

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

**FIRST REPORT OF THE RECEIVER
DATED JULY 15, 2011**

INTRODUCTION

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

2. The purpose of this report (“**First Report**”) is to provide the Court with a description of the Receiver’s activities to date in securing the Debtor’s Records, including the Receiver’s efforts in obtaining contact information for the Debtor’s creditors, and the Debtor’s refusal to provide the Receiver with certain of the Debtor’s Records in addition to the contact information necessary for the Receiver to comply with the notice requirements in the Appointment Order and the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”).
3. A copy of the Appointment Order, together with related Court documents, have been posted on the Receiver’s website at <http://www.deloitte.com/ca/insolvency>.
4. Unless otherwise provided, capitalized terms not otherwise defined in this First Report are as defined in the Appointment Order.

TERMS OF REFERENCE

5. In preparing the First Report and making the comments contained herein, Deloitte has been provided with and has relied upon unaudited financial information, books and records of the Debtor, the financial information prepared by the Debtor and its advisors, and discussions with management of the Debtor. 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.
6. Unless otherwise stated, all dollar amounts contained in the First Report are expressed in Canadian dollars.

BACKGROUND

7. The Receiver has only been appointed over the Property, which is all located in the Province of Ontario. The Lands are vacant serviced commercial/industrial land comprising 39.01 acres located on the south side of Steeles Avenue East, just west of Markham Road, in the City of Toronto. The Lands are notionally divided into three sections as follows:

Lands "A":	10.359 acres
Lands "B":	20.775 acres
Lands "C":	<u>7.875 acres</u>
Total:	<u>39.009 acres</u>

8. Lands "B" comprise the bulk of the Property and were to be developed by the Debtor with a 1,090 unit two-storey retail mall containing a gross floor area of 435,388 square feet and a saleable area of 228,907 square feet, known as The Landmark. Lands "A" comprise parcels of land fronting Steeles Avenue East and were proposed to be improved by the Debtor with retail pads totalling approximately 89,000 square feet. Lands "C" are held for future development and are currently zoned as industrial.
9. Internal servicing of the Lands has been completed by the Debtor, but no significant construction of The Landmark has commenced. Other than the normal course site plan approval and building permits, together with payment of any applicable levies in connection with such building permits, the Receiver is not aware of any outstanding municipal approvals still required to be received before construction of the Landmark can be commenced.

10. The Debtor has entered into approximately 400 agreements of purchase and sale (“**Landmark Sale Agreements**”) with respect to retail condominium units to be located in the Landmark.
11. The Receiver has retained the Applicant’s solicitors Thornton Grout Finnigan LLP and Meyer Wassenaar & Banach LLP as its legal counsel. The Receiver will retain independent legal counsel to, among other things, review the security granted by the Debtor to the Applicant.

RECEIVER’S ACTIVITIES IN RESPECT OF THE BOOKS AND RECORDS

12. In accordance with the terms of the Appointment Order, on July 7, 2011, the Receiver attended at the Debtor’s office at 7100 Woodbine Avenue, Suite 111, Markham, Ontario to review the Debtor’s books and records (the “Records”) and to ensure that the Records were properly secured.
13. Paragraph 30 of the Appointment Order requires the Receiver, within five (5) business days of receipt of the Debtor’s books and records, to give notice of the Appointment Order to all employees and trade creditors of the Debtor with claims greater than \$500.00. Pursuant to section 245 of the BIA, the Receiver is required as soon as possible, and not later than ten (10) days after the date of the Appointment Order, to send notice of its appointment to, among others, all creditors of the Debtor that the Receiver, after making reasonable efforts, has ascertained.
14. Pursuant to section 245(3) of the BIA, the Debtor is required to provide the Receiver with the names and addresses of all of its creditors.

15. On Thursday, July 7, 2011, the Receiver met with a representative of the Debtor to obtain copies of the Debtor's Records for this purpose. At this meeting, the Receiver requested that the Debtor provide all of the contact information for each of the Debtor's creditors (the "**Withheld Records**"). At that meeting, the Receiver was advised by the Debtor that the Debtor would provide the Withheld Records on the morning of July 8, 2011. The Debtor did not do so.
16. By letter dated July 11, 2011, the Receiver requested that the Withheld Records be delivered to the Receiver by no later than 2:00pm July 12, 2011, failing which it advised the Debtor it would seek the necessary relief from the Court to compel delivery to the Receiver of the Withheld Records. A true copy of the Receiver's letter to the Debtor dated July 11, 2011, is attached hereto as Exhibit "**B**".
17. By letter to the Receiver dated July 12, 2011, the Debtor advised that notification to its creditors of the Receiver's appointment would adversely impact a joint venture arrangement being finalized by the Debtor and that the Debtor would seek an Order from the Court directing the Receiver to delay notification to the Debtor's creditors of the fact of its appointment for a period of 14 days. A true copy of the Debtor's letter dated July 12, 2011 is attached hereto as Exhibit "**C**".
18. By letter from the Receiver's solicitors to the Debtor dated July 12, 2011, the Receiver's solicitors confirmed that the Receiver required immediate delivery of the Withheld Records, failing which the Receiver would seek an Order of the Court compelling delivery to the Receiver of the Withheld Records. A true copy of the letter from the Receiver's solicitors dated July 12, 2011 is attached hereto as Exhibit "**D**".

19. The Debtor has also failed to provide the Receiver with other Records of the Debtor and has, in certain instances, failed to provide complete information regarding the Property, all of which are required by the Receiver, including:
 - (i) all of the Landmark Sale Agreements;
 - (ii) contact information for the purchasers under the Landmark Sale Agreements;
 - (iii) information on the latest payroll assessment by Canada Revenue Agency, as well as information on outstanding payroll deductions, wages and vacation pay owed to the Debtor's employees;
 - (iv) complete information on the Debtor's various asset accounts; and
 - (v) a back up of the Debtor's accounting system.

20. Without the contact information for the Debtor's creditors, the Receiver is unable to send the notices required pursuant to the terms of the Appointment Order and the BIA advising the Debtor's creditors of the Debtor's receivership proceeding.

21. The Debtor's failure to provide the Receiver with complete and unfettered access to the Records and to provide the Receiver with the complete information requested by the Receiver in respect of the Property is impeding the Receiver's ability to fulfill its mandate set out in, and is in direct contravention of, the Appointment Order.

RECEIVER'S RECOMMENDATION

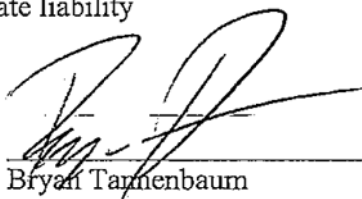
22. For the reasons set out above, the Receiver recommends that the Court grant an Order requiring the Debtor and Mr. Charles Chan, the Debtor's President, to immediately provide the Receiver with all information requested by the Receiver in respect of the Debtor's creditors that is required by the Receiver to comply with the notice to creditor requirements of the Appointment Order and the BIA, and requiring the Debtor to immediately comply with the terms of the Appointment Order, including the immediate delivery of the Debtor's Records.

All of which is respectfully submitted at Toronto, Ontario this 15th day of July, 2011.

Deloitte & Touche Inc.

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

Per:



Bryan Tannenbaum
Senior Vice-President

EXHIBIT "A"



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

THE HONOURABLE MR.) WEDNESDAY, THE 29th
)
JUSTICE CAMPBELL) DAY OF JUNE, 2011

B E T W E E N:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

ORDER

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

ON READING the affidavit of Michael Warner sworn May 30, 2011 (the "**Warner Affidavit**"), the supplementary affidavit of Michael Warner sworn June 28, 2011 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the Debtor, no one else appearing and on reading the consent of Deloitte & Touche Inc. to act as the Receiver,

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

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

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

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

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

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to

make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a charge on the Property ranking subsequent in priority to the security held by the Applicant with respect to the Property (including, without limitation, the Mortgage as defined in and as attached to the Warner Affidavit) and in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings**”

Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, ranking subsequent in priority to: i) the security held by the Applicant with respect to the Property (including, without limitation, the Mortgage as defined in and as attached to the Warner Affidavit); and ii) the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, but in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any other Person.

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

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

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

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

GENERAL

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

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

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

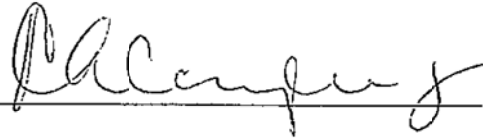
28. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is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

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

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

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

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



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

JUN 29 2011

PER/PAR: 

SCHEDULE "A"

LEGAL DESCRIPTION OF THE LANDS

The Lands comprising the Property are legally described as follows:

PIN No. 06050-0199 (LT)

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

PIN No. 06050-0266 (LT)

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

PIN No. 06050-0263 (LT)

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

PIN No. 06050-0264 (LT)

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

PIN No. 06050-0272 (LT)

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

SCHEDULE "B"

DEFINED TERMS

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

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

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

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

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

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

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

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

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

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

SCHEDULE "C"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Deloitte & Touche Inc., the receiver (the "**Receiver**") without security, of all of certain of the assets, undertakings and properties of 2811 Development Corporation (the "**Debtor**") acquired for, or used in relation to the development of the Lands and construction of improvements thereon, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of _____, 2011 (the "**Order**") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the _____ day of _____, 20__.

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

Per: _____

Name:

Title:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

and

2811 DEVELOPMENT CORPORATION

Respondent

Court File No.: CV11-9242-00CL

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

Proceedings commenced at **Toronto**

ORDER

Thornton Grout Finnigan LLP
Barristers and Solicitors
Suite 3200, P.O. Box 329
Canadian Pacific Tower
Toronto-Dominion Centre
Toronto, Ontario
M5K 1K7

Grant B. Moffat (LSUC# 32380L)
Tel: 416-304-0599
Danny M. Nunes (LSUC# 53802D)
Tel: 416-304-0592
Fax: 416-304-1313

Lawyers for the Applicant

EXHIBIT "B"

Deloitte

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

Tel: 416-775-7276
Fax: 416-601-6690
www.deloitte.ca

Via e-mail and facsimile

July 11, 2011

2811 Development Corporation
7100 Woodbine Ave, Suite 111
Markham, ON L3R 5J2

Attention: **Mr. Charles Chan, President**

Dear Sir,

Subject: **In the Matter of the Receivership of 2811 Development Corporation
("2811" or the "Debtor")**

As you are aware, by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated June 29, 2011 (the "Appointment Order"), Deloitte & Touche Inc. was appointed as the receiver (the "Receiver") of all of the lands and premises known municipally as 5789, 5811, 5933, 5945 and 5951 Steeles Avenue East, Toronto, Ontario and legally described in Schedule "A" to the Appointment Order (the "Lands") and all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to, the development of the Lands and construction of improvements thereon, including all proceeds thereof (collectively the "Property"). For greater certainty, Property includes Insurance Policies, Material Contracts, Permits, Personal Property, Plans and Specifications and Securities as each such term is defined in Schedule "C" to the Appointment Order. A copy of the Appointment Order and related Court documents have been posted on the Receiver's website at <http://www.deloitte.com/ca/insolvency>.

Pursuant to paragraph 30 of the Order, the Receiver is required, within 5 business days of receipt of the Debtor's books and records, to give notice of the Order to all employees and trade creditors of the Debtor with claims greater than \$500.00.

On Thursday July 7, 2011, the writer met with Mr. Chander Shekhar, in part, to obtain copies of the Debtor's books and records for this purpose. Although Mr. Shekhar provided a listing of the names of creditors setting out amounts due as at January 31, 2011, the Receiver also requested that Mr. Shekhar provide all of the contact information for each creditor (the "Missing Records"). Mr. Shekhar advised the Receiver that the Missing Records would be provided the morning of July 8, 2011. We still have not received the Missing Records.

2811 Development Corporation
July 11, 2011
Page 2

In addition to the Receiver's requirement under the Order to notify trade creditors, the Receiver is required pursuant to section 245 (1) of the *Bankruptcy & Insolvency Act* (Canada) to, within 10 days of the commencement of the receivership, notify all creditors of the proceeding.

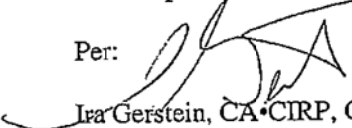
Please be advised that in the event we do not receive the Missing Records by 2 p.m. July 12, 2011, the Receiver will seek the necessary relief from the Court to compel delivery to the Receiver of the Missing Records.

Should you have any questions or require further information, please do not hesitate to contact the undersigned.

Yours truly,

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

Per:


Ira Gerstein, CA, CIRP, CIRP
Vice President

c:Mr. Derek Lee, (via e-mail)
c:Mr. Grant Moffat, Thornton Grout Finnigan, (via e-mail)

EXHIBIT "C"

2811 Development Corporation

July 12, 2011

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

Attention: Ira Gerstein, Vice President

Dear Sir,

Subject: In the Matter of the Receivership of 2811 Development Corporation
("Debtor")

This is further to your letter of July 11, 2011 regarding providing contact information for each of the creditors appearing on the list of creditors provided to you.

We do acknowledge that pursuant to paragraph 30 of the Order, the Receiver is required to give notice of the Order to all employees and trade creditors of the Debtor. However, serving the notice of the Order to the trade creditors at this stage would cause irreparable damage to the value of the business. The Debtor is in the final stages of executing a Joint Venture Agreement with the Midland Group and serving of notice of the Order to the trade creditors would adversely impact concluding the same. We would also emphasize that the Debtor is continuing with the pre-sales business on a daily basis.

We acknowledge our obligation and have no hesitation in providing the Receiver with the missing records pertaining to the trade creditors. However, the Debtor intends to seek necessary relief from the Court related to serving of notice of the Order to the trade creditors (that it be held in abeyance by the Receiver for an additional fourteen (14) days) so as to facilitate conclusion of the aforesaid Joint Venture Agreement.

Looking forward to your cooperation.

Yours truly,

2811 Development Corporation


Charles Chan
President

cc. Grant B. Moffat,
Thornton Grout Finnigan LLP (via email)

EXHIBIT "D"



Thornton Grout Finnigan LLP
RESTRUCTURING + LITIGATION

Canadian Pacific Tower
Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON Canada M5K 1K7
T 416.304.1616 F 416.304.1313

Grant B. Moffat
T: 416-304-0599
E: gmoffat@tgf.ca
File No. 533-028

July 12, 2011

Via Email

2811 Development Corporation
7100 Woodbine Avenue, Suite 111
Markham, ON L3R 5J2

Attention: Mr. Charles Chan, President

Dear Sir:

Re: **In the Matter of the Receivership of 2811 Development Corporation ("2811" or the "Debtor")**

We are the solicitors for the Receiver (as defined below) in connection with the above-captioned matter.

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

As you are aware, paragraph 30 of the Appointment Order requires the Receiver to give notice of the Appointment Order to all employees and trade creditors of the Debtor with claims greater than \$500.00 within five (5) business days of receipt of the Debtor's books and records. Pursuant to paragraph 5 of the Appointment Order, the Debtor and, among others, all of its current and former directors and officers and employees shall provide to the Receiver or permit the Receiver to copy the Debtor's books and records.

We also refer to section 245 of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") which requires the Receiver, as soon as possible and not later than 10 days after the date of the Appointment Order, to send notice of its appointment to, among others, all creditors of the Debtor that the Receiver, after making reasonable efforts, has ascertained. Pursuant to subparagraph 245(3) of the BIA, the Debtor is required to forthwith provide the Receiver with the names and addresses of all of its creditors.

We refer to your letter to the Receiver dated July 12, 2011, which responds to the Receiver's request that you deliver to the Receiver contact information for each of the Debtor's creditors (the "**Withheld Records**"). As we understand from your letter, the Debtor acknowledges the Receiver's right to the Withheld Records, but will not deliver the Withheld Records to the Receiver pending a motion by the Debtor directing the Receiver to delay delivery of the notices to the Debtor's creditors required by Court order and by statute.

Your refusal to comply with the Receiver's demand that you immediately deliver to the Receiver the Withheld Records is unacceptable and in direct contravention of the terms of both the Appointment Order and the BIA.

We confirm that if the Withheld Records are not delivered to the Receiver by 4:00 p.m. on Wednesday, July 13, 2011, the Receiver shall immediately seek an Order from the Court directing both the Debtor and you personally to deliver the Withheld Records to the Receiver.

Yours very truly,

Thornton Grout Finnigan LLP



Grant B. Moffat
GBM/gk

cc: *Ira Gerstein / Bryan Tannenbaum(Deloitte & Touche)*
Derek Lee

FIRM CAPITAL MORTGAGE FUND INC.

and

Applicant

2811 DEVELOPMENT CORPORATION

Respondent

Court File No.: CV11-9242-00CL

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

Proceedings commenced at **Toronto**

FIRST REPORT OF THE RECEIVER

Thornton Grout Finnigan LLP
Barristers and Solicitors
Suite 3200, P.O. Box 329
Canadian Pacific Tower
Toronto-Dominion Centre
Toronto, Ontario
M5K 1K7

Grant B. Moffat (LSUC# 32380L)

Tel: 416-304-0599

Danny M. Nunes (LSUC# 53802D)

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Fax: 416-304-1313

Lawyers for the Receiver, Deloitte & Touche Inc.