

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**FIRST NATIONAL FINANCIAL GP CORPORATION**

Applicant

and

**GOLDEN DRAGON HO 10 INC. and GOLDEN DRAGON HO 11 INC.**

Respondents

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**SECOND REPORT OF THE INTERIM RECEIVER**

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**DATED DECEMBER 13, 2017**

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## INTRODUCTION

1. By Order of the Ontario Superior Court of Justice (the “**Court**”) dated September 22, 2017 (the “**Appointment Order**”), Deloitte Restructuring Inc. was appointed as the interim receiver (the “**Receiver**”) of certain real property of Golden Dragon Ho 10 Inc. (“**GDH 10**”) municipally known as 347 Barber Street, Ottawa, Ontario (formerly known as 347 Clarence Street, Ottawa) (“**347 Barber**”) and of certain real property of Golden Dragon Ho 11 Inc. (“**GDH 11**”) municipally known as 345 Barber Street Ottawa, Ontario (formerly known as 345 Clarence Street, Ottawa) (“**345 Barber**”) (collectively, with 347 Barber, referred to herein as the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix "A"**.
2. The Appointment Order authorized the Receiver to, among other things:
  - (a) 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) undertake any renovations and make any repairs to the Property necessary to ensure that the Property is well maintained and rentable and is in compliance with the applicable laws and building codes; and
  - (c) market available rental units, enter into new rental agreements or renew expiring rental agreements where applicable.
3. On October 20, 2017, the Applicant, First National Financial GP Corporation (“**FN**”), brought a motion to, among other things, extend the appointment of the Receiver as permitted under section 47(1)(c) of the *Bankruptcy and Insolvency Act*. In support of that motion, the Receiver filed with the Court its First Report of the Interim Receiver dated October 17, 2017 (the “**First Report**”). Based on the First Report and submissions made to the Court by counsel for FN and the Receiver on October 20, 2017, the Court granted an order (the “**October 20 Order**”) approving the Receiver’s actions as described in the First Report, approving the Receiver’s Interim Statement of Receipts and Disbursements for the period from September 22 to October 13, 2017, and extending the appointment of the Receiver until

further order of this Court. Copies of the First Report and the October 20 Order are attached hereto as **Appendix “B”** and **Appendix “C”**, respectively.

4. The Appointment Order, the October 20 Order, the First Report, this the Receiver’s Second Report to the Court (the **“Second Report”**) and other key documents have been posted on the Receiver's website at [www.insolvencies.deloitte.ca/en-ca/GoldenDragonHo10-11](http://www.insolvencies.deloitte.ca/en-ca/GoldenDragonHo10-11).

## **PURPOSE OF REPORT**

5. The purpose of the Second Report is to:
  - (a) provide the Court with information on the current status of the Property and the repairs being undertaken;
  - (b) provide the Court with the Receiver’s strategy for the rental of vacant units at the Property;
  - (c) provide the Court with the evidentiary basis to make an order:
    - (i) approving the activities of the Receiver as described in this Second Report, including the Receiver’s course of action with respect to the repairs to the Property and the strategy for leasing vacant units;
    - (ii) approving the Receiver’s Interim Statement of Receipts and Disbursements for the period from September 22, 2017 to November 30, 2017; and
    - (iii) approving the fees and disbursements of the Receiver, of Blaney McMurtry LLP (**“Blaneys”**), and of the Receiver’s independent counsel, Dickinson Wright LLP (**“Dickinson”**).

## **TERMS OF REFERENCE**

6. In preparing this Second Report, the Receiver and/or its property manager CLV Group Inc. (**“CLV”**), have reviewed unaudited financial information and other records related to the Property provided by Chi Suites Inc. (the management company for GDH 10 and GDH 11) (**“Chi Suites”**), information provided by third-party sources, and have held discussions with

individuals involved in administering the Property (including the building superintendent) (collectively, the “**Information**”). Except as described in this report:

- (a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
- (b) the Receiver has prepared this Second Report in its capacity as a Court-appointed officer to support the Court’s approval of the Receiver’s activities to date, its course of action with respect to the repairs to the Property, the strategy for leasing vacant units, and the other relief being sought. Parties using this report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes.

7. Unless otherwise stated, all dollar amounts contained in this Second Report are expressed in Canadian dollars.
8. Unless otherwise provided, all other capitalized terms not otherwise defined in this Second Report are as defined in the Appointment Order.
9. The Receiver has sought the advice of Blaneys, counsel to the Applicant, for general legal matters that have arisen in respect of the interim receivership. Where the Receiver has required independent legal advice, the Receiver has sought the counsel of Dickinson.

## **BACKGROUND**

10. As noted in the First Report, the Property is comprised of two adjoining six-story multi-unit apartment buildings that originally consisted of a total of 110 units. Eighty of these units were located in 345 Barber, and 30 units were (and still are) located in 347 Barber. These buildings operate as one complex as they are connected on every floor except the basement, and they share common areas and facilities. Of the 110 units, 30 units are to be used for

affordable housing purposes pursuant to agreements with the City of Ottawa (the “City”) and the Ontario Ministry of Housing (the “MOH”) as discussed further below. These 30 units are referred to as below market rent (“BMR”) units.

11. Upon the appointment of the Receiver, the property was approximately 60% occupied. The low occupancy was primarily the result of the Respondents’ plan to convert 345 Barber to student housing by increasing the number of bedrooms in certain units and by making certain modifications to the lobby and the basement. In order to carry out this plan, the Respondent arranged for certain market rate tenants to move from 345 Barber to 347 Barber in order to free up units so that renovations could be undertaken. In addition, alternations to the building had also been started in the lobby and the basement of 345 Barber, which work remained substantially unfinished as of the date of the Appointment Order.

#### **RECEIVER’S ACTIVITIES SINCE ITS FIRST REPORT TO COURT**

12. Since the date of the First Report, the Receiver has undertaken the following activities in accordance with the terms of the Appointment Order:
  - (a) Followed up with CLV to ensure that inspections, by qualified professionals, have been completed for all systems at the Property (such as fire safety, emergency generator, boiler heating, electrical, dryer venting, elevator, and the roof). The Receiver continues to follow up with CLV to ensure that all deficiencies identified through the inspections are properly dealt with;
  - (b) Discussed with CLV the repairs required for the roof, lobby, and the many vacant units in the Property and provided instructions related thereto. With respect to the roof, the Receiver has approved certain work to repair areas where leaks have been occurring. With respect to the lobby, the Receiver, through CLV, has solicited three quotes for work to complete most of the planned renovations that had been started by the Respondents. The Receiver is awaiting a third quote before making a determination on proceeding. As reported in the First Report, the Receiver had previously approved the completion of certain tile work in the lobby (which had been prepaid prior to the interim

- receivership) which has now been completed. Work with respect to the vacant units is discussed further below;
- (c) Prepared a summary of the vacant units in the Property and developed a strategy for repair of those units. The strategy for dealing with the vacant units is discussed further below;
  - (d) Discussed with Canada Revenue Agency the HST account for the Property and undertook research with respect to HST issues. The Receiver determined that the Property represents an exempt rental property such that there is no entitlement to claim Input Tax Credits;
  - (e) Responded to questions and information requests from parties interested in the Property including a sales representative from Century 21 Explorer Realty Inc., a real estate broker who had been engaged by the Respondents prior to the date of the Appointment Order to list the Property for sale;
  - (f) Participated in conference calls with the City and the MOH regarding the status of the interim receivership and the status of the BMR units. The Receiver's proposed strategy for dealing with the BMR units is discussed further below;
  - (g) Organized and held a tenants meeting on November 14, 2017, after allowing some time for the Receiver and/or CLV to deal with the most pressing issues at the Property. Twenty-seven residents attended the meeting, which was held in a meeting room at a nearby hotel. A copy of the agenda for the meeting is attached as **Appendix "D"**. At the meeting, the residents appeared pleased that maintenance and repair issues were now being dealt with on a timely basis. Some expressed concern over the uncertainty of the interim receivership process and the timing for when a new owner might take over from the Receiver. They also identified several deficiencies that CLV made note of and subsequently followed up on. CLV also took this opportunity to distribute new secure keys to the residents as the electronic fob entry system is being discontinued (as discussed in paragraph 14(a) of the First Report).
  - (h) Reviewed the Property accounting prepared by CLV and prepared the Receiver's Interim Statement of Receipts and Disbursements;



- (i) Prepared a cash flow forecast and determined the Receiver's anticipated funding requirements. The Receiver determined that, given the low rental revenue as a result of the number of vacancies at the Property, combined with forecast disbursements for operating costs, property repairs and professional fees, third party funding of \$200,000 was required to meet its obligations until the end of January 2018. As a result, the Receiver borrowed \$200,000 from FN by way of Receiver's Certificate. The funds were received by the Receiver on November 28, 2017;
- (j) Responded to information requests from the Applicant and Desjardins Global Asset Management, the lender to which the FN mortgages had been assigned; and
- (k) Responded to tenant and creditor inquiries.

#### **RENTAL STATUS OF THE PROPERTY**

- 13. As at the date of the Appointment Order, there were 65 occupied units (out of 110 original total units, but as per above and below, a number of units in 345 Barber are not rentable until renovations are complete) generating monthly rental income of \$50,655 (not including monthly affordability payments payable by the City and the MOH, which are monthly subsidies paid in respect of the BMR units).
- 14. On a related note, the monthly affordability payments have not been made to the Receiver or FN since the Appointment Order, and the Receiver will be following up with the City and MOH in this regard.
- 15. As of December 1, 2017, as the result of one tenant vacating its unit in 345 Barber (unit 501) and one tenant vacating its unit in 347 Barber (unit 214), there are 63 occupied units generating a rent roll of \$48,976 (excluding affordability payments). As a result, there are currently 45 units which are vacant in 345 Barber, of which seven (units 209, 210, 309, 311, 402, 404, and 606) are available for rent (the rest of which require repairs before they can be rentable, as discussed further below), while two units are vacant in 347 Barber (units 214 and 314) both of which are available for rent.

## **BMR UNITS**

16. As set out in paragraphs 11 and 12 of the Sebben Affidavit, the Municipal Housing Project Facilities Agreement with the City and the Provincial Contribution Agreement with the MOH, as amended (collectively, the “**BMR Agreements**”), require that 30 of the units in the Property are to be used for affordable housing purposes. However, as at the date of the Appointment Order, only 23 units contained BMR tenants, of which three were located in 345 Barber and 20 were located in 347 Barber (this is an updated amount from the 21 BMR tenants that was reported in the First Report based on additional information subsequently obtained by CLV). As at December 1, 2017, the number of units with BMR tenants dropped to 22 because, as noted above, a tenant in 347 Barber (unit 214) moved out on November 30, 2017.
17. The BMR Agreements provide that reasonable efforts be made to relocate all BMR tenants currently in 345 Barber into 347 Barber once vacancies arise. In that regard, and given the two vacancies in 347 Barber, the Receiver directed CLV to write to two of the three BMR tenants in 345 Barber and offer to transfer them to one of the two vacant units in 347 Barber. A sample redacted letter sent by CLV on November 22, 2017 is attached hereto as **Appendix “E”**. This letter was not sent to one of the three BMR tenants in 345 Barber because of health and safety concerns regarding that tenant’s unit. None of the other two BMR units in 345 Barber elected to transfer to 347 Barber. As a result, the Receiver directed CLV to seek new BMR tenants through the affordable housing registry to fill the vacancies in 347 Barber.
18. In order to free up further units in 347 Barber for BMR tenants, the Receiver directed CLV to write to non-BMR tenants in 347 Barber offering to transfer them to vacant units in 345 Barber. The letters dated November 21, 2017 (a sample redacted version of which is attached hereto as **Appendix “F”**) allowed those tenants until December 15, 2017 to notify CLV should they desire to move. CLV did not send this letter to one of the nine non-BMR tenants in 347 Barber, as this tenant at that time was three months arrears in rent.
19. As of the date of this Second Report, none of the non-BMR tenants in 347 Barber has accepted the offer to move. As a result, subject to approval of this Court, after December 15, 2017, the Receiver proposes to offer the non-BMR tenants in 347 Barber, on a first-come,

first-served basis, an incentive of one-month's free rent and moving costs of up to \$500. The Receiver proposes that this will be the final offer to the non-BMR tenants in 347 Barber.

## UNIT REPAIRS

20. As noted in the First Report:

- a) the Receiver determined that most of the vacant units were in various stages of renovation, some of which required only minimal work to restore them to a rentable condition, and others (which had been completely gutted) requiring substantial work to restore them; and
- b) the Receiver was concerned that some of the renovations may not meet building code requirements.

21. Based on further inspections of the vacant units by CLV, the units were divided into the following six groups based on the estimated cost of restoration required per unit:

Group No.	Estimated Cost per Unit	Total No. of Units	Unit Numbers
1	Under \$750	9	205, 209, 210, 309, 311, 314, 402, 404, 605
2	\$750 to \$1,500	10	204, 208, 211, 304, 310, 409, 603, 604, 610, 703.
3	\$1,500 to \$2,000	6	207, 403, 411, 511, 612, 701
4	\$2,000 to \$3,000	2	609, 712
5	\$5,000 to \$10,000	9	101, 102, 105, 107, 202, 510, 607, 707, 708
6	Over \$10,000	9	100, 103, 106, 108, 305, 601, 602, 705, 709

22. At the direction of the Receiver, the nine Group No. 1 units listed above in paragraph 21 were restored to rentable condition by CLV which used its own handyman to make minor repairs where necessary, and who retained a painting contractor to paint all or parts of the

units. The total cost to restore these units was approximately \$3,300. These nine units are ready to be rented again, except for unit 205, which had been converted into student housing (by adding an additional bedroom). The Receiver is waiting to confirm that the renovation of unit 205 meets building code requirements before renting it.

23. For the ten Group No. 2 units listed in paragraph 21, which require similar but additional work than Group No. 1 units, the Receiver has directed CLV to first obtain (1) a price quote from the painting contractor, and (2) an estimate of repair costs from CLV's handyman. Provided that these price quotes are below \$10,000, the Receiver will proceed with this work.
24. The next four groups of units listed above in paragraph 21 require more extensive repairs, and, in some cases, electrical and plumbing work. For these groups, the Receiver has instructed CLV to obtain price quotes from at least three contractors to restore the units to rentable condition. This work will be performed in order of least expensive to most expensive groups in order to get units back into a rentable state as quickly as possible. Some of the units in Group No. 5 were in the process of being converted into student housing; thus, the Receiver is waiting to confirm that the renovations meet building code requirements in order to determine whether to finish the renovations of these units, or to convert them back to their original layouts.
25. In order to confirm whether the incomplete renovations of certain units met building code requirements, both the Receiver and CLV have contacted the City to request a copy of the renovation drawings that supported the three building permits issued by the City (as there were no drawings found in the records provided by Chi Suites). On December 6, 2017, the Receiver was advised by the City that the drawings were being pulled from storage.

### **THIRD MORTGAGE**

26. On or about October 17, 2017, the Receiver became aware that a collateral third mortgage for \$678,000.00 in favour of 3942783 Canada Inc. (the "**Third Mortgagee**") had been registered against 345 Clarence Street on September 27, 2017, five days after the Appointment Order was made (the "**Third Mortgage**"). A copy of the Third Mortgage and the Additional Provisions which form part of the charge is attached hereto as **Appendix "G"**.

27. The Third Mortgage was also registered over the following municipal addresses: 701 Somerset Street West, Ottawa; 219 Kent Street, Ottawa; and a property with no municipal address located at “Forward Avenue and Burnside Avenue” in Ottawa.
28. The Third Mortgage states that it was provided to “secure the obligations of Golden Dragon Ho 10 Inc. under a guarantee dated May 26, 2017 (the “**Guarantee**”) granted by Golden Dragon Ho 10 Inc. to the Chargee in respect of a promissory note dated June 14, 2016 granted by Golden Dragon Ho 7 Inc. (the “**Borrower**”) to the Chargee”. Notwithstanding this provision, the Third Mortgage was not registered against 347 Clarence Street (the property owned by GDH 10), but instead was registered against 345 Clarence Street (the property owned by GDH 11).
29. The Third Mortgage was not only granted by GDH 11, but also by GDH 10, Golden Dragon Ho Commercial Holdings, M.Y. Residential Inc. (“**M.Y. Residential**”), Golden Dragon Ho 3 Inc., Golden Dragon Ho 5 Inc. (“**GDH 5**”) and Golden Dragon Ho 9 Inc. (“**GDH 9**”).
30. As set out in paragraph 71 of the affidavit of Chris Sebben sworn in support of the Appointment Order, real property owned by GDH 5, GDH 9 and M.Y. Residential was also the subject of receivership proceedings.
31. By way of letter to the Third Mortgagee and its officer and director dated October 17, 2017, Blaneys requested that the Third Mortgage be discharged. A copy of the October 17, 2017 letter is attached hereto as **Appendix “H”**.
32. The Third Mortgage was not discharged, and on November 8, 2017, the lawyer for the Third Mortgagee, Harland Tanner of Piazza Tanner LLP, contacted Blaneys and requested the relevant materials, which were provided to him the next day.
33. By way of email dated November 29, 2017, Blaneys set out its position why the Third Mortgage should be discharged. While Mr. Tanner responded by email to Blaneys on November 30, 2017 advising that he expected his client would instruct him to discharge the Third Mortgage, it remains on title as of the date of this Second Report. A copy of the email correspondence from November 8 through December 5, 2017 between Blaneys and Mr. Tanner is attached hereto as **Appendix “I”**.

34. In the event that the Third Mortgage is not removed from title prior to the date of the motion in respect of the relief sought herein, the Receiver intends to bring a motion to the Court to have the Third Mortgage removed from title.

#### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

35. Attached hereto as **Appendix "J"** is the Interim Statement of Receipts and Disbursements for the interim receivership for the period September 22 to November 30, 2017 (the "**R&D**"). The R&D includes the rental receipts received into the property management account and the disbursements made by the Receiver from its trust account. The R&D separates out the receipts and disbursements between September 22 and October 13, 2017, which receipts and disbursements were accepted and approved in the October 20 Order, and the receipts and disbursements between October 14 and November 30, which reflects the interim receivership activity since the First Report.

#### **PROFESSIONAL FEES**

36. The Receiver and its legal counsel have maintained detailed records of their professional time and costs since the issuance of the Appointment Order. Pursuant to paragraph 17 of the Appointment Order, the Receiver and its legal counsel were directed to pass their accounts from time to time before a judge of the Court.
37. The total fees of the Receiver during the period from September 18 to November 30, 2017, amount to \$109,445.00 together with disbursements in the sum of \$1,580.00 plus HST of \$14,433.25, totaling \$125,458.25. The time spent by the Receiver is more particularly described in the Affidavit of Hartley Bricks, a Senior Vice-President of Deloitte, sworn December 11, 2017 in support hereof and attached hereto as **Appendix "K"**.
38. The total legal fees incurred by the Receiver during the period from September 18 to November 30, 2017, for services provided by its independent counsel Dickinson amount to \$11,567.50 together with disbursements in the sum of \$376.28 and HST in the amount of \$1,552.69 totaling \$13,496.47 (the "**Dickinson Fees**"). The time spent by Dickinson

personnel is more particularly described in the Affidavit of David Preger, a partner of Dickinson, sworn December 8, 2017 in support hereof and attached hereto as **Appendix “L”**.

39. The total legal fees and disbursements of Blaneys, in its capacity as counsel to FN from July 4, 2017 to the date Appointment Order, and in its capacity as counsel to FN and to the Receiver in respect of work performed for FN and for the Receiver from the date of the Appointment Order to November 30, 2017, are particularized in the Affidavit of Eric Golden, a partner of Blaneys, sworn December 13, 2017 in support hereof and attached hereto as **Appendix “M”**. The total amount of the invoices for this period is \$167,582.70 inclusive of HST (the **“Blaneys Fees”**). The Blaneys Fees have been paid directly by FN which amounts have been added to FN’s outstanding indebtedness.
  
40. The Receiver has reviewed the Dickenson Fees and the Blaneys Fees as set out in the fee affidavits and finds the work performed and charges to be appropriate and reasonable in the circumstances.

## RECEIVER'S REQUESTS

41. For the reasons set out above, the Receiver requests that the Court make an Order:

- (a) approving the activities of the Receiver as described in this Second Report, including the Receiver's course of action with respect to the repairs to the Property and the strategy for leasing vacant units;
- (b) approving the Receiver's Interim Statement of Receipts and Disbursements for the period from September 22 to November 30, 2017;
- (c) approving the professional fees and disbursements of the Receiver, of Blaneys, and of Dickinson, as set out in the fee affidavits, and authorizing the Receiver to pay all such fees and disbursements from available funds; and
- (d) such further and other relief as counsel may advise and this Honourable Court may permit.

All of which is respectfully submitted at Ottawa, Ontario this 13<sup>th</sup> day of December, 2017.

**DELOITTE RESTRUCTURING INC.**,  
solely in its capacity as the Court-  
appointed Interim Receiver of certain real  
property of Golden Dragon Ho 10 Inc. and  
Golden Dragon Ho 11 Inc., and without  
personal or corporate liability

Per:



Paul Casey, CPA, CA, FCIRP, LIT  
*Senior Vice-President*

John Saunders, CPA, CA, CIRP, LIT  
*Senior Vice-President*



**Exhibit "A"**

Appointment Order of Justice Hackland of the Ontario Superior Court of Justice dated  
September 22, 2017

## **Exhibit "B"**

First Report of the Interim Receiver, dated October 17, 2017 (without appendices)

## **Exhibit "C"**

Order of Justice Hackland of the Ontario Superior Court of Justice dated October 20, 2017

## **Exhibit "D"**

Agenda for Tenants' Meeting held on November 14, 2017

## **Exhibit "E"**

A sample redacted letter sent by CLV to BMR tenants on November 22, 2017

## **Exhibit "F"**

A sample redacted letter sent by CLV to non-BMR tenants on November 21, 2017

## **Exhibit "G"**

Mortgage for \$678,000 registered in favour of 3942783 Canada Inc. against 345 Clarence Street  
including Additional Provisions

## **Exhibit "H"**

Letter dated October 17, 2017 from Blaney McMurtry LLP to 3942783 Canada Inc., Abad  
Haman and Hamam Nizar



## **Exhibit "I"**

Email correspondence from November 8 through December 5, 2007 between Blaney McMurtry  
LLP and Harland Tanner of Piazza Tanner LLP

## **Exhibit "J"**

Interim Statement of Receipts and Disbursements for the Interim Receivership  
for the period from September 22 to November 30, 2017

## **Exhibit "K"**

Affidavit of Hartley Bricks of Deloitte Restructuring Inc. sworn December 11, 2017

**Exhibit "L"**

Affidavit of David Preger of Dickinson Wright LLP sworn December 8, 2017

## **Exhibit "M"**

Affidavit of Eric Golden of Blaney McMurtry LLP sworn December 13, 2017