

**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**

**B E T W E E N:**

**FIRM CAPITAL MORTGAGE FUND INC.**

**Applicant**

**- and -**

**2811 DEVELOPMENT CORPORATION**

**Respondent**

**AMENDED MOTION RECORD  
(Returnable August 3, 2011)**

July 29, 2011

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**TO: THIS HONOURABLE COURT**

**AND TO: THE ATTACHED SERVICE LIST**

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**AND TO: GALLANT MANAGEMENT CORPORATION**

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**AND TO: KIN CHUNG LAM**

88 Wenderly Drive  
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**AND TO: JAMES FOO-KWONG TANG**

71 Queens College Drive  
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**AND TO: MINISTRY OF ATTORNEY GENERAL**

Office of the Public Guardian and Trustee

**Attention: Mr. J.E. Byerley**

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**AND TO: AN YUAN LIN C.O.B. AN-DAK TRADING COMPANY**  
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**AND TO: THE TORONTO-DOMINION BANK**  
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Toronto, ON M5K 1A2

**AND TO: WORKPLACE SAFETY AND INSURANCE BOARD**  
120 King Street West  
Hamilton, ON L8P 4V2

**AND TO: RELMI FINANCIAL CORP.**  
44 Upjohn Road  
Toronto, ON M3B 2W1

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**TAB 1**

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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

B E T W E E N:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**AMENDED NOTICE OF MOTION**

Deloitte & Touche Inc., in its capacity 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 (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**”), will make a motion to a Judge presiding over the Commercial List on Wednesday, August 3, 2011 at 10:00 a.m. at 330 University Avenue, in the City of Toronto.

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



**THE MOTION IS FOR:**

1. An order, if necessary, abridging the time for service of the Notice of Motion and Motion Record herein, dispensing with further service thereof and validating service of the Notice of Motion and Motion Record.
2. An order approving the Receiver's activities as described in the Second Report of the Receiver dated July 20, 2011 (the "**Second Report**").
3. An order approving the Marketing Process for the Property, as described in the Second Report.
4. An order authorizing the Receiver to carry out the sale of the Property pursuant to the Marketing Process, including, without limitation, the Conditions of Sale, all as more particularly described in the Second Report.
5. An order declaring that the Debtor and its President, Mr. Charles Chan, are in contempt of the Order of the Court dated July 22, 2011 (the "**Withheld Records Order**") that: (i) orders that the Debtor and Mr. Chan are required to provide the Receiver with all of the contact information for the Debtor's creditors that is required by the Receiver to comply with the notice to creditor requirements set out in paragraph 30 of the Order of the Court dated June 29, 2011 (the "**Appointment Order**") and the *Bankruptcy and Insolvency Act* (Canada) by no later than 5:00 p.m. on July 22, 2011; and (ii) orders that the Debtor shall immediately comply with the provisions of the Appointment Order, including but not limited to those provisions of the Appointment Order requiring delivery of the Debtor's Records to the to the Receiver by no later than 5:00 p.m. on July 22, 2011.
6. An order that the Debtor and Mr. Charles Chan are required to (i) provide the Receiver with all of the contact information for the Debtor's creditors that is required by the Receiver to comply with the notice to creditor requirements set out in paragraph 30 of the Appointment Order and the *Bankruptcy and Insolvency Act* (Canada) by no later than 5:00 p.m. on August 3, 2011; and (ii) immediately comply with the provisions of the Appointment Order, including but not limited to those provisions of the Appointment

Order requiring the delivery of the Debtor's books and records to the Receiver by no later than 5:00 p.m. on August 3, 2011.

7. An order that the Debtor and Mr. Chan pay a fine in the amount of \$10,000 to the Receiver on behalf of the estate within five (5) days of the date of the order.
8. An order that the Debtor and Mr. Chan pay the Receiver's costs of this motion, as they relate to the relief sought as against the Debtor and Mr. Chan, on a substantial indemnity basis.
9. Such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

10. Pursuant to the Appointment Order ~~Order of the Court dated June 29, 2011~~ appointing ~~the Receiver~~ (the "**Appointment Order**"), the Receiver was authorized and directed 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.
11. In accordance with the Appointment Order, the Receiver has developed the Marketing Process for the Property pursuant to which it will solicit offers in respect of the Property on a timely and cost efficient basis.
12. Proceeding with the Marketing Process is in the best interests of the estate herein.
13. The Receiver has made numerous requests of the Debtor to provide the contact information for the Debtor's creditors and the Debtor's books and records, however, the Debtor has refused to deliver the contact information and all of the books and records in contravention of the Withheld Records Order. As a result, the Receiver has been unable to send notice of the receivership proceedings to all of the Debtor's creditors.

14. The Receiver is also unable to properly market the property for sale without access to all of the Debtor's books and records.
15. The failure of the Debtor and Mr. Chan to comply with the Withheld Records Order threatens to frustrate the process of this Honourable Court, to prejudice the Receiver's administration of the receivership, to prejudice the Receiver's creditors and to bring the administration of justice into disrepute.
16. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. The Second Report of the Receiver; and
2. The Supplement to the Second Report of the Receiver; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

July 29~~4~~, 2011

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Lawyers for the Receiver.

**TO: THIS HONOURABLE COURT**

**AND TO: THE SERVICE LIST**

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

**AMENDED NOTICE OF MOTION**

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Lawyers for the Receiver, Deloitte & Touche Inc.

## TAB 2

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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

BETWEEN:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**SUPPLEMENT TO THE SECOND REPORT OF THE RECEIVER  
DATED JULY 29, 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. 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 Friday, July 22, 2011 to permit the Debtor to file additional evidence in connection with that motion. A copy of the Endorsement of the Honourable Justice Mesbur granting the foregoing adjournment is attached hereto as Exhibit “**B**”.
  
3. Pursuant to the Order of the Honourable Justice Perell dated July 22, 2011 (the “**Withheld Records Order**”), the Debtor was directed to deliver to the Receiver, by 5:00 p.m. on July 22, 2011, all of the Debtor’s books and records and, along with the Debtor’s President, Mr. Charles Chan, was directed to provide the Receiver with the contact information for the Debtor’s creditors. A copy of the Withheld Records Order and the Endorsement of the Honourable Justice Perell are attached hereto as Exhibits “**C**” and “**D**”, respectively.
  
4. The purpose of this supplement to the Receiver’s second report (the “**Supplemental Report**”) is to provide the Court with a description of the Receiver’s efforts to obtain the Debtor’s books and records, including the contact information for the Debtor’s creditors, in accordance with the terms of the Withheld Records Order and the Debtor’s refusal to provide the Receiver with all of the Debtor’s books and records in contravention of the Withheld Records Order and the Appointment Order.

5. A copy of the Appointment Order and the Withheld Records Order, together with related Court documents, have been posted on the Receiver's website at <http://www.deloitte.com/ca/insolvency>.
6. Unless otherwise provided, capitalized terms not otherwise defined in this Supplemental Report are as defined in the Appointment Order and the Withheld Records Order.

#### **TERMS OF REFERENCE**

7. In preparing the Supplemental Report and making the comments contained herein, Deloitte has been provided with and has relied upon unaudited financial information, certain of the 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 Supplemental Report.
8. Unless otherwise stated, all dollar amounts contained in the Supplemental Report are expressed in Canadian dollars.

#### **BACKGROUND**

9. Immediately following the issuance of the Withheld Records Order on July 22, 2011, the Receiver and its solicitor contacted the Debtor and its solicitor by email to confirm the delivery of the Debtor's books and records as required by the Withheld Records Order. The Receiver did not receive a response to its request of July 22, 2011 and on July 25,



2011, a second email was sent by the Receiver to the Debtor requesting the books and records. Mr. Chander Shekhar, an employee of the Debtor, advised on July 25, 2011 that the information requested by the Receiver would not be delivered until he had consulted with the Debtor's counsel and legal counsel Terracap. It is the Receiver's understanding that the Debtor is engaged in discussions with Terracap, amongst other parties, in negotiating a joint venture agreement. A copy of the email correspondence between the Receiver and its solicitors, Thornton Grout Finnigan LLP ("TGF"), and the Debtor and its solicitor is attached hereto as Exhibit "E".

10. The Receiver has received certain of the Debtor's books and records including an out-dated listing of amounts owed to creditors as at January 31, 2011, a balance sheet as at January 31, 2011, various unaudited financial statements from previous fiscal years, four bankers boxes containing Landmark Sale Agreements (as defined herein) and other miscellaneous documents. The Receiver has requested further books and records which have not yet been delivered by the Debtor including, but not limited to, additional boxes containing current Landmark Sale Agreements, a listing of deposits related to the Landmark Sale Agreements, a listing of creditors with detailed contact information and a backup disk of the Debtor's accounting data. A copy of further email correspondence from the Receiver and TGF to the Debtor and its counsel is attached hereto as Exhibit "F".
11. Since, as of the date of the Supplemental Report, the Receiver is not yet in possession of all of the Debtor's books and records, the Receiver has not yet issued the notice to all of the Debtor's creditors required by Section 245 of the *Bankruptcy and Insolvency Act* (Canada).

12. Part of the Lands were to be developed by the Debtor with a 1,090 unit two-storey retail mall known as The Landmark. 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.
13. The Debtor has delivered those Landmark Sale Agreements that have already expired but has advised the Receiver that it will not deliver the remaining Landmark Sale Agreements on the basis that the notice requirement set out in paragraph 30 of the Appointment Order references trade creditors and the purchasers under the Landmark Sale Agreements are not trade creditors. A copy of email correspondence from the Debtor to the Receiver is attached here to as Exhibit "**G**".
14. Further, the Debtor maintains that the delivery of notices to the remaining purchasers under the Landmark Sale Agreements would be devastating to the Debtor's refinancing efforts. The Debtor asserted the same position at the Withheld Records Motion and Justice Perell determined that the Debtor's refinancing efforts were not sufficient reason to justify the Debtor's refusal to deliver all of its books and records, including the contract information for all of its creditors, to the Receiver.
15. The purchasers under the Landmark Sale Agreements have provided significant monetary deposits in respect of their purchases of condominium units and, as such, are also creditors of the Debtor.
16. The Debtor's refusal to deliver all of its books and records, including the remaining Landmark Sale Agreements, will impede the Receiver's efforts to properly market the Property through the sale process recommended by the Receiver in its Second Report

and, thus, will prejudice the Debtor's creditors. More specifically, it will impede the Receiver from being able to comply with its statutory requirements and will delay the Receiver from fully implementing a complete electronic information data room so that prospective purchasers of the Property can examine all information necessary to formulate and submit their offers on a timely basis.


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

17. For the reasons set out above, the Receiver recommends that the Court grant an Order holding the Debtor and Mr. Chan in contempt of the Withheld Records Order.

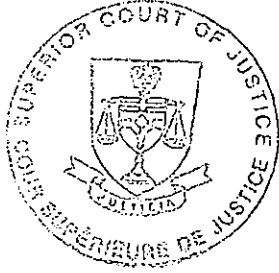
All of which is respectfully submitted at Toronto, Ontario this 29<sup>th</sup> day of July, 2011.

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

Per:

  
\_\_\_\_\_  
Bryan A. Tannenbaum  
Senior Vice-President

**EXHIBIT “A”**



Court File No.: CV11-9242-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

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

**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](http://www.deloitte.ca) (the "Website").

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



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

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



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

JUN 29 2011

PER/PAR:



## SCHEDULE "A"

### LEGAL DESCRIPTION OF THE LANDS

The Lands comprising the Property are legally described as follows:

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

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

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

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

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

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

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

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

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

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

## SCHEDULE "B"

### DEFINED TERMS

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

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

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

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

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

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

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

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

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

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

**SCHEDULE "C"**

**RECEIVER CERTIFICATE**

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

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

1. **THIS IS TO CERTIFY** that Deloitte & Touche Inc., the receiver (the "**Receiver**") without security, of all of certain of the assets, undertakings and properties of 2811 Development Corporation (the "**Debtor**") acquired for, or used in relation to the development of the Lands and construction of improvements thereon, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 2011 (the "**Order**") made in an action having Court file number \_\_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person other than the Applicant, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses upon first obtaining the prior consent of the Applicant.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

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

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

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

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

Name:

Title:

FIRM CAPITAL MORTGAGE FUND INC.

and

Applicant

2811 DEVELOPMENT CORPORATION

Respondent

Court File No.: CV11-9242-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

ORDER

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”**



Applicant

and

Respondent

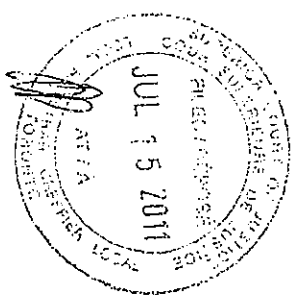
July 19/11  
Court File No.: CV11-9242-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

Proceedings commenced at Toronto

MOTION RECORD  
Returnable July 19, 2011

Thornton Groat Finnigan LLP  
Barristers and Solicitors  
Suite 3200, P.O. Box 329  
Canadian Pacific Tower  
Toronto-Dominion Centre  
Toronto, Ontario  
MSK 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 Receiver, Deloitte & Touche Inc.

July 19/11

D. Nunes for the Receiver  
D. Lee for 2811 Development Corp.

The Respondent is apparently in a position to finance & fully pay the mortgage in question. It has not, however provided the Court with sufficient information re this closing date to give sufficient comfort.

Motion is adjourned to July 22/11 - 12 hour to present

the respondent to file  
further & better material..

Pending the return  
of the motion, all five  
lines for the Receiver to  
obtain & disseminate  
information to creditors  
& employees are extended  
pending further order.

Musking.

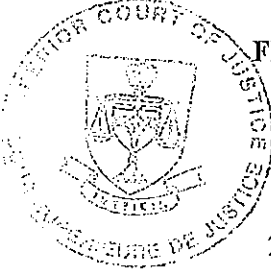
**EXHIBIT “C”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

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

THE HONOURABLE MR. ) FRIDAY, THE 22<sup>nd</sup>  
 )  
JUSTICE PERELL ) DAY OF JULY, 2011

**BETWEEN:**



**FIRM CAPITAL MORTGAGE FUND INC.**

**Applicant**

**- and -**

**2811 DEVELOPMENT CORPORATION**

**Respondent**

**ORDER**

**THIS MOTION** made by Deloitte & Touche Inc., in its capacity as the receiver (the “Receiver”) of certain of the assets, undertakings and properties of 2811 Development Corporation (the “Debtor”), for the relief set out in its Notice of Motion herein dated July 14, 2011, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the First Report of the Receiver dated July 15, 2011 and the Exhibits thereto and on hearing the submissions of counsel for the Receiver and counsel for the Debtor, no one else appearing although served as evidenced by the Affidavit of Maria Magni sworn July 15, 2011, filed.

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged such that this Motion is properly returnable today, that all parties entitled to notice of the Motion have been duly served with notice, that no other parties are affected by this Order, and that any requirement for service of the Notice of Motion and the Motion Record upon any party other than the parties served is unnecessary and is hereby dispensed with and that the service of the Notice of Motion and the Motion Record is hereby validated in all respects.

2. **THIS COURT ORDERS** that the Debtor and Mr. Charles Chan, the Debtor's President, are required to provide the Receiver with all of the contact information for the Debtor's creditors that is required by the Receiver to comply with the notice to creditor requirements set out in paragraph 30 of the Order of the Honourable Mr. Justice Campbell dated June 29, 2011 and the *Bankruptcy and Insolvency Act* (Canada) by no later than 5:00 p.m. on July 22, 2011.

3. **THIS COURT ORDERS** that the Debtor shall immediately comply with the provisions of the Order of the Honourable Mr. Justice Campbell dated June 29, 2011 appointing the Receiver (the "Appointment Order"), including but not limited to those provisions of the Appointment Order requiring the delivery of the Debtor's Records to the Receiver, which shall be delivered to the Receiver by no later than 5:00 p.m. on July 22, 2011.

4. **THIS COURT ORDERS** that the Receiver shall have its costs of this motion on a substantial indemnity basis payable forthwith <sup>in any event of the cause from the estate in receivership</sup>

Panel J

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

JUL 22 2011

PER/PAR:



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  
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M5K 1K7

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Tel: 416-304-0599

**Danny M. Nunes (LSUC# 53802D)**

Tel: 416-304-0592

Fax: 416-304-1313

Lawyers for the Receiver, Deloitte & Touche Inc.

**EXHIBIT “D”**

July 22, 2011

On June 29, 2011, Justice Campbell appointed Beloitte & Touche Inc. ("Beloitte") Receiver. Under the Receivership Order, Beloitte is obliged to give notice of the receivership to creditors of the respondent mortgagee 2811 Development Corp. Beloitte brings a motion to have 2811 Development and its president Charles Chan provide it with the contact information it needs to give the notices. This motion is supported by a subsequent mortgagee. The motion is opposed by 2811 Development because they say that giving notice to the creditors may impede a joint venture agreement just signed that if closed would see the redemption of the mortgages on the property and the payment of the creditors, along with the discharge of the Receiver. The Receiver replies that the receivership should continue and run parallel with the ~~completion~~ completion of the steps necessary to close the joint venture agreement. I agree with the Receiver's position. The receivership is, in effect, a power of sale proceeding and the ~~mortgagee's~~ mortgagee's request is, in effect, a request to enjoin the progress of the receivership. The law, however, is that a power of sale is rarely enjoined ~~or stayed~~ <sup>or stayed</sup> unless the mortgagee redeems, which in this case the mortgagee agrees to do, but has not yet done. The fact that the mortgagee is concerned about the effect of notice being given to the ~~creditors~~ creditors suggests to me that the joint venture prospects are far from plain and thus redemption is problematic. Accordingly, I grant the motion. I have signed the Order.

Paul J.



# **EXHIBIT “E”**

## Danny Nunes

---

**From:** Gerstein, Ira X (CA - Toronto) [iragerstein@deloitte.ca]  
**Sent:** July 25, 2011 1:39 PM  
**To:** 'Chander Shekhar'  
**Cc:** 'charles.chan@thelandmarkcanada.com'; Danny Nunes; Tannenbaum, Bryan (CA - Toronto); 'terry.yiu@thelandmarkcanada.com'  
**Subject:** FW: Books and Records

Good afternoon Chander

On Friday we sent an e-mail to Mr. Chan (see below) who I have copied on this e-mail requesting an appropriate time to attend at 2811's office premises to retrieve any all of the books and records required by the Receiver including but not limited to the Purchase and Sale Agreements and the creditor contact information.

To date I have received no response whatsoever from Mr. Chan or anyone on this matter.

As set out in the Order of Justice Perell, the Books and Records were to have been delivered by 5:00 pm Friday July 22, 2011, however the records were not delivered by this time.

Chander, please advise by no later than 5pm today when we can expect to attend at the premises to retrieve the information.

Regards

**Ira Gerstein, CA, CA•CIRP**  
Vice President | Financial Advisory Services

Deloitte & Touche Inc.

181 Bay Street, Brookfield Place,  
Suite 1400, Toronto, ON, M5J2V1, Canada  
Tel/Direct 416-775-7276 | Fax 416-601-6690  
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Please consider the environment before printing

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**From:** Gerstein, Ira X (CA - Toronto)  
**Sent:** Friday, July 22, 2011 4:38 PM  
**To:** 'charles.chan@thelandmarkcanada.com'  
**Cc:** 'Chander Shekhar'; Tannenbaum, Bryan (CA - Toronto); 'Terry Yiu'  
**Subject:** Books and Records

Good afternoon Mr. Chan

As you know, this morning Justice Perell of the Ontario Superior Court of Justice issued an Order requiring 2811 Development Corporation ("2811" or the "Company") to provide the Receiver with the Books and Records of the Company including, but not limited to, all Purchase and Sale Agreements and the contact information of all of the creditors of 2811.

We would like to make arrangements to attend at the Company's premises to retrieve the information and in this regard please advise when would be an appropriate time to attend at the premises for this purpose.

Regards

Ira Gerstein, CA, CA•CIRP  
Vice President | Financial Advisory Services

Deloitte & Touche Inc.

181 Bay Street, Brookfield Place,  
Suite 1400, Toronto, ON, M5J2V1, Canada  
Tel/Direct 416-775-7276 | Fax 416-601-6690  
[iragerstein@deloitte.ca](mailto:iragerstein@deloitte.ca) | [www.deloitte.ca](http://www.deloitte.ca)  
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## Danny Nunes

---

**From:** Gerstein, Ira X (CA - Toronto) [iragerstein@deloitte.ca]  
**Sent:** July 29, 2011 1:22 PM  
**To:** Danny Nunes  
**Subject:** FW: Books and Records

**Ira Gerstein, CA, CA•CIRP**  
Vice President | Financial Advisory Services

Deloitte & Touche Inc.

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**From:** Chander Shekhar [mailto:chander.shekhar@thelandmarkcanada.com]  
**Sent:** Thursday, July 28, 2011 11:13 AM  
**To:** Gerstein, Ira X (CA - Toronto)  
**Cc:** charles.chan@thelandmarkcanada.com; Tannenbaum, Bryan (CA - Toronto); terry.yiu@thelandmarkcanada.com; derek.lee@thelandmarkcanada.com  
**Subject:** RE: Books and Records

Hi Ira,

This is further to my email of yesterday night. Pursuant to the meeting at Terracap Offices today morning, I have been advised to inform you of the following:

1. The process of providing access to QuickBooks shall be streamlined sometime today. You may send in your representative tomorrow (preferably in the afternoon) to gain full access to the accounting records therein.
2. The AP list provided to you as of Jan 15, 2011 is being manually updated to reflect the vendors that have been paid out. The format of the information that would be forwarded to you would start from the AP list as of Jan 15, 2011 highlighting the vendors that have been paid out and the vendors that currently remain to be notified. The information provided would also include contact particulars. The updated AP list would be forwarded to you as soon as possible (hopefully by tomorrow).

Hope you would appreciate our position as we essentially have minimal staff employed at this time.

Regards,

Chander

---

**From:** Gerstein, Ira X (CA - Toronto) [mailto:iragerstein@deloitte.ca]  
**Sent:** Wednesday, July 27, 2011 4:35 PM  
**To:** 'Chander Shekhar'  
**Cc:** 'charles.chan@thelandmarkcanada.com'; 'dnunes@tgf.ca'; Tannenbaum, Bryan (CA - Toronto); 'terry.yiu@thelandmarkcanada.com'  
**Subject:** RE: Books and Records

Chander

In your e-mail below you had indicated that you were waiting for advice from Mr. Derek Lee before you would release any information. You also indicated that Mr. Lee was returning on July 26, 2011 which was last evening. I therefore assume that you have spoken with Mr. Lee and you can respond.

Please advise.

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**From:** Chander Shekhar [mailto:[chander.shekhar@thelandmarkcanada.com](mailto:chander.shekhar@thelandmarkcanada.com)]  
**Sent:** Monday, July 25, 2011 5:01 PM  
**To:** Gerstein, Ira X (CA - Toronto)  
**Cc:** [charles.chan@thelandmarkcanada.com](mailto:charles.chan@thelandmarkcanada.com); [dnunes@tgf.ca](mailto:dnunes@tgf.ca); Tannenbaum, Bryan (CA - Toronto); [terry.yiu@thelandmarkcanada.com](mailto:terry.yiu@thelandmarkcanada.com)  
**Subject:** RE: Books and Records

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To date I have received no response whatsoever from Mr. Chan or anyone on this matter.

As set out in the Order of Justice Perell, the Books and Records were to have been delivered by 5:00 pm Friday July 22, 2011, however the records were not delivered by this time.

Chander, please advise by no later than 5pm today when we can expect to attend at the premises to retrieve the information.

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**From:** Gerstein, Ira X (CA - Toronto)  
**Sent:** Friday, July 22, 2011 4:38 PM  
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## Danny Nunes

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**From:** Gerstein, Ira X (CA - Toronto) [iragerstein@deloitte.ca]  
**Sent:** July 29, 2011 1:21 PM  
**To:** Danny Nunes  
**Subject:** FW: Books and Records

**Ira Gerstein, CA, CA•CIRP**  
Vice President | Financial Advisory Services

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**Subject:** Books and Records

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## Danny Nunes

---

**From:** Danny Nunes  
**Sent:** July 22, 2011 12:53 PM  
**To:** 'Derek Lee'  
**Cc:** 'Gerstein, Ira X (CA - Toronto)'; 'Tannenbaum, Bryan (CA - Toronto)'  
**Subject:** 2811 Development Corporation  
**Attachments:** img-722125258-0001.pdf

**Importance:** High

Derek,

Attached is the Order signed by Justice Perell. Just so we are clear on what information is to be provided to the Receiver, the Receiver is to get any and all contact information that it requires to comply with its notice requirements under the Order of June 29, 2011 and the BIA. The parties to receive notice are not limited to trade creditors but include all creditors, including the counterparties to the purchase and sale agreements. In addition, 2811 is to comply with the terms of the Receivership Order and deliver its books and records to the Receiver. Pursuant to Justice Perell's Order, all of this information is to be provided by 5:00 p.m. today.

Regards,

Danny



Danny M. Nunes | [dnunes@tgf.ca](mailto:dnunes@tgf.ca) | Direct Line: 416-304-0592 | Thornton Grout Finnigan LLP | Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | Phone: 416-304-1616 | Fax: 416-304-1313 | [www.tgf.ca](http://www.tgf.ca)

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# **EXHIBIT “F”**

## Danny Nunes

---

**From:** Gerstein, Ira X (CA - Toronto) [iragerstein@deloitte.ca]  
**Sent:** July 29, 2011 1:22 PM  
**To:** Danny Nunes  
**Subject:** FW: Accounting information

**Ira Gerstein, CA, CA•CIRP**  
Vice President | Financial Advisory Services

Deloitte & Touche Inc.

181 Bay Street, Brookfield Place,  
Suite 1400, Toronto, ON, M5J2V1, Canada  
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**From:** Chander Shekhar [<mailto:chander.shekhar@thelandmarkcanada.com>]  
**Sent:** Wednesday, July 27, 2011 3:50 PM  
**To:** Laset, Catalina (CA - Toronto)  
**Cc:** Gerstein, Ira X (CA - Toronto); [terry.yiu@thelandmarkcanada.com](mailto:terry.yiu@thelandmarkcanada.com)  
**Subject:** RE: Accounting information

Hi Catin,

I am pacing along. Hope everything is well with you too.

Sorry for not replying to you earlier as I am in the office only for a limited time during the weekdays. Typically, as in general network settings, all the computers at Landmark have individual password settings with administrator override. I have been advised that the computer hosting QuickBooks has restricted access. None of us here know how to work with QuickBooks.

John Lam, who left the company in May 2011, had the dual role of the Business Development Manager as well as Network Administrator. Terry would be contacting John Lam to rework the settings so as to provide general accessibility. This should not take long (about a day depending on John's availability).

Regards,

Chander

---

**From:** Laset, Catalina (CA - Toronto) [<mailto:claset@deloitte.ca>]  
**Sent:** Wednesday, July 27, 2011 9:20 AM  
**To:** Chander Shekhar  
**Subject:** RE: Accounting information

Hi Chander,

Hope you are doing well.

We spoke to Cary and were told that there was a password to the computer with QuickBooks and the accounting information. Would it be possible for you to provide me with the passwords so that I can access the files myself?

Thank you.

Regards,  
Catin

---

**From:** Chander Shekhar [<mailto:chander.shekhar@thelandmarkcanada.com>]  
**Sent:** Wednesday, July 13, 2011 4:21 PM  
**To:** Laset, Catalina (CA - Toronto)  
**Subject:** RE: Accounting information

Hi Catin,

The accountant would be at Landmark office around 10:30 AM for around half hour to work out the timeline for delivery of the accounting information. You can be here around that time to talk to her.

Regards,

Chander

---

**From:** Laset, Catalina (CA - Toronto) [<mailto:claset@deloitte.ca>]  
**Sent:** Wednesday, July 13, 2011 2:59 PM  
**To:** [chander.shekhar@thelandmarkcanada.com](mailto:chander.shekhar@thelandmarkcanada.com)  
**Subject:** Accounting information

Hi Chander,

Would it be possible for me to meet with your accountant when she comes in tomorrow? Deloitte requires the details for the accounts as soon as possible and would like to talk to the accountant as they are updating the books.

Thank you.

Regards,

**Catin Laset**

Analyst | Financial Advisory  
Deloitte

181 Bay Street, Toronto, ON M5J 2V1

Tel/Direct 416-775-7281 | Fax 416-601-6690

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**Cc:** terry.yiu@thelandmarkcanada.com; derek.lee@thelandmarkcanada.com  
**Subject:** RE: Books and Records

Hi Ira,

Sorry to be replying to you at an odd time. However, at Landmark we are striving to work our way out despite all odds.

I have been advised to inform you that Derek Lee would be meeting with Terracap team including their legal counsel at 8:30 AM tomorrow . Accordingly, I shall get back to you after the meeting (say between 10-11AM) with the outcome and a definitive timeline on release of information.

We very much appreciate your understanding especially when the Landmark project is going through a difficult phase.

Regards,

Chander

On July 27, 2011 at 4:35 PM "Gerstein, Ira X (CA - Toronto)" <[iragerstein@deloitte.ca](mailto:iragerstein@deloitte.ca)> wrote:

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## Danny Nunes

---

**From:** Danny Nunes  
**Sent:** July 27, 2011 4:14 PM  
**To:** 'Derek Lee'  
**Cc:** 'Tannenbaum, Bryan (CA - Toronto)'; 'Gerstein, Ira X (CA - Toronto)'; Grant Moffat  
**Subject:** FW: Accounting information

**Importance:** High

Derek,

Further to our telephone discussions today, below please find a number of emails exchanged between the Receiver and Chander Shekhar regarding the continued failure of 2811 and Mr. Chan to provide the books and records of the Company and the information sought by the Receiver, all of which was to be provided to the Receiver pursuant to the Order issued July 22, 2011. Individuals being made available to the Receiver for a half hour and no one apparently knowing the administrator override are not credible reasons for delaying in providing information. The Receiver has made attempts to coordinate the delivery of the books and records since immediately after last Friday's motion hearing but has encountered resistance at every turn.

We are approaching a week since the Order was granted and the information needed by the Receiver has not been provided. Your statement to the effect that the parties are continuing to work on the joint venture agreement and do not want the situation to deteriorate is no justification for failing to comply with the Court Order. That very same argument was put before Justice Perell last Friday and he clearly did not find any merit in it.

As such, as I advised on the phone, we will be moving on August 3, 2011 to have 2811 and Mr. Chan found in contempt for their refusal to comply with the Order of July 22, 2011.

Regards,

Danny



Danny M. Nunes | [dnunes@tgf.ca](mailto:dnunes@tgf.ca) | Direct Line: 416-304-0592 | Thornton Grout Finnigan LLP | Suite 3200, Canadian Pacific Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | Phone: 416-304-1616 | Fax: 416-304-1313 | [www.tgf.ca](http://www.tgf.ca)

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---

**From:** Chander Shekhar [<mailto:chander.shekhar@thelandmarkcanada.com>]  
**Sent:** Wednesday, July 27, 2011 3:50 PM  
**To:** Laset, Catalina (CA - Toronto)  
**Cc:** Gerstein, Ira X (CA - Toronto); [terry.yiu@thelandmarkcanada.com](mailto:terry.yiu@thelandmarkcanada.com)  
**Subject:** RE: Accounting information

Hi Catin,



I am pacing along. Hope everything is well with you too.

Sorry for not replying to you earlier as I am in the office only for a limited time during the weekdays. Typically, as in general network settings, all the computers at Landmark have individual password settings with administrator override. I have been advised that the computer hosting QuickBooks has restricted access. None of us here know how to work with QuickBooks.

John Lam, who left the company in May 2011, had the dual role of the Business Development Manager as well as Network Administrator. Terry would be contacting John Lam to rework the settings so as to provide general accessibility. This should not take long (about a day depending on John's availability).

Regards,

Chander

---

**From:** Laset, Catalina (CA - Toronto) [mailto:claset@deloitte.ca]

**Sent:** Wednesday, July 27, 2011 9:20 AM

**To:** Chander Shekhar

**Subject:** RE: Accounting information

Hi Chander,

Hope you are doing well.

We spoke to Cary and were told that there was a password to the computer with QuickBooks and the accounting information. Would it be possible for you to provide me with the passwords so that I can access the files myself?

Thank you.

Regards,

Catin

---

**From:** Chander Shekhar [mailto:chander.shekhar@thelandmarkcanada.com]

**Sent:** Wednesday, July 13, 2011 4:21 PM

**To:** Laset, Catalina (CA - Toronto)

**Subject:** RE: Accounting information

Hi Catin,

The accountant would be at Landmark office around 10:30 AM for around half hour to work out the timeline for delivery of the accounting information. You can be here around that time to talk to her.

Regards,

Chander

---

**From:** Laset, Catalina (CA - Toronto) [mailto:claset@deloitte.ca]

**Sent:** Wednesday, July 13, 2011 2:59 PM

**To:** chander.shekhar@thelandmarkcanada.com

**Subject:** Accounting information

Hi Chander,

Would it be possible for me to meet with your accountant when she comes in tomorrow? Deloitte requires the details for the accounts as soon as possible and would like to talk to the accountant as they are updating the books.

Thank you.

Regards,

**Catin Laset**

Analyst | Financial Advisory

Deloitte

181 Bay Street, Toronto, ON M5J 2V1

Tel/Direct 416-775-7281 | Fax 416-601-6690

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# **EXHIBIT “G”**

## Danny Nunes

---

**From:** Gerstein, Ira X (CA - Toronto) [iragerstein@deloitte.ca]  
**Sent:** July 29, 2011 1:23 PM  
**To:** Danny Nunes  
**Subject:** FW: Books and Records

**Ira Gerstein, CA, CA-CIRP**  
Vice President | Financial Advisory Services

Deloitte & Touche Inc.

181 Bay Street, Brookfield Place,  
Suite 1400, Toronto, ON, M5J2V1, Canada  
Tel/Direct 416-775-7276 | Fax 416-601-6690  
iragerstein@deloitte.ca | [www.deloitte.ca](http://www.deloitte.ca)

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**From:** Chander Shekhar [mailto:chander.shekhar@thelandmarkcanada.com]  
**Sent:** Thursday, July 28, 2011 4:55 PM  
**To:** Gerstein, Ira X (CA - Toronto)  
**Cc:** charles.chan@thelandmarkcanada.com; terry.yiu@thelandmarkcanada.com; Tannenbaum, Bryan (CA - Toronto); derek.lee@thelandmarkcanada.com  
**Subject:** RE: Books and Records

Ira,

Representative of your office can be at Landmark's premises around 2:30PM tomorrow to retrieve the accounting information.

Regarding information on purchasers, I have been advised to inform you that the same cannot be provided at this stage. This is because the Order of Justice Campbell (paragraph 30) refers only to trade creditors and as you have stated that you would be sending notices to trade creditors and to PURCHASERS (who are not trade creditors), it is our intention now to seek explicit directions from the Court on the issue. The reason has been explained to you: because it is the intention of the Mortgagor to replace the first Mortgage (about which you have been apprised about the progress) such a notice to some 350 Purchasers would be devastating to our capacity to refinance and begin construction in short order.

Regards,

Chander

---

**From:** Gerstein, Ira X (CA - Toronto) [mailto:iragerstein@deloitte.ca]  
**Sent:** Thursday, July 28, 2011 1:38 PM  
**To:** 'Chander Shekhar'  
**Cc:** 'charles.chan@thelandmarkcanada.com'; Tannenbaum, Bryan (CA - Toronto); 'terry.yiu@thelandmarkcanada.com'; 'derek.lee@thelandmarkcanada.com'; 'dnunes@tgf.ca'  
**Subject:** RE: Books and Records

Chander

Thank you for your response set out in your e-mail below.

I would like to know an exact time tomorrow as to when a representative of our office can attend at 2811's premises to retrieve the information.

Please advise by no later than 5pm today if you will also be providing the balance of the purchase and sale agreements including a summary of same as you indicated on July 7, 2011 that you would provide as well as the contact information for each of the purchasers.

Regards

**Ira Gerstein, CA, CA-CIRP**  
Vice President | Financial Advisory Services

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---

**From:** Chander Shekhar [mailto:[chander.shekhar@thelandmarkcanada.com](mailto:chander.shekhar@thelandmarkcanada.com)]  
**Sent:** Thursday, July 28, 2011 11:13 AM  
**To:** Gerstein, Ira X (CA - Toronto)  
**Cc:** [charles.chan@thelandmarkcanada.com](mailto:charles.chan@thelandmarkcanada.com); Tannenbaum, Bryan (CA - Toronto); [terry.yiu@thelandmarkcanada.com](mailto:terry.yiu@thelandmarkcanada.com); [derek.lee@thelandmarkcanada.com](mailto:derek.lee@thelandmarkcanada.com)  
**Subject:** RE: Books and Records

Hi Ira,

This is further to my email of yesterday night. Pursuant to the meeting at Terracap Offices today morning, I have been advised to inform you of the following:

1. The process of providing access to QuickBooks shall be streamlined sometime today. You may send in your representative tomorrow (preferably in the afternoon) to gain full access to the accounting records therein.
2. The AP list provided to you as of Jan 15, 2011 is being manually updated to reflect the vendors that have been paid out. The format of the information that would be forwarded to you would start from the AP list as of Jan 15, 2011 highlighting the vendors that have been paid out and the vendors that currently remain to be notified. The information provided would also include contact particulars. The updated AP list would be forwarded to you as soon as possible (hopefully by tomorrow).

Hope you would appreciate our position as we essentially have minimal staff employed at this time.

Regards,

Chander

---

**From:** Gerstein, Ira X (CA - Toronto) [mailto:[iragerstein@deloitte.ca](mailto:iragerstein@deloitte.ca)]  
**Sent:** Wednesday, July 27, 2011 4:35 PM  
**To:** 'Chander Shekhar'  
**Cc:** '[charles.chan@thelandmarkcanada.com](mailto:charles.chan@thelandmarkcanada.com)'; '[dnunes@tgf.ca](mailto:dnunes@tgf.ca)'; Tannenbaum, Bryan (CA - Toronto); '[terry.yiu@thelandmarkcanada.com](mailto:terry.yiu@thelandmarkcanada.com)'  
**Subject:** RE: Books and Records

Chander

In your e-mail below you had indicated that you were waiting for advice from Mr. Derek Lee before you would release any information. You also indicated that Mr. Lee was returning on July 26, 2011 which was last evening. I therefore assume that you have spoken with Mr. Lee and you can respond.

Please advise.

Ira Gerstein, CA, CA•CIRP  
Vice President | Financial Advisory Services

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**From:** Chander Shekhar [mailto:[chander.shekhar@thelandmarkcanada.com](mailto:chander.shekhar@thelandmarkcanada.com)]  
**Sent:** Monday, July 25, 2011 5:01 PM  
**To:** Gerstein, Ira X (CA - Toronto)  
**Cc:** [charles.chan@thelandmarkcanada.com](mailto:charles.chan@thelandmarkcanada.com); [dnunes@tgf.ca](mailto:dnunes@tgf.ca); Tannenbaum, Bryan (CA - Toronto); [terry.yiu@thelandmarkcanada.com](mailto:terry.yiu@thelandmarkcanada.com)  
**Subject:** RE: Books and Records

Hi Ira,

This is further to our telephone conversation. I am still awaiting necessary inputs from Derek Lee (our legal counsel who is out of the country and returning tomorrow, July 26 evening) and legal counsel for Terracap (Landmark's Joint Venture Partner) to respond to your email.

Regards,

Chander

---

**From:** Gerstein, Ira X (CA - Toronto) [mailto:[iragerstein@deloitte.ca](mailto:iragerstein@deloitte.ca)]  
**Sent:** Monday, July 25, 2011 1:39 PM  
**To:** 'Chander Shekhar'  
**Cc:** '[charles.chan@thelandmarkcanada.com](mailto:charles.chan@thelandmarkcanada.com)'; '[dnunes@tgf.ca](mailto:dnunes@tgf.ca)'; Tannenbaum, Bryan (CA - Toronto); '[terry.yiu@thelandmarkcanada.com](mailto:terry.yiu@thelandmarkcanada.com)'  
**Subject:** FW: Books and Records

Good afternoon Chander

On Friday we sent an e-mail to Mr. Chan (see below) who I have copied on this e-mail requesting an appropriate time to attend at 2811's office premises to retrieve any all of the books and records required by the Receiver including but not limited to the Purchase and Sale Agreements and the creditor contact information.

To date I have received no response whatsoever from Mr. Chan or anyone on this matter.

As set out in the Order of Justice Perell, the Books and Records were to have been delivered by 5:00 pm Friday July 22, 2011, however the records were not delivered by this time.

Chander, please advise by no later than 5pm today when we can expect to attend at the premises to retrieve the information.

Regards

Ira Gerstein, CA, CA•CIRP  
Vice President | Financial Advisory Services

Deloitte & Touche Inc.

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**From:** Gerstein, Ira X (CA - Toronto)  
**Sent:** Friday, July 22, 2011 4:38 PM  
**To:** 'charles.chan@thelandmarkcanada.com'  
**Cc:** 'Chander Shekhar'; Tannenbaum, Bryan (CA - Toronto); 'Terry Yiu'  
**Subject:** Books and Records

Good afternoon Mr. Chan

As you know, this morning Justice Perell of the Ontario Superior Court of Justice issued an Order requiring 2811 Development Corporation ("2811" or the "Company") to provide the Receiver with the Books and Records of the Company including, but not limited to, all Purchase and Sale Agreements and the contact information of all of the creditors of 2811.

We would like to make arrangements to attend at the Company's premises to retrieve the information and in this regard please advise when would be an appropriate time to attend at the premises for this purpose.

Regards

**Ira Gerstein, CA, CA•CIRP**  
Vice President | Financial Advisory Services

Deloitte & Touche Inc.

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**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**

**SUPPLEMENT TO THE SECOND REPORT  
OF THE RECEIVER**  
Dated **July 29, 2011**

**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 Receiver, Deloitte & Touche Inc.

**TAB 3**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE ) WEDNESDAY, THE 3<sup>rd</sup>  
)  
JUSTICE ) DAY OF AUGUST, 2011

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

B E T W E E N:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**AMENDED ORDER**

**THIS MOTION**, made by Deloitte & Touche Inc., in its capacity 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 (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**”) for relief with respect to the matters set out in the Amended Notice of Motion dated July 29~~t~~, 2011, was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the Second Report of the Receiver dated July 20, 2011 (the “**Second Report**”), the Supplement to the Second Report dated July 29, 2011 (the “**Supplemental Report**”) and the Exhibits thereto, and on hearing submissions of counsel for the Receiver, the Applicant and any other party appearing,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record herein be and is hereby abridged such that this motion is properly returnable today and that further service thereof upon any other interested party is hereby dispensed with and that service of the Notice of Motion and Motion Record is hereby validated in all respects.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the Second Report and the Supplemental Report.
3. **THIS COURT ORDERS** that the Second Report and the activities and conduct of the Receiver described in the Second Report are hereby ratified and approved.
4. **THIS COURT ORDERS** that the Receiver’s marketing plan for the Property as described in the Second Report, together with any amendments thereto deemed necessary and appropriate by the Receiver (hereinafter, the “**Marketing Process**”) be and it is hereby approved and the Receiver is hereby authorized and directed to carry out the Marketing Process.
5. **THIS COURT ORDERS** that the conditions of sale (“**Conditions of Sale**”) attached as an exhibit to the Second Report be and the same are hereby approved, together with any amendments thereto deemed necessary and appropriate by the Receiver.
6. **THIS COURT ORDERS** that the Receiver be and it is hereby authorized to:

- (a) proceed to market and offer for sale the Receiver's right, title and interest in the Property in the manner more particularly described in the Second Report and in accordance with and on the terms of the Marketing Process and the Conditions of Sale;
- (b) enter into discussions with any and all offerors in respect of the Property;
- (c) disclose to and review with the Applicant, any of its advisors and Deloitte Real Estate any and all offers received by the Receiver to purchase some or all of the Property;
- (d) accept an offer to purchase some or all of the Property, the terms of which, in the Receiver's sole opinion, are in the best interests of the estate herein, subject to approval of this Court if required in accordance with the Appointment Order; and
- (e) enter into agreements of purchase and sale in respect of some or all of the Property on the terms of the Template Agreement (as defined in the Conditions of Sale), together with any amendments or additions thereto deemed necessary by the Receiver in its sole opinion, subject to approval of this Court if required in accordance with the Appointment Order.

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

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

- (a) by advertising the Property and/or the Marketing Process;

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

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

10. **THIS COURT ORDERS AND DECLARES** that the evidentiary record establishes and it is so found that: (i) the Debtor and Mr. Charles Chan have knowledge of the nature and terms of the Order of the Honourable Mr. Justice Perell dated July 22, 2011 (the “Withheld Records Order”); (ii) the Withheld Records Order was directive and not merely permissive; and (iii) the Debtor and Mr. Charles Chan have been knowingly and intentionally in contravention of the Withheld Records Order.

11. **THIS COURT ORDERS** that the Debtor and Mr. Charles Chan are in contempt of paragraph 2 of the Withheld Records Order and have failed to provide the Receiver with all of the contact information for the Debtor's creditor, including the Landmark Sale Agreements, that is required by the Receiver to comply with the notice to creditor requirements set out in paragraph 30 of the Appointment Order and the *Bankruptcy and Insolvency Act* (Canada) by no later than 5:00 p.m. on July 22, 2011.

12. **THIS COURT ORDERS** that the Debtor is in contempt of paragraph 3 of the Withheld Records Order and has failed to immediately comply with the provisions of the Appointment Order, including but not limited to those provisions of the Appointment Order requiring the delivery of the Debtor's Books and Records to the Receiver, which were to be delivered by no later than 5:00 p.m. on July 22, 2011.

13. **THIS COURT ORDERS** that the Debtor and Mr. Charles Chan are required to (i) provide the Receiver with all of the contact information for the Debtor's creditors that is required by the Receiver to comply with the notice to creditor requirements set out in paragraph 30 of the Appointment Order and the *Bankruptcy and Insolvency Act* (Canada) by no later than 5:00 p.m. on August 3, 2011; and (ii) immediately comply with the provisions of the Appointment Order, including but not limited to those provisions of the Appointment Order requiring the delivery of the Debtor's Books and Records to the Receiver by no later than 5:00 p.m. on August 3, 2011.

14. **THIS COURT ORDERS** that the Debtor and Mr. Charles Chan are required to pay a fine in the amount of \$10,000 to the Receiver on behalf of the estate within five (5) days of this Order on account of this Court's finding them in contempt of the Withheld Records Order.

15. **THIS COURT ORDERS** that the Receiver shall have its costs of this motion, up to and including the hearing of this motion and the entry of this order (including applicable Harmonized Sales Tax) on a substantial indemnity basis which shall be paid to the Receiver from the estate herein.

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

---



**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

**AMENDED ORDER**

**ThorntonGroutFinnigan 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)**  
**Danny Dunes (LSUC#53802D)**  
Tel: 416-304-1616  
Fax: 416-304-1313

Lawyers for the Receiver.

**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**

**AMENDED MOTION RECORD  
RETURNABLE AUGUST 3, 2011**

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

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