

**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

**FIFTH REPORT OF THE RECEIVER
DATED DECEMBER 20, 2011**

INTRODUCTION

1. By Order of the Court dated June 29, 2011 (the “**Appointment Order**”), 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 (the “**Lands**”) and all of the assets, undertakings and properties of 2811 Development Corporation (the “**Debtor**”) acquired for, or used in relation to, the development of the Lands and construction of improvements thereon, including all proceeds thereof (collectively, the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.

2. On November 3, 2011, the Receiver issued its Third Report to the Court (the “**Third Report**”) in support of its sale approval motion returnable November 15, 2011 (the “**November 15 Motion**”) for an order, *inter alia*:
 - (a) authorizing and directing the Receiver to enter into and carry out the terms of the Mady Agreement (as defined below) together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Lands in Mady (as defined below) upon closing of the Mady Agreement and the delivery of the Receiver’s Certificate (as defined below) to Mady; and
 - (b) approving an interim distribution of certain of the net proceeds of sale of the Lands to the Applicant and other secured lenders, in the event that the sale transaction contemplated by the Mady Agreement was completed.
3. On November 11, 2011, the Receiver filed with the Court a Supplement to the Third Report (the “**Supplement to the Third Report**”) in connection with the November 15 Motion, which provided the Court with additional information with respect to the charges, mortgages and claims registered against the Property. A copy of the Third Report (without attachments) is attached as **Appendix “B”**. A copy of the Supplement to the Third Report (without attachments) is attached as **Appendix “C”**.
4. On November 15, 2011, The Honourable Justice Morawetz granted the Approval, Vesting and Interim Disbursement Order (the “**AVID Order**”) authorizing the Receiver to, among other things, enter into and carry out the terms of the Mady Agreement. A copy of the AVID Order is attached as **Appendix “D”**.
5. At the request of Lombard Insurance Company of Canada (“**Lombard**”), the Receiver’s motion for an order approving an interim distribution of certain net proceeds was adjourned to December 5, 2011 to allow Lombard the opportunity to review the secured claims of Firm Capital Mortgage Fund Inc. (“**Firm Capital**”), White Bear Developments Inc. (“**White Bear**”) and Key Pendragon Enterprises Inc. (“**Pendragon**”), being the parties holding the first through fifth mortgages on the Lands.

6. On December 1, 2011, the Receiver issued its Fourth Report to the Court (the “**Fourth Report**”), a copy of which (without appendices) is attached as **Appendix “E”**, in support of its motions returnable December 5, 2011 (the “**December 5 Motion**”), for orders, *inter alia*:
 - (a) authorizing an interim distribution of certain of the net proceeds of sale of the Lands to Firm Capital and other secured lenders, as agreed upon by Firm Capital, White Bear, Pendragon and Lombard, in the event that the sale transaction contemplated by the Mady Agreement is completed; and
 - (b) amending the AVID Order to vest title in Mady Steeles (as defined below).
7. On December 5, 2011, The Honourable Justice Morawetz granted the Order Amending the Approval, Vesting and Interim Disbursement Order dated November 15, 2011 (the “**Amending Order**”), which provided that title to the Lands would vest in Mady Steeles upon the closing of the sale transaction contemplated by the Mady Agreement. A copy of the Amending Order is attached as **Appendix “F”**.
8. Prior to and during the hearing of the motion with respect to a proposed interim distribution, Lombard confirmed that it may challenge the ability of Firm Capital, White Bear and Pendragon to obtain payment for certain amounts in priority to the claims of Lombard with respect to certain portions of the Lands. The parties agreed to continue to negotiate the terms of a draft interim distribution order that would provide for payment of amounts owing to Firm Capital, White Bear and Pendragon that Lombard acknowledged were claims that stood in priority to its claims against certain portions of the Lands.
9. On December 7, 2011, The Honourable Justice Morawetz granted an interim distribution order that set out certain amounts to be distributed to the secured creditors and that had been agreed to by Firm Capital, White Bear, Pendragon and Lombard (the “**Interim Distribution Order**”) upon the closing of the sale transaction contemplated by the Mady Agreement, and established certain holdbacks. A copy of the Interim Distribution Order is attached as **Appendix “G”**.

PURPOSE OF THIS FIFTH REPORT

10. The purpose of this fifth report of the Receiver (the “**Fifth Report**”) is to:
 - (a) provide an update on the status of the Mady Agreement;
 - (b) provide an update with respect to distribution matters and the discussions amongst Lombard, Firm Capital, White Bear, Pendragon and Con-Drain Company (1983) Limited (“**Con-Drain**”) since the granting of the Interim Distribution Order; and
 - (c) recommend the granting of an order:
 - (i) authorizing a second interim distribution of certain of the Net Sale Proceeds (as defined below) to the Applicant and other secured lenders, as more fully described herein; and
 - (ii) authorizing a distribution of certain of the Net Sale Proceeds to the law firm of Harris Sheaffer LLP, in trust, on the terms more fully described herein.

TERMS OF REFERENCE

11. In preparing the Fifth 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 Fifth Report.
12. Unless otherwise stated, all dollar amounts contained in the Fifth Report are expressed in Canadian dollars.

MADY AGREEMENT AND SALE OF THE LANDS

13. As is described in greater detail in the Third Report, following the completion of a Court-approved marketing process, the Receiver entered into an agreement of purchase and sale for the Lands with Mady Development Corporation (“Mady”) dated October 3, 2011 (the “Mady Agreement”). The Mady Agreement was conditional upon obtaining approval of this Honourable Court.
14. Pursuant to the terms of the AVID Order, this Honourable Court approved the sale of the Lands by the Receiver to Mady and the execution of the Mady Agreement by the Receiver. The transfer of the Debtor’s right, title and interest in and to the Assets (as defined in the AVID Order) would vest in Mady free and clear of all claims and encumbrances upon the delivery to Mady by the Receiver of a certificate substantially in the form attached as a schedule to the AVID Order (the “Receiver’s Certificate”).
15. In connection with the Receiver’s motion seeking approval of the Mady Agreement, the Receiver: (i) filed with the Court a redacted copy of the Mady Agreement, (ii) filed an unredacted copy of the Mady Agreement, among other documents, with the Court on a confidential basis, and (iii) sought a sealing order with respect to the unredacted Mady Agreement and other documents. The key provision of the Mady Agreement that had been redacted in the publicly filed copy of the agreement filed with the Court was the purchase price.
16. Pursuant to the terms of the AVID Order, the unredacted Mady Agreement, among other documents, were sealed by the Court pending the filing of the Receiver’s Certificate or further order of the Court.
17. On November 18, 2011, the Debtor served a notice of appeal with respect to the AVID Order. Counsel to the Receiver informed counsel to the Debtor that it was the Receiver’s intention to complete the sale contemplated in the Mady Agreement on December 8, 2011 unless the Debtor obtained an order staying the AVID Order and completion of the sale transaction before that date. The Debtor has not to date brought a motion seeking an order staying the enforcement of the AVID Order.

18. Following the granting of the AVID Order, Mady requested that the Lands vest in its affiliate, Mady Steeles 2011 Ltd. (“**Mady Steeles**”), under the AVID Order. As a result, the Receiver brought the December 5 Motion seeking, among other things, an amendment to the AVID Order to provide that the Lands vest in Mady Steeles upon the delivery of the Receiver’s Certificate. On December 5, 2011, the Amending Order was granted by The Honourable Justice Morawetz, providing for the requested amendment to the AVID Order.
19. The Receiver previously reported to the Court during the November 15 Motion that the Mady Agreement was expected to close on or before December 8, 2011. Mady subsequently requested that the closing date be extended to December 14, 2011, which the Receiver agreed to. However, on December 14, 2011, due to a technical issue with regard to delivery of funds by Mady, the closing of the transaction occurred on December 15, 2011. Counsel to the Receiver informed counsel to the Debtor that the Mady Agreement sale transaction was set to close on December 15, 2011.
20. The Receiver reports to this Honourable Court that, on December 15, 2011, the sale of the Lands pursuant to the terms of the Mady Agreement was completed and the Receiver’s Certificate was delivered to Mady and Mady Steeles. A copy of the Receiver’s Certificate was also filed with the Court on December 15, 2011. The Receiver’s Certificate, the AVID Order and the Amending Order have been registered against title to the Lands, as set out in the Application for Vesting Order registered against the Lands on December 15, 2011 as instrument AT2897037, a copy of which is attached as **Appendix “H”**.
21. As noted above, the purchase price under the Mady Agreement was sealed pursuant to the AVID Order until the filing of the Receiver’s Certificate. As the Receiver’s Certificate was delivered to Mady and Mady Steeles and filed with the Court on December 15, 2011, the Receiver reports that the purchase price for the Lands under the Mady Agreement was \$42,500,000. The Receiver further reports that, as a result of certain adjustments, the amounts received by the Receiver in respect of the Mady

Agreement was \$42,513,159.60, which includes the deposit of \$4,250,000 previously paid by Mady to the Receiver.

22. In connection with the completion of the sale of the Lands under the Mady Agreement, an aggregate amount of \$5,321.82 was paid to the Treasurer of the City of Toronto with respect to outstanding real property taxes on the Lands.
23. As a result, the aggregate amount of \$42,507,837.78 was realized by the Receiver in connection with the sale of the Lands under the Mady Agreement (the “**Net Sale Proceeds**”).

CLAIMS AGAINST THE LANDS

24. As set out in further detail in the Third Report, the Supplement to the Third Report and the Fourth Report, Firm Capital, White Bear, Pendragon, Lombard, Con-Drain and Mady Contract Division Ltd. (“**MCD**”) have registered charges/mortgages or claims against title to the Lands or against portions of the Lands.
25. The Receiver has been informed by these creditors that the following aggregate amounts were due to them for outstanding principal, interest, fees and other amounts:

Creditor	Outstanding Amount
Firm Capital	\$18,408,421.05 ¹
White Bear	\$2,327,207.96 ²
Pendragon	\$7,892,465.38 ³
Pendragon	\$1,417,761.67 ⁴
Pendragon	\$1,250,125.22 ⁵

¹ Amount owing as of December 8, 2011, with per diem of \$5,302.90 from and including December 9, 2011 to date of payment.

² Amount owing as of December 9, 2011, with per diem of \$1,080.86 per day from and including December 10, 2011 to date of payment.

³ Amount owing as of December 9, 2011, with per diem of \$2,838.84 per day from and including December 10, 2011 to date of payment.

⁴ Amount owing as of December 9, 2011, with per diem of \$436.21 per day from and including December 10, 2011 to date of payment.

Lombard	\$12,727,872.80 ⁶
Con-Drain	\$1,743,008.13
MCD	\$429,190.00 ⁷
TOTAL	\$46,196,052.21

26. As has been reported to the Court, the Receiver previously obtained from BLG, its independent legal counsel, security opinions that provide, subject to the qualifications and assumptions contained therein, which the Receiver understands are customary in security opinions granted in a receivership context, that each of Firm Capital, White Bear and Pendragon have valid and enforceable charges/mortgages against the Lands.

Lombard

27. As has previously been reported to the Court, Lombard provided a deposit insurance facility to the Debtor in connection with parts of the Lands pursuant to deposit insurance facility commitment letters dated May 3, 2005, February 27, 2006 and June 30, 2006 between Lombard and the Debtor (collectively, the “**DIF Commitment**”). In connection with the DIF Commitment, Lombard agreed to insure the purchasers of un-built condominium units (collectively, the “**Unit Purchasers**”) in respect of the deposit funds delivered by the Unit Purchasers to the Debtor and subsequently released to the Debtor, pursuant to a Master Deposit Insurance Policy (Ontario) dated October 17, 2005 and executed by the Debtor and Lombard (the “**Deposit Insurance Policy**”). Copies of the DIF Commitment and the Deposit Insurance Policy are attached respectively as **Appendix “I”** and **Appendix “J”**.
28. Lombard has filed affidavits in these proceedings confirming that, as of November 1, 2011, the aggregate amount of \$12,031,976.15 in deposit funds have been released to the Debtor, and that the total indebtedness owed to Lombard by the Debtor was in the

⁵ Amount owing as of December 9, 2011, with per diem of \$384.73 per day from and including December 10, 2011 to date of payment.

⁶ Amount owing as of November 1, 2011.

⁷ This amount is an estimate, as MDC’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.

aggregate amount of \$12,727,872.80 as of November 1, 2011. Additionally, Lombard has confirmed that, as of November 29, 2011, Lombard has paid \$2,007,143.86 to Unit Purchasers pursuant to its obligations owing to the Unit Purchasers under the DIF Commitment and the Deposit Insurance Policy.

29. The Receiver understands that the Debtor is required to indemnify Lombard with respect to payment of amounts under the DIF Commitment and the Deposit Insurance Policy by Lombard, among other amounts, pursuant to the terms of the DIF Commitment, the Deposit Insurance Policy, and an indemnity agreement dated August 8, 2006 made in favour of Lombard by 2811, among others (the “**Indemnity**”). A copy of the Indemnity is attached as **Appendix “K”**.

30. The Receiver understands that in connection with the DIF Commitment and the Indemnity, Lombard was granted the following mortgages over certain portions of the Lands (collectively, the “**Lombard Charges**”), copies of which are attached as **Appendix “L”**:
 - (a) Charge/Mortgage of Land with respect to PIN 06050-0199 (LT) and PIN 06050-0266 (LT) of the Lands in favour of Lombard registered in the Land Registry Office for The Land Titles Division of the Toronto Registry Office No. 66 as instrument no. AT974288 on November 9, 2005 in the principal amount of \$75,000,000, and the schedules attached thereto (the “**\$75,000,000 Lombard Charge**”);

 - (b) Charge/Mortgage of Land with respect to PIN 06050-0199 (LT), PIN 06050-0266 (LT) and PIN 06050-0264 (LT) of the Lands in favour of Lombard registered in the Land Registry Office for The Land Titles Division of the Toronto Registry Office No. 66 as instrument no. AT1085822 on March 14, 2006 in the principal amount of \$750,000, and the schedules attached thereto (the “**\$750,000 Lombard Charge**”); and

 - (c) Charge/Mortgage of Land with respect to PIN 06050-0199 (LT), PIN 06050-0266 (LT), PIN 06050-0263 and PIN 06050-0264 (LT) of the Lands in favour of

Lombard registered in the Land Registry Office for The Land Titles Division of the Toronto Registry Office No. 66 as instrument no. AT1187188 on June 30, 2006 in the principal amount of \$1,560,127, and the schedules attached thereto (the “**\$1,560,127 Lombard Charge**”).

31. The Receiver requested BLG, as its independent legal counsel, to review the validity and enforceability of the Lombard Charges registered against title to certain portions of the Lands. The Receiver reports that, subject to the qualifications and assumptions contained in the opinion from BLG to the Receiver, which the Receiver understands are customary in security opinions granted in the context of a receivership proceeding, the Receiver understands that the Lombard Charges are valid and enforceable charges against the portions of the Lands that they are registered against.
32. The Receiver further understands that, as a result of postponements granted by Lombard:
 - (a) the \$75,000,000 Lombard Charge, the \$750,000 Lombard Charge and the \$1,560,127 Lombard Charge are the effective sixth-in-time, seventh-in-time and eighth-in-time charges/mortgages against PIN 06050-0199 (LT) and PIN 06050-0266 (LT) of the Lands, as they are subsequent to the charges registered in favour of Firm Capital, White Bear and Pendragon;
 - (b) the \$1,560,127 Lombard Charge is the effective sixth-in-time charge/mortgage against PIN 06050-0263 (LT) of the Lands, as it is subsequent to the charges registered in favour of Firm Capital, White Bear and Pendragon;
 - (c) the \$750,000 Lombard Charge and the \$1,560,127 Lombard Charge are the effective sixth-in-time and seventh-in-time charges/mortgages against PIN 06050-0264 (LT) of the Lands, as they remain subsequent to the charges registered in favour of Firm Capital, White Bear and Pendragon; and
 - (d) none of the Lombard Charges were registered against PIN 06050-0272 (LT) of the Lands.

Con-Drain

33. The Receiver understands that, pursuant to agreements dated October 31, 2006, June 22, 2007, February 2008, September 2009 and March 10, 2009 between the Debtor and Con-Drain, among others (collectively, the “**Con-Drain Servicing Agreement**”), Con-Drain supplied certain services and materials to the Debtor in connection with underground services and roadworks for the Lands. The Receiver further understands that, as collateral security for the payment of amounts due and owing to Con-Drain by the Debtor under the Con-Drain Servicing Agreement, the Debtor granted to Con-Drain a Charge/Mortgage of Land with respect to PIN 06050-0199 (LT), PIN 06050-0266 (LT), PIN 06050-0263 (LT), PIN 06050-0264 (LT) and PIN 06050-0272 (LT) of the Lands in favour of Con-Drain registered in the Land Registry Office for The Land Titles Division of the Toronto Registry Office No. 66 as instrument no. AT2561525 on November 26, 2010 in the principal amount of \$1,500,000, and the schedules attached thereto (the “**Con-Drain Charge**”). A copy of the Con-Drain Charge is attached as **Appendix “M”**.
34. The Receiver has been informed by Con-Drain that, as of November 11, 2011, the total indebtedness owed to Con-Drain by the Debtor, inclusive of principal, interest and applicable fees, was in the aggregate amount of \$1,743,008.13.
35. The Receiver requested BLG, as its independent legal counsel, to review the validity and enforceability of the Con-Drain Charge registered against title to the Lands. The Receiver reports that, subject to the qualifications and assumptions contained in the opinion from BLG to the Receiver, which the Receiver understands are customary in security opinions granted in the context of a receivership proceeding, the Receiver understands that the Con-Drain Charge is a valid and enforceable charge against the Lands.
36. The Receiver further understands that the Con-Drain Charge is the effective:
 - (a) ninth-in-time charge/mortgages against PIN 06050-0199 (LT) and PIN 06050-0266 (LT) of the Lands, as it is subsequent to the charges registered in favour of Firm Capital, White Bear, Pendragon and Lombard;

- (b) seventh-in-time charge/mortgage against PIN 06050-0263 (LT) of the Lands, as it is subsequent to the charges registered in favour of Firm Capital, White Bear and Pendragon and the \$1,560,127 Lombard Charge;
- (c) eighth-in-time charge/mortgage against PIN 06050-0264 (LT) of the Lands, as it is subsequent to the charges registered in favour of Firm Capital, White Bear and Pendragon and the \$750,000 Lombard Charge and the \$1,560,127 Lombard Charge; and
- (d) sixth-in-time charge/mortgage against PIN 06050-0272 (LT) of the Lands, as it is subsequent to the charges registered in favour of Firm Capital, White Bear and Pendragon.

DISTRIBUTION MATTERS

- 37. As described above and in greater detail in the Third Report, the Supplement to the Third Report, and the Fourth Report, the Receiver's original motion seeking an order approving an interim distribution was adjourned to December 5 and 7, 2011 to allow Lombard the opportunity to review the secured claims of Firm Capital, White Bear and Pendragon, being the parties holding the 1st through 5th mortgages on the Lands.
- 38. Lombard confirmed that it may challenge the ability of Firm Capital, White Bear and Pendragon to obtain payment, in priority to Lombard, on account of loan renewal fees, forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act*. However, Lombard did not challenge the majority of the amounts claimed to be secured by the charges held by Firm Capital, White Bear and Pendragon.
- 39. The parties negotiated an order, subsequently granted by the Honourable Justice Morawetz on December 7, 2011 as the Interim Distribution Order, which provided that, upon completion of the Mady Agreement, the Receiver was authorized to distribute the following amounts from the proceeds of sale after payment of all costs and disbursements related to the completion of the sale transaction:

- (a) to Firm Capital the amount of \$17,749,273.05 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the applicable Contested Amounts (defined below), plus \$5,302.90 per day from and including December 9, 2011 to the date of payment;
 - (b) to White Bear the amount of \$1,972,566.68 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the applicable Contested Amounts, plus \$1,080.86 per day from and including December 10, 2011 to the date of payment;
 - (c) to Pendragon the amount of \$7,401,274.40 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the applicable Contested Amounts, and secured by Pendragon's third mortgage on the Lands, plus \$2,838.84 per day from and including December 10, 2011 to the date of payment;
 - (d) to Pendragon the amount of \$1,326,794.71 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the applicable Contested Amounts, and secured by Pendragon's fourth mortgage on the Lands, plus \$436.21 per day from and including December 10, 2011 to the date of payment; and
 - (e) to Pendragon the amount of \$1,170,234.69 on account of the indebtedness owing to it by the Debtor for principal, interest and costs, net of the Contested Amounts, and secured by Pendragon's fifth mortgage on the Lands, plus \$384.73 per day from and including December 10, 2011 to the date of payment.
40. Pursuant to the terms of the Interim Distribution Order, the Receiver was required to hold back the following amounts (the "Contested Amounts"):
- (a) with respect to the Firm Capital charge the sum of \$659,148.00 on account of a loan renewal fee and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by Firm Capital pursuant to the Firm Capital charge;
 - (b) with respect to the White Bear charge:

- (i) the sum of \$342,141.28 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by White Bear pursuant to the White Bear charge; and
 - (ii) the sum of \$12,500.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Lombard with respect to this proceeding;
- (c) with respect to the Pendragon third mortgage:
- (i) the sum of \$478,690.98 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by Pendragon pursuant to the Pendragon third charge; and
 - (ii) the sum of \$12,500.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Lombard with respect to this proceeding;
- (d) with respect to the Pendragon fourth charge:
- (i) the sum of \$78,466.96 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by Pendragon pursuant to the Pendragon fourth charge; and
 - (ii) the sum of \$12,500.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Lombard with respect to this proceeding;
- (e) with respect to the Pendragon fifth charge:
- (i) the sum of \$67,390.53 on account of forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* claimed by Pendragon pursuant to the Pendragon fifth charge; and

- (ii) the sum of \$12,500.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Lombard with respect to this proceeding;
 - (f) the sum of \$100,000.00 as a reserve for legal fees and disbursements and other costs that may be incurred by Firm Capital with respect to this proceeding, and
 - (g) the sum of \$50,000 as a reserve for legal fees and disbursements and other costs that may be incurred by White Bear and Pendragon with respect to this proceeding.
- 41. The Receiver reports that, following the closing of the Mady Agreement on December 15, 2011, the following amounts (inclusive of per diem interest to the date of payment) were distributed to Firm Capital, White Bear and Pendragon from the Net Sale Proceeds in accordance with the Interim Distribution Order:
 - (a) to Firm Capital, the amount of \$17,781,090.45, with respect to the Firm Capital charge;
 - (b) to White Bear, the amount of \$1,977,970.98, with respect to the White Bear Charge;
 - (c) to Pendragon, the aggregate amount of \$9,916,602.70, with respect to the Pendragon third mortgage, fourth mortgage and fifth mortgage.
- 42. Following the granting of the Interim Distribution Order, the Receiver, Firm Capital, Lombard, White Bear, Pendragon and Con-Drain engaged in discussions regarding further distributions and the positions of the parties with respect to the Contested Amounts.
- 43. The Receiver reports that, as a result of discussions amongst the parties, the following distributions have been agreed to:
 - (a) a further distribution to Firm Capital, in the amount of \$329,574.00, in full satisfaction of its claims with respect to the loan renewal fee and interest pursuant

to section 17 of the Ontario *Mortgages Act* referred to in subparagraph 4(a), and the legal fees and disbursements and other costs referred to in subparagraph 5(a), of the Interim Distribution Order;

- (b) a further distribution to White Bear, in the amount of \$156,024.24, in full satisfaction of its claims with respect to the forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* referred to in clause 4(b)(i), and the legal fees and disbursements and other costs referred to in subparagraph 5(b), of the Interim Distribution Order;
 - (c) a further distribution to Pendragon, in the amount of \$288,512.31, in full satisfaction of its claims with respect to the forbearance fees and interest pursuant to section 17 of the Ontario *Mortgages Act* referred to in clauses 4(c)(i), 4(d)(i) and 4(e)(i), and the legal fees and disbursements and other costs referred to in subparagraph 5(b), of the Interim Distribution Order;
 - (d) a distribution to Lombard, in the amount of \$2,253,345.74, on account of the indebtedness owing to it by the Debtor for principal, interest and costs as of November 2, 2011 secured by the Lombard Charges registered against certain of the Lands, plus interest thereon up to the date of payment; and
 - (e) a distribution to Con-Drain, in the amount of \$57,314.12 on account of the indebtedness owing to it by the Debtor and secured by the Con-Drain Charge registered against the Lands.
44. In addition to the agreed upon distribution amounts, the parties have agreed that the Receiver shall no longer be obliged to maintain the holdbacks referred to in paragraphs 4 and 5 of the Interim Distribution Order.
45. With respect to distributions to Lombard, as noted above, the total indebtedness owed to Lombard by the Debtor was in the aggregate amount of \$12,727,872.80 as of November 1, 2011 and, as of November 29, 2011, Lombard has paid \$2,007,143.86 to Unit Purchasers pursuant to its obligations owing to the Unit Purchasers under the DIF Commitment and the Deposit Insurance Policy.

46. It is anticipated that Lombard will continue to receive claims from the Unit Purchasers for repayment of deposits under the terms of the DIF Commitment and the Deposit Insurance Policy.
47. At this time, the Receiver proposes that it be authorized by this Honourable Court to distribute the balance of the Net Sale Proceeds, subject to the creation of reserves by the Receiver for any outstanding or future claims, Receiver's fees and disbursements and the fees and disbursements of the Receiver's counsel or other costs that may be incurred prior to the discharge of the Receiver, to the law firm of Harris Sheaffer LLP, in trust, on the following terms:
- (a) all funds received by Harris Sheaffer LLP (the "**Unit Purchaser Deposit Trust Funds**") will be held in trust for the benefit of Unit Purchasers entitled to claim refunds of deposits paid to the Debtor pursuant to the DIF Commitment and the Deposit Insurance Policy (the "**Deposit Refund Claims**").
 - (b) the Unit Purchaser Deposit Trust Funds will also be held in trust for the benefit of Lombard to the extent that Lombard becomes entitled thereto as a result of its payment to Unit Purchasers of any Deposit Refund Claims pursuant to the Deposit Insurance Policy. The terms and conditions governing payments to be made from the Unit Purchaser Deposit Trust Funds to Lombard shall be agreed upon between Lombard and Harris Sheaffer LLP without requiring further approval of the Receiver or this Honourable Court.
 - (c) If, upon the expiry of the period of two (2) years following the date that notices are sent by the Receiver to the Unit Purchasers in accordance with paragraph 14 of the AVID Order, there are Unit Purchaser Deposit Trust Funds remaining in the possession of Harris Sheaffer LLP after the payment of all legitimate Deposit Refund Claims made prior to the expiry of that 2-year period (the "**Trust Surplus**"), Lombard shall make a motion to this Court for directions respecting the distribution of the Trust Surplus, with such motion to be made on notice to the Receiver (if not then discharged), Con-Drain, MCD, the Debtor and any other person appearing to have an interest in, or claim to, the Trust Surplus, and Harris


Sheaffer LLP shall hold the Trust Surplus and not distribute any portion thereof except in accordance with such directions or further order of this Honourable Court.

RECEIVER'S RECOMMENDATIONS

48. For the reasons set out above, the Receiver recommends that the Court make an order:
- (a) authorizing a second interim distribution of certain of the Net Sale Proceeds to the Applicant and other secured lenders as agreed upon by Firm Capital, White Bear, Pendragon, Lombard and Con-Drain; and
 - (b) authorizing a distribution of the Net Sale Proceeds, after creation of reserves by the Receiver for any outstanding or future claims, Receiver's fees and disbursements and fees and disbursements of the Receiver's legal counsel or other costs that may be incurred prior to the discharge of the Receiver, to Harris Sheaffer LLP, in trust, on the terms more fully described herein; and

All of which is respectfully submitted at Toronto, Ontario this 20th day of December, 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: 
for Bryan A. Tannenbaum, FCA, FCIRP
Senior Vice-President