



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

WEDNESDAY THE 7th DAY

JUSTICE MORAWETZ)

OF DECEMBER, 2011

**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

INTERIM DISTRIBUTION ORDER

THIS MOTION, made by DELOITTE & TOUCHE INC. in its capacity as the court-appointed receiver (the "**Receiver**") of certain of the assets, undertaking and property (the "**Assets**") of 2811 Development Corporation (the "**Debtor**"), for the relief set forth below was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the appointment order herein of the Honourable Mr. Justice C.L. Campbell dated June 29, 2011 (the "**Appointment Order**"), the Approval, Vesting and Interim Disbursement Order of the Honourable Mr. Justice Morawetz dated November 15, 2011 (the

“**Vesting Order**”), the Third Report of the Receiver dated November 3, 2011 (the “**Third Report**”), the Supplement to the Third Report dated November 11, 2011 (the “**Supplementary Report**”) the Fourth Report of the Receiver dated December 1, 2011 (the “**Fourth Report**”), and on hearing the submissions of counsel for the Receiver, Firm Capital Mortgage Fund Inc. (“**Firm Capital**”), Key Pendragon Enterprises Inc. (“**Key Pendragon**”), White Bear Developments Inc. (“**White Bear**”), Lombard General Insurance Company of Canada, Con-Drain Company (1983) Limited (“**Lombard**”) and Mady Contract Division Ltd., no one appearing for any other person on the service list, although properly served as appears from the affidavit of Chun Ying Wang sworn December 2, 2011, filed,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record dated December 2, 2011 is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the capitalized words herein shall have the meaning attributed to them in the Vesting Order, the Third Report, the Supplementary Report and the Fourth Report.

3. **THIS COURT ORDERS** that upon completion of the Transaction the Receiver is hereby authorized to distribute the following amounts from the proceeds of sale of the Assets after payment of all costs and disbursements related to the completion of the Transaction (the “**Net Sale Proceeds**”):

(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 Contested Amounts referred to in subparagraph 4(a) below, and secured by Firm Capital’s first mortgage on the Assets registered as Instrument no. AT1842029 (the “**Firm Capital First Mortgage**”), 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 Contested Amounts referred to in subparagraph 4(b) below, and secured by White Bear’s second mortgage on the Assets registered

as Instrument no. AT2259133 (the "**White Bear Second Mortgage**"), plus \$ 1,080.86 per day from and including December 10, 2011 to the date of payment;

(c) to Key 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 Contested Amounts referred to in subparagraph 4(c) below, and secured by Key Pendragon's third mortgage on the Assets registered as Instrument no. AT1903983 (the "**Key Pendragon Third Mortgage**"). plus \$2,838.84 per day from and including December 10, 2011 to the date of payment:

(d) to Key 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 Contested Amounts referred to in subparagraph 4(d) below, and secured by Key Pendragon's fourth mortgage on the Assets registered as Instrument no. AT2357840 (the "**Key Pendragon Fourth Mortgage**"), plus \$436.21 per day from and including December 10, 2011 to the date of payment; and

(e) to Key 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 referred to in subparagraph 4(e) below, and secured by Key Pendragon's fifth mortgage on the Assets registered as Instrument no. AT2449883 (the "**Key Pendragon Fifth Mortgage**"), plus \$384.73 per day from and including December 10, 2011 to the date of payment.

4. **THIS COURT ORDERS** that subject to the distributions authorized by paragraph 3 above the Receiver shall hold back from the Net Proceeds the following amounts (the "**Contested Amounts**"):

(a) with respect to the Firm Capital First Mortgage 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 First Mortgage that are contested by Lombard.

(b) with respect to the White Bear Second Mortgage:

- (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 Second Mortgage that are contested by Lombard; 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, including without limitation the Contested Amounts Motion referred to in paragraph 6 below (the “**Contested Amounts Motion**”).
- (c) with respect to the Key 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 Key Pendragon pursuant to the Key Pendragon Third Mortgage and that are contested by Lombard; 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, including without limitation the Contested Amounts Motion;
- (d) with respect to the Key Pendragon Fourth Mortgage:
 - (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 Key Pendragon pursuant to the Key Pendragon Fourth Mortgage that are contested by Lombard; 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, including without limitation the Contested Amounts Motion; and
- (e) with respect to the Key Pendragon Fifth Mortgage:
 - (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 Key Pendragon

pursuant to the Key Pendragon Fifth Mortgage that are contested by Lombard:
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, including without limitation the Contested Amounts Motion; and

5. ~~THIS COURT ORDERS that subject to the distributions authorized by paragraph 3 above~~ the Receiver shall hold back from the Net Sale Proceeds the following amounts:

(a) 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, including without limitation the Contested Amounts Motion; and

(b) the sum of \$50,000 as a reserve for legal fees and disbursements and other costs that may be incurred by White Bear and Key Pendragon with respect to this proceeding including without limitation the Contested Amounts Motion.

6. **THIS COURT ORDERS** that the entitlement, if any, of Lombard and the mortgagees referred to in paragraph 4 above to the Contested Amounts shall be determined on a further motion (the "**Contested Amounts Motion**") to be made by any of the Receiver, Firm Capital, White Bear, Key Pendragon or Lombard on a date to be scheduled by a judge presiding over the Commercial List.

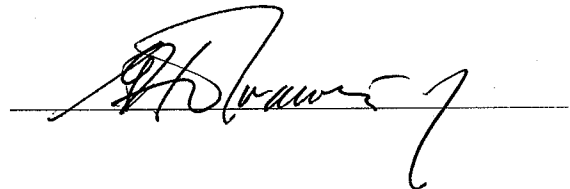
7. **THIS COURT ORDERS** that the Receiver shall hold the balance of the Net Sale Proceeds in accordance with the Appointment Order subject to further order of this court.

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

DEC 08 2011

PER/PAR:

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FIRM CAPITAL CORPORATION

- and -

2811 DEVELOPMENT CORPORATION

Applicant

Respondent

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

**PROCEEDINGS COMMENCED AT
TORONTO**

INTERIM DISTRIBUTION ORDER

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capacity as Receiver