL 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655 AS IN AT1787250  
**Address** 5933 STEELES AVENUE EAST  
TORONTO

**PIN** 06050 - 0264 LT  
**Description** PART LOT 18 CON 5, SCARBOROUGH; PT RDAL BTN LOTS 18 AND 19, CON 5, SCARBOROUGH(CLOSED BY BY-LAW NO. 406 AS IN SC608215), CITY OF TORONTO, DESIGNATED AS PART 2 ON PLN 66R-23217; S/T EASEMENT OVER 38 PL 66R23655 AS IN AT1787207; TORONTO; T/W EASEMENT OVER PT 35 PL 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655  
**Address** 5945 STEELES AVENUE EAST  
TORONTO

**PIN** 06050 - 0272 LT  
**Description** PT LOT 18 CON. 5 SCARBOROUGH, PT 3 PL 66R23217 SAVE AND EXCEPT PT 32 PL 66R23655; CITY OF TORONTO; S/T EASEMENT OVER PT 36 66R23655 AS IN AT1787207; T/W ROW OVER PT 32 66R23655 AS IN AT1787644; T/W EASEMENT OVER PT 35 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655 AS IN AT1787250  
**Address** 5951 STEELES AVENUE EAST  
TORONTO

**Consideration**

**Consideration** \$ 42,500,000.00

**Party From(s)**

**Name** ONTARIO SUPERIOR COURT OF JUSTICE  
**Address for Service** 330 University Avenue  
Toronto, Ontario

**Owner(s)****Capacity****Share**

**Name** MADY STEELES 2011 LTD.  
**Address for Service** 8791 Woodbine Avenue  
Suite 100  
Markham ON L3R 0P4

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 45

**Statements**

The applicant who is authorized by court order file no. CV-11-9242-00CL dated 2011/11/15, which is still in full force and effect, applies to have the register amended as follows: The Court orders that the Land Registrar is hereby directed to amend the parcel abstracts to vest all the right, title and interest of 2811 Development Corporation in Mady Steeles 2011 Ltd. free and clear of the encumbrances as set out in the Order dated November 15, 2011, as amended by an Order dated December 5, 2011, further particulars of which are set out in Schedule "C" to the November 15, 2011 Order, and free and clear of Execution No. 11-0008602 filed with the Sheriff, City of Toronto on August 8, 2011, all of which Orders and the Receiver's Certificate are attached in Statement 61.

Schedule: See Schedules

This document relates to registration no.(s)AT2755074

**Signed By**

Peggy Marie Spadafora	2600-120 Adelaide St. West Toronto M5H 1T1	acting for Owner(s)	Signed	2011 12 15
Tel	4168681080			
Fax	4168680306			

I have the authority to sign and register the document on behalf of the Owners(s).

**Submitted By**

ROBINS, APPLEBY & TAUB LLP	2600-120 Adelaide St. West Toronto M5H 1T1	2011 12 15
Tel	4168681080	
Fax	4168680306	

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Provincial Land Transfer Tax	\$635,975.00
Municipal Land Transfer Tax	\$622,725.00
Total Paid	\$1,258,760.00

**PROVINCIAL AND MUNICIPAL LAND TRANSFER TAX STATEMENTS**

In the matter of the conveyance of: 06050 - 0199 PT LOTS 18 & 19, CON 5; PT ROAD ALLOWANCE BETWEEN LOTS 18 & 19 CON 5, AS CLOSED BY BY-LAW 406 BEING PT OF PT 1 66R12477 LYING NORTH OF PLAN 66M1996; SAVE & EXCEPT PT OF LOTS 18 & 19 CON 5 PT 1 66R16987...SUBJ. TO EASE. OVER PTS 1 & 2 66R17070 AS IN C981858. SCARBOROUGH, CITY OF TORONTO; S/T EASEMENT OVER PART 37 PL 66R23655 AS IN AT1787207; TORONTO; T/W EASEMENT OVER PT 35 PL 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655 AS IN AT1787250

06050 - 0266 PT LT 20 CON 5 SCARBOROUGH DESIGNATED AS PT 1 PL 66R23210; SCARBOROUGH; CITY OF TORONTO

06050 - 0263 PART OF LOT 19 CON 5, SCARBOROUGH, DESIGNATED AS PART 1 ON PLAN 66R-23217, CITY OF TORONTO; T/W EASEMENT OVER PT 35 PL 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655 AS IN AT1787250

06050 - 0264 PART LOT 18 CON 5, SCARBOROUGH; PT RDAL BTN LOTS 18 AND 19, CON 5, SCARBOROUGH(CLOSED BY BY-LAW NO. 406 AS IN SC608215), CITY OF TORONTO, DESIGNATED AS PART 2 ON PLN 66R-23217; S/T EASEMENT OVER 38 PL 66R23655 AS IN AT1787207; TORONTO; T/W EASEMENT OVER PT 35 PL 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655

06050 - 0272 PT LOT 18 CON. 5 SCARBOROUGH, PT 3 PL 66R23217 SAVE AND EXCEPT PT 32 PL 66R23655; CITY OF TORONTO; S/T EASEMENT OVER PT 36 66R23655 AS IN AT1787207; T/W ROW OVER PT 32 66R23655 AS IN AT1787644; T/W EASEMENT OVER PT 35 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655 AS IN AT1787250

BY: ONTARIO SUPERIOR COURT OF JUSTICE

TO: MADY STEELES 2011 LTD.

%(all PINs)

1. CHARLES MADY

I am

- (a) A person in trust for whom the land conveyed in the above-described conveyance is being conveyed;
- (b) A trustee named in the above-described conveyance to whom the land is being conveyed;
- (c) A transferee named in the above-described conveyance;
- (d) The authorized agent or solicitor acting in this transaction for \_\_\_\_ described in paragraph(s) ( ) above.
- (e) The President, Vice-President, Manager, Secretary, Director, or Treasurer authorized to act for MADY STEELES 2011 LTD. described in paragraph(s) (c) above.
- (f) A transferee described in paragraph ( ) and am making these statements on my own behalf and on behalf of \_\_\_\_ who is my spouse described in paragraph ( ) and as such, I have personal knowledge of the facts herein deposited to.

2. I have read and considered the definition of "single family residence" set out in subsection 1(1) of the Act. The land being conveyed herein:

does not contain a single family residence or contains more than two single family residences.

3. The total consideration for this transaction is allocated as follows:

(a) Monies paid or to be paid in cash	42,500,000.00
(b) Mortgages (i) assumed (show principal and interest to be credited against purchase price)	0.00
(i) Given Back to Vendor	0.00
(c) Property transferred in exchange (detail below)	0.00
(d) Fair market value of the land(s)	0.00
(e) Liens, legacies, annuities and maintenance charges to which transfer is subject	0.00
(f) Other valuable consideration subject to land transfer tax (detail below)	0.00
(g) Value of land, building, fixtures and goodwill subject to land transfer tax (total of (a) to (f))	42,500,000.00
(h) VALUE OF ALL CHATTELS - items of tangible personal property	0.00
(i) Other considerations for transaction not included in (g) or (h) above	0.00
(j) Total consideration	42,500,000.00

PROPERTY Information Record

A. Nature of Instrument: Application For Vesting Order

LRO 80 Registration No. AT2897037 Date: 2011/12/15

B. Property(s):

PIN 06050 - 0199	Address 5789 STEELES AVENUE EAST TORONTO	Assessment Roll No -
PIN 06050 - 0266	Address 5811 STEELES AVENUE EAST TORONTO	Assessment Roll No -
PIN 06050 - 0263	Address 5933 STEELES AVENUE EAST TORONTO	Assessment Roll No -
PIN 06050 - 0264	Address 5945 STEELES AVENUE EAST TORONTO	Assessment Roll No -



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

**BETWEEN:**

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of The Honourable Mr. Justice C. Campbell of the Ontario Superior Court of Justice (the "Court") dated June 29, 2011, Deloitte & Touche Inc. was appointed as the receiver (the "Receiver") of certain of the undertaking, property and assets of 2811 Development Corporation (the "Debtor") as described in the said order.

B. Pursuant to an Order of the Court dated November 15, 2011, as amended by an Order dated December 5, 2011, the Court approved the agreement of purchase and sale made as of October 3, 2011 (the "Mady Agreement") between the Receiver and Mady Development Corporation and provided for the vesting in Mady Steeles 2011 Ltd. (the "Purchaser") of the Debtor's right, title and interest in and to the Assets as defined in the Mady Agreement, which vesting is to be effective with respect to the Assets upon the delivery by the Receiver to the

Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in section 4 of the Mady Agreement have been satisfied or waived by the Receiver and the Purchaser; 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 Mady Agreement.

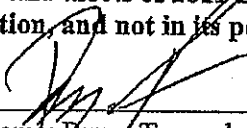
THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Assets payable on the Closing Date pursuant to the Mady Agreement;
2. The conditions to Closing as set out in section 4 of the Mady Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at 10:37 A.M. on December 15, 2011.

**SIGNATURE ON NEXT PAGE**

**DELOITTE & TOUCHE INC., in its capacity  
as Receiver of certain of the undertakings,  
property and assets of 2811 Development  
Corporation, and not in its personal capacity**

Per:

  
Name: Bryan Tannenbaum

Title: Senior Vice-President

I have authority to bind the Corporation

**FIRM CAPITAL CORPORATION**

- and -

**2811 DEVELOPMENT CORPORATION**

Applicant

Respondent

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
PROCEEDINGS COMMENCED AT  
TORONTO**

**RECEIVER'S CERTIFICATE**

**BORDEN LADNER GERVAIS LLP**  
Barristers and Solicitors  
40 King Street West  
Toronto, Ontario M5H 3Y4

**John D. Marshall**  
Tel: (416) 367-6024  
Fax: (416) 361-2763  
(LSUC #: 169600)

**Sam P. Rappos**  
Tel: (416) 367-6033  
Fax: (416) 361-7306  
(LSUC#51399S)

Solicitors for Deloitte & Touche Inc in its  
capacity as Receiver



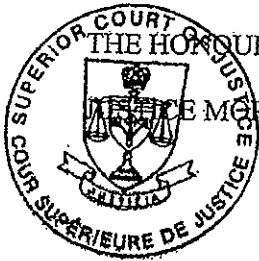
**CANADA  
PROVINCE OF ONTARIO  
CITY OF TORONTO**

I, John D. Marshall, a notary public in and for the Province of Ontario, duly appointed, commissioned and sworn and practising at 40 King St. W., Toronto, CERTIFY that the paper annexed is a true copy of a document produced and shown to me and being the Approval, Vesting and Interim Disbursement Order of the Honourable Mr. Justice Morawetz dated November 15, 2011 in Ontario Superior Court of Justice action no. CV-11-9242-00CL, the copy having been compared by me with the original document, an act which, having been requested, I have granted under my notarial form and seal of office to serve as shall be required.

IN TESTIMONY OF WHICH I have subscribed my name and affixed my notarial seal at the City of Toronto this 15<sup>th</sup> day of December, 2011.

  
\_\_\_\_\_  
John D. Marshall

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST



THE HONOURABLE MR.  
JUSTICE MCGRAWETZ

)  
)  
)

TUESDAY THE 15<sup>th</sup> DAY  
OF NOVEMBER, 2011

IN THE MATTER OF section 101 of  
the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

APPROVAL, VESTING and INTERIM DISBURSEMENT  
ORDER

**THIS MOTION**, made by DELOITTE & TOUCHE INC. in its capacity as the Court-appointed receiver (the "**Receiver**") of certain of the assets, undertaking and property of 2811 Development Corporation (the "**Debtor**"), for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Mady Agreement**") between the Receiver and Mady Development Corporation (the "**Purchaser**") dated as of October 3, 2011 and attached in redacted form as Appendix "X" to the Third Report of the Receiver dated November 3, 2011 (the "**Third Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the Assets, as such term is defined in the Mady Agreement (the "**Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Third Report and the appendices attached thereto, including the affidavit of Bryan Tannenbaum sworn on November 2, 2011 (the "**Tannenbaum Fee Affidavit**"), the affidavit of Grant Moffat sworn on October 28, 2011 (the "**Moffat Fee Affidavit**"), the affidavit of Joseph Fried sworn on November 2, 2011 (the "**Fried Fee Affidavit**") and the affidavit of Sam P. Rappos sworn on November 2, 2011 (the "**Rappos Fee Affidavit**"), and the Supplement to the Third Report of the Receiver dated November 11, 2011 (the "**Supplementary Report**") and the appendices attached thereto, and on hearing the submissions of counsel for the Receiver, the Debtor, the Purchaser, Key Pendragon Enterprises Inc., White Bear Developments Inc., Lombard General Insurance Company of Canada, Con-Drain Company (1983) Limited, Mady Contract Division Ltd. and Terracap Investments Inc., no one appearing for any other person on the service list, although properly served as appears from the affidavit of Marie Pacheco sworn November 4, 2011, filed,

#### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Amended Notice of Motion, the Motion Record dated November 3, 2011 and the Supplementary Motion Record dated November 11, 2011 is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

#### **APPROVAL AND VESTING**

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Mady 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 Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Assets described in the Mady Agreement and listed on Schedule "B" hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual,

statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Mr. Justice C. Campbell dated June 29, 2011; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Land Titles Act* (Ontario) or any other personal or real property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the assumed encumbrances listed on Schedule "D" hereto) and (iv) any other Claims registered or arising between November 13, 2011 and the registration of this Order (the "Additional Encumbrances") and, for greater certainty, this Court orders that all of the Encumbrances and Additional Encumbrances affecting or relating to the Assets are hereby expunged and discharged as against the Assets.

4. **THIS COURT ORDERS** that upon the registration in the Toronto Land Titles Office (No. 80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule "C" hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the 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 Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the 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.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

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 Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

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

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

#### **APPROVAL OF FEES AND ACTIVITIES**

10. **THIS COURT ORDERS** that the First Report of the Receiver dated July 15, 2011, the Second Report of the Receiver dated July 21, 2011, the Supplement to the Second Report of the Receiver dated July 29, 2011, the Third Report of the Receiver dated November 3, 2011 and the Supplement to the Third Report dated November 11, 2011, and the activities of the Receiver described therein, be and are hereby approved.

11. **THIS COURT ORDERS** that the fees and the disbursements of the Receiver referred to in the Third Report, including its legal fees and disbursements, as set forth in the Tannenbaum Fee Affidavit, the Moffat Fee Affidavit, the Fried Fee Affidavit and the Rappos Fee Affidavit, are hereby approved.

#### **DISBURSEMENTS**

12. **THIS COURT ORDERS** that upon completion of the Transaction the Receiver is hereby authorized to disburse from the proceeds of sale of the Assets the full amount of the Receiver's fees and disbursements, including its legal fees and disbursements, as approved herein and described in greater detail in the Third Report. The Receiver shall continue to hold the balance of the sale proceeds pending further order of this court.

#### **SEALING**

13. **THIS COURT ORDERS** that the Confidential Information Memorandum, the Template Sale Agreement, the Cushman appraisal, the summary of the offers received and the unredacted version of the Mady Agreement, delivered to the Court as Confidential Appendices "R", "T", "U", "V" and "W" respectively to the Third Report, be and are hereby sealed until the filing with the Court of the Receiver's Certificate, or upon further order of the Court.

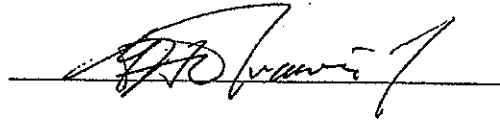
#### **NOTICE TO THE UNIT PURCHASERS**

14. **THIS COURT ORDERS** that the Receiver is directed, following the filing of the Receiver's Certificate with the Court as provided for in paragraph 6 hereof, to forthwith send a letter substantially in the form attached as Appendix "A" to the Supplementary Report to each of the Unit Purchasers (as such term is defined in the Third Report) at the last known addresses of the Unit Purchasers according to the books and records of the Debtor.

#### **AID AND RECOGNITION**

15. **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.

A handwritten signature in black ink, appearing to be "J. D. [unclear]", written over a horizontal line.

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

NOV 15 2011

PER/PAR: Handwritten initials, possibly "JD", written in black ink.

**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-11-9242-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF section 101 of the  
*Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

**BETWEEN:**

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of The Honourable Mr. Justice C. Campbell of the Ontario Superior Court of Justice (the "Court") dated June 29, 2011, Deloitte & Touche Inc. was appointed as the receiver (the "Receiver") of certain of the undertaking, property and assets of 2811 Development Corporation (the "Debtor") as described in the said order.

B. Pursuant to an Order of the Court dated November 15, 2011, the Court approved the agreement of purchase and sale made as of October 3, 2011 (the "Mady Agreement") between the Receiver and Mady Development Corporation (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Assets as defined in the Mady Agreement, which vesting is to be effective with respect to the Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the



Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in section 4 of the Mady Agreement have been satisfied or waived by the Receiver and the Purchaser; 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 Mady Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Assets payable on the Closing Date pursuant to the Mady Agreement;
2. The conditions to Closing as set out in section 4 of the Mady Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**DELOITTE & TOUCHE INC., in its capacity  
as Receiver of certain of the undertakings,  
property and assets of 2811 Development  
Corporation, and not in its personal capacity**

Per: \_\_\_\_\_  
Name:  
Title:

## Schedule B – Assets

### The Lands

- (a) The right, title and interest of the Debtor in the real property described as PIN No.06050-0199 (LT) being Part Lots 18 and 19, Con 5; Part Road Allowance between Lots 18 and 19, Concession 5, as closed by By-Law 406 being Part of Part 1, 66R12477 lying north of Plan 66M1996, Save and Except Part of Lots 18 and 19, Con 5, Part 1, 66R16987; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5789 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (b) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0266 (LT) being Part Lot 20, Conc 5 Scarborough designated as Part 1, Plan 66R23210; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5811 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (c) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0263 (LT) being Part Lot 19, Conc 5 Scarborough designated as Part 1, Plan 66R23217; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5933 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (d) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0264 (LT) being Part Lot 18, Conc 5 Scarborough; Part RDAL between Lots 18 and 19, Con 5, Scarborough (Closed by By-Law 406 as in SC608215), designated as Part 2 on Plan 66R23217; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5945 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (e) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0272 (LT) being Part Lot 18, Conc 5 Scarborough, Part 3 Plan 66R23217 Save and Except Part 32, Plan 66R23655; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5951 Steeles Avenue East, Toronto, Ontario M2M 3Y2

### The Plans

**Schedule C – Claims to be deleted and expunged from title to Real Property**

**(a) Instruments to be deleted from PIN No. 06050-0199 (LT)**

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
AT974288	2005/11/09	Charge	\$75,000,000	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1085822	2006/03/14	Charge	\$750,000	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1187188	2006/06/30	Charge	\$1,560,127	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1787210	2008/05/26	Postponement (AT974288 to AT1787207)		Lombard General Insurance Company of Canada	Markham Steeles Realty Inc.
AT1787211	2008/05/26	Postponement (AT1085822 to AT1787207)		Lombard General Insurance Company of Canada	Markham Steeles Realty Inc.
AT1787212	2008/05/26	Postponement (AT1187188 to AT1787207)		Lombard General Insurance Company of Canada	Markham Steeles Realty Inc.
AT1842029	2008/07/23	Charge	\$17,500,000	2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842030	2008/07/23	No Assgn Rent Gen		2811 Development Corporation	Firm Capital Mortgage Fund Inc.

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
AT1842143	2008/07/23	Postponement (AT974288 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1842144	2008/07/23	Postponement (AT1085822 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1842145	2008/07/23	Postponement (AT1187188 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1903983	2008/09/23	Charge	\$5,500,000	2811 Development Corporation	Relmi Financial Corp.
AT1904325	2008/09/23	Postponement (AT974288 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT1904326	2008/09/23	Postponement (AT1085822 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT1904327	2008/09/23	Postponement (AT1187188 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT2098876	2009/06/19	Apl. Court Order		Ontario Superior Court of Justice	Terracap Investments Inc.
AT2205071	2009/10/16	Transfer of Charge		Relmi Financial Corp.	Key Pendragon

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
					Enterprises Inc.
AT2205083	2009/10/16	Notice (Re AT1903983)		Key Pendragon Enterprises Inc.	2811 Development Corporation
AT2205105	2009/10/16	Postponement (AT974288 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2205106	2009/10/16	Postponement (AT1085822 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2205107	2009/10/16	Postponement (AT1187188 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2259133	2009/12/16	Charge	\$1,500,000	2811 Development Corporation	Vector Financial Services Limited
AT2259134	2009/12/16	No Assign Rent Gen		2811 Development Corporation	Vector Financial Services Limited
AT2259190	2009/12/16	Postponement (AT974288 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259191	2009/12/16	Postponement (AT974288 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259192	2009/12/16	Postponement (AT1085822 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
AT2259193	2009/12/16	Postponement (AT1085822 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259194	2009/12/16	Postponement (AT1187188 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259195	2009/12/16	Postponement (AT1187188 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259196	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259133)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2259197	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259134)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2357840	2010/04/22	Charge	\$1,100,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2449883	2010/07/19	Charge	\$1,000,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2457585	2010/07/26	Postponement (AT974288 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457586	2010/07/26	Postponement (AT1085822 to		Lombard General Insurance Company of	Key Pendragon Enterprises Inc.

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
		AT2357840)		Canada	
AT2457587	2010/07/26	Postponement (AT1187188 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457588	2010/07/26	Postponement (AT1187188 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457589	2010/07/26	Postponement (AT1085822 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457590	2010/07/26	Postponement (AT974288 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2561525	2010/11/26	Charge	\$1,500,000	2811 Development Corporation	Con-Drain Company (1983) Limited
AT2565586	2010/11/30	Transfer of Charge		Vector Financial Services Limited	White Bear Developments Inc.
AT2565587	2010/11/30	No Assgn Rent Gen		Vector Financial Services Limited	White Bear Developments Inc.
AT2665134	2011/04/13	Construction Lien	\$386,190	Mady Contract Division Ltd.	
AT2742192	2011/07/05	Certificate (Re AT2665134)		Mady Contract Division Ltd.	The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd.

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
					Con Drain Company (1983) Limited White Bear Developments Inc.
AT2755074	2011/07/05	App. Court Order		Ontario Superior Court of Justice (Commercial List)	Firm Capital Mortgage Fund Inc.
AT2864312	2011/11/08	Application to Change Name		Vector Financial Services Limited	Vector Financial Services Limited

(b) Instruments to be deleted from PIN No. 06050-00266 (LT)

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
AT969273	2005/11/02	Apl. Change Name Owner		1610607 Ontario Inc.	2811 Development Corporation
AT974288	2005/11/09	Charge	\$75,000,000	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1085822	2006/03/14	Charge	\$750,000	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1187188	2006/06/30	Charge	\$1,560,127	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1842029	2008/07/23	Charge	\$17,500,000	2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842030	2008/07/23	No Assgn Rent Gen		2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842143	2008/07/23	Postponement		Lombard General	Firm Capital Mortgage



		(AT974288 to AT1842029 & AT1842030)		Insurance Company of Canada	Fund Inc.
AT1842144	2008/07/23	Postponement (AT1085822 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1842145	2008/07/23	Postponement (AT1187188 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1903983	2008/09/23	Charge	\$5,500,000	2811 Development Corporation	Relmi Financial Corp.
AT1904325	2008/09/23	Postponement (AT974288 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT1904326	2008/09/23	Postponement (AT1085822 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT1904327	2008/09/23	Postponement (AT1187188 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT2205071	2009/10/16	Transfer of Charge		Relmi Financial Corp.	Key Pendragon Enterprises Inc.
AT2205083	2009/10/16	Notice (Re AT1903983)		Key Pendragon Enterprises Inc.	2811 Development Corporation

AT2205105	2009/10/16	Postponement (AT974288 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2205106	2009/10/16	Postponement (AT1085822 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2205107	2009/10/16	Postponement (AT1187188 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2259133	2009/12/16	Charge	\$1,500,000	2811 Development Corporation	Vector Financial Services Limited
AT2259134	2009/12/16	No Assign Rent Gen		2811 Development Corporation	Vector Financial Services Limited
AT2259190	2009/12/16	Postponement (AT974288 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259191	2009/12/16	Postponement (AT974288 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259192	2009/12/16	Postponement (AT1085822 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259193	2009/12/16	Postponement (AT1085822 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259194	2009/12/16	Postponement (AT1187188 to		Lombard General Insurance Company of	Vector Financial Services Limited

		AT2259133)		Canada	
AT2259195	2009/12/16	Postponement (AT1187188 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259196	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259133)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2259197	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259134)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2357840	2010/04/22	Charge	\$1,100,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2449883	2010/07/19	Charge	\$1,000,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2457585	2010/07/26	Postponement (AT974288 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457586	2010/07/26	Postponement (AT1085822 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457587	2010/07/26	Postponement (AT1187188 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457588	2010/07/26	Postponement (AT1187188 to		Lombard General Insurance Company of	Key Pendragon Enterprises Inc.

		AT2449883)		Canada	
AT2457589	2010/07/26	Postponement (AT1085822 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457590	2010/07/26	Postponement (AT974288 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2561525	2010/11/26	Charge	\$1,500,000	2811 Development Corporation	Con-Drain Company (1983) Limited
AT2565586	2010/11/30	Transfer of Charge		Vector Financial Services Limited	White Bear Developments Inc.
AT2565587	2010/11/30	No Assgn Rent Gen		Vector Financial Services Limited	White Bear Developments Inc.
AT2665134	2011/04/13	Construction Lien	\$386,190	Mady Contract Division Ltd.	
AT2742192	2011/07/05	Certificate (Re AT2665134)		Mady Contract Division Ltd.	The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. Con Drain Company (1983) Limited White Bear Developments Inc.
AT2755074	2011/07/05	App. Court Order		Ontario Superior Court of Justice (Commercial List)	Firm Capital Mortgage Fund Inc.
AT2864312	2011/11/08	Application to Change Name		Vector Financial Services Limited	Vector Financial Services Limited

(c) Instruments to be deleted from PIN No. 06050-00263 (LT)

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
AT1187188	2006/06/30	Charge	\$1,560,127	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1842029	2008/07/23	Charge	\$17,500,000	2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842030	2008/07/23	No Assgn Rent Gen		2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842145	2008/07/23	Postponement (AT1187188 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1903983	2008/09/23	Charge	\$5,500,000	2811 Development Corporation	Relmi Financial Corp.
AT1904327	2008/09/23	Postponement (AT1187188 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT2205071	2009/10/16	Transfer of Charge		Relmi Financial Corp.	Key Pendragon Enterprises Inc.
AT2205083	2009/10/16	Notice (Re AT1903983)		Key Pendragon Enterprises Inc.	2811 Development Corporation
AT2205107	2009/10/16	Postponement (AT1187188 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.

AT2259133	2009/12/16	Charge	\$1,500,000	2811 Development Corporation	Vector Financial Services Limited
AT2259134	2009/12/16	No Assign Rent Gen		2811 Development Corporation	Vector Financial Services Limited
AT2259194	2009/12/16	Postponement (AT1187188 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259195	2009/12/16	Postponement (AT1187188 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259196	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259133)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2259197	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259134)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2357840	2010/04/22	Charge	\$1,100,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2449883	2010/07/19	Charge	\$1,000,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2457587	2010/07/26	Postponement (AT1187188 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457588	2010/07/26	Postponement		Lombard General	Key Pendragon

		(AT1187188 to AT2449883)		Insurance Company of Canada	Enterprises Inc.
AT2561525	2010/11/26	Charge	\$1,500,000	2811 Development Corporation	Con-Drain Company (1983) Limited
AT2565586	2010/11/30	Transfer of Charge		Vector Financial Services Limited	White Bear Developments Inc.
AT2565587	2010/11/30	No Assgn Rent Gen		Vector Financial Services Limited	White Bear Developments Inc.
AT2665134	2011/04/13	Construction Lien	\$386,190	Mady Contract Division Ltd.	
AT2742192	2011/07/05	Certificate (Re AT2665134)		Mady Contract Division Ltd.	The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. Con Drain Company (1983) Limited White Bear Developments Inc.
AT2755074	2011/07/05	App. Court Order		Ontario Superior Court of Justice (Commercial List)	Firm Capital Mortgage Fund Inc.
AT2864312	2011/11/08	Application to Change Name		Vector Financial Services Limited	Vector Financial Services Limited

(d) Instruments to be deleted from PIN No. 06050-0264 (LT)

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
AT1085822	2006/03/14	Charge	\$750,000	2811 Development Corporation	Lombard General Insurance Company of Canada

AT1187188	2006/06/30	Charge	\$1,560,127	2811 Development Corporation	Lombard General Insurance Company of Canada
AT1787211	2008/05/26	Postponement (AT1085822 to AT1787207)		Lombard General Insurance Company of Canada	Markham Steeles Realty Inc.
AT1787212	2008/05/26	Postponement (AT1187188 to AT1787207)		Lombard General Insurance Company of Canada	Markham Steeles Realty Inc.
AT1842029	2008/07/23	Charge	\$17,500,000	2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842030	2008/07/23	No Assgn Rent Gen		2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842144	2008/07/23	Postponement (AT1085822 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1842145	2008/07/23	Postponement (AT1187188 to AT1842029 & AT1842030)		Lombard General Insurance Company of Canada	Firm Capital Mortgage Fund Inc.
AT1903983	2008/09/23	Charge	\$5,500,000	2811 Development Corporation	Relmi Financial Corp.
AT1904326	2008/09/23	Postponement (AT1085822 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.



AT1904327	2008/09/23	Postponement (AT1187188 to AT1903983)		Lombard General Insurance Company of Canada	Relmi Financial Corp.
AT2205071	2009/10/16	Transfer of Charge		Relmi Financial Corp.	Key Pendragon Enterprises Inc.
AT2205083	2009/10/16	Notice (Re AT1903983)		Key Pendragon Enterprises Inc.	2811 Development Corporation
AT2205106	2009/10/16	Postponement (AT1085822 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2205107	2009/10/16	Postponement (AT1187188 to AT2205083)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2259133	2009/12/16	Charge	\$1,500,000	2811 Development Corporation	Vector Financial Services Limited
AT2259134	2009/12/16	No Assign Rent Gen		2811 Development Corporation	Vector Financial Services Limited
AT2259192	2009/12/16	Postponement (AT1085822 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259193	2009/12/16	Postponement (AT1085822 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259194	2009/12/16	Postponement (AT1187188 to AT2259133)		Lombard General Insurance Company of Canada	Vector Financial Services Limited

AT2259195	2009/12/16	Postponement (AT1187188 to AT2259134)		Lombard General Insurance Company of Canada	Vector Financial Services Limited
AT2259196	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259133)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2259197	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259134)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2357840	2010/04/22	Charge	\$1,100,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2449883	2010/07/19	Charge	\$1,000,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2457586	2010/07/26	Postponement (AT1085822 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457587	2010/07/26	Postponement (AT1187188 to AT2357840)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457588	2010/07/26	Postponement (AT1187188 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.
AT2457589	2010/07/26	Postponement (AT1085822 to AT2449883)		Lombard General Insurance Company of Canada	Key Pendragon Enterprises Inc.

AT2561525	2010/11/26	Charge	\$1,500,000	2811 Development Corporation	Con-Drain Company (1983) Limited
AT2565586	2010/11/30	Transfer of Charge		Vector Financial Services Limited	White Bear Developments Inc.
AT2565587	2010/11/30	No Assgn Rent Gen		Vector Financial Services Limited	White Bear Developments Inc.
AT2665134	2011/04/13	Construction Lien	\$386,190	Mady Contract Division Ltd.	
AT2742192	2011/07/05	Certificate (Re AT2665134)		Mady Contract Division Ltd.	The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. Con Drain Company (1983) Limited White Bear Developments Inc.
AT2755074	2011/07/05	App. Court Order		Ontario Superior Court of Justice (Commercial List)	Firm Capital Mortgage Fund Inc.
AT2864312	2011/11/08	Application to Change Name		Vector Financial Services Limited	Vector Financial Services Limited

(e) Instruments deleted from PIN No. 06050-0272 (LT)

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
AT1842029	2008/07/23	Charge	\$17,500,000	2811 Development Corporation	Firm Capital Mortgage Fund Inc.
AT1842030	2008/07/23	No Assgn Rent Gen		2811 Development Corporation	Firm Capital Mortgage Fund Inc.

AT1903983	2008/09/23	Charge	\$5,500,000	2811 Development Corporation	Relmi Financial Corp.
AT2205071	2009/10/16	Transfer of Charge		Relmi Financial Corp.	Key Pendragon Enterprises Inc.
AT2205083	2009/10/16	Notice (Re AT1903983)		Key Pendragon Enterprises Inc.	2811 Development Corporation
AT2259133	2009/12/16	Charge	\$1,500,000	2811 Development Corporation	Vector Financial Services Limited
AT2259134	2009/12/16	No Assign Rent Gen		2811 Development Corporation	Vector Financial Services Limited
AT2259196	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259133)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2259197	2009/12/16	Postponement (AT1903983 & AT2205071 to AT2259134)		Key Pendragon Enterprises Inc.	Vector Financial Services Limited
AT2357840	2010/04/22	Charge	\$1,100,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2449883	2010/07/19	Charge	\$1,000,000	2811 Development Corporation	Key Pendragon Enterprises Inc.
AT2561525	2010/11/26	Charge	\$1,500,000	2811 Development Corporation	Con-Drain Company (1983) Limited

AT2565586	2010/11/30	Transfer of Charge		Vector Financial Services Limited	White Bear Developments Inc.
AT2565587	2010/11/30	No Assgn Rent Gen		Vector Financial Services Limited	White Bear Developments Inc.
AT2665134	2011/04/13	Construction Lien	\$386,190	Mady Contract Division Ltd.	
AT2742192	2011/07/05	Certificate (Re AT2665134)		Mady Contract Division Ltd.	The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. Con Drain Company (1983) Limited White Bear Developments Inc.
AT2755074	2011/07/05	App. Court Order		Ontario Superior Court of Justice (Commercial List)	Firm Capital Mortgage Fund Inc.
AT2864312	2011/11/08	Application to Change Name		Vector Financial Services Limited	Vector Financial Services Limited

**Schedule D – Assumed Encumbrances related to the Real Property  
(unaffected by the Vesting Order)**

1. Unregistered Subsection 37(1) of the *Planning Act*, R.S.O. 1990, c.P.13 Agreement between 2811 Development Corporation and the City of Toronto dated the 26<sup>th</sup> day of July 2007.
2. Unregistered Amending Agreement between 2811 Development Corporation and the City of Toronto dated the 18<sup>th</sup> day of September 2008 amending certain provisions of the Subsection 37(1) agreement dated July 26<sup>th</sup>, 2007.
3. The following instruments registered on title against the Lands:

(a) **Permitted Encumbrances for PIN No. 06050-0199 (LT)**

Reg. Num.	Date	Instrument Type	Parties From	Parties To
66R17070	1995/09/15	Plan Reference		
C981858	1995/12/12	Transfer Easement	The Treewood Development Corporation	The Municipality of Metropolitan Toronto
AT1371078	2007/02/05	Notice	City of Toronto	2811 Development Corporation Markham Steeles Realty Inc. Steeles Markham Developments Limited Bradgate Investments Limited Runnymede Development Corporation Limited Tapscott Industrial Landowners Group Inc.
66R23193	2007/07/18	Plan Reference		
66R23655	2008/04/10	Plan Reference		

Reg. Num.	Date	Instrument Type	Parties From	Parties To
AT1787207	2008/05/26	Transfer Easement	2811 Development Corporation	Markham Steeles Realty Inc.
AT1787250	2008/05/26	Transfer Easement	Markham Steeles Realty Inc.	2811 Development Corporation
66R25114	2010/09/22	Plan Reference		
AT2616576	2011/02/07	Notice (Cost sharing Agreement re shared roadway)	Markham Steeles Realty Inc.	2811 Development Corporation

(b) Permitted Encumbrances for PIN No. 06050-0266 (LT)

Reg. Num.	Date	Instrument Type	Parties From	Parties To
AT496819	2004/05/28	Notice (Easement relating to development of land)	Norstar Commercial Developments Inc. Gawler Holdings Limited	
66R23210	2007/07/25	Plan Reference		
AT1517543	2007/07/25	Apl. Absolute Title	2811 Development Corporation	2811 Development Corporation

(c) Permitted Encumbrances for PIN No. 06050-0263 (LT)

Reg. Num.	Date	Instrument Type	Parties From	Parties To
AT1394850	2007/03/09	Bylaw	City of Toronto	
66R23217	2007/07/27	Plan Reference		

Reg. Num.	Date	Instrument Type	Parties From	Parties To
AT1520329	2007/07/27	Apl. Absolute Title	2811 Development Corporation	2811 Development Corporation
AT2616576	2011/02/07	Notice (Cost sharing Agreement re shared roadway)	Markham Steeles Realty Inc.	2811 Development Corporation

(d) Permitted Encumbrances for PIN No. 06050-0264 (LT)

Reg. Num.	Date	Instrument Type	Parties From	Parties To
66R23217	2007/07/27	Plan Reference		
AT1520329	2007/07/27	Apl. Absolute Title	2811 Development Corporation	2811 Development Corporation
66R23655	2008/04/10	Plan Reference		
AT1787207	2008/05/26	Transfer Easement	2811 Development Corporation	Markham Steeles Realty Inc.
66R25114	2010/09/22	Plan Reference		
AT2616576	2011/02/07	Notice (Cost sharing Agreement re shared roadway)	Markham Steeles Realty Inc.	2811 Development Corporation

(e) Permitted Encumbrances for PIN No. 06050-0272 (LT)

Reg. Num.	Date	Instrument Type	Parties From	Parties To
AT1309249	2006/11/17	Bylaw	City of Toronto	
66R23217	2007/07/27	Plan Reference		



Reg. Num.	Date	Instrument Type	Parties From	Parties To
AT1520329	2007/07/27	Apl. Absolute Title	2811 Development Corporation	2811 Development Corporation
66R23655	2008/04/10	Plan Reference		
AT1787207	2008/05/26	Transfer Easement	2811 Development Corporation	Markham Steeles Realty Inc.
AT1837423	2008/07/18	Land. Reg. Order (Correction of typographical error)	Land Registrar	
66R25114	2010/09/22	Plan Reference		

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

Court File No. CV-11-9242-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**COMMERCIAL LIST**

**PROCEEDINGS COMMENCED AT TORONTO**

**APPROVAL, VESTING and DISBURSEMENT  
ORDER**

**BORDEN LADNER GERVAIS LLP**

Barristers and Solicitors

Scotia Plaza

40 King Street West

Toronto, Ontario

M5H 3Y4

**John Marshall**

Tel: (416) 367-6024

Fax: (416) 361-2763

(LSUC #169600)

Lawyers for the Receiver, Deloitte & Touche Inc.

TOR01: 4739087: v2

**CANADA  
PROVINCE OF ONTARIO  
CITY OF TORONTO**

I, John D. Marshall, a notary public in and for the Province of Ontario, duly appointed, commissioned and sworn and practising at 40 King St. W., Toronto, CERTIFY that the paper annexed is a true copy of a document produced and shown to me and being the Order of the Honourable Mr. Justice Morawetz dated December 5, 2011 Amending the Approval, Vesting and Interim Disbursement Order of the Honourable Mr. Justice Morawetz dated November 15, 2011 in Ontario Superior Court of Justice action no. CV-11-9242-00CL, the copy having been compared by me with the original document, an act which, having been requested, I have granted under my notarial form and seal of office to serve as shall be required.

IN TESTIMONY OF WHICH I have subscribed my name and affixed my notarial seal at the City of Toronto this 15<sup>th</sup> day of December, 2011.

  
\_\_\_\_\_  
John D. Marshall



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR.  
JUSTICE MORAWETZ

)  
)  
)

MONDAY THE 5<sup>th</sup> DAY  
OF DECEMBER, 2011

**IN THE MATTER OF section 101 of  
the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended**

BETWEEN:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**ORDER AMENDING THE APPROVAL, VESTING and INTERIM  
DISBURSEMENT ORDER DATED NOVEMBER 15, 2011**

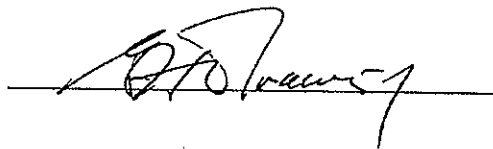
**THIS MOTION**, made by DELOITTE & TOUCHE INC. in its capacity as the court-appointed receiver (the "**Receiver**") of certain of the assets, undertaking and property of 2811 Development Corporation (the "**Debtor**"), including the Lands described in Schedule "A" attached hereto, granted pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for the relief set forth below was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Approval, Vesting and Interim Disbursement Order herein of the Honourable Mr. Justice Morawetz dated November 15, 2011 (the "**Vesting Order**"), the Fourth

Report of the Receiver dated December 1, 2011 (the "Fourth Report"), and on hearing the submissions of counsel for the Receiver, the Debtor, Firm Capital Mortgage Fund Inc., Key Pendragon Enterprises Inc., White Bear Developments Inc., Lombard General Insurance Company of Canada, Con-Drain Company (1983) Limited, Mady Contract Division Ltd., Terracap Investments Inc. and Mady Development Corporation, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Chun Ying Wang sworn December 2, 2011, filed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record dated December 2, 2011 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 Vesting Order be and it is hereby amended by deleting the words "the Purchaser" as they appear in paragraphs 3, 4 and 8 of the Vesting Order and replacing them with "Mady Steeles 2011 Ltd."



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

DEC 0<sup>1</sup><sup>10</sup> 2011

PER/PAR:

NB

Schedule A

The Lands

- (a) The right, title and interest of the Debtor in the real property described as PIN No.06050-0199 (LT) being Part Lots 18 and 19, Con 5; Part Road Allowance between Lots 18 and 19, Concession 5, as closed by By-Law 406 being Part of Part 1, 66R12477 lying north of Plan 66M1996, Save and Except Part of Lots 18 and 19, Con 5, Part 1, 66R16987; City of Toronto
- Toronto Land Titles Office (No. 80)
- Municipally known as 5789 Steeles Avenue East, Toronto, Ontario M2M 3Y2
- (b) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0266 (LT) being Part Lot 20, Conc 5 Scarborough designated as Part 1, Plan 66R23210; City of Toronto
- Toronto Land Titles Office (No. 80)
- Municipally known as 5811 Steeles Avenue East, Toronto, Ontario M2M 3Y2
- (c) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0263 (LT) being Part Lot 19, Conc 5 Scarborough designated as Part 1, Plan 66R23217; City of Toronto
- Toronto Land Titles Office (No. 80)
- Municipally known as 5933 Steeles Avenue East, Toronto, Ontario M2M 3Y2
- (d) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0264 (LT) being Part Lot 18, Conc 5 Scarborough; Part RDAL between Lots 18 and 19, Con 5, Scarborough (Closed by By-Law 406 as in SC608215), designated as Part 2 on Plan 66R23217; City of Toronto
- Toronto Land Titles Office (No. 80)
- Municipally known as 5945 Steeles Avenue East, Toronto, Ontario M2M 3Y2
- (e) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0272 (LT) being Part Lot 18, Conc 5 Scarborough, Part 3 Plan 66R23217 Save and Except Part 32, Plan 66R23655, City of Toronto
- Toronto Land Titles Office (No. 80)
- Municipally known as 5951 Steeles Avenue East, Toronto, Ontario M2M 3Y2

**FIRM CAPITAL CORPORATION**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

Court File No.: CV11-9242-00CL

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

PROCEEDINGS COMMENCED AT  
TORONTO

**ORDER**

**BORDEN LADNER GERVAIS LLP**

Barristers and Solicitors  
40 King Street West  
Toronto, Ontario M5H 3Y4

**John D. Marshall**  
Tel: (416) 367-6024  
Fax: (416) 361-2763  
(LSUC #: 16960Q)

**Sam P. Rappos**  
Tel. (416) 367-6033  
Fax: (416) 361-7306  
(LSUC#51399S)

Solicitors for Deloitte & Touche Inc. in its  
capacity as Receiver

TOR01:4787321:v3

# **APPENDIX “I”**





Lombard Canada Ltd.  
 105 Adelaide Street West  
 Toronto, Ontario M6H 1P8  
 Tel: (416) 350-4400 Fax: (416) 369-7166  
 Web: http://www.lombard.ca

May 3, 2005

2811 Development Corporation  
 c/o The Landmark (Canada) Inc.  
 108-7100 Woodbine Avenue  
 Markham, ON L3R 5J2

Attention: Mr. James Tang, Executive Director

**Re: Deposit Insurance Facility**  
**For: 2811 Development Corporation**  
**Project: \$26 unit commercial condominium building, and 5 out parcel commercial buildings (forming a second condominium corporation) located at 5789, 5827, 5883 Steeles Avenue East and known as "The Landmark, Phase I".**

Lombard General Insurance Company of Canada, ("Lombard") has reviewed your application for a Deposit Insurance Facility and is prepared to support your project subject to your acceptance of all terms and general conditions held within this Commitment Letter and attached schedules.

**Approval Terms and Conditions offered to the Principal:**

- Entity bonded: 2811 Development Corporation (hereinafter referred to as the "Principal").
- Deposit Insurance Facility Approved: \$62,000,000
- Premium for deposits insured: (see schedule B)
- Site Plan Security, City of Toronto: Subject to the City of Toronto accepting a Bond from Lombard, we are prepared to offer a Bond to secure site plan obligations to a maximum of \$5,000,000.
- Commitment fee payable upon acceptance of these terms: ~~\$2,500,000~~ \$500,000 *with C.C. J.*
- Indemnity of: Personal and Corporate Indemnities to be determined
- Collateral mortgage in the amount of: \$75,000,000.00, to be postponed only to the construction lender.
- Standard conditions relating to Indemnity and Collateral Security are set out in Schedule "A"
- Conditions for release of Insured purchaser deposits are set out in Schedule "B"
- Standard general terms and conditions are set out in Schedule "C"
- Lombard's Solicitor: Lamy Ginsler, Morrison, Brown Sosnovitch LLP

*All the above terms and conditions are strictly confidential and neither the Principal nor any Indemnitor shall disclose the contents hereof without the prior written or verbal consent of Lombard. Failure to observe this condition may result in either Lombard withdrawing or altering this commitment (the "Commitment Letter").*

If the above terms and conditions are satisfactory, kindly signify your acceptance by executing a copy of this letter, initialing all schedules and returning it together with any applicable fees, on or before May 11, 2005. *MAY 21 C.C. J.*

Lombard General Insurance Company of Canada

Per:   
 R. A. (Sandy) Ewen  
 Vice-President, Developer Solutions

Per:   
 Jim Emanoilidis  
 National Manager, Developer Solutions

I/We have the authority to bind the Corporation.

Accepted: this 11 day of MAY, 2005

2811 DEVELOPMENT CORPORATION

Per: 

Per: 

I/We have the authority to bind the Corporation

Landmark Cons. T&C May 3.05  
 Ont. Developer

Page 1

## Schedule "A"

### Indemnity and Collateral Security General Terms

#### Lombard Legal Work:

- The Principal acknowledges and accepts that the law firm selected to act for Lombard with respect to registration of its security, the role of escrow agent and other matters shall be the legal firm noted on page one of the Commitment Letter.
- The Principal shall be responsible for full payment of all legal fees and disbursements when invoiced by this firm.
- The Principal shall pay all costs with respect to preserving Lombard's rights under its mortgage security including all defense costs of any construction lien actions incurred by or on behalf of Lombard.

#### Lombard Security

As evidence of, and general and continuing security, for payment of present and future indebtedness, obligations and liabilities of the Principal to Lombard, the following security (the "Security Documents") shall be provided to Lombard by not later than four months from the date of acceptance of the Commitment Letter:

##### Indemnity Agreement

The Principal consents to provide the unlimited, joint and several indemnities of the Corporations and people noted on page one of the Commitment Letter in Lombard's Standard form, along with all other resolutions, etc. deemed necessary by Lombard's solicitor.

##### Collateral Mortgage

The Principal consents to providing Lombard with a collateral mortgage on the subject project and property in the amount noted on page one of the Commitment Letter. Lombard will require an opinion from its Solicitor that it has a valid and enforceable charge over the project and property.

Further conditions regarding the Collateral Mortgage:

- Lombard will fully postpone its mortgage position to a Construction lender providing project financing that has been approved in accordance with Schedule C. The Principal shall not further encumber the project unless approval is given in writing by Lombard.
- The Principal shall adequately insure the property and project and Lombard shall be named on the Policy as mortgagee and loss payee.
- Lombard will discharge its collateral mortgage upon the final closing of units and the discharge will be provided at no charge to the Principal.
- Upon full payment of any prior encumbrances to Lombard's mortgage, and at Lombard's sole discretion, Lombard may require as a condition of executing further partial discharges of additional sold and/or unsold units, the sale revenues from those units to be retained in trust as added security for any outstanding bonds and/or policies.

##### Additional Security

The Principal consents to provide Lombard with all such other certificates, undertakings, documents and opinions as Lombard or its solicitors shall reasonably require.

Schedule "A" Initialed by Principal

*M. C. C.*

## Schedule "B"

### Purchaser Deposit Release Terms

Upon confirmation from Lombard's Solicitor that its mortgage security is registered, Lombard will permit the release of deposits as follows:

1. Up to \$7,000,000 of available deposits to discharge the existing land mortgage. These deposits shall earn a premium of 1.50% and payable upon release of deposits.
2. Up to \$2,500,000 of available deposits to fund soft, marketing or other project costs once construction financing has been confirmed. These deposits shall earn a premium of 1.10% and be payable upon release of deposits.
3. Remaining deposits to be released to fund construction costs on a 1:1 ratio with construction lender advances. These deposits shall earn a premium of 1.00% and be payable upon release of deposits. The Principal may provide Lombard with a Letter of Credit ("LC") to accelerate the release of deposits. The LC will be reduced on a quarterly basis to reflect the aforementioned ratio. Should the Principal wish leave the LC with Lombard until completion of the project and complete extinguishment of Lombard's exposure, the deposits insured against this LC shall earn a premium of 0.50%, and be payable upon release of deposits.
4. Interim occupancy deposits as available. These deposits shall earn a premium of 0.50% and be payable upon release of deposits.

Standard requirements for release of insured deposits:

- Lombard's security shall be registered.
- No default or event of default exists under the Commitment Letter or the Security Documents.
- Lombard's authorization to release funds from trust shall be conditional upon the Escrow Agent receiving proper prescribed security under the Condominium Act either in the form of a deposit insurance issued by Lombard.
- Lombard's authorization to release funds shall be conditional upon the Principal dealing with cost overruns to the satisfaction of both the construction lender and Lombard and construction of the subject project proceeding without any major construction problems identified by any consultant which could ultimately affect Lombard exposure under the bonds or policies.

Schedule "B" Initialed by Principal

M. C.C.

## Schedule "C"

### General Terms and Conditions

#### **Fees and Premiums:**

- The Principal shall pay to Lombard the non-refundable Commitment Fee upon execution of this Commitment Letter. The Commitment Fee shall be deemed earned upon the issuance of this Commitment Letter.
- The premium charged for all deposit insurance shall be at the flat rate noted on page one of the Terms and Conditions letter. Premium for deposit insurance shall be payable as deposits are released from the Trust Account, unless stipulated otherwise.
- Lombard reserves the right to deduct outstanding premiums and/or fees from future deposits releases.

#### **The Condominium Act:**

- The Principal covenants and agrees to comply at all times with the provisions and requirements of the Condominium Act, S.O. 1998 c.19, as amended, and the regulations made thereunder.

#### **Project Financing:**

- The Principal shall provide Lombard with copies of all discussion papers and the final accepted construction loan financing commitment. The terms of those commitments shall be satisfactory to Lombard and permit the project to be completed in a timely matter. If the terms of the said commitment do not contemplate the facility provided by Lombard or do not compliment the facility provided by Lombard, all terms in this facility shall either be re-negotiated or terminated.
- The Principal shall take full responsibility to advise and obtain consent from any construction lender of the involvement and/or security requirements by Lombard on this project.

#### **Project Construction and Bonding of Major Trades:**

- The Principal shall notify Lombard of any key construction staff changes and/or changes in plans regarding retention of a General Contractor or Construction Manager from those that were contemplated and revealed to Lombard prior to these terms being offered.
- Lombard highly recommends that any major trades provide the Principal contract performance and labour and material bonds with a two maintenance period to offset any liability for deficiencies which may be determined in the first year condominium performance audit.

#### **Project Monitoring:**

- The Principal agrees to authorize the cost consultant to provide copies of all reports to Lombard as and when provided to the construction lender. Both the Cost consultant firm and the content of the report shall be acceptable to Lombard for the purposes of fulfilling its obligations under this bonding facility.
- Occasionally, Lombard may request its own "Project Status Report", which is to be completed with basic sales, closing and construction information. The Principal undertakes to complete and return those reports on a timely basis.
- Representatives of Lombard shall be entitled to, subject to reasonable prior notice, attend and inspect the bonded project.

#### **Financial Reporting:**

- The Principal and each of the Indemnitors noted on page one of the Terms and Conditions letter agree to provide Lombard with year end financial statements as they are produced but not later than 180 days after their fiscal year end. If applicable, personal indemnitors shall arrange to supply Lombard with updated net worth statements annually.

**Material Change in the Information Supplied to Lombard:**

- If at any time prior to the execution and/or release of any bond or policy or release of deposits from trust, Lombard determines there is a material adverse change or implication to the information that the Principal had previously supplied to Lombard, including, but not limited to: project viability, ownership of the project or financial ability of the Principal and/or the Indemnitors, Lombard may suspend the issuance of bonds, policies or release of monies from Trust until the matter is resolved to the satisfaction of Lombard.
- The Principal shall notify Lombard immediately of any material change in respect of the project or its financial condition.

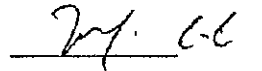
**Consent and Acknowledgement to Collection, Use and Disclosure of Information:**

- The Principal and all Indemnitors consent to Lombard obtaining from any person or company, including Credit Reporting Agencies, any information, including personal information, that Lombard may require at any time to facilitate the delivery of bonds and policies contemplated under this surety facility. The Principal and all indemnitors further consent to the disclosure of this information to any credit grantor or re-insurer by Lombard if Lombard is requested to do so.

**Electronic Execution of Documents:**

- It is expressly acknowledged and agreed that the execution of this Schedule, the Terms and Conditions letter and other Schedules that form part of the agreement contemplated by the Terms and Conditions letter (collectively referred to as the "Agreement") may be made or manifested by way of an electronic signature (as such term is defined in The Electronic Commerce Act 2000, S.O. 2000, as amended), undertaken by or through a computer program or any other electronic means, as expressly provided or contemplated by (and in accordance with the provisions of) The Electronic Commerce Act 2000, S.O. 2000, as amended.
- Each of the parties hereto further acknowledges and agrees that the Agreement may be executed via telefax transmission (and the execution of a telefaxed version hereof by any or all of the parties that have signed the Agreement shall have the same force and effect as if same were originally executed), and that a photocopy or telefaxed copy of the Agreement may be relied upon by all of the parties that have signed the Agreement to the same extent as if it were an original executed version addressed specifically to each of them.

Schedule "C" Initialed by Principal





Lombard Canada Ltd.
105 Adelaide Street West
Toronto, Ontario M5H 1P9
Tel: (416) 350-4400 Fax: (416) 369-7166
Web: http://www.lombard.ca

February 27, 2006

2811 Development Corporation
c/o The Landmark (Canada) Inc.
108-7100 Woodbine Avenue
Markham, ON L3R 6J2

Attention: Mr. James Tang, Executive Director

Re: Deposit Insurance Facility
For: 2811 Development Corporation
Project: 626 unit commercial condominium building, and 5 out parcel commercial buildings (forming a second condominium corporation) located at 5789, 5827, 5883 Steeles Avenue East and known as "The Landmark, Phase I".

Lombard General Insurance Company of Canada, ("Lombard") has reviewed your request to release \$750,000.00 of Phase I purchaser deposits to assist with the closing of a 0.5 acre parcel of land on Steeles Avenue to be added to Phase II lands. This request is clearly outside the intent of our deposit release conditions outlined in our Terms and Conditions letter dated May 3, 2005. That letter intended purchaser deposits released after the initial \$7,000,000.00 release to discharge existing land debt to be used to fund Phase I project costs and only once construction financing has been confirmed. As construction financing is not confirmed, nor in place, we feel this request fall outside of those conditions.

However, Lombard will consider your request to release \$750,000.00 of Phase I purchaser deposits to assist with those closings of additional phase lands subject to:

- 1. The premium on this release shall be 2.00%
2. This \$750,000.00 release shall permanently reduce the second \$2,500,000.00 release facility
3. No other release of deposits shall be outstanding until a firm, accepted financing commitment is in place and that lender's security is registered.
4. Lombard shall be granted a First Mortgage charge over the acquired property.
5. The balance of purchase price of the added lands is funded from the applicants own equity.

If the above terms and conditions are satisfactory, kindly signify your acceptance by executing a copy of this letter, initialing all schedules and returning it together with any applicable fees, on or before March 13, 2006.

Lombard General Insurance Company of Canada

Per: R. A. (Sandy) Ewen Vice-President, Developer Solutions
Per: Jim Emanoilidis National Manager, Developer Solutions

I/We have the authority to bind the Corporation.

Accepted this 28 day of Feb, 2006

2811 DEVELOPMENT CORPORATION

Per: LAWRENCE WONG CFO

I/We have the authority to bind the Corporation

Per: CHARLES CHAN PRESIDENT



Lombard Canada Ltd.  
105 Adelaide Street West  
Toronto, Ontario M5H 1P9  
Tel: (416) 360-4400 Fax: (416) 360-7100  
Web: http://www.lombard.ca

June 30, 2006

2811 Development Corporation  
c/o The Landmark (Canada) Inc.  
108-7100 Woodbine Avenue  
Markham, ON L3R 5J2

Attention: Lawrence Wong

Dear Mr. Wong:

Re: Deposit Insurance Facility  
For: 2811 Development Corporation

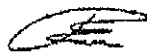
Project: 626-unit commercial condominium building, and 5 out parcel commercial buildings (forming a second condominium corporation) located at 5789, 5827, 5883 Steeles Avenue East and known as "The Landmark, Phase I".

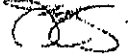
Lombard General Insurance Company of Canada, ("Lombard") has reviewed your request to release \$1,550,127.28 of Phase I purchaser deposits to assist with the closing of a 1.148 acre parcel of land at 5933 Steeles Avenue East to be added to the Phase II lands. Lombard will consider your request to release \$1,550,127.28 of Phase I purchaser deposits to assist with those closings of these additional phase II lands subject to:

1. The Bank of Montreal providing a firm commitment letter to finance the above referenced Project.
2. The deposits being repatriated to the trust account from the first Bank of Montreal advance, which is to take place after the registration of security and to occur within 8 weeks of the date of this letter
3. Lombard being granted a First Mortgage charge over the acquired property.
4. Payment of a \$10,000 fee, which shall also be paid from Phase I deposits

If the above terms and conditions are satisfactory, kindly signify your acceptance by executing a copy of this letter, and returning it to us on or before July 7, 2006.

Lombard General Insurance Company of Canada


Per:   
R. A. (Sandy) Ewen  
Vice-President, Developer Solutions

Per:   
Jim Emanoilidis  
National Manager, Developer Solutions

I/We have the authority to bind the Corporation.

Accepted this 30 day of JUNE, 2006

2811 DEVELOPMENT CORPORATION

Per:   
LAWRENCE WONG  
CFO

I/We have the authority to bind the Corporation

# APPENDIX “J”





Lombard Canada Ltd.  
105 Adelaide Street West  
Toronto, Ontario M5H 1P9

**MASTER DEPOSIT INSURANCE POLICY (ONTARIO)**

**VENDOR:** 2811 DEVELOPMENT CORPORATION

**POLICY NO.:** 3530115

This Policy shall only become effective on the date that it is duly executed by Authorized Representatives of Lombard General Insurance Company of Canada (the "Surety").

**INSURED:** Each of the unit purchasers, for the Deposits and Upgrade Monies (as defined on the reverse hereof) noted in the attached schedule or schedules, which may be amended, updated or added to from time to time by the Surety.

**CONDOMINIUM PROJECT:** The Landmark, Phase I  
5789, 5827, 5883 Steeles Avenue East  
Markham, Ontario

Dated: October 17, 2005

2811 DEVELOPMENT CORPORATION

Per:

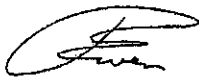
  
(Signature) Lawrence Wong, Secretary  
I have the authority to bind the corporation.

**INSURANCE AGREEMENT**

In consideration of the Vendor's undertaking to pay to the Surety, on behalf of the Insured, the premium for this Policy and subject to the terms and conditions hereof (including the Conditions set forth on the reverse hereof), the Surety hereby insures the Insured in respect of the Deposits and interest thereon (as defined on the reverse hereof) and any Upgrade Monies (as defined on the reverse hereof), which shall become owing by the Vendor to the Insured upon due termination of the Purchase Agreement and which the Vendor shall fail to pay to the Insured in accordance with the terms of the Purchase Agreement.

In witness whereof the Surety has duly executed this Policy on the 16th day of September, 2005.

**LOMBARD GENERAL INSURANCE COMPANY OF CANADA**



R.A. Ewen, Vice President



Jim Emanoilidis, National Manager

## DEPOSIT INSURANCE POLICY (ONTARIO)

### CONDITIONS

#### 1. INTERPRETATION

- 1.1 **Definitions** - In this Policy, unless the context otherwise requires, the following expressions shall have the following meanings:
- (a) "Act" means the Condominium Act, 1998, S.O. 1998, c.19 as amended and supplemented from time to time and any reference herein to any section or subsection thereof shall be deemed to be a reference to the section or subsection as at the time in question amended or supplemented or to the successor thereof if the same has been repealed.
  - (b) "Deposits" means all money received, by the trustee or Vendor's solicitor from each Insured on account of the Purchase Agreement or with respect to reserving a right to enter into a Purchase Agreement before the Registration Date, other than:
    - (i) money paid thereunder as rent or as an occupancy charge, and
    - (ii) money credited against the purchase price pursuant to subsection (2) of section 81 of the Act.
  - (c) "Insured" means the Insured identified or referenced on the face hereof and includes his or their heirs, executors, administrators, other personal representatives, assigns and successors.
  - (d) "Interest" means the interest, at the rate or rates prescribed under the Act, which is required by the Act to be paid by the Vendor to the Insured on the Deposits.
  - (e) "Policy", "hereto", "herein", "hereby" and similar expressions mean or refer to this policy and any schedule(s), endorsement or other instrument supplemental or ancillary hereto.
  - (f) "Purchase Agreement" means the agreement between the Vendor and the Insured, described as such on the face hereof, as amended and supplemented from time to time.
  - (g) "Registration Date" means the date on which the declaration and description required by the Act are duly registered in the proper land registry office.
  - (h) "Upgrade Monies" means all monies received by the trustee or Vendor's solicitor from the Insured on account of the Purchase Agreement or by way of a separate agreement for upgrades or extras, which monies are not considered to be Deposits, nor on which monies is interest required to be paid under the Act.
  - (i) "Vendor" means the person named as such on the face hereof and includes its successors and assigns.

- 1.2 **Extended Meanings** - Words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders.
- 1.3 **Headings** - The insertion of headings is for convenience of reference only and shall not affect the construction or interpretation of this Policy.

#### 2. TERM OF POLICY AND EXECUTION THEREOF

This Policy shall become effective on the date it is duly executed by the Surety and executed by the Vendor as provided on the face hereof and has been delivered to the trustee or Vendor's solicitor holding the money for which the Policy is being provided as security and shall remain in full force and effect, subject to the provisions of paragraph 6 hereof.

It is expressly acknowledged and agreed that the execution of this Schedule, the Terms and Conditions letter and other Schedules that form part of the agreement contemplated by the Terms and Conditions letter (collectively referred to as the "Agreement") may be made or manifested by way of an electronic signature (as such term is defined in The Electronic Commerce Act 2000, S.O. 2000, as amended), undertaken by or through a computer program or any other electronic means, as expressly provided or contemplated by (and in accordance with the provisions of) The Electronic Commerce Act 2000, S.O. 2000, as amended.

Each of the parties hereto further acknowledges and agrees that this Policy may be executed via telefax transmission (and the execution of a telefaxed version hereof by any or all of the parties hereto shall have the same force and effect as if same were originally executed), and that a photocopy or telefaxed copy of this executed Policy may be relied upon by all of the parties hereto and the Insured to the same extent as if it were an original executed version addressed specifically to each of them.

#### 3. DEPOSITS & UPGRADE MONIES

It is acknowledged and agreed that this Policy shall extend and apply only to the portion of the Deposits and Upgrade Monies actually received by the trustee or Vendor's solicitor as shown on the face hereof or schedule(s) hereto before the Registration Date, notwithstanding that Deposits and Upgrade Monies may exceed the amounts shown on the face hereof.

#### 4. CLAIMS

- 4.1 **Notice of Default and Proof of Loss** - If the Deposits and Interest thereon and Upgrade Monies shall become properly owing by the Vendor to the Insured upon due termination of the Purchase Agreement and if the Vendor shall fail to pay the same to the Insured in accordance with the terms of the Purchase Agreement, the Insured shall give prompt written notice thereof to the Surety referring to this Policy by number, identifying the Condominium Project and briefly describing the nature of the default by the Vendor. The Surety, immediately upon receipt of such notice, shall furnish to the Insured forms upon which to make the proof of loss hereunder.
- 4.2 **Disputes Between Vendor and Insured** - In the event of any dispute between the Vendor and Insured as to the liability of the Vendor to pay any Deposits herein mentioned and/or Interest thereon and Upgrade Monies, resulting in the withholding by the Vendor of any payment on account of Deposits or Interest thereon or Upgrade Monies or resulting in the Vendor claiming set-off or similar legal right, no claim by the Insured shall be paid hereunder unless and until such dispute shall have been finally resolved.
- 4.3 **Payment of Claims** - Subject to the provisions of paragraph 4.2, any claim by the Insured hereunder shall be paid by the Surety within sixty days after proof of loss has been submitted to and accepted by the Surety. Such proof of loss shall consist of such evidence as the Surety may reasonably require as to the payment of Deposits by the Insured under the Purchase Agreement, the payment by the Insured of Upgrade Monies and the termination of the Purchase Agreement, as well as the failure of the Vendor to pay the Deposits and Interest thereon and Upgrade Monies to the Insured and the amount thereof in default.

#### 5. RIGHTS OF SUBROGATION

Upon payment by the Surety of any claim hereunder, the Surety shall be subrogated to all rights of the Insured against the Vendor for recovery thereof and the Insured shall execute and deliver such instruments and do such acts and things as may be necessary or desirable to give effect thereto.

#### 6. CESSATION OF LIABILITY

The Surety shall cease to be liable under this Policy from and after:

- (a) the delivery to the Insured of a registrable deed or transfer of the unit(s) being purchased under the Purchase Agreement;
- (b) the termination of the Purchase Agreement and the payment to or on behalf of the Insured of the Deposits and Interest thereon and Upgrade Monies due to him;
- (c) the payment by the Surety of the Deposits and Interest thereon and Upgrade Monies due under any claim arising from any default by the Vendor, written notice of which is given as required by paragraph 4.1.;
- (d) the Insured acknowledges in writing that he is not entitled to payment of Deposits and Interest thereon and Upgrade Monies;
- (e) the Insured acknowledges in writing that the Surety is no longer liable under the policy; or
- (f) a court of competent jurisdiction has made a final determination that the Insured is not entitled to the Deposits and Interest thereon and Upgrade Monies in respect of the unit being purchased under the Purchase Agreement.

#### NOTICES

All notices required or permitted to be given hereunder to the Surety or the Insured shall be sufficiently given if sent by prepaid ordinary mail or by facsimile addressed to the address shown on the face of this Policy for such party or to such other address as such party may from time to time designate by notice in writing to the other. Every notice so mailed shall be conclusively deemed to have been given on the first business day following the date of such mailing.

# APPENDIX “K”



Lombard Canada Ltd.  
105 Adelaide Street West  
Toronto, Ontario M5H 1P9

## INDEMNITY AGREEMENT

BY:

2811 DEVELOPMENT CORPORATION

(hereinafter called the "Principal")

AND BY:

Gallant Management Corporation  
Perrybing Investment Ltd.  
Golden Link Holdings Ltd.  
1651226 Ontario Inc.  
Terry Yuf Yi  
Charles Chan  
James Tang  
Kin Chung Lam

(each of whom is hereinafter called an "Indemnitor")

IN FAVOUR OF:

LOMBARD GENERAL INSURANCE COMPANY OF CANADA

(hereinafter called the "Surety")

IN CONSIDERATION OF THE ISSUE BY THE SURETY OF BONDS AND/OR POLICIES AS DEFINED HEREUNDER AND IN ACCORDANCE WITH AN AGREED UPON SURETY FACILITY, THE UNDERSIGNED COVENANT AND AGREE AS FOLLOWS:

1. *Date and place of execution of the present agreement* - The present agreement, for all legal intents and purposes, is deemed to have been executed the 8<sup>th</sup> day of August 2006, in the Province of Ontario.
2. *The "Principal"* - All references herein to the "Principal" mean one or the other or each of the parties designated hereinabove as the "Principal".
3. *The "Indemnitors"* - For purposes of the present agreement, "Indemnitors" means:
  - a) all the parties designated as the "Principal" and, should the case arise, and
  - b) the other signatories of the present agreement.
4. *Purpose of the present agreement and definition of "Bonds and/or Policies"* - The purpose of the present agreement is:
  - a) to set forth the rights of the Surety and other beneficiaries,
  - b) to set forth the rights and obligations of the Indemnitors, and
  - c) flowing from the execution of one or several bonds and/or policies to guarantee the obligations of any Principalor  
other forms of guarantee or obligation or one or several policies of insurance (herein called the "Bonds and/or Policies"); the word "Bonds and/or Policies" includes any alteration, renewal, continuance, replacement or  
extension of such bonds or policies of insurance.
5. *Bonded Obligations* - For purposes of the present agreement, any reference to "Bonded Obligations" means obligations or undertakings in respect of which one or more Bonds and/or Policies have been issued.

6. *Indemnitors' interest in the Principal* - The Indemnitors acknowledge that the present agreement will remain in full force and effect and continue to bind them even if they never had (or no longer have) any interest in the Principal or each of them.
7. *Consideration for the present agreement* - The Indemnitors acknowledge that the Surety requires their signatures to the present agreement in consideration:
  - a) of the issue of Bonds and/or Policies, whether past, present and future, by the Surety or by others referred to in paragraph 9 herein, directly or indirectly,
  - b) of the Surety refraining from cancelling such Bonds and/or Policies, and
  - c) (outside the Province of Quebec), of the sum of Two Dollars and other good and valuable consideration paid and furnished by the Surety to each of the Indemnitors (the receipt and sufficiency of which are hereby acknowledged).
8. *Additional beneficiaries of the present agreement* - All of the terms and conditions of the present agreement are for the benefit of:
  - a) any successors or assigns of the Surety, including as a result of mergers, acquisitions of portfolios, or otherwise, and
  - b) any surety, joint or several, any re-insurance company and any other surety procured by the Surety upon the request of the Principal to issue Bonds and/or Policies, whether or not such Bonds and/or Policies are issued by the Surety or whether or not the Surety retains any interest in any such Bonds and/or Policies.
9. *Parties bound by the present agreement* - Each of the Indemnitors acknowledges that it is bound by all of the terms and conditions of the present agreement, as are its representatives, successors and assigns.
10. *Joint and several obligation of the Indemnitors* - The Indemnitors agree that they bind themselves jointly and severally with respect to all of the obligations assumed hereunder; this means that each of the Indemnitors may be compelled separately to perform all of the Indemnitors' obligations hereunder.
11. *Waiver of the benefit of division* - The Indemnitors specifically waive the benefit of division, which would, in the absence of the present waiver, permit any one Indemnitor to require the Surety to divide its claim proportionately amongst all the Indemnitors.
12. *Waiver of the benefit of discussion* - The Indemnitors specifically waive the benefit of discussion, which would, in the absence of the present waiver, permit the Indemnitors to require the Surety to exhaust its recourses against the Principal, before calling upon the Indemnitors under the present agreement.
13. *Obligations in respect of Bonds and/or Policies, Bonded Obligations and the present agreement* - The Principal agrees to fulfill and the Indemnitors, other than the Principal, agree to cause the Principal to fulfill all of the Principal's obligations under:
  - a) Bonds and/or Policies, and
  - b) Bonded Obligations.The Indemnitors undertake to do nothing which could give rise to a claim or a default under the terms of the present agreement, of any Bond and/or Policy or of any Bonded Obligation.
14. *Indemnification of the Surety* - The Indemnitors undertake to indemnify the Surety in full for any loss or damages that it may suffer arising from the issue of one or several Bonds and/or Policies, or arising from a decision of the Surety not to issue any Bond and/or Policies, or arising from any default by the Indemnitors under the present agreement. The present undertaking includes, without limitation, the obligation of the Indemnitors to reimburse to the Surety all sums which it might be called upon to pay:
  - a) as a result of a judgment, arbitration award or settlement;
  - b) as damages of any nature, including punitive and exemplary damages, as the case may be;
  - c) in respect of any claim, liability or loss;
  - d) as expenditure, costs or fees that it may incur, including the cost of internal or external adjusters and consultants;
  - e) in satisfaction of judicial and extra-judicial fees and disbursements of the Surety's counsel on a substantial indemnity scale and legal fees of claimants' counsel;
  - f) as administration costs related to claims under Bonds and/or Policies and under this agreement.

15. *Obligation to pay the premium* - The Indemnitors undertake to pay to the Surety:
- a) the initial premium for the issue of any Bond and/or Policy, in conformity with the Surety's tariff in force, or such other tariff as may be agreed upon with the Principal; and
  - b) thereafter, any additional or other premium, in conformity with the Surety's tariff in force or such other tariff as may be agreed upon with the Principal until such time as the Surety receives proof to its satisfaction, confirming its complete release from all Bonds and/or Policies issued by it, and from the renewal or extension of such Bonds and/or Policies.
16. *Reduction of obligations* - The Indemnitors' obligations hereunder, may be reduced to zero from time to time without affecting the validity, perfection or enforceability of this Indemnity Agreement for subsequent obligations until this Indemnity Agreement is terminated in accordance with the terms hereof.
17. *Subordination of Indemnitors* - None of the Indemnitors shall enforce any rights of contribution or indemnity against any Principal or its property and undertakings until such Principal's obligations to the Surety under this agreement have been satisfied in full.
18. *Indemnitors' obligation to advance funds required by the Surety to meet its obligations* - In order to permit the Surety to meet its obligations under the Bonds and/or Policies, the Indemnitors undertake to advance to the Surety upon demand, funds or satisfactory guarantees sufficient to allow the Surety to perform any or all of its obligations under the Bonds, which could be subject to indemnification under the terms of the present agreement, even before any payment has been made by the Surety to a third party. Without limiting the generality of the foregoing, the Indemnitors undertake to advance funds or furnish guarantees, as soon as the Surety establishes or increases a reserve with respect to a claim or a situation relating to any Bonds and/or Policies, up to the amount of such reserve which will be established by the Surety in its sole discretion.
19. *Advance and payment to the Surety when the Principal requires the Surety to take part in an action or a defence* - The Indemnitors undertake to advance and pay to the Surety funds sufficient to satisfy any judgment or arbitration award which could be rendered against the Surety, as well as disbursements or costs incurred by the Surety or awarded against it, including judicial or extra-judicial fees and disbursements of the Surety's counsel on a substantial indemnity scale, when the Principal requires the Surety to take part in any legal action or in the defense of any legal proceedings. The Indemnitors undertake to make further advances and payments when required by the Surety.
20. *Investment and use of advances to the Surety* - The Surety may hold any advance made by any Indemnitor, in such form as the Surety may in its sole discretion decide, and shall have no obligation to invest, or provide any income or return on any such advance. The Surety may use all or any part of such advance and any income earned thereon, in payment or compromise of any of the Indemnitors' obligations hereunder.
21. *Decision as to the payment of claims* - The Indemnitors acknowledge that the Surety will have the right, in its sole and entire discretion, to decide whether to pay, settle or contest any claim under a Bond, without any obligation to consult or advise the Indemnitors in advance of so doing.
22. *Proof of payments made by the Surety* - The Indemnitors acknowledge their obligation to indemnify the Surety in virtue of the present agreement, upon presentation by the latter of a release or a copy of a cheque or any other proof of payment, which will be deemed to be complete proof of the amount paid and of the Surety's right to make such payment as a result of the issue of the Bonds and, consequently, its right to demand reimbursement from the Indemnitors under the terms of the present agreement.
23. *Surety's right of access to the books and records of the Indemnitors* - The Indemnitors hereby grant to the Surety full right of access to, examination of and making of copies of, during normal business hours, their books, records, files, computer records and accounts, for such period as any rights and obligations under Bonds remain in effect or so long as the Indemnitors are potentially or actually indebted to the Surety for any sum or sums whatsoever.
24. *Undertaking to furnish certain information* - The Indemnitors undertake to furnish to the Surety, on demand, all information or pertinent documentation required by the Surety relevant to:
- a) the Indemnitors' financial position;
  - b) any modification to the corporate or partnership structure of any of the Indemnitors, particularly any change of name, merger, amalgamation, etc.
25. *Undertaking to deliver certain documents to the Surety* - So long as the Surety has any potential liability under any Bond, the Indemnitors undertake, without delay, to deliver to the Surety copies of the following documents:
- a) the annual or interim financial statements of each Indemnitor;

- b) any petition for a receiving order, petition in bankruptcy or proceeding for arrangement with its creditors made against or by an Indemnitor;
- c) any proposal by an Indemnitor to its creditors; and
- d) any notice of default or action involving an Indemnitor, which could result in a claim under a Bond and/or Policy and every letter, document advice, statement of claim or writ received by an Indemnitor on behalf of any person who asserts or threatens any claim against a Bond, Policy or an Indemnitor.

26. *Co-operation and discharge* - The Indemnitors undertake to cooperate with the Surety in any way which may assist the Surety in limiting, reducing or discharging its obligations under any Bond and/or Policy in accordance with its terms and particularly in respect of any proceeding taken against the Surety, without any obligation on the Surety's part to indemnify them. The present undertaking includes that of being present at any examination or trial relating to any Bond and/or Policy or to any right granted to the Surety under the present agreement. The Surety may, at any time, take such action as it deems necessary or proper to obtain its release from any and all liability under any Bond and/or Policy.

27. *Information concerning the Indemnitors* - The Indemnitors specifically authorize the Surety to obtain any credit or any other information, including, without limitation, personal information concerning any or all Indemnitors which it desires and which is pertinent to the conclusion or the execution of the present agreement and to the issue of any Bond and/or Policy, and any person, credit bureau, bank, financial institution, obligee and accountant possessing any such information is, by this agreement, authorized to communicate such information to the Surety, on demand, during the life of the present agreement and, if necessary, thereafter. In so doing, the Indemnitors expressly acknowledge and agree that they are hereby giving their individual consents to the Surety to obtain, use and distribute such personal information, in compliance with all applicable federal and provincial privacy legislation.

28. *Authorization to the Surety to make changes* - The Surety is hereby authorized to make the following changes, without notice to the Indemnitors:

- a) in the terms of any Bond and/or Policy or Bonded Obligations;
- b) in the designation of any obligee of a Bond and/or Policy;
- c) respecting any renewal, continuation, replacement, reinstatement or extension of any Bond and/or Policy;
- d) correcting errors in and executing any substitute to any Bond and/or Policy with the same or different conditions, provisions, amounts and obligees; and
- e) for the purpose of completing the present agreement or any Bond and/or Policy or of correcting errors of declaration or description of Bonds and/or Policies or of the present agreement.

29. *Validity of the present agreement notwithstanding the absence of the signatures of one or more Indemnitors or witnesses* - The present agreement will be and will remain in full force, even if one or more of the Indemnitors designated herein, or one or more of the witnesses have not signed the present agreement or their signature has been adjudged invalid.

30. *Failure of the Principal to sign or deliver any Bond and/or Policies* - The Indemnitors are fully responsible under the present agreement even in the event that the Principal has not signed any Bond and/or Policy signed by the Surety or that a Bond and/or Policy has not been delivered to an obligee, without prejudice to the Surety's right to assert that it is not liable under such Bond and/or Policy.

31. *Settlement with one or several Indemnitors* - In the event of a claim by the Surety against the Indemnitors in virtue of the present agreement or in virtue of any other rights of the Surety, the Indemnitors specifically authorize the Surety to settle such claim with one or several of the Indemnitors, without reference to the others and such settlement shall not affect or reduce the obligations of such others. The Indemnitors expressly renounce and waive any rights which they may have to be discharged from their obligations or to have such obligations reduced by reason of the discharge of one or several Indemnitors.

32. *Surety's rights following settlement with one Indemnitor* - The Indemnitors agree that any settlement made by the Surety with one of them will not effect novation of the obligations of the Indemnitor in question (i.e. substituting or extinguishing its obligations) and the present agreement will retain all of its force in the event of a default by such Indemnitor to honour the terms of the settlement and without prejudice to all of the Surety's rights against the other Indemnitors.

33. *Interest rate* - All sums due by the Indemnitors in virtue of the present agreement will bear interest in favour of the Surety, on the thirtieth (30th) day following the demand for payment from the Surety, at the rate of eighteen (18%) percent per annum, with such interest to be calculated monthly not in advance, and any unpaid interest shall be added

to the outstanding sums due, and same shall collectively bear interest in the same manner and at the same rate, with interest on overdue interest to be calculated and compounded monthly at the same rate, until such time as the entire sums due are paid in full to the Surety.

34. *Persons authorized to request the execution of Bonds and/or Policies* - Requests to the Surety to execute any Bond and/or Policy may be made by any of the Principal or (where a Principal is not an individual) any officer, employee or partner of any of the Principal, or by an agent or broker which the Surety reasonably believes represents any Principal, or by any Indemnitor. Such requests, whether made in writing (mailed, delivered or telecopied), by telegraph, by personal interview or by telephone, shall be regarded as sufficient and ample authority for the Surety to execute any such Bond and/or Policy.
35. *Surety's right to refuse to issue a Bond and/or Policy* - The Indemnitors acknowledge that the Surety, in its sole and entire discretion, has the right to refuse to issue, furnish or procure any Bond and/or Policy and the Indemnitors renounce and waive any recourse against the Surety resulting from such refusal.
36. *Notice of issue of Bonds and/or Policies* - The Indemnitors expressly agree that the Surety is not obliged to advise them of the issue of any Bond and/or Policy nor to deliver a copy to the Indemnitors.
37. *Notice of changes in any Bonds and/or Policies or any Bonded Obligations* - The Indemnitors expressly agree that the Surety is not obliged to advise them of any change, addition, substitution or extension made to any Bond and/or Policy or Bonded Obligations; moreover, the Indemnitors renounce any right to raise such changes, additions, substitutions or extensions for the purpose of reducing or eliminating their obligations by virtue of the present agreement.
38. *Termination of the present agreement and its effect upon outstanding Bonds and/or Policies* - The present agreement shall only be terminated by any Indemnitor, upon prior written notice to the Surety by registered mail at its head office, at least thirty days prior to its effective date; however, the said prior notice of termination will not modify, nor exclude, nor discharge the Indemnitors' obligations relating to Bonds and/or Policies issued prior to the effective date of termination or Bonds and/or Policies issued after the effective date of termination by reason of undertakings by the Surety prior to such date; the present agreement will remain in full force and effect as regards the other Indemnitors without any obligation on the part of the Surety to advise such other Indemnitors of such termination.
39. *Effect of the execution of a new indemnity agreement* - The execution of a new indemnity agreement with respect to any Principal, shall not have the effect of terminating the present agreement which shall remain in full force and effect, unless expressly terminated in writing according to the terms hereunder.
40. *Events not affecting the obligations of the Indemnitors* - The Indemnitors acknowledge that the following events are in addition to any other rights of the Surety under the present agreement and shall not in any way release, waive or abridge any right or remedy of the Surety under the present agreement:
  - a) the fact that another guarantee has been or will be given to the Surety (particularly any other security or indemnity agreement); or
  - b) the fact that the Surety has consented to any action taken by the Principal; or
  - c) any action, judgment, arbitration award or settlement arising from the present agreement; or
  - d) the fact that the Surety has renounced or waived any recourse against whomsoever or has given to whomsoever a release in virtue of the present agreement or other agreements or in respect of any security.
41. *Surety's additional rights* - The rights of the Surety by virtue of the present agreement are in addition to any rights which the Surety may have by law or otherwise.
42. *Surety's right to intervene* - In the event of: any default of the Principal under any Bond and/or Policy; or any default of the Indemnitors or any of them under the present agreement; or any action by the Indemnitors or any of them which could affect the rights of the Surety under any bond or under the present agreement; or any act of bankruptcy of the Indemnitors or any of them or the insolvency of the Indemnitors or any of them or the making by the Indemnitors or any of them of any arrangement with its creditors; or any default by the Indemnitors or any of them with respect to any of its secured creditors; or any other act, event, circumstance or occurrence which, in the Surety's reasonable discretion, gives rise to any concern as to the enforcement of its right hereunder, the Surety may, without notice of default, intervene in any project for the purpose of assuming its obligations and exercising any of its rights under the Bonds and/or Policies.
43. *Modifications of the terms of the present agreement* - No derogation from the terms of the present agreement, nor any modification of such terms, may be set up against the Surety without the prior written consent of one of its officers.



44. *Applicable law* - The present agreement will be interpreted in accordance with the laws in force in the Province named in Paragraph 1 hereof.

45. *Seal and corporate resolution* - The Indemnitors agree that the absence of any corporate seal or corporate resolution will not invalidate the obligations of any Indemnitor under the present agreement.

46. *Gender and number* - In the present agreement the singular form includes the plural and the plural includes the singular; also the feminine includes the masculine and the masculine includes the feminine.

47. *Headings* - The insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this agreement.

48. *Language* - The parties hereto have requested that the present agreement be drafted in the English language. Les parties aux présentes ont requis que la présente convention soit rédigée dans la langue anglaise.

**THE UNDERSIGNED ACKNOWLEDGE HAVING RECEIVED A COPY OF THE AGREEMENT, CAREFULLY READ IT AND THAT THEY UNDERSTAND ALL OF THE TERMS AND CONDITIONS OF THE PRESENT AGREEMENT AND THAT THERE EXIST NO OTHER AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY COULD LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN.**

**PERSONAL INDEMNITORS SIGN HEREUNDER.**

Witness: CRYSTAL WONG  
Name in block letters  
[Signature]  
Signature of Witness

Address: 521 Davenport Road  
Toronto, ON M5R 3R5

Witness: CRYSTAL WONG  
Name in block letters  
[Signature]  
Signature of Witness

Address: 521 Davenport Road  
Toronto, ON M5R 3R5

Witness: CRYSTAL WONG  
Name in block letters  
[Signature]  
Signature of Witness

Address: 521 Davenport Road  
Toronto, ON M5R 3R5

Witness: LAM NGAI LAM  
Name in block letters  
[Signature]  
Signature of Witness

Address: 88 Wenderly Drive  
Toronto, ON M6B 2P5

Terry Yu, in a personal capacity  
[Signature]  
Signature of Personal Indemnitor

Address: 1450 Midland Avenue, Suite 210  
Scarborough, Ontario M1P 4Z8

Charles Chan, in a personal capacity  
[Signature]  
Signature of Personal Indemnitor

Address: 7100 Woodbine Avenue, Suite 108  
Markham, Ontario L3R 5J2

James Tang, in a personal capacity  
[Signature]  
Signature of Personal Indemnitor

Address: 50 Northline Road  
Toronto, Ontario M4B 3E2

Kin Chung Lam, in a personal capacity  
[Signature]  
Signature of Personal Indemnitor

Address: 88 Wenderly Drive  
Toronto, Ontario M6B 2P5

**CORPORATE INDEMNITORS AND / OR PARTNERSHIPS SIGN HEREUNDER. IF THE UNDERSIGNED IS A CORPORATION, EXECUTE IN FULL CORPORATE NAME BY PROPER OFFICER(S) AND ATTACH CORPORATE RESOLUTION(S). IF THE UNDERSIGNED IS A PARTNERSHIP, SET FORTH NAME IN FULL, WITH THE**

SIGNATURE(S) OF THE PARTNER(S) EXECUTING ON ITS BEHALF SET OUT IMMEDIATELY BELOW. EACH PARTNER SHOULD ALSO SIGN SEPARATELY AS A PERSONAL INDEMNITOR.

Name of Corporation: 2811 DEVELOPMENT CORPORATION

Address of 7100 Woodbine Avenue, Suite 108, Markham, Ontario L3R 5J2  
Corporation:

Signature

Signature

LAURENCE WONG, SECRETARY  
Name & Title of Authorized Signing Officer (in block letters)

Name & Title of Authorized Signing Officer (in block letters)

// We have authority to bind the corporation

Name of Corporation: 1651226 ONTARIO INC.

Address of 521 Davenport Road, Toronto, ON M5R 3R5  
Corporation:

Signature

Signature

Name & Title of Authorized Signing Officer (in block letters)

TERRY YIU DIRECTOR  
Name & Title of Authorized Signing Officer (in block letters)

// We have authority to bind the corporation

Name of Corporation: PERRYJING INVESTMENT LTD.

Address of 7100 WOODBINE AVENUE, SUITE 108, MARKHAM, ONT L3R 5J2  
Corporation:

Signature

Signature

L.P. SNOW DIRECTOR  
Name & Title of Authorized Signing Officer (in block letters)

CHARLES CUAN DIRECTOR  
Name & Title of Authorized Signing Officer (in block letters)

// We have authority to bind the corporation

Name of Corporation: GOLDEN LINK HOLDINGS INC.

Address of 88 Wenderly Drive, Toronto, ON M6B 2P5  
Corporation:

Signature

Signature

LAI NAAN LAM - DIRECTOR  
Name & Title of Authorized Signing Officer (in block letters)

KIN CHUNG LAM - PRESIDENT  
Name & Title of Authorized Signing Officer (in block letters)

// We have authority to bind the corporation

Name of Corporation: GALLANT MANAGEMENT CORPORATION

Address of 50 Northline Rd Toronto, Ontario M4B 3E2  
Corporation:

Signature

Signature

Name & Title of Authorized Signing Officer (in block letters)

JAMES TANG, Secretary & Treasurer  
Name & Title of Authorized Signing Officer (in block letters)

// We have authority to bind the corporation

# APPENDIX "L"

**Properties**

**PIN** 06050 - 0199 LT *Interest/Estate* Fee Simple  
**Description** PT LOTS 18 & 19, CON 5; PT ROAD ALLOWANCE BETWEEN LOTS 18 & 19 CON 5, AS CLOSED BY BY-LAW 406 BEING PT OF PT 1 66R12477 LYING NORTH OF PLAN 66M1996; SAVE & EXCEPT PT OF LOTS 18 & 19 CON 5 PT 1 66R16987...SUBJ. TO EASE. OVER PTS 1 & 2 66R17070 AS IN C981858. SCARBOROUGH, CITY OF TORONTO  
**Address** TORONTO

**PIN** 06050 - 0203 LT *Interest/Estate* Fee Simple  
**Description** PT LT 20 CON 5 SCARBOROUGH AS IN SC402875 & TB566563 EXCEPT PT 1 64R14694; SCARBOROUGH, CITY OF TORONTO  
**Address** TORONTO

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

**Name** 2811 DEVELOPMENT CORPORATION  
**Address for Service** c/o The Landmark (Canada) Inc.  
 108-7100 Woodbine Avenue  
 Markham, Ontario  
 L3R 5J2

I, Lawrence Wong, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

**Chargee(s)****Capacity****Share**

**Name** LOMBARD GENERAL INSURANCE COMPANY OF CANADA  
**Address for Service** 105 Adelaide Street West  
 Toronto, Ontario  
 M5H 1P9

**Provisions**

**Principal** \$75,000,000.00 **Currency** CDN  
**Calculation Period** Monthly  
**Balance Due Date** On Demand  
**Interest Rate** 18.0%  
**Payments**  
**Interest Adjustment Date**  
**Payment Date**  
**First Payment Date**  
**Last Payment Date**  
**Standard Charge Terms** 200501  
**Insurance Amount** full insurable value  
**Guarantor**

**Signed By**

Larry Neil Ginsler 1 Toronto St., Suite 910 acting for Chargor(s) Signed 2005 11 09  
 Toronto M5C 2V6  
**Tel** 416-368-0600  
**Fax** 4163686068

**Submitted By**

MORRISON BROWN 1 Toronto St., Suite 910 2005 11 09  
 SOSNOVITCH LLP Toronto M5C 2V6  
**Tel** 416-368-0600

**Submitted By**

Fax 4163686068

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

**File Number**

Charger Client File Number : 20050786

**Properties**

<i>PIN</i>	06050 - 0006 LT	<i>Interest/Estate</i>	Fee Simple	<input checked="" type="checkbox"/> Remove S/T interest
<i>Description</i>	PT LT 18 CON 5 SCARBOROUGH; PT RDAL BTN LTS 18 & 19 CON 5 SCARBOROUGH (CLOSED BY SC608215) AS IN TB232699; CITY OF TORONTO			
<i>Address</i>	05945 STEELES AVENUE EAST SCARBOROUGH			
<i>PIN</i>	06050 - 0199 LT	<i>Interest/Estate</i>	Fee Simple	
<i>Description</i>	PT LOTS 18 & 19, CON 5; PT ROAD ALLOWANCE BETWEEN LOTS 18 & 19 CON 5. AS CLOSED BY BY-LAW 406 BEING PT OF PT 1 66R12477 LYING NORTH OF PLAN 66M1996; SAVE & EXCEPT PT OF LOTS 18 & 19 CON 5 PT 1 66R16987...SUBJ. TO EASE. OVER PTS 1 & 2 66R17070 AS IN C981858. SCARBOROUGH, CITY OF TORONTO			
<i>Address</i>	5789 STEELES AVENUE SCARBOROUGH			
<i>PIN</i>	06050 - 0203 LT	<i>Interest/Estate</i>	Fee Simple	
<i>Description</i>	PT LT 20 CON 5 SCARBOROUGH AS IN SC402875 & TB566563 EXCEPT PT 1 64R14694; SCARBOROUGH, CITY OF TORONTO			
<i>Address</i>	5811 STEELES AVENUE EAST SCARBOROUGH			

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* 2811 DEVELOPMENT CORPORATION  
*Address for Service* 7100 Woodbine Avenue  
 Suite 108  
 Markham, ON L3R 5J2

I, Charles Chan, President, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

**Chargee(s)***Capacity**Share*

*Name* LOMBARD GENERAL INSURANCE COMPANY OF CANADA  
*Address for Service* 105 Adelaide Street West  
 Toronto, ON M5H 1P9

**Provisions**

*Principal* \$750,000.00 *Currency* CDN  
*Calculation Period* monthly  
*Balance Due Date* On Demand  
*Interest Rate* 18.0%  
*Payments*  
*Interest Adjustment Date*  
*Payment Date*  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* 200501  
*Insurance Amount* full insurable value  
*Guarantor*

**Signed By**

Jackalene Christine Williams 1500-151 Yonge St. acting for Chargor(s) Signed 2006 03 14  
 Toronto M5C 2W7  
 Tel 4168631188  
 Fax 4168630305

**Submitted By**

TORKIN MANES COHEN ARBUS  
LLP

1500-151 Yonge St.  
Toronto M5C 2W7

2006 03 14

Tel 4168631188

Fax 4168630305

**Fees/Taxes/Payment**

Statutory Registration Fee \$60.00

Total Paid \$60.00

**File Number**

Chargor Client File Number :

20596-430

**Properties**

<i>PIN</i>	06050 - 0005 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 19 CON 5 SCARBOROUGH AS IN TB189026; S/T EXECUTION 95-018108, IF ENFORCEABLE; S/T EXECUTION 96-010374, IF ENFORCEABLE; S/T EXECUTION 97-002546, IF ENFORCEABLE; TORONTO, CITY OF TORONTO		
<i>Address</i>	5933 STEELES AVENUE EAST SCARBOROUGH		
<i>PIN</i>	06050 - 0006 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 18 CON 5 SCARBOROUGH; PT RDAL BTN LTS 18 & 19 CON 5 SCARBOROUGH (CLOSED BY SC608215) AS IN TB232699; TORONTO, CITY OF TORONTO		
<i>Address</i>	05945 STEELES AVENUE EAST SCARBOROUGH		
<i>PIN</i>	06050 - 0199 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LOTS 18 & 19, CON 5; PT ROAD ALLOWANCE BETWEEN LOTS 18 & 19 CON 5. AS CLOSED BY BY-LAW 406 BEING PT OF PT 1 66R12477 LYING NORTH OF PLAN 66M1996; SAVE & EXCEPT PT OF LOTS 18 & 19 CON 5 PT 1 66R16987...SUBJ. TO EASE. OVER PTS 1 & 2 66R17070 AS IN C981858. SCARBOROUGH, CITY OF TORONTO		
<i>Address</i>	5789 STEELES AVENUE EAST SCARBOROUGH		
<i>PIN</i>	06050 - 0203 LT	<i>Interest/Estate</i>	Fee Simple
<i>Description</i>	PT LT 20 CON 5 SCARBOROUGH AS IN SC402875 & TB566563 EXCEPT PT 1 64R14694; SCARBOROUGH, CITY OF TORONTO		
<i>Address</i>	5811 STEELES AVENUE EAST SCARBOROUGH		

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* 2811 DEVELOPMENT CORPORATION  
*Address for Service* 7100 Woodbine Avenue  
 Suite 108  
 Markham, ON L3R 5J2

I, Charles Chan, President, have the authority to bind the corporation.  
 This document is not authorized under Power of Attorney by this party.

**Chargee(s)**

*Capacity*

*Share*

*Name* LOMBARD GENERAL INSURANCE COMPANY OF CANADA  
*Address for Service* 105 Adelaide Street West  
 Toronto, ON M5H 1P9

**Provisions**

*Principal* \$1,560,127.28 *Currency* CDN  
*Calculation Period* MONTHLY  
*Balance Due Date* ON DEMAND  
*Interest Rate* 18.0%  
*Payments*  
*Interest Adjustment Date*  
*Payment Date*  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* 200501  
*Insurance Amount* full insurable value  
*Guarantor*



**Signed By**

Leonard David Rodness                      1500-151 Yonge St.                      acting for Chargor(s)                      Signed                      2006 06 30  
Toronto M5C 2W7

Tel                      4168631188  
Fax                      4168630305

**Submitted By**

TORKIN MANES COHEN ARBUS                      1500-151 Yonge St.                      2006 06 30  
LLP                      Toronto M5C 2W7

Tel                      4168631188  
Fax                      4168630305

**Fees/Taxes/Payment**

Statutory Registration Fee                      \$60.00  
Total Paid                      \$60.00

**File Number**

Chargor Client File Number :                      23108-02

## Land Registration Reform Act

## SET OF STANDARD CHARGE TERMS

STANDARD CHARGE TERMS  
CLAUSES TYPES DE CHARGE

Filing No. 2005 01 ..... Cote

Filing Date JAN 6<sup>th</sup> / 05 ..... Date de Dépôt

Page totale 21 ..... Pages

  
 DIRECTOR OF LAND REGISTRATION  
 DIRECTEUR DE L'ENREGISTREMENT DES IMMEUBLES

Filed by

LOMBARD GENERAL INSURANCE COMPANY OF CANADA

Filing Date:

Filing Number:

The following Set of Standard Charge Terms shall be deemed to be included in every charge in which the set is referred to by its filing number, as provided in section 9 of The Land Registration Reform Act R.S.O. 1990, as amended, except to the extent that the provisions of this set of standard charge terms are modified by any additions, amendments or deletions expressly provided for or stipulated in such charge, or in any schedule(s) annexed thereto.

**DEFINITIONS**

In addition to any other words, terms or phrases specifically defined elsewhere in these standard charge terms, the words, terms or phrases set out below shall have the meanings respectively ascribed to them as follows, whenever same are used or referred to in these standard charge terms, namely:

"Charge" shall mean the charge/mortgage of land which specifically incorporates these standard charge terms by expressly referencing the filing number of same therein, together with any schedules attached thereto, and as may be amended, extended or renewed from time to time with the written consent of the Chargee;

"Charged Premises" shall have the meaning as defined in paragraph 2 of these standard charge terms;

"Chargee" shall mean Lombard General Insurance Company of Canada and/or any other mortgagee(s) or chargee(s) expressly described or defined as such in the Charge;

"Chargor" shall mean the mortgagor(s) or chargor(s) described or defined as such in the Charge;

"Claims" shall have the meaning as defined in paragraph 5(h) of these standard charge terms;

"Commitment Letter" shall mean the commitment letter issued by or on behalf of the Chargee, and duly accepted by or on behalf of the Chargor, as may be amended from time to time by the mutual agreement of both the Chargor and the Chargee;

"Condominium Corporation" shall have the meaning as defined in paragraph 29(a) of these standard charge terms;

"Condominium Project" shall mean the residential condominium being developed by or on behalf of the Chargor on the Property (as such term is hereinafter defined), or on any portion thereof;

"Construction Mortgage" shall have the meaning as defined in paragraph 24 of these standard charge terms;

"Construction Mortgagee" shall have the meaning as defined in paragraph 24 of these standard charge terms;

"E-Reg" shall mean the "Teraview Electronic Registration System" referred to in paragraph 28 of these standard charge terms;

"Indebtedness" shall have the meaning as defined in paragraph 1 (a) of these standard charge terms;

"Indemnity Agreement" shall mean the indemnity agreement entered into by the Chargor as the principal, with or without the Chargor and/or any other party or parties described therein as the indemnitor(s), to and in favour of the Chargee as the surety, as may be amended from time to time by the mutual agreement of the Chargee and the Chargor, and all other indemnitors, as the case may be;

"Leases" shall have the meaning as defined in paragraph 2(b) of these standard charge terms;

"Permitted Encumbrances" shall mean those interests, charges, agreements, instruments and/or encumbrances in respect of the Property as are more particularly listed below, and any others which are approved by the Chargee and expressly described in one or more schedules to the Charge, namely;

- a) inchoate liens for realty taxes, utilities and local improvement charges affecting the Property, and all other charges pursuant to any applicable site plan or development agreement(s) in respect of the Property, provided any or all of the foregoing are not yet due and payable;
- b) the reservations, limitations, provisos and conditions expressed in any original grant(s) of the Property (or any portion thereof) from the Crown, as may be varied by statute, provided same have been complied with;
- c) any and all restrictions, easements, rights of way and other similar rights and agreements affecting the Property (including without limitation, any easements for the installation, maintenance and/or repair of sewers, drains, gas and water mains, hydro-electricity, telephone and/or cable television conduits, wires and cables, and all appurtenances thereto) which, in the opinion of the Chargee, do not (and will not) individually, or in the aggregate, materially impair the development of the Condominium Project on the Property or the Chargee's security with respect to same, or the value or use of the Property, and provided further that the obligations, if any, of the Chargor thereunder (or in connection therewith) are being complied with;
- d) zoning and building restrictions, and municipal by-laws, ordinances and regulations, provided same are being complied with;
- e) minor title defects which do not, in the opinion of the Chargee's counsel, materially effect the marketability of title to the Property;
- f) any and all site plan agreements, condominium development agreements, servicing agreements and/or density bonus agreements entered into with the local municipality or regional authority and/or any other governmental authorities or agencies pertaining to the development of the Condominium Project on the Property, together with any and all amending agreements (or counterpart agreements or assumption agreements) with respect thereto, and any and all agreements of like kind as deemed necessary or desirable by any governmental authorities or agencies and/or any public or private utility supplier(s) [ie for the installation, maintenance and/or repair of any utilities, telephone, cable television and/or any other requisite service(s) to the Property] in connection with the development of the Condominium Project on the Property (or any portion thereof), provided that said agreements do not (and will not), in the opinion of the Chargee, either individually or collectively, materially impair the Chargee's security or the value or use of the Property, and provided further that the obligations thereunder have been (or are being) complied with, or satisfactory security to ensure compliance therewith has been posted with the relevant governmental authorities, agencies or utility suppliers (as the case may be);
- g) the declaration and by-laws of the residential condominium to be created by the Chargor on the Property (or any portion thereof), together with any mutual easement and cost-sharing agreement(s) or reciprocal agreement(s) to be registered on title to the Property pertaining to the mutual use, maintenance, repair and/or cost-sharing of any amenities, services and/or facilities intended to be shared between or amongst the Condominium Corporation and any existing or future adjacent or neighbouring condominium corporation(s), as well as any counterpart agreement(s), amending agreement(s) and/or assumption agreement(s) in respect of said reciprocal agreement(s);
- h) an easement/servicing agreement entered into with the local or regional hydro-electric commission (or any other applicable hydro-electricity supplier selected by the Chargor), for the provision of hydro-electric service to the Condominium Project;
- i) an easement/servicing agreement entered into with the local or regional cable television supplier (or any other applicable cable television supplier selected by the Chargor), for the provision of cable television service to the Condominium Project;
- j) an easement/servicing agreement entered into with the local or regional gas supplier (or any other applicable gas supplier selected by the Chargor), for the provision of gas service to the Condominium Project;
- k) any and all outstanding agreements of purchase and sale between the Chargor and the respective purchasers of units in the Condominium Project, provided that all of such agreements of purchase and

sale are expressly stipulated to be subordinate and postponed to the Charge and the Chargee's security interests thereunder, and provided further that none of such agreements of purchase and sale are registered against the title to the Property or any portion thereof, either prior to or subsequent to the registration of the Charge; and

- l) any and all purchase money security interests obtained and/or evidenced by one or more financing statements registered under or pursuant to The Personal Property Security Act R.S.O. 1990, as amended, by or in favour of any party or parties respecting any equipment, furnishings and/or appliances installed (or to be installed) within the Condominium Project or any portion thereof.

"Principal Sum" shall have the meaning as defined in paragraph 1(a) of these standard charge terms;

"Property" shall have the meaning as defined in paragraph 2(a) of these standard charge terms;

"Receiver" shall have the meaning as defined in paragraph 14 of these standard charge terms;

"Rents" shall have the meaning as defined in paragraph 2(b) of these standard charge terms;

"Security" shall have the meaning as defined in paragraph 2 of these standard charge terms; and.

"Tarion" shall mean the Tarion Warranty Corporation, or any successor institution, in whose favour the Chargee has issued (or intends to issue) one or more warranty bonds in respect of the Condominium Project (or any portion thereof), for and on behalf of the Chargor.

#### THE INDEBTEDNESS SECURED AND THE INTEREST RATE CHARGED

1. (a) For value received, the Chargor hereby acknowledges and agrees that the Charge is being given to the Chargee as continuing collateral security for the payment of all amounts from time to time due and payable (or becoming due and payable) by the Chargor to the Chargee under or pursuant to the Indemnity Agreement, in Canadian currency (hereinafter collectively referred to as the "Indebtedness" or the "Principal Sum"). The Charge is also being given in addition to, and not in substitution for, any other security or securities now or hereafter held by the Chargee for the Indebtedness. The Principal Sum shall become due and payable on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment of same or any portion thereof, at the Chargee's office address or address for service so indicated in the Charge, and the Chargor shall pay interest on the Principal Sum, and on all other amounts added thereto from time to time in accordance with the provisions hereof (or on so much thereof as may be outstanding and unpaid from time to time), computed and accruing from and after the date of the Chargee's demand for payment thereof, and both before and after default, as well as before and after judgment, at the rate of interest more particularly stipulated in the Charge [provided however that if no interest rate is expressly stipulated in the Charge, then the applicable rate of interest shall be deemed and construed, for all purposes, to be eighteen (18%) percent per annum], with such interest to be calculated monthly not in advance, and payable on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment, and any unpaid interest shall be added to the outstanding Indebtedness and same shall collectively bear interest in the same manner and at the same rate, with interest on overdue interest to be calculated and compounded monthly at the same rate, until such time as the entire Principal Sum is paid in full to the Chargee.
- (b) In addition to (and without limiting) the foregoing, it is acknowledged and agreed that the Charge is being given to the Chargee as continuing collateral security for the payment of all monies, and the performance of all obligations, of and by the Chargor pursuant to the terms and provisions of the Commitment Letter. The provisions of the Commitment Letter shall be deemed and construed to be incorporated in the Charge by reference, and shall form an integral part of the Charge. In the event of any conflict or inconsistency between any of the provisions of the Commitment Letter and the provisions of the Charge, then the provisions of the Commitment Letter shall prevail.

#### SECURITY

2. As security for the due payment of all monies payable under the Charge, the Chargor hereby:
  - (a) mortgages and charges, as and by way of a fixed and specific mortgage and charge, to and in favour of the Chargee and its successors and assigns, the lands and premises described in (and correspondingly encumbered by) the Charge, and each and every building, structure, installation and/or improvement now or hereafter situate or erected thereon or therein, including all plant, equipment, apparatus,

machinery and fixtures (of every nature or kind whatsoever) now or hereafter situate thereon or affixed thereto (all of which is hereinafter collectively referred to as the "Property" or the "Charged Premises"); and

- (b) assigns, to and in favour of the Chargee and its successors and assigns, all agreements to lease and all leases, both present and future, together with any and all extensions or renewals thereof (hereinafter collectively referred to as the "Leases") now or hereafter relating to the Property (or any portion thereof), including all rents and all other monies now or hereafter payable under any or all of the Leases (hereinafter collectively referred to as the "Rents"), together with the benefit of all covenants, stipulations and provisions contained in the Leases, and all guarantees with respect to the payment and/or performance of any covenants in respect of the Leases, on the express understanding and agreement that unless and until there is an event of default under the Charge, and the Chargee thereafter delivers written notice to the Chargor to such effect, the Chargor shall be entitled to deal with the Rents and the Leases in the ordinary course of business, in the same fashion or manner as a prudent owner or landlord would so do, free and clear of the security constituted by the Charge;

with such mortgage and charge of the Property, and such assignment of the Rents and Leases, being hereinafter collectively referred to as the "Security".

#### TERM AND DEFEASANCE

3. The Charge shall be void, and of no further force or effect, upon the payment to the Chargee of the entire Indebtedness, and all other sums of money now or hereafter secured by the Charge (or to which the Chargee may be entitled by virtue of the Charge or these standard charge terms), together with all interest earned or accrued thereon at the aforementioned rate of interest, and together with the payment by the Chargor of all taxes and performance of statute labour, and the observance and performance of all covenants, provisos and conditions contained in the Charge and set forth in these standard charge terms.

#### FURTHER ASSURANCES

4. The Chargor hereby covenants and agrees that it will at all times do, execute, acknowledge and deliver (or cause to be done, executed, acknowledged and delivered) all such further acts, pledges, mortgages, hypothecs, charges, assignments and assurances, at law or in equity, as the Chargee may reasonably require from time to time for the better assuring, mortgaging, hypothecating, charging, assigning and confirming the Security unto (and in favour of) the Chargee, and for perfecting the security interests created by the Charge in the undertaking, property and assets of the Chargor so mortgaged and charged by virtue of the provisions of the Charge and these standard charge terms, or intended so to be, or which the Chargor may hereafter become bound to mortgage, hypothecate, assign and/or charge to and in favour of the Chargee, and for the better accomplishing and effectuating of the Charge.

#### CHARGOR'S COVENANTS

5. The Chargor covenants and agrees with the Chargee that:
- (a) The Chargor shall keep the Property in good condition and repair, such that the value of the Property is not materially adversely affected in any way.
  - (b) The Chargor shall pay the principal, interest and all other monies stipulated to be due and owing under the Indemnity Agreement and secured by the Charge, and shall pay (or cause to be paid) as and when they fall due, all realty taxes, utility charges and similar assessments (whether local, municipal, provincial, federal or otherwise) which are now (or may hereafter be) imposed, charged or levied against the Property (or any portion thereof), and the Chargor further covenants and agrees to deliver to the Chargee, on an annual basis, evidence of the Chargor's payment of all such realty taxes, utility charges and similar assessments, in form and substance satisfactory to the Chargee.
  - (c) The Chargor shall comply with all governmental, statutory and/or regulatory requirements pertaining to the Property, and with the provisions of all Permitted Encumbrances affecting the Property.
  - (d) The Chargor shall permit the Chargee and its designated agents or representatives, whenever the Chargee deems it necessary or desirable, to enter upon and inspect the Property and all buildings and structures erected thereon.

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 CLAUSES TYPES DE CHARGE  
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- (e) The Chargor shall, at its own expense, forthwith insure the Property (if not already so insured), and during the continuance of the Charge shall continue to keep the Property insured, in the name of the Chargor, with loss payable to the Chargee as its interest may appear, with such insurance being in such amounts as the Chargee may from time to time specify, but in any event in an amount not less than the full insurable replacement value thereof on a completed value basis, in lawful money of Canada, with a company or companies and by a policy or policies of insurance approved by the Chargee, against all risks of direct physical loss, with only such exclusions to coverage as the Chargee may approve. In addition, but without limiting the generality of the foregoing, the Chargor shall maintain rental loss insurance, boiler and pressure vessel insurance (if applicable), and insurance against any liability which may be imposed or claimed against the Chargor and/or the Chargee for damages, loss or injury (including death) occasioned to any persons, and for damages to (and/or loss of) the property of any person(s), in such amounts as will, in the reasonable opinion of the Chargee, adequately protect the Chargor and the Chargee against such liabilities and losses. If the Property has no insurable structures thereon, then such insurance will not be required. Such insurance shall, during the course of construction, be in a builder's "all risk" course of construction form. Such insurance coverage shall either be without any co-insurance requirement, or shall have a stated or stipulated amount of co-insurance clause, but in no case shall the insurance coverage be for an amount less than the aggregate of the Principal Sum secured by the Charge, together with the principal amount of any permitted prior encumbrances. The Chargor shall deliver to the Chargee, forthwith upon the latter's request, copies of all insurance binders and policies in effect with respect to the Property, together with evidence of the payment of all insurance premiums payable in connection therewith, in form and substance satisfactory to the Chargee. Evidence of the continuation of all such insurance having been effected shall also be produced to the Chargee at least fifteen (15) days prior to the expiration thereof; otherwise the Chargee may procure such insurance coverage on its own and charge the premiums paid therefor to the Chargor, together with interest accruing thereon at the rate provided for or stipulated in the Charge (or at the rate of interest deemed to be applicable by virtue of these standard charge terms), and the same shall be payable by the Chargor to the Chargee on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment thereof, and shall also be deemed and construed to be secured by the Charge against the Property. It is further agreed that the Chargee may at any time require any insurance of the buildings situate on the Property to be cancelled, and new insurance effected with an insurance company selected by the Chargee, and also on the Chargee's own accord may effect or maintain any insurance herein provided for, and any amount paid by the Chargee therefor shall be reimbursed and payable by the Chargor on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment of same, together with interest accruing thereon at the rate provided for or stipulated in the Charge (or at the rate of interest deemed to be applicable by virtue of these standard charge terms), and all such amounts shall likewise be deemed to be secured by the Charge against the Property. All policies of insurance required to be obtained and maintained by the Chargor shall expressly provide that loss, if any, shall be payable to the Chargee as its interest may appear, subject to the standard form of mortgage clause approved by the Insurance Bureau of Canada, which shall be attached to (or incorporated within) each and every policy of insurance so procured.
- (f) The Chargor shall maintain at all times throughout the duration of the Charge its corporate existence, and furthermore shall promptly provide written notice to the Chargee of any default respecting any obligations or liabilities of the Chargor arising under the Charge and/or any of the Permitted Encumbrances.
- (g) The Chargor shall promptly pay, as and when due, the full amount of:
- (i) all liens, charges and encumbrances upon or against the Charged Premises;
  - (ii) all reasonable charges or expenses of the Chargee in inspecting, protecting or valuating the Property at any time, after realization proceedings have been commenced by or on behalf of the Chargee; and
  - (iii) all costs, fees and disbursements incurred by the Chargee and secured by the Charge.
- (h) The Chargor shall pay (or cause to be paid) as soon as the same are due, all claims and demands of contractors and labourers, and all wages, salaries, holiday pay and worker's compensation assessments, and all other charges of any nature or kind (hereinafter collectively referred to as

the "Claims"), which if unpaid might constitute (or give rise to) a construction lien or similar lien or charge against the Property having priority over (or ranking *pari passu* with) the Charge, or any future advance(s) to be made under or otherwise secured by the Charge, and the Chargor shall from time to time, and on demand, provide the Chargee with such books, payrolls, or other records, receipts, certificates and/or declarations as the Chargee may deem necessary in order to satisfy itself that the Claims have been paid as soon as the same are due.

- (i) The Chargor shall forthwith on the happening of any loss or damage, furnish at its own expense, all necessary proofs, and do all necessary acts to enable the Chargee to obtain payment of all applicable insurance monies; and any insurance monies that the Chargor may be entitled to receive shall, at the option of the Chargee, be applied in rebuilding, reinstating or repairing the Charged Premises (or any portion thereof), or alternatively may be applied, in the sole discretion of the Chargee, to repay the Indebtedness in whole or in part, or to repay any other monies owing to the Chargee or otherwise secured under the Charge, whether or not then due, notwithstanding any law, equity or statute to the contrary, on the express understanding that all rights and benefits of the Chargor to such insurance proceeds (to the extent that any portion of the Indebtedness is still outstanding, or any other monies are due and owing to the Chargee, or otherwise secured by the Charge) are hereby expressly waived.
- (j) The Chargor, immediately upon obtaining knowledge of the institution of any proceedings for the expropriation of the Charged Premises, or any part thereof, shall notify the Chargee of such proceedings. If the Charged Premises, or any part thereof, is taken or damaged in or by such expropriation proceedings or otherwise, then the award or compensation payable to the Chargor is hereby charged and assigned to the Chargee, and shall correspondingly be paid directly to the Chargee in the place and stead of the Chargor, in order to reduce, *pro tanto*, the outstanding Indebtedness secured by the Charge.
- (k) The Chargor, within ten (10) days after receipt of the Chargee's request from time to time to do so, shall (at no cost or charge to the Chargee) certify and confirm to the Chargee (or to any person designated by the Chargee) the precise amount of the Indebtedness secured or otherwise due under the Charge as at the date of the certification, together with the date to which interest accruing thereon has been paid, and that the Chargor has no right of set-off or equitable claim against the monies due or payable to the Chargee so secured under or by the Charge (or if it has such a right or claim of set-off, the amount thereof), and that there have been no amendments to the Charge (or, if there have been any such amendments, the details specifying same). Likewise the Chargee, within ten (10) days after receipt of the Chargor's request from time to time to do so, shall (at no cost or charge to the Chargor) provide a mortgage statement to the Chargor (or to any person so designated by the Chargor) certifying or confirming each of the foregoing matters.
- (l) The Chargor shall obey (or cause to be obeyed) all laws, rules, regulations and by-laws, whether federal, provincial or municipal, which in any way relate to the Charged Premises (or any portion thereof), or the use of same.
- (m) All representations and warranties given by the Chargor to the Chargee in connection with the Indemnity Agreement and/or the Charge shall remain true, and be of full force and effect, throughout the entire term or duration of the Charge.
- (n) The Chargor shall keep the Charged Premises in good condition and repair, according to the nature and description of same as a prudent owner would so do, and the Chargee and its designated agents or representatives may, whenever the Chargee deems it necessary or appropriate, enter upon and inspect the Charged Premises (or any portion thereof) and all buildings and structures erected thereon, and make such repairs thereto as it deems necessary, and the reasonable cost of such inspection and repairs, together with interest accruing thereon at the rate prescribed by the Charge (or at the rate of interest deemed to be applicable pursuant to these standard charge terms), shall be added to the Indebtedness secured by the Charge, and shall be payable on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment of same, and shall also be considered a charge against the Property having priority to all claims and encumbrances made or arising subsequent to the registration of the Charge. If the Chargor shall neglect to keep the Charged Premises in good condition and repair, or shall commit or permit any act of waste on the Charged Premises (as to which the Chargee shall be the sole judge), or if the Chargor is in default of any of the covenants, provisos, agreements or conditions contained in the Charge (or in any prior mortgage or charge to which the Charge is

subordinate), then all monies secured by the Charge shall, at the option of the Chargee, become due and payable on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment of same, and in default of such payment interest shall continue to accrue thereon, and the Chargee's powers of entering upon and leasing or selling the Charged Premises or any portion thereof (and all other remedies contained in the Charge in favour of the Chargee) may thereafter be exercised forthwith.

- (o) Save and except for the Permitted Encumbrances, the Chargor shall not further encumber the Property or any portion thereof without the Chargee's prior written consent, which consent shall not be unreasonably withheld or unduly delayed.
- (p) The Chargor shall comply fully with the terms and provisions of the Permitted Encumbrances, and shall keep same in good standing at all times, and shall fully indemnify and save the Chargee harmless from and against all costs, claims, damages and/or liabilities which the Chargee may suffer or incur as a result of the Chargor's failure to do so.
- (q) In the event that the Chargor commits an act of default under (or pursuant to the provisions contained in) any charge, agreement or encumbrance affecting (or registered against) the Charged Premises ranking *pari passu* with or in priority to this Charge, then the Chargor shall be deemed to have committed a breach or an act of default under the Charge, whereupon the Chargee shall be entitled to exercise and pursue any and all rights, remedies and powers against the Chargor and/or the Charged Premises (or any portion thereof) arising under or by virtue of the Charge, at law or in equity.

#### **CHARGE EFFECTIVE WITHOUT ADVANCES THEREUNDER**

6. Neither the preparation, execution nor registration of the Charge shall bind the Chargee to advance any monies secured by the Charge, nor shall the advance of a part of the monies thereby secured bind the Chargee to advance any unadvanced portion thereof, but nevertheless the security in the Charged Premises in favour of the Chargee shall take effect forthwith upon the execution and delivery of the Charge by the Chargor, and the Chargee's expenses incurred in connection with the examination of the title to the Charged Premises and/or in procuring any appraisal of the value of the Charged Premises shall nevertheless be secured by the Charge, and such monies together with interest accruing thereon at the rate stipulated in the Charge (or deemed to be applicable pursuant to these standard charge terms) shall correspondingly be payable by the Chargor to the Chargee on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment of same, and in default of the Chargor's payment thereof, the Chargee's powers of entering upon and leasing or selling the Charged Premises or any portion thereof [and all other rights, remedies and powers against the Chargor and/or the Charged Premises (or any portion thereof) arising under or by virtue of the Charge in favour of the Chargee] may thereafter be exercised forthwith.

#### **OUTSTANDING REALTY TAXES**

7. The Chargee may, at its option, deduct from any advance of monies secured by the Charge, an amount sufficient to pay any realty taxes which have become due and payable as at the date of such advance, or alternatively may pay the whole or any portion of the outstanding realty taxes assessed against the Property at any time or times, and all amounts so expended by the Chargee shall automatically be added to the Indebtedness, and shall likewise be secured by the Charge. The Chargor shall deliver to the Chargee, forthwith upon the latter's request, copies of all realty tax bills and other notices of assessment affecting the imposition of realty taxes against the Property, together with evidence of the payment of same in form and substance satisfactory to the Chargee.

#### **ASSIGNMENT OF CHARGE BY CHARGE**

8. The Chargee may, without notice to the Chargor and without the consent of the Chargor, assign the Charge in whole or in part, together with the benefit of all covenants of the Chargor thereunder, provided that the security and obligations to which the Charge is collateral shall likewise be assigned by the Chargee to the same assignee.



**DISCRETIONARY POWERS OF THE CHARGE**

9. The Chargee may, at its sole, unfettered and unreviewable discretion, and without notice to the Chargor and without the consent of the Chargor, enter into an agreement with anyone who has assumed the Charge, to grant an extension of time; or to change the rate of interest applicable thereto; or to alter (in any way) the terms of payment of the Charge; or to take any additional security; or to waive the performance of any covenant(s) contained in the Charge; and may release the Chargor (or anyone claiming under the Chargor) or any other person(s) liable under the Charge; or may surrender, release or abandon (or omit to perfect or enforce) any security, remedy or proceeding which the Chargee may now or hereafter hold or have; and may take, acquire or discharge, either with or without payment, part or all of the Property and/or the Security; and may apply all monies received from the Chargor or others, or from any other security, upon such part of the Indebtedness secured by the Charge as the Chargee may think best, without prejudice to (and without in any way limiting or lessening) the liability of the Chargor and/or any guarantor(s), indemnitor(s) or other person(s) liable to the Chargee for the payment thereof. The Chargee shall incur no liability to the Chargor, or to any other person, by reason of any of the foregoing actions, arrangements or circumstances, and the liability of the Chargor and/or any guarantor(s), indemnitor(s) or other person(s) liable for payment of the Indebtedness to the Chargee shall continue in full force as long as any portion of the Indebtedness remains due and owing to the Chargee, but the Chargee shall not be bound to exhaust its rights, remedies and/or recourse against the Chargor, or against any other parties, or against the Property or the Security, before being entitled to demand and pursue immediate payment of the amounts secured by (or due and owing under) the Charge from any guarantor(s), indemnitor(s) or other person(s) liable for payment thereof.

**EXCLUSION OF IMPLIED COVENANTS**

10. (a) The implied covenants deemed to be included in a mortgage or charge under subsection 7(1) of The Land Registration Reform Act R.S.O. 1990, as amended, are hereby expressly excluded from these standard charge terms, and the previous existing covenants contained in The Short Forms of Mortgages Act R.S.O. 1980, Ch. 474 (which has since been abolished) shall be deemed and construed to be incorporated herein by reference. Without limiting the generality of the foregoing, it is understood and agreed that if any of the forms of words or phrases contained in these standard charge terms are also contained in Column One of Schedule "B" to The Short Forms of Mortgages Act R.S.O. 1980, Ch. 474, and distinguished by a number therein, then these standard charge terms shall be deemed to include (and shall have the same effect as if these standard charge terms contained) the form of words in Column Two of Schedule "B" to the said Act, distinguished by the same number, and accordingly the Charge and these standard charge terms shall be interpreted and construed as if The Short Forms of Mortgages Act R.S.O. 1980, Ch. 474, were still in full force and effect.

(b) The Chargor covenants, warrants and represents that it has a good, marketable and valid registered title to the Property, in fee simple, subject only to the Permitted Encumbrances, and has the good right, full power and lawful and absolute authority to charge the Property to and in favour of the Chargee in accordance with the terms and provisions set forth in the Charge and these standard charge terms, and to execute and deliver the Charge to the Chargee upon the covenants contained in the Charge and in these standard charge terms, and that upon the Chargor's execution and delivery of the Charge to the Chargee (and the corresponding registration of the Charge against the Property by or on behalf of the Chargee) the Chargee shall thereupon obtain and have a valid charge and security interest by virtue of the Charge that is binding upon and enforceable against the Chargor and the Property.

(c) On default, the Chargee shall have quiet possession of the Property, subject however to the Permitted Encumbrances but nevertheless free from all other claims, charges, interests and/or encumbrances whatsoever.

(d) The Chargor has done (and will do) no act to encumber the Property, save and except for the Permitted Encumbrances.

**DISTRESS**

11. The Chargee may distress for arrears of interest, together with all costs, charges and expenses incurred in connection with (or otherwise attendant upon) any exercise of distraint undertaken by or on behalf of the Chargee upon the Chargor's default, as in like cases of distress for rent. The Chargee may also distress for arrears of principal, in the same manner and to the same extent as if the same were arrears of interest.

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SECURITY WITH RESPECT TO RENTS AND LEASES

12. (a) Notwithstanding anything hereinbefore or hereinafter provided to the contrary, it is expressly understood and agreed that the Chargor's assignment of the Rents and the Leases to and in favour of the Chargee pursuant to the Charge, as additional collateral security for the payment and/or performance of the Chargor's obligations to the Chargee arising under the Indemnity Agreement shall not, under any circumstances, be deemed or construed to create any privity of estate between any or all of the tenants in respect of any of the Leases, and the Chargee as the assignee thereof, nor shall said assignment oblige the Chargee to perform or fulfill (or otherwise make the Chargee liable or responsible for performing or fulfilling) any of the covenants or obligations of the Chargor arising under or in connection with any of the Leases, in its capacity as the landlord thereunder. Furthermore, nothing contained herein shall be deemed or construed to have the effect of making the Chargee responsible for the collection of the Rents or any part thereof, or for the performance of any covenants, terms and/or conditions (either by the landlord or by the tenant) contained in any of the Leases, and the Chargee shall not, by virtue of the Charge or these standard charge terms, be deemed or construed to be a mortgagee or chargee in possession of the Property or any portion thereof, and under no circumstances shall the Charge and/or the assignment of the Rents and the Leases thereunder, in and of themselves, constitute or create the relationship of landlord and tenant between the Chargee and any tenant(s) in respect of any of the Leases.
- (b) If the Chargee, in the course of realizing on its security under the Charge consequent upon a default by the Chargor, takes any steps to attorn the Rents or any portion thereof, then the Chargee shall be liable to account for only such monies as shall actually come into its hands by virtue thereof, and such monies when received by the Chargee shall, at the sole option of the Chargee, be applied on account of the outstanding Indebtedness of the Chargor to the Chargee secured by the Charge, or be held as cash-collateral security for the outstanding obligations and/or liabilities of the Chargor to the Chargee, or otherwise applied on account of the monies from time to time due under the primary instrument(s) of indebtedness collaterally secured by the Charge.
- (c) The Chargor covenants and agrees that no rent has been or will be paid by any tenant(s) or other person(s) in possession of any portion of the Property more than two months in advance, and that the payment of any Rents owing under any of the Leases shall not be waived, released, reduced, discounted or otherwise discharged or compromised by the Chargor, except in the ordinary course of the Chargor's business acting as a prudent landlord, and none of the terms and provisions of the Leases shall be altered, waived or discharged (nor shall any of the Leases be terminated at the instance of the Chargor prior to their respective terms), except in the ordinary course of the Chargor's business acting as a prudent landlord. Save as otherwise hereinbefore provided, nothing herein contained shall be deemed or construed to be a consent on the part of the Chargee to the payment of any Rents in advance by any of the tenants under the Leases so assigned, nor to an alteration of any of the terms of the Leases, neither of which shall be undertaken except in the ordinary course of the Chargor's business acting as a prudent landlord, without the prior consent of the Chargee, whether or not a demand by the Chargee for payment or performance by the Chargor has occurred under the Charge.
- (d) The Chargee may waive any default committed by the Chargor under the Charge, or any breach of covenant with respect to the Charge, and shall not be bound to serve any notice upon any of the tenants in respect of any of the Leases upon the happening of any default or breach of covenant by the Chargor, but any such waiver shall not extend to any subsequent default or breach committed by the Chargor.
- (e) Notwithstanding the assignment by the Chargor of the Rents and the Leases to and in favour of the Chargee pursuant to the Charge, it is understood and agreed that until a default or breach has been committed by the Chargor under the Charge, the Chargor shall be entitled to receive the Rents, and shall not be liable to account therefor to the Chargee; provided however that at any time after any default or breach of covenant has been committed by the Chargor under the Charge, or at any time after the Chargee's demand for payment of the Indebtedness or any portion thereof (and/or any other monies secured by the Charge by virtue of these standard charge terms), or at any time after demand by the Chargee for performance by the Chargor has been made under the Charge, the Chargee shall then be entitled to serve notice of demand for payment of the Rents falling due subsequent to the date of service of said notice upon any or all of the tenants in respect of the Leases, and shall correspondingly be entitled to collect any and all of the Rents falling due subsequent to the date of service of said notice. Any payment(s) of the Rents (or any portion thereof) by any of the Chargor's tenants to the Chargee pursuant to the aforementioned notice of demand for payment issued by the Chargee shall not be

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considered or construed as a breach of the Leases by the tenants making such payments to the Chargee. Despite any default or breach committed by the Chargor under the Charge, and irrespective of any receipt by the Chargee of the Rents (or any portion thereof) pursuant to the foregoing provisions hereof, it is expressly understood and agreed that the Chargor shall at all times be (and shall continue to remain exclusively) liable to perform and fulfill all of the covenants and obligations of the Chargor arising under (or in connection with) all of the Leases existing or outstanding from time to time, in its capacity as the landlord thereunder.

#### DEFAULT

13. (a) If default shall be made in the payment of any sum for interest at any time appointed for the payment thereof as aforesaid, then compound interest shall be payable, and in such circumstances the sum in arrears for interest from time to time, as well after as before demand or maturity, and both before and after default and judgment, shall bear interest at the rate aforesaid, and in case the interest and compound interest are not paid within one (1) month from the date of default, a rest shall be made and compound interest at the rate aforesaid shall be payable on the aggregate amount then due, as well after as before demand or maturity and so on from time to time, and all such interest and compound interest shall be a charge upon the Property.
- (b) Upon default in the payment of any monies due and payable to the Chargee under the Charge for at least fifteen (15) days, the Chargee may, on at least thirty-five (35) days' notice in writing, enter on and lease the Property (or any portion thereof), or on default of payment for at least fifteen (15) days the Chargee may, on at least thirty-five (35) days' notice in writing, sell the Property (or any portion thereof). Such notice shall be given to such persons, and in such manner and form, and within such time as provided for or required by The Mortgages Act R.S.O. 1990, as amended, or alternatively as provided for in these standard charge terms. Provided further, and without prejudice to the statutory powers of the Chargee arising under the foregoing, that in case default be made in the payment of the said principal or interest or any part thereof, and such default continues for two (2) months after any payment of either falls due, then the Chargee may exercise the foregoing powers of entering, leasing or selling (or any of them) without any notice, it being understood and agreed, however, that if the giving of notice by the Chargee shall be required by law, then notice shall be given to such persons and in such manner and form and within such time as is so required by law. The whole or any part or parts of the Property may be sold by public auction or private contract, or partly one or partly the other, and the proceeds of any sale under or pursuant to the Charge may be applied in payment of any costs, charges and expenses incurred by or on behalf of the Chargee in taking, recovering or keeping possession of the Property, or incurred by reason of the non-payment (or incurred in the course of procuring payment) of the monies secured by the Charge, or otherwise. The Chargee may sell the Property or any part thereof, on such terms as to credit and otherwise as shall appear to it most advantageous, and for such price as can reasonably be obtained therefor, and may make any stipulations as to title or evidence or commencement of title or otherwise which it shall deem proper, and may buy in or rescind or vary any contract for the sale of the whole or any part of the Property, and resell the same without being answerable for any loss occasioned thereby, and in the case of a sale on credit, the Chargee shall be bound to pay the Chargor only such monies as have been actually received from the purchaser(s) after the satisfaction of the claims of the Chargee, and for any of the said purposes the Chargee may make and execute all agreements and assurances as it shall think fit. Any purchaser or lessee shall not be bound to see to the propriety or regularity of any sale or lease of the Property (or any portion thereof), nor be affected by any express notice that any sale or lease is improper, and no lack of notice or publication by the Chargee (as and when required) shall invalidate any such sale or lease.

#### RECEIVER

14. The Chargee may by writing under the hand of any solicitor or agent authorized on its behalf, upon any default whatsoever on the part of the Chargor in the payment of any principal, interest or any other monies owing or otherwise secured under the Charge, or upon any default by the Chargor in the observance of any of the covenants and conditions therein contained, appoint a receiver or manager, or a receiver and manager, or a receiver-manager (hereinafter referred to as the "Receiver") of the Property or any portion thereof, and every such Receiver shall be deemed to be the agent of the Chargor, and the Chargor shall be solely responsible for the acts or defaults of the Receiver, save and except for fraud or wilful misconduct. The Receiver shall have the power to demand, recover and receive all of the Rents and income from the Property by any lawful action, distress or otherwise, either in the name of the Chargor or the Chargee, and may give effectual receipts and discharges therefor. The Receiver may, at the discretion and written direction of the Chargee, complete the

development and construction of any uncompleted project or structure on the Property (or any portion thereof), substantially in accordance with the Chargor's plans and specifications in connection therewith, or carry on the business of the Chargor relating to the Property or any part thereof, and may exercise all the powers conferred upon the Chargee under the Charge. The Receiver may be removed by the Chargee, and in such case (as well as in the circumstances of any Receiver dying or refusing to act, or becoming incapable of acting) a new Receiver may be appointed from time to time by the Chargee by writing under the hand of any authorized solicitor or agent as aforesaid. The Chargee may from time to time fix the remuneration of every such Receiver, and may recompense every such Receiver for its disbursements properly incurred in carrying out its duties, and the Receiver's fees and disbursements shall be deemed and construed to be secured by the Charge against the Property, and shall be payable on demand, and shall bear interest at the rate stipulated under the Charge (or otherwise deemed to be applicable pursuant to these standard charge terms). The appointment of the Receiver by the Chargee shall not be deemed or construed to constitute the Chargee as a mortgagee or chargee in possession, and the Chargee shall not be accountable except for any monies actually received by it, and the person paying money to (or in any way dealing with) the Receiver shall not be obliged or concerned to enquire whether any cause or event has happened or occurred to authorize the Receiver to so act. Subject to the retention of the Receiver's remuneration and disbursements as aforesaid, the Receiver shall apply all monies received by it in such of the following modes, and in such order or priority as the Chargee may, from time to time and at the Chargee's sole option, direct in writing, namely: in discharge of all realty taxes, utility charges and other assessments affecting the Property which, if left unpaid, would constitute a lien or charge against the Property having priority over (or ranking *pari passu* with) the Charge; in payment of any amounts due under any mortgage or lien having priority over (or ranking *pari passu* with) the Charge; in payment of any premiums owing in respect of any fire, builder's all-risk, comprehensive liability and/or any other requisite insurance coverage that the Chargor is obliged under the Charge to procure and maintain, the payment of which is directed or confirmed in writing by the Chargee; in payment of the costs of executing or undertaking any necessary or proper repairs to any building or structure situate on the Property (or any portion thereof), as directed or confirmed in writing by the Chargee; in payment of the costs of carrying out or executing any of the powers, duties or discretions which vest in (or may be vested in) the Receiver by virtue of the foregoing provisions hereof; in payment of the principal monies (or any portion thereof) due and owing under the Charge, and/or in payment of any interest accruing due under the Charge, if and to the extent directed in writing by the Chargee; and shall pay the residue, if any, out of the monies received by the Receiver to the person or persons who, but for the possession of the Receiver, would have been entitled to receive same at law, in equity or by virtue of any applicable statute.

#### REMEDIES CUMULATIVE

15. No power or remedy conferred upon (or reserved to) the Chargee is intended to be exclusive of any other power or remedy given or available to the Chargee under or by virtue of the Charge and these standard charge terms, or under any security collateral thereto, or at law, in equity or by virtue of any applicable statute, and each and every such power or remedy shall be deemed and construed to be cumulative, and shall be in addition to every other power or remedy available to the Chargee by virtue of the Charge and these standard charge terms or any other security collateral thereto, now or hereafter existing at law, in equity or by statute. Every power and/or remedy given or available to the Chargee upon any default or breach of the Charge or these standard charge terms may be exercised by or on behalf of the Chargee from time to time, as often as may be deemed expedient by the Chargee, in its sole, unfettered and unreviewable discretion.

#### DISCHARGE

16. Upon the full payment and satisfaction of all principal, interest and other monies owing to the Chargee and secured by the Charge, and the due performance of all covenants and obligations of the Chargor set forth in the Charge, the Chargee shall, subject to the provisions of paragraph 28 hereof dealing with E-Reg registration requirements, execute and deliver a discharge of the Charge in registerable form within a reasonable time thereafter. All legal costs and other expenses incurred by the Chargee in connection with the preparation, execution and/or registration of such discharge shall be borne and paid for by the Chargor.

#### SEVERABILITY

17. If any one or more of the provisions contained in the Charge or in these standard charge terms shall, for any reason, be held or construed by a court of competent jurisdiction in the Province of Ontario to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision(s) of the Charge or these standard charge terms, and the Charge or these standard charge terms

(as the case may be) shall thereafter be read and construed as if such invalid, illegal or unenforceable provision had never been contained therein.

**DUE ON SALE, TRANSFER OR CHANGE IN BENEFICIAL OWNERSHIP**

18. In the event that the Chargor sells, conveys, transfers or assigns the Property (or any portion thereof) to one or more purchasers, transferees or assignees, or alternatively attempts or effects a change in the beneficial ownership of the Property (in whole or in part) at any time during the term or duration of the Charge, without first obtaining the written consent of the Chargee thereto, then at the sole option of the Chargee all monies secured by the Charge shall become due and payable on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment of same. However, a sale to one or more arms' length purchasers of one or more units (or proposed units) in the Condominium Project developed (or to be developed) on the Property (or any portion thereof) shall not trigger any payment(s) by the Chargor to the Chargee pursuant to the preceding provisions hereof.

**NO FURTHER CHARGE OR ENCUMBRANCE**

19. In the event that the Chargor further charges, mortgages or encumbers the Property (or any portion thereof) in any way, save and except for the Permitted Encumbrances, without first obtaining the written consent of the Chargee thereto, then at the sole option of the Chargee all monies secured by the Charge shall become due and payable on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment of same.

**NOTICES**

20. Any and all notices or other documents or communications desired or required to be given to any of the parties to the Charge [including the Chargor, the Chargee, and any guarantor(s) or indemnitor(s) of the Chargor's obligations under the Charge, in whole or in part] shall be in writing, and shall be delivered to the intended party or parties only by the following methods, namely by:

- (a) prepaid registered mail (provided there is no prevailing or impending interruption in postal service at the relevant time of posting) addressed to the intended party or parties at their respective addresses for service set forth in the Charge, and shall be deemed to have been effectively given and correspondingly received on the 5<sup>th</sup> day (excluding Saturdays, Sundays and statutory holidays) after the date same is posted by registered mail;
- (b) telefax transmission to the intended party or parties at their respective telefax numbers set forth in the Charge, and shall be deemed to have been effectively given and correspondingly received on the next day (excluding Saturdays, Sundays and statutory holidays) following the date of such telefax transmission, and provided further that a confirmation of such telefax transmission has been received by the transmitting party contemporaneous with (or forthwith following) such telefax transmission; or
- (c) personal delivery by hand or bonded courier, to any officer, director or senior employee of the intended party or parties, at their respective addresses for service set forth in the Charge, and shall be deemed to have been effectively given and correspondingly received on the next day (excluding Saturdays, Sundays and statutory holidays) following the date of such personal delivery.

Any of the parties to the Charge may, from time to time and by written notice delivered to all other parties thereto in the manner aforesaid, change the address for service or telefax number (or provide a telefax number where no such fax number was originally set forth in the Charge) to which its notices, documents and other communications are to be delivered.

**NON-MERGER**

21. (a) The taking of the Charge by the Chargee as security for the Indebtedness and interest thereon, and for all other amounts secured thereunder, shall not operate as a merger of the remedies of the Chargee for the payment of the monies owing from time to time by the Chargor to the Chargee, nor of any remedies or powers of the Chargee arising under the Commitment Letter, and the Charge shall constitute continuing security to the Chargee for the amount of the Indebtedness and interest thereon, and for all other amounts secured thereunder in accordance with the provisions of these standard charge terms.

(b) It is further agreed that the taking of a judgment or judgments on any of the covenants contained in the Charge shall not operate as a merger of any such covenants, nor shall same affect the Chargee's right to interest at the rate and times expressly provided for in the Charge (or at the rate of interest deemed to be applicable by virtue of these standard charge terms), and provided further that any such judgment(s) shall provide or stipulate that interest thereon shall be computed at the same rate (and in the same manner) as provided for in the Charge (or at the rate of interest deemed to be applicable by virtue of these standard charge terms, as the case may be) until the judgment(s) shall have been fully paid and satisfied.

**APPLICATION OF PROCEEDS**

22. Any and all payments made to the Chargee in respect of any monies secured by the Charge, and/or any monies or other proceeds realized from any securities held therefor (including the Charge) may be applied, and/or re-applied (notwithstanding any previous application) against or in respect of such part or parts of the Indebtedness and other liabilities of the Chargor arising under the Commitment Letter and/or the Charge as the Chargee may see fit in its sole, unfettered and unreviewable discretion.

**CONSENTS AND PARTIAL DISCHARGES**

23. (a) Subject to the provisions of paragraph 28 hereof dealing with the E-Reg registration requirements, the Chargor, when not in default under the Charge and/or the Indemnity Agreement, shall have the privilege of obtaining from the Chargee, upon ten (10) days' notice therefor (excluding Saturdays, Sundays and statutory holidays), the following:

- (i) the consent in writing of the Chargee to all documents and/or Planning Act proceedings (including any severance or minor variance applications) which may be reasonably required by the Chargor for the purposes of servicing the Property and/or developing the Condominium Project thereon, including all required postponements of the Charge (in registerable form) to any and all requisite easements or rights of way for maintenance, servicing, access and/or support purposes, and to any and all condominium development (or similar) agreements with any municipal, regional or other governmental authority or agency and/or utility provider; and
- (ii) partial discharges of the Charge in respect of such portions of the Property as are required by the Chargor to be dedicated or conveyed to any municipal, regional or other governmental authority or agency, including road or park dedications;

provided that:

- A) the partial discharge(s) and any related documents in connection therewith are in compliance with the part-lot control and subdivision control provisions of The Planning Act R.S.O. 1990, as amended;
- B) any such partial discharge(s) and consent(s) will not, in the reasonable opinion of the Chargee's counsel or the Chargee, materially or adversely affect the value of the Property or the Chargee's security interests under the Charge;
- C) the Chargee does not incur any liability under (or in respect of) any partial discharge(s) and/or consent(s) granted by the Chargee pursuant to the foregoing provisions hereof;
- D) the execution by the Chargee of any such partial discharge(s) and/or consent(s) is to the extent only of its interests in the Charge; and
- E) any consideration payable to the Chargor for any such partial discharge(s) and/or consent(s), or for any other document(s) requested to be executed by the Chargee in connection with the foregoing provisions of this paragraph, shall be paid entirely to the party or parties that are providing construction financing to the Chargor in connection with the development and construction of the Condominium Project on the Property, in reduction of the principal and interest indebtedness owing and secured thereunder.

(b) In those circumstances where the Condominium Project has been developed and completed on the Property (or any portion thereof), and the Condominium Corporation has correspondingly been created and registered under The Condominium Act 1998, S.O. 1998, as amended, the Chargor shall, when not

in default under the Charge and/or the Indemnity Agreement, and subject to the overriding provisions of paragraph 23(c) and (d) hereof, have the privilege of obtaining a partial discharge of the Charge with respect to each dwelling unit (and any ancillary parking and/or locker unit(s) acquired in connection therewith, if any), without any payment by the Chargor on account of principal or interest, provided that the following conditions are all complied with, namely:

- (i) that each partial discharge so requested is in compliance with the part-lot control and subdivision control provisions of The Planning Act R.S.O. 1990, as amended;
  - (ii) that the Chargor delivers (or causes to be delivered) to the purchaser of such unit(s) a registrable transfer and conveyance of such unit(s);
  - (iii) that the deed/transfer in respect of such unit(s) so conveyed by the Chargor is duly registered on title; and
  - (iv) that the Chargee is furnished with a photocopy of the duplicate registered copy of such transfer and conveyance, or is given the registration particulars thereof.
- (c) It is understood and agreed that the Chargee shall provide to the Chargor or its solicitors one or more blanket partial discharges of the Charge in respect of those units (and their appurtenant common interests) in the Condominium Project that have been sold and conveyed by the Chargor, within thirty (30) days after the Chargee's receipt of a list from the Chargor or its solicitors indicating and confirming the specific units so transferred to the respective unit purchasers thereof, accompanied by the registration numbers of the deeds/transfers to the respective unit purchasers. All such partial discharges shall be provided by the Chargee free of any charge or fee to the Chargor, save and except as may otherwise be specified or stipulated in the Commitment Letter. Alternatively, should the Chargor require executed individual partial discharges of the Charge on or before the final closing of any unit sale transactions, then the Chargor's solicitors shall prepare and forward the requisite partial discharges to the Chargee for execution, along with certified funds to cover and pay for the Chargee's solicitor's reasonable legal fees charged in connection with each individual partial discharge (or any higher sum or fee per individual partial discharge as may be specified in the Commitment Letter).
- (d) Notwithstanding anything provided in these standard charge terms to the contrary, it is understood and agreed that the Chargee shall not be obliged nor requested to provide any partial discharge(s) of the Charge in respect of any condominium unit(s) and its/their appurtenant common interests for which:
- (i) the Chargor still has liability exposure to Tarion for any deposit monies paid by a previous purchaser of the same unit(s); and/or
  - (ii) the Chargee still has liability exposure to Tarion under (or in connection with) any warranty bond(s) issued to Tarion by the Chargee in connection with the Condominium Project (or any portion thereof), or any liability exposure under any excess condominium deposit insurance policy, with respect to any deposit monies paid by a previous purchaser of the same unit(s).
- (e) The registration of a partial discharge of the Charge in respect of any condominium unit (and its appurtenant common interests), or in respect of any other portion of the Property shall, insofar as such premises so partially discharged are concerned, automatically constitute a discharge of (and from) all other security documents and security interests in favour of the Chargee (excluding any guarantees) as may be registered against the title to the Property (or any portion thereof) or evidenced by any financing statement(s) registered or recorded under the Ontario Personal Property Security Registration System.

#### **POSTPONEMENT OF THE CHARGE**

24. The Chargee covenants and agrees to postpone and subordinate the Charge, and its rights and interests thereunder, to and in favour of the mortgage security now or hereafter given by the Chargor to the party or parties providing construction financing to the Chargor in connection with the development and construction of the Condominium Project on the Property or any portion thereof (hereinafter referred to as the "Construction Mortgage"), and to any and all advances under the Construction Mortgage (whether prior to, or subsequent to, the date of registration of the Charge), and the Chargee shall correspondingly execute and deliver to the Chargor, forthwith upon the Chargor's request (and at no charge or fee to the Chargor therefor), a postponement of the Charge in registerable form, together with any requisite financing change statement (for registration under the Ontario Personal Property Security Registration System) evidencing and confirming the foregoing postponement

and subordination; provided however that with respect to purchasers' deposit monies involving the Condominium Project which are held or retained in a designated trust account monitored by or on behalf of the Chargee, it is expressly understood and agreed that the Chargee shall have a first charge and security interest with respect thereto, which shall not be postponed nor subordinated to or in favour of the holder(s)/owner(s) of the Construction Mortgage (hereinafter collectively referred to as the "Construction Mortgage").

#### **RELEASING OF SECURITY BY CHARGE**

25. Subject to the overriding requirement to comply with the part-lot control and subdivision control provisions of The Planning Act R.S.O. 1990, as amended, the Chargee may at any time, and from time to time, in its sole, unfettered and unreviewable discretion, release or discharge any part or parts of the Property from the security of the Charge, and/or may release any other security for (or any surety in respect of) the monies secured by the Charge or any portion thereof, either with or without any sufficient consideration therefor, and without any responsibility or liability to the Chargor (or any other party or parties) therefor, all without thereby releasing any other part of the Property or the Chargor (or any other person(s) from the obligations under the Charge], or from any of the covenants therein contained, and without being accountable to the Chargor for the value of any property or security so released or discharged, or for any monies except for such funds that are actually received by the Chargee. Every lot, part-lot or condominium unit into which the Charged Premises are (or may hereafter be) divided does and shall stand charged with all of the monies owing by the Chargor to the Chargee and secured by the Charge, and no person shall have the right to require such monies to be apportioned. It is expressly agreed that the Chargee may grant time, renewals, extensions, indulgences, releases and discharges, and may take securities or give same up, and may abstain from taking any securities, or from perfecting any securities, and/or may otherwise deal with the Chargor and all other persons and securities as the Chargee may see fit, in its sole, unfettered and unreviewable discretion, without restricting, prejudicing or derogating from any of the rights of the Chargee arising under or by virtue of the Charge and these standard charge terms.

#### **SALE OF EQUITY OF REDEMPTION**

26. No sale, transfer, conveyance or other dealing whatsoever by the Chargor with the Property or the equity of redemption with respect to same (or any part thereof) shall in any way change the liability of the Chargor to the Chargee, or in any way alter the rights of the Chargee as against the Chargor or any other person(s) liable for the payment of the monies and/or the performance of the obligations secured by the Charge.

#### **QUIET POSSESSION PRIOR TO DEFAULT**

27. Until a default by the Chargor under the Charge has occurred, the Chargor shall have quiet possession of the Property. Upon a default in the payment of any principal and/or interest due and owing under the Charge, or upon a default in the performance of any of the covenants or obligations set forth in the Charge or in these standard charge terms, the Chargee may enter into and take possession of the Property (or any portion thereof), and shall correspondingly be entitled to use, occupy, possess and enjoy the Property (or any portion thereof), without any interference, suit, hindrance, interruption, or claim by or from the Chargor or any other person or persons whomsoever.

#### **E-REG ELECTRONIC REGISTRATION REQUIREMENTS**

28. In the event that the electronic registration system (herein referred to as the "Teraview Electronic Registration System" or "E-Reg") is operative in the applicable Land Titles Office in which the Charged Premises are registered, then anywhere in these standard charge terms where it is stated that the Chargee is obliged to execute and deliver a discharge and/or postponement of the Charge, in registerable form, such obligation shall be replaced with either of the following obligations to be selected or chosen by the Chargee in its sole discretion, namely:

- (a) the Chargee delivering to the Chargor's solicitor an acknowledgment and direction authorizing the Chargor's solicitor to electronically register the discharge(s) and/or the postponement(s), as the case may be (provided that the Chargor's solicitor personally undertakes to provide the Chargee's solicitor with the registration particulars thereof, or alternatively a receipted copy of the electronically registered discharge and/or postponement, as the case may be, forthwith following the registration of same), all at the Chargor's sole cost and expense; or
- (b) the Chargee authorizing and directing its solicitor to electronically register the discharge(s) and/or the postponement(s), as the case may be, at the Chargor's sole cost and expense;



provided that in each case the Chargor has otherwise complied with all other provisions set forth in the Charge and in these standard charge terms.

**REGISTRATION OF CONDOMINIUM ON THE PROPERTY**

29. (a) It is acknowledged and agreed that the Condominium Project is intended to be developed on all or a portion of the Property encumbered by the Charge, and to be described in a declaration and description drawn and prepared pursuant to (and in accordance with) the provisions of The Condominium Act 1998, S.O. 1998, as amended, or any successor condominium legislation (hereinafter referred to as the "Act"), and registered as a condominium pursuant to the provisions thereof. The term or expression "**Condominium Corporation**" shall mean the condominium corporation created by the registration of the said declaration and description against or in respect of the Property (or any portion thereof).
- (b) The Chargor covenants and agrees to observe and comply with all duties and obligations imposed on the Chargor by the provisions of the Act, and by the declaration, by-laws and rules of the Condominium Corporation in force from time to time. Without limiting the generality of the foregoing, the Chargor covenants and agrees that it will promptly pay, as and when due, all contributions to the common expenses and all other payments required to be made by the Chargor as owner of the units therein. The Chargor further covenants and agrees to deliver to the Chargee, forthwith upon the demand of the Chargee, satisfactory proof that all common expenses assessed against the unit(s) owned by the Chargor have been paid, as and when same are due. In the event of the Chargor's default in paying any common expenses or other monies due and owing to the Condominium Corporation, the Chargee may, at its sole option, pay the same and add the amount thereof to the Indebtedness (and same shall correspondingly be secured by the Charge) and shall bear interest at the rate provided by the Charge (or deemed to be applicable by virtue of these standard charge terms), and the Chargee may thereafter exercise all or any of its rights, powers and/or remedies arising under or by virtue of the Charge and these standard charge terms by reason of the Chargor's non-payment of the common expenses or such other monies. Any breach of the aforementioned duties and obligations by the Chargor shall constitute a default under the Charge, and shall thereupon entitle the Chargee to exercise all of the rights, powers and remedies provided by virtue of the Charge (and these standard charge terms) in the event of a default thereunder. Without limiting the generality of the foregoing, upon the Chargor's default in the payment of the common expenses as aforesaid, the outstanding Indebtedness (and all other monies) secured by the Charge shall, at the Chargee's sole option, become due and payable on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment of same.
- (c) The Chargor further covenants and agrees to deliver to the Chargee a copy of each and every:
- (i) claim or demand for payment made by or on behalf of the Condominium Corporation to or from the Chargor, at least five (5) clear days prior to the date upon which any monies so claimed or demanded become due and payable, as provided by the terms of such claim or demand;
  - (ii) notice of any breach by the Chargor (or by those for whom the Chargor is liable or responsible at law or in equity) of any of the provisions of the Act, and/or the declaration, by-laws or rules of the Condominium Corporation, within five (5) days of the date upon which such notice is received by the Chargor;
  - (iii) request or demand for the consent or vote of the Chargor to any matter affecting any or all of the units in the Condominium Corporation owned by the Chargor, or with respect to the common elements, within five (5) days of the date upon which such request or demand is received by the Chargor;
  - (iv) notice of any special assessment proposed to be levied or any extraordinary expenditure intended or contemplated to be made by the Condominium Corporation, within five (5) days of the date upon which the Chargor receives notice of same; and
  - (v) in the event that the Charge constitutes a second charge against any unit(s) owned by the Chargor, notice that the holder of the first charge does not intend to exercise the right to vote in respect of any matter relating to the affairs of the Condominium Corporation, within five (5) days of the date upon which the Chargor receives such notice from the holder of the first charge.

- (d) In the event that the government of the property of the Condominium Corporation is terminated pursuant to the provisions of the Act, or in the event that a sale of the condominium property or any portion of the common elements is authorized by a vote of the owners of the Condominium Corporation, then in any of such circumstances the monies secured by the Charge shall, at the option of the Chargee, become due and payable on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment, and all the rights, powers and remedies conferred upon the Chargee by virtue of the Charge and these standard charge terms shall thereupon become exercisable, notwithstanding any consent given by the Chargee to any such termination or sale.
- (e) The Chargee is hereby irrevocably authorized and empowered to exercise the right of the Chargor to vote and/or consent to all matters pertaining to the affairs of the Condominium Corporation and/or any unit(s) owned by the Chargor and its/their appurtenant common interests, including without limitation, any matter relevant to the management of the Condominium Corporation, the sale of the whole or any portion of the condominium property and/or the assets of the Condominium Corporation, and/or the termination of the Condominium Corporation under the Act, and to exercise such right to vote and/or consent at all times and for all purposes, wherever and whenever the Chargor would have such right to vote or consent, at any meeting(s) of the unit owners of the Condominium Corporation, whether or not the Chargor is in default or in breach of any of the covenants or provisions contained in the Charge or in these standard charges, provided however that the Chargor shall nevertheless be entitled to exercise such right to vote or consent unless and until the Chargee gives notice to the Condominium Corporation and to the Chargor of the Chargee's intention to exercise such rights, in accordance with the provisions of the Act. Any such notice from or on behalf of the Chargee may apply to an indeterminate period of time, or to a limited period of time, or to a specific meeting or matter.
- (f) The Chargee may, from time to time, waive its right to vote or consent, by giving notice of its intention to do so to the Condominium Corporation and to the Chargor, and any such waiver may be for an indeterminate period of time until withdrawn, or for a limited period of time, or for a specific meeting or matter, and while such waiver is in effect, the Chargor may exercise the right to vote or to consent.
- (g) Notwithstanding the exercise by the Chargee of the right of the Chargor to vote or consent, it is acknowledged and agreed that such exercise shall not, under any circumstances, be deemed or construed so as to render the Chargee a mortgagee or chargee in possession, and it is further agreed that the Chargee shall not be under any obligation to vote, consent or otherwise protect the interests of the Chargor, nor shall the Chargee be responsible or liable to the Chargor in connection with any exercise of the right to vote or consent, nor with respect to any failure on the part of the Chargee to exercise such right to vote or consent.
- (h) The Chargee may, at its sole option, pay the amount of any common expenses or other payments owing by the Chargor to the Condominium Corporation, and/or the amount of any other encumbrance, lien or charge having or claiming priority over (or ranking *pari passu* with) the Charge, including any realty taxes or other charges assessed against any or all of the units owned by the Chargor and their appurtenant interests in the common elements of the Condominium Corporation, and all such monies so paid by the Chargee, as well as all costs, charges and expenses incurred by or on behalf of the Chargee in recovering and keeping possession of the unit(s) owned by the Chargor, and all solicitor's charges (based on a substantial indemnity scale of costs) in respect of the collection of any overdue payments or any other monies payable by the Chargor (whether or not any step, action or proceeding to enforce such payment has been taken against the Chargor), shall be added to the Indebtedness secured by the Charge, and shall be payable by the Chargor to the Chargee on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment of same, and shall likewise bear interest at the rate specified in the Charge (or at the rate of interest deemed to be applicable by virtue of these standard charge terms). In the event of the Chargee paying the amount of any such encumbrance, lien or charge, and/or paying any outstanding realty taxes, common expenses, special assessments or any other payments owing by the Chargor to the Condominium Corporation, then the Chargee shall be entitled to all the rights, powers, entitlements, equities, remedies and/or securities of all persons so paid (including, without limitation, the Condominium Corporation).
- (i) The Chargor hereby charges to and in favour of the Chargee, as and by way of additional collateral security for the Chargor's repayment of the outstanding Indebtedness secured under the Charge, all rents and other monies receivable by the Chargor in connection with any unit(s) in the Condominium Corporation owned by the Chargor, and which are payable under any lease(s), occupancy agreement(s) or rental arrangement(s) now or hereafter entered into by the Chargor, and hereby assigns to the Chargee the benefit of all covenants, agreements and provisos therein contained, and shall execute and deliver

to the Chargee all such notices and other documents as may be reasonably required in order to render such assignment effectual in law, and/or to preserve the priority of the Chargee with respect thereto pursuant to any registration provision of any statute, provided that the payment of rents under any such leases, occupancy agreements and/or rental arrangements may continue to be made to the Chargor unless and until default occurs under the Charge, and the Chargee notifies the Chargor and the lessee(s) or occupant(s) in writing to thereafter pay all rents and/or occupancy fees due and owing (or becoming due and owing) directly to the Chargee. Nothing herein contained shall make the Chargee responsible for the collection of the rents payable under any such leases or occupancy agreements, nor for the performance of any covenants, terms or conditions contained therein, and the Chargee shall not, by virtue of these presents, be deemed or construed under any circumstances to be a mortgagee or chargee in possession of the unit(s) owned by the Chargor. The Chargee shall be liable to account for only such rents or occupancy fees as actually come into its hands, less reasonable collection charges in respect thereof.

- (j) Notwithstanding anything contained in the Charge or in these standard charge terms to the contrary, it is acknowledged and agreed that the obligation to insure any portion of the common elements, as well as the obligation to insure all of the units owned by the Chargor in the Condominium Corporation from time to time, up to the level of insurance mandated by the standard unit description set forth in any by-law of the Condominium Corporation (if such a by-law has been duly enacted), or by the standard unit description set out in the schedule (if any) prepared by the declarant of the Condominium Corporation and turned over to the board of directors of the Condominium Corporation in accordance with the provisions of the Act (in those circumstances where a standard unit by-law has not been enacted), may be performed by the Condominium Corporation rather than by the Chargor, and the proceeds of such insurance may be payable in accordance with the provisions of the declaration, by-laws and insurance trust agreement of the Condominium Corporation. However, in addition to the insurance coverage required to be obtained and maintained by the Condominium Corporation, the Chargor shall be obliged to obtain and maintain its own insurance coverage (noting the interests of the Chargee as a loss payee) for damage to any and all improvements made to the units (or deemed to be improvements to the units, pursuant to the provisions of the Act) owned from time to time by the Chargor, for the full replacement cost or value thereof, subject to a reasonable deductible limit or amount. The Chargor covenants that forthwith upon the happening of any loss or damage, it shall fully comply with the terms of all applicable policies of insurance, and with the insurance provisions of the said declaration, by-laws and insurance trust agreement of the Condominium Corporation, and shall seek the full compliance by the Condominium Corporation with its aforementioned insurance obligations. The Chargor further covenants and agrees to provide the Chargee with copies of all applicable insurance policies obtained and maintained by the Condominium Corporation, and by the Chargor, together with evidence of the payment of all premiums owing with respect thereto, along with evidence of the renewal of all such applicable insurance policies, within five days of being requested by the Chargee for same, all at no cost, charge or expense to the Chargee therefor whatsoever. If the Chargor or the Condominium Corporation (or both of them) shall neglect to keep the condominium property (including all of the units owned from time to time by the Chargor) fully insured as aforesaid, or to deliver copies of such policies of insurance and/or evidence of payment of all premiums owing with respect thereto, and/or evidence of the renewal of all such insurance policies as aforesaid, then the Chargee shall be entitled, but shall not be obliged, to insure each and every unit owned from time to time by the Chargor, and the Chargor or the Condominium Corporation (or both of them) shall forthwith, on the happening of any loss or damage, furnish at their own respective expense all necessary proofs, and shall do or undertake all necessary acts or things so as to enable the Chargee to obtain payment of all applicable or obtainable insurance proceeds.

#### CHANGE IN CHARGOR'S STATUS

30. Immediately after any change or transfer in the legal title or beneficial ownership of the Property, or any portion thereof (which change or transfer shall not occur or be undertaken without the prior written consent of the Chargee, unless same constitutes a sale or transfer to one or more arms' length purchasers of one or more units in the Condominium Project), the Chargor shall furnish the Chargee with full particulars thereof (together with such other information in connection with the foregoing as the Chargee may from time to time request), so that the Chargee is kept fully informed of the names and addresses of the owner or owners for the time being of the Property.

STANDARD CHARGE TERMS  
 CLAUSES TYPES DE CHARGE  
 Filing No. 200501 Cote

**GUARANTEE**

31. Each party named or described in the Charge as a guarantor (hereinafter individually and collectively referred to as the "Guarantor") hereby agrees with the Chargee as follows:
- (a) In consideration of the Chargee issuing one or more warranty bonds to Tarion in connection with the Condominium Project for and on behalf of the Chargor, and/or providing excess condominium deposit insurance with respect to some or all of the purchasers' deposit monies in connection with the Condominium Project, and for other good and valuable consideration and the sum of Two Dollars of lawful money of Canada paid by the Chargee to the Guarantor (the receipt and sufficiency of which is hereby expressly acknowledged), the Guarantor hereby covenants, promises and agrees as a principal debtor, and not merely as a surety, to pay (or cause to be paid) to the Chargee the entire Indebtedness and all other monies secured by the Charge, together with all interest accrued thereon at the rate stipulated in the Charge (or at the rate deemed to be applicable pursuant to these standard charge terms), at the times and in the manner set forth in the Charge, and shall observe, perform and fulfill all covenants and obligations of the Chargor contained in the Charge and set forth in these standard charge terms, and the Guarantor does further acknowledge and agree that this covenant of guarantee shall unconditionally bind the Guarantor (and the Guarantor's respective heirs, estate trustees, successors and assigns) notwithstanding any indulgences granted by the Chargee to the Chargor, the giving of time for the repayment of the Indebtedness secured by the Charge, the varying of the terms of payment of the Charge, the varying of the principal sum secured by the Charge and/or the rate of interest charged thereunder (including any increase or decrease in the principal sum secured and/or any increase or decrease in the interest rate so charged or accruing under the Charge), any extension or renewal of the Charge by the Chargee, any release or discharge of the Chargor and/or any discharge of the Charge registered in respect of any portion of the Property [including any unit(s) and its/their appurtenant common interests], and/or the subsequent bankruptcy or insolvency of the Chargor, and despite the Chargee's failure or omission to obtain the consent or signature of the Guarantor to (or to give notice to the Guarantor of) any such indulgences by the Chargee, any such giving of time for repayment, any such variance of the terms of payment, any such variance of the principal sum secured and/or the rate of interest so charged (including any increase or decrease in the principal sum secured and/or any increase or decrease in the interest rate so charged or accruing under the Charge), any such extension or renewal of the Charge, any such release or discharge of the Chargor and/or any discharge of the Charge registered in respect of any portion of the Property [including any unit(s) and its/their appurtenant common interests], and/or any such bankruptcy or insolvency of the Chargor.
- (b) The Guarantor expressly acknowledges and agrees that the Chargee may waive any breach or default by the Chargor, and may accept other covenants, guarantees, sureties or securities without notice to (and without the consent of) the Guarantor, and without relieving the Guarantor from any liability to the Chargee, and that the Guarantor's liability shall subsist and continue until payment in full is received by the Chargee of the entire Indebtedness together with all interest accrued thereon and all other monies secured by the Charge. Without limiting the generality of the foregoing, it is understood and agreed that the liability of the Guarantor shall subsist and continue, and be binding on the Guarantor, as well after as before default, and both before and after the Chargee's demand or the maturity of the Charge, until the outstanding Indebtedness secured by the Charge (together with all interest accrued thereon and all other monies secured by the Charge) have been fully paid and satisfied, and nothing whatsoever shall reduce, release or extinguish such liability of the Guarantor until the entire Indebtedness, together with interest thereon and all other monies secured by the Charge are fully paid to the Chargee as aforesaid.
- (c) The Guarantor hereby expressly acknowledges and agrees that upon any default by the Chargor under the Charge, the Chargee shall thereupon be entitled to demand payment from the Guarantor of the entire outstanding principal and interest indebtedness secured thereunder, and shall be correspondingly entitled to exercise and pursue all rights, remedies and powers:
- i) against the Chargor and/or the Property (or any portion thereof), without having to give any notice thereof whatsoever to the Guarantor; and/or
- ii) against the Guarantor, without having to take any prior action (nor any action whatsoever) against the Chargor (or against any other party or parties), and without having to realize on the security of the Charge against the Property (or any portion thereof), and without having to exhaust or pursue any other rights, powers and/or remedies available to the Chargee against the Chargor or any other person or property whatsoever.

- (d) It is further acknowledged and agreed by the Guarantor that the foregoing covenant of guarantee has been given to the Chargee free of any conditions, that no representations whatsoever have been made to the Guarantor affecting (or with respect to) the Guarantor's liability to the Chargee, that said guarantee is in addition to (and not in substitution for) any other guarantee(s) now or hereafter held or taken by the Chargee in respect of the outstanding indebtedness secured by the Charge (or any portion thereof), and that said guarantee shall not be deemed or construed to have been waived, released, discharged, impaired or affected by reason of any assignment and/or re-assignment of the Charge at any time hereafter, nor by reason of any subsequent sale, transfer or other conveyance of the Property (or any portion thereof) by the Chargor or the Chargor's successors in title thereto.
- (e) Any payment made by the Guarantor to the Chargee pursuant to this guarantee shall not in any way or event be deemed or construed to affect or reduce the liability of the Chargor for the payment of any monies secured by the Charge, but rather such liability of the Chargor to the Chargee shall remain unimpaired and unaffected, and the Chargor may in such circumstances be liable to the Guarantor to the extent of any such payments made by the Guarantor to the Chargee, inasmuch as the Guarantor may be subrogated as against the Chargor to all of the rights, powers and privileges to which the Chargee was entitled prior to any such payment by the Guarantor; provided however that the Guarantor shall not be entitled under any circumstances to claim or rank for payment against the Chargor or the Property (or any portion thereof) in priority to, or *pari passu* with, the Chargee, nor otherwise compete with or against the Chargee insofar as the Chargor or the Property (or any portion thereof) so encumbered by the Charge is concerned, unless and until the entire Indebtedness, together with all interest accrued thereon and all other monies secured by the Charge, have been fully paid to the Chargee, and accordingly any monies or other property received or collected prior thereto by the Guarantor from the Chargor (either directly or indirectly) shall be deemed and construed to be held in trust by the Guarantor for and on behalf of the Chargee (and shall be forthwith remitted and/or paid to the Chargee by the Guarantor).
- (f) The Chargee may vary any agreement or arrangement with, or release, the Guarantor (or any one or more of the Guarantors, if more than one party is named or described as Guarantor), and may grant extensions of time or other indulgences to the Guarantor, and/or otherwise deal with the Guarantor in any manner that the Chargee deems appropriate, in its sole, unfettered and unreviewable discretion, without any notice to (and without having to procure the consent of) the Chargor or any other Guarantor (or their respective successors or assigns), and without in any way reducing or otherwise affecting the liability of the Chargor to the Chargee arising under the Charge (nor reducing or otherwise affecting the liability of any other Guarantor to the Chargee).
- (g) All covenants and obligations of the individual parties comprising the Guarantor shall be deemed and construed to be joint and several covenants and obligations. Accordingly, where more than one party is named or described in the Charge as a guarantor, then all of the foregoing covenants, liabilities and obligations of the Guarantor shall be deemed and construed to be joint and several covenants, liabilities and obligations, respectively. Furthermore, all of the covenants, liabilities and obligations of the Guarantor created or imposed by these standard charge terms shall be equally binding upon the Guarantor's respective heirs, estate trustees, successors and assigns.

#### COSTS ADDED TO PRINCIPAL

32. Without limiting or restricting any of the foregoing provisions of these standard charge terms, it is acknowledged and agreed that the Chargee may pay all premiums of insurance, and all realty taxes, utility charges and/or common expense payments which from time to time fall due and remain unpaid in respect of the Property (or any portion thereof), or in respect of any units owned by the Chargor in the Condominium Corporation and their appurtenant common interests, and all such payments so made by the Chargee, together with all costs and expenses incurred by or on behalf of the Chargee in negotiating, preparing and/or registering the Charge, investigating the title to the Property and/or in having the Property inspected and appraised, and incurred with respect to any proceedings taken or pursued by the Chargee in connection with the Charge (including recovering and keeping possession of the Property, or suing the Chargor on its covenant to pay, or otherwise pursuing the collection of the payment of the Indebtedness from the Chargor), or in realizing upon the security of the Charge [including without limitation, all legal fees, disbursements and real-estate commissions and other costs incurred in leasing or selling the Property (or any portion thereof), or in exercising any power of sale in respect of the Property (or any portion thereof)], shall, together with interest thereon at the rate provided for in the Charge (or at the rate of interest deemed to be applicable by virtue of these standard charge terms), be and constitute a charge against the Property in favour of the Chargee, and the Chargee may also pay or satisfy any lien, charge or encumbrance (other than any of the Permitted Encumbrances) now

existing or hereafter created or claimed upon the Property, which payments, together with interest thereon at the rate provided for in the Charge (or at the rate of interest deemed to be applicable by virtue of these standard charge terms) shall likewise be and constitute a charge against the Property in favour of the Chargee. It is further understood and agreed that all such amounts so paid or incurred by the Chargee as aforesaid shall be added to the Principal Sum secured by the Charge, and shall be payable on the thirtieth (30<sup>th</sup>) day following the date of the Chargee's demand for payment of same, together with interest thereon at the rate provided for in the Charge (or at the rate of interest deemed to be applicable by virtue of these standard charge terms), and upon the Chargor's default in the payment of same all rights, powers and remedies conferred upon (or reserved to) the Chargee under or by virtue of the Charge and these standard charge terms shall thereupon become immediately exercisable.

**INTERPRETATION, ENUREMENT, TIME OF THE ESSENCE & HEADINGS**

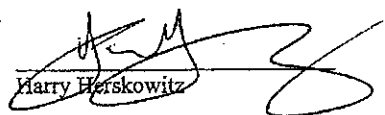
33. The Charge and these standard charge terms shall be read and construed with all changes in gender and/or number as may be required by the context. All rights, powers, remedies, advantages, privileges, immunities and things secured to and in favour of the Chargee under or by virtue of the Charge and these standard charge terms (including the benefit of all covenants and obligations of the Chargor thereunder), shall enure to the benefit of the Chargee's successors and assigns, and all covenants, obligations and liabilities of the Chargor arising under or by virtue of the Charge and these standard charge terms shall correspondingly be binding upon the Chargor's heirs, estate trustees, successor and assigns (including any trustee in bankruptcy appointed in respect of the Chargor), as the case may be. All covenants, liabilities and obligations of the Chargor and the Guarantor respectively, shall be joint and several. Time shall be of the essence in respect of the performance and fulfilment of all covenants and obligations set forth in the Charge and in these standard charge terms. The headings used throughout these standard charge terms are inserted for convenience of reference purposes only, and shall not affect the interpretation or construction of the Charge nor these standard charge terms, and shall not define, restrict or limit any term or provision thereof.

**CHARGOR'S ACKNOWLEDGMENT & AUTHORIZATION**

34. The Chargor acknowledges having received a true copy of the Charge, and in the event E-Reg is operative in the applicable Land Titles Office in which the Property is registered, then the Chargor expressly authorizes the Chargee (and/or its solicitors) to register the Charge against the Property electronically in the Teraview Electronic Registration System.

Dated this 20<sup>th</sup> day of December, 2004.

LOMBARD GENERAL INSURANCE COMPANY OF CANADA  
by its solicitors, DelZotto, Zorzi LLP

Per:   
Harry Herskowitz

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# APPENDIX "M"

**Properties**

**PIN** 06050 - 0199 LT *Interest/Estate* Fee Simple  
**Description** PT LOTS 18 & 19, CON 5; PT ROAD ALLOWANCE BETWEEN LOTS 18 & 19 CON 5, AS CLOSED BY BY-LAW 406 BEING PT OF PT 1 66R12477 LYING NORTH OF PLAN 66M1996; SAVE & EXCEPT PT OF LOTS 18 & 19 CON 5 PT 1 66R16987...SUBJ. TO EASE. OVER PTS 1 & 2 66R17070 AS IN C981858. SCARBOROUGH, CITY OF TORONTO; S/T EASEMENT OVER PART 37 PL 66R23655 AS IN AT1787207; TORONTO; T/W EASEMENT OVER PT 35 PL 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655 AS IN AT1787250  
**Address** TORONTO

**PIN** 06050 - 0263 LT *Interest/Estate* Fee Simple  
**Description** PART OF LOT 19 CON 5, SCARBOROUGH, DESIGNATED AS PART 1 ON PLAN 66R-23217, CITY OF TORONTO; T/W EASEMENT OVER PT 35 PL 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655 AS IN AT1787250  
**Address** TORONTO

**PIN** 06050 - 0264 LT *Interest/Estate* Fee Simple  
**Description** PART LOT 18 CON 5, SCARBOROUGH; PT RDAL BTN LOTS 18 AND 19, CON 5, SCARBOROUGH(CLOSED BY BY-LAW NO. 406 AS IN SC608215), CITY OF TORONTO, DESIGNATED AS PART 2 ON PLN 66R-23217; S/T EASEMENT OVER 38 PL 66R23655 AS IN AT1787207; TORONTO; T/W EASEMENT OVER PT 35 PL 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655  
**Address** TORONTO

**PIN** 06050 - 0266 LT *Interest/Estate* Fee Simple  
**Description** PT LT 20 CON 5 SCARBOROUGH DESIGNATED AS PT 1 PL 66R23210; SCARBOROUGH; CITY OF TORONTO  
**Address** TORONTO

**PIN** 06050 - 0272 LT *Interest/Estate* Fee Simple  
**Description** PT LOT 18 CON. 5 SCARBOROUGH, PT 3 PL 66R23217 SAVE AND EXCEPT PT 32 PL 66R23655; CITY OF TORONTO; S/T EASEMENT OVER PT 36 66R23655 AS IN AT1787207; T/W ROW OVER PT 32 66R23655 AS IN AT1787644; T/W EASEMENT OVER PT 35 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655 AS IN AT1787250  
**Address** TORONTO

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

**Name** 2811 DEVELOPMENT CORPORATION  
**Address for Service** 7100 Woodbine Avenue  
 Suite 111  
 Markham, Ontario  
 L3R 5J2

I, Terry Yiu, ASO and Charles Chan, ASO, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)***Capacity**Share*

**Name** CON-DRAIN COMPANY (1983) LIMITED  
**Address for Service** 30 Floral Parkway  
 Concord, Ontario  
 L4K 4R1

**Statements**

Schedule: See Schedules

**Provisions**

**Principal** \$1,500,000.00 **Currency** CDN  
**Calculation Period** see schedule



**Provisions**

Balance Due Date	2011/02/15
Interest Rate	Prime plus 3% per annum
Payments	
Interest Adjustment Date	
Payment Date	see schedule
First Payment Date	
Last Payment Date	2011 02 15
Standard Charge Terms	200033
Insurance Amount	full insurable value
Guarantor	The Landmark (Canada) Inc.

**Signed By**

Waltraud Boccongelle	7501 Keele Street, Ste. 200 Concord L4K 1Y2	acting for Chargor (s)	First Signed	2010 11 26
Tel	9057602600			
Fax	9057602900			
Waltraud Boccongelle	7501 Keele Street, Ste. 200 Concord L4K 1Y2	acting for Chargor (s)	Last Signed	2010 11 26
Tel	9057602600			
Fax	9057602900			

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

BRATTY AND PARTNERS LLP	7501 Keele Street, Ste. 200 Concord L4K 1Y2			2010 11 26
Tel	9057602600			
Fax	9057602900			

**Fees/Taxes/Payment**

Statutory Registration Fee	\$60.00
Total Paid	\$60.00

SCHEDULE TO THE ATTACHED CHARGE/MORTGAGE  
OF LAND GIVEN BY 2811 DEVELOPMENT CORPORATION AND  
THE LANDMARK (CANADA) INC.  
TO CON-DRAIN COMPANY (1983) LIMITED

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**WHEREAS:**

- (A) Pursuant to the Servicing Agreement, the Mortgagee agreed to supply to the Mortgagor services and materials in connection with underground services and roadworks for the Lands;
- (B) As collateral security for the payment of amounts due and owing to the Mortgagee from time to time under the Servicing Agreement, the Mortgagor has agreed to grant to the Mortgagee and the Mortgagee has agreed to accept this Mortgage.

**NOW THEREFORE WITNESSETH AS FOLLOWS:**

1. PAYMENT PROVISIONS AND SECURITY

2811 DEVELOPMENT CORPORATION (the "Mortgagor"), the registered owner of the lands and premises described in Box 5 of the Charge/Mortgage of Land to which this schedule is annexed (the "Lands"), in consideration of One Dollar (\$1.00) of lawful money of Canada, paid to it, charges the Lands and the Mortgaged Premises (as hereinafter defined) with the payment to CON-DRAIN COMPANY (1983) LIMITED (the "Mortgagee") of the principal sum of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00), together with interest thereon as hereinafter set out, on the terms and conditions and with the power of sale hereinafter expressed. Notwithstanding the principal amount of this Charge/Mortgage of Land, the Mortgagor and Mortgagee acknowledge and agree that this Charge/Mortgage of Land represents collateral security for the indebtedness to the Mortgagee being all amounts owing from time to time by the Mortgagor to the Mortgagee pursuant to the Servicing Agreement and this Mortgage.

As security for the due payment of the indebtedness to the Mortgagee, the Mortgagor hereby:

- (a) mortgages and charges as and by way of a fixed and specific mortgage and charge to and in favour of the Mortgagee, its successors and assigns:
  - (i) the Lands together with all appurtenances, buildings, erections, structures, fixtures and improvements now or hereafter situate thereon;
  - (ii) all fixed machinery, plant, equipment, apparatus and fittings and other fixtures and all furniture, goods and other items of personal property presently situate upon the Lands or which at any time may hereafter be constructed or brought or placed thereon, or used in connection therewith;
  - (iii) all rights-of-way, easements, licences and privileges, appurtenant or appertaining to the Lands;
- (b) unconditionally and irrevocably assigns, transfers and sets over unto and in favour of the Mortgagee, its successors and assigns, as and by way of a general assignment, all of its right, title, estate and interest, present and future, in and to:
  - (i) any and all existing or future leases, subleases, agreements to lease or sublease or other occupancy or tenancy agreements relating to the whole or any part or parts of the Lands and all existing or future licenses or concessions whereby any person is given the right (other than an easement or a right in the nature of an easement) to use or occupy the whole or any part or parts of the Lands and all extensions, amendments, renewals or substitutions thereof or therefor which may hereafter be

effected or entered into (collectively the "Leases"), and all benefits, powers and advantages of the Mortgagor to be derived therefrom and all covenants, obligations and agreements of the tenants thereunder;

- (ii) all rents and other moneys now due and payable or hereafter to become due and payable under the Leases, and each guarantee of or indemnity in respect of the obligations of the tenants thereunder with full power to demand, sue for recovery, receive and give receipts for all such rents and other moneys and otherwise to enforce the rights of the Mortgagor thereto in the name of the Mortgagor;
  - (iii) any and all existing or future agreements, contracts, licenses, permits, plans and specifications, bonds, letters of credit, letters of guarantee or other documents or instruments affecting or relating to the Lands or any part or parts thereof and all extensions, amendments, renewals or substitutions thereof or therefor which may hereafter be effected or entered into and all benefit, power and advantage of the Mortgagor to be derived therefrom;
  - (iv) any and all existing or future agreements of purchase and sale, options to purchase and mortgage, loan or other financing commitments affecting the Lands or any part or parts thereof and all proceeds and other moneys now due and payable or hereafter to become due and payable thereunder and all benefit, power and advantage of the Mortgagor to be derived therefrom;
  - (v) any and all existing or future insurance policies pertaining to the Lands and the Mortgaged Premises (as hereinafter defined) and the proceeds therefrom and all proceeds of expropriation or similar taking of the Lands or any part or parts thereof and all benefit, power and advantage of the Mortgagor to be derived therefrom; and
  - (vi) all book debts, debts, accounts, claims, demands and choses-in-action now due or owing, or accruing due or owing or which may at any time hereafter become due and owing to the Mortgagor relating to the Lands including without limitation, any and all debts owing from any affiliates or subsidiaries of the Mortgagor, and, also, all books of account, vouchers, promissory notes, cheques, bills of exchange, and all other books or documents or evidences of the book debts or accounts aforesaid, or any of them, or any part thereof, relating to the Lands together with all ledgers or other books of account in which there are or hereafter may be entered particulars of the said book debts or accounts or any of them; and
- (c) grants, conveys, mortgages, charges, pledges and assigns as and by way of a floating charge to and in favour of the Mortgagee, the undertaking, property, assets, rights, benefits and privileges of the Mortgagor for the time being, and related to the Lands, both real and personal, movable and immovable, of whatsoever nature and kind, now owned or hereafter acquired (except such property and assets as are validly and effectively subject to any fixed and specific mortgage and charge or assignment or transfer created hereby) including, without limiting the generality of the foregoing, its franchises, uncalled capital, goodwill and inventories pertaining to the Lands.

All such mortgages and charges hereby constituted are hereinafter sometimes collectively called the "Security" and the subject matter of the security is hereinafter sometimes called the "Mortgaged Premises".

2. DEFINITIONS

In this Mortgage,

- (a) "City" means the City of Toronto;
- (b) "Governmental Authority" means each of the City of Toronto, or any other governmental body, authority or agency or private or public utility having jurisdiction over, or otherwise

entitled to approve, consent to, or comment on the servicing and/or development of the Lands, and/or the registration of the plan of subdivision with respect thereto;

- (c) "Indebtedness to the Mortgagee" means all amounts due and owing to the Mortgagee from time to time pursuant to the Servicing Agreement and this Mortgage;
- (d) "Interest" means interest at the rate per annum calculated monthly not in advance, equal to the rate declared by the Canadian Imperial Bank of Commerce from time to time as its prime rate, plus three (3%);
- (e) "Lands" means the lands and premises described in Box 5 of the Charge/Mortgage of Land to which this schedule is annexed;
- (f) "Mortgage" means the Charge/Mortgage of Land to which this Schedule is attached, together with all schedules attached thereto, including this Schedule;
- (g) "Principal Sum" means the sum of MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) (being the estimated amount of the Indebtedness to the Mortgagee);
- (h) "Progress Certificate" means a certificate issued by the Project Engineer in accordance with the Servicing Agreement;
- (i) "Project" means the real estate development being constructed on the Mortgaged Premises and other lands as set out in the Servicing Agreement, by the Mortgagor;
- (j) "Project Engineer" means the project engineer or other consultant appointed and/or requested by the Mortgagee from time to time;
- (k) "Registry Office" means the Land Registry Office for the Land Titles Division of Toronto (No. 66);
- (l) "Security" means the mortgages and charges constituted by this Mortgage;
- (m) "Servicing Agreement" means, collectively, the agreements dated October 31, 2006, June 22, 2007, February, 2008, September, 2008 and March 10, 2009, between the Mortgagee and the Mortgagor and/or The Landmark (Canada) Inc. (in its own capacity and on behalf of the Mortgagor); and
- (n) "Taxes" means and includes all taxes, rates and assessments of whatever nature or kind and to whomever assessed now or hereafter charged or payable with respect to the Mortgaged Premises, including local improvement rates, and any and all interest and penalties thereon.

3. PROVISO FOR REDEMPTION

Provided this Mortgage to be void on payment of the Indebtedness to the Mortgagee in lawful money of Canada, including, without limitation, Interest calculated on so much of the Principal Sum as shall from time to time remain unpaid, both before and after default and judgment, or such lesser amount due and payable by the Mortgagor to the Mortgagee pursuant to the Servicing Agreement.

4. PAYMENT PROVISIONS

- (a) The Mortgagor hereby covenants and agrees with the Mortgagee that the Indebtedness to the Mortgagee shall be paid to the Mortgagee by the Mortgagor as follows:
  - (i) interest on the balance of the outstanding Indebtedness to the Mortgagee at the rate which is three (3%) percent in excess of the annual prime lending rate of the Canadian Imperial Bank of Commerce adjusted from time to time, calculated monthly commencing on the date each Progress Certificate is issued by the Project Engineer on the value of the works set out therein, and payable on the accumulated

value of the services provided to date, to be due and payable together with the balance of the Indebtedness as set out in 4(a) (ii) hereinabove;

- (ii) the balance of the Indebtedness to the Mortgagee shall be paid in full on or before February 15, 2011.

Notwithstanding the maturity date set out in (ii) above, in the event that the Mortgagor shall arrange for additional financing on the Project (including without limitation, from Wildwood Capital) prior to the said maturity date, then the balance of the Indebtedness to the Mortgagee, together with all Interest thereon, shall be paid in full out of the first advance of funds by Wildwood Capital and/or any other substitute lender, or February 15, 2011, whichever is earlier. In any event, the entire Indebtedness to the Mortgagee shall be paid in full by the Mortgagor by no later than the maturity date set out above;

- (b) The Mortgagor and Mortgagee agree that, at the sole option of the Mortgagee and prior to the maturity date set out in sub-paragraph 4(a)(ii) hereinabove, the amounts available under the Indebtedness to the Mortgagee may revolve and may be available for re-borrowing by the Mortgagor on the same terms and conditions as set out in this Mortgage.

5. COLLATERAL SECURITY FOR SERVICING AGREEMENT

This Mortgage is collateral security for the obligations of the Mortgagor to the Mortgagee contained in the Servicing Agreement; provided that the total amount secured by this Mortgage shall not exceed the Principal Sum and any other moneys payable hereunder, provided further however that nothing herein contained shall in any way affect or prejudice any right of the Mortgagee independently of this Mortgage to recover the total due from the Mortgagor under the Servicing Agreement over and above the amount hereby secured, and if the total liability of the Mortgagor exceeds such amount (the "Excess Amount"), the Principal Amount secured hereby may, at the Mortgagee's sole option, be re-adjusted based on an amount equal to the Excess Amount, and such adjusted Principal Amount, including the Excess Amount, shall be paid together with any accrued Interest in accordance with the terms of this Mortgage. Provided further that, if the Mortgagee chooses not to readjust the Principal Amount as aforesaid, then the Mortgagee may exclusively determine what part of such total liability not exceeding the Principal Amount shall be deemed secured by this Mortgage and what part shall be deemed not so secured.

6. MORTGAGOR'S COVENANTS TO PAY AND AS TO TITLE

The Mortgagor covenants and agrees with the Mortgagee:

- (a) That the Mortgagor will pay or cause to be paid to the Mortgagee all amounts due or accruing due to the Mortgagee pursuant to the Servicing Agreement;
- (b) That the Mortgagor is the registered and beneficial owner of the Lands, and has a good and marketable title in fee simple to the Mortgaged Premises, free and clear of all charges, liens and encumbrances except as disclosed by the registered title;
- (c) That the Mortgagor will execute such further assurances of the Mortgaged Premises as may be required by the Mortgagee; and
- (d) That the Mortgagor has done no act to encumber the Mortgaged Premises, except to the extent and in the manner recorded on the register for title to the Mortgaged Premises on the date hereof.

7. TAXES

The Mortgagor shall pay all Taxes when and as the same become due and payable.

8. INSURANCE

- (a) The Mortgagor shall insure or cause to be insured, all buildings and improvements from time to time forming part of the Mortgaged Premises against loss or damage by fire and also against loss or damage by or from such additional perils, risks or events on an all risks basis and in such amounts as the Mortgagee may require at any time and from time to time and, if a steam boiler, pressure vessel or any other object generating steam or operated by steam or if an oil or gas burner or coal blower or stoker or if a sprinkler system shall be operated on the Mortgaged Premises, also insurance against loss or damage by explosion of or caused by such boiler, vessel or other object and loss or damage caused by such burner, blower or stoker and such sprinkler system;
- (b) The Mortgagor shall obtain and maintain public liability insurance under a policy or policies issued in form, content and amount by a company, all as shall be satisfactory to the Mortgagee and shall obtain and maintain any other form of insurance under a policy or policies issued in form, content and amount by a company all as shall be satisfactory to the Mortgagee. Each policy of insurance shall provide upon loss, all proceeds, if any, shall be payable to the Mortgagee as its interest may appear, subject to a standard form of mortgage clause or other mortgage clause approved by the Mortgagee;
- (c) The Mortgagee may require any such insurance to be cancelled and new insurance to be effected with a company or companies named by the Mortgagee and also may without reference to the Mortgagor and without any obligation or liability to so do, effect or maintain any insurance herein provided for;
- (d) The Mortgagor shall, as and when required by the Mortgagee, deliver to the Mortgagee each policy of insurance;
- (e) Evidence of the renewal of each policy of insurance shall be given to the Mortgagee at least fifteen (15) days before the termination thereof or the Mortgagee may (without any obligation or liability to so do) provide therefor;
- (f) The Mortgagee shall have a lien for all moneys secured by this Mortgage on all insurance on such buildings whether effected under the foregoing provisions or not;
- (g) All insurance on such buildings shall disclose the interest of and protect the Mortgagee, stipulate that loss is payable to the Mortgagee, and contain or have attached thereto a mortgage clause in a form approved by the Mortgagee;
- (h) The foregoing provisions as to insurance shall apply to all buildings whether now or hereafter forming part of the Mortgaged Premises; and
- (i) Until such time as the Project is complete, the Mortgagor shall, in addition to the required insurance coverage set out above, maintain or cause to be maintained during the construction of the Project, builders "all risk insurance" with standard mortgage clauses, providing all risk insurance coverage for the Project, including insurance coverage with respect to material stored on the Project and any Project assets stored elsewhere, pursuant to a policy or policies in form, substance, content and in an amount satisfactory to the Mortgagee. The Mortgagor shall cause the proceeds of such insurance to be payable to the Mortgagee as its interest may appear. Such policies shall contain a waiver of subrogation rights which the Mortgagor's insurer may have against the Mortgagee or any person appointed by the Mortgagee as agent for, or whom the Mortgagee is at law responsible.

9. MAINTENANCE AND PRESERVATION OF SECURITY

- (a) The Mortgagor shall not permit waste to be committed or suffered on the Mortgaged Premises and shall repair, maintain and keep in good and substantial repair the Mortgaged Premises with their appurtenances and all fixtures and things thereto belonging or which at

any time during the existence of this Mortgage shall be erected and made so that the Mortgaged Premises shall be and remain in good condition. (Notwithstanding the foregoing, provided it is not in default of the terms of this Mortgage, the Mortgagor and its successors, shall have the privilege of installing roads, watermains, sewers and other utilities and services in connection with the development of the Mortgaged Premises and performing any other construction in connection with the development of the Mortgaged Premises and any such acts shall not be deemed acts of waste hereunder, and the erection of houses on the property will not constitute waste);

- (b) It shall be lawful for the Mortgagee personally or by agents at any time to enter the Mortgaged Premises and examine the condition thereof;
- (c) The Mortgagee may pay (without any obligation or liability to so do) all premiums of insurance and all taxes which shall from time to time fall due and be unpaid;
- (d) The Mortgagee may satisfy (without any obligation or liability to so do) the whole or any part of any charge or claim now existing or hereafter affecting the Mortgaged Premises and whether any such charge or claim be satisfied out of the moneys advanced under this Mortgage or otherwise and the Mortgagee shall be entitled to all the equities and securities of the person or persons so paid off;
- (e) If any building now or hereafter in the course of erection on the lands remains unfinished and without any work being done on it for a period of ten (10) consecutive days, and provided such work stoppage is not as a result of any labour strike(s), walkout(s), or other involuntary work-stoppage, nor due to the unavailability of construction materials and equipment, nor due to weather conditions nor for any other reason beyond the reasonable control of the Mortgagor, then the Mortgagee may enter the Mortgaged Premises and do all work (without any obligation or liability to so do) necessary to protect the same from deterioration and to complete such building in such manner as the Mortgagee may see fit;
- (f) The Mortgagee may pay (without any obligation or liability to so do) all costs, charges, and expenses which may be incurred in taking, recovering and keeping possession of the Mortgaged Premises or inspecting the same and generally in any other proceedings taken to realize the moneys hereby secured or in protecting the security for such moneys, together with a proper allowance for the time and services of any person appointed by the Mortgagee and all solicitor's charges as between a solicitor and his own client and agent's charges or commissions for or in respect of the collection of the Principal Sum, Interest, insurance premiums, taxes and any other moneys whatsoever payable hereunder by the Mortgagor whether any action or other judicial proceedings to enforce such payment has been taken or not;
- (g) All disbursements of moneys made or incurred pursuant to any provision of this Mortgage or with respect to which the Mortgagee becomes entitled to the security hereof, shall be forthwith payable to the Mortgagee by the Mortgagor, shall be added to the indebtedness secured hereunder and shall be a charge on the Mortgaged Premises; and
- (h) The Mortgagee in exercising any of the rights given to the Mortgagee under this paragraph shall be deemed not to be a mortgagee in possession.

10. MORTGAGOR TO COMPLY WITH LAWS

The Mortgagor shall comply with and conform to the requirements of every applicable statute, law, by-law and ordinance and with every applicable regulation or order affecting the operation, condition, maintenance, use or occupation of the Mortgaged Premises including the construction thereof and the making of any repair, alteration or addition therein or thereto, whether or not such construction, repair, alteration or addition be an alteration or addition therein or thereto, whether or not such construction, repair, alteration or addition be structural or be required on account of any particular purpose for which the Mortgaged Premises are used and whether or not such requirement, regulation or order be of a kind now existing or within the contemplation of the parties.

11. EVENTS OF DEFAULT

The Security hereby constituted shall be enforceable in each and every of the following events:

- (a) If the Mortgagor sells, transfers, conveys or otherwise disposes of the Mortgaged Premises or any part thereof;
- (b) If the Mortgagor shall fail to pay any of the Indebtedness to the Mortgagee when the same shall become due and payable by the Mortgagor and such default continues for fifteen (15) days following the giving of written notice thereof by the Mortgagee to the Mortgagor;
- (c) If the Mortgagor shall fail to duly perform or observe any other terms, conditions or covenants contained in this Mortgage, the Servicing Agreement or any other collateral security given pursuant thereto on its part to be performed or is otherwise in default hereunder and such default continues for twenty (20) days following the giving of written notice thereof by the Mortgagee to the Mortgagor;
- (d) Upon the occurrence of and during the continuation of any other default pursuant to the provisions of this Mortgage, the Servicing Agreement or any other collateral security given pursuant thereto or upon discovery by the Mortgagee that any representation or warranty made by the Mortgagor to the Mortgagee is untrue;
- (e) If a petition is filed or a resolution is passed or an order is made for the winding up of the Mortgagor;
- (f) If the Mortgagor ceases or threatens to cease to carry on its business or if the Mortgagor makes or agrees to make a bulk sale of its assets or if the Mortgagor commits or threatens to commit any act of bankruptcy or if the Mortgagor becomes insolvent or bankrupt or makes an authorized assignment or if a bankruptcy petition is filed or presented against the Mortgagor;
- (g) If any execution, sequestration, extent or any other process of any Court becomes enforceable against the Mortgagor or if a distress or analogous process is levied upon the property of the Mortgagor or any part thereof;
- (h) If the Mortgagor shall permit any sum which has been admitted as due by the Mortgagor or is not disputed to be due by it or which forms or is capable of being made a charge upon any of the Mortgaged Premises in priority to or pari passu with the mortgage and charge created by this Mortgage to remain unpaid for fifteen (15) days after proceedings have been taken to enforce the same as such mortgage and charge in priority to or pari passu with the mortgage and charge created by this Mortgage;
- (i) If a claim for lien (excluding any lien for which the Mortgagee is responsible pursuant to the Servicing Agreement) pursuant to the Construction Lien Act (Ontario) or similar legislation has been registered and is not removed within twenty (20) days of the date of its registration;
- (j) If the Mortgagor shall make a general assignment for the benefit of creditors or shall liquidate or pass a resolution to liquidate;
- (k) If a receiver or receiver and manager to or of the Mortgagor or of any substantial part of its property and assets is appointed, either with its consent or acquiescence or if any such appointment shall remain unvacated and unstayed for a period of thirty (30) days after such appointment; or
- (l) If the Mortgagor shall fail to pay any amount when due and/or fail to observe any covenant or obligation under any charge or encumbrance on the lands which ranks prior to or pari passu with this Mortgage.



12. POWER OF SALE

- (a) Provided that the Mortgagee on default of payment for fifteen (15) days may on fifteen (15) days' notice enter on and lease the Mortgaged Premises or on default of payment for at least fifteen (15) days may on at least thirty-five (35) days' notice sell the Mortgaged Premises; provided that should default of payment continue for thirty (30) days the Mortgagee may enter on and lease the Mortgaged Premises without notice; provided that the Mortgagee on default by the Mortgagor of the observance or performance of any of the provisions of this Mortgage other than a default of payment of any moneys hereby secured for a period of fifteen (15) days may on fifteen (15) days' notice enter on and lease the Mortgaged Premises, or on default of such observance or performance for at least fifteen (15) days may on at least thirty-five (35) days' notice sell the Mortgaged Premises; provided that should default of such observance or performance continue for thirty (30) days the Mortgagee may enter on and lease the Mortgaged Premises without notice; any notice under this paragraph shall be sufficiently given for all purposes if given in accordance with Part III of the Mortgages Act of Ontario, or under such statutory provision as may be enacted in substitution or amendment of Part III; such notice shall not be required or lesser notice may be given if and to the extent permitted or authorized under or pursuant to Part III; the rights in this paragraph given to the Mortgagee are without prejudice to and are in addition to any other rights and remedies given in this Mortgage to the Mortgagee or which the Mortgagee may have at law.
- (b) Provided that the Mortgagee may lease or sell as provided in paragraph 12(a) without entering into possession of the Mortgaged Premises.
- (c) Any sale hereunder may either be for cash or on credit, or part cash and part credit; the proceeds of any sale or lease of the Mortgaged Premises may be applied in payment of any costs, charges and expenses including surveyor's charges, solicitor's charges as between a solicitor and his own client and agent's charges or commission, including realtor's and appraiser's fees and commissions, incurred in taking, recovering, keeping possession of and selling the Mortgaged Premises or by reason of non-payment or endeavouring to procure payment of moneys secured hereby as well as to payment of the Principal Sum, Interest and all other moneys payable under this Mortgage to the Mortgagee; sales may be made from time to time of portions of the Mortgaged Premises or of the equity of redemption in the whole of the Mortgaged Premises subject as to the amount not yet actually payable according to the proviso for redemption contained in paragraph 3, to satisfy parts of the Principal Sum and/or Interest overdue; the Mortgagee may make any stipulations as to title or evidence or commencement of title, or otherwise which the Mortgagee shall deem proper and may rescind or vary any contract for sale of any of the Mortgaged Premises and resell without being answerable for loss occasioned thereby; on any sale hereunder the Mortgagee shall be accountable only for moneys actually received in cash as and when so received and for any such purposes may make and execute all agreements and assurances as the Mortgagee shall think fit; the purchaser at any sale hereunder or the lessee under any such lease shall not be bound to see to the legality, propriety or regularity thereof, or that default has happened on account of which the sale or lease is made and no want of default or of notice shall invalidate any sale or lease hereunder and the remedy of the Mortgagor shall be in damages only.

13. RECEIVER

- (a) If and whenever the Mortgagee becomes entitled to enter into possession of the Mortgaged Premises the Mortgagee may, in the discretion of the Mortgagee, by writing appoint a receiver (the "Receiver") of the Mortgaged Premises or any part thereof and of the rents and profits thereof and from time to time remove any Receiver with or without appointing another in his stead, and in making any such appointment or appointments the Mortgagee shall be deemed, acting as the attorney for the Mortgagor, to appoint such Receiver as the agent of the Mortgagor unless the Mortgagee specifically appoints such Receiver as the agent for the Mortgagee.
- (b) The following provisions shall apply upon the appointment of any such Receiver: (i) such appointment may be made either before or after the Mortgagee shall have taken possession

of the Mortgaged Premises or any part thereof; (ii) every such Receiver may, at the option of and in the discretion of the Mortgagee, either be appointed as the agent of and be vested with all or any of the powers and discretions of the Mortgagor, or be appointed as the agent of and be vested with all or any of the powers and discretions of the Mortgagee; the Mortgagee may from time to time fix the remuneration of every such Receiver and direct payment thereof out of the Mortgaged Premises or the proceeds thereof; (iii) every such Receiver shall, so far as concerns the responsibility for his acts or omissions, be deemed the agent of the Mortgagor and not the agent of the Mortgagee unless specifically appointed by the Mortgagee as the agent of the Mortgagee and the Mortgagee in making or consenting to such appointment shall not incur any liability to the Receiver for his remuneration or otherwise howsoever, unless specifically appointed as the agent of the Mortgagee; (iv) all moneys from time to time received by such Receiver shall be paid by him as follows: firstly, in payment of his commission or remuneration as Receiver; secondly, in discharge of all taxes, rates, assessments, insurance premiums and expenses affecting the Mortgaged Premises and the cost of executing necessary or proper repairs; thirdly, in keeping in good standing all charges on the Mortgaged Premises prior to this Mortgage; and the residue of any moneys so received by him shall be applied on account of the Principal Sum and Interest outstanding; (v) the term Receiver as used herein shall include a Receiver and Manager.

14. RIGHTS AND REMEDIES OF MORTGAGEE

No right or remedy of the Mortgagee under this Mortgage or which the Mortgagee may have at law shall be exclusive or dependent on any other right or remedy, but any one or more of such rights and remedies may from time to time be exercised independently or in combination.

15. NON-MERGER

The obtaining of a judgment or judgments in any action to enforce this Mortgage or any of the covenants, agreements, provisions or provisoes herein contained shall not operate as a merger of this Mortgage or of the moneys hereby secured or of any such covenants, agreements, provisions or provisoes or affect any of the Mortgagee's rights under such covenants, agreements, provisions or provisoes.

16. LIABILITY NOT AFFECTED BY MORTGAGEE'S DEALINGS

No extension of time given by the Mortgagee to the Mortgagor or any one claiming under the Mortgagor, nor any other dealing by the Mortgagee with the owner of the equity of redemption in the Mortgaged Premises shall in any way affect or prejudice the rights of the Mortgagee against the Mortgagor or any other person liable for the payment of the moneys secured by this Mortgage. No forbearance by the Mortgagee to seek any remedy for breach of any covenant, agreement, provision or proviso contained in this Mortgage shall operate as a waiver of any rights or remedies of the Mortgagee with respect to such or any subsequent or other breach.

17. POSSESSION AND COMPLETION OF THE PROJECT

If and whenever the Mortgagee becomes entitled to enter into possession of the Mortgaged Premises, the Mortgagee may, in addition to any other rights or remedies available to it under this Mortgage or the Servicing Agreement, but shall not be obligated to, enter upon and take possession of the Mortgaged Premises or any part thereof with power to exclude the Mortgagor, its servants and agents therefrom and thenceforth to possess and use the same, with full power to complete the construction and development of the Project substantially in accordance with the plans and specifications therefor, to carry on and manage the business and operations of the Mortgagor in respect of the Project and to receive the rents, incomes and profits of the Project or parts thereof so taken possession of and to employ watchmen to protect the Project. All sums expended by the Mortgagee for such purposes shall constitute part of the indebtedness of the Mortgagor to the Mortgagee hereunder and shall be secured by the Security. For this purpose, the Mortgagor hereby constitutes and appoints the Mortgagee its true and lawful attorney-in-fact with full power of substitution to complete the Project in the name of the Mortgagor and hereby empowers the Mortgagee, as such, to use any funds of the Mortgagor deposited in the Project account (including

any balance which may be held on behalf of the Mortgagor and any amounts which may remain unadvanced hereunder for the purpose of completing the Project in the manner called for by the plans and specifications), to make such additions and changes and corrections to the plans and specifications which may be necessary or desirable to complete the Project, to employ such contractors, sub-contractors, agents, architects and inspectors as may be required for such purposes, to pay, settle or compromise all existing bills and claims which are or may be liens against the Project or may be necessary or desirable for the completion of the work or the clearance of title, to execute all applications and certificates in the name of the Mortgagor which may be required by any construction contract, and to do any and every act with respect to the construction of the Project which the Mortgagor may do on its own behalf. It is understood and agreed that this power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked. The Mortgagee, as attorney-in-fact, will also have the power to prosecute and defend all actions or proceedings in connection with the construction of the Project and to take such action and require such performance as the Mortgagee may deem necessary. The Mortgagor hereby assigns and quits claims to the Mortgagee all amounts unadvanced hereunder and all amounts held on behalf of the Mortgagor subject to the condition that such amounts, if any, shall be used for the completion of the Project.

18. ENFORCEMENT OF SECURITY

Whenever the Security has become enforceable, the Mortgagee may realize upon the Security and enforce its rights against the Mortgagor by the following remedies:

- (a) entry into possession as more particularly set out in paragraph 17 hereof;
- (b) sale in accordance with paragraph 12 hereof;
- (c) proceedings in any court of competent jurisdiction for the appointment of a Receiver (which term as used in this Mortgage includes a receiver and manager) of all or any part of the Mortgaged Premises;
- (d) proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Mortgaged Premises;
- (e) filing of proofs of claim and other documents to establish its claims in any proceedings relative to the Mortgagor;
- (f) appointment by instrument in writing of a Receiver of all or any part of the Mortgaged Premises and removal or replacement from time to time of any such Receiver as more particularly set out in paragraph 13 hereof; and
- (g) any other remedy or proceeding authorized or permitted hereby or by law or equity.

In addition to the foregoing, the Mortgagee shall have the following rights, powers and remedies:

- (i) to preserve and maintain the Mortgaged Premises and make such replacements thereof and additions thereto as it shall deem advisable;
- (ii) to exercise all powers necessary for the performance of all functions provided for herein including without limitation the powers to purchase on credit, to borrow money in the Mortgagor's name or in its own name and to advance its own money to the Mortgagor at such rates of interest as it may deem reasonable; and
- (iii) to sell or lease from time to time all or any part of the Mortgaged Premises whether by public auction or by private sale or lease either for cash or on credit and on such terms and conditions as the Mortgagee may determine, and in the case of sale on credit the Mortgagee shall only be liable to account to the Mortgagor or subsequent encumbrancers for such moneys as have actually been received from the purchasers after satisfaction of all claims and costs of the Mortgagee; provided that it shall not

be incumbent on the Mortgagee to sell, lease or dispose of the said property but that it shall be lawful for the Mortgagee peaceably to use and possess the same without hindrance or interruption by the Mortgagor, or any other person or persons whomsoever, and to convey, transfer and assign to a purchaser or purchasers the title to any undertaking, property and assets so sold.

Such remedies may be exercised from time to time separately or in combination and are in addition to and not in substitution for any rights of the Mortgagee however created.

Whenever the Security becomes enforceable, and without in any way restricting, diminishing, prejudicing or derogating from the rights of the Mortgagee hereunder, the Indebtedness to the Mortgagee shall, at the sole discretion of the Mortgagee, immediately become due and payable to the Mortgagee in full.

19. FULL DISCHARGE OF MORTGAGE

The Mortgagor shall only be entitled to receive a full and final discharge of this Mortgage upon payment to the Mortgagee in full of the Indebtedness to the Mortgagee.

20. RELEASE OF MORTGAGED PREMISES BY MORTGAGEE

Provided that the Mortgagee may at the discretion of the Mortgagee release from this Mortgage all or any part of the Mortgaged Premises at any time and from time to time either with or without any consideration therefor, without being accountable for the value thereof or for any moneys except those actually received, and without thereby releasing any other part of the Mortgaged Premises, or any person from this Mortgage or from any of the provisions, covenants or agreements herein contained, and that no sale or other dealing by the Mortgagor with the Mortgaged Premises or any part thereof shall in any way change the liability of the Mortgagor or in any way alter the rights of the Mortgagee as against any person liable for payment of the moneys hereby secured.

21. ENVIRONMENTAL MATTERS

(a) The Mortgagor agrees:

- (i) to obey all Environmental Laws and requirements relating to the Lands and the operation of the business activities of the Mortgagor in connection with the Lands;
- (ii) to allow the Mortgagee access at all times to the Lands of the Mortgagor to monitor and inspect all Lands and business activities of the Mortgagor in connection with the Lands;
- (iii) to notify the Mortgagee from time to time of any business activity conducted by the Mortgagor with respect to Lands which involves the use or handling of Contaminants or wastes or which increases the environmental liability of the Mortgagor;
- (iv) to notify the Mortgagee of any proposed change in the use or occupation of the Lands of the Mortgagor prior to any change occurring;
- (v) to provide the Mortgagee with immediate written notice of any environmental problem or of any issue or problem respecting any Environmental Laws and any Contaminants or substances which may have an adverse effect on the Lands, equipment or business activities of the Mortgagor and with any other information respecting Environmental Laws and Contaminants and other environmental information requested by the Mortgagee from time to time;
- (vi) to conduct all remedial activities required to comply with Environmental Laws and the provisions of this paragraph 21 to the satisfaction of the Mortgagee, failing which, the Mortgagee may, but shall not be obligated, to perform such activities at the Mortgagor's cost;

- (vii) in the event that the Mortgagor is found to be in breach of the environmental provisions of this Mortgage, to pay for any reasonable environmental investigations, assessments or remedial activities with respect to the Lands that may be performed for or by the Mortgagee from time to time; and
  - (viii) to indemnify and save harmless the Mortgagee, its officers, directors, employees, agents and shareholders from and against all losses, damages or costs suffered by the Mortgagee arising from or relating to any breach by the Mortgagor of the foregoing covenants in this paragraph 21 and any breach by the Mortgagor or any person now or hereafter having an interest in the Lands which is asserted or claimed against the Mortgagee or its officers, directors, employees, agents or shareholders. This indemnity shall survive the payment in full of all the indebtedness to the Mortgagee and the discharge hereof.
- (b) If the Mortgagor notifies the Mortgagee of any specified activity or change or provides the Mortgagee with any information pursuant to subsections 21(a)(iii), (iv) or (v), or if the Mortgagee receives any environmental information from other sources, the Mortgagee in its sole discretion, may decide that an adverse change in the environmental condition of the Lands, equipment, or business activities of the Mortgagor thereon has occurred which decision will constitute, in the absence of manifest error, conclusive evidence of the adverse change. Following this decision being made by the Mortgagee, the Mortgagee shall notify the Mortgagor of the Mortgagee's decision concerning the adverse change.
- (c) If the Mortgagee decides or is required to incur expenses in compliance or to verify the Mortgagor's compliance with Environmental Laws, the Mortgagor shall indemnify the Mortgagee in respect of such expenses, which will constitute further Indebtedness to the Mortgagee for the purposes of this Mortgage.
- (d) For the purposes of this paragraph 21:
- (i) "Contaminant" means any solid, liquid, gas, odour, heat, sound, smoke, waste, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that may cause: (i) impairment of the quality of the natural environment for any use that can be made of it, (ii) injury or damage to property or to plant or animal life, (iii) harm or material discomfort to any person, (iv) an adverse affect on the health of any person, (v) impairment of the safety of any person, (vi) rendering any property or plant or animal life unfit for use by man, (vii) loss of enjoyment of normal use of property, or (viii) interference with the normal conduct of business, and includes any pollutant or contaminant as defined in any applicable Environmental Laws and any biological, chemical or physical agent which is regulated, prohibited, restricted or controlled.
  - (ii) "Environmental Laws" means the common law and all applicable federal, provincial, local, municipal, governmental or quasi-governmental laws, rules, regulations, licences, orders, permits, decisions or requirements concerning Contaminants, occupational or public health and safety or the environment and any other order, injunction, judgment, declaration, notice or demand issued thereunder.

22. ADDITIONAL SECURITY

This security is in addition and without prejudice to any other security now or hereafter held by the Mortgagee.

23. AFTER ACQUIRED PROPERTY

The Mortgagor covenants and agrees that if and to the extent that any of its right, title, estate and interest in any of the Mortgaged Premises is not acquired until after delivery of this Mortgage, this Mortgage shall nonetheless apply thereto and the security interest of the Mortgagee hereby created shall attach to such property at the same time as the Mortgagor acquires rights therein, without the necessity of any further mortgage, charge, pledge, assignment or assurance and thereafter the security interests created hereby in respect of such property shall be absolute, fixed and specific.

24. ATTACHMENT

The Mortgagor hereby acknowledges and agrees that there is no agreement between the parties hereto, express or implied, to postpone the attachment of the security interests created hereby and such security interests shall attach immediately upon execution of this Mortgage to all property of the Mortgagor to the extent the Mortgagor has any interest therein.

25. MORTGAGEE'S WRITTEN CONSENT

No consent or waiver by the Mortgagee shall be effective unless made in writing and signed by an authorized officer of the Mortgagee.

26. NOTICE

Any notice to the Mortgagor may be given by delivery or prepaid registered mail to the Mortgagor at the address more particularly set out in Box 13 on page 1 of the Form 2 Charge/Mortgage of Land to which this Mortgage is attached, and any notice so given shall be deemed to have been duly given on the day on which the notice is delivered to the Mortgagor or on the second business day following the day on which the envelope containing the notice was deposited prepaid and registered in a post office in Canada, as the case may be.

27. FURTHER ASSURANCES

The Mortgagor covenants that it will at all times hereafter at the request of the Mortgagee execute and deliver such further assurances in respect of the transfers, mortgages, pledges, charges and assignments provided for herein as the Mortgagee may reasonably require and, from and after the occurrence of any default which would entitle the Mortgagee to exercise any of its remedies under the Mortgage (and for so long as such default continues), such further assurances as may reasonably be required to more perfectly and absolutely convey, assign and assure the Mortgaged Premises to the Mortgagee.

28. SUCCESSORS AND ASSIGNS

This Mortgage and everything herein contained shall extend to and bind and enure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each and every of the parties hereto, and if the Mortgagor is more than one person (which term includes, in addition to an individual, a corporation, firm or other entity) all covenants and agreements of the persons comprising the Mortgagor shall be deemed to be joint and several.

29. ADDITIONAL PROVISIONS

Provided that the Mortgagor, its successors and assigns, when not in default hereunder, shall have the privilege of prepaying the whole or a any part of the principal sum hereby secured, together with Interest thereon, at any time or times, without notice or bonus.

30. PLACE OF PAYMENT

All payments of Principal, Interest and other moneys payable hereunder to the Mortgagee shall be payable at such place in the City of Vaughan or other place in Canada as the Mortgagee or other holder of the Mortgage shall designate in writing from time to time.

31. INTERPRETATION

- (a) All of the provisions of this Mortgage on the part of the Mortgagor to be performed and observed shall be deemed to be covenants and agreements on the part of the Mortgagor in favour of the Mortgagee.
- (b) The paragraph headings in this Mortgage do not form part of this Mortgage and have been inserted for convenience of reference only.
- (c) If any covenant or provision of this Mortgage is illegal or unenforceable it shall be considered separate and severable from the remaining provisions of this Mortgage which shall remain in force and be binding as though such provision had never been included.

- (d) The provisions of this Mortgage shall be read with all grammatical changes made necessary because of the gender of the Mortgagor or the Mortgagee or because there is more than one Mortgagor or Mortgagee.

32. LAND REGISTRATION REFORM ACT

It is hereby understood and agreed that wherever the words "Mortgagor", "Mortgagee" and "Mortgage" appear throughout this document, same shall correspondingly be deemed and construed to mean "Chargor", "Chargee", and "Charge" respectively, as such latter terms are defined in the Land Registration Reform Act, 1984, as amended, and wherever the words "Mortgaged Premises" or any derivative of the word "Mortgage" are used throughout this document, same shall be deemed and construed to mean the "Charged Premises" and the applicable derivative of the word "Charge", as such latter term is defined in the Land Registration Reform Act, 1984, as amended.

If any of the forms of words contained herein are also contained in the Column One of Schedule B of the Short Forms of Mortgages Act, R.S.O. 1980, Ch. 474 and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column Two of Schedule B of the said Act distinguished by the same number, and this Charge shall be interpreted as if the Short Forms of Mortgages Act were still in full force and effect. The implied covenants deemed to be included in a charge under subsection 7(1) of the Land Registration Reform Act, 1984 shall be and are hereby expressly excluded from the terms of this charge.

33. CONSTRUCTION LIEN RIGHTS

The parties acknowledge and agree that nothing in this Mortgage or any security or other documentation delivered in connection herewith shall derogate from, diminish, waive, alter, postpone, modify or impair the Mortgagee's legal rights, remedies, claims or priorities pursuant to the Construction Lien Act.

34. PARAMOUNTCY

The parties acknowledge and agree, that in the event of a conflict between the terms of this Mortgage Schedule and the terms of Standard Charge Terms No. 200033, the terms of this Mortgage Schedule shall apply to the extent of such conflict.

35. ACKNOWLEDGEMENT

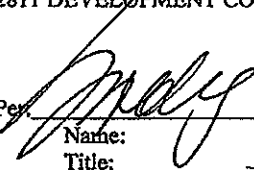
- (a) The Mortgagor acknowledges having received a true copy of this Mortgage.
- (b) This Mortgage is made in pursuance of the Land Titles Act.

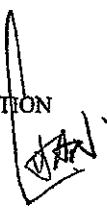
36. GUARANTEE

THE LANDMARK (CANADA) INC. (the "Guarantor") hereby covenants and agrees with the Mortgagee that the Mortgagor will duly pay and satisfy all principal, interest and other moneys secured by or payable pursuant to this Mortgage when due and duly perform and observe all the covenants, agreements and provisos in this Mortgage to be performed and observed by the Mortgagor and acknowledge that the Guarantor shall be considered as primarily liable to the Mortgagee for the due payment and satisfaction of such moneys and for the performance and observance of such covenants, agreements and provisos and shall not be released of liability herein limited or lessened by any variation in or departure from the provisions of this Mortgage, or by the Mortgagee granting time, taking or giving up securities, accepting compositions, granting releases or discharges of the Mortgagor or the Mortgaged Premises or any part of them or any other security, or otherwise dealing with the Mortgagor, the Mortgaged Premises or any security or with any other person or persons, matters or things, or by any want of notice to the Guarantor, or by any other matter or thing whatsoever whereby as a guarantor only the Guarantor would or might be released; and that the Mortgagee shall not be bound to resort to or exhaust any recourse against the Mortgagor or any other person, entity or security before enforcing its rights and satisfaction in full of all moneys secured by the Mortgage and only the due performance and observance of all the covenants, agreements and provisos of this Mortgage shall release the Guarantor of this guarantee.

DATED this                      day of November, 2010.

2811 DEVELOPMENT CORPORATION

Per:   
Name:  
Title:



Per: Terry Yiu                      Charles Chan  
Name: **Director**                      **Director**  
Title:

I/We have authority to bind the Corporation

THE LANDMARK (CANADA) INC.

Per:   
Name:  
Title:



Per: Terry Yiu                      Charles Chan  
Name: **Director**                      **Director**  
Title:

I/We have authority to bind the Corporation



**FIRM CAPITAL MORTGAGE FUND INC.**

**Applicant**

- and - **2811 DEVELOPMENT CORPORATION**

**Respondent**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
  
**PROCEEDINGS COMMENCED AT**  
**TORONTO**

**MOTION RECORD**  
**(Motion for Second Interim Distribution Order**  
**returnable December 21, 2011)**

**BORDEN LADNER GERVAIS LLP**  
Barristers and Solicitors  
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Toronto, Ontario M5H 3Y4

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Solicitors for Deloitte & Touche Inc.  
in its capacity as Receiver