

Court File No. CV-11-9456-00CL

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

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

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

**MOTION RECORD OF RECEIVER FOR APPROVAL OF
MARKETING PROCESS**
(Returnable July 12, 2012)

Borden Ladner Gervais LLP
Scotia Plaza, 40 King St. W.
Toronto, ON, M5H 3Y4

John D. Marshall
(LSUC 16960Q)

Tel.: 416-367-6024
Fax.: 416-361-2763

Lawyers for the Receiver

SERVICE LIST

TO: MEYER, WASSENAAR & BANACH LLP

Barristers & Solicitors
Royal Bank Building
301-5001 Yonge St.
North York, ON M2N 6P6

Martin G. Banach

Tel: (416) 223-9191

Fax: (416) 223-9405

Email: mbanach@mwb.ca

Lawyers for Firm Capital Mortgage Fund Inc.

AND BORDEN LADNER GERVAIS LLP

TO: Barristers & Solicitors
Scotia Plaza
40 King Street West
Toronto, ON M5H 3Y4

John D. Marshall

Tel: (416) 367-6024

Fax: (416) 361-2763

Email: jmarshall@blg.com

Sam Rappos

Tel: (416) 367-6033

Fax: (416) 361-7306

Email: srappos@blg.com

AND AIRD & BERLIS LLP

TO: Barristers & Solicitors
Brookfield Place
181 Bay Street
Suite 1800, Box 754
Toronto, ON M5J 2T9

Robb English
Sanj Sood
Tel: (416) 865-1500
Fax: (416) 863-1515
Email: renglish@airdberlis.com
ssood@airdberlis.com

Lawyers for The Toronto-Dominion Bank

AND LIPMAN, ZENER WAXMAN LLP

TO: Barristers & Solicitors
1220 Eglinton Avenue West
Toronto, ON M6C 2E3

Anthony J. O'Brien
Tel: (416) 789-0652
Fax: (416) 789-9015
Email: tobrien@lzwlaw.com

Lawyers for the respondent

AND SIKDER PROFESSIONAL CORPORATION

TO: Barristers & Solicitors
306-1620 Albion Road
Toronto, ON M9V 4B4

Paltu Kumar Sikder
Tel: (416) 740-2957
Fax: (416) 740-2642
Email: sikder@sikderlaw.ca

Real Estate counsel to the respondent

**AND BIRENBAUM, STEINBERG, LANDAU, SAVIN
TO: & COLRAINE LLP**

Barristers & Solicitors
1000-33 Bloor Street East
Toronto, ON M4W 3H1

Mario Merocchi

Tel: (416) 961-4165
Fax: (416) 961-2531
Email: merocchi@bslsc.com

Lawyers for Lawyers' Professional Indemnity
Company for the insured Paltu Kumar Sikder

**AND CAPO SGRO LLP
TO: Barristers & Solicitors**
7050 Weston Road, Suite 400
Woodbridge, ON L4L 8G7

Alistair Riswick

Tel: (416) 798-4838
Fax: (905) 850-7050

Lawyers for Ravinder Chahal

AND CHANG ADVOCACY PROFESSIONAL CORPORATION

TO: Barrister & Solicitor
102-4255 Sherwoodtowne Blvd.
Mississauga, ON L4Z 1Y5

Charles Chang

Tel: (905) 276-4122
Fax: (905) 276-6432
Email: cchang@changadvocacy.com

Lawyers for 1730237 Ontario Inc. and
Jagdev Dhaliwal

AND BERKOW COHEN LLP

TO: Barristers & Solicitors
141 Adelaide Street West
Suite 400
Toronto, ON M5H 3L5

Jack B. Berkow

Scott Crocco

Tel: (416) 364-4900

Fax: (416) 364-3865

Email: jberkow@berkowcohen.com

scrocco@berkowcohen.com

Lawyers for Versa Construction Limited

AND MINISTRY OF FINANCE (ONTARIO)

TO: Legal Services Branch
33 King Street West, 6th Floor
Oshawa, ON L1H 8H5

Kevin O'Hara LL.M., Senior Counsel

Tel: (905) 433-6934

Fax: (905) 436-4510

Email: Kevin.ohara@ontario.ca

AND DEPARTMENT OF JUSTICE

TO: The Exchange Tower
130 King Street West
Toronto, ON M5X 1K6

Diane Winters

Tel: (416) 973-3172

Fax: (416) 973-0810

Email: diane.winters@justice.gc.ca

Peter Zevenhuisen

Email: peter.zevenhuis@justice.gc.ca

AND HOMELIFE MIRACLE REALTY LTD.

TO: 5010 Steeles Ave. West
Suite 11A
Toronto, ON M9V 5C6

Ajay Shah

Tel: (416) 747-9777
Fax: (416) 747-7135

AND ENGLISH PRESTIGE PROPERTY

TO: MANAGEMENT INC.
8 Building B Automatic Road
Suite 2
Brampton, ON L6S 5N4

AND ENGLISH PRESTIGE CONTRACTING INC.

TO: 8 Building B Automatic Road
Suite 2
Brampton, ON L6S 5N4

AND PARMINDER SINGH CHAHAL

TO: 100 Westmore Drive
Suite 12F
Etobicoke, ON M9V 5C3

AND

TO: FOLKES LEGAL PROFESSIONAL CORPORATION

Barristers & Solicitors
14 Nelson Street West
Suite 1
Brampton, Ontario
L6X 1B7

A. Ricky Rye

Tel.: 905-457-2118
Fax.: 905-457-3707
Email: ronefolkes@folkeslaw.ca

Lawyers for 1448037 Ontario Limited

TOR01: 4895330: v1

SUPPLEMENTAL SERVICE LIST

1. **Natha Singh**
7063 Dalewood Dr.
Mississauga, ON

2. **Steinberg Morton Hope & Israel LLP**
5255 Yonge St., Suite 1100
Toronto, ON, M2N 6P4

Attn.: Michael Title
mtitle@smhilaw.com

Lawyers for St. Abu-Nofr Drugs Ltd.

3. **Sekhon Law Office**
4284 Village Centre Court
Suite 100, Mississauga ON
L4Z 1S2

aman@sekhonlaw.ca

Lawyers for:

Phillip Vettese
Active Life Wellness Centre
Narinder Basra
Taranjit Basra

4. **R. Brent Raby**
Barrister & Solicitor
425 Tonelli Lane
Milton, ON, L9T 0N4

brent@brentraby.com

Lawyer for Kandy Apple Nails

5. **Lakhwinder Gill**
Barrister & Solicitor
1090 Peter Robertson Blvd.
Suite 204
Brampton, ON, L6R 3B3

Lawyer for:

Harmanjot Dhillon
Amarjit Masuta
Navdeep Singh Johal
Charnjit Singh Gill
1827107 Ontario Inc.
Gurdey Singh Dhaliwal
Lakhbir Singh Dhaliwal
Harmanjit Dhillon
Major Hansra
2199299 Ontario Limited
Jasbir S. Chahal
Gagandeep K. Chahal

6. **Sohi & Bansal Lawyers LLP**
2970 Drew Rd., Unit 108
Mississauga, ON, L4T 0A6

Lawyers for 2238104 Ontario Inc.

7. **Mann Law**
920 Derry Road E.
Mississauga, ON, L5T 2X6

Lawyer for 2256280 Ontario Inc.

8. **Balwant Singh Brar**
97 Whitwell Dr.
Brampton, L6P 1E3

9. **Joshi Law Office**
6921 Steeles Ave. W.
Suite 11
Etobicoke, ON, M9W 6T5

Info@oashilawoffice.com

Lawyer for:

Daljit Singh Gill
2263105 Ontario Inc.
Ranbir Singh

10. **Mavi Law Office**
7900 Hurontario St.
Suite 205
Brampton, ON, L6Y 0P6

Lawyer for Harvinder Singh Gill

11. **Surinder Binopal**
Barrister & Solicitor
2565 Steeles Ave. E.
Brampton, ON, L6T 4L6

Lawyer for Pirthi Singh Samra

12. **Bhupinder S. Somal**
Barrister & Solicitor
#9, 7050 – A, Bramalea Rd.
Mississauga, ON, L5S 1T1

Lawyer for:

Tarnjit Atwal
2263907 Ontario Limited

13. **Merwars Lawyers**
932 The East Mall
Suite 200,
Toronto, ON, M9B 6J9

Attn.: Suzy Johal
suzy@merwars.com

Lawyers for Gurjit Grewal

14. **Prouse Dash & Crouch LLP**
50 Queen St. W.
Brampton, ON, L6X 4H3

Lawyers for Dr. Surinder Singh Sidhu Medicine Professional Corp.

15. **Dr. R. Surapaneni Corp.**
487 Park St.
Kitchener, ON, N2G 1N7

16. **Nuri Medics Inc.**
341 Main St. N.
Unit 208
Brampton, ON, L6Y 3C7

17. **1553357 Ontario Inc.**
6980 Maritz Dr.
Unit 9
Mississauga, ON, L5W 1Z3

Attn.: Roopa Brar

18. **Top Kat Investments Inc.**
5255 Yonge St., #1300
North York, ON, M2N 6P4

19. **Moaz Sheikh, C.A.**
7050 – A Bramalea Rd.
Mississauga, ON, L5S 1T1

50 Sunny Meadow
Unit 306
Bramalea, ON, L6R 0Y7

msheikh@moaaz.ca

20. **Dale Streiman & Kurz LLP**
480 Main St. N.
Brampton, ON, L6V 1P8

Attn.: Elliott Dale
Elliott@dsklaw.com

Lawyers for The Family Enhancement Centre

21. **Teri Ote Consulting Corp.**
27 Michigan Avenue
Brampton, ON, L6Y 4N5

Attn.: Gurcharan Singh

22. **Paul Hunjen**
700-1199 W. Pender St.
Vancouver, BC, V6E 2R1

c/o Centum One Financial Group
50 Sunny Meadow Blvd.
Brampton, ON, L6R 0Y7

23. **Jaswinder Gill**
Barrister & Solicitor
Unit 1, 511 Ray Lawson Blvd.
Brampton, ON, L6Y 0N2

Lawyer for:

Ranvinder Singh
Rajbir Singh
Anaad Investments Inc.

24. **Romano Law Firm**
4580 Dufferin Street
Toronto ON M3H 5Y2

Joseph L. Romano

Lawyers for Jasvir Singh

TOR01: 4944025: v2

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TAB 1

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

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

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

NOTICE OF MOTION

Deloitte & Touche Inc., in its capacity as receiver (the "**Receiver**") of the undertaking, property and assets of the respondent 2012241 Ontario Limited (the "**Debtor**") will make a motion to a judge presiding over the Commercial List on Thursday, July 12, 2012 at 10:00 a.m. at 330 University Avenue, in the City of Toronto.

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 hereto as Schedule "A":

1. if necessary, abridging the time for service of the notice of motion and motion record herein and dispensing with further service thereof;

2. approving the Receiver's activities as described in the First Report of the Receiver dated June 15, 2012 (the "**First Report**");
3. approving the Marketing Process for the Property as described in the First Report;
4. authorizing the Receiver to carry out the sale of the Property pursuant to the marketing Process, including, without limitation, the Conditions of Sale, all as more particularly described in the First Report;
5. declaring that the leases, agreements to lease and agreements of purchase and sale respecting units of the Property described in the First Report (the "**Leases and Agreements**") are subordinate in priority to the mortgage registered against title to the Property and now held by the applicant Firm Capital Mortgage Fund Inc.;
6. declaring that the Leases and Agreements are terminated and that the lessees and purchasers identified in the First Report deliver up vacant possession of the Property upon written demand from the Receiver;
7. granting such other relief as may be required in the circumstances.

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to the Amended and Restated Receivership Order of the Honourable Mr. Justice C. L. Campbell herein dated May 10, 2012 (the "**Appointment Order**") the Receiver was authorized and directed to market the Property as therein defined in a manner approved by the court, including advertising and soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.

2. In accordance with the Appointment Order the Receiver has developed a Marketing Process as set forth in the First Report pursuant to which it will solicit offers in respect of the sale of the Property on a timely and cost efficient basis to the broadest possible market.

3. The Leases and Agreements are subordinate in priority to the first mortgage registered against title to the Property in favour of the applicant Firm Capital Mortgage Fund Inc. and the termination of the Leases and Agreements prior to the commencement of the Receiver's proposed marketing process is likely to enhance the Receiver's ability to attract the interest of a wider range of potential purchasers of the Property and to maximize the realizable value of the Property.

4. 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:

1. The First Report of the Receiver;
2. The reports of the Former Receiver, Ira Smith Trustee & Receiver Inc.
3. Such other material as counsel may advise and this honourable court permit.

June 18, 2012

Borden Ladner Gervais LLP
Scotia Plaza, 40 King St. W.
Toronto, ON, M5H 3Y4

John D. Marshall
(LSUC #16960Q)

Tel.: 416-367-6024
Fax.: 416-361-2763

Lawyers for the Receiver

TO: THE SERVICE LIST

AND TO: THE SUPPLEMENTAL SERVICE LIST

A

SCHEDULE "A"

Court File No.: CV-11-9456-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.) DAY, THE
)
JUSTICE) DAY OF JUNE, 2012

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

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

ORDER

THIS MOTION, made by Deloitte & Touche Inc., in its capacity as the receiver (the "Receiver") of the assets, undertakings and properties of the respondent (the "Debtor"), including the property known municipally as 50 Sunny Meadow Blvd., Brampton (the "Property"), for the relief set forth below, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated June 15, 2012 (the “**First Report**”), and on hearing submissions of counsel for the Receiver, the Applicant, the Respondent, and _____, no other person appearing although served with notice of this motion according to the affidavits of service filed herein,

1. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this order shall have the meanings ascribed thereto in the First Report.
2. **THIS COURT ORDERS** that the First Report and the activities and conduct of the Receiver described in the First Report are hereby ratified and approved.
3. **THIS COURT ORDERS** that the Receiver’s marketing plan for the Property as described in the First Report, together with any amendments thereto deemed necessary and appropriate by the Receiver (hereinafter, the “**Marketing Process**”), be and it is hereby approved and the Receiver is hereby authorized and directed to carry out the Marketing Process.
4. **THIS COURT ORDERS** that the form of offer and conditions of sale contained in the First Report (the “**Form of Offer**” and “**Conditions of Sale**” respectively) be and the same are hereby approved, together with any amendments thereto deemed necessary and appropriate by the Receiver.
5. **THIS COURT ORDERS** that the Receiver be and it is hereby authorized to:
 - (a) proceed to market and offer for sale the Receiver’s right, title and interest in the Property in the manner more particularly described in the First Report and in accordance with and on the terms of the Marketing Process and the Form of Offer and Conditions of Sale contained in the First Report;
 - (b) enter into discussions with any and all offerors in respect of the Property;
 - (c) if considered by the Receiver to be necessary or appropriate, to disclose to and review with any secured creditor of the Debtor, any of their advisors and Deloitte Real Estate any and all offers received by the Receiver to purchase the Property;

- (d) accept an offer to purchase of the Property, the terms of which, in the Receiver's sole opinion, are in the best interests of the estate herein, subject to approval of this Court if required in accordance with the Appointment Order; and
- (e) enter into agreements of purchase and sale in respect of the Property on the terms of the Template Agreement (as defined in the Conditions of Sale), together with any amendments or additions thereto deemed necessary by the Receiver in its sole opinion, subject to approval of this Court if required in accordance with the Appointment Order.

6. **THIS COURT ORDERS** that, in accordance with the Conditions of Sale, the Receiver is not obligated to accept any offer or offers to purchase the Property.

7. **THIS COURT ORDERS** that the Receiver shall have no personal or corporate liability in connection with offering the Receiver's right, title and interest in the Property for sale, including, without limitation:

- (a) by advertising the Property and/or the Marketing Process;
- (b) by exposing the Property to any and all parties, including, but not limited to, those who have made their interest known to the Receiver;
- (c) by carrying out the Marketing Process;
- (d) by responding to any and all requests or inquiries in regards to due diligence conducted in respect of the Property;
- (e) through the disclosure of any and all information presented by the Receiver and its solicitors or agents (including, without limitation, Deloitte Real Estate), arising from, incidental to, or in connection with the Marketing Process;
- (f) pursuant to any and all offers received by the Receiver in accordance with the Marketing Process; and
- (g) pursuant to any agreement of purchase and sale entered into by the Receiver in respect of the sale of any of the Property.

8. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to market the Property directly through Deloitte Real Estate as set out in the First Report.

9. **THIS COURT ORDERS** that the Receiver shall be entitled to disclose to the applicant any appraisals of the value of the Property that are in its possession.

10. **THIS COURT ORDERS** that the unredacted copy of Appendix "E" to the First Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the court file, in a sealed envelope and shall only be opened upon further order of the court.

11. **THIS COURT ORDERS AND DECLARES** that all leases, agreements to lease and agreements of purchase and sale (collectively "**Agreements**") respecting all units of the Property, including but not limited to, the Agreements referred to in the confidential unredacted Appendix "E" to the First Report and listed in Schedule "A" attached to this order, are hereby terminated.

12. **THIS COURT ORDERS** that the lessees and purchasers identified in the confidential unredacted Appendix "E" to the First Report and listed in Schedule "A" attached to this order (the "**Lessees**" and "**Purchasers**") shall deliver up vacant possession of the units of the Property referred to in their respective Agreements forthwith upon receipt of a written demand for such vacant possession from the Receiver.

13. **THIS COURT ORDERS** that this order shall be without prejudice to any claim or claims that the Lessees or Purchasers may have against the Debtor, including but not limited to, the return of any deposit funds paid to the Debtor or its solicitors in connection with their Agreements.

14. **THIS COURT ORDERS** that the costs of the Receiver in preparation of this motion and of these proceedings, up to and including the hearing of this motion and the entry of this order (including applicable Harmonized Sales Tax) be paid to the Receiver from the estate herein.

SCHEDULE "A"

UNIT NO.	NAME OF PURCHASER/LESSEE	DATE OF AGREEMENT/LEASE
100, 101, 102 & 103	Natha Singh (purchaser)	October 15, 2011
100	St. Abu-Nofr Drugs Ltd. (lessee)	November 17, 2009
102	Phillip Vettese (purchaser under reservation contract)	May 25, 2007
104 & 105	Phillip Vettese (purchaser under reservation contract)	unknown
108	Harmanjot Dhillon (purchaser)	July 29, 2009
108	2297060 Ontario Inc. o/a Kandi Apple Nails (lessee)	September 8, 2011
109	Harmanjot Dhillon and 2140822 Ontario Inc. (purchaser)	February 28, 2009
110	2238104 Ontario Inc. (purchaser)	April 12, 2010
112	Prabjot Dhanoa and 2256280 Ontario Inc. (purchaser)	January 27, 2010
113	Jasvir Singh (purchaser)	February 3, 2010
200	Amarjit Masuta (purchaser)	March 1, 2009

201	Balwant Singh Brar (purchaser)	January 26, 2009
202	Daljit Singh Gill (purchaser)	September 1, 2009
205	Navdeep S. Johal (purchaser)	March 1, 2009
206 & 207	Ranbir Singh (purchaser)	March 5, 2009
208 & 209	Harvinder Singh Gill (purchaser)	March 1, 2009
211	Charnjit Singh Gill (purchaser)	July 1, 2009
213	Pirithi Singh Samra and 1253237 Ontario Inc. (purchaser)	June 2, 2009
214	Tarnjit Atwal and 2263907 Ontario Inc. (purchaser)	September 2, 2009
215	Gurjit Singh Grewal (purchaser under reservation contract)	July 31, 2007
216 & 217	Gurdev Singh Dhaliwal and 1827107 Ontario Inc. (purchaser)	March 1, 2009
218 & 219	Lakhbir Singh Dhaliwal and 1827107 (purchaser)	March 1, 2009
220 & 221	Dr. Surinder Singh Medicine Professional Corporation and Five Rivers Rehabilitation Centre Inc. (purchaser)	February 7, 2010

223	Dr. Surapaneni and Dr. S. Tomescu (lessees)	Undated
224	Nuri Medics Inc. (lessee)	July 6, 2010
302	1553357 Ontario Inc. (purchaser)	Undated
303	Top Kat Investments Inc. (purchaser)	Undated
306 & 307	Moaz M. Sheikh (lessee)	March 1, 2011
308	Sumeet Kaur Hansra (purchaser)	March 14, 2011 (as amended)
309	Harmanjot Dhillon (purchaser)	March 14, 2011 (as amended)
313	Family Enhancement Centre Inc. (lessee)	Undated
314	Gurcharan Singh (purchaser)	February 8, 2010
314	Teri Ote Consulting Corporation (purchaser)	February 8, 2010
314	Brar Group (purchaser under reservation contract)	May 25, 2007
318 & 319	Ranvinder Singh and Rajber Singh and Anaad Investments Inc. (purchasers)	February 10, 2010

320 & 321	Narinder Basra and Tarnjit Basra (purchasers)	May 27, 2010
323 & 324	Jasbir S. Chahal and Gagandeep K. Chahal and 2199299 Ontario Inc. (purchasers)	June 20, 2009

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

2012241 ONTARIO LIMITED

Respondent

Court File No.: **CV-11-9456-00CL**

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

Proceedings commenced at Toronto

ORDER

(Approving Marketing Process)

Borden Ladner Gervais LLP
Barristers and Solicitors
Scotia Plaza
40 King Street West
Toronto ON
M5H 3Y4

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

Lawyers for the Receiver.

FIRM CAPITAL MORTGAGE FUND INC.

- and -

2012241 ONTARIO LIMITED

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION OF RECEIVER FOR
APPROVAL OF SALE PROCESS**
(Returnable June , 2012)

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza, 40 King St. W.
Toronto, ON, M5H 3Y4

John D. Marshall (LSUC# 16960Q)

Tel: (416) 367-6024
Fax: (416) 361-2763

TOR01: 4944459: v1

Lawyers for Receiver Deloitte & Touche Inc.

TAB 2

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

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**FIRST REPORT OF THE RECEIVER
DATED JUNE 18, 2012**

INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated May 10, 2012, as well as an amended and restated receivership Order also dated May 10, 2012 (collectively, the “**Appointment Orders**”), Deloitte & Touche Inc. (“**Deloitte**”) was appointed as the receiver (the “**Receiver**”) of all of the assets, undertakings and properties of 2012241 Ontario Limited (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including but not limited to the municipal property known as 50 Sunny Meadow Boulevard in Brampton, Ontario (the “**Property**”, or the “**Project**”). Copies of the Appointment Orders are attached hereto as Appendix “**A**”.
2. As set out in the Appointment Orders, Deloitte was appointed as substituted Receiver, replacing Ira Smith Trustee & Receiver Inc. (the “**Former Receiver**”).
3. The Appointment Orders 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:

- (a) without the approval of the Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$150,000; and
 - (b) with the approval of the Court in respect of any transaction in which the purchase price exceeds \$50,000 or exceeds \$150,000 in the aggregate.
4. The Receiver issued a Notice and Statement of the Receiver pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act* (Canada).
5. The Appointment Orders, together with related Court documents and additional Orders, and the Notice and Statement of the Receiver have been posted on the Receiver's website at www.deloitte.com/ca/SunnyMeadow.
6. The purpose of this first report of the Receiver (the "**First Report**") is to:
- (a) provide this Court with a description of the Property; and
 - (b) provide the Court with the evidentiary basis to make an Order:
 - (i) approving the activities of the Receiver as described in the First Report;
 - (ii) terminating the agreements of purchase and sale, leases and occupation with respect to the Property which were entered into prior to the date of the Appointment Orders;
 - (iii) lifting the existing sealed restriction with respect to the Lebow Appraisal Report as defined later in the First Report to allow review of same by the Applicant; and
 - (iv) approving the marketing plan proposed by the Receiver for the sale of the Property.

TERMS OF REFERENCE

7. In preparing the First Report and making the comments contained herein, Deloitte has been provided with and has relied upon unaudited financial information, the Debtor's books and records obtained by the Former Receiver, and certain other information prepared by the Former Receiver. Deloitte has not audited, reviewed, or otherwise attempted to verify the accuracy or

completeness of the information and, accordingly, Deloitte expresses no opinion or other form of assurance on the information contained in the First Report.

8. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.
9. Capitalized terms not otherwise defined in this First Report are as defined in the Appointment Orders.

BACKGROUND

10. As set out later in the First Report, the Project consists of sixty-four (64) units and has not yet been registered as a condominium corporation. The building is comprised of approximately 54,700 square feet on two acres of land located near the Brampton Civic Hospital, and was marketed by the Debtor as a medical and professional office building.
11. Consistent with the Fourth Report of the Former Receiver, a significant amount of information and records of the Company and its financial affairs are missing or incomplete.
12. According to the Former Receiver, the Debtor did not have any employees. However, in correspondence with representatives of the Canada Revenue Agency ("CRA"), the Receiver was informed that the Debtor has a registered payroll tax account number. The Receiver has not received any communications from parties purporting to be former employees of the Debtor.

TAKING POSSESSION, SAFEGUARDING ASSETS, AND CERTAIN OTHER MATTERS

13. The Receiver has undertaken the following activities in accordance with the terms of the Appointment Orders:
 - (a) met with representatives of the Former Receiver to obtain its books and records with respect to this receivership administration, and discussed the lack of information made available to the Former Receiver by the Debtor;
 - (b) provided notice of the Receiver's appointment to Nacora Insurance Brokers Ltd. ("Nacora"), who arranged for the insurance coverage of the Former Receiver based on an annual premium of \$111,950 before applicable taxes, and arranged to have the Receiver be added as loss payee and additional named insured on the existing policy;

- (c) made arrangements with Condor Security Inc. (“**Condor**”), the security company previously engaged by the Former Receiver, to continue providing services at the Property until it was terminated by the Receiver as described later in the First Report;
- (d) attended at the Property with the Former Receiver to review the Property;
- (e) obtained the sets of keys to the Property from the Former Receiver and the former property manager;
- (f) entered into a property management services agreement with Firm Capital Properties Inc. (the “**Property Manager**”), a copy of which is attached hereto as Appendix “**B**”;
- (g) prepared a letter to tenants and occupants notifying them of the Receiver’s appointment and providing contact information of the Property Manager;
- (h) made arrangements to be added to the Property Manager’s insurance policy which has an annual premium of \$12,000 plus applicable sales taxes, resulting in significant cost savings;
- (i) requested the termination of the insurance coverage with Nacora and requested that Nacora return to the Receiver any available retained premium in connection with the policy it originated with the Former Receiver;
- (j) made arrangements with the Property Manager to install a functioning electronic building access system and subsequently terminated Condor;
- (k) requested that the Former Receiver provide the cash on hand in its receivership trust account which totalled \$95,426.71 as at May 2, 2012, of which \$20,000 has been remitted to the Receiver as at the date of this Report;
- (l) issued payment of the property tax arrears which were outstanding prior to the date of the Appointment Orders;
- (m) reviewed the appraisal report of the Property prepared by Lebow, Hicks Appraisal Inc. (the “**Lebow Appraisal Report**”) for the Former Receiver;
- (n) reviewed the interim report prepared by Pelican Woodcliff Inc. on behalf of the Former Receiver with respect to matters relating to the construction of the Property and condominium registration requirements;
- (o) obtained and reviewed marketing proposals from three brokerage firms; and

- (p) in conjunction with the Deloitte & Touche Real Estate Group ("**Deloitte Real Estate**") and the Receiver's legal counsel, prepared a marketing plan for the sale of the Property, which is described in greater detail below.
14. The Receiver reviewed quotes obtained by the Former Receiver with respect to parts and construction related repairs to the non-functional air conditioning system which was damaged prior to the date of the Appointment Orders. The Property Manager investigated this damage and obtained an alternate and more cost effective quote. The Receiver has approved the Property Manager's funding request to remedy this matter.
15. The Receiver has contacted CRA which opened a new account with respect to harmonized sales tax ("**HST**") effective the date of the Appointment Orders. The Receiver has requested that the Former Receiver prepare the outstanding HST returns with respect to the period prior to the date of the Appointment Orders, which includes the entire period of its part of the receivership administration and the outstanding returns of the Debtor prior to the appointment of the Former Receiver.

INDEPENDENT LEGAL OPINION ON THE VALIDITY AND ENFORCABILITY OF THE MORTGAGE HELD BY FIRM CAPITAL

16. This proceeding was commenced in November, 2011 by The Toronto-Dominion Bank ("**TD Bank**") which was then the Debtor's first priority secured lender with loans outstanding in excess of \$12 million. As security for those loans, TD Bank held, among other things, a mortgage or charge on the Property registered in the applicable Land Titles Office as Instrument No. PR1554408 (the "**Mortgage**"). A copy of the Mortgage and the title abstract for the Property dated May 12, 2012 are attached as Appendices "**C**" and "**D**" respectively.
17. In April, 2012 TD Bank assigned its debt and all security it held therefor, including the Mortgage, to Firm Capital Mortgage Fund Inc. ("**Firm Capital**"). On May 10, 2012 Justice Campbell granted an order to proceed pursuant to which Firm Capital became the applicant in this proceeding.
18. The Receiver has obtained an independent opinion from its legal counsel Borden Ladner Gervais LLP that the Mortgage now held by Firm Capital is a valid and enforceable first charge on the Property.

STATUS OF LEASES AND PURCHASE AGREEMENTS

Overview

19. The Project consists of 64 commercial and retail units which the Debtor intended to have registered as a condominium pursuant to the Ontario *Condominium Act* 1998. As at the date of the receivership, construction of the project was substantially completed but the Project had not been, and is still not, registered. The Receiver's review of the Debtor's records indicates that there are still numerous steps that need to be taken before registration of the project as a condominium will be possible.
20. Of the 64 units, a number have been leased by the Debtor to tenants and a number are subject to agreements of purchase and sale which have not closed, and cannot be closed, unless and until the project is registered as a condominium. The Debtor's records are incomplete and, in many respects unclear, but it appears that 5 units have been leased and 29 units are subject to agreements of purchase and sale. The balance of 30 units remain unsold and have not been leased. Two of the unsold and unleased units (104 and 105) appear to be the subject of a "Reservation Contract." None of the agreements or leases have been registered against title to the Property.
21. Of the 29 units subject to agreements of purchase and sale, 4 are currently occupied by the purchasers pursuant to interim occupancy provisions contained in their agreements which call for monthly occupancy payments. The rest are vacant. Most of the purchasers apparently paid deposits to the Debtor which were to be held in trust by the Debtor's solicitors in accordance with the requirements of the *Condominium Act*, 1998. Existing trust deposits have been transferred to the Applicant's solicitors, Meyer, Wassenaar & Banach LLP pursuant to the order herein of the Justice Campbell dated May 10, 2012. The Receiver notes, however, that there are some unresolved discrepancies in the trust records of the Debtor's solicitors, who initially held the deposits in trust, as certain trust funds were released to the Debtor without a clear record as to the basis of such releases. Those discrepancies are still not resolved and the insurer of the Debtor's solicitors has been put on notice of potential claims as a result. Accordingly, there may be certain purchasers whose deposits are no longer held in trust but who may have recourse against the Debtor's solicitors or their insurer.
22. All 5 of the leased units are occupied.

23. Copies of the leases and agreements of purchase and sale are attached to this report as Appendix "E" and bound separately in three volumes. Those copies have been redacted to remove the names of the lessees, purchasers and the purchase price in order to protect any privacy concerns the lessees and purchasers may wish to assert. The Receiver proposes to file sealed copies of the unredacted agreements with the Court.
24. Certain of the units also appear to have been subject to "Reservation Contracts". The Debtor's records indicate that several such agreements were entered into from time to time but that all but one of those agreements have apparently been terminated and any deposits refunded. A copy of what appears to be the remaining Reservation Contract for two units (with the "purchaser's" name redacted) is attached as Tab 3 in Appendix "E".
25. The agreements of purchase and sale take one of two standard forms that are substantially the same. All of the agreements contain express subordination clauses subordinating and postponing the purchaser's interest under the agreement to any mortgages granted by the Debtor. The following is an example of the subordination clause:

"26. Subordination of Agreement

The Purchaser agrees that this Agreement shall be subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time, and to any easement, service agreement and other similar agreements made by the Vendor concerning the property or lands and also to the registration of all condominium documents. The Purchaser agrees to do all acts necessary and execute and deliver all necessary documents as may be reasonably required by the Vendor from time to time to give effect to this undertaking and in this regard the Purchaser hereby irrevocably nominates, constitutes and appoints the Vendor or any of its authorized signing officers to be and act as his lawful attorney in the Purchaser's name, place and stead for the purpose of signing all documents and doing all things necessary to implement this provision."

26. The leases do not contain express subordination clauses. However, all of the leases are for 5 year terms, are not registered on title and were entered into after the registration of the mortgage security now held by Firm Capital.
27. The Receiver has been advised by its legal counsel that based on the foregoing facts the mortgage security of Firm Capital has priority over the interests of both the lessees and the unit purchasers.

Summary of Status of Units

28. The following is a summary of the status of each of the units.

- (a) **Units 100, 101, 102 and 103** – These four units are subject to one agreement of purchase and sale dated October, 2011, and are all vacant. It appears from the Debtor's records that the deposits called for in the agreement were not paid. The status of the agreement is therefore unclear. Unit 100 appears to be subject to an earlier lease dated November 17, 2009 with St. Abu-Nofr Drugs Ltd as lessee. Unit 102 appears to be subject to a Reservation Contract in favour of a certain individual in trust, as set out in Tab 3 in Appendix "E". The "seller" in the Reservation Contract is "D.S.C. Developments". The Receiver does not know the relationship, if any, between that entity and the Debtor. There is reference to deposits having been paid by the purchaser but none of the trust deposits are attributed to this particular unit.
- (b) **Units 104 and 105** – These units are occupied. The Receiver believes that the occupant may be related to the purchaser of Unit 102 but the records are not clear. The Debtor's records do not contain any agreements or leases relating to Units 104 and 105. It is not clear whether deposits were ever received. There are no funds in trust attributable to these units.
- (c) **Unit 106** – This unit is vacant and unsold.
- (d) **Unit 107** – This unit is vacant and unsold.
- (e) **Unit 108** – This unit is occupied, apparently pursuant to a lease in favour of 229060 Ontario Inc. c.o.b. as Kandi Apple Nails dated September 8, 2011. The lease agreement in the Debtor's records is not executed by the Debtor. The unit was also the subject of an earlier agreement of purchase and sale dated July 29, 2009. The Receiver assumes that that agreement was terminated.
- (f) **Unit 109** – This unit is subject to an agreement of purchase and sale but is vacant. Deposits apparently remain in trust.
- (g) **Unit 110** – This unit is subject to an agreement of purchase and sale and is occupied by an entity described as "Commercial School - Learning Center." Deposits apparently remain in trust.
- (h) **Unit 111** – This unit is vacant and unsold.

- (i) **Unit 112** – This unit is subject to an agreement of purchase and sale and is occupied as a general dentistry office. Deposits apparently remain in trust.
- (j) **Unit 113** – This unit is vacant and unsold.
- (k) **Unit 200** – This unit is subject to an agreement of purchase and sale but is not occupied. Deposits apparently remain in trust.
- (l) **Unit 201** – This unit is subject to an agreement of purchase and sale but is not occupied. Deposits apparently remain in trust.
- (m) **Unit 202** – This unit is subject to an agreement of purchase and sale but is not occupied. Deposits apparently remain in trust.
- (n) **Unit 203** – This unit is vacant and unsold.
- (o) **Unit 204** – This unit is vacant and unsold.
- (p) **Unit 205** – This unit is subject to an agreement of purchase and sale but is vacant. The Debtor's records are unclear, but it appears that the initial deposits remain in trust, but the purchaser apparently paid the balance of the purchase price (approx. \$202,000) which was released from trust by the Debtor, with the purchaser's consent, and paid to the second mortgagee on the property.
- (q) **Units 206 and 207** – These two units are subject to one agreement of purchase and sale. The units are vacant. The deposits apparently remain in trust.
- (r) **Units 208 and 209** – These two units are subject to one agreement of purchase and sale. The units are vacant. The deposits apparently remain in trust.
- (s) **Unit 210** – This unit is vacant and unsold.
- (t) **Unit 211** – This unit is subject to an agreement of purchase and sale but the unit is vacant. Deposits apparently remain in trust. However, it appears from the Debtor's records that the purchaser may have paid the balance due on closing (approx. \$195,000) to the Debtor, which funds were released from trust
- (u) **Unit 212** – This unit is vacant and unsold.
- (v) **Unit 213** – This unit is subject to an agreement of purchase and sale but the unit is vacant. Deposits apparently remain in trust.

- (w) **Unit 214** – This unit is subject to an agreement of purchase and sale. This unit is vacant. Initial deposits apparently remain in trust. However, it appears that the purchaser paid additional funds that were released from trust to the Debtor.
- (x) **Unit 215** – This unit is vacant and apparently not sold. This unit was apparently the subject of a Reservation Contract that may not have been completed. It is not clear whether any deposits were paid or, if so, whether they were returned to the purchaser. There are no funds in trust attributed to this unit.
- (y) **Units 216 and 217** – Both units are subject to one agreement of purchase and sale. This unit is vacant. Deposits apparently remain in trust.
- (z) **Units 218 and 219** – Both units are subject to one agreement of purchase and sale. This unit is vacant. Deposits apparently remain in trust.
- (aa) **Units 220 and 221** – These units are subject to one agreement of purchase and sale. These units are occupied by a medical office. Deposits apparently remain in trust. However, it appears that the purchaser paid the balance due on closing (approx. \$309,000) which was released with the purchaser's consent to the Debtor.
- (bb) **Unit 222** – This unit is vacant and unsold.
- (cc) **Unit 223** – This unit is vacant. This unit is subject to a lease agreement. However, the Former Receiver has reported that the lease may have been terminated or abandoned.
- (dd) **Unit 224** – This unit is vacant. Subject to a lease agreement. However, the Former Receiver has reported that the lease may have been terminated or abandoned.
- (ee) **Units 300 and 301** – These units are vacant and unsold.
- (ff) **Units 302 and 303** – These units are vacant. These units are subject to two separate agreements of purchase and sale with different purchasers. However, the Debtor's lawyer's trust records show one amount in trust for both units.
- (gg) **Units 304 and 305** – These units are vacant and unsold.
- (hh) **Units 306 and 307** – Occupied by an accounting firm under some sort of 5 year lease arrangement. The only document in the records is an "Addendum" to a lease agreement that the Receiver has not located.

- (ii) **Unit 308** – This unit is subject to an agreement of purchase and sale. This unit is vacant. Unclear whether deposits remain in trust.
- (jj) **Unit 309** – This unit was subject to an agreement of purchase and sale that included Unit 308 as well. Records indicate that the agreement may have been amended to delete Unit 309. Vacant. It is unclear whether deposits remain in trust.
- (kk) **Units 310 and 311** – These units are vacant and unsold.
- (ll) **Unit 312** – This unit is vacant and unsold. The Former Receiver reported that the unit may be subject to an “oral lease” for one year of free rent. However, the Receiver has been unable to locate any record of such an arrangement.
- (mm) **Units 313** – This unit is subject to an undated 5 year lease commencing August, 2011. The unit is occupied by a Professional Therapy office.
- (nn) **Unit 314** – This unit is subject to an agreement of purchase and sale. Vacant. Deposits apparently remain in trust.
- (oo) **Unit 315** – This unit is subject to a 5 year lease commencing June, 2011. This unit is occupied by an entity named Centum One Financial Group which the Receiver understands is a mortgage brokerage company.
- (pp) **Units 316 and 317** – These units are vacant and unsold.
- (qq) **Units 318 and 319** – These units are subject to one agreement of purchase and sale. These units are vacant. Deposits apparently remain in trust.
- (rr) **Units 320 and 321** – These units are subject to one agreement of purchase and sale, and are vacant. Deposits apparently remain in trust.
- (ss) **Unit 322** – This unit is vacant and unsold.
- (tt) **Units 323 and 324** – These units are subject to one agreement of purchase and sale, and are vacant. Deposits apparently remain in trust.

Receiver’s Recommendation re: Agreements of Purchase and Sale and Leases

29. The Receiver has been advised by counsel that due to the subordination provisions in the agreements of purchase and sale those agreements are subordinate to the first mortgage registered against the property and now held by Firm Capital. The Receiver has also been advised that the

Firm Capital mortgage takes priority over the leases pursuant to the provisions of the Ontario *Land Titles Act*. The Receiver therefore proposes that in order to maximize the sale value of the Property, the agreements and leases be terminated so that the Receiver can offer vacant possession of the Property to all prospective buyers.

30. The Receiver is not in a position to complete the registration of the Property as a condominium. Among other things, registration requires the consent of all mortgagees registered against title and Firm Capital has informed the Receiver that it does not consent. Without registration, none of the agreements of purchase and sale can be completed.
31. In any event, in the Receiver's view, vacant possession will provide more flexibility and options in the marketing of the Property and will attract a broader spectrum of potential purchasers as a result. Some potential purchasers may wish to complete the project as a condominium, in which case they would be free to enter into new agreements with the existing purchasers. However, other potential purchasers, including institutional investors such as pension funds, may wish to convert the project into either an investment property to be leased out to various users or acquire the Property as a user / owner occupant. The continuation of the existing agreements and leases would virtually exclude such potential purchasers, and the Receiver does not want to limit the building's use.
32. The Receiver therefore seeks the court's authorization and approval to terminate the agreements of purchase and sale and the leases prior to marketing the Property so that it can assure purchasers that vacant possession will be provided on the closing of any accepted and approved offer.

REQUEST FOR APPROVAL TO ALLOW ACCESS BY THE APPLICANT TO THE LEBOW APPRAISAL REPORT

33. The Former Receiver obtained an appraisal with respect to the Property which has been kept confidential pursuant to the endorsement of Justice Wilton-Siegel dated April 5, 2012 (the "**April 5th Endorsement**"), a copy of which is attached hereto as Appendix "F". An unofficial transcript of the April 5th Endorsement is also included in Appendix "F".
34. Firm Capital has requested access to the Lebow Appraisal Report in order to assess any offers the Receiver may receive pursuant to its proposed marketing plan. The Receiver sees no reason to deny such access. At the time of the April 5th Endorsement, the Debtor was seeking disclosure

of the Lebow Appraisal Report in order to provide a copy to a potential financier of a redemption by the Debtor. Justice Wilton-Siegel noted that such disclosure ran the risk of excluding an interested party from any future sales process that might be conducted and the Former Receiver apparently acknowledged similar concerns. Since circumstances have now changed, the Receiver is not concerned that disclosure of the Lebow Appraisal Report to Firm Capital, the largest stakeholder in this receivership, will jeopardize its proposed marketing process or result in the exclusion of any interested party from that process.

THE RECEIVER'S PROPOSED MARKETING PROCESS

35. The Receiver proposes to directly market the Property through a focused target marketing process through Deloitte Real Estate. The Receiver has determined that it will be able to fully expose the Property to the market through Deloitte Real Estate's contacts and list of potential purchasers. This will also result in a significant cost savings to the estate since Deloitte Real Estate's consulting services will be billed on an hourly basis as opposed to a full commission basis if the Property was listed with an agent.
36. In addition to the Lebow Appraisal Report and marketing proposals provided by brokers as set out earlier in the First Report, the Receiver is obtaining an analysis of recent sales of comparable sales transactions to permit the Receiver to properly evaluate all offers to purchase the Property received as part of the Receiver's Marketing Process.
37. The Receiver proposes to retain the option to negotiate with a sales broker or buying agent of a potential purchaser, and to provide a partial sales commission if deemed appropriate, subject to future Court Approval of any sales transaction.
38. The Receiver believes that a documentation preparation and marketing period of up to approximately 6 to 10 weeks will be sufficient to expose the Property and permit qualified parties to conduct due diligence and to determine if they will make an offer, while at the same time minimizing the uncertainty and costs of a prolonged receivership period. In view of the summer holiday season, this period may need to be adjusted.
39. The Receiver proposes to sell the Property utilizing the following process (the "**Marketing Process**"):
 - (a) retain Deloitte Real Estate to assist the Receiver in conducting the Marketing Process;

- (b) upon Court approval of the Marketing Process, the Receiver will send an information overview document ("**Flyer**") outlining the Property to potential purchasers along with a confidentiality agreement to be executed in order to receive further information in respect of the Property. The list of potential purchasers will be developed from a database maintained by Deloitte Real Estate, expressions of interest received by the Receiver from interested parties and the Receiver's experience and contacts. Copies of the draft Flyer and Confidentiality Agreement are attached hereto as Appendices "**G**" and "**H**";
- (c) place an advertisement in the Toronto edition of The Globe and Mail newspaper's real estate section, and in local newspapers if deemed appropriate, for two weeks following Court approval of the Marketing Process;
- (d) prepare and place in a password protected electronic data room copies of all documentation relating to the Property and provide access to potential purchasers who sign a confidentiality agreement;
- (e) prepare a confidential information memorandum ("**CIM**") providing detailed information in respect of the Property, to be sent to all potential purchasers who have executed the confidentiality agreement. The CIM will also include the terms and conditions of any sale by the Receiver and a form of offer. A copy of the form of offer and the Conditions of Sale are attached hereto as Appendix "**I**";
- (f) follow up with interested prospective purchasers as considered appropriate to identify the opportunity and/or provide access to the data room, the Property and additional information as required; and
- (g) set 12 o'clock noon on September 7, 2012 or such other date as the Receiver considers reasonable in the circumstances as the deadline for the submission of binding offers (the "**Offer Date**"). Following the Receiver's review of all submitted offers, the Receiver may, at its option, seek clarification from any of the offerors regarding the terms of a submitted offer, reject any of the offers submitted or request any of the offerors to submit revised and/or improved offers to purchase any of the Property or to otherwise address any issues or concerns raised by the Receiver. There shall be no obligation on the part of the Receiver to provide any offeror with the opportunity to amend or otherwise improve the terms of its offer following the Offer Date.

40. Each offeror shall, with its offer, deliver to the Receiver the following:
- (a) an amount equal to 10% of the purchase price specified in the offer. If the offer is accepted said cheque or bank draft will be deemed to be a cash deposit (the "**Deposit**") against the aggregate offered purchase price (the "**Purchase Price**") and the successful offeror (hereinafter called the "**Purchaser**") will pay the balance of the Purchase Price to the Receiver, in cash or by certified cheque on the Closing Date of the subject transaction without interest;
 - (b) an executed copy of the template agreement of purchase and sale ("**Template Agreement**"), amended to reflect that part of the Property subject to the offer (the Template Agreement as amended, the "**Offeror Sale Agreement**") and any other matters specific to the offer, which shall be binding and irrevocable for seven (7) business days following the Offer Date;
 - (c) a comparison of the Template Agreement to the executed Offeror Sale Agreement;
 - (d) a representation of the offeror and written evidence of available cash and/or a commitment for financing to evidence the offeror's ability to close the proposed transaction as the Receiver may reasonably request;
 - (e) a copy of a board resolution or similar document demonstrating authority to make an irrevocable offer and to execute the transaction contemplated by the Offeror Sale Agreement; and
 - (f) a disclosure of the identity of each entity (including its ultimate shareholders) that have submitted the offer.
41. The Receiver shall not be bound to sell any of the Property until it has entered into a binding agreement of purchase and sale and received approval to complete such transaction from the Court. The Receiver reserves the right to enter into one or more agreements to sell any or all of the Property at any time and to withdraw any or all of the Property from the sale.

PROCEDURES FOR SALE

42. All sales will be on an "as is, where is" basis. Each offeror will be solely responsible for inspecting the Property and satisfying itself as to title to any of the Property it is offering to purchase. The Receiver will not provide any representations or warranties with regard to title,

merchantability, condition, description, fitness for purpose, quality, quantity or any other matter or thing regarding the Property.

43. The Receiver's legal counsel will draft the closing book documentation with respect to any sale transaction.


RECEIVER'S RECOMMENDATIONS

44. For the reasons set out above, the Receiver recommends that the Court make an Order:
 - (a) approving the activities of the Receiver as described in the First Report;
 - (b) terminating the agreements of purchase and sale, leases and occupation with respect to the Property which were entered into prior to the date of the Appointment Orders;
 - (c) lifting the existing sealed restriction with respect to the Lebow Appraisal Report to allow review of same by the Applicant;
 - (d) approving the Marketing Process; and
 - (e) authorizing the Receiver to carry out the sale of the Property pursuant to the Marketing Process, including, without limitation, the Conditions of Sale attached as Appendix "I".

All of which is respectfully submitted at Toronto, Ontario this 18TH day of June, 2012.

DELOITTE & TOUCHE INC.
solely in its capacity as the
Court-appointed receiver of
2012241 Ontario Limited and
without personal or corporate liability

Per:



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

A

APPENDIX "A"

Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE C. L. CAMPBELL

THURSDAY, THE 10th
DAY OF MAY, 2012

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant



- and -

2012241 ONTARIO LIMITED

Respondent

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

ORDER

THIS MOTION made by Firm Capital Mortgage Fund Inc. ("**Firm Capital**") for an order amending the title of proceedings herein, amending and restating the initial receivership order herein of the Honourable Mr. Justice C.L. Campbell dated 15 November, 2011 (the "**Initial Receivership Order**"), and other relief as set forth below,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Michael Warner sworn April 12, 2012 and the exhibits thereto (the "**Warner Affidavit**"), the consent of Ira Smith Trustee & Receiver Inc. to this order, and the consent of Deloitte & Touche Inc. to act as Receiver of the Property of the Debtor, and on hearing the submissions of counsel for Firm Capital, counsel for the Debtor, counsel for Ira Smith Trustee & Receiver Inc., counsel for The Toronto-Dominion Bank and counsel for Deloitte & Touche Inc.,

1. **THIS COURT ORDERS** that the time for service of the notice of motion and the motion record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
- 2.. **THIS COURT ORDERS** that all capitalized terms in this order have the same meaning as in the Initial Receivership Order.
- 3.. **THIS COURT ORDERS** that this proceeding continue and that the title of the proceeding in all documents issued, served or filed after the date of this order be as follows:

"FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2012241 ONTARIO LIMITED"

Respondent

4. **THIS COURT ORDERS AND DECLARES** that the Initial Receivership Order is hereby amended in accordance with the form attached hereto as Schedule "A" and that an order in that form shall be issued (the "**Amended and Restated Receivership Order**").
5. **THIS COURT ORDERS** that from and after its issuance the Amended and

Restated Receivership Order shall supersede the Initial Receivership Order.

6. **THIS COURT ORDERS** that Ira Smith Trustee & Receiver Inc. is hereby authorized and directed to transfer forthwith to Deloitte & Touche Inc.:

(a) all books and records created, compiled or received by Ira Smith Trustee & Receiver Inc. in its capacity as Receiver, including, but not limited to, all contracts, consultants reports, and appraisals; and

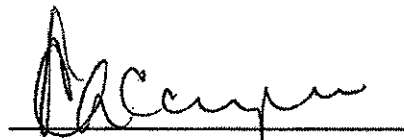
(b) all funds received by Ira Smith Trustee & Receiver Inc. in its capacity as Receiver, net of any authorized disbursements, together with all banking records relating thereto.

7. **THIS COURT ORDERS** that Blaney McMurtry LLP, the lawyers for Ira Smith Trustee and Receiver Inc., do transfer to Meyer, Wassenaar & Banach LLP all deposits received by Blaney McMurtry LLP as escrow agent pursuant to paragraph 3 of the order herein of the Honourable Madam Justice Mesbur dated 25 November 2011 and that Meyer, Wassenaar & Banach LLP shall continue to hold such deposits as escrow agent, without liability, in accordance with the said order of Madam Justice Mesbur.

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



MAY 10 2012



Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE C. L. CAMPBELL

THURSDAY, THE 10th
DAY OF MAY, 2012

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -



2012241 ONTARIO LIMITED

Respondent

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

AMENDED AND RESTATED RECEIVERSHIP ORDER

THIS APPLICATION made by the Applicant, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") for

the appointment of a receiver, without security, of all of the assets, undertakings and properties of 2012241 Ontario Limited (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

WHEREAS an initial receivership order in this matter was issued on November 15, 2011 by the Honourable Mr. Justice C. L. Campbell (the "**Initial Receivership Order**") and such order is hereby amended and restated.

ON READING the affidavit of Kenneth Malcolm sworn November 10, 2011 and the exhibits thereto, and the affidavit of Theresa Kellen sworn November 15, 2011 and the exhibits attached thereto and the affidavit of Michael Warner sworn April 12, 2012 and the exhibits thereto (the "**Warner Affidavit**"), and on reading the consent of Deloitte & Touche Inc. to act as Receiver, and on hearing the submissions of counsel for the Applicant, counsel for the Debtor, counsel for Ira Smith Trustee & Receiver Inc., counsel for The Toronto-Dominion Bank and counsel for Deloitte & Touche Inc.,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, effective as of the date of this order Deloitte & Touche Inc. (the "**Receiver**") is hereby appointed as Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including but not limited to the municipal property known as 50 Sunny Meadow Circle in Brampton, Ontario and whose legal description is Pt. of Lt. 11, Con 5 East of Hurontario St. des as Pts 6 and 7, Pl 43R21902 S/T an easement in favour of Brampton Hydro Electric Commission and The

Corporation of the City of Brampton over Pt. of Lt 11, Con 5 EHS, des as Pt 7, PI 43R21902 as in LT 1615145, City of Brampton (hereinafter referred to as the "Building"), and including all proceeds thereof (the "Property").

3. **THIS COURT ORDERS** that effective from the date hereof the provisions of this Amended and Restated Receivership Order shall supersede the provisions of the Initial Receivership Order.

RECEIVER'S POWERS

4. **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, 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,
- (m) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$150,000; and

- (n) 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.
- (o) 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;
- (p) 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;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) 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;
- (s) 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;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized

and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **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.

6. **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.

7. **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

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **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

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or

regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the 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

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property

and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees 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

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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, 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 security referred to in 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.

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

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the 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

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (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 subordinate in priority to (i) the security held by the Applicant with respect to the Property (including, without limitation, the security referred to in the Warner Affidavit), (ii) the Receiver's Charge, and (iii) 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.

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

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

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

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.

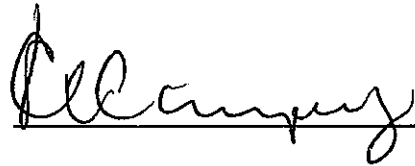
29. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than two (2) 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.

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



MAY 10 2012



Schedule "A"

RECEIVER'S CERTIFICATE

CERTIFICATE NO.

AMOUNT \$

1. THIS IS TO CERTIFY that Deloitte & Touche Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 2012241 Ontario Limited acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by the Amended and Restated Receivership Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 10th day of May, 2012 (the "Order") made in an action having Court file number CV-11-9456-00CL, 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.

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 MONTH, 2012YR.

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.
Applicant

2012241 ONTARIO LIMITED
Respondent

- and -

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

**AMENDED AND RESTATED RECEIVERSHIP
ORDER**

MEYER, WASSENAAR & BANACH LLP
Barristers and Solicitors
Royal Bank Building
301 -- 5001 Yonge St.
North York, Ontario
M2N 6P6

Martin G. Banach (LSUC# 15852N)

Tel: (416) 223-9191
Fax: (416) 223-9405

Lawyers for Firm Capital Mortgage
Fund Inc.

TOR01: 4894391: v7

B

APPENDIX "B"

PROPERTY MANAGEMENT AGREEMENT

THIS AGREEMENT made as of the 5th day of June, 2012
BETWEEN:

DELOITTE & TOUCHE INC., solely in its capacity as Court-appointed Receiver of 2012241 Ontario Limited, and not in its personal capacity
(hereinafter called "Receiver")

AND:

Firm Capital Properties Inc.
(hereinafter called the "Manager")

WHEREAS:

- A. 2012241 Ontario Limited (the "Owner") is the owner of the property municipally known as 50 Sunny Meadow Circle, Brampton, Ontario and more particularly described in Schedule "A" (the "Property");
- B. Pursuant to a commitment letter dated July 3, 2008, as amended, the Toronto-Dominion Bank (the "Bank") advanced the principal sum of \$12,500,000 to the Owner;
- C. The Owner granted security in favour of TD Bank the following:
 - i. A general security agreement dated September 10, 2008, made by the Owner in favour of the Bank, which has been registered pursuant to the *Personal Property Security Act* (Ontario) and constitutes a perfected security interest in and to all of the assets of the Owner, including the Property;
 - ii. A collateral mortgage, payable on demand, that is registered as a first Charge/Mortgage against title to the Property (the "Mortgage Security");
 - iii. Postponements of four encumbrances that were previously registered against title to the Property by 1448037 Ontario Limited ("144") in favour of the Bank;
 - iv. Acknowledgement of priority and standstill undertaking from 144 in favour of the Bank;
 - v. A general security agreement from 1611161 Ontario Limited ("161"); and
 - vi. Personal guarantees from Ravinder Singh Chahal and Jagdev Dhaliwal, who are the Owner's officers, directors and shareholder, each limited to the amount of \$4,000,000.

- D. By an agreement dated as of the 5th day of April, 2012, the Bank assigned the indebtedness owing by the Owner together with all of the security held by the Bank as security for repayment of that indebtedness to Firm Capital Mortgage Fund Inc.
- E. The Mortgage Security is presently in default;
- F. On the 10th day of May, 2012, the Receiver was appointed as Receiver of all of the assets, undertakings and properties of the Owner acquired for, or used in relation to a business carried on by the Owner, including but not limited to the Property by virtue of being appointed by the Honourable Justice Campbell of the Superior Court of Justice, Commercial List pursuant to Section 243 (1) of the *Bankruptcy & Insolvency Act* and Section 101 of the *Courts of Justice Act* (the "Order");
- G. Pursuant to the terms of the Order, the Receiver is entitled to possession of the Property and to retain a property manager to manage the Property;
- H. The Receiver has agreed to retain the Manager to manage the Property on the terms herein set out.

NOW THEREFORE, in consideration of the premises and the mutual covenants, agreements and conditions herein contained, the Receiver and Manager hereby covenant, agree and declare as follows:

1. **Definitions**

In this Agreement, unless the context otherwise requires, the following definitions apply:

- 1.1 "Agreement" means this Property Management Agreement as it may be amended from time to time.
- 1.2 "Bank Account" means a bank account at a Schedule I chartered bank maintained by the Manager and referencing the Receiver and the Property.
- 1.3 "Business Day" means any day other than a Saturday, Sunday or other day on which the Receiver is not open for business in Toronto, Ontario.
- 1.4 "CRA" means Canada Revenue Agency.
- 1.5 "Date of Termination" means the last day upon which the Manager manages any portion of the Property.
- 1.6 "Emergency Situation" means a condition existing with respect to the Property which, if not remedied without delay, would result, in the reasonable opinion of the Manager, in injury to an individual, or damage or further damage to the Property.
- 1.7 "HST" means the harmonized sales tax exigible in accordance with the *Excise Tax Act* (Canada) as amended from time to time.
- 1.8 "including" means "including without limitation".
- 1.9 "Lease" means an agreement to lease or occupy premises within the Property.
- 1.10 "Management Fee" as defined in Section 12.1.
- 1.11 "Mortgage Security" as defined in Recital C.
- 1.12 "Net Tax" as defined in Section 9.2.

- 1.13 "Owner" as defined in Recital A.
- 1.14 "Property" as defined in Recital A.
- 1.15 "Revenue Account" as defined in Section 6.1.
- 1.16 "Tenant" means a tenant or occupant under a Lease.
- 1.17 "Term" means the period of time commencing the date hereof and ending on the Date of Termination.
- 1.18 "Termination" means termination of the appointment of the Manager hereunder but, for greater certainty, does not include termination of the appointment with respect to a portion of the Property where such portion is sold and the Manager continues to manage other portions of the Property.

2. **Interpretation**

- 2.1 The words "hereto", "herein", "hereof", "hereunder", "this Agreement" and similar expressions mean and refer to this Agreement as a whole and not to any particular section or sections only.
- 2.2 In this Agreement:
 - (a) words importing the singular shall include the plural and *vice versa*;
 - (b) plural versions of defined singular words shall have the corresponding plural meanings and *vice versa*;
 - (c) words importing the use of any gender shall include all genders; and
 - (d) words importing individuals shall include firms and corporations, and *vice versa*.
- 2.3 The headings of the sections in this Agreement are inserted for convenience of reference only and are to be ignored in construing or interpreting this Agreement and, unless otherwise specifically provided, references in this Agreement to Recitals, Sections and Schedules are references to recitals, sections and schedules of this Agreement.

3. **Appointment**

- 3.1 Subject to the exclusive authority of the Receiver over management of the Property, the Receiver hereby appoints the Manager to manage the Property during the Term in accordance with this Agreement.
- 3.2 The Manager hereby accepts the appointment set out in Section 3.1 and agrees to manage the Property and comply with the provisions of this Agreement.

4. **Performance Standard**

- 4.1 Subject to the direction of the Receiver and the provisions of this Agreement, the Manager shall diligently manage, operate and maintain the Property in an economic and efficient manner as would a prudent and reasonable owner of similar properties in the City of Brampton so as to preserve and protect the Property and maximize earnings therefrom.
- 4.2 In performing its duties and obligations hereunder, the Manager shall act honestly and in good faith, and shall manage the Property and administer the

Leases and tenancies and occupancies in accordance with the terms of the leases and occupancy agreements and this Agreement.

5. **Borrowing by Manager**

The Manager shall not be entitled to borrow money for any purpose whatsoever without the express prior written consent of the Receiver and the Receiver shall not have any responsibility or liability for any money borrowed without such consent.

6. **Bank Accounts**

6.1 The Manager agrees to the following banking requirements:

- (a) The Manager shall open a TD Bank account to be used in respect of the Property's operations (the "Operating Account") at a branch of its choice in the following name:

"Firm Capital Properties Inc., Agent for Deloitte & Touche Inc., Receiver of 2012241 Ontario Limited"

- (b) The Receiver shall be a mandatory second signatory on all banking requirements including all cheques and other transactions that require a signature in respect of the Operating Account;
- (c) The Manager shall arrange for the Receiver to have on-line access to the Operating Account;
- (d) All tenant/occupant rent cheques shall be made payable to "Deloitte & Touche Inc., Receiver of 2012241 Ontario Limited";
- (e) All tenant/occupant rent cheques shall be forwarded by the tenants or occupants to the Manager and the Manager shall deposit immediately upon receipt all tenant/occupant rent cheques into the Operating Account;
- (f) The Manager shall arrange for all supplier invoices to be forwarded by suppliers to the Manager and the Manager shall process all supplier invoices and other necessary disbursements. All cheques drawn on the Operating Account in payment of supplier invoices and other disbursements shall be forwarded to the Receiver for signature;
- (g) Within ^{ten (10)} ~~five (5)~~ business days subsequent to the end of each month, a statement of receipts and disbursements shall be prepared on a cash basis in respect of the Operating Account by the Manager in a format acceptable to the Receiver and forwarded to the Receiver; and

6.2 Within 5 business days subsequent to the end of each month, a reconciliation of the Operating Account shall be provided by the Manager to the Receiver.

6.3 The Operating Account shall be maintained and operated by the Manager exclusively for the purposes set out herein.

6.4 The Manager acknowledges and understands that full control of the Operating Account remains with the Receiver.

The Manager shall maintain during the Term;

7. **Property Inspections**

The Manager shall carry out, at reasonable and appropriate intervals, physical inspections of the Property and keep the Receiver advised as to the results of such inspections.

8. **Leasing**

During the Term, the Manager shall, with respect to the Property:

- 8.1 establish and maintain professional communication and contact with the Tenants on an on-going basis;
- 8.2 supervise and regulate the conduct of Tenants and the use of the common areas of the Property;
- 8.3 do, or cause to be done all things necessary and for which the Manager has authority hereunder to enable compliance by the landlord with all of the terms and conditions of the Leases;
- 8.4 notify the Receiver promptly of any event of default by a Tenant or by the landlord under any of the Leases, and seek instructions from the Receiver in respect of any action or proceedings required to rectify any default;
- 8.5 if requested by the Receiver, secure potential Tenants for vacant premises within the Property, and for premises which may become vacant in the Property;
- 8.6 negotiate the renewal or continuation of existing leases and obtain executed offers to lease or renewal agreements if requested by the Receiver;
- 8.7 plan and co-ordinate any moves into, or from, the Property by Tenants, and supervise such activities so that there will be a minimum of disturbance and inconvenience to the other Tenants;
- 8.8 co-ordinate and supervise any leasehold improvements approved by the Receiver;
- 8.9 demand and collect the rents and other payments from the Tenants as well as any other revenues recoverable by the Owner or the Receiver as and when they become due and payable, and to give receipts therefor;
- 8.10 pay, on behalf of the Receiver, all advertising, leasing fees and other expenses in connection with the leasing of space in the Property as approved by the Receiver;
- 8.11 give all notices necessary or appropriate for the proper management of the Property in accordance with this Agreement including:
 - (a) at all proper times, all notices and statements required to be given to the Tenants;
 - (b) prompt notice to the Receiver of any damage to the Property;
 - (c) prompt notice to the Receiver of any Tenants arrears; ~~and~~



9. **HST**

The Manager shall ensure that all applicable HST, if any, is collected and remitted as required by law. Specifically, with respect to the Property and if required by the Receiver:

- 9.1 the Manager shall file HST returns in the name of the Owner, using a divisional account of the Owner to be assigned in respect of the Property by CRA;
- 9.2 the Manager shall file the HST returns in the prescribed manner, within the prescribed deadlines and remit such HST returns and any difference between HST collected less input tax credits ("Net Tax") owing to CRA in accordance with applicable legislation; and
- 9.3 on a monthly basis the Manager shall provide the Receiver with a copy of all HST returns that have been filed together with proof that Net Tax has been remitted to CRA.

10. **Application of Revenues**

Each month the Manager shall disburse funds from the Operating Account for the Property in the following order:

- 10.1 in payment of the Manager's remuneration calculated with respect to the Property;
- 10.2 in payment of all Property expenses incurred by the Manager in accordance with Section 17; and
- 10.3 the balance to the Receiver (or as may from time to time be directed by the Receiver) no later than the 10th day of the following month.

11. **Employees**

- 11.1 Unless otherwise directed by the Receiver, the Manager shall employ all operating and maintenance staff for the Property and shall be solely responsible for:
 - (a) the payment of all such staff at wages comparable to those being paid to employees doing similar work in the City of Brampton, Ontario;
 - (b) making all required deductions from wages and remitting such deductions, along with the employer's corresponding contributions, to CRA; and
 - (c) making all further remittances in respect of employees as required by law including remittances to the Workplace Safety and Insurance Board.

All such operating and maintenance staff shall be employees of the Manager. To the extent expenses incurred by the Manager with respect to such operating and maintenance staff are attributable to the Property, such expenses shall not be greater than market rates, shall be included in the Budget for the Property and paid as Property expenses pursuant to Section 10.2.

- 11.2 The Manager shall provide such general administrative, supervisory, accounting and management staff as may from time to time be required to properly carry out the Manager's duties and obligations under this Agreement and all costs and

expenses incurred by the Manager in respect of such staff are for the account of, and shall be paid by, the Manager.

- 11.3 The Manager shall carry, at the Manager's expense, a fidelity bond covering its employees who handle, or are responsible for handling, funds, rents and other revenues of the Property, and insuring against loss, theft, embezzlement and other criminal and fraudulent acts, and against errors and omissions, on the part of employees of the Manager, all in form, amounts and with binding companies approved by the Receiver.

12. **Management Fee**

- 12.1 In consideration of the performance of its services hereunder, the Receiver agrees to pay to the Manager a monthly management fee ("Management Fee") equal to:

- (a) Four (4) percent of gross collected rents, taxes maintenance and insurance, occupancy fees and any other revenue sources associated with the Property,

which shall be calculated monthly and payable on the first day of each month commencing on the first day of the month following the effective date of this Agreement. If the Term includes any part-month, the Management Fee shall be pro-rated and paid in respect of the days of the month that fall within the Term. In addition to the Management Fee, HST exigible on the Management Fee shall also be payable to the Manager.

- 12.2 Unless the Receiver specifically instructs otherwise, the Manager shall be entitled to issue a cheque payable to "Firm Capital Property Management Inc." from the Operating Account in payment of the Management Fee.

- 12.3 The Manager shall also be entitled to payment out of the Operating Account of its reasonable out of pocket expenses that relate to the operation of the Property.

13. **No Further Payments**

Except as specifically provided herein or as may hereafter be approved in writing by the Receiver, no amount shall be paid to the Manager, whether by way of fees or reimbursement of expenses, in respect of its general office overhead and administrative expenses, or for salary and benefits payable to its general office and administrative employees, regardless of whether they devote any time to the management of the Property. It is understood that the Management Fee paid includes compensation to the Manager for all such general office overhead and administrative expenses and all office and bookkeeping services of the Manager in connection with the management and operation of the Property.

14. **Records**

- 14.1 The Manager shall maintain, at its principal place of business in the City of Toronto and in accordance with generally accepted accounting principles, full and complete information, data and records of its activities in respect of this Agreement and the Property including record of receipts, disbursements, Leases, documents, accounts, copies of all invoices and any and all other documents and materials in the possession or control of the Manager relating to the Property.

14.2 The Receiver and any person designated by the Receiver shall have access to such information, data and records at all reasonable times.

15. Budget

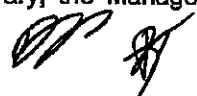
~~15.1 With respect to the Property, the Manager shall prepare and submit to the Receiver for approval an initial budget within thirty (30) days of the date hereof covering the period from the date hereof to December 31, 2012.~~

15.2 The Manager shall prepare and submit annually to the Receiver for approval an annual budget for the Property by the first day of December in each year during the Term covering the next following calendar year.

15.3 The budget to be prepared by the Manager shall contain:

- (a) a profit and loss budget setting forth anticipated revenues and expenses with respect to the operation of the Property; and
- (b) a capital expenditure budget with respect to the Property setting out foreseeable capital expenditures.

15.4 The Manager shall consult with the Receiver to amend, if required by the Receiver, and finalize each budget as required by the Receiver and, once a budget is approved by the Receiver and subject to any direction from the Receiver to the contrary, the Manager shall implement the budget during the applicable period.




16. Information and Reports

16.1 The Manager shall keep the Receiver fully informed in a timely way of all significant aspects of its activities in relation to the Property.

16.2 For each month, the Manager shall provide to the Receiver, within twenty (20) days after the end of the month (unless another due date is specifically provided):

- (a) statement of operations prepared in accordance with generally accepted accounting principles and showing variances from the approved budget;
- (b) balance sheet (on a monthly and 12-month basis);
- (c) property inspection report and recommended actions to be taken;
- (d) aged accounts receivable report including rental arrears and doubtful accounts, and recommended actions to be taken;
- (e) accounts payable listing;
- (f) up-to-date rent roll;
- (g) vacancy report outlining the vacant units;
- (h) progress reports on leasing, if applicable including a summary of all Leases terminated during the month and a summary of each new Lease executed during the month, if applicable;

- (i) cash-flow summary;
 - (j) Bank Account reconciliations;
 - ~~(k) variance analysis comparing actual to budgeted expenses for the month and the year-to-date, and~~
 - (l) copies of invoices as may be requested by the Receiver.
- 

16.3 The Manager shall provide the Receiver, if requested to do so by the Receiver with the requisite information for the Receiver to prepare and issue the necessary notices and reports by a "Receiver" pursuant to Sections 245 and 246 of the *Bankruptcy and Insolvency Act*.

16.4 The Manager shall provide the Receiver with such other information and reports as the Receiver shall reasonably request from time to time.

17. **Expenditures and Contracts**

17.1 The Manager shall not have, and shall not represent that it has, any authority to commit the Receiver to any expenditure or to enter into any contract or agreement on behalf of the Receiver unless such expenditure, contract or agreement:

17.2 has been specifically approved in writing by the Receiver;

17.3 is made in accordance with a budget previously approved in writing by the Receiver; or

17.4 is undertaken for work required to be performed by reason of an Emergency Situation where it is not possible, acting reasonably, to obtain the Receiver's approval, in which case the Manager is hereby authorized to proceed with such work to the extent necessary to avoid the injury or damage.

17.5 In addition, the Manager shall not enter into any contract or agreement on behalf of, or binding upon, the Receiver unless such contract or agreement terminates, or may be terminated by the Receiver without cost or penalty, on or before Termination.

18. **Maintenance of Property**

18.1 The Manager shall arrange for, supervise, and be responsible for, all repairs, maintenance and upkeep of the Property and the purchase of supplies and labour therefor in accordance with an approved budget and the provisions of this Agreement.

18.2 The Manager shall be responsible for payment of all expenses properly incurred in accordance with the provisions of this Agreement including all operational and capital expenses incurred in accordance with a budget approved by the Receiver, and payment therefor shall be made from the Operating Account as contemplated in Section 10.2.

18.3 Without limiting the generality of the foregoing, the Manager shall:

- (a) ensure that all heating, air conditioning, plumbing, elevators and electrical equipment in or about the Property are maintained in good working order;

- (b) make contracts in its own name as agent for the Receiver for electricity, gas, fuel, water, heating and air conditioning equipment, telephone, general cleaning, window cleaning, garbage removal, landscaping, building security, snow removal and the purchase of such reasonable and necessary supplies and services, as contemplated herein; and
- (c) disclose to the Receiver, in writing and prior to entering into any contract with a supplier of goods or services, all direct and indirect interests it may have in such supplier and obtain the Receiver's written approval prior to utilizing such supplier.

19. **Assignment**

The Manager shall not assign any of its rights and benefits, nor any of its duties and obligations, under or arising out of this Agreement without the prior written consent of the Receiver which consent may be arbitrarily withheld.

20. **Termination**

20.1 The appointment of the Manager under this Agreement shall terminate upon the earliest of the following to occur:

- (a) _____, 201_ unless renewed prior to such date for a period of one year by written agreement between the parties hereto;
- (b) the completion of the sale of the Property;
- (c) the Mortgage Security being brought into good standing;
- (d) the bankruptcy, receivership or insolvency of the Manager;
- (e) the thirtieth day after delivery of written notice of Termination by the Manager to the Receiver or by the Receiver to the Manager, as the case may be;
- (f) the fifth day after delivery of written notice of default by the Receiver to the Manager unless such default is cured within such five day period;
- (g) destruction of the Property or similar event requiring evacuation of all tenants; and
- (h) fraud, willful misconduct or gross negligence on the part of the Manager.

In the event of any sale of a portion of the Property, the appointment of the Manager with respect to such portion of the Property shall terminate upon the completion of such sale.

20.2 Upon Termination, the Receiver and the Manager shall each satisfy its outstanding obligations to the other which accrued to the Date of Termination including payment of accrued Management Fees save and except that:

- (a) if Termination occurs due to completion of a sale of the Property, the Manager shall receive Management Fees as if Termination had occurred on the 30th day after completion of the sale; and

- (b) notwithstanding anything else herein contained, in the event of the Manager's fraud or wilful misconduct, the Manager shall not be entitled to any accrued compensation or fees hereunder, all of which shall be forfeited to the Receiver.

20.3 After Termination, the Manager shall:

- (a) within twenty (20) days after the Date of Termination, complete and deliver to the Receiver final financial statements and accounts to the Date of Termination consistent in form and content with those provided prior to Termination;
- (b) within fifteen (15) days after the Date of Termination, deliver to the Receiver, or as the Receiver may direct, all books and records, Leases, offers to lease and agreements to lease, contracts, accounts and any and all other documents and materials in the possession or control of the Manager relating to the Property;
- (c) as of the Date of Termination, turn over management of the Property to the Receiver or as the Receiver may direct; and
- (d) co-operate in good faith to facilitate a smooth transition to new management both before and after Termination.

20.4 Compliance by the Manager with its obligations under Section 20.3 shall not be construed as a waiver of any rights accruing in favour of the Receiver.

21. **Indemnities**

21.1 The Manager shall indemnify and save the Receiver harmless from any action, cause of action, debt, cost, expense, claim or demand whatsoever resulting from any breach of this Agreement by the Manager or any party for whom it is in law responsible, or any action taken by the Manager outside the scope of its authority under this Agreement or by reason of any fraudulent, wrongful or negligent act or omission of the Manager or any party for whom it is in law responsible. This indemnity shall survive Termination.

21.2 The Manager shall provide the Receiver with a certificate of insurance confirming that the Manager maintains liability and fidelity insurance in respect of the liability of the Manager to indemnify the Receiver hereunder, which certificate shall include an undertaking by the insured to give the Receiver at least thirty (30) days prior written notice of any cancellation or material change to such insurance coverage.

22. **Notices**

All notices, requests, demands or other communications by the terms hereof required or permitted to be given by one party to another shall be given in writing by personal delivery, courier, e-mail or fax transmission as follows:

22.1 to the Receiver at:

Deloitte & Touche Inc.
181 Bay Street
Brookfield Place
Suite 1400
Toronto, ON M5J 2V1

Attention: Bryan Tannenbaum
Fax: 416-601-6690

with a copy to the Receiver's legal counsel at :

Borden Ladner Gervais LLP
Scotia Plaza

40 King Street West

Toronto, Ontario, Canada M5H 3Y4

Attention: John Marshall
Fax: 416-367-6024

22.2 to the Manager at:

Firm Capital Properties Inc.

Toronto, ON M2P 1T7

Attention: David Pruss
Fax: 416-635-1713

or at such other address as may be given by any of them to the others in writing from time to time, not to exceed two addresses at any particular time, and such notices, request, demands, acceptances and other communications shall be deemed to have been received when delivered.

23. **Confidentiality**

All information received by the Manager pursuant to this Agreement and in connection with the provision of its services under this Agreement shall be used only in the course of performing its duties hereunder and may not be disclosed by the Manager to any other person including the Manager's affiliates, except with the prior written consent of the Receiver. This Section 23 shall survive Termination.

24. **Time of the Essence**

Time is of the essence in this Agreement.

25. **Governing Law**

This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the Province of Ontario.

26. **Entire Agreement**

This Agreement sets forth the entire agreement between the parties concerning the subject matter hereof.

27. **No Partnership**

In its capacity as manager under this Agreement, the Manager acts solely as an independent contractor to the Receiver and nothing herein shall constitute, or be construed to be or to create, a partnership or joint venture between the Manager and the Receiver.

28. **No Commission**

The Manager acknowledges that it:

28.1 is not, and has not been, engaged by the Receiver to act in the capacity of a real estate broker; and

28.2 shall not make any claim or demand whatsoever in the nature of a real estate fee, commission or like remuneration from anyone including, the Receiver in the event of a sale of all or any of the Property.

29. **No Waiver**

The failure of either the Manager or the Receiver to insist upon the strict performance of any of the terms or provisions of this Agreement, or to exercise any right or remedy herein contained, shall not be construed as a waiver of such term, provision, right or remedy, each of which shall continue and remain in full force and effect. No waiver by either party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such party.

30. **Counterparts and Fax**

30.1 This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all such counterparts together shall constitute one and the same document.

30.2 This Agreement may be delivered by fax or electronic mail.

31. **Invalid Provisions**

If any provision in this Agreement or the application hereof to any circumstance shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application thereof to other circumstances shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

32. **Successors and Assigns**

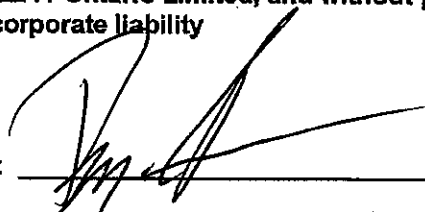
This Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns except that, as set out above, the Manager may not make any assignment without the prior written consent of the Receiver.

The remainder of this page is intentionally blank

IN WITNESS WHEREOF this Agreement has been duly executed by the parties as of the date first above written.

DELOITTE & TOUCHE INC., solely in its capacity as the Court-appointed receiver of 2012241 Ontario Limited, and without personal or corporate liability

Per: _____



FIRM CAPITAL PROPERTIES INC.

Per: _____



Mr. David Pruss
Chief Operating Officer, Real Estate

SCHEDULE "A"
LEGAL DESCRIPTION OF PROPERTY

Legal Description per property tax bill from the City of Brampton:

CON 5 EHS PT LOT 11 RP 43R21902 PARTS 6, 7

C

APPENDIX "C"

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

yyyy mm dd Page 1 of 2

Properties

Pin 14223 - 0856 LT **Interest/Estate** Fee Simple

Description PT OF LT 11, CON 5 EAST OF HURONTARIO ST, DES AS PTS 6 AND 7, PL 43R21902. BRAMPTON. S/T A EASEMENT IN FAVOUR OF BRAMPTON HYDRO ELECTRIC COMMISSION AND THE CORPORATION OF THE CITY OF BRAMPTON OVER PT OF LT 11, CON 5 EHS, DES AS PT 7, PL 43R21902 AS IN LT1615145.

Address 50 SUNNY MEADOW BOULEVARD
BRAMPTON

**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 2012241 ONTARIO LIMITED

Address for Service 470 Chrysler Drive, Unit 20
Brampton, Ontario
L6S 0C1

I, JAGDEV DHALIWAL, President, and RAVINDER SINGH CHAHAL, Secretary, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

Charges(s)**Capacity****Share**

Name THE TORONTO-DOMINION BANK

Address for Service TD Commercial Banking
Mississauga Real Estate Group
20 Milverton Drive, 2nd Floor
MISSISSAUGA, Ontario
L5R 3G2

Statements

Schedule: Restriction on Further Financing - The Chargor covenants and agrees not to enter into any further financing of the Property and not to further mortgage, charge or otherwise encumber the Property in any manner without the prior written consent of the Chargee.

Provisions

Principal \$ 12,500,000.00 **Currency** CDN

Calculation Period SEE SCHEDULE 1

Balance Due Date ON DEMAND

Interest Rate SEE SCHEDULE 1

Payments

Interest Adjustment Date

Payment Date SEE SCHEDULE 1

First Payment Date

Last Payment Date

Standard Charge Terms 8520

Insurance Amount See standard charge terms

Guarantor

Additional Provisions

See Schedules

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

Signed By

Helena Clara

600-390 Bay Street
Toronto
M5H 2Y2

acting for
Chargor(s)

Signed 2008 10 20

Tel 416-868-1900

Fax 4168681708

Submitted By

ROSE, PERSIKO, RAKOWSKY, MELVIN LLP

600-390 Bay Street
Toronto
M5H 2Y2

2008 10 20

Tel 416-868-1900

Fax 4168681708

Fees/Taxes/Payment

Statutory Registration Fee . \$60.00

Total Paid \$60.00

File Number

Chargor Client File Number : 2080223 - TD MORTGAGE (CHAHAL)



Schedule 1

Form 5 - Land Registration Reform Act, 1984

S

Additional Property Identifier(s) and/or Other Information

This is a Schedule to a Charge made between 2012241 ONTARIO LIMITED
and THE TORONTO-DOMINION BANK.

Box (2)(b) The Chargor hereby agrees to pay interest on the Principal Amount at the following Interest Rate:

- the Bank's Prime Rate plus 6.00% per annum. "Prime Rate" means the rate of interest per annum established and reported by the Bank to the Bank of Canada from time to time as a reference rate of interest for the determination of interest rates that the Bank charges to customers of varying degrees of credit worthiness in Canada for Canadian dollar loans made by it in Canada.

Box (2)(c) Interest at the Interest Rate aforesaid is calculated and payable monthly, not in advance, before and after demand, default and judgment. Interest is payable on overdue interest and on indebtedness payable under this Charge at the aforesaid Interest Rate. Any payment appropriated as a permanent reduction of this Charge shall be first applied against interest accrued hereunder.

FOR OFFICIAL
USE ONLY

177

Standard Charge Terms
Filing No. 8520
Land Registration Reform Act, 1984

This 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 above Act.

I. Definitions

In this set of Standard Charge Terms:

- (a) **Bank** means The Toronto-Dominion Bank.
- (b) **Charge** means this Charge/Mortgage of Land made pursuant to the Land Registration Reform Act, 1984 and any amendments thereto, to which the Chargor and the Chargee are parties and which is dated as of the Date of Signature of the first named Chargor who signs the Charge.
- (c) **Chargee** means the Bank.
- (d) **Chargor** means each Chargor described in this Charge.
- (e) **Costs** means the fees, costs, charges and expenses of the Bank of and incidental to:
 - (i) the preparation, execution and registration of the Charge and any other instruments connected herewith;
 - (ii) the collection, enforcement, realization of the security herein contained;
 - (iii) procuring payment of the Indebtedness due and payable hereunder, including foreclosure, power of sale or execution proceedings commenced by the Bank or any other party;
 - (iv) any inspection required to be made of the Property;
 - (v) all necessary repairs required to be made to the Property;
 - (vi) the Bank's having to go into possession of the Property and secure, complete and equip the building or buildings in any way in connection therewith;
 - (vii) the Bank's renewal of any leasehold interest;
 - (viii) the exercise of any of the powers of a receiver contained herein; and
 - (ix) all solicitor's costs, costs and expenses of any necessary examination of the title to and of valuation of the Property.

Costs shall:

 - (i) extend to and include legal costs incurred by the Bank as between solicitor and his own client;
 - (ii) be payable forthwith by the Chargor; and
 - (iii) be a charge on the Property.
- (f) **Fixtures** include, but are not limited to, furnaces, boilers, oil burners, stokers, water heaters, electric light fixtures, screen and storm doors and windows, air conditioning, plumbing, cooling and heating equipment and all apparatus and equipment appurtenant to the Property.
- (g) **Indebtedness** means all monies and liabilities matured or not, whether present or future, direct or indirect, absolute or contingent, now or at any time hereafter owing or incurred, whosoever or howsoever incurred from or by the Chargor, as principal or surety, whether alone or jointly with any other person and in whatever name style or firm, whether otherwise secured or not and whether arising from dealings between the Bank and the Chargor or from other dealings or proceedings by which the Bank may become a creditor of the Chargor including, without limitation, advances upon overdrawn accounts or upon bills of exchange, promissory notes or other obligations discounted for the Chargor or otherwise, all bills of exchange, promissory notes and other obligations negotiable or otherwise representing money and liabilities, or any portion thereof, now or hereafter owing or incurred from or by the Chargor and all interest, damages and Costs, and all premiums of insurance upon the buildings, Fixtures and improvements now or hereafter brought or erected upon the said Property which may be paid by the Bank and Taxes.
- (h) **Interest Rate** means the Interest Rate set out in Schedule 1 to this Charge.
- (i) **Principal Amount** means the Principal Amount in lawful money of Canada set out in this Charge.
- (j) **Property** means the property identified in this Charge by the Property Identifier(s) and described in the Description therein and in a Schedule to this Charge, if required, and includes all buildings, Fixtures and improvements now or hereafter brought or erected thereon.

- (k) Spouse of Chargor means each Spouse of Chargor described in this Charge.
- (l) Taxes means all taxes, rates and assessments, municipal, local, parliamentary or otherwise.

If the Property is a condominium unit, the following definitions apply:

- (m) Condominium Corporation means the Condominium Corporation which was created by the registration of the Declaration and the description relating thereto of which the Property hereby charged constitutes a part.
- (n) Common Expenses means the expenses of the performance of the objects and duties of the Condominium Corporation and any expenses specified as common expenses in the Condominium Act (Ontario), as amended from time to time or in the Declaration.
- (o) Declaration means the Declaration which, together with a description, was registered pursuant to the Condominium Act, to create the Condominium Corporation.

2. Charge of Property

The Chargor has, at the request of the Bank, agreed to give this Charge as a CONTINUING COLLATERAL SECURITY for payment to the Bank ON DEMAND of the Indebtedness, provided that such security be limited to the Principal Amount plus Costs with interest thereon at the Interest Rate. Interest at the Interest Rate is calculated and payable monthly, not in advance, before and after demand, default and judgment, with interest on overdue interest and on all other amounts charged to the Chargor hereunder at the Interest Rate. The Chargor,

- (a) if the Property is a freehold property, hereby charges the Property to the Bank; or
- (b) if the Property is a leasehold interest, hereby charges and subleases the Property to the Bank for and during the unexpired residue of the term of the lease, except the last day thereof, and all other estate, term, right of renewal and other interest of the Chargor in the lease;

to secure the repayment of the Indebtedness and the performance of all of the obligations of the Chargor contained herein. The Chargor hereby releases to the Bank all its claims upon the Property until the Chargor has repaid the Indebtedness and performed all the obligations of the Chargor in the manner provided by this Charge.

3. Covenants of the Chargor

The Chargor hereby covenants with the Bank that:

- (a) The Chargor will ON DEMAND pay the Indebtedness and observe all provisos, conditions and agreements contained herein;
- (b) The Chargor has a good title in fee simple to the Property (unless the Chargor is a lessee of the Property), save and except prior registered encumbrances;
- (c) The Chargor has the right to charge the Property to the Bank;
- (d) On default, the Bank shall have quiet possession of the Property, free from all encumbrances, save as aforesaid;
- (e) Covenant 1.vii, deemed to be included in this Charge by subsection 7(1) of the Land Registration Reform Act, 1984 is hereby expressly varied by providing that the Chargor will, before or after default, execute such further assurances of the Property and do such other acts, at the Chargor's expense, as may be reasonably required;
- (f) The Chargor will insure the Property to an amount of not less than the Principal Amount PROVIDED that if and whenever such amount be greater than the insurable value of the buildings, Fixtures and improvements now or hereafter brought or erected upon the Property, such insurance shall not be required in any greater amount than such insurable value and if and whenever the same shall be less than the insurable value the Bank may require such insurance to the full replacement value. It is further agreed that the Bank may require any insurance hereunder to be cancelled and new insurance effected by an insurer to be approved by it and also may of its own accord effect or maintain any insurance herein provided for and any amount paid by the Bank therefor shall be payable forthwith to the Bank with interest at the Interest Rate by the Chargor and shall be a charge upon the Property;
- (g) The Chargor will in each year within ten (10) days after the Taxes become due and payable produce to and leave with the Bank the duly receipted tax bills for that year covering the Property;
- (h) This Charge shall be void UPON REPAYMENT of the Indebtedness upon demand; or without demand, UPON PERMANENT REPAYMENT of the Indebtedness, with written notice to such effect to the Bank. The Chargor releases to the Bank all the Chargor's claims upon the Property subject to this paragraph; and
- (i) The Chargor agrees to assign to the Bank forthwith upon the request of the Bank as additional security for payment of the Indebtedness and the performance of the covenants herein contained, any present or future lease which may be granted by the Chargor as to the whole or any portion of the Property and agrees to deliver to the Bank executed copies of all such leases at the written request of the Bank. The Chargor covenants to perform and comply with all lessor's covenants contained in any leases assigned by the Chargor to the Bank. Notwithstanding the assignment or assignments of any lease or leases by the Chargor to the Bank, it is nevertheless declared and agreed that none of the rights or remedies of the Bank under this Charge shall be delayed or in any way hindered or prejudiced by such assignment or assignments or by any act of the Bank pursuant thereto.

4. Additional Covenants if Property is a Leasehold Interest

The Chargor covenants with the Bank that:

- (a) The Chargor has a good leasehold title to the Property;
- (b) The Chargor has a right to charge and sublet the leasehold title to the Property to the Bank in the manner herein provided, and, if required, has obtained the lessor's consent to this Charge;
- (c) Neither the Chargor nor any other person has heretofore made, done, committed or suffered any act to encumber the lease or any part thereof;
- (d) The lease is a good, valid and subsisting lease and not surrendered, forfeited, amended or become void or voidable and the rents and covenants reserved have been duly paid and performed by the Chargor up to the Date of Signature of the Chargor;
- (e) During the continuance of this Charge, the Chargor will not amend, surrender or modify the lease without the written consent of the Bank and will pay the rent reserved by the lease and perform and observe the covenants, provisos and conditions contained in the lease and on the lessee's part to be performed and observed and hereby agrees to keep the Bank indemnified against all actions, claims and demands whatsoever in respect of the said rent and covenants or anything relating thereto; and
- (f) The Chargor will stand possessed of the Property for the last day of the term or any renewal term granted by the lease in trust for the Bank, and will assign and dispose thereof as the Bank may direct, but subject to the same right of redemption and other rights as are hereby given to the Chargor with respect to the derivative term hereby granted.

5. Repair and Maintenance of Property

The Chargor covenants with the Bank that the Chargor will keep the Property in good condition and repair. The Bank may, whenever it deems it necessary, by its agent enter upon and inspect the Property and the Chargor shall pay the Costs associated therewith. If the Chargor or anyone claiming under him neglects to keep the Property in good condition and repair or commits any act of waste on the Property or does anything by which the value of the Property shall be diminished, as to all of which the Bank shall be sole judge, or makes default as to any of the covenants or provisos herein contained, the Indebtedness shall, at the option of the Bank, forthwith become due and payable. In default of payment thereof the powers of entering upon and leasing or selling hereby given may be exercised forthwith, and the Bank may make such repairs as it deems necessary and the Costs thereof shall be paid by the Chargor.

6. Obligation to Build Diligently

The Chargor covenants with the Bank that if the Chargor fails at any time for a period of ten days to diligently carry on the work of construction of any building or buildings being or to be erected on the Property or, without the consent in writing of the Bank, departs in such construction from any plans and specifications thereof which must be approved by the Bank or from the generally accepted standards of construction in the locality of the Property, or permits any construction or other lien to be registered against the Property for any period exceeding thirty days, the Bank at its option at any time thereafter through its agents or contractors may enter the Property and have exclusive possession thereof and of all materials, plant, gear and equipment thereon free of interference from or by the Chargor and complete the construction of the building or buildings either according to the said plans and specifications or according to other plans, specifications or design as the Bank in its absolute discretion shall elect. All Costs in connection therewith shall be payable by the Chargor.

7. Remedies on Default of Chargor

It is hereby provided that:

(a) Power to Lease or Sell Property

The Bank on default of payment of the Indebtedness or any portion thereof for the minimum default period on giving the minimum notice, according to applicable law, may enter on, lease or sell the Property. Provided further that on default of payment for the minimum default period, according to applicable law, the foregoing power of entry, leasing and selling may be exercised by the Bank without any notice whatsoever.

(b) Rights of Bank in Sale of Property

(i) The Bank in the event of default by the Chargor in payment of the Indebtedness or any portion thereof may sell the Property or any part thereof or, if the Property is a leasehold interest, sell the unexpired term of years demised by the lease or any part thereof by public auction or private sale for such price as can reasonably be obtained therefor and on such terms as to credit and otherwise and with such conditions of sale as it shall in its discretion deem proper, and in the event of any sale on credit or for cash or for part cash and part credit, the Bank shall not be accountable for or be charged with any monies until actually received by it. The Bank may rescind or vary any contract or sale and may buy in and re-sell the Property or any part thereof without being answerable for loss occasioned thereby; and no purchaser shall be bound to enquire into the legality, regularity or propriety of any sale or be affected by notice of any irregularity or impropriety; and no lack of default or want of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale hereunder, but the Bank alone shall be responsible. The Bank may sell without entering into actual possession of the Property and while in possession shall be accountable only for monies which are actually received by it and sales may be made by it from time to time of parts of the Property to satisfy any portion of the Indebtedness, leaving the residue thereof secured hereunder on the remainder of the Property, or may take proceedings to sell and may sell the Property or any portion of the Property subject to the balance of the Indebtedness not yet due at the time of the said sale.

- (ii) Disposition of Leasehold Property - If the Property is a leasehold interest, the Chargor hereby irrevocably appoints the Bank as the Chargor's substitute to be the Chargor's attorney during the continuance of this security. In the event of default and on giving the notice contemplated herein to the Chargor for and on behalf of the Chargor, the Bank may assign the lease and convey the Property and the last day of the term granted by the lease as the Bank shall at any time direct, and in particular, upon any sale made by the Bank under the statutory power or power of sale herein contained, to assign the lease and convey the Property and the said reversion to the purchaser. It is hereby declared that the Bank or other person for the time being entitled to the Indebtedness may at any time, by deed, remove the Chargor or any other person from being a trustee of the lease under the declaration of trust hereinbefore declared and on the removal of the Chargor or any future trustee of the lease, appoint a new trustee or trustees in the Chargor's place.
- (iii) If the Property is a leasehold interest, the Chargor will, with respect to the lease, at the request of the Bank, but at the cost, charge and expense of the Chargor, grant and assign unto the Bank, or the person whom it may appoint, the last day of the said term hereinbefore excepted or any renewal or substituted term; and further, in the event of the Bank making any sale under the power of sale herein contained the Chargor shall stand seized and possessed of the Property for the last day of the said term hereinbefore excepted, and of any renewal or substituted term, and of all rights of renewal in trust for the purchaser or purchasers, his or their heirs, executors, administrators, successors and assigns.

(c) **Costs of Sale of Property**

The Costs of any sale proceedings hereunder, whether such sale proves abortive or not, incurred in taking, recovering or keeping possession of the Property or in enforcing the personal remedies under this Charge or by reason of non-payment or in procuring payment of the Indebtedness shall be payable by the Chargor whether any action or proceeding has commenced or not.

8. Appointment of Receiver

If the Chargor shall be in default in the observance or performance of any of the terms, conditions, covenants or payments described herein or in any additional or collateral security given by the Chargor to the Bank then the Bank may in writing, appoint any person, whether an officer or employee of the Bank or not, to be a receiver of the Property and the rents and profits derived therefrom, and may remove the receiver so appointed and appoint another in his stead. The term "receiver" as used in this Charge includes a receiver and manager. The following provisions shall apply to this paragraph:

- (a) The receiver so appointed is conclusively the agent of the Chargor and the Chargor shall be solely responsible for the acts or defaults and for the remuneration and expenses of the receiver. The Bank shall not be responsible in any way for any misconduct or negligence on the part of the receiver and may, from time to time, fix the remuneration of the receiver and be at liberty to direct the payment thereof from proceeds collected;
- (b) Nothing contained herein and nothing done by the Bank or by the receiver shall render the Bank a mortgagee in possession or responsible as such;
- (c) All monies received by the receiver, after providing for payment and charges ranking prior to this Charge and for all applicable Costs shall be applied in or towards satisfaction of the remaining Indebtedness;
- (d) The receiver so appointed shall have power to:
- (i) take possession of the Property, collect rents and profits and realize upon additional or collateral security granted by the Chargor to the Bank and for that purpose may take any proceedings, be they legal or otherwise, in the name of the Chargor or otherwise;
 - (ii) carry on or concur in carrying on the business which the Chargor is conducting on and from the Property and for that purpose may borrow money on the security of the Property in priority to this Charge; and
 - (iii) lease all or any portion of the Property and for this purpose execute contracts in the name of the Chargor which said contracts shall be binding upon the Chargor;
- (e) The rights and powers conferred herein are supplemental to and not in substitution for any rights which the Bank may have from time to time.

9. Taking Possession of Personal Property

The Bank may distrain for arrears of any portion of the Indebtedness. The Chargor hereby waives the right to claim exemption and agrees that the Bank shall not be limited to the amount for which it may distrain.

10. Quiet Possession

Until default of payment the Chargor shall have quiet possession of the Property.

11. Release of Property by Bank

It is hereby agreed by the Chargor that the Bank may at its discretion at all times release any part or parts of the Property or any other security or any surety for the Indebtedness or any portion thereof either with or without any sufficient consideration therefor, without responsibility therefor and without thereby releasing any other part of the Property or any person from this Charge or from any of the covenants herein contained and without being accountable to the Chargor for the value thereof or for any money except that actually received by the Bank, it being expressly agreed that every part or lot into which the Property is or may hereafter be divided does and shall stand charged with the whole of the Indebtedness.

No extension of time given by the Bank to the Chargor, or any one claiming under the Chargor or any other dealing by the Bank with the owner or owners of the Property or of any part thereof shall in any way affect or prejudice the rights of the Bank against the Chargor or any other person liable for the payment of the Indebtedness or any portion thereof.

12. Payment of Other Charges and Performance of Other Obligations by Bank

The Chargor hereby agrees that:

- (a) The Bank may satisfy any charge now or hereafter existing or to arise or be claimed upon the Property and the amount so paid shall be added to the Indebtedness and bear interest at the Interest Rate and shall be payable forthwith by the Chargor to the Bank and in default of payment, the Indebtedness shall become payable and the powers of sale hereby given may be exercised forthwith without any notice. And in the event of the Bank satisfying any such charge or claim, it shall be entitled to all equities and securities of the person or persons so satisfied and it may retain any discharge or cessation of charge unregistered until paid; and
- (b) If the Property is a leasehold interest, and if the Chargor shall refuse or neglect to renew the lease or any renewals thereof granted hereafter, then, and as often as it shall happen, the Bank may, effect such renewals in its own name or otherwise, and every renewal of the lease and the Property thereby demised shall remain and be security to the Bank for the Indebtedness. All Costs in connection therewith shall be payable by the Chargor.

13. Sale or Transfer of Property by Chargor

The Chargor covenants and agrees with the Bank that:

- (a) The Chargor will not without the prior consent in writing of the Bank, sell, transfer or otherwise dispose of the Property or any portion thereof or any interest therein; and, in the event of such sale, transfer or other disposition, without the consent of the Bank, the Indebtedness hereby secured shall, at the option of the Bank, forthwith become due and payable; and
- (b) If the Property is a leasehold interest, no sale or other dealing by the Chargor with the lease or the Property or any part thereof or any other dealing by the Bank with the lease or the Property or any part thereof, shall in any way affect or prejudice the rights of the Bank against the Chargor or any other person liable to repay the Indebtedness hereby secured.

14. Charge Not a Substitute For Any Other Security

It is hereby expressly agreed by the Chargor that this Charge shall not create any merger, rebate or discharge of any debt owing to the Bank or of any lien, bond, promissory note, bill of exchange or other security held by or which may hereafter be held by the Bank, whether from the Chargor or any other party or parties whomsoever and this Charge shall not in any way affect any security held or which may hereafter be held by the Bank for the Indebtedness or any portion or portions thereof or the liability of any endorser or any other person or persons upon any such lien, bond, bill of exchange, promissory note or other security or contract or any renewal or renewals thereof held by the Bank for or on account of the Indebtedness or any portion or portions thereof nor shall the remedies of the Bank in respect thereof be affected in any manner whatsoever.

15. Judgments

The taking of a judgment or judgments against the Chargor on any of the covenants herein contained shall not operate as a merger of the said covenants or affect the Bank's rights to interest on the Indebtedness at the Interest Rate, and further that any such judgment may provide that interest thereon shall be computed at the Interest Rate until such judgment shall have been fully paid and satisfied.

16. Bank May Appropriate Payments to Any Debt

It is hereby agreed that the Bank shall have the right at any time to appropriate any payment made as a temporary or permanent reduction of any portion of the Indebtedness whether the same be represented by open account, overdraft or by any bills, notes or other instruments and whether then due or to become due and may from time to time revoke or alter such appropriation and appropriate such payment as a temporary or permanent reduction of any other portion of the Indebtedness as in its sole and uncontrolled discretion it may see fit.

17. Charge Continuing Security

It is hereby agreed that this Charge may secure a current or running account and shall stand as a continuing security to the Bank for the payment of the Indebtedness and all interest, damages and Costs which may become due or payable to the Bank notwithstanding any fluctuation or change in the amount, nature or form of the Indebtedness or in the bills, notes or other obligations now or hereafter representing the same or any portion thereof or in the names of the parties to the said bills, notes or obligations or any of them.

18. **Additional Covenants if Property is a Condominium Unit**

The Chargor covenants with the Bank that:

- (a) The Chargor will promptly observe and perform all obligations imposed on the Chargor by the Condominium Act as enacted from time to time, and by the Declaration, the By-laws and the Rules, as amended from time to time, of the Condominium Corporation, by virtue of the Chargor's ownership of the Property. Any breach of the said duties and obligations shall constitute a breach of covenant under this Charge;
- (b) Without in any way limiting or restricting the generality of the foregoing:
 - (i) The Chargor will pay promptly when due any contributions to Common Expenses required of the Chargor as an owner of the Property;
 - (ii) The Chargor will transmit to the Bank forthwith upon the demand of the Bank satisfactory proof that all Common Expenses assessed against or in respect of the said Property have been paid as assessed;
 - (iii) The Bank may put out of and deduct from any advance of the Principal Amount secured hereunder all contributions to the Common Expenses assessed against or in respect of the said Property which have become due and payable and are unpaid at the date of such advance; and
 - (iv) Whenever and so long as the Bank so requires the Chargor shall on or before the date when any sum becomes payable by the Chargor in respect of Common Expenses pay such sum to the Bank. The Bank shall forthwith on receipt thereof remit all such sums to the Condominium Corporation on behalf of the Chargor or as the Condominium Corporation may from time to time direct;
- (c) The Bank by accepting delivery of and registering this Charge authorizes and empowers the Chargor to vote or consent or not to consent respecting all matters relating to the affairs of the relevant Condominium Corporation provided that:
 - (i) The Bank may at any time upon written notice to the Chargor and the Condominium Corporation revoke this authorization;
 - (ii) The Bank shall not be under any obligation to vote or consent or not to consent as aforesaid to protect the interest of the Chargor; and
 - (iii) The exercise by the Bank of its right to vote or consent or not to consent as aforesaid shall not constitute the Bank a mortgagee in possession.

19. **Assignment of Rents**

The Chargor hereby agrees with the Bank as follows:

- (a) The Chargor hereby assigns and sets over to the Bank all rents payable from time to time under all leases of the Property or any part thereof, whether presently existing or arising in the future, together with the benefit of all covenants, agreements and provisos contained in the said leases, in favour of the Bank;
- (b) Forthwith after making any lease of the Property or any part thereof the Chargor will execute and deliver to the Bank an assignment in registrable form in the Bank's usual form of all rents payable under such lease, the benefit of all covenants, agreements and provisos therein contained on the part of the tenant to be observed and performed and the reversion of such lease, and will also execute and deliver to the Bank all such notices and other documents as may be required in order to render such assignment effectual in law;
- (c) Nothing herein contained shall make the Bank responsible for the collection of rents payable under any lease of the Property or any part thereof or for the performance of any covenants, terms or conditions contained in any such lease;
- (d) The Bank shall not by virtue of these presents be deemed a mortgagee in possession of the Property;
- (e) The Bank shall be liable to account for only such rents as actually come into its hands less reasonable collection charges in respect thereof and may apply such rents to the repayment of the Indebtedness; and
- (f) Notwithstanding anything herein contained no lease of the Property or any part thereof made by the Chargor without the consent in writing of the Bank shall have priority over this Charge.

20. **Interpretation and Headings**

It is hereby agreed that wherever in this Charge the word "Chargor" is used the same shall extend to and include the heirs, executors, administrators, successors and assigns of the Chargor, and wherever in this Charge the word "Bank" is used the same shall extend to and include the successors and assigns of the Bank and wherever the singular or masculine is used the same shall be construed as meaning the plural or the feminine or the neuter where the context or the parties hereto so require. The headings do not form part of this document and have been inserted for convenience of reference only.

21. **Condominium Act**

If the Property is a condominium unit, this Charge is made pursuant to the Condominium Act.

ACKNOWLEDGEMENT OF STANDARD CHARGE TERMS



TO: THE TORONTO-DOMINION BANK (the "Lender")
AND TO: ROSE, PERSIKO, RAKOWSKY, MELVIN LLP, its solicitors herein
RE: THE TORONTO-DOMINION BANK loan to 2012241 ONTARIO LIMITED, Part Lot 11, Concession 5 EHS, 50 Sunny Meadow Boulevard, Brampton, Ontario

IN CONSIDERATION OF the closing of the above-noted loan transaction and making the initial advance of funds thereunder, each of the undersigned acknowledges receipt of the attached copy of Standard Charge Terms No. 8520 and agrees to be bound by the provisions of such Standard Charge Terms.

DATED this 10 day of ^{September} August, 2008.

2012241 ONTARIO LIMITED

Per: [Signature]
Jagdey Dhaliwal, President

Per: [Signature]
Ravinder Singh Chahal, Secretary

I have authority to bind the Corporation.

WITNESS: [Signature]
[Signature]

1611161 ONTARIO LIMITED

Per: [Signature]
Jagdey Dhaliwal, President

Per: [Signature]
Sandeep Chahal, Secretary

I have authority to bind the Corporation.

[Signature]
RAVINDER SINGH CHAHAL
[Signature]
JAGDEY DHALIWAL

SOLICITOR'S CERTIFICATION

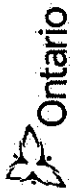
I am the solicitor acting on behalf of the mortgagor and guarantors in the above-noted transaction and confirm that, (i) each mortgagor and guarantor has been provided with a true copy of each Charge/Mortgage given in connection with the above transaction and the Standard Charge Terms referred to above and (ii) I have verified the proper identification of each of the parties executing each Charge/Mortgage and other loan documents, each of whom who is personally known to me and each such person is who he or she purports to be.

DATED this 10 day of ^{September} August, 2008.

[Signature]
HARJINDER CHAHAL
Barrister & Solicitor

D

APPENDIX "D"



LAND
REGISTRY
OFFICE #43

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 1 OF 6
PREPARED FOR ID45776
ON 2012/05/17 AT 12:36:10

14223-0956 (LIT)

SUBJECT TO RESERVATIONS IN CROWN GRANT

PROPERTY DESCRIPTION:

PT OF LT 11, CON 5 EAST OF HURONTARIO ST, DES AS PTS 6 AND 7, PL 43R21902. S/T A EASEMENT IN FAVOUR OF BRAMPTON HYDRO ELECTRIC COMMISSION AND THE CORPORATION OF THE CITY OF BRAMPTON OVER PT OF LT 11, CON 5 EHS, DES AS PT 7, PL 43R21902 AS IN LT1615145.; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 3 & 4, 43R33711 AS IN PR2106932; CITY OF BRAMPTON

PROPERTY REMARKS:

CONSENT OF THE LAND DIVISION COMMITTEE OF THE REGIONAL MUNICIPALITY OF PEEL IS ENDORSED IN LT1699650. THE FOLLOWING REMARK HAS BEEN ADDED ON 2002/10/21 AT 09:41 BY ISOBEL STEWART : CONSENT OF THE LAND DIVISION COMMITTEE IS ATTACHED TO LT1699650.

ESTATE/QUALIFIER:

RECENTLY:
DIVISION FROM 14223-0041

FREE SIMPLE

ABSOLUTE

OWNERS' NAMES

2012241 ONTARIO LIMITED

CAPACITY SHARE

NC

PIN CREATION DATE:

1997/03/05

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1996/05/07 ON THIS PIN						
WAS REPLACED WITH THE "PIN CREATION DATE" OF 1997/03/05						
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE: 1997/03/05 **						
43R18419	1991/03/07	PLAN REFERENCE				C
LT1302850	1992/03/12	NOTICE		*** DELETED AGAINST THIS PROPERTY ***		
REMARKS: RULED OFF PIN 14223-4133 ON AUGUST 26/03 BY RWARCH RE: LT1887369						
43R21191	1995/09/11	PLAN REFERENCE				C
LT1615145	1996/02/01	TRANSFER EASEMENT			BRAMPTON HYDRO ELECTRIC COMMISSION THE CORPORATION OF THE CITY OF BRAMPTON	C
43R21902	1996/11/14	PLAN REFERENCE				C
LT1699650	1997/02/10	TRANSFER		*** COMPLETELY DELETED *** WELLINGDALE COMMUNITY (BRAMPTON) INC.	CHURCH EXTENSION COUNCIL OF DUFFERIN AND PEEL PRESBYTERY OF THE UNITED CHURCH OF CANADA	C
REMARKS: CONSENT OF THE LAND DIVISION COMMITTEE ATTACHED HERETO.						
LT2057426	2000/03/27	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF THE DEPARTMENT OF TRANSPORT CANADA		C
REMARKS: PEARSON AIRPORT ZONING REGULATION						
PR192321	2002/01/21	CHARGE		*** COMPLETELY DELETED *** CHURCH EXTENSION COUNCIL OF DUFFERIN AND PEEL PRESBYTERY OF THE UNITED CHURCH OF CANADA	THE TORONTO UNITED CHURCH COUNCIL	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



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REGISTRY
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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 6
PREPARED FOR ID45776
ON 2012/05/17 AT 12:36:10

14223-0956 (LIT)

SUBJECT TO RESERVATIONS IN CROWN GRANT

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
PR192329	2002/01/21	CHARGE		*** DELETED AGAINST THIS PROPERTY *** CHURCH EXTENSION COUNCIL OF DUFFERIN AND PEEL PRESBYTERY OF THE UNITED CHURCH OF CANADA	THE TORONTO UNITED CHURCH COUNCIL	
PR325702	2002/10/02	TRANSFER	\$850,000	CHURCH EXTENSION COUNCIL OF DUFFERIN AND PEEL PRESBYTERY OF THE UNITED CHURCH OF CANADA	2012241 ONTARIO LIMITED	C
PR325711	2002/10/02	CHARGE		*** COMPLETELY DELETED *** 2012241 ONTARIO LIMITED	DUCA FINANCIAL SERVICES CREDIT UNION LTD.	
PR326750	2002/10/04	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE TORONTO UNITED CHURCH COUNCIL		
REMARKS: RE: PR192329						
PR326751	2002/10/04	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE TORONTO UNITED CHURCH COUNCIL		
REMARKS: RE: PR192321						
PR1138739	2006/09/19	NOTICE	\$2	THE CORPORATION OF THE CITY OF BRAMPTON		
PR1139444	2006/09/20	CHARGE		*** COMPLETELY DELETED *** 2012241 ONTARIO LIMITED	TISHLER, BRIAN 606696 ONTARIO LIMITED WALDERMAN, FRANCINE	
PR1139491	2006/09/20	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** 2012241 ONTARIO LIMITED	TISHLER, BRIAN 606696 ONTARIO LIMITED WALDERMAN, FRANCINE	
REMARKS: PR1139444						
PR1146634	2006/10/02	DISCH OF CHARGE		*** COMPLETELY DELETED *** DUCA FINANCIAL SERVICES CREDIT UNION LTD.		
REMARKS: RE: PR325711						
PR1312800	2007/08/10	NOTICE		*** COMPLETELY DELETED *** 2012241 ONTARIO LIMITED	TISHLER, BRIAN 606696 ONTARIO LIMITED WALDERMAN, FRANCINE	
REMARKS: PR1139444						
PR1403840	2008/01/18	NOTICE		*** COMPLETELY DELETED *** 2012241 ONTARIO LIMITED	TISHLER, BRIAN	

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 3 OF 6
PREPARED FOR ID45776
ON 2012/05/17 AT 12:36:10

14223-0956 (LT)

SUBJECT TO RESERVATIONS IN CROWN GRANT

REG. NDM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHCD
		REMARKS: PR1139444			606696 ONTARIO LIMITED WALDERMAN, FRANCINE	
PR1418741	2008/02/21	CHARGE	\$400,000	2012241 ONTARIO LIMITED	1448037 ONTARIO LIMITED	C
PR1418749	2008/02/21	NO ASSGN RENT GEN REMARKS: PR1418741		2012241 ONTARIO LIMITED	1448037 ONTARIO LIMITED	C
PR1539562	2008/09/25	DISCH OF CHARGE		*** COMPLETELY DELETED *** TISHLER, BRIAN 606696 ONTARIO LIMITED WALDERMAN, FRANCINE		
		REMARKS: RE: PR1139444				
PR1539845	2008/09/25	CHARGE	\$864,070	2012241 ONTARIO LIMITED	1448037 ONTARIO LIMITED	C
PR1539924	2008/09/26	NO ASSGN RENT GEN REMARKS: PR1539845		2012241 ONTARIO LIMITED	1448037 ONTARIO LIMITED	C
PR1554408	2008/10/20	CHARGE	\$12,500,000	2012241 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
PR1569920	2008/11/18	POSTPONEMENT REMARKS: PR1418741 TO PR1554408		1448037 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
PR1569921	2008/11/18	POSTPONEMENT REMARKS: PR1418749 TO PR1554408		1448037 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
PR1569922	2008/11/18	POSTPONEMENT REMARKS: PR1539845 TO PR1554408		1448037 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
PR1569923	2008/11/18	POSTPONEMENT REMARKS: PR1539924 TO PR1554408		1448037 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
PR1582644	2008/12/12	APL (GENERAL) REMARKS: DELETES LT1302850		*** COMPLETELY DELETED *** PEEL DISTRICT SCHOOL BOARD		
PR1591143	2009/01/08	NOTICE	\$2	THE CORPORATION OF THE CITY OF BRAMPTON		C
PR1681378	2009/08/05	NOTICE	\$2	THE TORONTO-DOMINION BANK		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



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REGISTRY
OFFICE #43

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 4 OF 6
PREPARED FOR ID45776
ON 2012/05/17 AT 12:36:10

14223-0956 (LT)

SUBJECT TO RESERVATIONS IN CROWN GRANT

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERY/ CHKD
PRI720150	2009/10/15	NOTICE	\$2	THE TORONTO-DOMINION BANK		C
		REMARKS: PRI554408, PRI418741, PRI539845.				
PRI720151	2009/10/15	TRANSFER OF CHARGE		1448037 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
		REMARKS: PRI418741.				
PRI720152	2009/10/15	TRANSFER OF CHARGE		1448037 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
		REMARKS: PRI539845.				
PRI740689	2009/11/25	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** STUBBE'S PRECAST COMMERCIAL INC.		
PRI759521	2010/01/05	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** STUBBE'S PRECAST COMMERCIAL INC.		
		REMARKS: PRI740689.				
PRI764737	2010/01/15	APL (GENERAL)		*** COMPLETELY DELETED *** H S G PROPERTIES INCORPORATED		
		REMARKS: CERTIFICATE OF PENDING LITIGATION				
PRI774495	2010/02/05	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** RAFAT GENERAL CONTRACTORS INC.		
PRI778915	2010/02/18	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** RAFAT GENERAL CONTRACTORS INC.		
		REMARKS: PRI774495.				
PRI784339	2010/03/01	APL AMEND ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	2012241 ONTARIO LIMITED CHAHAL, RAVINDER SINGH	
		REMARKS: DELETES PRI764737				
PRI785468	2010/03/03	APL (GENERAL)		H S G PROPERTIES INCORPORATED		C
		REMARKS: PENDING LITIGATION				
PRI803331	2010/04/12	POSTPONEMENT		H S G PROPERTIES INCORPORATED	THE TORONTO-DOMINION BANK	C
		REMARKS: FROM PRI785468 TO PRI554408				
PRI877343	2010/08/18	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** SCHINDLER ELEVATOR CORPORATION		

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 5 OF 6
PREPARED FOR ID45776
ON 2012/05/17 AT 12:36:10

14223-0956 (LIT)

SUBJECT TO RESERVATIONS IN CROWN GRANT

REG. NO.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
PR1885715 REMARKS: PR1877343.	2010/09/01	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** SCHINDLER ELEVATOR CORPORATION		
PR1930393	2010/12/02	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** ROYAL WINDSOR MECHANICAL INC.		
43R33711	2010/12/23	PLAN REFERENCE	\$70			
PR1946955 REMARKS: PR1930393	2011/01/11	CERTIFICATE		*** COMPLETELY DELETED *** ROYAL WINDSOR MECHANICAL INC.	VERSA CONSTRUCTION LIMITED 2012241 ONTARIO LIMITED THE TORONTO-DOMINION BANK	C
PR1947540	2011/01/12	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** FLOORCRAFT DESIGN INC.		
PR1948049 REMARKS: PR1930393, DEELTES PR1930393, PR1946955	2011/01/13	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** ROYAL WINDSOR MECHANICAL INC.		
PR1950063 REMARKS: PR1947540.	2011/01/18	DIS CONSTRUCT LIEN		*** COMPLETELY DELETED *** FLOORCRAFT DESIGN INC.		
PR1982084	2011/03/30	CONSTRUCTION LIEN	\$383,399	VERSA CONSTRUCTION LIMITED		C
PR2008837 REMARKS: PR1982084	2011/05/16	CERTIFICATE		VERSA CONSTRUCTION LIMITED		C
PR2106932	2011/11/14	TRANSFER EASEMENT		2012241 ONTARIO LIMITED	HYDRO ONE BRAMPTON NETWORKS INC.	C
PR2110730	2011/11/21	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	IRA SMITH TRUSTEE & RECEIVER INC.	C
PR2176035 REMARKS: PR1554408.	2012/04/10	TRANSFER OF CHARGE		THE TORONTO-DOMINION BANK	FIRM CAPITAL MORTGAGE FUND INC.	C
PR2176036 REMARKS: PR1418741	2012/04/10	TRANSFER OF CHARGE		THE TORONTO-DOMINION BANK	FIRM CAPITAL MORTGAGE FUND INC.	C

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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 6 OF 6
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14223-0956 (LT)
SUBJECT TO RESERVATIONS IN CROWN GRANT

REG. NDM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
PR2176037	2012/04/10	TRANSFER OF CHARGE		THE TORONTO-DOMINION BANK	FIRM CAPITAL MORTGAGE FUND INC.	C
	REMARKS: PR1539#45					

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E

Appendix "E"

**Refer to separately bound volumes (3) of the
agreements and leases**

F

APPENDIX "F"

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) WEDNESDAY, THE 4TH DAY
)
JUSTICE WILTON-SIEGEL) OF APRIL, 2012

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

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

**UNOFFICIAL TRANSCRIPT OF THE
ENDORSEMENT OF JUSTICE WILTON-SIEGEL**

The applicant seeks copies of three categories of documentation in the hands of the Receiver. The Toronto-Dominion Bank seeks copies of whatever is ordered in favour of the applicant.

The consultant's report is not yet completed and therefore not appropriate for disclosure at this time.

The agreement of purchase and sale and the leases should be available to both parties upon payment of the costs of photocopying and execution of confidentiality agreements satisfactory to the Receiver.

The appraisal report should not be disclosed at this time. The court must be satisfied that such disclosure would not affect the integrity of any sales process that might subsequently be conducted by the Receiver.

The effect of such disclosure for the purposes of further disclosure to a prospective financier of a redemption by the applicant runs the risk of excluding an interested party from such sales process. The Receiver, although not objecting to the request, acknowledges number concerns. Accordingly the request is denied at this time.

The applicant is, however, actively seeking financing to permit a redemption of the T-D mortgage financing and a termination of the Receivership. In the event that bidding financing arrangement are entered into, the court may be prepared to consider arrangements for such disclosure in order to permit closing of the financing depending upon the circumstances at that time.

The Receiver seeks approval of its actions as set out in the Third Report and of the fees and disbursements of the Receiver and its legal counsel. The T-D Bank does not object and no objection has been raised by the applicant. Order to go in the form attached.

[Justice Wilton-Siegel's signature]

THE TOWER ONTARIO BANK
2012-11-14
Respondent

2012-11-14 ONTARIO LIMITED
Respondent

April 4/12

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL DIST.

Proceeding Commenced at Toronto

MOTION RECORD

BLANCK MCMURPHY LLP
1500-1 Queen Street East
Toronto, ON M5C 2G5

Lim. Brzezinska (USUC# 1919400)
Dominic Mcgregor (USUC# 45735E)
Grace Kim (USUC# 55162D)
Tel: (416) 593-1211
Fax: (416) 593-5437

Lawyers for the Smith, Trustees & Receiver Inc. court appointed
Receiver at 2012-11-14 Ontario Limited



A.C. Brzezinska
1 Avenue for 2012-11-14 Ontario Ltd
Deliberations for the Tower

The attached notes represent the
contents of the meeting on 11/14/11
at Tower. The Tower, Dominion Bank
expended resources in order to inform
of the 11/14/11

The contents of the meeting
confirms and that the
meeting took place on 11/14/11
and the contents of the meeting
and the meeting minutes are
being reviewed.

The meeting minutes are being reviewed
and the meeting minutes are being
reviewed by the Receiver and the
Receiver's legal counsel.

Received by the Receiver
PTD

The effect of such disclosure for the purposes of ^{further} disclosure to prospective financiers of the redemption by the applicant upon the risk of excluding an interested party from such sales process. The Receiver, although not objecting to the request, acknowledges similar concerns. Accordingly, this request is denied at this time.

The applicant is, however, actively seeking financing to permit a redemption of the T-D mortgage financing and a termination of the receivership. In the event that binding financing arrangements are entered into, the court may be prepared to consider arrangements for such disclosure in order to permit closing of the financing depending upon the circumstances at that time.

The Receiver seeks ~~the court's~~ approval of its actions as set out in the third report and of the fees and disbursements of the Receiver and its legal counsel. The T-D Bank does not object and no objection has been raised by the applicant. Order to go in the form attached.

W. Don-ht J.

G

APPENDIX "G"

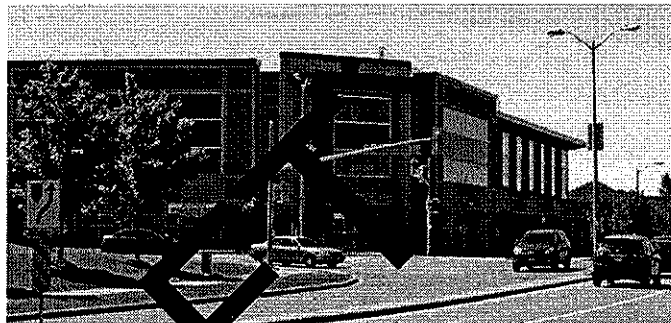
Investment Opportunity – Sunny Meadow Centre

Date

Exceptional opportunity to acquire a newly built office building located opposite Brampton Civic Hospital in northeast Brampton.

Highlights:

- Modern office building with total floor area of approximately 54,700 sf
- Situated across from the recently expanded 1.3 million sf Brampton Civic Hospital complex
- Zoning permits office, retail & personal services
- Abundant surface parking and underground parking garage
- Optional vacant possession provides flexibility to purchasers
- Option to hold as an investment property or proceed with condo plan registration
- Financing may be available to qualified purchasers



Transaction and competitive bids process

Deloitte & Touche Inc., in its capacity as Court-appointed Receiver of certain assets, undertakings and properties of 2012241 Ontario Limited ("2012241"), and not in its personal capacity, (the "Receiver") offers for sale, through Deloitte & Touche Real Estate Group certain property of 2012241 including the Sunny Meadow Medical Centre property known municipally as 50 Sunny Meadow Boulevard, located north of Bovaird Drive between Bramalea Road and Torbram Road, in Brampton, Ontario.

The Receiver will be conducting a Request for Offers, with the deadline for submissions set for [REDACTED] 2012 at 12:00 p.m. Offers must be submitted using the pre-approved form of offer available with the Confidential Information Memorandum ("CIM"). The Receiver reserves the right to extend the above deadline at its sole discretion.

To receive additional information, including the CIM and access to the data room, prospects must execute the enclosed Confidentiality Agreement and return a copy via e-mail to SunnyMeadow@deloitte.ca or via facsimile (416-601-6690) to the Receiver to the attention of Mr. Stefano, Damiani, CA, CIRP.

Legal | Privacy

H

APPENDIX "H"

CONFIDENTIALITY AGREEMENT

2012241 ONTARIO LIMITED

BETWEEN:

Deloitte & Touche Inc.

Solely in its capacity as the Court-Appointed Receiver of all the assets, properties and undertakings of 2012241 Ontario Limited (the “Debtor”) and without personal or corporate liability

(hereinafter, the “Receiver”)

- and -

[Insert name]

(hereinafter, the “Recipient”)

WHEREAS:

- A. Pursuant to an Order of the Ontario Superior Court of Justice (the “Court”) dated May 10, 2012, (the “Appointment Order”) Deloitte & Touche Inc. was appointed as the Receiver of all of the assets, undertakings and properties of 2012241 Ontario Limited known municipally as 50 Sunny Meadow Blvd., Brampton, Ontario (the “Property”).
- B. By Order of the Court dated [REDACTED] (the “Marketing Order”), the Receiver was authorized by the Court to market and sell the Receiver’s right, title and interest in and to the Property.
- D. The Property is being offered for sale by the Receiver pursuant to the Request for Offers (the “RFO”) approved by the Court pursuant to the Marketing Order.
- E. The Recipient has expressed an interest in acquiring (the “Potential Transaction”) the Property.
- F. The Receiver intends to provide certain confidential information pertaining to the Debtor and the Property to the Recipient for its review and consideration in connection with the Potential Transaction.

FOR GOOD AND VALUABLE consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. The Receiver shall furnish to the Recipient certain information pertaining to the Debtor and the Property that is either non-public, confidential or proprietary in nature, including, but not limited to, property, financial and operating information and an information memorandum. All such information furnished to the Recipient, its directors, officers, employees, agents or representatives, including, without limitation, its lawyers, accountants, consultants or financial advisers (collectively "**Representatives**") by the Receiver, and all analyses, compilations, data, studies, derivative works or other documents prepared by the Recipient or its Representatives containing or based upon, in whole or in part, any such furnished information is herein referred to as the "**Information**". Information includes, but is not limited to, information about identifiable individuals ("**Personal Information**").
2. The Information will be kept confidential by the Recipient and its Representatives and will not, without the prior written consent of the Receiver, be disclosed by the Recipient or its Representatives, in any manner whatsoever, in whole or in part, and will not be used by the Recipient or its Representatives, directly or indirectly, for any purpose other than in connection with the Potential Transaction.
3. The Recipient acknowledges that the Information is being furnished to the Recipient in accordance with the RFO and the Marketing Order and no provision of this Confidentiality Agreement shall limit or otherwise affect any of the terms of the Marketing Order including, without limitation, the limitations on the Receiver's liability contained therein with respect to marketing and sale of the Property as well as the confidentiality obligations imposed upon the Recipient pursuant thereto. The Recipient acknowledges that the Receiver does not make any express or implied representation or warranty as to the accuracy or completeness of the Information and agrees that the Receiver shall not have any liability, direct or indirect, to the Recipient or its Representatives relating to or resulting from the Information or the use by the Recipient thereof, errors therein, or omissions therefrom, except in accordance with any specific representation or warranty made in any definitive agreement entered into in respect of the Potential Transaction.
4. The Recipient agrees to furnish the Information only to those Representatives who need to know the Information for the purpose of evaluating the Potential Transaction and who are informed by the Recipient of the confidential nature of the Information and who agree in writing to be bound by the terms of this Agreement. The Recipient further agrees to be responsible for any breach of this Agreement by any of its Representatives. The Recipient will make all reasonable, necessary and appropriate efforts to safeguard the Information from disclosure to anyone other than as permitted hereby.
5. Without the prior written consent of the Receiver, the Recipient will not, and will direct its Representatives not to, disclose to any other person that the Information has been

made available, that this Agreement has been entered into, that discussions or negotiations are taking place concerning the Potential Transaction, or any of the terms, conditions or other facts with respect to the Potential Transaction, unless and only to the extent that in the opinion of its counsel disclosure is required to be made under applicable laws or regulations or as required by any competent governmental, judicial or other authority, provided that the Recipient will advise the Receiver so the Receiver may seek a protective order or other appropriate remedy and, where reasonably practical, consult with the Receiver prior to such disclosure concerning the Information the Recipient proposes to disclose. The Recipient shall co-operate with the Receiver on a reasonable basis to obtain such protective order or other appropriate remedy.

6. The Recipient shall keep a record of each location of the Information and its Representatives to whom the Information is provided. If the parties determine not to enter into an offer to purchase the Property, or if an offer to purchase the Property is not concluded, the Recipient shall promptly deliver to the Receiver all documents furnished or made available by the Receiver to the Recipient or its Representatives constituting the Information, without retaining copies thereof. Without limiting the generality of the foregoing, the Recipient shall not retain for any longer than necessary, and shall destroy or make anonymous, any records pertaining to Personal Information in accordance with applicable law.
7. The Recipient shall store the Personal Information properly and securely and ensure that appropriate technical and organizational means are in place to protect the Personal Information against unauthorized or unlawful processing and against accidental loss, destruction or damage, including taking reasonable steps to ensure the reliability of any person permitted by the Recipient to have access to the Personal Information.
8. Save and except with respect to Personal Information, this Agreement shall be inoperative as to such portions of the Information which: (a) are or become generally available to the public other than as a result of the disclosure by the Recipient or its Representatives; (b) become available to the Recipient from a source other than the Receiver or its Representatives, provided that such source, so far as the Recipient is aware, is not bound by a confidentiality agreement with the Receiver or its Representatives or otherwise prohibited from transmitting the Information to the Recipient by a contractual or legal obligation; or (c) were known to the Recipient prior to their disclosure to the Recipient by the Receiver.
9. The Recipient's right to receive information hereunder may be terminated by the Receiver at any time upon written notice to the Recipient whereupon the Recipient shall remit and surrender to the Receiver or destroy, without any cost to the Receiver, the Information and all notes and writings in respect thereof, which the Recipient or its Representatives may have in their possession at that time.
10. The Recipient hereby agrees to indemnify the Receiver against any damages, liability or expense (including legal fees and disbursements) caused to the Receiver, or its agents and

arising from any breach by the Recipient of its obligations under the terms of this Agreement.

11. The Recipient acknowledges that it has not been introduced to the Property through any registered real estate agent or intermediary and agrees to work directly through the Receiver with respect to any purchase of the Property.
12. No failure or delay by either party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise preclude any other or further exercise of any right, power or privilege under this Agreement.
13. The Recipient acknowledges that disclosure of the Information or other breach of this Agreement would cause serious and irreparable damage and harm to the Receiver and that remedies at law would be inadequate to protect against breach of this Agreement, and each agrees in advance to the granting of injunctive relief in favour of the Receiver for any breach of the provisions of this Agreement and to the specific enforcement of the terms of this Agreement, without proof of actual damages, in addition to any other remedy to which the Receiver would be entitled.
14. No amendment, supplement, modification or waiver or termination of this Agreement and, unless otherwise specified, no consent or approval by either party, shall be binding unless executed in writing by the party to be bound thereby.
15. The confidentiality and non-use obligations described in this Agreement shall terminate two (2) years from the date of this Agreement.
16. This Agreement shall not be assigned without the prior consent of both the Receiver and the Recipient.
17. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable to agreements made to be performed within such province.

DATED at _____ this _____ day of _____ 2012.

Deloitte & Touche Inc. solely in its capacity as
the Court-appointed receiver of the Property
(as defined herein) 2012241 Ontario Limited
and without personal or corporate liability

Per: _____

Name:

Title:

[Name of Recipient]

Per: _____

Name:

Title:

1

APPENDIX "I"

CONDITIONS OF SALE

1. The vendor is Deloitte & Touche Inc., solely in its capacity as the receiver (the "**Vendor**") appointed pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated May 10th, 2012 of all of the assets, undertakings and properties of 2012241 Ontario Limited ("2012241") acquired for, or used in relation to the business carried on by 2012241, including but not limited to the municipal property known as 50 Sunny Meadow Blvd, in Brampton, Ontario (the "Property").
2. Pursuant to these Conditions of Sale, the Vendor is offering for sale the Vendor's and the Debtor's right, title and interest, if any, in the Property as described in the Confidential Information Memorandum (the "**CIM**") dated June, 2012.
3. A listing of the various items comprising the Property is contained in the CIM. All information contained in the CIM, including without limitation, the lists and descriptions of the Property (including, without limitation, the legal description of the Lands), has been prepared solely for the convenience of the party submitting an offer to purchase some or all of the Property (an "**Offeror**") and are not warranted to be complete or accurate and do not form part of these Conditions of Sale.
4. Sealed offers marked "Offer – 50 Sunny Meadow Blvd." shall be delivered or mailed postage prepaid to Deloitte & Touche Inc., 181 Bay Street, Brookfield Place, Suite 1400, Toronto, Ontario, M5J 2V1, to the attention of Stefano Damiani. All offers must be received by the Vendor by 12:00 p.m. Eastern Standard Time on [REDACTED] (the "**Offer Date**"). The Vendor reserves the right to extend the Offer Date at any time for any reason.

5. Every offer submitted should be in the form of offer attached hereto. Offers received by the Vendor which are not in such form may be rejected. No Offeror shall be entitled to be present for the opening of offers.

6. The Vendor shall have no obligation, at law or in equity or otherwise, to any Offeror or any other person or party, to:
 - (a) consider any offer which:
 - (i) specifies a purchase price as an amount or percentage in excess of any other offer or otherwise as a function of the purchase price offered by any other Offeror;
 - (ii) has not been fully completed and duly executed;
 - (iii) is not accompanied by the Deposit (as defined below) required hereunder;
 - (iv) has not been delivered to and received at the offices of the Vendor as required hereunder; or
 - (b) negotiate with any Offeror after the Offer Date with respect to any provision of the offer or request or agree to any changes therein,

but nothing in these Conditions of Sale shall preclude the Vendor from taking any of the foregoing steps if, in its sole and unfettered discretion, it decides to do so; however the taking of any such step shall not constitute a waiver by the Vendor of the provisions of this paragraph or an obligation on the part of the Vendor to take any further or other steps referred to above with the same or any other Offeror. The Vendor will be under no obligation to negotiate identical terms with, or extend identical terms to, each Offeror.

7. The Offeror shall, with its offer, deliver to the Vendor the following:
 - (a) an amount equal to 10% of the purchase price specified in the Offer by certified cheque or bank draft drawn on or issued by a Schedule 1 Canadian chartered bank or trust

company, which shall be held in a non-interest bearing account by the Vendor. If the Offer is accepted by the Vendor said cheque shall be deemed to be a cash deposit (the “**Deposit**”) against the aggregate offered purchase price (the “**Purchase Price**”) and, subject to Court approval of the Offer, the Offeror (hereinafter called the “**Purchaser**”) under an Approved Sale Agreement (as defined below) shall pay the balance of the Purchase Price to the Vendor, by certified cheque or bank draft drawn on or issued by a Schedule 1 Canadian chartered bank or trust company on the Closing Date of the transaction under the Approved Sale Agreement;

- (b) an executed copy of the template agreement of purchase and sale prepared by the Vendor and, if applicable, any matters specific to the Offer (the “**Offeror Sale Agreement**”), which shall be binding and irrevocable until the completion of the transaction contemplated by the Offeror Sale Agreement;
 - (c) a comparison of the template agreement of purchase and sale to the executed and amended Offeror Sale Agreement;
 - (d) a representation of the Offeror that the Offeror has, and written evidence of, available cash and/or a commitment for financing to evidence the Offeror’s ability to close the proposed transaction as the Vendor may reasonably request;
 - (e) a copy of a resolution of the Offeror’s board of directors or similar document demonstrating the Offeror’s authority to make an irrevocable Offer and to execute the transaction contemplated by the Offeror Sale Agreement; and
 - (f) disclosure of the identity of each entity (including its ultimate shareholders) that has submitted the Offer.
8. Following the Offer Date, the Vendor specifically reserves its right to negotiate with any Offeror with respect to any provision of the offer or to request or agree to any changes in any such Offer. The Vendor may choose to take such steps with respect to one or more Offers but the Vendor

shall have no obligation to negotiate identical terms with, or extend identical terms to each Offeror. The Vendor reserves its right to request some, but not all, Offerors to submit a revised offer reflecting improved terms or other amendments requested by the Vendor. The Vendor will be under no obligation to provide to each Offeror the opportunity to improve the terms of any offer submitted to the Vendor following the Offer Date.

9. If the Vendor accepts an offer and the subject Offeror Sale Agreement, the Vendor shall seek Court approval of such Offeror Sale Agreement as soon as reasonably possible. Any Offeror Sale Agreement accepted by the Vendor and approved by the Court is referred to herein as an **“Approved Sale Agreement”**.
10. If the Vendor accepts an offer but the terms of that offer or the Offeror Sale Agreement are not approved by the Court then the Vendor may, in its sole and unfettered discretion, terminate the proposed transaction and any Offeror Sale Agreement accepted by the Vendor, whereupon the Deposit shall forthwith be returned to the Offeror without credit for any accrued interest thereon and the Vendor may then accept any other offer to purchase that part of the Property subject to the terminated Offeror Sale Agreement.
11. Notwithstanding any other provision contained in these Conditions of Sale, nothing herein shall constitute an assignment or attempted assignment of any of the Property subject to an Approved Sale Agreement (**“Purchased Assets”**) which is not assignable without the consent of any person if such consent is not obtained by the Purchaser. It shall be the Purchaser’s sole responsibility to obtain, at its own expense, any consents, approvals or any further documentation or assurances which may be required to carry out the terms of the sale of the Purchased Assets, including, without limitation, any approvals with respect to the assignment of any of the Purchased Assets not assignable without the consent or action of a third party or parties. Specifically, and without limiting the generality of the foregoing, by submitting an Offer, an Offeror acknowledges that it

has conducted its own investigations with respect to any licences, approvals or third party consents which are necessary to purchase any of the Property, to develop or construct improvements upon the Lands or any other activity utilizing or in connection with any of the Property.

12. The Offeror acknowledges that it is purchasing the Purchased Assets on an “as is where is basis” and the Receiver cannot and will not provide any representations or warranties whatsoever in any manner with respect to the Purchased Assets.
13. Cheques accompanying Offers that are not accepted will be returned to the Offeror by registered mail addressed to the Offeror at the address set out in its Offer or made available for pick up not later than eighteen (18) days following the opening of Offers unless otherwise arranged with the Offeror.
14. The closing of the Approved Sale Agreement shall take place at the office of the Vendor, 181 Bay Street, Brookfield Place, Suite 1400, Toronto, Ontario or at the option of the Vendor, at the offices of the Vendor's solicitors at 11:00 a.m. on the 31st day after approval by the Court of the Approved Sale Agreement accepted by the Vendor (the “**Closing Date**”) or such other date as the Vendor and the Purchaser may agree.
15. Upon closing of the sale of the Purchased Assets contemplated by the Approved Sale Agreement (the “**Closing**”), the Purchaser shall be entitled, upon receipt by the Vendor of the Purchase Price, to possession of the Purchased Assets and to such bills of sale or assignments as may be considered necessary by the Vendor to convey the Purchased Assets to the Purchaser provided that the Purchaser shall remain liable under the Approved Sale Agreement. Any such deeds, bills of sale or assignments shall contain only a release of the Vendor's interest in the Purchased Assets and shall not contain any covenants.

16. The Purchaser shall pay on closing in addition to the Purchase Price:
 - (a) all applicable federal, provincial and municipal taxes;
 - (b) costs, if any, of dismantling or removing the Purchased Assets from their present location and restoring such location to a neat and clean condition; and
 - (c) the cost of repairing any damage caused by dismantling or removal of the Purchased Assets from their present location.

17. The Purchaser shall assume at the Purchaser's cost complete responsibility for compliance with all laws, municipal, provincial or federal in so far as same apply to the Purchased Assets and the use thereof by the Purchaser.

18. The Vendor shall not be required to produce any abstract of title, title deed, or documents or copies thereof or any evidence as to title, other than those in its possession.

19. Prior to the Closing, the Purchased Assets shall be and remain in the possession of and at the risk of the Vendor and the Vendor will hold all policies of insurance effected thereon and the proceeds thereof in trust for the Vendor and the Purchaser as their respective interests may appear. After Closing, the Purchased Assets shall be at the risk of the Purchaser. In the event of substantial damage to the Purchased Assets occurring on or before Closing, the Purchaser may either have the proceeds of the insurance and complete the Approved Sale Agreement or may cancel such Approved Sale Agreement and have the Deposit paid thereunder, returned without interest, costs or compensation of any kind whatsoever. Where any damage is not substantial, the Purchaser shall be obliged to complete the purchase and shall be entitled to the proceeds of insurance referable to such damage, but not to any other costs or compensation whatsoever.

20. All adjustments of such taxes and other items as are specified herein will be made as of Closing under the Approved Sale Agreement. The Purchaser shall arrange its own insurance and there shall be no adjustment with respect to insurance.
21. No adjustments will be allowed by either the Vendor or the Purchaser for changes in the condition or quantity of any of the Property comprising the Purchased Assets. The Vendor shall remain in possession of the Purchased Assets until the Purchase Price therefor has been paid in full. The Purchaser will take possession of the Purchased Assets at Closing.
22. If the Purchaser fails to comply with the Approved Sale Agreement, the Purchaser's deposit shall be forfeited to the Vendor and the Purchased Assets may be resold by the Vendor, and the Purchaser shall pay to the Vendor (i) an amount equal to the amount, if any, by which the Purchase Price under the Approved Sale Agreement exceeds the net purchase price received by the Vendor pursuant to such resale, and (ii) an amount equal to all costs and expenses incurred by the Vendor in respect of or occasioned by the Purchaser's failure to comply with the Approved Sale Agreement.
23. By submitting an Offer, a Purchaser acknowledges that it has inspected the Purchased Assets and that the Purchased Assets are sold on an "as is, where is" basis at the time of Closing and that no representation, warranty or condition is expressed or implied as to title, description, fitness for purpose, merchantability, quantity, conditions or quality thereof or in respect of any other matter or thing whatsoever. Each Purchaser acknowledges that the Vendor is not required to inspect or count, or provide any inspection or counting, of the Purchased Assets or any part thereof and each Purchaser shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation. It shall be the Purchaser's sole responsibility to obtain, at its own expense, any consents to the transfer of the Purchased Assets and any further documents or assurances which are necessary or desirable in the circumstances. Without limiting the generality of the foregoing,

any and all conditions, warranties and representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) do not apply to the sale of the Purchased Assets and have been waived by the Purchaser.

24. Deloitte & Touche Inc. acts solely in its capacity as Court-appointed receiver of 2012241 and shall have no personal or corporate liability in connection with the Vendor offering the Property for sale, pursuant to the Conditions of Sale, the CIM or under any offer, Offeror Sale Agreement or Approved Sale Agreement.
25. The highest or any offer will not necessarily be accepted.
26. The acceptance of any offer and any Offeror Sale Agreement entered into by the Vendor shall be subject to the condition that the sale and the terms thereof be approved by the Court.
27. No Offeror shall be at liberty to withdraw, vary or countermand an Offer once received by the Vendor. Each Offer shall be irrevocable until 12:00 O'clock noon Eastern Time on .
28. The Vendor, at its sole discretion, may waive or vary any or all of the terms and conditions hereof. The terms and conditions contained herein shall not merge on the Closing of the transaction contemplated by any Approved Sale Agreement but shall survive such closing and remain in full force and effect and be binding on the Purchaser thereafter.
29. These Conditions of Sale and the validity and interpretation of any offer, Offeror Sale Agreement or Approved Sale Agreement shall be governed by the laws of Ontario, and such agreement shall enure to the benefit of and be binding upon the parties thereto, and their respective heirs, executors, administrators, successors or assigns as the case may be.
30. The submission of an offer by a resident of the province of Quebec shall be deemed to constitute the declaration and acknowledgement by the Offeror that it has requested the Conditions of Sale,

the form of the offer referred to herein, any Offeror Sale Agreement and all other documentation relating to its offer and to the acceptance thereof to be drawn up in the English language only.

31. All stipulations as to time are strictly of the essence.
32. Any offer of documents or money hereunder may be made upon the Vendor or the Purchaser, or their respective solicitors. Money may be paid by certified cheque or bank draft drawn on or issued by a Schedule 1 Canadian chartered bank or trust company.
33. The obligations of the Vendor to complete an Approved Sale Agreement shall be relieved if, on or before the Closing of such sale, the Order of the Court approving the subject Approved Sale Agreement is subject to appeal, any of the Purchased Assets subject to the sale have been removed from the control of the Vendor by any means or process, or if any of the Purchased Assets subject to the sale is redeemed, whereupon the only obligation of the Vendor shall be to return the applicable Deposit, without interest, costs or compensation.
34. The Vendor shall not be bound to sell any of the Property until it is authorized by the Court to accept and enter into an Approved Sale Agreement. The Vendor reserves the right to enter into one or more agreements to sell any or all of the Property at any time and to withdraw any or all of the Property from the sale.

FORM OF OFFER

To: **Deloitte & Touche Inc., solely in its capacity as receiver of all of the assets, undertakings and properties of 2012241 Ontario Limited ("2012241") acquired for, or used in relation to the business carried on by 2012241 (lands and premises known municipally as 50 Sunny Meadow Blvd, Brampton, Ontario and more particularly described in Schedule "A" attached hereto (the "Property"), and without personal or corporate liability.**

- 1. _____
(Name of Offeror)
- 2. _____
(Address of Offeror)
- 3. _____
(Telephone Number) (Facsimile Number) (email address)

4. I/We hereby submit this en bloc offer for the purchase of the Property for the purchase price of CAD\$ _____ (_____ dollars), excluding applicable taxes;

5. We/I agree that in the event this offer is accepted, to be bound by the Conditions of Sale as approved by the Court, which shall form part of this offer.

6. This offer is irrevocable and shall remain open for the consideration of the Vendor until 12:00 o'clock Noon Eastern Time on the _____

7. Warranty – We/I represent and warrant to Deloitte & Touche Inc. that I am/we are not a non-eligible person as defined by the *Investment Canada Act*.

8. Enclosed is our/my certified cheque payable to Deloitte & Touche Inc., as a deposit in the amount of \$ _____, representing 10% of the total amount of my/our offer submitted herein.

DATED at _____ this _____ day of _____, 2012.

By: _____
Name: •
Title: •
I/We have authority to bind the Corporation

By: _____
Name: •
Title: •
I/We have authority to bind the Corporation

FIRM CAPITAL MORTGAGE FUND INC.

- and -

2012241 ONTARIO LIMITED

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD OF RECEIVER FOR SALE
PROCESS APPROVAL**
(Returnable June , 2012)

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
Scotia Plaza, 40 King St. W.
Toronto, ON, M5H 3Y4

John D. Marshall (LSUC# 16960Q)

Tel: (416) 367-6024

Fax: (416) 361-2763

Lawyers for Receiver Deloitte & Touche Inc.