

**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 “**T**”;
 - (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;

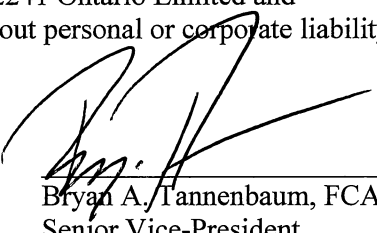
- (b) authorizing and directing the Receiver to enter into and carry out the terms of the New Bond Purchase Agreement together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Property in New Bond upon closing of the New Bond Purchase 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 “T”;
- (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