

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

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

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

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

INTRODUCTION

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

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

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

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

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

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

PURPOSE OF THIS THIRD REPORT

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

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

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

TERMS OF REFERENCE

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

BACKGROUNDThe Property

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

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

Change of Solicitors

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

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

The Unit Purchasers

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

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

ATTEMPTS TO OBTAIN BOOKS AND RECORDS FROM THE DEBTOR

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

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

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

“with respect to Section 245 of the Act, such Notices shall be sent to all persons who, according to the books and records of the Debtor, have entered into agreements to purchase retail condominium units in the Property”
36. As a result of the Marketing Order, the Debtor finally provided the Receiver with the information it needed in order to comply with its statutory obligations under the BIA as well as the information necessary to include in the Marketing Process.

CLAIMS AGAINST THE PROPERTY

Secured Creditors

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

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

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

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

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

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

RECEIVER’S MARKETING ACTIVITIES

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

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

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

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

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

BINDING OFFERS RECEIVED

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

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

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

SALE OF THE PROPERTY

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

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

PROPOSED INTERIM DISTRIBUTION

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

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

PROFESSIONAL FEES

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

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

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

RECEIVER'S RECOMMENDATIONS

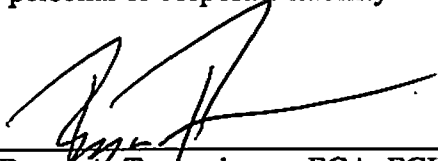
61. For the reasons set out above, the Receiver recommends that the Court make an Order:
- (a) authorizing and directing the Receiver to enter into and carry out the terms of the Mady Agreement, together with any amendments thereto deemed necessary by the Receiver in its sole opinion and vesting title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

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

Deloitte & Touche Inc.

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

Per:



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