

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

MOTION RECORD OF RECEIVER FOR APPROVAL OF SALE

VOL. 1

(Motion returnable January 7, 2013)

December 14, 2012

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TAB 1

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

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**

NOTICE OF MOTION

Deloitte & Touche Inc., in its capacity as receiver (the "**Receiver**") of the undertaking, property and assets of the respondent 2012241 Ontario Limited (the "**Debtor**") will make a motion to a judge presiding over the Commercial List on Monday, January 7, 2013 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 an order substantially in the form of the draft attached hereto as Schedule "A":

1. if necessary, abridging the time for service of the notice of motion and motion record herein and dispensing with further service thereof;

2. approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**New Bond Purchase Agreement**") between the Receiver and New Bond Properties Inc. in Trust (the "**Purchaser**") dated as of December 12, 2012;
3. vesting in the Purchaser, or its nominee, the Debtor's right, title and interest in and to the Assets, as such term is defined in the New Bond Purchase Agreement (the "**Assets**"), including the land and proposed condominium building known municipally as 50 Sunny Meadow Blvd., Brampton, Ontario (the "**Property**");
4. authorizing the law firm of Meyer, Wassenaar & Banach LLP to make certain payments from the trust funds held by them with respect to the purchase of units in the Property in accordance with Appendix "P" to the Second Report of the Receiver dated December 14, 2012 (the "**Second Report**");
5. approving the Receiver's Statement of Receipts and Disbursements contained in the Second Report;
6. approving the Receiver's activities and fees and disbursements and those of its counsel as set forth in the Second Report; and
7. granting such other relief as may be required in the circumstances.

THE GROUNDS FOR THE MOTION ARE:

1. The Debtor's primary asset is the Property which consists of a commercial condominium project which is substantially complete but which has not yet been registered as a condominium.
- 2.. Pursuant to the Amended and Restated Receivership Order of the Honourable

Mr. Justice C. L. Campbell herein dated May 10, 2012 (the "**Appointment Order**") the Receiver was authorized and directed to market the Property as therein defined in a manner approved by the court, including advertising and soliciting offers in respect of the Property and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.

3. By the order herein of the Honourable Mr. Justice Morawetz dated August 30, 2012 the court approved the Marketing Process proposed by the Receiver and set forth in the Receiver's First Report dated June 15, 2012 and authorized the Receiver to offer the Property for sale in accordance with that Marketing Process.

4. The Receiver has completed the Marketing Process but did not receive any offer sufficient to repay the first priority mortgage of the applicant Firm Capital Mortgage Fund Inc. ("**Firm Capital**") on the Property.

5. As a result, the Receiver has received an offer to purchase the Property from New Bond Properties Inc., a company related to Firm Capital, which the Receiver has accepted (the "**New Bond Offer**") subject to approval of this court.

6. For the reasons set forth in more detail in the Second Report, the Receiver recommends that its acceptance of the the New Bond Offer be approved as it represents the best recovery possible in the circumstances.

7. Prior to the appointment of the Receiver the Debtor had entered into a number of agreements (the "**Unit Purchase Agreements**") to sell units in the Property pursuant to which a number of purchasers ("**Unit Purchasers**") paid deposits which were held in trust by the Debtor's former lawyers, Sikder Professional Corporation. Certain of those deposits (the "**Trust Deposits**") were transferred to the law firm of Meyer, Wassenaar & Banach LLP to be held in trust pursuant to the May 10, 2012 order of the Honourable Mr. Justice C. L. Campbell.

8. The August 30, 2012 order of the Honourable Mr. Justice Morawetz authorized the Receiver to terminate, on 30 days notice, the Unit Purchase Agreements in the event that the Receiver received an offer to purchase the Property that it was prepared to accept and recommend to the court for approval. The New Bond Offer is such an offer. The Receiver has not yet terminated the Unit Purchase Agreements, but intends to do so forthwith.

9. Upon the termination of the Unit Purchase Agreements the Unit Purchasers thereunder will be entitled to the refund of purchase deposits paid by them to the Debtor and held in trust pursuant to their agreements and the Receiver is recommending that those deposits, to the extent that they can be identified in the trust records obtained from the Debtor and its former lawyers, be refunded.

10. The Receiver's activities, Statement of Receipts and Disbursements and its fees and disbursements, including the fees and disbursements of its legal counsel, Borden Ladner Gervais LLP, as set forth in the Second Report are reasonable and ought to be approved.

11. 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;
2. The affidavits of Bryan A. Tannebaum and John D. Marshall sworn December 7 and December 13, 2012 respectively; and
3. Such other material as counsel may advise and this Honourable Court permit.

December 14,, 2012

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TAB A

SCHEDULE "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) MONDAY, THE 7th DAY OF
JUSTICE)
) JANUARY, 2013

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. c. D.43, as amended**

APPROVAL, VESTING AND DISTRIBUTION ORDER

THIS MOTION, made by DELOITTE & TOUCHE INC. in its capacity as the court-appointed receiver (the "**Receiver**") of all of the assets, undertakings and properties of the respondent (the "**Debtor**"), for an order (i) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**New Bond**")

Purchase Agreement") between the Receiver and New Bond Properties Inc. in Trust (the "**Purchaser**") dated as of December 12, 2012 and attached in redacted form as Appendix "M" to the Second Report of the Receiver dated December 14, 2012 (the "**Second Report**"), (ii) vesting in the Purchaser, or its nominee, the Debtor's right, title and interest in and to the Assets, as such term is defined in the New Bond Purchase Agreement (the "**Assets**"), (iii) authorizing the law firm of Meyer, Wassenaar & Banach LLP to make certain payments from the trust funds held by them with respect to the purchase of units in the Debtor's condominium project at 50 Sunny Meadow Blvd., Brampton, Ontario in accordance with Appendix "P" to the Second Report, (iv) approving the Receiver's Statement of Receipts and Disbursements attached as Appendix "Q" to the Second Report, and (v) approving the Receiver's activities, fees and disbursements as set forth in the Second report, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and the appendices attached thereto, the affidavit of Bryan A. Tannenbaum sworn December 7, 2012 (the "**Tannenbaum Fee Affidavit**") and the affidavit of John D. Marshall sworn December 13, 2012 (the "**Marshall Fee Affidavit**"), and on hearing the submissions of counsel for the Receiver, the Debtor, the Applicant and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service filed herein,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver's notice of motion and motion record dated December 14, 2012 is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL AND VESTING

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the New Bond Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such

additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Assets described in the New Bond Purchase Agreement and listed on Schedule "B" hereto shall vest absolutely in the Purchaser, or in whomsoever it may direct or nominate, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, and all agreements of purchase and sale, reservation contracts and leases (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Initial Receivership Order herein of The Honourable Mr. Justice C. L. Campbell dated November 15, 2011 as amended by the Amended and Restated Receivership Order herein of the Honourable Mr. Justice C.L. Campbell dated May 10, 2012; (ii) all charges, security interests, agreements, leases or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Land Titles Act* (Ontario) or any other personal or real property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the assumed encumbrances listed on Schedule "D" hereto) and (iv) any other Claims registered or arising prior to the registration of this Order (the "**Additional Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances and Additional Encumbrances affecting or relating to the Assets are hereby expunged and discharged as against the Assets.

4. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to direct the person nominated by the Purchaser to take title to the Assets to draw the mortgage representing the full purchase price under the Transaction in favour of, and

deliver it to, Firm Capital Mortgage Fund Inc. in accordance with the provisions of the New Bond Purchase Agreement.

5. **THIS COURT ORDERS** that upon the registration in the Brampton Land Registry Office (No. 43) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser, or whomsoever it may nominate or direct, as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule "C" hereto.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be

void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

APPROVAL OF ACTIVITIES

10. THIS COURT ORDERS that (i) the Second Report of the Receiver, (ii) the activities of the Receiver described therein, (iii) the statement of receipts and disbursements contained therein, and (iv) the fees and disbursements of the Receiver described therein and in the Tannenbaum Fee Affidavit and the Marshall Fee Affidavit be and are hereby approved.

SEALING

11. THIS COURT ORDERS that the Confidential Information Memorandum and the summary of the offers received and marked as Confidential Appendices "I" and "L" respectively to the Second Report, be and are hereby sealed until the filing with the Court of the Receiver's Certificate, or upon further order of the Court.

TRUST DEPOSITS

12. THIS COURT ORDERS that the law firm of Meyer, Wassenaar & Banach LLP is hereby authorized and directed (i) to make payments from the trust funds received and held by it in trust pursuant to the order herein of the Honourable Mr. Justice C. L. Campbell dated May 10, 2012 (the "**Trust Funds**") to the persons, and in the amounts, set forth in Schedule "E" attached hereto, together with any interest earned on such amounts from November 25, 2011 to the date of payment, and (ii) to pay any balance of the Trust Funds remaining to the Receiver.

AID AND RECOGNITION

13. 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.

SCHEDULE "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an order herein of The Honourable Mr. Justice C. L. Campbell of the Ontario Superior Court of Justice (the "**Court**") dated November 15, 2011 as amended and restated by an order herein of the said Honourable Mr. Justice C. L. Campbell dated May 10, 2012, Deloitte & Touche Inc. was appointed as the receiver (the "**Receiver**") of the assets, undertakings, and properties of the respondent 2012241 Ontario Limited (the "**Debtor**") as described in the said orders.

B. Pursuant to an order of the Court dated January 7, 2013, the (the "**Approval Order**") the Court approved the agreement of purchase and sale made as of December 12, 2012 (the "**New Bond Purchase Agreement**") between the Receiver and New Bond Properties Inc. in Trust (the "**Purchaser**") and provided for the vesting in the Purchaser, or whomsoever it may direct or nominate, of the Debtor's right, title and interest in and to the Assets as defined in the New Bond Purchase Agreement, which vesting is to be effective with respect to the Assets upon the delivery by the Receiver to

the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in section 4 of the New Bond Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the New Bond Purchase Agreement and the Approval Order.

THE RECEIVER CERTIFIES the following:

1. The Purchaser or its nominee has paid and the Receiver has received the Purchase Price for the Assets payable on the Closing Date pursuant to the New Bond Purchase Agreement;
2. The conditions to Closing as set out in section 4 of the New Bond Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

DELOITTE & TOUCHE INC., in its capacity as Receiver of the assets, undertakings and properties of 2012241 Ontario Limited, and not in its personal capacity

Per: _____

Name:

Title:

SCHEDULE "B" –ASSETS

The Lands

The right, title and interest of the Debtor in the real property described as PIN No.14223-0956 (LT) being PT of LT 11, Con 5 East of Hurontario St. DES as PTS 6 and 7, PL 43R21902. S/T 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, PL 43R21902 as in LT1615145. Subject to an Easement in gross over parts 3 & 4 on reference plan 43R33711 as in PR2106932, City of Brampton, Regional Municipality of Peel

Brampton Land Registry Office (No. 43)

Municipally known as 50 Sunny Meadow Circle, Brampton, Ontario;

and

The Plans.

SCHEDULE C – Claims to be deleted and expunged from title to the Real Property

Reg. Num.	Date	Instrument Type	Amount	Parties From	Parties To
PR1418741	2008/02/21	Charge	\$400,000.00	2012241 Ontario Limited	1448037 Ontario Limited
PR1418749	2008/02/21	Notice of Assignment of Rents - General		2012241 Ontario Limited	1448037 Ontario Limited
PR1539845	2008/09/25	Charge	\$864,070.00	2012241 Ontario Limited	1448037 Ontario Limited
PR1539924	2008/09/26	Notice of Assignment of Rents – General		2012241 Ontario Limited	1448037 Ontario Limited
PR1554408	2008/10/20	Charge	\$12,500,000.00	2012241 Ontario Limited	The Toronto- Dominion Bank
PR1569920	2008/11/18	Postponement		1448037 Ontario Limited	The Toronto- Dominion Bank
PR1569921	2008/11/18	Postponement		1448037 Ontario Limited	The Toronto- Dominion Bank
PR1569922	2008/11/18	Postponement		1448037 Ontario Limited	The Toronto- Dominion Bank
PR1569923	2008/11/18	Postponement		1448037 Ontario Limited	The Toronto- Dominion Bank
PR1681378	2009/08/05	Notice	\$2.00	The Toronto- Dominion Bank	
PR1720150	2009/10/15	Notice	\$2.00	The Toronto- Dominion Bank	
PR1720151	2009/10/15	Transfer of Charge		14480317 Ontario Limited	The Toronto- Dominion Bank

PR1720152	2009/10/15	Transfer of Charge		14480317 Ontario Limited	The Toronto-Dominion Bank
PR1785468	2010/03/03	Application (General)		H S G Properties Incorporated	
PR1803331	2010/04/12	Postponement		H S G Properties Incorporated	The Toronto-Dominion Bank
PR2176035	2012/04/10	Transfer of Charge		The Toronto-Dominion Bank	Firm Capital Mortgage Fund Inc.
PR2176036	2012/04/10	Transfer of Charge		The Toronto-Dominion Bank	Firm Capital Mortgage Fund Inc.
PR2176037	2012/04/10	Transfer of Charge		The Toronto-Dominion Bank	Firm Capital Mortgage Fund Inc.

PPSA REGISTRATIONS

FILE NUMBER	SECURED PARTY
647532792	Firm Capital Mortgage Fund Inc.
648818028	1448037 Ontario Limited
652974381	1448037 Ontario Limited

SCHEDULE D – Assumed Encumbrances related to the Real Property**(unaffected by the Vesting Order)****Permitted Encumbrances for PIN No. 14223-0956 (LT)**

Reg. Num.	Date	Instrument Type	Parties From	Parties To
43R18419	1991/03/07	Plan Reference		
43R21191	1995/09/11	Plan Reference		
LT1615145	1996/02/01	Transfer Easement		Brampton Hydro Electric Commission The Corporation of the City of Brampton
43R21902	1996/11/14	Plan Reference		
LT2057426	2000/03/27	Notice (Pearson Airport Zoning Regulation)	Her Majesty the Queen in right of the Department of Transport Canada	
PR1138739	2006/09/19	Notice	The Corporation of the City of Brampton	
PR1591143	2009/01/08	Notice	The Corporation of the City of Brampton	
43R33711	2010/12/23	Plan Reference		
PR2106932	2011/11/14	Transfer Easement	2012241 Ontario Limited	Hydro One Brampton Networks Inc.

SCHEDULE "E"

PAYEE NAME	UNIT	DEPOSIT	INTEREST
1253237 Ontario Inc. & Pirthi Singh Samra jointly	213	\$48,018.75	\$403.94
Amargit Masuta	200	\$32,633.70	\$0.00
Teri Ote Consulting Corp. & Gurcharan Singh jointly	314	\$42,918.75	\$385.54
Ranvinder Singh & Rajbir Singh jointly	318, 319	\$53,616.75	\$481.27
2262248 Ontario Inc. & Ranbir Singh Gill	206, 207	\$68,835.00	\$171.56
Dr. Surinder Singh Sidhu Medicine Professional Corporation, Five Rivers Rehabilitation Centre Ltd. and Surinder Sidhu, jointly	220, 221	\$54,570.00	\$314.04
Taranjit Atwal	214	\$46,500.00	\$76.00
2238104 Ontario Inc.	110	\$47,200.00	\$379.97
2140822 Ontario Inc. and Harmanjot Dhillon, jointly	109	\$79,050.00	\$436.27
Navdeep Singh Johal	205	\$25,545.00	\$262.99
Harvinder Singh Gill	208, 209	\$44,118.75	\$326.45
2263105 Ontario Inc. & Daljit Singh Gill, jointly	202	\$35,997.00	\$221.27
Balwant Singh Brar	201	\$28,420.50	\$257.88
1827107 Ontario Inc. & Lakhbir Singh Dhaliwal, jointly	218, 219	\$40,135.08	\$291.93
Sumit Kaur Hansra, Harmanjot Dhillon, Jagvinder Hansra and Major Hansra, jointly	308, 309	\$36,091.00	\$315.65

Gurdev Singh Dhaliwal & Majit Dhaliwal, jointly	216, 217	\$38,418.42	\$273.10
Taranjit Basra & Narinder Basra, jointly	320, 321	\$55,590.00	\$504.39
Jasbir Singh Chahal & Gagandeep K. Chahal, jointly	323, 324	\$30,514.00	\$60.89
1553351 Ontario Inc.Top Kat Investments Inc.	302	\$58,372.00	\$0.00
Top Kat Investments Inc.	303	\$57,732.00	\$0.00
Sikder Professional Corporation	211	\$34,466.25	\$143.04
Sikder Professional Corporation	112	\$86,340.00	\$430.48
Sikder Professional Corporation	216, 217	\$15,000.00	\$0.00
Sikder Professional Corporation	205	\$10,140.00	\$0.00
Sikder Professional Corporation	208, 209	\$16,965.00	\$0.00
Sikder Professional Corporation	201	\$12,918.00	\$0.00
Sikder Professional Corporation	218,219	\$15,000.00	\$0.00

TAB 2

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

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**SECOND REPORT OF THE RECEIVER
DATED DECEMBER 14, 2012**

INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated May 10, 2012, as well as an amended and restated receivership Order also dated May 10, 2012 (collectively, the “**Appointment Orders**”), Deloitte & Touche Inc. (“**Deloitte**”) was appointed as the receiver (the “**Receiver**”) 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, including but not limited to the municipal property known as 50 Sunny Meadow Boulevard in Brampton, Ontario (the “**Property**”, or the “**Project**”). Copies of the Appointment Orders are attached hereto as Appendix “**A**”.
2. As set out in the Appointment Orders, Deloitte was appointed as substituted Receiver, replacing Ira Smith Trustee & Receiver Inc. (the “**Former Receiver**”) who had been appointed by an order dated November 15, 2011.
3. The Appointment Orders 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 \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$150,000; and
 - (b) with the approval of the Court in respect of any transaction in which the purchase price exceeds \$50,000 or exceeds \$150,000 in the aggregate.
4. On June 18, 2012, the Receiver issued its First Report to the Court (the "**First Report**") for the purpose of, among other things, seeking an Order of the Court approving the marketing plan (the "**Marketing Process**") proposed by the Receiver for the sale of the Property. A copy of the First Report, without attachments, is attached hereto as Appendix "**B**".
5. On June 28, 2012, the Receiver issued a Supplement to the First Report (the "**First Supplement**") to clarify certain statements contained in the First Report relating to certain leases and agreements of purchase and sale of certain units. A copy of the First Supplement, without attachments, is attached hereto as Appendix "**C**".
6. On July 17, 2012, the Receiver issued another Supplement to the First Report (the "**Second Supplement**") to address certain issues raised by legal counsel to certain parties who purchased proposed condominium units in the Project and who objected to the Marketing Process. A copy of the Second Supplement, without attachments, is attached hereto as Appendix "**D**".
7. By Order of the Court dated August 30, 2012 (the "**Marketing Order**"), the Court approved the Marketing Process, authorized the Receiver to terminate (on 30 days notice) all lease and purchase and sale agreements respecting all units of the Property in the event that an acceptable offer to purchase the Property was received, and approved the activities and conduct of the Receiver as set out in the First Report, First Supplement and Second Supplement. A copy of the Marketing Order is attached hereto as Appendix "**E**".
8. The Appointment Orders, Marketing Order, together with related Court documents, the previous reports of the Receiver (the "**Previous Reports**"), and the Notice and Statement of the Receiver, have been posted on the Receiver's website at www.deloitte.com/ca/SunnyMeadow.
9. The purpose of this second report of the Receiver (the "**Second Report**") is to:

- (a) report on the results of the operations of the Property for the receivership period commencing on the date of the Appointment Orders to October 31, 2012;
- (b) provide a summary of the Marketing Process and all other marketing activities undertaken by the Receiver with respect to the Property since the Marketing Order; and
- (c) provide the Court with the evidentiary basis to make an Order:
 - (i) authorizing and directing the Receiver to accept the offer from New Bond Properties Inc. in Trust ("**New Bond**") to purchase the Debtor's and the Receiver's right, title and interest, if any, in the Property (the "**New Bond Offer**") more particularly described below;
 - (ii) authorizing and directing the Receiver to enter into and carry out the terms of the agreement of purchase and sale entered into between the Receiver and New Bond with respect to the Property, subject to court approval, dated December __, 2012 (the "**New Bond Purchase Agreement**") together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Property in New Bond, or such other entity as it may direct, upon closing of the New Bond Purchase Agreement;
 - (iii) sealing as confidential the CIM referred to in paragraph 19 (e) below and the summary of offers received by the Receiver pursuant to the Marketing Process and referred to below as Confidential Appendix "F";
 - (iv) approving the activities of the Receiver as described in the Second Report including, without limitation, the steps taken by the Receiver pursuant to the Marketing Process and the rejection of all offers other than the New Bond Offer;
 - (v) directing the return of purchase deposits currently held in trust for certain purchasers of units in the Project pursuant to their unit purchase agreements;
 - (vi) approving a distribution of any available net proceeds to Firm Capital as defined in paragraph 16 and authorizing the Receiver to make additional distributions to Firm Capital in such amounts as the Receiver deems appropriate in partial repayment of Firm Capital's secured advances to the Debtor;

- (vii) approving the professional fees and disbursements of the Receiver and its independent counsel, Borden Ladner Gervais LLP (“**BLG**”), for the period ending October 31, 2012; and
- (viii) approving the Receiver’s Statement of Receipts and Disbursements for the period from May 10, 2012 to October 31, 2012.

TERMS OF REFERENCE

- 10. 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 obtained by the Former Receiver, and certain other information prepared by the Former Receiver, and information prepared by Firm Capital Properties Inc. (the “**Property Manager**”) (collectively the “**Information**”). 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. With the exception of the November 25, 2011 trust summary and related documentation referred to in paragraphs 31 to 40 below, the Receiver has not relied upon the Information for the purpose of making the recommendations contained herein.
- 11. Unless otherwise stated, all dollar amounts contained in the Second Report are expressed in Canadian dollars.
- 12. Capitalized terms not otherwise defined in the Second Report are as defined in the Previous Reports or the Appointment Orders.

BACKGROUND

- 13. The Project consists of sixty-four (64) commercial units intended to be, but not yet, registered as a condominium corporation. The building is comprised of approximately 54,100 square feet on two acres of land located near the Brampton Civic Hospital, and was marketed by the Debtor as a medical and professional office building. The building remains largely vacant, except for a small number of finished units which are occupied or leased.
- 14. Consistent with the Fourth Report of the Former Receiver, a significant amount of information and records of the Company and its financial affairs are missing or incomplete.

15. As set out in the First Report, according to the Former Receiver, the Debtor did not have any employees. However, in correspondence with representatives of the Canada Revenue Agency (“**CRA**”), the Receiver was informed that the Debtor has a registered payroll tax account number. CRA advised the Receiver that the account appeared inactive. To date, the Receiver has not received any communications from anyone purporting to be a former employee of the Debtor.

INDEPENDENT LEGAL OPINION ON VALIDITY AND ENFORCEABILITY OF FIRM CAPITAL’S SECURITY

16. As set out in the First Report, this proceeding was commenced in November, 2011 by The Toronto-Dominion Bank (“**TD Bank**”) which was then the Debtor’s first priority secured lender with loans outstanding in excess of \$12 million. As security for those loans, TD Bank held, among other things, a mortgage or charge on the Property registered in the applicable Land Titles Office as Instrument No. PR1554408 (the “**Mortgage**”). Copies of the Mortgage and the title abstract for the Property dated May 12, 2012 were attached to the First Report as Appendices “**C**” and “**D**”, respectively. In April, 2012 TD Bank assigned its debt and all security it held therefor, including the Mortgage, to Firm Capital Mortgage Fund Inc. (“**Firm Capital**”). On May 10, 2012 Justice Campbell granted an Order to proceed pursuant to which Firm Capital became the applicant in this proceeding. A copy of the updated title abstract is attached hereto as Appendix “**F**”.
17. Also as set out in the First Report, the Receiver has obtained an independent opinion from its legal counsel, BLG, that the Mortgage now held by Firm Capital (the “**Firm Capital Mortgage**”) is a valid and enforceable first charge on the Property. The Receiver has also obtained an opinion from BLG that a general security agreement assigned by TD Bank to Firm Capital and containing a security interest in all of the Debtor’s undertaking, property and assets, is a valid and enforceable first-registered security with respect to the Property and all proceeds thereof, pursuant to the Ontario *Personal Property Security Act*. A copy of the general security agreement is attached hereto as Appendix “**G**”.
18. The title abstract shows only one other registered secured interest, that being a construction lien claim registered by Versa Construction Limited (“**Versa**”). Although the Versa construction lien claim was registered subsequent to the registration of the Firm Capital Mortgage, the Receiver has been informed that Versa has issued a statement of claim in the lien action and has claimed priority over the Firm Capital Mortgage. As noted in more detail in paragraph 29 below, the

Receiver has been informed by Firm Capital that it intends to take steps to have the Versa lien claim vacated from title prior to the completion of the proposed New Bond Purchase Proposal described in paragraphs 26 and following, below.

THE MARKETING PROCESS

19. Following issuance of the Marketing Order, the Receiver and Deloitte & Touche Real Estate Group ("**Deloitte Real Estate**") took the following steps in accordance with the Marketing Process:
- (a) developed a list of potential purchasers based on a database maintained by Deloitte Real Estate, expressions of interest received by the Receiver from interested parties, and the Receiver's experience and contacts;
 - (b) over three e-mail blasts on separate days, sent a marketing teaser which contained an information overview document outlining the Property to more than 244 recipients at over 130 different real estate investment, development, service firms, along with a confidentiality agreement to be executed in order to receive further information in respect of the Property (together, the "**Flyer**"). A copy of the Flyer is attached hereto as Appendix "**H**";
 - (c) obtained signed confidentiality agreements from 33 parties who expressed an interest in the Property;
 - (d) prepared and placed in a password-protected electronic data room detailed information with respect to the Property for potential purchasers who signed a confidentiality agreement;
 - (e) prepared a confidential information memorandum ("**CIM**"), a copy of which is marked as Confidential Appendix "**I**" hereto, providing detailed information in respect of the Property, which was sent to all potential purchasers who executed a confidentiality agreement;
 - (f) posted to the electronic data room the Conditions of Sale and Form of Offer approved pursuant to the Marketing Order, copies of which are attached hereto as Appendix "**J**", along with the CIM and template agreement of purchase and sale,

- (g) placed advertisements in The Globe and Mail newspaper's Report on Business - Real Estate section on September 13, 2012 and September 18, 2012, copies of which are attached hereto as Appendix "K";
- (h) placed a marketing sign outside the Property;
- (i) performed targeted queries to major brokerages, health care REITs, and other prospective purchasers to whom the Flyer was provided;
- (j) circulated this opportunity to representatives of Deloitte's Infrastructure Advisory and Project Finance Group and other Deloitte practitioners serving the real estate sector in general;
- (k) assisted in responding to inquiries from prospective purchasers throughout the Marketing Process;
- (l) provided periodic reporting to Firm Capital regarding the status of the Marketing Process;
- (m) provided potential purchasers with access to the data room, additional requested information, tours of the Property and access to the Property Manager, as required; and
- (n) set October 17, 2012 as the deadline for the submission of binding offers to purchase the Property (the "Offer Date").

OFFERS RECEIVED

20. Pursuant to the Marketing Process, prospective purchasers were required to submit bids by the Offer Date. Four offers were received. As authorized by the Marketing Order, the Receiver reviewed the terms of all of the offers with Firm Capital. Following the Receiver's review of all submitted offers, the Receiver exercised its option pursuant to the Conditions of Sale to request some, but not all, offerors to submit revised offers reflecting improved terms or other amendments requested by the Receiver. A summary of the offers (with revisions) to purchase the Property submitted to the Receiver is marked as Confidential Appendix "L" hereto. The Receiver has not attached the summary of offers as it is concerned that public disclosure of those offers would prejudice the marketing process if the recommended New Bond Offer referred to below is not approved, or does not close, and the Receiver is obliged to continue marketing the Property.

21. The Receiver discussed all of the offers with Firm Capital and Firm Capital was not prepared to support the acceptance of any of the offers as even the highest offer was not sufficient to repay the amount of Firm Capital's outstanding mortgage debt, including principal, interest and costs, as well as the Receiver's fees and disbursements in connection with the Receivership.
22. The outstanding indebtedness of the Debtor to Firm Capital, secured by the Firm Capital Mortgage, together with the related costs of enforcement, not including the Receiver's fees, costs and disbursements, as of November 15, 2012 is as follows:

Principal	\$12,573,492.00
Accrued Interest	815,291.64
Principal and Accrued Interest	<u>\$13,388,783.64</u>
Property Taxes	56,225.64
Outstanding Charges, including Costs of Enforcement	768,449.52
Total	<u>\$14,213,458.80</u>

23. As Firm Capital is the primary secured creditor and, based on the foregoing, the party with the greatest economic interest in the sale of the Property, the Receiver did not accept any of the offers.
24. The Receiver believes, and has advised Firm Capital, that the highest offer received by the Receiver (as disclosed on the summary of offers) is the best price that could be expected on the open market in the present circumstances after a thorough marketing process and taking into account that the Debtor itself attempted, unsuccessfully, to refinance the Project and sell the units for a considerable time prior to the initial receivership order in November, 2011. The Receiver is therefore of the opinion that it would not be economically advisable to continue or reopen the marketing process.
25. The Receiver has been informed by Firm Capital that it also approached the highest bidder on the list of offerors in an attempt to elicit a higher purchase price but was unsuccessful in that regard. Firm Capital has therefore submitted an offer to the Receiver which represents, in effect, a credit bid of its mortgage debt.

THE FIRM CAPITAL / NEW BOND PURCHASE PROPOSAL

26. Based on the foregoing, Firm Capital has presented an offer to the Receiver to purchase the Property through a nominee company (the New Bond Offer) the essential terms of which are as follows:

- (a) the purchaser is New Bond in Trust, a corporation that is related to Firm Capital and is not an arms-length entity independent from Firm Capital;
- (b) upon approval of the transaction New Bond intends to direct title to be taken by a company to be incorporated (“Newco”);
- (c) the purchase price is equal to the highest purchase price received by the Receiver from the offerors listed on the summary of offers referred to herein as Confidential Appendix “L”;
- (d) the consideration for the purchase consists entirely of the delivery of a mortgage on the real property for the full purchase price from Newco to the Receiver on the condition that the Receiver be authorized by the Court to direct Newco to draw the mortgage in favour of, and deliver it to, Firm Capital;
- (e) the offer contains no material variation of the form of template sale agreement provided by the Receiver to other potential purchasers, save that there is no due diligence condition; and
- (f) the offer is conditional on the purchaser obtaining vacant possession of the Property, which requires that the Receiver exercise its power to terminate all leases and agreements of purchase and sale with respect to the units as referred to in paragraph 7 above.

A copy of the New Bond Purchase Agreement, with the purchase price redacted, is attached hereto as Appendix “M”.

27. As noted above, the New Bond Purchase Agreement is essentially a credit bid. The Receiver has been informed by Firm Capital that the reason for the structure of the New Bond Purchase Agreement is as follows. Firm Capital is a wholly-owned subsidiary, of Firm Capital Mortgage Investment Corporation (“FCMCI”), a publicly-traded company, and acts as a nominee for FCMCI and others in connection with mortgage investments. As such, for income tax and accounting reasons Firm Capital does not take equity positions in real estate investments. Newco

is to be incorporated for the specific purpose of taking title to the Property and Firm Capital intends to capitalize Newco by way of a loan secured by the mortgage to be granted to Firm Capital for the full amount of the purchase price. Firm Capital has further informed the Receiver that it is its intention, if the sale is approved, to have the Project completed and registered as a condominium and to approach existing unit purchasers about the possibility of entering into new purchase or lease arrangements with Newco.

28. The Receiver has accepted the New Bond Offer and has entered into the New Bond Purchase Agreement, subject to approval of this Court.
29. The New Bond Offer contemplates the vesting of title free and clear of encumbrances, save for certain permitted encumbrances. As noted in paragraph 18 above, Versa has registered a construction lien against the Property for which it claims priority over the Firm Capital Mortgage. The Receiver has been informed by Firm Capital that its counsel is taking steps either to settle the lien claim or have it vacated from title prior to the closing of the New Bond Purchase Agreement. The Versa lien will therefore not constitute an encumbrance as of the effective date of any vesting order issued by the court in favour of Newco.
30. The Receiver recommends that this Court authorize the Receiver's acceptance of the New Bond Offer and authorize the Receiver to carry out the terms of the New Bond Purchase Agreement for the following reasons:
 - (a) the Marketing Process conducted by the Receiver and Deloitte Real Estate resulted in a broad and thorough exposure of the Property to the marketplace;
 - (b) following consultation with Deloitte Real Estate, the Receiver has concluded that it is unlikely it would obtain a superior offer for the Property if it rejected the New Bond Offer and continued to canvass the market, included after taking into account continuing receivership costs, accruing mortgage interest, maintenance and repair costs and the likely deterioration in value of the Property which is still not registered as a condominium and remains, for the most part, unoccupied; and
 - (c) based on the offers received in the course of the Marketing Process it is evident that there would not be full recovery for Firm Capital as first secured creditor and there would be no recovery at all for the other subordinate or unsecured creditors of the Debtor were any of those offers accepted.

TRUST DEPOSIT REFUND CLAIMS

31. The Debtor's records obtained by the Receiver from the Former Receiver indicate that at the time of the initial receivership order in this proceeding the Debtor had pre-sold approximately 29 units in the Project. Those pre-sales took 2 forms. According to the documents obtained by the Receiver from the Debtor, early on in the development of the project a number of potential purchasers apparently entered into "Reservation Contracts" pursuant to which deposits were paid to reserve a unit with the intention of entering into a more formal agreement of purchase and sale after construction commenced. In most cases the vendor under the Reservation Contracts was not the Debtor, but rather D.S.C. Developments ("D.S.C."), which the Receiver believes was a related entity controlled by the Debtor or its principals. The records show that most, but apparently not all, of the Reservation Contracts were cancelled and replaced by formal agreements of purchase and sale under which the Debtor was the vendor.
32. The agreements of purchase and sale called for deposits which were to be paid by way of cheque or bank draft. Prior to the receivership the Debtor's lawyer was Sikder Professional Corporation ("Sikder"). According to the Debtor's records, and records obtained from Sikder, deposit cheques and drafts were received by Sikder from time to time with respect to certain of the units. Those deposits were to be held in trust until the closing of the sales in accordance with the provisions of the *Ontario Condominium Act, 1998*.
33. At the time of the initial receivership order Sikder was directed to pay all trust deposits then in its possession to the law firm of Blaney, McMurtry LLP, the lawyers for the Former Receiver. When Deloitte replaced the Former Receiver those trust deposits were ordered to be transferred to the law firm of Receiver's real estate counsel, Meyer, Wassenaar & Banach LLP ("MWB"), and they were so transferred.
34. Details of the transferred trust deposits are contained in a trust summary prepared by Sikder, dated as of November 25, 2011, that was provided to Blaney McMurtry. That summary, a copy of which is attached hereto as Appendix "N" indicated that the trust funds held by Sikder totaled \$1,153,415.17. However, by a letter dated January 26, 2012 Sikder advised that the figures contained in the November 25, 2011 summary were not accurate as Sikder had "over-remitted" funds to the extent of \$55,023 and that he would be seeking return of that amount. A copy of Sikder's January 26, 2012 letter is attached hereto as Appendix "O". To date Sikder has not sought return of any of the trust funds.

35. As noted above, the Marketing Order authorized the Receiver to terminate, on notice, all leases and agreements of purchase and sale upon receipt of an acceptable offer to purchase the Property. The Receiver has not yet exercised that power but intends to do so forthwith. Upon such terminations the purchasers on whose behalf deposit funds are currently held in trust will be entitled to refunds.
36. The Receiver has already received requests from a number of unit purchasers for refunds of purchase deposits. However, in a number of cases the purchasers' names or the unit(s) they claim to have purchased do not appear on the November 25, 2011 Sikder summary. The records obtained from Sikder are not sufficiently clear to permit the Receiver to reconcile a number of these claims.
37. Sikder provided back-up documentation for the November 25, 2011 trust summary, consisting of copies of its trust ledgers for individual units, copies of agreements of purchase and sale, copies of trust cheques and bank drafts and other documentation related to the funds reflected in the summary. The Receiver and its counsel have reviewed all of that documentation and, for the most part is satisfied that deposits made by the purchasers listed on the November 25, 2011 can be traced to the trust ledgers provided by Sikder. Details of that tracing are contained in a memorandum attached hereto as Appendix "P".
38. The Receiver therefore recommends that the court authorize the Receiver and MWB to release the trust deposits to those purchasers identified in Appendix "P" in the amounts set forth in that Appendix. Purchasers with claims for the return of deposits that are not listed on the November 25, 2011 trust summary may have recourse against the Debtor or Sikder, but the Receiver is not in a position to determine the validity of any such claims.
39. It should be noted that the total of the funds referred to in the November 25, 2011 summary are comprised of both purchase deposits and occupancy fees together with interest accrued on both without distinction. The Receiver has been advised by its legal counsel that under the Ontario *Condominium Act, 1998* (s.81) purchase deposits must be held in trust but those trust provisions do not apply to occupancy fees. Accordingly it would appear that the funds described as occupancy fees in the November 25, 2011 summary should not be refunded to the purchasers but rather form part of the Debtor's estate.

40. The refunds proposed by the Receiver are net of the over-remittances claimed by Sikder and referred to in paragraph 34 above. The Receiver therefore recommends that the court authorize MWB to return the over-remittances of \$55,023 to Sikder in trust and pay to the Receiver any balance left in its hands after paying the refunds set forth in Appendix "P" and the over-remittances.

OTHER ACTIVITIES OF THE RECEIVER

41. In addition to the activities set out in the First Report, the Receiver has undertaken the following activities in accordance with the terms of the Appointment Orders:
- (a) corresponded with the Property Manager with respect to operations, tenants and occupants, and banking matters;
 - (b) attended to queries from unit holders, tenants, and occupants;
 - (c) made arrangements to remain on the Property Manager's insurance policy which was renewed for a one year term effective June 30, 2012;
 - (d) followed up with Nacora Insurance Brokers Ltd. and collected the retained premium in connection with the insurance policy it originated with the Former Receiver;
 - (e) requested that the Former Receiver provide the cash on hand in its receivership trust account which totalled \$95,426.71 as at May 2, 2012, of which a total of \$25,000 has been remitted to the Receiver as at the date of this Report; and
 - (f) ensured payment of property taxes to the City of Brampton, and upon receipt and review of the Property Assessment Change Notice, and the updated property tax bill in September, 2012, made arrangements with Firm Capital for Firm Capital to directly pay the increased tax amounts, commencing on the installment due on October 15, 2012, due to insufficient funds on hand with the Receiver.
42. As set out in the First Report, the Receiver reviewed quotes obtained by the Former Receiver with respect to parts and construction related repairs to the non-functional air conditioning system which was damaged prior to the date of the Appointment Orders. The Property Manager investigated this damage and obtained an alternate and more cost effective quote. The Receiver promptly approved the Property Manager's funding request and this matter was remedied.

43. As set out in the First Report, the Receiver contacted CRA which opened a new account with respect to harmonized sales tax (“HST”) effective the date of the Appointment Orders. CRA attended at the Receiver’s office on August 21, 2012 and November 1 and 9, 2012 to perform an audit of the Debtor’s HST account for the pre-receivership period. As of the date of the Second Report, the Receiver is not in possession of CRA’s Examiner’s Statement of Account or Notice of Assessment for the pre-receivership period.
44. Upon substantial completion of its administration and prior to seeking its discharge and termination of the receivership proceedings, the Receiver will make arrangements with CRA to perform an HST audit with respect to the period after the date of the Appointment Orders.
45. CRA also opened a new HST account for the Former Receiver with respect to its part of the receivership administration. The Receiver understands from CRA that an audit was scheduled to be performed at the office of the Former Receiver on November 8, 2012. On December 4, 2012, the Former Receiver informed the Receiver that it has since remitted \$8,574.96 in accordance with the findings of CRA’s audit. The Former Receiver has advised that it will forward the remaining funds to the Receiver upon receipt of an assessment for CRA with respect to the period after September 30, 2012, for which there is no activity on part of the Former Receiver. The Receiver will follow up with the Former Receiver to ensure these funds are collected in January, 2012.
46. The Receiver also made arrangements with CRA to perform an audit of the Company’s payroll tax account on November 6, 2012. There is no payroll tax liability according to CRA’s Examiner’s Statement of Account dated November 6, 2012.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

47. Attached hereto as Appendix “Q” is the Receiver’s Statement of Receipts and Disbursements (“R&D”) for the period May 10, 2012 to October 31, 2012. The R&D reflects receipts and disbursements of the Receiver, as well as the Property Manager. As at October 31, 2012, the closing cash balance was approximately \$66,000. No distributions have been made from the receivership trust account to date.

DISTRIBUTION

48. As set out earlier in this report, the Receiver has obtained an independent opinion from its legal counsel that the Firm Capital Mortgage constitutes a valid and enforceable first charge on the Property, subject to the usual qualifications.
49. The mortgage statement obtained from Firm Capital, and attached hereto as Appendix "R", indicates that the total indebtedness of the Debtor for principal and accrued interest secured by the mortgage amounts to \$13,388,783.64. In addition, Firm Capital remitted \$56,225.64 directly to the City of Brampton in connection with the October 15, 2012 property tax instalment, and there are outstanding and other charges, including incurred costs of enforcement to date, in the approximate amount of \$768,449.52 as referred to in paragraph 22 above. Accordingly, if the New Bond Purchase Agreement is approved Firm Capital will incur a shortfall on its mortgage debt and there will be no proceeds generated from the receivership administration available for distribution to other secured and unsecured creditors of the Debtor.

OTHER LEGAL PROCEEDINGS

50. By motion dated January 24, 2012, the Former Receiver sought relief in connection with certain transferred funds and an Order restraining the sale, disposition or encumbrance of certain real property in Orangeville, Ontario. This matter has since been resolved among the respective parties and the motion was dismissed by an Order dated July 20, 2012 (the "Orangeville Order"). A copy the Orangeville Order is attached hereto as Appendix "S". The Receiver has since collected the settlement amount in this regard.
51. In its Second Report the Former Receiver reported that in December, 2008 the Debtor may have paid real estate commissions to HomeLife Miracle Realty Ltd. ("**HomeLife Miracle**") in connection with the pre-sale of units in the Project notwithstanding the fact that none of the sales had closed. It was also suggested that one of the principals of the Debtor may have been connected to HomeLife Miracle. HomeLife Miracle apparently denied that it had received any payments respecting unit sales related to the Project. The Former Receiver requested additional documentation from HomeLife Miracle but it was apparently not received. Although the alleged payments, if made, may have been questionable, considering the date of the alleged payments, the total amount involved and the costs that would be incurred in investigating and possibly litigating

the matter, the Receiver has concluded that it would not be economically sensible to take any further steps in connection with this matter.

PROFESSIONAL FEES

52. The Receiver and BLG have maintained detailed records of their professional time and costs since the issuance of the Appointment Orders. Pursuant to paragraph 18 of the Amended and Restated Appointment Order, the Receiver and its legal counsel were directed to pass their accounts from time to time before this Court.
53. The total fees of the Receiver during the period from May 2, 2012 to October 31, 2012, amount to \$246,901.50, together with expenses and disbursements in the sum of \$252.71 and HST in the amount of \$32,130.05, totalling \$279,284.26 (the "**Receiver's Fees**"). The time spent by the Receiver is more particularly described in the Affidavit of Bryan Tannenbaum, a Senior Vice President of Deloitte, sworn December 7, 2012 (the "**Tannenbaum Affidavit**") and filed in support of the Receiver's motion referred to in this Report. A copy of the Tannenbaum Affidavit is attached hereto as Appendix "**T**".
54. The total legal fees incurred by the Receiver during the period April 5, 2012 to October 31, 2012 for services provided by BLG as the Receiver's independent legal counsel amount to \$246,537.00, together with disbursements in the sum of \$9,029.12 and HST in the amount of \$33,191.36, totalling \$288,757.48. The time spent by BLG personnel is more particularly described in the Affidavit of John Marshall, a Partner of BLG, sworn December 13, 2012 (the "**Marshall Affidavit**") filed in support of the Receiver's motion referred to in this Report. A copy of the Marshall Affidavit is attached hereto as Appendix "**U**".
55. The Receiver has not paid any fees and disbursements incurred by the Receiver and its legal counsel as of the date of the Second Report.

RECEIVER'S RECOMMENDATIONS

56. For the reasons set out above, the Receiver recommends that the Court make an Order:
 - (a) approving the activities of the Receiver as described in the Second Report including, without limitation, the steps taken by the Receiver pursuant to the Marketing Process;

- (b) authorizing and directing the Receiver to enter into and carry out the terms of the New Bond Purchase Agreement together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Property in New Bond upon closing of the New Bond Purchase Agreement;
- (c) sealing as confidential the summary of offers received by the Receiver pursuant to the Marketing Process referred to herein as Confidential Appendix "L" and the CIM referred to as Confidential Appendix "I";
- (d) authorizing the Receiver and MWB to refund certain purchase deposits currently held in trust by MWB to unit purchasers in accordance with Appendix "P" hereto, and to retain the occupancy fees and interest thereon;
- (e) approving the professional fees and disbursements of the Receiver, its independent legal counsel, BLG, for the period ending October 31, 2012; and
- (f) approving the Receiver's Statement of Receipts and Disbursements for the period from May 10, 2012 to October 31, 2012.

All of which is respectfully submitted at Toronto, Ontario this 14TH day of December, 2012.

DELOITTE & TOUCHE INC.

solely in its capacity as the
Court-appointed receiver of
2012241 Ontario Limited and
without personal or corporate liability

Per: 

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

APPENDIX "A"

A

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.
JUSTICE C. L. CAMPBELL

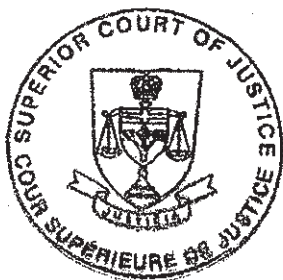
THURSDAY, THE 10th
DAY OF MAY, 2012

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 & 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 Debtor, counsel for Ira Smith Trustee & Receiver Inc., counsel for The Toronto-Dominion Bank 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

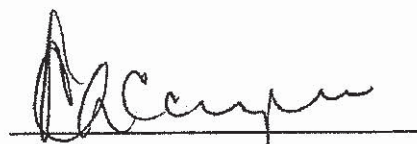
(b) all funds received by Ira Smith Trustee & Receiver Inc. in its capacity as Receiver, net of any authorized disbursements, together with all banking records relating thereto.

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.

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



MAY 10 2012



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE C. L. CAMPBELL

THURSDAY, THE 10th
DAY OF MAY, 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 AND 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 Debtor, counsel for Ira Smith Trustee & Receiver Inc., counsel for The Toronto-Dominion Bank 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.

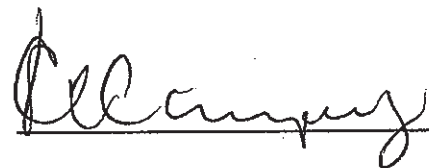
29. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver 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.

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



MAY 10 2012



Schedule "A"

RECEIVER'S 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 10th day of May, 2012 (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: