

Court File No.: CV11-9242-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.) WEDNESDAY, THE 10th
MORAWETZ)
JUSTICE ~~NEUBOLD~~) DAY OF AUGUST, 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

ORDER

THIS MOTION, made by Deloitte & Touche Inc., in its capacity as the receiver (the "**Receiver**") of all of the lands and premises known municipally as 5789, 5811, 5933, 5945 and 5951 Steeles Avenue East, Toronto, Ontario (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 (collectively, the "**Property**") for relief with respect to the matters set out in the Notice of Motion dated July 21, 2011, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report of the Receiver dated July 20, 2011 (the “**Second Report**”), the Supplementary Motion Record of the Receiver dated August 9, 2011 (the “**Receiver’s Supplementary Record**”), the affidavits of Charles Chan sworn July 18, 2011 and August 2, 2011, the affidavit of Anthony O’Brien sworn August 3, 2011 and the Exhibits thereto, and on hearing submissions of counsel for the Receiver, the Applicant, the Respondent, Key Pendragon Enterprises Inc., White Bear Developments Inc., Markham Steeles Realty Inc., Mady Contract Division Ltd., Lombard General Insurance Company of Canada and Terracap Investments Inc.,

1. **THIS COURT ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the Second Report.
2. **THIS COURT ORDERS** that the Second Report and the activities and conduct of the Receiver described in the Second Report are hereby ratified and approved.
3. **THIS COURT ORDERS** that the Receiver’s marketing plan for the Property as described in the Second Report, as amended by the revised marketing flyer and Form of Offer and Conditions of Sale contained in the Receiver’s Supplementary Record, together with any amendments thereto deemed necessary and appropriate by the Receiver (hereinafter, the “**Marketing Process**”) be and it is hereby approved and the Receiver is hereby authorized and directed to carry out the Marketing Process.
4. **THIS COURT ORDERS** that the revised form of offer and conditions of sale (the “**Form of Offer**” and **Conditions of Sale**” respectively) contained in the Receiver’s Supplementary Record be and the same are hereby approved, together with any amendments thereto deemed necessary and appropriate by the Receiver.

5. **THIS COURT ORDERS** that the Receiver be and it is hereby authorized to:

- (a) proceed to market and offer for sale the Receiver's right, title and interest in the Property in the manner more particularly described in the Second Report and in accordance with and on the terms of the Marketing Process and the Form of Offer and Conditions of Sale contained in the Receiver's Supplementary Record;
- (b) enter into discussions with any and all offerors in respect of the Property;
- (c) if considered by the Receiver to be necessary or appropriate, to disclose to and review with any secured creditor of the Debtor, any of their advisors and Deloitte Real Estate any and all offers received by the Receiver to purchase some or all of the Property;
- (d) accept an offer to purchase some or all of the Property, the terms of which, in the Receiver's sole opinion, are in the best interests of the estate herein, subject to approval of this Court if required in accordance with the Appointment Order; and
- (e) enter into agreements of purchase and sale in respect of some or all of the Property on the terms of the Template Agreement (as defined in the Conditions of Sale), together with any amendments or additions thereto deemed necessary by the Receiver in its sole opinion, subject to approval of this Court if required in accordance with the Appointment Order.

6. **THIS COURT ORDERS** that, in accordance with the Conditions of Sale, the Receiver is not obligated to accept any offer or offers to purchase some or all of the Property.

7. **THIS COURT ORDERS** that the Receiver shall have no personal or corporate liability in connection with offering the Receiver's right, title and interest in the Property for sale, including, without limitation:

- (a) by advertising the Property and/or the Marketing Process;
- (b) by exposing the Property to any and all parties, including, but not limited to, those who have made their interest known to the Receiver;
- (c) by carrying out the Marketing Process;
- (d) by responding to any and all requests or inquiries in regards to due diligence conducted in respect of the Property;
- (e) through the disclosure of any and all information presented by the Receiver and its solicitors or agents (including, without limitation, Deloitte Real Estate), arising from, incidental to, or in connection with the Marketing Process;
- (f) pursuant to any and all offers received by the Receiver in accordance with the Marketing Process; and
- (g) pursuant to any agreement of purchase and sale entered into by the Receiver in respect of the sale of any of the Property.

8. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to directly market the Property through Deloitte Real Estate as set out in the Second Report.

9. **THIS COURT ORDERS** that any notice required to be sent or provided by the Receiver pursuant to sections 245 and 246 of the *Bankruptcy and Insolvency Act* (the "Act") shall be substantially in the form of the draft notice contained in the Receiver's Supplementary Record


and, with respect to section 245 of the Act, such notices shall be sent to all persons who, according to the records of the Debtor, have entered into agreements to purchase retail condominium units in the Property.

10. **THIS COURT ORDERS** that the costs of the Receiver in preparation of this motion and of these proceedings, up to and including the hearing of this motion and the entry of this order (including applicable Harmonized Sales Tax) be paid to the Receiver from the estate herein.

A handwritten signature in black ink, appearing to read "A. H. Francis", is written over a horizontal line.

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

AUG 11 2011

PER/PAR: 

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

and

2811 DEVELOPMENT CORPORATION

Respondent

Court File No.: **CV11-9242-00CL**

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

Proceedings commenced at Toronto

ORDER

(Approving Marketing Plan)

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