

**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**

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

July 21, 2011

**Thornton Grout Finnigan LLP**  
Barristers and Solicitors  
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Lawyers for the Receiver, Deloitte & Touche Inc.

**TO: THIS HONOURABLE COURT**

**AND TO: THE ATTACHED SERVICE LIST**

## SERVICE LIST

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Lawyers for Lombard General Insurance company of Canada

- AND TO: GOLDEN LINK HOLDINGS INC.**  
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North York, ON M6B 2P5
- AND TO: GALLANT MANAGEMENT CORPORATION**  
71 Queens College Drive  
Richmond Hill, ON L4B 1X4
- AND TO: KIN CHUNG LAM**  
88 Wenderly Drive  
North York, ON M6B 2P5
- AND TO: JAMES FOO-KWONG TANG**  
71 Queens College Drive  
Richmond Hill, ON L4B 1X4
- AND TO: TERRACAP INVESTMENTS INC.**  
c/o Teplitsky, Colson, LLP  
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30 Floral Parkway  
Concord, ON L4K 4R1
- AND TO: MINISTRY OF ATTORNEY GENERAL**  
Office of the Public Guardian and Trustee  
**Attention: Mr. J.E. Byerley**  
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Toronto, ON M5G 2M6
- AND TO: AN YUAN LIN C.O.B. AN-DAK TRADING COMPANY**  
11 Rowe Court  
Markham, ON L3S 2J6
- AND TO: THE TORONTO-DOMINION BANK**  
55 King Street West, 3<sup>rd</sup> Floor  
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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## INDEX

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# TAB 1

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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

B E T W E E N:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**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 and dispensing with further service thereof.



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. Such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. Pursuant to the 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.
2. 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.
3. Proceeding with the Marketing Process is in the best interests of the estate herein.
4. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

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

July 21, 2011

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Lawyers for the Receiver.

**TO: THIS HONOURABLE COURT**

**AND TO: THE SERVICE LIST**

**FIRM CAPITAL MORTGAGE FUND INC.**

and

**2811 DEVELOPMENT CORPORATION**

Applicant(s)

Respondent

Court File No.: CV11-9242-00CL

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

Proceedings commenced at **Toronto**

**NOTICE OF MOTION**

**ThorntonGroutFinnigan LLP**  
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Toronto-Dominion Centre  
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Lawyers for the Receiver.

# **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

B E T W E E N:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

- and -

**2811 DEVELOPMENT CORPORATION**

Respondent

**SECOND REPORT OF THE RECEIVER  
DATED JULY 20, 2011**

**INTRODUCTION**

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

2. The Appointment Order authorized the Receiver to, among other things, take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements, arising out of, or from, the Property. In addition, the Receiver was authorized to sell, convey, transfer, lease or assign the Property or any part thereof out of the ordinary course:
  - (a) without the approval of the Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
  - (b) with the approval of the Court in respect of any transaction exceeding \$100,000 or exceeding \$250,000 in the aggregate.
  
3. On July 15, 2011, the Receiver issued its first report to the Court (the “**First Report**”) in support of its motion returnable July 19, 2011 (the “**Withheld Records Motion**”) for an order, *inter alia*, directing the Debtor to deliver to the Receiver all of the Debtor’s books and records, including contact information for the Debtor’s creditors. The Withheld Records Motion was adjourned until 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**”.
  
4. The purpose of this report (“**Second Report**”) is to provide to the Court:
  - (a) a description of the Lands and the Debtor’s development plans prior to the appointment of the Receiver;
  - (b) a summary of the Debtor’s various secured creditors;

- (c) a description of the Receiver's activities to date; and
  - (d) the evidentiary basis to make an Order:
    - i. approving the activities of the Receiver as described in this Second Report; and
    - ii. approving the marketing plan proposed by the Receiver for the sale of the Property.
5. A copy of the Appointment Order, together with related Court documents have been posted on the Receiver's website at <http://www.deloitte.com/ca/insolvency>. Since, as of the date of the Second 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 creditors or filed the Report of the Receiver as required by Sections 245 and 246, respectively of the *Bankruptcy and Insolvency Act (Canada)*.
6. Unless otherwise provided, capitalized terms not otherwise defined in this Second Report are as defined in the Appointment Order.

#### **TERMS OF REFERENCE**

7. In preparing the Second Report and making the comments contained herein, Deloitte has been provided with and has relied upon unaudited financial information, the Debtor's books and records, 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 Second Report.

8. Unless otherwise stated, all dollar amounts contained in the Second Report are expressed in Canadian dollars.

## **BACKGROUND**

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

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

10. Lands "B" comprise the bulk of the Property and were to be developed by the Debtor with a 1,090 unit two-storey retail mall containing a gross floor area of 435,388 square feet and a saleable area of 228,907 square feet, known as The Landmark. Lands "A" comprise parcels of land fronting Steeles Avenue East and were proposed to be improved by the Debtor with retail pads totalling approximately 89,000 square feet. Lands "C" are held for future development and are currently zoned as industrial.
11. Internal servicing of the Lands has been completed by the Debtor, but no significant construction of The Landmark has commenced. Other than the normal course site plan approval and building permits, together with payment of any applicable levies in



connection with such building permits, the Receiver is not aware of any outstanding municipal approvals still required to commence construction of the Landmark.

12. Prior to the advance of a first mortgage loan by the Applicant, Firm Capital Mortgage Fund Inc. ("**Firm Capital**"), to the Debtor, the Debtor advised Firm Capital that it had entered into approximately 400 agreements of purchase and sale ("**Landmark Sale Agreements**") with respect to retail condominium units to be located in the Landmark, representing approximately 115,000 square feet of retail space. Pursuant to the Withheld Records Motion, the Receiver is seeking an Order directing the Debtor to deliver all Landmark Sale Agreements to the Receiver. As of the date of this Second Report, the Receiver has not yet received all such agreements. Accordingly, the Receiver will advise in a subsequent report to the Court the number and status of the Landmark Sale Agreements following the Receiver's receipt and review of those agreements.
  
13. Lombard General Insurance Company of Canada ("**Lombard**") has provided a deposit insurance facility for The Landmark to the Debtor. Lombard has provided purchasers under the Landmark Sale Agreements with insurance policies to protect their rights to a return of the deposits paid under the Landmark Sale Agreements. Lombard has agreed pursuant to the terms of that facility to release certain purchaser deposits to 2811 that otherwise would be required to be held in trust pursuant to the provisions of the *Condominium Act* (Ontario) and the terms of the Landmark Sale Agreements. The Debtor currently owes Lombard approximately \$14.5 million pursuant to the foregoing deposit insurance facility.

**SECURED CREDITORS**

14. Attached hereto as Exhibit “D” is a detailed description of the various charges registered against the Lands. Set out below is a summary of the charges registered against the Lands and the amounts outstanding thereunder:

<b>Creditor</b>	<b>Amount of Charge Against Property</b>	<b>Outstanding Indebtedness (Rounded)</b>	<b>Nature of Obligation</b>
Firm Capital Mortgage Fund Inc.	\$17,500,000	\$16,431,745 as at May 10/11	First Mortgage Loan
White Bear Developments Inc.	\$1,500,000	\$1,808,116 as at Feb. 28/11	Conventional Mortgage
Key Pendragon Enterprises Inc.	\$5,500,000	\$6,901,112 as at Mar. 1/11	Conventional Mortgage
Key Pendragon Enterprises Inc.	\$1,100,000	\$1,262,168 as at Mar. 1/11	Conventional Mortgage
Key Pendragon Enterprises Inc.	\$1,000,000	\$1,119,515 as at Mar. 1/11	Conventional Mortgage
Lombard General Insurance Company of Canada	\$75,000,000	\$14,500,000	Collateral Charge
Lombard General Insurance Company of Canada	\$750,000	Unknown	Collateral Charge
Lombard General Insurance Company of Canada	\$1,560,127	Unknown	Collateral Charge
Con-Drain Company (1983) Limited	\$1,500,000	\$1,500,000	Originally a construction lien, converted to a conventional charge.
Mady Contract Division Ltd.	\$386,190	\$386,190 as at Apr. 13/11	Construction lien
<b>TOTALS</b>	<b>\$105,796,317</b>	<b>\$43,908,846</b>	

15. Attached hereto as Exhibit “E” is a copy of a PPSA Enquiry Response Certificate from the Ontario Ministry of Government Services with respect to the Debtor certified as at July 11, 2011.
16. The Receiver has retained the Applicant’s solicitors Thornton Grout Finnigan LLP and Meyer Wassenaar & Banach LLP as its legal counsel. The Receiver will retain independent legal counsel to, among other things, review the security granted by the Debtor to its creditors.

### RECEIVER’S ACTIVITIES

17. The Receiver has undertaken the following activities in accordance with the terms of the Appointment Order:
  - (a) advised the Debtor of the Receiver’s appointment;
  - (b) attended at the Debtor’s office at 7100 Woodbine Avenue, Suite 111, Markham, Ontario to review the Debtor’s books and records;
  - (c) taken possession of all three of the Debtor’s bank accounts associated with the Property (the “**Accounts**”) by notification to the financial institutions with whom the Accounts are domiciled;
  - (d) advised the Debtor’s three banks that no further disbursements are to be made from the Accounts without the prior written consent of the Receiver;
  - (e) met with and delivered to the Debtor’s two employees a letter (“**Employee Letter**”) confirming that, in accordance with the provisions of the Appointment Order, the Debtor will continue to employ each of its employees on the existing

terms and conditions of such employment and that the Receiver will not pay nor be liable for any wages or other amounts which are due or which may in the future become due to such employees;

- (f) provided notice of the Receiver's appointment to the Debtor's insurance company with respect to the Lands and arranged to have the Receiver added as a named insured and as an additional insured and reviewed the insurance policy to ensure that the coverage was sufficient;
  - (g) placed property insurance coverage over the Debtor's personal property located at the Leased Premises (defined below);
  - (h) prepared a marketing plan for the sale of the Property, which is described in more detail below;
  - (i) commenced the process of ordering two updated appraisals of the Lands in connection with the Receiver's plan to market and sell the Property; and
  - (j) conducted a physical count of the furniture and computer equipment owned by the Debtor and located at the Leased Premises (the "**Equipment**").
18. Given that the Receiver is not yet in possession of all of the books and records of the Debtor, the Receiver is not yet in a position to ensure that the books and records of the Debtor have been properly secured.
19. Prior to the appointment of the Receiver, the Debtor carried on business from leased premises at 7100 Woodbine Avenue, Suite 111, Markham, Ontario (the "**Leased Premises**"). According to a lease provided by the Debtor to the Receiver, The Landmark (Canada) Inc. and not the Debtor is the tenant of the Leased Premises. The

Receiver has not reviewed any documentation setting out the basis upon which the Debtor has a right to occupy the Leased Premises. However, the Receiver understands that the Debtor has guaranteed the obligations of The Landmark (Canada) Inc. under its lease of the Leased Premises.

20. The Equipment located at the Leased Premises forms part of the Property and, pursuant to the terms of the Appointment Order, the Receiver is authorized to sell the Equipment without approval of the Court in respect of any transaction not exceeding \$100,000 provided that the aggregate consideration for all such transactions does not exceed \$250,000. The Receiver has conducted a physical count of the Equipment and requested two auctioneers to provide to the Receiver a proposal to either auction or purchase the Equipment.
21. The Receiver does not intend to occupy the Leased Premises or utilize the Equipment in connection with the discharge of its duties. Given the relatively low value of the Equipment, the Receiver does not intend to take possession of or incur any storage costs in respect of the Equipment at this time. The Receiver has therefore elected to leave the Equipment at the Leased Premises until further notice to the Debtor.

#### **THE RECEIVER'S PROPOSED MARKETING PROCESS**

22. Rather than retain an independent listing agent for the Lands, the Receiver proposes to directly market the Property through a focused target marketing process through Deloitte Real Estate ("**Deloitte Real Estate**"). The Receiver has determined that it will be able to fully expose the Property to the market through Deloitte Real Estate's contacts and list of

potential purchasers. This will also result in a significant cost savings to the estate since Deloitte Real Estate's consulting services will be billed on an hourly basis as opposed to a traditional commission basis if the Lands were listed with an agent. In addition to the appraisals of the Lands referred to above, the Receiver has obtained an analysis of recent sales of comparable vacant development properties to permit the Receiver to properly evaluate all offers to purchase the Property received as part of the Receiver's marketing process.

23. The Receiver believes that a documentation preparation and marketing period of approximately 6 to 7 weeks will be sufficient to expose the Property and permit qualified parties to conduct due diligence and to determine if they will make an offer, while at the same time minimizing the uncertainty and costs of a prolonged receivership period.
24. The Receiver proposes to sell the Property utilizing the following process (the "**Marketing Process**"):
  - (a) retain Deloitte Real Estate to assist the Receiver in conducting the Marketing Process;
  - (b) by August 4, 2011, send an information overview document ("**Flyer**") outlining the Property to potential purchasers along with a confidentiality agreement to be executed in order to receive further information in respect of the Property. The list of potential purchasers will be developed from a database maintained by Deloitte Real Estate, expressions of interest received by the Receiver from interested parties and the Receiver's experience and contacts. Copies of the draft Flyer and Confidentiality Agreement are attached hereto as Exhibits "**F**" and "**G**";

- (c) place an advertisement in the Toronto edition of The Globe and Mail newspaper the week of August 15, 2011;
- (d) prepare and place in a password protected electronic data room copies of all documentation relating to the development of The Landmark by the Debtor, including architectural drawings, site plan agreements with the municipality, relevant municipal approvals, any subsisting construction contracts and copies of all Landmark Sale Agreements, or a summary of same to be provided to potential purchasers who sign a confidentiality agreement;
- (e) prepare a confidential information memorandum (“**CIM**”) providing detailed information in respect of the Property, to be sent to all potential purchasers who have executed the confidentiality agreement. The CIM will also include the terms and conditions of any sale by the Receiver and a form of offer. A copy of the form of offer and the Conditions of Sale are attached hereto as Exhibit “**H**”;
- (f) follow up with interested prospective purchasers to identify the opportunity and provide access to the data room, the Property and additional information as required;
- (g) set 12 o’clock noon on September 23, 2011 as the deadline for the submission of binding offers (the “**Offer Date**”). Following the Receiver’s review of all submitted offers, the Receiver may, at its option, seek clarification from any of the offerors regarding the terms of a submitted offer, reject any of the offers submitted or request any of the offerors to submit revised and/or improved offers to purchase any of the Property or to otherwise address any issues or concerns raised by the Receiver. There shall be no obligation on the part of the Receiver to

provide any offeror with the opportunity to amend or otherwise improve the terms of its offer following the Offer Date;

- (h) Each offeror shall, with its offer, deliver to the Receiver the following:
- i. an amount equal to 10% of the purchase price specified in the offer. If the offer is accepted said cheque or bank draft will be deemed to be a cash deposit (the “**Deposit**”) against the aggregate offered purchase price (the “**Purchase Price**”) and the successful offeror (hereinafter called the “**Purchaser**”) will pay the balance of the Purchase Price to the Receiver, in cash or by certified cheque on the Closing Date of the subject transaction without interest;
  - ii. an executed copy of the template agreement of purchase and sale (“**Template Agreement**”), amended to reflect that part of the Property subject to the offer (the Template Agreement as amended, the “**Offeror Sale Agreement**”) and any other matters specific to the offer, which shall be binding and irrevocable until October 7, 2011;
  - iii. a comparison of the Template Agreement to the executed Offeror Sale Agreement;
  - iv. a representation of the offeror and written evidence of available cash and/or a commitment for financing to evidence the offeror’s ability to close the proposed transaction as the Receiver may reasonably request;



- v. a copy of a board resolution or similar document demonstrating authority to make an irrevocable offer and to execute the transaction contemplated by the Offeror Sale Agreement; and
  - vi. a disclosure of the identity of each entity (including its ultimate shareholders) that have submitted the offer.
25. The Receiver shall not be bound to sell any of the Property until it has entered into a binding agreement of purchase and sale and received approval to complete such transaction from the Court. The Receiver reserves the right to enter into one or more agreements to sell any or all of the Property at any time and to withdraw any or all of the Property from the sale.

#### **PROCEDURES FOR SALE**

26. All sales will be on an “as is, where is” basis. Each offeror will be solely responsible for inspecting the Property and satisfying itself as to title to any of the Property it is offering to purchase. The Receiver will not provide any representations or warranties with regard to title, merchantability, condition, description, fitness for purpose, quality, quantity or any other matter or thing regarding the Property.
27. The Receiver’s solicitors will prepare any required closing documentation.

#### **RECEIVER’S REQUESTS OF THE COURT**

28. For the reasons set out above, the Receiver requests that the Court make an Order:
- (a) approving the activities of the Receiver as described in the Second Report;

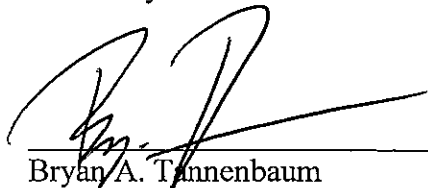
- (b) approving the Marketing Process; and
- (c) authorizing the Receiver to carry out the sale of the Property pursuant to the Marketing Process, including, without limitation, the Conditions of Sale attached as Exhibit "H".

All of which is respectfully submitted at Toronto, Ontario this 20th 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:

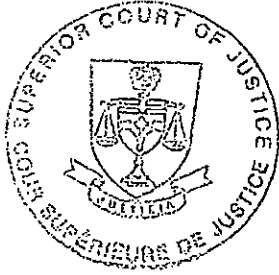


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Bryan A. Tannenbaum  
Senior Vice-President

# TAB A

# 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.

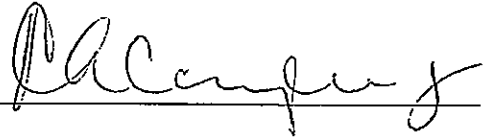
28. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is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



A handwritten signature in cursive script, appearing to read "P. Campbell", is written over a horizontal line.

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

JUN 29 2011

PER/PAR:



Handwritten initials, possibly "JP", written in a stylized cursive font.



**SCHEDULE "A"**

**LEGAL DESCRIPTION OF THE LANDS**

The Lands comprising the Property are legally described as follows:

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

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

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

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

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

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

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

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

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

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

City of Toronto

Toronto Land Titles Office (No. 80)

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

## **SCHEDULE "B"**

### **DEFINED TERMS**

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

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

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

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

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

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

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

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

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

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

**SCHEDULE "C"**

**RECEIVER CERTIFICATE**

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

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

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

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

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

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

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

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

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

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

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

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

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

Name:

Title:

**FIRM CAPITAL MORTGAGE FUND INC.**

Applicant

and

**2811 DEVELOPMENT CORPORATION**

Respondent

Court File No.: CV11-9242-00CL

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

Proceedings commenced at **Toronto**

**ORDER**

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

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

Lawyers for the Applicant

# TAB B

**EXHIBIT "B"**

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 terms, closing date to give sufficient comfort.

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

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

and

2811 DEVELOPMENT CORPORATION

Respondent

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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

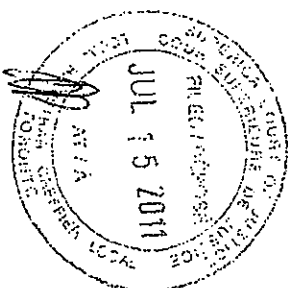
Proceedings commenced at Toronto

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  
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.





-2-

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.

Murphy.

# TAB C



# TAB D

# EXHIBIT

u D

Based on Search performed on  
May 30<sup>th</sup>, 2011 at 1:33 p.m.

## SUMMARY OF INSTRUMENTS

RANK OF PRIORITY	INSTRUMENT NUMBER	REG. DATE	INSTRUMENT TYPE	AMOUNT	PARTY IN FAVOUR	PIN NOS.
1.	AT1842029 AT1842030	July 23, 2008 July 23, 2008	Charge Assignment of Rents – General	\$17,500,000	Firm Capital Mortgage Fund Inc. Firm Capital Mortgage Fund Inc.	06050-0199 (LT) 06050-0266 (LT) 06050-0263 (LT) 06050-0264 (LT) 06050-0272 (LT)
2.	<ul style="list-style-type: none"> <li>See boxes 6, 7, and 8 below for Postponements registered as Instrument No. AT1842143, AT1842144, and AT1842145 by Lombard General Insurance Company of Canada in favour of the above charge of Firm Capital Mortgage Fund Inc.</li> </ul> AT2259133 AT2565586 AT2259134 AT2565587	Dec. 16, 2009 Nov. 30, 2010 Dec. 16, 2009 Nov. 30, 2010	Charge Transfer of Charge Assignment of Rents – General Assignment of Rents – General	\$1,500,000	Vector Financial Services Limited White Bear Developments Inc. Vector Financial Services Limited White Bear Developments Inc.	06050-0199 (LT) 06050-0266 (LT) 06050-0263 (LT) 06050-0264 (LT) 06050-0272 (LT)
3.	<ul style="list-style-type: none"> <li>See box 3 below for Postponement registered as Instrument No. AT2259196 and AT2259197 by Key Pendragon Enterprises Inc, in favour of the above charge of Vector Financial Services Limited.</li> <li>See boxes 6, 7, and 8 below for Postponements registered as Instrument No. AT2259190, AT2259191, AT2259192, AT2259193, AT2259194, AT2259195 by Lombard General Insurance Company of Canada in favour of the above charge of Vector Financial Services Limited.</li> </ul> AT1903983 AT2205071 AT2205083 AT2259196 AT2259197	Sep. 23, 2008 Oct. 16, 2009 Oct. 16, 2009 Dec. 16, 2009 Dec. 16, 2009	Charge Transfer of Charge Notice Postponement Postponement	\$5,500,000	Relmi Financial Corp. Key Pendragon Enterprises Inc. 2811 Development Corporation Vector Financial Services Limited Vector Financial Services Limited	06050-0199 (LT) 06050-0266 (LT) 06050-0263 (LT) 06050-0264 (LT) 06050-0272 (LT)
	<ul style="list-style-type: none"> <li>See boxes 6, 7, and 8 below for Postponements registered as Instrument No. AT1904325, AT1904326, AT1904327 by Lombard General Insurance Company of Canada in favour of the above charge of Relmi Financial Corp. and Postponements registered as Instrument No. AT2205105, AT2205106, AT2205107 by Lombard General Insurance Company of Canada in favour of the above charge of Key Pendragon Enterprises Inc.</li> </ul>					

4.	AT2357840	Apr. 22, 2010	Charge	\$1,100,000	Key Pendragon Enterprises Inc.	06050-0199 (LT) 06050-0266 (LT) 06050-0263 (LT) 06050-0264 (LT) 06050-0272 (LT)
<ul style="list-style-type: none"> <li>See boxes 6, 7, and 8 below for Postponements registered as Instrument No. AT2457585, AT2457586, AT2457587 by Lombard General Insurance Company of Canada in favour of the above charge of Key Pendragon Enterprises Inc.</li> </ul>	AT2449883	July 19, 2010	Charge	\$1,000,000	Key Pendragon Enterprises Inc.	06050-0199 (LT) 06050-0266 (LT) 06050-0263 (LT) 06050-0264 (LT) 06050-0272 (LT)
<ul style="list-style-type: none"> <li>See boxes 6, 7, and 8 below for Postponements registered as Instrument No. AT2457588, AT2457589, AT2457590 by Lombard General Insurance Company of Canada in favour of the above charge of Key Pendragon Enterprises Inc.</li> </ul>	AT974288	Nov. 9, 2005	Charge	\$75,000,000	Lombard General Insurance Company of Canada	06050-0199 (LT) 06050-0266 (LT) 06050-0263 (LT) 06050-0264 (LT) 06050-0272 (LT)
AT1787210	May 26, 2008	Postponement		Markham Steeles Realty Inc.		
AT1842143	July 23, 2008	Postponement		Firm Capital Mortgage Fund Inc.		
AT2259190	Dec. 16, 2009	Postponement		Vector Financial Services Limited		
AT2259191	Dec. 16, 2009	Postponement		Vector Financial Services Limited		
AT1904325	Sep. 23, 2008	Postponement		Relmi Financial Corp.		
AT2205105	Oct. 16, 2009	Postponement		Key Pendragon Enterprises Inc.		
AT2457585	July 26, 2010	Postponement		Key Pendragon Enterprises Inc.		
AT2457590	July 26, 2010	Postponement		Key Pendragon Enterprises Inc.		

7.	AT1085822	Mar. 14, 2006	Charge	\$750,000	Lombard General Insurance Company of Canada	06050-0199 (LT) 06050-0266 (LT) 06050-0264 (LT)		
	AT1787211	May 26, 2008					Postponement	Markham Steeles Realty Inc.
	AT1842144	July 23, 2008					Postponement	Firm Capital Mortgage Fund Inc.
	AT2259192	Dec. 16, 2009					Postponement	Vector Financial Services Limited
	AT2259193	Dec. 16, 2009					Postponement	Vector Financial Services Limited
	AT1904326	Sep. 23, 2008					Postponement	Relmi Financial Corp.
	AT2205106	Oct. 16, 2009					Postponement	Key Pendragon Enterprises Inc.
	AT2457586	July 26, 2010					Postponement	Key Pendragon Enterprises Inc.
	AT2457589	July 26, 2010					Postponement	Key Pendragon Enterprises Inc.
	8.	AT1187188					June 30, 2006	Charge
AT1787212		May 26, 2008	Postponement	Markham Steeles Realty Inc.				
AT1842145		July 23, 2008	Postponement	Firm Capital Mortgage Fund Inc.				
AT2259194		Dec. 16, 2009	Postponement	Vector Financial Services Limited				
AT2259195		Dec. 16, 2009	Postponement	Vector Financial Services Limited				
AT1904327		Sep. 23, 2008	Postponement	Relmi Financial Corp.				
AT2205107		Oct. 16, 2009	Postponement	Key Pendragon Enterprises Inc.				
AT2457587		July 26, 2010	Postponement	Key Pendragon Enterprises Inc.				
AT2457588		July 26, 2010	Postponement	Key Pendragon Enterprises Inc.				

9.	AT2561525	Nov. 26, 2010	Charge	\$1,500,000	Con-Drain Company (1983) Limited	06050-0199 (LT) 06050-0266 (LT) 06050-0263 (LT) 06050-0264 (LT) 06050-0272 (LT)
10.	AT2665134	Apr. 13, 2011	Construction Lien	\$386,190.00	Mady Contract Division Ltd.	06050-0199 (LT) 06050-0266 (LT) 06050-0263 (LT) 06050-0264 (LT) 06050-0272 (LT)
	AT2098876	June 19, 2009	Application to Register Court Order – Certificate of Pending Litigation		Terracap Investments Inc.	06050-0199 (LT)
<ul style="list-style-type: none"> <li>Registered after Instrument No. AT1842029, being a mortgage/charge in favour of Firm Capital Mortgage Fund Inc., and Instrument No. AT1903983, being a mortgage/charge in favour of Relmi Financial Corp., but prior to Instrument No. AT2259133 being a mortgage/charge in favour of Vector Financial Services Limited.</li> </ul>						



# TAB E

RUN NUMBER : 193  
RUN DATE : 2011/07/12  
ID : 20110712152959.01

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 1  
( 3949)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE  
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : 2811 DEVELOPMENT CORPORATION

FILE CURRENCY : 11JUL 2011

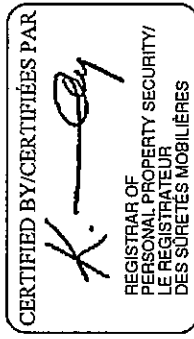
ENQUIRY NUMBER 20110712152959.01 CONTAINS 12 PAGE(S), 7 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

THORNTONGROUPEFINNIGAN (MCROBERTS) (GBM)  
3200 - 100 WELLINGTON STREET WEST  
TORONTO ON M5K 1K7

EXHIBIT

1  
M  
2



Ontario



PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 3  
 ( 3951)

RUN NUMBER : 193  
 RUN DATE : 2011/07/12  
 ID : 20110712152959.01

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : 2811 DEVELOPMENT CORPORATION  
 FILE CURRENCY : 11JUL 2011

FORM IC FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER : 667905147

01 CAUTION PAGE : 002 2  
 FILING NO. OF PAGES : 20110225 1538 1590 7257

02 DEBTOR NAME : CHARLES  
 DATE OF BIRTH : 02NOV1950  
 BUSINESS NAME : 17 RAYNES CRESCENT TORONTO

03 DEBTOR NAME : SANDIE  
 DATE OF BIRTH : 08JAN1956  
 BUSINESS NAME : 17 RAYNES CRESCENT TORONTO

04 REGISTERED PARTY / LIEN CLAIMANT : ONTARIO CORPORATION NO. ON MIV 3V6

05 REGISTERED PARTY / LIEN CLAIMANT : ONTARIO CORPORATION NO. ON MIV 3V6

06 COLLATERAL CLASSIFICATION : CONSUMER

07 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED : MOTOR VEHICLE AMOUNT DATE OF MATURITY OR WAIVER DATE

10 YEAR MAKE MODEL Y.N.

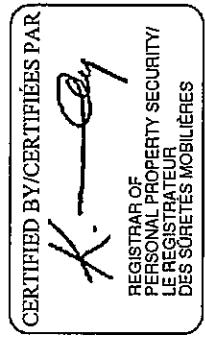
11 MOTOR VEHICLE : 06050-0199 LT, 06050-0263 LT, 06050-0264 LT, 06050-0266 LT AND 060500272 LTD AND MUNICIPALLY KNOWN AS 5789, 5933, 5945, 5811 AND 5951

12 GENERAL COLLATERAL DESCRIPTION : STEELES AVENUE EAST, TORONTO, ONTARIO.

13 REGISTERING AGENT : ADDRESS

14 FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY \*\*\*

CONTINUED . . . 4





TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH CONDUCTED ON : 2811 DEVELOPMENT CORPORATION  
 FILE CURRENCY : 11JUL 2011

FORM IC FINANCING STATEMENT / CLAIM FOR LIEN

FILE NUMBER : 664832052

CAUTION PAGE TOTAL MOTOR VEHICLES REGISTRATION REGISTERED REGISTRATION  
 FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
 01 001 001 20100930 1530 1862 2577 P PPSA 10

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
 02 DEBTOR 2811 DEVELOPMENT CORPORATION  
 03 NAME

ONTARIO CORPORATION NO.  
 ON L3R 5J2

ADDRESS SUITE 111, 7100 WOODBINE AVENUE MARKHAM

DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

BUSINESS NAME ADDRESS  
 05 DEBTOR  
 06 NAME

ONTARIO CORPORATION NO.

SECURED PARTY / LIEEN CLAIMANT ADDRESS  
 08 LOMBARD GENERAL INSURANCE COMPANY OF CANADA TORONTO  
 09 105 ADELAIDE STREET WEST ON M5H 1P9

COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
 10 GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED Maturity OR VAUABILITY DATE

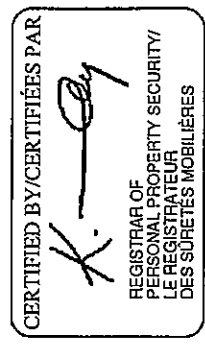
YEAR MAKE MODEL VIN  
 11 MOTOR  
 12 VEHICLE

GENERAL COLLATERAL DESCRIPTION  
 13  
 14  
 15

REGISTRAR AGENT ADDRESS SUITE 610, 4100 YONGE STREET TORONTO ON M2P 2B5  
 16  
 17

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY \*\*\*

CONTINUED... 6



PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

RUN NUMBER : 193  
RUN DATE : 2011/07/12  
ID : 20110712152959.01

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2811 DEVELOPMENT CORPORATION  
FILE CURRENCY : 11JUL 2011

FORM IC FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
65808856

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
001 002 20091209 1028 1862 1547 P PPSA 3

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

03 NAME BUSINESS NAME 2811 DEVELOPMENT CORPORATION ONTARIO CORPORATION NO. L3R 5J2

04 ADDRESS 7100 WOODBINE AVENUE, SUITE 111 MARKHAM

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME

06 NAME BUSINESS NAME KEY PENDRAGON ENTERPRISES INC. ONTARIO CORPORATION NO. M4S 2B4

07 ADDRESS 2221 YONGE STREET, SUITE 606 TORONTO

08 SECURED PARTY / LIEN CLAIMANT VECTOR FINANCIAL SERVICES LIMITED

09 ADDRESS 25 IMPERIAL STREET, SUITE 500, TORONTO ON M5P 1B9

10 COLLATERAL CLASSIFICATION CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
X X X X X

11 YEAR MAKE MODEL VIN

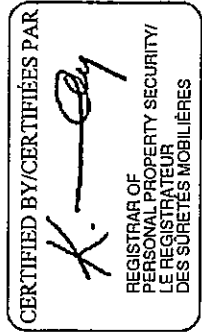
12 MOTOR VEHICLE

13 GENERAL SECURITY DOCUMENTS FOR THE PROPERTIES MUNICIPALLY KNOWN AS 5879,  
14 COLLATERAL 5933, 5945, 5811 AND 5951 STEELES AVENUE EAST, TORONTO, ONTARIO  
15 DESCRIPTION

16 REGISTERING AGENCY BAKER SCHNEIDER RUGGIERO LLP ONT M5H 3V1  
17 ADDRESS 120 ADELAIDE STREET W., STE. 1000 TORONTO

\*\*\* FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY \*\*\*

CONTINUED... 7



RUN NUMBER : 193  
RUN DATE : 2011/07/12  
ID : 20110712152959.01

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 7  
( 3955)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2811 DEVELOPMENT CORPORATION  
FILE CURRENCY : 11JUL 2011

FORM ID : FINANCING STATEMENT / CLAIM FOR LIEN

00 FILE NUMBER  
65808856

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
002 002 20091209 1028 1862 1547

02 DATE OF BIRTH : 10JUN1927  
03 BUSINESS NAME : STANLEY

INITIAL : M  
SURNAME : SNOW

04 ADDRESS : 12-2600 BATHURST STREET TORONTO  
ONTARIO CORPORATION NO. : ON M6B 2Z4

05 DEBTOR :  
06 NAME :  
07 ADDRESS :

INITIAL :  
SURNAME :

ONTARIO CORPORATION NO. :

08 SECURED PARTY :  
09 LIEN CLAIMANT :  
ADDRESS :

10 COUNTERAL CLASSIFICATION

CONSUMER MOTOR VEHICLE AMOUNT DATE OF NO FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE

11 YEAR MAKE :  
12 MOTOR VEHICLE :  
MODEL : V I N

13 GENERAL :  
14 COLLATERAL :  
15 DESCRIPTION :

16 REGISTERING :  
17 AGENT :  
ADDRESS :

FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY

CONTINUED . . . . 8

CERTIFIED BY/CERTIFIÉES PAR  
K. [Signature]  
REGISTRAR OF  
PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR  
DES SÛRETÉS MOBILIÈRES  
(en fr 11/2008)







RUN NUMBER : 193  
RUN DATE : 2011/07/12  
ID : 20110712152959.01

PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 9  
( 3957)

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2811 DEVELOPMENT CORPORATION  
FILE CURRENCY : 11 JUL 2011

FORM 20. FINANCING CHANGE STATEMENT / CHANGE STATEMENT

CAUTION : TOTAL MOTOR VEHICLE REGISTRATION REGISTERED  
FILING NO. OF PAGES SCHEDULE NUMBER UNDER  
001 001 20091217 1255 1862 2183

01 RECORD FILE NUMBER 656941509  
02 PAGE AMENDED NO. SPECIFIC PAGE AMENDED CHANGE REQUIRED RENEWAL CORRECT  
03 001 X J OTHER SURNAME PERIOD

23 DEBTOR/ FIRST GIVEN NAME INITIAL SURNAME  
24 TRANSFEROR BUSINESS NAME 2811 DEVELOPMENT CORPORATION

25 OTHER CHANGE SUBORDINATION  
26 REASON/ KEY PEN-DRAGON ENTERPRISES INC. POSTPONES AND SUBORDINATES FILE  
27 DESCRIPTION NO. 656941509 AND REGISTRATION NUMBER 20091014 1438 1590 1924 TO FILE  
28 NO. 65808856, REGISTRATION NO. 20091209 1028 1862 1547.

02/ DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME  
05 DEBTOR/ BUSINESS NAME  
03/ TRANSFEROR ADDRESS  
06 ADDRESS  
04/07 ONTARIO CORPORATION NO.

29 ASSIGNOR SECURED PARTY/DEB CLAIMANT/ ASSIGNEE

08 COLLATERAL CLASSIFICATION ADDRESS  
09 CONSUMER MOTOR VEHICLE DATE OF NO FIXED  
GOODS INVENTORY EQUIPMENT ACCOUNTS OTHER ENCLIPSE AMOUNT MATURITY OR MATURITY DATE

10 YEAR MAKE MODEL M.T.N.  
11 MOTOR BAKER SCHNEIDER RUGGIERO LLP TORONTO M5H 3V1  
12 VEHICLE 120 ADELAIDE STREET W., STE. 1000  
13 GENERAL REGISTERING AGENT OR ADDRESS  
14 COLLATERAL SECURED PARTY/ ADDRESS  
15 DESCRIPTION BLEN CLAIMANT  
16 REGISTERING AGENT OR ADDRESS  
17 SECURED PARTY/ ADDRESS

FOR FURTHER INFORMATION CONTACT THE SECURED PARTY

CONTINUED... 10

CERTIFIED BY/CERTIFIÉES PAR  
K. [Signature]  
REGISTRAR OF PERSONAL PROPERTY SECURITY/  
LE REGISTRATEUR DES SÛRETÉS MOBILIÈRES  
(e12r11/2008)



PROVINCE OF ONTARIO  
 MINISTRY OF GOVERNMENT SERVICES  
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
 ENQUIRY RESPONSE  
 CERTIFICATE

REPORT : PSSR060  
 PAGE : 10  
 ( 3958)

RUN NUMBER : 193  
 RUN DATE : 2011/07/12  
 ID : 20110712152959.01

TYPE OF SEARCH : BUSINESS DEBTOR  
 SEARCH COMPUTED ON : 2811 DEVELOPMENT CORPORATION  
 FILE CURRENCY : 11JUL 2011

FORM IC FINANCING STATEMENT / CREDIT FOR LIEN

00 FILE NUMBER : 647401221

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION REGISTERED REGISTRATION  
 FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD  
 01 001 20080731 1450 1530 1617 P PPSA 5

02 DATE OF BIRTH : INITIAL SURNAME

03 BUSINESS NAME : 2811 DEVELOPMENT CORPORATION

04 ADDRESS : 7100 WOODBINE AVE SUITE 108 MARKHAM ONTARIO CORPORATION NO. L3R 5J2

05 DEBTOR : FIRST GIVEN NAME INITIAL SURNAME

06 DEBTOR : DATE OF BIRTH INITIAL SURNAME

07 BUSINESS NAME : ADDRESS : ONTARIO CORPORATION NO.

08 SECURED PARTY : THE TORONTO-DOMINION BANK - 19572

09 LIEN CLAIMANT : ADDRESS : 55 KING ST W 3RD FLR TDT TORONTO ON M5K 1A2

10 COLLATERAL CLASSIFICATION : MOTOR VEHICLE AMOUNT DATE OF NO. FIXED  
 CONSUMER INVENTORY EQUIPMENT ACCOUNTS OTHER INCLUDED MATURITY OR MATURITY DATE  
 X X X X X

11 MOTOR : YEAR MAKE : MODBL : V.I.N.

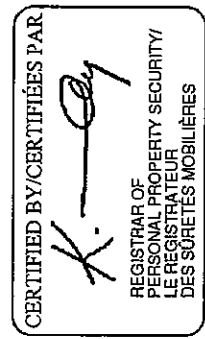
12 VEHICLE

13 GENERAL : COLLATERAL : DESCRIPTION

14 REGISTERING : ADDRESS : SUITE 200 - 4126 NORLAND AVENUE BURNABY BC V5G 3S8

15 AGENT : ADDRESS : FOR FURTHER INFORMATION CONTACT THE SECURED PARTY

16 CONTINUED... 11





PROVINCE OF ONTARIO  
MINISTRY OF GOVERNMENT SERVICES  
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
ENQUIRY RESPONSE  
CERTIFICATE

REPORT : PSSR060  
PAGE : 12  
( 3960)

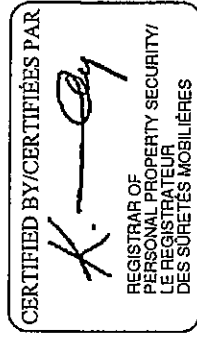
RUN NUMBER : 193  
RUN DATE : 2011/07/12  
ID : 20110712152959.01

TYPE OF SEARCH : BUSINESS DEBTOR  
SEARCH CONDUCTED ON : 2811 DEVELOPMENT CORPORATION  
FILE CURRENCY : 11JUL 2011

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
667905147	20110225	1538	1590 7257
665842383	20101112	1406	1462 9296
664832052	20100930	1530	1862 2577
658088856	20091209	1028	1862 1547
656941509	20091014	1438	1590 1924
647401221	20080731	1450	1530 1617
646081227	20080613	1454	1616 9373
	20091217	1255	1862 2183

8 REGISTRATIONS ARE REPORTED IN THIS ENQUIRY RESPONSE.



# TAB F

**EXHIBIT "F"**

**For Sale  
39 Acres**

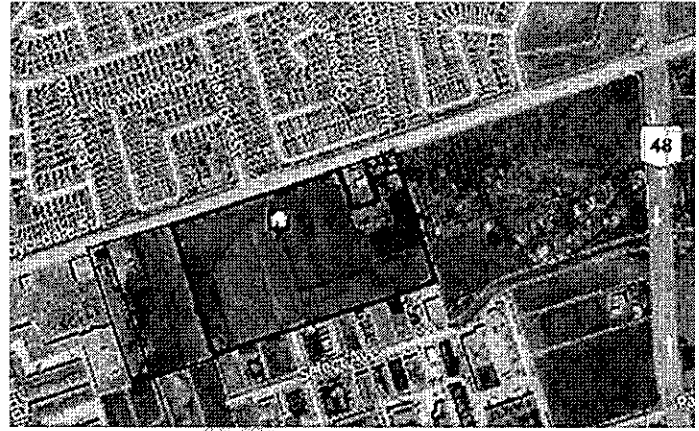
**Prime Commercial  
Development Opportunity**

**Steeles Avenue East  
Toronto • Ontario**

**Deloitte.**



# PRIME COMMERCIAL LAND DEVELOPMENT OPPORTUNITY



## Highlights

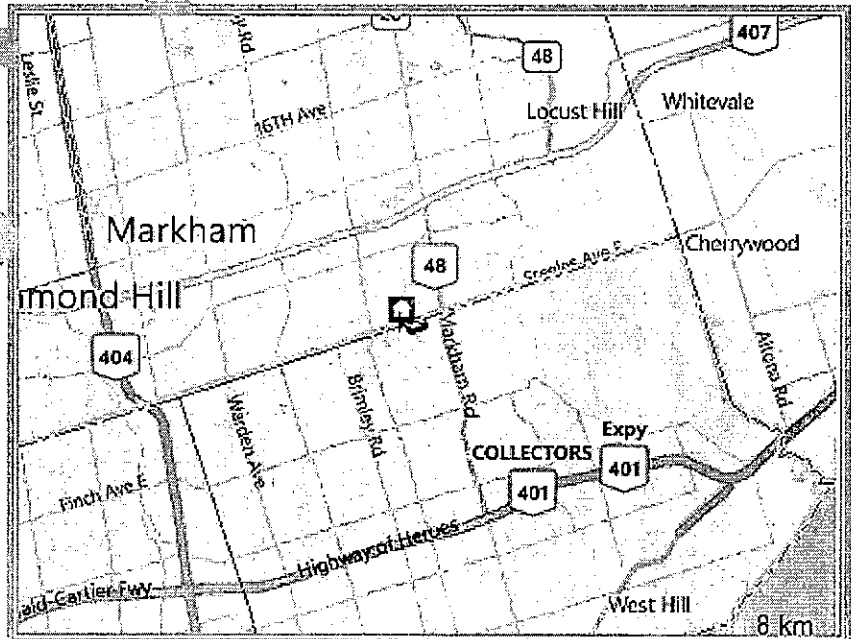
- Approximately 39-acre development opportunity near established residential areas of Markham
- Strategically positioned among National Retailers
- Extensive frontage along Steeles Avenue East
- Only one kilometer away from Markham Road
- Designated for Employment uses

## Location

The subject property is located in the northern GTA in the area of Steeles Avenue East and Markham Road. A number of established retail and industrial developments are to the east, west and south of the property.

The surrounding residential area is comprised mostly of medium density dwellings with over 50,000 people within local shopping distance.

The average population age in the area is 37 to 39.4 years old. The Dominant Market Group is known as "Young & Yearning". This group consists of married couples and singles under 40 with children. These individuals are educated and employed with incomes between \$90,000-\$100,000







# PRIME COMMERCIAL LAND DEVELOPMENT OPPORTUNITY

## Site description

The subject property is largely cleared and rectangular in shape measuring approximately 39 acres. The property fronts on Steeles Avenue East and to the north of it is the Town of Markham. Industrial properties about the land to the south. Baif Development lies to the east where large retailers and smaller commercial retail units are located (Walmart, Lowes and Esso Gas Station). On the west side of the property lies Norstar Development which offers a food market, retail and service outlets.

## Official plan

The lands are designated Employment Areas (Map 22 – Land Use), providing for business and economic activity, and Employment Districts (Map 2 – Urban Structure) in the Official Plan. Steeles Avenue East is a major street.

The commercial development of the property will contribute to the creation of competitive, attractive and highly functional Employment Areas. Large Scale, stand-alone retail stores and power centres are only permitted in Employment Areas

## Zoning

The lands are zoned Special District Commercial with a Holding Provision SDC (H) and Industrial with a Holding Provision M(H) in Employment Districts zoning By-law No. 24982 (Tapscott Employment District), as amended.

City of Toronto By-Law No. 158-2007 (OMB) states that the Holding Provision (H) used in conjunction with the Special District Commercial Zone (SDC) and the Industrial Zone (M) shall be removed, in whole or in part, by amending by-law when Council is satisfied as to the availability of all infrastructure and servicing requirements necessary to accommodate a proposed development, and that all necessary transportation improvements have been secured to the satisfaction of the City.

## Legal description

All of Block 1 and 2 Registered Plan 65M- City of Toronto



# TAB G

# EXHIBIT <sup>4</sup>

## CONFIDENTIALITY AGREEMENT

### 2811 DEVELOPMENT CORPORATION

BETWEEN:

**Deloitte & Touche Inc.**

Solely in its capacity as the Court-Appointed Receiver of certain assets, properties and undertakings of 2811 Development Corporation (the “**Debtor**”) and without personal or corporate liability

(hereinafter, the “**Receiver**”)

- and -

[●]

(hereinafter, the “**Recipient**”)

WHEREAS:

- A. Pursuant to an Order of the Ontario Superior Court of Justice (the “**Court**”) dated June 29, 2011, (the “**Appointment Order**”) Deloitte & Touche Inc. was appointed as 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 legally described in Schedule “**A**” to the Appointment Order 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**”).
- B. By Order of the Court dated July 1, 2011 (the “**Marketing Order**”), the Receiver was authorized by the Court to market and sell the Receiver’s right, title and interest in and to the Property.
- D. The Lands and certain of the Property is being offered for sale by the Receiver pursuant to the Request for Offers (the “**RFO**”) approved by the Court pursuant to the Marketing Order.
- E. The Recipient has expressed an interest in acquiring (the “**Potential Transaction**”) the Property.
- F. The Receiver intends to provide certain confidential information pertaining to the Debtor and the Property to the Recipient for its review and consideration in connection with the Potential Transaction.

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

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

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

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

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

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

DATED at Toronto this \_\_\_\_ day of \_\_\_\_\_ 2011.

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

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

Name:

Title:

**[NAME OF RECIPIENT]**

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

Name: ●

Title: ●



# TAB H

# EXHIBIT "H"

## FORM OF OFFER

To: **Deloitte & Touche Inc., solely in its capacity as 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" attached hereto (the "Lands"), and all of the assets, undertakings and properties of 2811 Development Corporation acquired for, or used in relation to, the development of the Lands and construction of improvements thereon (collectively, the "Property"), and without personal or corporate liability**

1. \_\_\_\_\_  
(Name of Offeror)

2. \_\_\_\_\_  
(Address of Offeror)

3. \_\_\_\_\_  
(Telephone Number) (Facsimile Number) (email address)

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

5. We/I agree, that in the event this offer is accepted, to be bound by the Conditions of Sale dated July ►, 2011 which shall form part of this offer.

6. This Offer is irrevocable and shall remain open for the consideration of the Vendor until 12:00 o'clock Noon Eastern Time on the ► day of ►, 2011.

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

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

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_

By: \_\_\_\_\_

Name: ●

Title: ●

By: \_\_\_\_\_

Name: ●

Title: ●

I/We have authority to bind the Corporation.

**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

## CONDITIONS OF SALE

1. The vendor is Deloitte & Touche Inc., solely in its capacity as the receiver (the “**Vendor**”) appointed pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated June 29, 2011 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**”).
2. Pursuant to these Conditions of Sale, the Vendor is offering for sale the Vendor's and the Debtor's right, title and interest, if any, in the Property as described in the Confidential Information Memorandum (the “**CIM**”) dated July 1, 2011.
3. A listing of the various items comprising the Property is contained in the CIM. All information contained in the CIM, including without limitation, the lists and descriptions of the Property (including, without limitation, the legal description of the Lands), has been prepared solely for the convenience of the party submitting an offer to purchase some or all of the Property ( an “**Offeror**”) and are not warranted to be complete or accurate and do not form part of these Conditions of Sale.
4. The Vendor will only consider en bloc offers for the Lands comprising the Property. Offers may not be submitted for individual parcels of the Lands.

5. Sealed offer marked "Offer – 2811 Development Corporation" shall be delivered or mailed postage prepaid to Deloitte & Touche Inc., 181 Bay Street, Brookfield Place, Suite 1400, Toronto, Ontario, M5J 2V1, to the attention of Ira Gerstein. All offers must be received by the Vendor by 12:00 p.m. Eastern Standard Time on September 23, 2011 (the "**Offer Date**"). The Vendor reserves the right to extend the Offer Date at any time for any reason.
6. Every offer submitted should be in the form of offer attached hereto. Offers received by the Vendor which are not in such form may be rejected. Offers shall be opened by the Vendor in the presence of, and reviewed with, representatives of Firm Capital Mortgage Fund Inc. No Offeror shall be entitled to be present for the opening of offers.
7. The Vendor shall have no obligation, at law or in equity or otherwise, to any Offeror or any other person or party, to:
  - (a) consider any offer which:
    - (i) specifies a purchase price as an amount or percentage in excess of any other offer or otherwise as a function of the purchase price offered by any other Offeror;
    - (ii) has not been fully completed and duly executed;
    - (iii) is not accompanied by the Deposit (as defined below) required hereunder;
    - (iv) has not been delivered to and received at the offices of the Vendor as required hereunder; or

- (b) negotiate with any Offeror after the Offer Date with respect to any provision of the offer or request or agree to any changes therein,

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

8. The Offeror shall, with its offer, deliver to the Vendor the following:

- (a) an amount equal to 10% of the purchase price specified in the Offer by certified cheque or bank draft drawn on or issued by a Schedule 1 Canadian chartered bank or trust company, which shall be held in a non-interest bearing account by the Vendor. If the Offer is accepted by the Vendor said cheque shall be deemed to be a cash deposit (the “**Deposit**”) against the aggregate offered purchase price (the “**Purchase Price**”) and, subject to Court approval of the Offer, the Offeror (hereinafter called the “**Purchaser**”) under an Approved Sale Agreement (as defined below) shall pay the balance of the Purchase Price to the Vendor, by certified cheque or bank draft drawn on or issued by a Schedule 1 Canadian chartered bank or trust company on the Closing Date of the transaction under the Approved Sale Agreement;
- (b) an executed copy of the template agreement of purchase and sale prepared by the Vendor (“**Template Sale Agreement**”), amended to reflect that part of the

Property subject to the Offer (the Template Sale Agreement as amended, the “**Offeror Sale Agreement**”) and any other matters specific to the Offer, which shall be binding and irrevocable until October 7, 2011;

- (c) a comparison of the Template Sale Agreement to the executed and amended Offeror Sale Agreement;
  - (d) a representation of the Offeror that the Offeror has, and written evidence of, available cash and/or a commitment for financing to evidence the Offeror’s ability to close the proposed transaction as the Vendor may reasonably request;
  - (e) a copy of a resolution of the Offeror’s board of directors or similar document demonstrating the Offeror’s authority to make an irrevocable Offer and to execute the transaction contemplated by the Offeror Sale Agreement; and
  - (f) disclosure of the identity of each entity (including its ultimate shareholders) that has submitted the Offer.
9. Following the Offer Date, the Vendor specifically reserves its right to negotiate with any Offeror with respect to any provision of the offer or to request or agree to any changes in any such Offer. The Vendor may choose to take such steps with respect to one or more Offers but the Vendor shall have no obligation to negotiate identical terms with, or extend identical terms to each Offeror. The Vendor reserves its right to request some, but not all, Offerors to submit a revised offer reflecting improved terms or other amendments requested by the Vendor. The Vendor will be under no obligation to provide to each Offeror the opportunity to improve the terms of any offer submitted to the Vendor following the Offer Date.



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

improvements upon the Lands or any other activity utilizing or in connection with any of the Property.

13. Cheques accompanying Offers that are not accepted will be returned to the Offeror by registered mail addressed to the Offeror at the address set out in its Offer or made available for pick up not later than eighteen (18) days following the opening of Offers unless otherwise arranged with the Offeror.
14. The closing of each Approved Sale Agreement shall take place at the office of the Vendor, 181 Bay Street, Brookfield Place, Suite 1400, Toronto, Ontario or at the option of the Vendor, at the offices of the Vendor's solicitors at 11:00 a.m. on the 31<sup>st</sup> day after approval by the Court of the Approved Sale Agreement accepted by the Vendor (the "**Closing Date**") or such other date as the Vendor and the Purchaser may agree.
15. Upon closing of the sale of the Purchased Assets contemplated by the Approved Sale Agreement (the "**Closing**"), the Purchaser shall be entitled, upon receipt by the Vendor of the Purchase Price, to possession of the Purchased Assets and to such bills of sale or assignments as may be considered necessary by the Vendor to convey the Purchased Assets to the Purchaser provided that the Purchaser shall remain liable under the Approved Sale Agreement. Any such deeds, bills of sale or assignments shall contain only a release of the Vendor's interest in the Purchased Assets and shall not contain any covenants.
16. The Purchaser shall pay on closing in addition to the Purchase Price:
  - (a) all applicable federal, provincial and municipal taxes;

- (b) costs, if any, of dismantling or removing the Purchased Assets from their present location and restoring such location to a neat and clean condition; and
  - (c) the cost of repairing any damage caused by dismantling or removal of the Purchased Assets from their present location.
17. The Purchaser shall assume at the Purchaser's cost complete responsibility for compliance with all laws, municipal, provincial or federal in so far as same apply to the Purchased Assets and the use thereof by the Purchaser.
18. The Vendor shall not be required to produce any abstract of title, title deed, or documents or copies thereof or any evidence as to title, other than those in its possession.
19. Prior to the Closing, the Purchased Assets shall be and remain in the possession of and at the risk of the Vendor and the Vendor will hold all policies of insurance effected thereon and the proceeds thereof in trust for the Vendor and the Purchaser as their respective interests may appear. After Closing, the Purchased Assets shall be at the risk of the Purchaser. In the event of substantial damage to the Purchased Assets occurring on or before Closing, the Purchaser may either have the proceeds of the insurance and complete the Approved Sale Agreement or may cancel such Approved Sale Agreement and have the Deposit paid thereunder, returned without interest, costs or compensation of any kind whatsoever. Where any damage is not substantial, the Purchaser shall be obliged to complete the purchase and shall be entitled to the proceeds of insurance referable to such damage, but not to any other costs or compensation whatsoever.

20. All adjustments of such taxes and other items as are specified herein will be made as of Closing under the Approved Sale Agreement. The Purchaser shall arrange its own insurance and there shall be no adjustment with respect to insurance.
21. No adjustments will be allowed by either the Vendor or the Purchaser for changes in the condition or quantity of any of the Property comprising the Purchased Assets. The Vendor shall remain in possession of the Purchased Assets until the Purchase Price therefor has been paid in full. The Purchaser will take possession of the Purchased Assets at Closing.
22. If the Purchaser fails to comply with the Approved Sale Agreement, the Purchaser's deposit shall be forfeited to the Vendor and the Purchased Assets may be resold by the Vendor, and the Purchaser shall pay to the Vendor (i) an amount equal to the amount, if any, by which the Purchase Price under the Approved Sale Agreement exceeds the net purchase price received by the Vendor pursuant to such resale, and (ii) an amount equal to all costs and expenses incurred by the Vendor in respect of or occasioned by the Purchaser's failure to comply with the Approved Sale Agreement.
23. By submitting an Offer, a Purchaser acknowledges that it has inspected the Purchased Assets and that the Purchased Assets are sold on an "as is, where is" basis at the time of Closing and that no representation, warranty or condition is expressed or implied as to title, description, fitness for purpose, merchantability, quantity, conditions or quality thereof or in respect of any other matter or thing whatsoever. Each Purchaser acknowledges that the Vendor is not required to inspect or count, or provide any inspection or counting, of the Purchased Assets or any part thereof and each Purchaser

shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation. It shall be the Purchaser's sole responsibility to obtain, at its own expense, any consents to the transfer of the Purchased Assets and any further documents or assurances which are necessary or desirable in the circumstances. Without limiting the generality of the foregoing, any and all conditions, warranties and representations expressed or implied pursuant to the *Sale of Goods Act* (Ontario) do not apply to the sale of the Purchased Assets and have been waived by the Purchaser.

24. Deloitte & Touche Inc. acts solely in its capacity as Court-appointed receiver of the Property and shall have no personal or corporate liability in connection with the Vendor offering the Property for sale, pursuant to the Conditions of Sale, the CIM or under any Offer, Offeror Sale Agreement or Approved Sale Agreement.
25. The highest or any offer will not necessarily be accepted.
26. The acceptance of any offer and any Offeror Sale Agreement entered into by the Vendor shall be subject to the condition that the sale and the terms thereof be approved by the Court.
27. No Offeror shall be at liberty to withdraw, vary or countermand an Offer once received by the Vendor. Each Offer shall be irrevocable until October 7, 2011.
28. The Vendor, at its sole discretion, may waive or vary any or all of the terms and conditions hereof. The terms and conditions contained herein shall not merge on the Closing of the transaction contemplated by any Approved Sale Agreement but shall

survive such closing and remain in full force and effect and be binding on the Purchaser thereafter.

29. These Conditions of Sale and the validity and interpretation of any offer, Offeror Sale Agreement or Approved Sale Agreement shall be governed by the laws of Ontario, and such agreement shall enure to the benefit of and be binding upon the parties thereto, and their respective heirs, executors, administrators, successors or assigns as the case may be.
30. The submission of an offer by a resident of the province of Quebec shall be deemed to constitute the declaration and acknowledgement by the Offeror that it has requested the Conditions of Sale, the form of the offer referred to herein, any Offeror Sale Agreement and all other documentation relating to its offer and to the acceptance thereof to be drawn up in the English language only.
31. All stipulations as to time are strictly of the essence.
32. Any offer of documents or money hereunder may be made upon the Vendor or the Purchaser, or their respective solicitors. Money may be paid by certified cheque or bank draft drawn on or issued by a Schedule 1 Canadian chartered bank or trust company.
33. The obligations of the Vendor to complete an Approved Sale Agreement shall be relieved if, on or before the Closing of such sale, the Order of the Court approving the subject Approved Sale Agreement is subject to appeal, any of the Purchased Assets subject to the sale have been removed from the control of the Vendor by any means or process, or if any of the Purchased Assets subject to the sale is redeemed, whereupon the only

obligation of the Vendor shall be to return the applicable Deposit, without interest, costs or compensation.

34. The Vendor shall not be bound to sell any of the Property until it is authorized by the Court to accept and enter into an Approved Sale Agreement. The Vendor reserves the right to enter into one or more agreements to sell any or all of the Property at any time and to withdraw any or all of the Property from the sale.

**FIRM CAPITAL MORTGAGE FUND INC.**

and

**2811 DEVELOPMENT CORPORATION**

Applicant(s)

Respondent

Court File No.: CV11-9242-00CL

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

Proceedings commenced at **Toronto**

**SECOND REPORT OF THE RECEIVER  
DATED JULY 20, 2011**

**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# 323801 ID)  
**Danny Nunes** (LSUC # 53802D)  
Tel: 416-304-1616  
Fax: 416-304-1313

Lawyers for the Receiver.



# 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

**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 Notice of Motion dated July 21, 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**”) 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.
2. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the Second 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 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.

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**FIRM CAPITAL MORTGAGE FUND INC.**

and

Applicant

**2811 DEVELOPMENT CORPORATION**

Respondent

Court File No.: **CV11-9242-00CL**

*ONTARIO*

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

Proceedings commenced at Toronto

**ORDER**

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Lawyers for the Receiver.

**FIRM CAPITAL MORTGAGE FUND INC.**

and

**2811 DEVELOPMENT CORPORATION**

Applicant(s)

Respondent

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**MOTION RECORD**

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