

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

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

MOTION RECORD

(Returnable *MAY 10,* 2012)

Date: *MAY 1,* 2012

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TAB 1

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

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

NOTICE OF MOTION
(Returnable *MAY 10*, 2012)

FIRM CAPITAL MORTGAGE FUND INC. will make a motion to the court on *THURSDAY
MAY 10*, 2012 at 10:00 a.m. or soon after that time as the motion can be heard, at
330 University Ave., Toronto.

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

THE MOTION IS FOR an order in the form of the draft attached hereto as Schedule
"A" amending the title of proceedings, substituting Deloitte & Touche Inc. in the place
of Ira Smith Trustee and Receiver as receiver of the property of the respondent, and

amending the receivership order of the Honourable Mr. Justice C.L. Campbell herein dated November 15, 2011.

THE GROUNDS FOR THE MOTION ARE:

1. By an order herein dated November 15, 2011 (the "**Initial Receivership Order**") the Honourable Mr. Justice C. L. Campbell appointed Ira Smith Trustee and Receiver Inc. as Receiver of the Property of the respondent upon the application of The Toronto-Dominion Bank (the "Bank"), the primary secured creditor of the respondent.
2. By an agreement dated as of the 5th day of April, 2012 the Bank assigned the indebtedness owing to it by the respondent together with all of the security held by the Bank as security for repayment of that indebtedness to Firm Capital Mortgage Fund Inc. ("**Firm Capital**").
3. Firm Capital intends to continue this proceeding in reliance upon the assignment from the Bank of its security.
4. The current Receiver, Ira Smith Trustee and Receiver Inc., has consented to an order appointing Deloitte & Touche Inc. in its place and stead as Receiver of the respondent's Property.
5. Deloitte & Touche Inc. has consented to act as Receiver of the Property of the respondent.
6. Rule 11 of the *Rules of Civil Procedure*.

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

1. The affidavit of Michael Warner sworn April 12, 2012 and the exhibits attached thereto;
2. The Initial Receivership Order of the Honourable Mr. Justice C.L.

Campbell dated November 15, 2011; and

3. The pleadings and proceedings herein.

Date: April 23, 2012

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Mortgage Fund Inc.

TAB A

SCHEDULE "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE

DAY, THE
DAY OF APRIL, 2012

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

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

ORDER

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

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

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

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

2.. **THIS COURT ORDERS** that all capitalized terms in this order have the same meaning as in the Initial Receivership Order.

3.. **THIS COURT ORDERS** that this proceeding continue and that the title of the proceeding in all documents issued, served or filed after the date of this order be as follows:

"FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2012241 ONTARIO LIMITED"

Respondent

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

5. **THIS COURT ORDERS** that from and after its issuance the Amended and

Restated Receivership Order shall supersede the Initial Receivership Order.

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

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

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

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

SCHEDULE "A"

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE
JUSTICE

DAY, THE
DAY OF APRIL, 2012

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

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

AMENDED RESTATED RECEIVERSHIP ORDER

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

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

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

ON READING the affidavit of Kenneth Malcolm sworn November 10, 2011 and the exhibits thereto, and the affidavit of Theresa Kellen sworn November 15, 2011 and the exhibits attached thereto and the affidavit of Michael Warner sworn April 12, 2012 and the exhibits thereto (the "Warner Affidavit"), and on reading the consent of Deloitte & Touche Inc. to act as Receiver, and on hearing the submissions of counsel for the applicant, counsel for the respondent and counsel for Deloitte & Touche Inc.,

SERVICE

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

APPOINTMENT

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

LT 1615145, City of Brampton (hereinafter referred to as the "Building"), and including all proceeds thereof (the "Property").

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

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises

or other assets to continue the business of the Debtor or any part or parts thereof;

- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor,
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
- (m) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$150,000; and

- (n) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause; and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, (or section 31 of the Ontario *Mortgages Act*, as the case may be) shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.
- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully

copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from

any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

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

PIPEDA

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

in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the

Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, ranking subordinate in priority to (i) the security held by the Applicant with respect to the Property (including, without limitation, the security referred to in the Warner Affidavit), (ii) the Receiver's Charge, and (iii) the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, but in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any other Person.

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

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

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

GENERAL

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

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

27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this

Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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

30. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than two (2) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

Schedule "A"

RECEIVER CERTIFICATE

CERTIFICATE NO.

AMOUNT \$

1. THIS IS TO CERTIFY that Deloitte & Touche Inc., the receiver (the "Receiver") of the assets, undertakings and properties of 2012241 Ontario Limited acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by the Amended and Restated Receivership Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the _____ day of [MONTH, 20YR] (the "Order") made in an action having Court file number CV-11-9456-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating

charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the day of MONTH, 2012YR.

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

Per:

Name:

Title:

TAB 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

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

AFFIDAVIT OF MICHAEL WARNER

(Sworn April 2th, 2012)

I, Michael Warner, of the city of Toronto in the Province of Ontario, executive,
MAKE OATH AND SAY AS FOLLOWS:

1. I am Vice President, Mortgage Lending with Firm Capital Mortgage Fund Inc. ("Firm Capital") and as such have knowledge of the matters deposed to below. Where I have relied on information from other persons I have identified the source of such information and verily believe it to be true.
2. Firm Capital is an Ontario corporation carrying on business in Ontario and

elsewhere in Canada providing mortgage-secured financing in commercial and industrial real estate markets.

3. By an agreement dated as of the 5th day of April 2012 between The Toronto-Dominion Bank (the "Bank") as assignor and Firm Capital as assignee, the Bank assigned to Firm Capital all of the indebtedness owed to the Bank by the respondent 2102241 Ontario Limited together with all security held by the Bank for repayment of that indebtedness, which security was referred to and identified in the application record delivered by the Bank in support of the application that resulted in the receivership order herein of the Honourable Mr. Justice C. L. Campbell dated November 15, 2011 (the "Initial Receivership Order"). A copy of the written assignment agreement between the Bank and Firm Capital is attached hereto as Exhibit "A".

4. At the time of the assignment of indebtedness and security from the Bank to Firm Capital Ira Smith Trustee and Receiver Inc., appointed Receiver under the Initial Receivership Order, agreed to be replaced as Receiver by Deloitte & Touche Inc. Attached hereto as Exhibit "B" is a copy of the consent of Ira Smith Trustee and Receiver Inc. dated March 29, 2012.

5. Attached hereto as Exhibit "C" is a copy of the consent of Deloitte & Touche Inc. to act as the court-appointed receiver of the Property of the respondent currently subject to the Initial Receivership order.

6. In order that there be no confusion as a result of the substitution of Deloitte & Touche Inc. for Ira Smith Trustee and Receiver Inc. as receiver of the Property of the respondent, Firm Capital is seeking an order that the Initial Receivership Order be amended and that an amended and restated version of the order be issued.

SWORN BEFORE ME

at the city of Toronto, Ontario
this 12th day of April, 2012


A Commissioner, etc.


MICHAEL WARNER

TAB A

THIS is Exhibit "A" referred to in the
the affidavit of Michael Warner
sworn before me this 12th
day of April, 2012



A COMMISSIONER, ETC.

ASSIGNMENT OF DEBT AND SECURITY

THIS AGREEMENT made as of the 5th day of April, 2012.

BETWEEN:

THE TORONTO-DOMINION BANK
3140 Dufferin Street
Toronto, ON M6A 2T1

(hereinafter called the "Lender")

OF THE FIRST PART

- and -

FIRM CAPITAL MORTGAGE FUND INC.
1244 Caledonia Road
Toronto, ON M6A 2X6

(hereinafter called the "Assignee")

OF THE SECOND PART

WHEREAS, as of 2012241 Ontario Limited (the "Debtor") is indebted to the Lender for the sums more particularly described in Schedule "A" hereto, which include principal, interest, costs and fees (collectively, the "Indebtedness");

AND WHEREAS the Lender has been granted and holds the documents more particularly described in Schedule "B" attached hereto (collectively, the "Security") as security for repayment of the Indebtedness;

AND WHEREAS the Assignee has agreed to purchase from the Lender the Indebtedness and the Security;

NOW THEREFORE THIS AGREEMENT WITNESSETH that for good and valuable consideration (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto agree as follows:

1. The Lender does hereby assign to the Assignee absolutely, all of its rights, benefits and advantages in and under the loan agreements as between Lender

and the Debtor related to the Indebtedness including the following commitment letters:

- (a) letter of commitment dated July 3, 2008;
 - (b) letter of commitment dated December 12, 2008;
 - (c) letter of commitment July 28, 2009;
 - (d) letter of commitment dated March 30, 2010;
 - (e) letter of commitment dated June 23, 2010; and
 - (f) letter of commitment dated March 30, 2011 (signed July 7, 2011)
- (collectively, the "Loan Agreements").

- 2. The Lender does hereby assign to the Assignee all of its right, title and interest in and to the Indebtedness.
- 3. The Lender does hereby assign to the Assignee absolutely, all of its right, title and interest in and to the Security together with all supporting documentation (including, without limitation, all supporting certificates, opinions, etc. in connection with same the opinion dated January 29, 2009 from Rose, Persiko, Rakowsky, Melvin LLP), including, without limitation, all of the benefits and advantages to be derived therefrom.
- 4. The assignments herein are each made on the basis that there are no representations, warranties or conditions, express or implied, made by the Lender or by anyone on its behalf or by anyone else with respect to the Indebtedness, the Loan Agreements or the Security, save and except as follows:
 - (a) As of February 8, 2012, the Indebtedness owing by the Debtor to the Lender is as set out in Schedule "A" hereto;
 - (b) The Loan Agreements and the Security listed in Schedule "B" attached hereto forms all of the loan and security documentation with respect to the Indebtedness;
 - (c) The Lender has the right, without further approval and without the consent of any person, to assign, transfer and set over the Indebtedness, the Loan Agreements and the Security to the Assignee; and
 - (d) The Lender has not knowingly done or permitted any act, matter or thing to be done whereby the Indebtedness and the Security or either one of them has been limited, released, postponed, discharged, amended, compromised or assigned, in whole or in part, except as evidenced by the Loan Agreements and the Security or as disclosed, in writing, to the Assignee.

The representations and warranties of the Lender contained in this Paragraph 4 shall not merge and shall survive the closing of the transaction contemplated herein.

5. The Assignee acknowledges and agrees that it is accepting the assignment of the indebtedness, the Loan Agreements and the Security on an "as is" basis, without recourse against the Lender in any respect, except that this Paragraph 5 shall not apply to any breach of or inaccuracy with respect to any of the Lender's representations and warranties under Paragraph 4 of this Assignment Agreement.
6. The Assignee hereby undertakes and agrees to register such documents, file such statements and give such notices as may be required to record the assignment of the Security and the Assignee and its solicitors are hereby authorized to do so, to the extent that the Lender's consent and authorization is required at all appropriate registry offices in respect of the Security.
7. The Lender shall concurrently with the execution of this Assignment Agreement deliver such original copies of the Security and the Loan Agreements to the Assignee as are in the Lender's possession and forthwith any other originals that come into the Lender's possession.
8. The parties hereto hereby agree and undertake to the other at the sole cost and expense of the requesting party, to execute such further and other documents or assurances as may be necessary to give effect to the assignment of the indebtedness and the Security.
9. The Assignee agrees that the enforcement of, and all other dealings with, the Loan Agreements, the indebtedness and the Security shall be done in the name of the Assignee and not in the name of the Lender and the Lender consents to the transmittal order in respect of any litigation or proceeding relating to the indebtedness.
10. The Assignee acknowledges and agrees that apart from the representations made by the Lender in paragraph 4 hereof, the Assignee has satisfied itself on all matters with respect to the Loan Agreements, the indebtedness and the Security and the assignment thereof and has not relied on the Lender or anyone on the Lender's behalf with respect to any such matters.
11. This Assignment Agreement constitutes the entire agreement between the Lender and the Assignee with respect to the subject matter hereof and there are no other terms, conditions, provisos, agreements, warranties or representations, other than those expressly contained herein.
12. This Assignment Agreement may be signed in counterparts and each of such counterpart shall constitute an original document and all of which counterparts taken together shall constitute one and the same instrument.
13. Executed copies of this Assignment Agreement may be delivered by fax at the applicable facsimile number shown below and shall be conclusively deemed to have been executed and delivered and shall be binding on the party delivering such faxed copy upon receipt by the other party hereto of such faxed copy:

If to the Lender:

THE TORONTO-DOMINION BANK
3140 Dufferin Street
Toronto, ON M6A 2T1

Attention: Kenneth Malcolm
Telecopier Number: (416)785-5068

If to the Assignee:

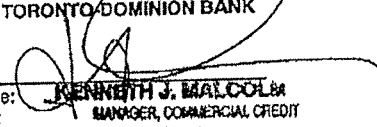
FIRM CAPITAL MORTGAGE FUND INC.
1244 Caledonia Road
Toronto, ON M6A 2X5

Attention: Michael Warner
Telecopier Number: (416)835-1713

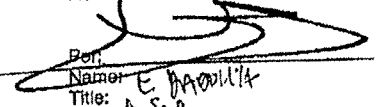
- 14. This Assignment Agreement shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable herein.
- 15. This Assignment Agreement shall be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties have executed this Assignment Agreement this on the date first written above.

THE TORONTO-DOMINION BANK

Per: 
 Name: KENNETH J. MALCOLM
 Title: MANAGER, COMMERCIAL CREDIT
 I have authority to bind the Lender

FIRM CAPITAL MORTGAGE FUND INC.

Per: 
 Name: E. BADILLA
 Title: A.S.O.
 I have authority to bind the Corporation

SCHEDULE "A"

50 SUNNY MEADOW BOULEVARD, BRAMPTON, ONTARIO
BORROWER: 2012241 ONTARIO LIMITED
LOAN EXPOSURE AS AT FEBRUARY 8, 2012

Direct

Principal	\$12,299,975.00	
Extension Fee	\$50,000.00	
Interest	<u>\$321,478.08</u>	
Total		\$12,680,851.08

Costs Incurred and Paid

CBRE Limited	\$5,650.00	
Bank's Counsel (January 25, 2012)	\$80,680.35	
Receiver (December 31, 2012)	\$160,497.58	
Receiver's Counsel (December 31, 2012)	\$36,883.82	
Total		<u>\$263,711.75</u>
Total Principal and Interest and Costs to date		\$12,944,562.83

SCHEDULE "B"
SECURITY

1. Promissory Note in the original principal amount of \$12,000,000.00.
2. Charge/Mortgage registered October 20, 2008 as Instrument No. PR1554408 given by 2012241 Ontario Limited in favour of The Toronto-Dominion Bank in the original principal amount of \$12,500,000.00.
3. Guarantees by each of 1611161 Ontario Limited, Ravinder Singh Chahal, and Jagdev Dhaliwal.
4. General Security Agreement given by 2012241 Ontario Limited.
5. General Security Agreement given by 1611161 Ontario Limited.
6. Assignment of Sale Agreements given by 2012241 Ontario Limited.
7. Undertaking to Complete given by 2012241 Ontario Limited and 161161 Ontario Limited.
8. Non-Merger Acknowledgement given by 2012241 Ontario Limited and 161161 Ontario Limited.
9. Assignment of Insurance Proceeds given by 2012241 Ontario Limited.
10. General Hypothecation of Stocks and Bonds given by 2012241 Ontario Limited.
11. Assignment of Term Deposits and Credit Balances given by 2012241 Ontario Limited.
12. Acknowledgement of Priority and Standstill Agreement dated October 31, 2008 and registered as Instrument No. PR1681378 on August 5, 2009.
13. Inter-Lender Agreement made among The Toronto-Dominion Bank, 2012241 Ontario Limited, 1448037 Ontario Limited, 1611161 Ontario Limited, Ravinder Singh Chahal and Jagdev Dhaliwal dated September 22, 2009 and registered as Instrument No. 1720150 on October 15, 2009.
14. Charge/Mortgage registered on February 21, 2008 as Instrument No. PR1418741 given by 2012241 in favour of 1448037 Ontario Limited in the original principal amount of \$400,000.00 as transferred to The Toronto-Dominion Bank by Transfer of Charge registered on November 15, 2009 as Instrument No. PR1720151.
15. Charge/Mortgage registered on September 25, 2008 as Instrument No. PR1539845 given by 2012241 in favour of 1448037 Ontario Limited in the original principal amount of \$864,700.00 as transferred to The Toronto-Dominion Bank by Transfer of Charge registered on November 15, 2009 as Instrument No. PR1720152.

UNDERTAKING

TO: First Capital Mortgage Fund Inc.

RE: The Toronto-Dominion Bank Transfer of Charge registered as Instrument No. PR1539845 (the "Charge") to First Capital Mortgage Fund Inc. (the "Assignee") with respect to the property municipally known as 50 Sunny Meadow Circle, Brampton, Ontario

In consideration of the completion of the above-noted transaction, the undersigned hereby undertakes to update and deliver to the Assignee a revised Schedule "A" to the Assignment of Debt and Security, thereby showing the undersigned's total loan exposure pursuant to the Charge as at the closing date of the above-noted transaction, as soon as practicable after determining the undersigned's total principal, interest and cost owing pursuant to the Charge.

Dated this 5th day of April, 2012.

THE TORONTO-DOMINION BANK

Per:


 Name: **KENNETH J. MALCOLM**
 Title: **MANAGER, COMMERCIAL CREDIT**

I have authority to bind the bank

UNDERTAKING

TO: Firm Capital Mortgage Fund Inc.

AND TO: Meyer, Wassenaar & Banach, LLP, its solicitors ("MWB")

RE: The Toronto-Dominion Bank Transfer of Charge registered as Instrument No. PR1539845 (the "Charge") to FC Mortgage Credit Corp. (the "Assignee") with respect to the property municipally known as 50 Sunny Meadow Circle, Brampton, Ontario

In consideration of the completion of the above-noted transaction, the undersigned hereby undertakes as follows:

- a) to deliver all original signed documents in our possession
- b) to pay to City of Brampton-Treasurer, all realty taxes due and owing, up to a total of \$36,000.00, and provide MWB with copies of same
- c) that the Toronto-Dominion Bank will pay the Receiver and the Receiver's counsel, all costs and expenses, up until the date of closing
- d) that the Toronto-Dominion Bank will pay the costs and expenses of its own counsel

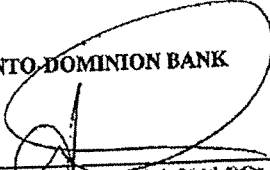
Transmission by fax of this Undertaking shall be as binding upon the undersigned as if executed and delivered in the original.

Dated this 5th day of April, 2012.

THE TORONTO DOMINION BANK

Per: _____

Name:
Title:


KENNETH J. MACCOLL
MANAGER, COMMERCIAL CREDIT

I have authority to bind the bank

TAB B

THIS is Exhibit "B" referred to in the
the affidavit of Michael Warner
sworn before me this 12th
day of April, 2012


A COMMISSIONER, ETC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

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

CONSENT

The undersigned, Ira Smith Trustee & Receiver Inc. ("ISTR") hereby consents to an Order discharging ISTR as receiver, without security, of all of the assets, undertakings and properties of 2012241 Ontario Limited (the "Debtor") and appointing Deloitte & Touche Inc. as receiver, without security, of all of the assets, undertakings and properties of the Debtor in its place, provided, however, that notwithstanding its discharge ISTR shall continue to have the benefit of the provisions of all Orders made in these proceedings, including, all approvals, protections and stays of proceedings in favour of ISTR, in its capacity as receiver of the Debtor.

DATED at Toronto, this 29th day of March, 2012.

IRA SMITH TRUSTEE & RECEIVER INC.

Per:



Name: Ira Smith
Title: President

THE TORONTO-DOMINION BANK

- and -

2012241 ONTARIO LIMITED

Applicant

Respondent

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

CONSENT

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

D. Robb English (LSUC # 19862F1B)
Tel: (416) 865-4748
Fax: (416) 863-1515
E-mail: renglish@airdberlis.com

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
E-mail: iaversa@airdberlis.com

Lawyers for The Toronto-Dominion Bank

TAB C

THIS is Exhibit "C" referred to in the
the affidavit of Michael Warner
sworn before me this 12th
day of April, 2012



A COMMISSIONER, ETC.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

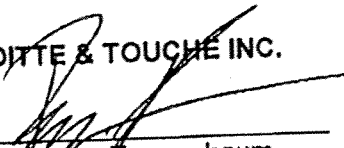
**APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND
INSOLVENCY ACT, R.S.C. 1985, c. B-3, as amended and SECTION 101 OF
THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43, as amended**

CONSENT

The undersigned, Deloitte & Touche Inc. hereby consents to act as
Receiver, without security, of all of the assets, undertakings and properties of the
respondent 2012241 Ontario Limited.

Dated at Toronto this 11th day of April, 2012.

DELOITTE & TOUCHE INC.

Per: 
Name: Bryan Tannenbaum
Title: Senior Vice President

THE TORONTO-DOMINION BANK
Applicant

2012241 ONTARIO LIMITED

Respondent

- and -

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

CONSENT OF DELOITTE & TOUCHE INC.

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

Martin G. Banach (LSUC# 15852N)

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

Lawyers for Firm Capital Mortgage
Fund Inc.

TOR01: 4894316: v1

TAB 3



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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE *mf*) TUESDAY, THE 15TH
JUSTICE *Cr Campbell*) DAY OF NOVEMBER, 2011
)

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

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

ORDER

THIS APPLICATION made by the Applicant, *ex parte*, for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Ira Smith Trustee and Receiver Inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2012241 Ontario Limited (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

- 2 -

ON READING the affidavit of Kenneth Malcolm sworn November 10, 2011 and the exhibits thereto, and the affidavit of Theresa Kellen sworn November 15, 2011 and the exhibits attached thereto and on hearing the submissions of counsel for Applicant and on reading the consent of Ira Smith Trustee and Receiver 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 and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Ira Smith Trustee and Receiver Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

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;

- 4 -

- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$150,000; and
 - (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; and

- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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 in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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 first charge on the Property in priority to all 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, 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 by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$250,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to 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.

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 "A" 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.

GENERAL

24. **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.

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

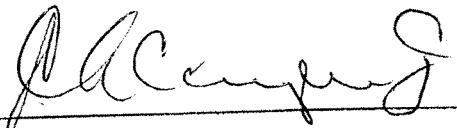
26. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

27. **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.

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

29. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than ^{Two (2) Clk} ~~seven (7)~~ days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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

NOV 15 2011

RECEIVED 

Schedule "A"

RECEIVER CERTIFICATE

CERTIFICATE NO.

AMOUNT \$

1. THIS IS TO CERTIFY that Ira Smith Trustee and Receiver Inc., the receiver (the "Receiver") of the assets, undertakings and properties 2012241 Ontario Limited acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the _____ of MONTH, 20YR (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, but subject to the priority of the charges set out in the Order and in the Bankruptcy and Insolvency Act, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

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

DATED the _____ day of MONTH, 20YR.

Ira Smith Trustee and Receiver Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____
Name:
Title:

TAB 4

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

)

FRIDAY, THE 25TH DAY

JUSTICE

MESKUK

)

OF NOVEMBER, 2011.

BETWEEN:



THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

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

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as court appointed receiver of the Respondent (the "**Receiver**"), for an Order requiring the principals of the Respondent and its counsel to deliver certain documents and funds, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated November 24, 2011, and the Appendices thereto (the "**First Report**") and on hearing submissions from counsel to the Receiver, to the Applicant and any other stakeholders present,

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

2. **THIS COURT ORDERS** that the Order of the Honourable Mr. Justice Campbell dated November 15, 2011, be and the same is hereby amended by inserting at paragraph 2 the following wording: "including but not limited to the municipal property known as 50 Sunny Meadows Circle in Brampton, Ontario" and whose legal description is Pt of Lt 11, Con 5 East of Hurontario St, des as Pts 6 and 7, Pl 43R21902. S/T an easement In favour of Brampton Hydro Electric Commission and The Corporation of the City of Brampton Over Pt of Lt 11, Con 5 EHS, des as Pt 7, Pt 43R21902 as in LT1615145, City Of Brampton in the definition of "Property" (hereinafter referred to as the "**Building**")".

3. **THIS COURT ORDERS** that Sikder Professional Corporation, Barristers and Solicitors, shall transfer to Blaney McMurtry LLP, all deposits presently held by it, in trust, for all purchases of the units in the Building within 72 hours of the date of this Order. In this regard, this Court Orders and appoints Blaney McMurtry LLP as escrow agent for the sole purposes of holding the said trust fund deposits without liability.

4. **THIS COURT ORDERS** that Sikder Professional Corporation shall deliver up ~~within 72 hours of the date of this Order~~ ^{by 12} copies of all documents and accounting relating to the purchase and sale of the condominium units, including but not limited to:

- (a) All agreements of purchase and sale, including amendments thereto;
- (b) All documents relating to all interim occupancies;

Handwritten notes:
✓ by 12
Cyclo of business on November 29 2011 ✓ [Signature]
~~72 hours of the date of this Order~~

- (c) Detailed trust ledger and reconciliation in respect of all deposits and releases of deposits;
- (d) All directions signed by purchasers permitting the disbursements to 2012241 of deposits held in trust by you;
- (e) All correspondence and documentation exchanged between Sikder and all purchasers and their solicitors;
- (f) All draft condominium documents including draft declaration, by-laws and condominium plans, *in its possession* *PLW*
- (g) Details of all occupancy fees being paid; and
- (h) All documents requested by the Receiver in his November 16, 2011 letter.

5. **THIS COURT ORDERS** that Jagdev Dhaliwal, Jagden Dhaliwal, Jasdew Dhaliwal and Ravinder Chahal (the "**Principals**") provide responses to all requests contained in the Receiver's requests contained in its letter of November 16, 2011 (and attached as Schedule "A" to this Order) on or before the close of business on November 29, 2011.

6. **THIS COURT ORDERS** that if the Principals fail to comply with paragraph 4 of this Order, the Receiver shall be free to bring a contempt motion against the Principals on three calendar days' notice.

Meslin G.

REGISTERED AT / INSERTE A TORONTO
 DIV / BOOK NO:
 LE / DANS LE REGISTRE NO.:

NOV 25 2011

REG/PAF *[Signature]*

Schedule "A"



167 Applewood Cres. Suite 6, Concord, ON L4K 4K7
 Phone: 905.738.4167
 Fax: 905.738.9848
 irasmithinc.com

Ira Smith
 Phone: 905.738.4167 ext. 111
 Email: ira@irasmithinc.com

November 16, 2011

VIA EMAIL ravi@chahalwilshire.com

VIA EMAIL dhaliwalj10@hotmail.com

Mr. R. Chahal, Project Manager
 2012241 Ontario Limited
 c/o 470 Chrysler Drive Unit 20
 Brampton, ON L6S 0C1

Mr. J. Dhaliwal, President
 2012241 Ontario Limited
 c/o 7420 Airport Road Unit 105
 Mississauga, Ontario L4T 1E5

Dear Sirs

2012241 Ontario Limited ("2012241")
 Receivership Order dated November 15, 2011
 50 Sunny Meadow Blvd., Brampton, ON (the "Building")

We are writing further to the meeting last evening between Mr. and Mrs. Chahal and our Messrs. I. Smith, B. Smith and M. Wolfe. We advise that on November 15, 2011, The Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (Commercial List) made an Order (the "Appointment Order") appointing Ira Smith Trustee & Receiver Inc. as Receiver (the "Receiver") of the assets, undertakings and properties of 2012241. We enclose a copy of the Appointment Order and the file directions issued yesterday. We confirm that both Mr. and Mrs. Chahal were each provided with a copy of the Appointment Order last evening.

Paragraphs 4 and 5 of the Appointment Order require all persons with notice of the Appointment Order to deliver all Property (as defined in the Appointment Order) and books, records and all documents in their possession to the Receiver. We obtained certain records last evening from the 50 Sunny Meadow Blvd. premises, but many records we would have expected to have seen were not stored in the main floor office.

Although this listing is not meant to be exhaustive, we would have expected to have found, and taken possession of at least the following additional records of 2012241:

1. Quantity Surveyor reports and Architect's Certificates.
2. Contracts with contractors and suppliers for both the construction and ongoing maintenance and property management of the Building.
3. All files relating to the construction of the Building, including all Statutory Declarations and/or lien claims (both registered and unregistered) of the trades used in the construction of the Building.
4. Bank statements and cancelled cheques for all accounts maintained by 2012241 whether at The Toronto-Dominion Bank or elsewhere.
5. The documents relating to all secured indebtedness and leases of equipment.
6. Accounting records and software showing full disclosure of the affairs of 2012241.
7. Minute Book, corporate seal and other corporate records, financial statements and income tax returns.
8. Statements received from Canada Revenue Agency, Workers' Safety and Insurance Board and various provincial and municipal government agencies.
9. Payroll records.
10. Extension Agreements for all Agreements of Purchase and Sale.
11. Identification of the whereabouts and amount of all deposits being held relating to Agreements of Purchase and Sale, by purchaser.
12. Identification of the whereabouts and amount of all security deposits and last month's rent being held from tenants of the Building.
13. All Offers to Lease and Leases from prospective or actual tenants of the Building.
14. The current rent roll for the Building.
15. Extension Agreements for all Agreements of Purchase and Sale entered into with purchasers of the condominium units.
16. Licenses required for the operation of the Building and machinery and equipment located thereon.
17. Occupancy Certificates.

18. The declaration and the description required to register a condominium building under the *Ontario Condominium Act, 1998* S.O. 1998, CHAPTER 19.
19. Documentation relating to owners paying phantom rent for the units they are respectively using.
20. Paid and unpaid billings for the supply of goods and services for the Building, including, but not limited to, property tax, hydro, water and gas.
21. Documentation to clearly identify all assets, properties and undertakings of 2012241 in addition to the Building.
22. A copy of all insurance policies/insurance endorsements detailing the insurance coverage held by 2012241 in relation to the Building, any vehicles and any other assets being insured.

As new information becomes available to us, we will update this listing, although it is your responsibility to deliver all Property of 2012241 without receiving specific requests from us, otherwise, you will be in contravention/contempt of the Appointment Order.

As you know, as Court-appointed Receiver, we are an Officer of the Court and we act on behalf of all the creditors of 2012241 and we must report our actions, activities and all issues concerning this receivership administration to the Court. We must be able to quickly identify the location of all of the assets, properties and undertakings of 2012241 and take possession of same. As indicated above, all persons with notice of the Appointment Order, including you, have a positive duty to disclose the whereabouts of all such assets, properties and undertakings and deliver them to the Receiver immediately.

We therefore advise that we require knowing the whereabouts of, and for you to deliver to the Receiver, all such assets, properties and undertakings of 2012241. We confirm that last evening, our Mr. I. Smith and Mr. Chahal agreed that they would meet at 3PM today, in order for Mr. Chahal to provide Mr. Smith with complete disclosure concerning 2012241's affairs, however, at 12:03PM today by email, Mr. Chahal cancelled the meeting without rescheduling. As you can appreciate, this occurrence is disappointing, and we still require full disclosure and possession of all of 2012241's assets, properties and undertakings immediately. We look forward to your immediate cooperation. Please contact us immediately to make satisfactory arrangements.

We are copying our independent legal counsel, Mr. D. Magisano of Blaney McMurtry LLP with this communication.

Yours truly,

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court-appointed Receiver of
2012241 Ontario Limited



Per:

Ira Smith
President

Enc

cc Mr. D. Magisano - Blaney McMurtry LLP - dmagisano@blaney.com (letter only)

THE TORONTO-DOMINION BANK
Applicant

- and -

2012241 ONTARIO LIMITED
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

MOTION RECORD
(Returnable *March 10,* 2012)

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

Martin G. Banach (LSUC# 15852N)

Tel: (416) 223-9191
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Lawyers for Firm Capital Mortgage
Fund Inc.