

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

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

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

**SUPPLEMENT TO THE THIRD REPORT OF THE RECEIVER
DATED NOVEMBER 11, 2011**

PURPOSE OF THIS REPORT

1. By Order of the Court dated June 29, 2011, Deloitte & Touche Inc. was appointed as receiver (the “Receiver”) of all of the lands and premises known municipally as 5789, 5811, 5933, 5945 and 5951 Steeles Avenue East, Toronto, Ontario and more particularly described in Schedule “A” to the Appointment Order and all of the assets, undertakings and properties of 2811 Development Corporation acquired for, or used in relation to, the development of the Lands and construction of improvements thereon, including all proceeds thereof.
2. As set out in the Third Report of the Receiver dated November 3, 2011 (the “Third Report”), the Receiver is recommending, in a motion to be heard on November 15, 2011, that the Court grant an order, *inter alia*, authorizing and directing the Receiver to enter into and carry out the terms of the Mady Agreement and vesting title to the Property in

Mady, or as it may further direct in writing, upon closing of the Mady Agreement and the delivery of the Receiver's Certificate to Mady.

3. The purpose of this Supplement to the Third Report (the "**Supplementary Report**") is to:
 - (a) provide further information to the Court with respect to the charges, mortgages and claims registered against the Property; and
 - (b) recommend that, in the event that the Mady Agreement is approved by the Court and the Receiver's Certificate filed with the Court, the Court authorize and direct the Receiver to send a letter, substantially in the form of the draft attached as **Appendix "A"** hereto, to each of the Unit Purchasers at their last known addresses based on the books and records of the Debtor, in connection with the Unit Purchasers' potential rights to recover their deposits under the Lombard deposit insurance facility.

TERMS OF REFERENCE

4. In preparing the Supplementary Report and making the comments contained herein, the Receiver has been provided with and has relied upon unaudited financial information, the Debtor's books and records, financial information prepared by the Debtor and its advisors, and discussions with management of the Debtor, among other things. The Receiver has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, the Receiver expresses no opinion or other form of assurance on the information contained in the Supplementary Report.
5. Unless otherwise provided, all capitalized terms not otherwise defined in this Supplementary Report are as defined in the Third Report.
6. The Supplemental Report should be read in conjunction with the Third Report.

CLAIMS AGAINST THE LANDS

7. As set out in greater detail in the Third Report, Firm Capital, White Bear, Pendragon, Lombard, Con-Drain and MCD have registered charges/mortgages or claims against title to the Lands or against portions of the Lands as of October 26, 2011.
8. The Receiver has been informed by these secured creditors that the following aggregate amounts are due to them for outstanding principal, interest, fees and other amounts as of November 15, 2011, unless otherwise stated:

Creditor	Outstanding Amount
Firm Capital	\$18,239,434.72
White Bear	\$ 2,347,200.33 ¹
Pendragon	\$ 7,801,962.99 ²
Pendragon	\$ 1,405,631.72 ³
Pendragon	\$ 1,239,776.35 ⁴
Lombard	\$12,727,872.80 (as of November 2, 2011)
Con-Drain	\$ 1,743,008.13
MCD	\$ 429,190.00 ⁵
TOTAL	\$45,934,077.04

9. The Receiver, through its counsel, has requested that each of the above-noted parties provide an affidavit confirming the amounts outstanding under their respective mortgages/claims. As the Receiver is seeking Court authorization to make certain disbursements to Firm Capital, Pendragon and White Bear, it has requested that such

¹ This amount is exclusive of legal fees that have been incurred by the creditor/mortgagee since September 10, 2011.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ This amount is an estimate, as MCD's legal counsel has not rendered invoices with respect to services provided to date. An amount of \$40,000 is included as an estimate of unbilled legal fees incurred.

parties provide sworn affidavits prior to the hearing of the Receiver's motion scheduled for November 15, 2011.

THE UNIT PURCHASERS

10. As set out in greater detail in the Third Report, the Debtor entered into approximately 330 Landmark Sale Agreements prior to the date of the Appointment Order, pursuant to which each Unit Purchaser agreed to purchase un-built condominium units in the Debtor's project at the Lands "B".
11. The Receiver has been informed by the Debtor that: (i) all Unit Purchasers paid deposits to the Debtor upon execution of their respective Landmark Sale Agreement; (ii) the deposits were paid to the Debtor's solicitors to be held in trust pursuant to the provisions of the Condominium Act; (iii) the Debtor was entitled to withdraw from trust and use the deposits of the Unit Purchasers, as the Debtor obtained from Lombard a condominium deposit insurance policy securing the deposits; and (iv) the Lombard insurance policy protects the rights of the Unit Purchasers to a return of the deposit paid under their respective Landmark Sale Agreement in the event that the agreements are terminated.
12. In the event that the Mady Agreement is approved by this Honourable Court, all of the Debtor's right, title and interest in the Lands will vest in Mady, or such party that Mady directs in writing, upon the delivery of the Receiver's Certificate. As a result, following the completion of the Mady sale transaction, the Debtor will no longer have any interest in the Lands, and will no longer be in a position to perform the obligations owed to the Unit Purchasers under the Landmark Sale Agreements.
13. As part of the Mady Agreement, Mady has elected not to take an assignment of the Debtor's rights under the Landmark Sale Agreements. As a result, the Receiver is of the view that the Unit Purchasers should be notified of the sale of the Lands to Mady following the closing of the sale transaction and be made aware of the claims they may have for a return of their deposits under the Lombard insurance policy. Attached hereto as **Appendix "A"** is a draft form of letter that the Receiver proposes to send to the Unit Purchasers following the closing of the sale transaction with respect thereto.

14. As has been previously reported to this Court, the Receiver obtained the last known addresses of the Unit Purchasers from the books and records of the Debtor so that it could send to the Unit Purchasers, in accordance with the Marketing Order, the statutorily required notice under section 245 of the BIA. The Receiver proposes to send a copy of the draft letter attached hereto to the same addresses to which it sent the BIA notice.

RECEIVER'S RECOMMENDATIONS

15. For the reasons set out above, the Receiver recommends that the Court make an order, in the event that the Mady Agreement is approved by the Court and the Receiver's Certificate filed with the Court, authorizing and directing the Receiver to send a letter following the closing of the sale transaction, substantially in the form of the draft attached as Appendix "A" hereto, to each of the Unit Purchasers at their last known addresses based on the books and records of the Debtor.

All of which is respectfully submitted at Toronto, Ontario this 11th day of November, 2011.

Deloitte & Touche Inc.

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

Per:



Bryan A. Tannenbaum, FCA, FCIRP

APPENDIX "A"

[LETTERHEAD OF DELOITTE & TOUCHE INC.]

•, 2011

DELIVERED BY REGULAR MAIL

TO THE PARTIES LISTED ON SCHEDULE "A" HERETO

Dear Sirs/Mesdames,

**Re: Firm Capital Mortgage Fund Inc. v. 2811 Development Corporation
Court File No. CV11-9242-00CL (the "Receivership Proceeding")**

And Re: The Landmark Unit Condominiums

On June 29, 2011, Deloitte & Touche Inc. was appointed by the Ontario Superior Court of Justice (Commercial List) (the "Court") in the Receivership Proceeding as receiver (the "Receiver") of all of the lands and premises known municipally as 5789, 5811, 5933, 5945 and 5951 Steeles Avenue East, Toronto, Ontario, commonly known as "The Landmark". A notice of the Receivership Proceeding was previously sent to you. Additional information with respect to the Receivership Proceeding can be found on the Receiver's website at www.deloitte.ca, and more specifically located under the related links titles of "Services", then "Financial Advisory", then "Insolvency and Restructuring".

We write to you in connection with your agreement to purchase a Landmark condominium unit from 2811 Development Corporation ("2811"). On November 15, 2011, the Court granted an Order in the Receivership Proceeding approving the sale of The Landmark to Mady Development Corporation ("Mady"). The sale of The Landmark to Mady was completed on •, 2011. As a result of the sale, 2811 no longer has any ownership interest in The Landmark and will not be in a position to satisfy its obligations to you under your purchase agreement.

In connection with your purchase agreement, you were required to provide a deposit to 2811. As you should be aware, 2811 obtained a condominium deposit insurance policy from Lombard General Insurance Company of Canada ("Lombard"), a copy of which is enclosed herewith (the "Policy"). The Receiver wishes to inform you that the deposit you paid to 2811 may be insured under the terms of the Policy and you may have the ability to recover your deposit by filing a proof of loss under the terms of the Policy with Lombard.

You may obtain further information directly from Lombard by contacting Mr. Ron Perfetti, National Director – Risk Solutions, at (416) 350-4449.

Deloitte & Touche Inc.

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

Per:

Ira Gerstein, CA, CIRP
Vice-President