

**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

**MOTION RECORD
(Interim Distribution – returnable December 5, 2011)**

Date: December 2, 2011

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TAB 1

**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.

B E T W E E N:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

NOTICE OF MOTION
(Interim distribution)

DELOITTE & TOUCHE INC. in its capacity as receiver (the “**Receiver**”) of all 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 the respondent 2811 Development Corporation (the “**Debtor**”) acquired for, or used in relation to, the development of the Lands and construction of improvements thereon (together the “**Assets**”), will make a motion before a Judge presiding over the Commercial List on Monday, the 5th day of December, 2011 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR AN ORDER substantially in the form of the draft attached as Schedule "A" hereto (the "**Interim Distribution Order**");

- (a) if necessary, abridging the time for service of this motion so that it is properly returnable on Monday, December 5, 2011 and dispensing with further service thereof;
- (b) authorizing the Receiver to pay from the net proceeds of sale upon the completion of the Mady Agreement (defined below) sufficient funds to repay in full the indebtedness of the Debtor to the mortgagees Firm Capital Mortgage Fund Inc., White Bear Developments Inc. and Key Pendragon Enterprises Inc.;
- (c) such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) the Receiver was appointed by Order of the Honourable Mr. Justice C. Campbell dated June 29, 2011;
- (b) the order of the Honourable Mr. Justice Morawetz dated August 10, 2011 (the "**Sale Process Approval Order**") approved a marketing and sale process with respect to the Assets (the "**Sales Process**");
- (c) the Receiver implemented the Sales Process in accordance with the Sale Process Approval Order and entered into an agreement of purchase and sale, dated as of October 3, 2011 (the "**Mady Agreement**"), between the Receiver as vendor and Mady Development Corporation as purchaser (the "**Purchaser**") for the sale of the Assets as defined in the agreement, subject to the approval of this Honourable Court;

(d) by an order herein dated November 15, 2011 the Honourable Mr. Morawetz approved the Mady Agreement;

(e) the Mady Agreement is currently scheduled to be completed on December 8, 2011 and the mortgagees holding mortgage security on the Lands wish to have the proceeds of sale distributed to them, in accordance with their respective interests, as soon as practicable after the completion of the sale;

(f) upon completion of the sale the Receiver will have sufficient proceeds of sale in hand to distribute funds sufficient to pay in full the secured claims of the mortgagees Firm Capital Mortgage Fund Inc., White Bear Developments Inc. and Key Pendragon Enterprises Inc.;

(g) subject to a holdback for continuing fees and disbursements and the possible settlement of priority or other claims, the Receiver will also have funds available to distribute with respect to the sixth mortgage held by Lombard General Insurance Company of Canada ("**Lombard**");

(h) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The third report of the Receiver dated November 3, 2011 (the "Third Report");
- (b) The Supplement to the Third Report dated November 11, 2011;
- (c) the Fourth Report of the Receiver dated December 1, 2011; and
- (d) such further and other material as counsel may advise and this Honourable Court

may permit.

December 2, 2011

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TAB 2

**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

**FOURTH REPORT OF THE RECEIVER
DATED DECEMBER 1, 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 (the “**Sale Approval Motion**”) returnable November 15, 2011 for an order, *inter alia*:
 - a) authorizing and directing the Receiver to enter into and carry out the terms of the agreement of purchase and sale between the Receiver and Mady Development Corporation (“**Mady**”) dated October 3, 2011 (the “**Mady Agreement**”) together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Lands in Mady upon closing of the Mady Agreement and the delivery of the Receiver’s Certificate 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, as more fully described therein, 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 in connection with the Sale Approval Motion (the “**Supplement to the Third Report**”), 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 6th ranking mortgagee over certain of the Lands, 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 Development Inc. (“**White Bear**”) and Key

Pendragon Enterprises Inc. (“**Pendragon**”), being the parties holding the 1st through 5th mortgages on certain of the Lands.

PURPOSE OF THIS FOURTH REPORT

6. The Receiver understands that Lombard is still in the process of reviewing the claims of Firm Capital, White Bear and Pendragon and is partially satisfied with the quantum of those claims. The purpose of this fourth report of the Receiver (the “**Fourth Report**”) is to:
 - a) provide a summary of the outstanding secured claims against the Lands; and
 - b) recommend the granting of an order:
 - i) authorizing an interim distribution of certain of the net proceeds of sale of the Lands to the Applicant and other secured lenders as agreed upon by Firm Capital, White Bear, Pendragon and, Lombard as more fully described herein and in the event that the sale transaction contemplated by the Mady Agreement is completed; and
 - ii) amending the AVID Order to vest title in Mady Steeles 2011 Ltd. (“**Mady Steeles**”).

TERMS OF REFERENCE

7. In preparing the Fourth 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 Fourth Report.
8. Unless otherwise stated, all dollar amounts contained in the Fourth Report are expressed in Canadian dollars.

9. Unless otherwise provided, all other capitalized terms not otherwise defined in this Fourth Report are as defined in the Appointment Order or previous reports of the Receiver.

CLAIMS AGAINST THE LANDS AND PROPOSED INTERIM DISTRIBUTION

10. As set out in greater detail in the Third Report, Firm Capital, White Bear, Pendragon, Lombard, Con-Drain Company (1983) Limited (“**Con-Drain**”) and Mady Contract Division Ltd. (“**MCD**”) (Collectively the “**Secured Creditors**”) have registered charges/mortgages or claims against title to the Lands or against portions of the Lands.
11. As noted in the Supplement to the Third Report, the Receiver was informed by the Secured Creditors that the aggregate amounts due to them for outstanding principal, interest, fees and other amounts as at November 15, 2011 are as follows:

| Creditor | Outstanding Amount |
|-----------------|--|
| Firm Capital | \$18,239,434.72 |
| White Bear | \$2,347,200.33 |
| Pendragon | \$7,801,962.99 |
| Pendragon | \$1,405,631.72 |
| Pendragon | \$1,239,776.35 |
| Lombard | \$12,727,872.80 (as of November 2, 2011) |
| Con-Drain | \$1,743,008.13 |
| MCD | \$429,190.00 |
| Total | \$45,934,077.04 |

12. On or before November 15, 2011, at the request of the Receiver through its legal counsel, the Receiver received sworn affidavits from Firm Capital, White Bear and Pendragon as to the amounts owing by 2811 in respect of its indebtedness to each of Firm Capital, White Bear and Pendragon. The amounts set out in the sworn affidavits are the same as those amounts set out above. Attached as **Appendix "E"** is a copy of each of Firm Capital's, White Bear's and Pendragon's sworn affidavits.
13. As noted above, the Receiver's motion for an interim distribution was adjourned to December 5, 2011 pending a review by Lombard of the other Secured Creditors' claims.
14. The Receiver understands that since November 15, 2011, as a result of Lombard's review of the claims, Lombard may challenge the ability of Firm Capital, White Bear and Pendragon to obtain payment for certain amounts in priority to the claims of Lombard. As at the date of this Fourth Report, the Receiver is not aware of what amounts have been agreed to between Lombard, Firm Capital, White Bear and Pendragon.
15. Although the Receiver is not aware of the exact amounts, the Receiver does understand that there are undisputed amounts owing to Firm Capital, White Bear and Pendragon that Lombard acknowledges are claims that stand in priority to its claims against the Lands. These undisputed amounts could therefore be distributed after the Mady Agreement is completed.
16. The Receiver proposes that the Court grant the Receiver the authority to, in its discretion, make distributions of undisputed amounts owing to Firm Capital, White Bear and Pendragon on account of their claims against the Property and upon receiving written confirmation from Lombard, Firm Capital, and Pendragon as to their agreement of the undisputed amounts.
17. The Receiver will report to this Honourable Court following the closing of the Mady Agreement as to the amounts distributed to such creditors.
18. In the Third Report, the Receiver noted that Borden Ladner Gervais LLP ("**BLG**"), legal counsel to the Receiver, was not in a position to provide a definitive opinion with respect

to the White Bear charge/mortgage. The reason for this was that there was an inconsistency (being the inclusion of a period) between the chargee's name listed on the White Bear charge in the amount of \$1,500,000 registered on December 16, 2009, being "Vector Financial. Services Limited", and the name of the transferor on the Transfer of Charge registered on November 30, 2010 in favour of White Bear, being "Vector Financial Services Limited".

19. The Receiver understands that on November 8, 2011, an Application to Change Name-Instrument was registered on title to the Lands as instrument no. AT2864312, wherein it is indicated that the listing of "Vector Financial. Services Limited" as chargee under the charge was a typographical error and the name of the chargee was properly "Vector Financial Services Limited".
20. In a letter dated November 10, 2011, BLG wrote to counsel to White Bear, Pendragon, Lombard, Con-Drain and MCD and confirmed its view that the typographical error did not affect the validity or priority of the White Bear charge. However, BLG requested that the parties confirm in writing whether they took any issue with the amendment to the White Bear charge. A copy of the November 10, 2011 letter is attached as **Appendix "F"**.
21. The Receiver reports that none of the parties have indicated that they take issue with the amendment filed by White Bear.
22. As noted in the Third Report, the Receiver is of the view that upon the completion of the Mady Agreement, and the proposed distribution set out above, it will have sufficient funds in its possession to address and make payment of any other potential claims, such as those noted in the Third Report, to the extent that such claims are valid and have priority to the claims of Firm Capital, White Bear, Pendragon and Lombard.

AMENDMENT OF THE AVID ORDER

23. The Receiver understands that Mady has requested that the Mady Agreement be assigned to Mady Steeles pursuant to paragraph 6.22 of the Mady Agreement.

24. The Receiver has no objection to the assignment, however the AVID Order does not contemplate vesting title of the Lands to any person or entity other than Mady.
25. Accordingly, the Receiver respectfully requests that this Honourable Court amend the AVID Order allowing title to the Lands to be vested in Mady Steeles, in accordance with the terms of the Mady Agreement.

RECEIVER'S RECOMMENDATIONS

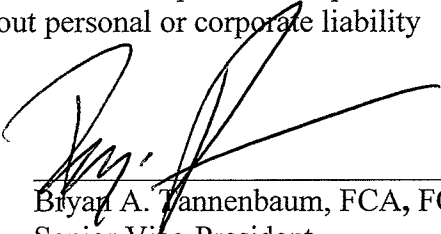
26. For the reasons set out above, the Receiver recommends that the Court make an Order:
- a) authorizing an interim distribution of certain of the net proceeds of sale of the Property to the Applicant and other secured lenders as agreed upon by Firm Capital, White Bear, Pendragon and Lombard in the event that the sale transaction contemplated by the Mady Agreement is completed; and
 - b) amending the AVID to vest title in Mady Steeles.

All of which is respectfully submitted at Toronto, Ontario this 1st day of December, 2011.

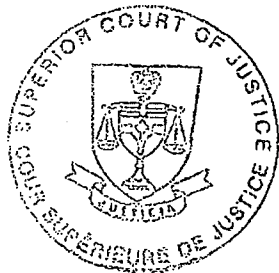
Deloitte & Touche Inc.

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:


Bryan A. Vannenbaum, FCA, FCIRP
Senior Vice-President

APPENDIX "A"



Court File No.: CV11-9242-00CL

**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**

| | | |
|--------------------|---|---------------------------------|
| THE HONOURABLE MR. |) | WEDNESDAY, THE 29 th |
| |) | |
| JUSTICE CAMPBELL |) | DAY OF JUNE, 2011 |

BETWEEN:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

2811 DEVELOPMENT CORPORATION

Respondent

ORDER

THIS APPLICATION made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing Deloitte & Touche Inc. as receiver (in such capacity, the “Receiver”) without security, of certain of the assets, undertakings and properties of 2811 Development Corporation (the “Debtor”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Michael Warner sworn May 30, 2011 (the “Warner Affidavit”), the supplementary affidavit of Michael Warner sworn June 28, 2011 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the Debtor, no one else appearing and on reading the consent of Deloitte & Touche Inc. to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, Deloitte & Touche Inc. is hereby appointed Receiver, without security, of all of the lands and premises legally described in Schedule "A" hereto (the "**Lands**") and all of the assets, undertakings and properties of 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**"). For greater certainty, Property includes Insurance Policies, Material Contracts, Permits, Personal Property, Plans and Specifications and Securities, as each such term is defined in Schedule "B" hereto.

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to 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) to receive, preserve, and protect of the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to undertake environmental or workers' health and safety assessments of the Property and operations of the Debtor;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (k) to market any or all of the Property, in a manner approved by the Court, including advertising and soliciting offers in respect of the Property or any part or parts

thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (o) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (p) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (t) to register a copy of this Order and any other orders in respect of the Property against title to any of the Property,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to

make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply to the Applicant or in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. Nothing contained in this paragraph shall prevent the registration of a Certificate of Action, service of a Statement of Claim by a lien claimant or delivery of a demand pursuant to section 39 of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended ("CLA").

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this

Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not

complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a charge on the Property ranking subsequent in priority to the security held by the Applicant with respect to the Property (including, without limitation, the Mortgage as defined in and as attached to the Warner Affidavit) and in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts and upon first obtaining the consent of the Applicant, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings

Charge”) as security for the payment of the monies borrowed, together with interest and charges thereon, ranking subsequent in priority to: i) the security held by the Applicant with respect to the Property (including, without limitation, the Mortgage as defined in and as attached to the Warner Affidavit); and ii) the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA, but in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any other Person.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “C” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

24. **THIS COURT ORDERS** that notwithstanding paragraphs 20 to 23 inclusive above, and as alternative thereto, the Receiver is hereby authorized to borrow money to fund the exercise of its powers and duties hereunder by way of advances from the Applicant, which advances shall be secured by the Applicant’s security on the Property (including, without limitation, the Mortgage as defined in and as attached as an exhibit to the Warner Affidavit), with the same priority that may attach to such security.

GENERAL

25. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

26. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

27. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

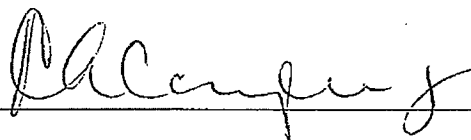
28. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

29. **THIS COURT ORDERS** that the Applicant and the Receiver and any party who has served a Notice of Appearance, may serve any materials in this proceeding by e-mailing a pdf or other electronic copy of such materials to counsels' e-mail addresses as recorded on the Service List from time to time, in accordance with the e-filing protocol of the Commercial List to the extent practicable and the Receiver may post a copy of any or all such material on its website at www.deloitte.ca (the "Website").

30. **THIS COURT ORDERS** that the Receiver shall, within five (5) business days of receipt of the Debtor's books and records with respect to the Property, send notice of this Order to any trade creditors of the Debtor in respect of the Property as disclosed in such books and records, other than employees and trade creditors to which the Debtor owes less than \$500, at their addresses as they appear in the Debtor's books and records, by prepaid ordinary mail, courier, personal delivery or electronic transmission, advising that such creditor may obtain a copy of this Order on the Website and if such creditor is unable to obtain it by that means, such creditor may request a copy from the Receiver, who shall promptly send a copy of this Order to any interested person so requesting.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



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

JUN 29 2011

PER/PAR:



SCHEDULE "A"

LEGAL DESCRIPTION OF THE LANDS

The Lands comprising the Property are legally described as follows:

PIN No. 06050-0199 (LT)

Part Lots 18 and 19, Con 5; Part Road Allowance between Lots 18 and 19, Concession 5, as closed by By-Law 406 being Part of Part 1, 66R12477 lying north of Plan 66M1996, Save and Except Part of Lots 18 and 19, Con 5, Part 1, 66R16987

City of Toronto

Toronto Land Titles Office (No. 80)

Municipal Address: 5789 Steeles Avenue East, Toronto, Ontario M2M 3Y2

PIN No. 06050-0266 (LT)

Part Lot 20, Conc 5 Scarborough designated as Part 1, Plan 66R23210;

City of Toronto

Toronto Land Titles Office (No. 80)

Municipal Address: 5811 Steeles Avenue East, Toronto, Ontario M2M 3Y2

PIN No. 06050-0263 (LT)

Part Lot 19, Conc 5 Scarborough designated as Part 1, Plan 66R23217;

City of Toronto

Toronto Land Titles Office (No. 80)

Municipal Address: 5933 Steeles Avenue East, Toronto, Ontario M2M 3Y2

PIN No. 06050-0264 (LT)

Part Lot 18, Conc 5 Scarborough; Part RDAL between Lots 18 and 19, Con 5, Scarborough (Closed by By-Law 406 as in SC608215), designated as Part 2 on Plan 66R23217

City of Toronto

Toronto Land Titles Office (No. 80)

Municipal Address: 5945 Steeles Avenue East, Toronto, Ontario M2M 3Y2

PIN No. 06050-0272 (LT)

Part Lot 18, Conc 5 Scarborough, Part 3 Plan 66R23217 Save and Except Part 32, Plan 66R23655

City of Toronto

Toronto Land Titles Office (No. 80)

Municipal Address: 5951 Steeles Avenue East, Toronto, Ontario M2M 3Y2

SCHEDULE "B"**DEFINED TERMS**

In the Order to which this Schedule "B" is attached, the following terms have the following meanings:

"Construction Agreements" means all construction contracts and subcontracts entered into by or on behalf of the Debtor for the supply of construction services or materials to all improvements constructed on or made to the Lands including, without limitation, all agreements, invoices and other documents related thereto, together with all bonds, guarantees, letters of credit and/or other securities issued with respect to the performance of such Construction Agreements and the supply of all work, labour and materials thereunder.

"Insurance Policies" means all policies of insurance insuring the Lands and the building improvements, fixtures and other properties situate in, on or under the Lands or arising out of the interest of the Debtor in the Lands including, without limitation, policies of insurance for property damage, loss of rental income, business interruptions, theft of property, professional liability, general liability, fire and extended perils and boiler and machinery.

"Landmark Sale Agreements" means any and all agreements of purchase and sale entered into between the Debtor and a purchaser of a condominium unit in the two-storey retail mall known as The Landmark to be constructed by the Debtor upon the Lands.

"Material Contracts" means all of the right, title and interest, but not the liabilities, obligations or burdens, of the Debtor in all contracts entered into by or on behalf of the Debtor for the development, servicing and management of any improvements constructed on or made to the Lands including, without limitation, any cost sharing agreements (except Construction Agreements which are expressly excluded herefrom), insurance, Permits and Plans and Specifications and Landmark Sale Agreements including, without limitation, any amendments, extensions, renewals and replacement which have been made to any of them, all proceeds therefrom, all benefits and advantages which now or hereafter may be derived therefrom, all debts, demands, choses in action and claims due, owing, or accruing due to or on behalf of the Debtor therefrom and all books, accounts, invoices, letters, papers, drawings, blueprints,

documents, records and data (including hard and soft copies thereof and all forms of magnetic, electronic and other means of data storage) in any way evidencing or relating thereto.

"Permits" means all present and future approvals, licenses, demolition permits, excavation permits, foundation permits, building permits, construction permits and other permits now or hereafter issued or required to be issued by any public or governmental authority in order to permit the construction of improvements to the Lands.

"Personal Property" means all personal property (including, without limitation, each account, chattel paper, document of title, equipment, instrument, intangible, inventory, money, security and goods) owned or acquired by or on behalf of the Debtor or in respect of which the Debtor has any rights and which is now located on, affixed or attached to, placed upon, situate in or on, or which may arise out of, from or in connection with the ownership, use or disposition of, the Lands or any part thereof, including, without limitation, all increases, additions, substitutions, repairs, renewals, replacements, accessions, accretions and any improvements to any such Personal Property and all proceeds and other amounts derived directly or indirectly from any dealings with any such Personal Property.

"Plans and Specifications" means all plans, specifications and drawings for the improvements constructed upon the Lands.

"Securities" means all monies evidenced or represented by certificates of deposit, guaranteed investment certificates or other interest bearing instruments or accounts issued to or registered in the name of the Debtor or its nominee and all renewals thereof and/or substitutions, replacements, additions of alterations thereto.

SCHEDULE "C"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that Deloitte & Touche Inc., the receiver (the "**Receiver**") without security, of all of certain 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**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of _____, 2011 (the "**Order**") made in an action having Court file number ___-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person other than the Applicant, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses upon first obtaining the prior consent of the Applicant.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

Deloitte & Touche Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____
Name:
Title:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

2811 DEVELOPMENT CORPORATION

Respondent

Court File No.: CV11-9242-00CL

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

Proceedings commenced at **Toronto**

ORDER

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Tel: 416-304-0592

Fax: 416-304-1313

Lawyers for the Applicant

APPENDIX “B”

Court File No. CV11-9242-00CL

**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

**THIRD REPORT OF THE RECEIVER
DATED NOVEMBER 3, 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. The Appointment Order 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 of business:

- (a) without the approval of the Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$250,000; and
 - (b) with the approval of the Court in respect of any transaction exceeding \$100,000 or exceeding \$250,000 in the aggregate.
3. On July 15, 2011, the Receiver issued its First Report to the Court (the "**First Report**") in support of its motion returnable July 19, 2011 (the "**Withheld Records Motion**") for an order, *inter alia*, directing the Debtor to deliver to the Receiver all of the Debtor's books and records, including contact information for the Debtor's creditors. The Withheld Records Motion was adjourned until July 22, 2011 to permit the Debtor to file additional evidence in connection with that motion. A copy of the First Report, without attachments, is attached hereto as **Appendix "B"**. Copies of the handwritten and unofficial transcript of the endorsement of The Honourable Madam Justice Mesbur dated July 19, 2011 granting the adjournment is attached hereto as **Appendix "C"**.
 4. On July 21, 2011, the Receiver issued its Second Report to the Court (the "**Second Report**") in support of its motion for an Order approving the Receiver's activities since June 29, 2011 and approving the marketing plan proposed by the Receiver for the sale of the Property (the "**Sale Process Motion**"). This motion was returnable on August 3, 2011. A copy of the Second Report, without attachments, is attached hereto as **Appendix "D"**.
 5. On July 22, 2011 the Withheld Records Motion was heard by The Honourable Mr. Justice Perell, who, following the hearing of the motion, issued an order compelling the Debtor to comply with paragraph 30 of the Appointment Order and all other provisions of the Appointment Order, including the requirement to deliver all of the Debtor's books and records to the Receiver. A copy of the order of Justice Perell dated July 22, 2011 (the "**Perell J. Order**") is attached hereto as **Appendix "E"**.

6. On July 29, 2011, the Receiver filed with the Court a Supplement to the Second Report (the "**Supplementary Report**"). The purpose of the Supplementary Report was to provide the Court with a description of the Receiver's efforts to obtain the Debtor's books and records, including contact information for the Debtor's creditors in accordance with the Perell J. Order, and a description of the Debtor's failure to provide the Receiver with all of the Debtor's books and records in contravention of the Perell J. Order and the Appointment Order. A copy of the Supplementary Report is attached hereto as **Appendix "F"**.
7. As a result of the failure of the Debtor to comply with the Perell J. Order, the Receiver amended the relief it was seeking in the Sale Process Motion to include an order, *inter alia*, declaring the Debtor and the President of the Debtor, Mr. Charles Chan, to be in contempt of the Perell J. Order (the "**Contempt Motion**").
8. On August 3, 2011, the Sale Process Motion was adjourned by The Honourable Mr. Justice Wilton-Siegel until August 5, 2011. At the request of the Debtor, the Court directed the Receiver not to send any notices of the receivership to the approximately 400 persons who had purchased condominium units to be constructed in the Debtor's proposed development pending the hearing of the Sale Process Motion on August 5, 2011. In addition, Justice Wilton-Siegel compelled the Debtor to deliver all books and records to the Receiver prior to August 5, 2011 in accordance with the Perell J. Order. Copies of the handwritten and unofficial transcript of the endorsement of Justice Wilton-Siegel dated August 3, 2011 is attached hereto as **Appendix "G"**.
9. On August 5, 2011, the Sale Process Motion was adjourned again by Justice Wilton-Siegel to August 10, 2011 to permit stakeholders with an interest in the Property to meet with the Receiver to discuss various issues relating to the approach to the valuation of the Property and the proposed sale process. Copies of the handwritten and unofficial transcript of the endorsement of Justice Wilton-Siegel dated August 5, 2011 is attached hereto as **Appendix "H"**.
10. On August 9, 2011, the Receiver filed with the Court a Supplementary Motion Record in connection with the Sale Process Motion (the "**Supplementary Motion Record**"), which

contained a revised Marketing Flyer, a revised Form of Offer and Conditions of Sale and a revised form of the Notice of Receiver. A copy of the Supplementary Motion Record is attached hereto as **Appendix "I"**.

11. On August 10, 2011, the Sale Process Motion was heard by The Honourable Mr. Justice Morawetz, and following the hearing of the motion, Justice Morawetz granted an order (the "**Marketing Order**") approving the Receiver's plan for marketing the Property for sale (the "**Marketing Process**"). A copy of the Marketing Order is attached hereto as **Appendix "J"**.
12. In September, 2011, the Receiver and the Debtor, through their respective counsel, resolved the Contempt Motion, and the motion was subsequently dismissed without costs on consent by an order of Justice Morawetz dated October 17, 2011 (the "**Contempt Dismissal Order**"). A copy of the Contempt Dismissal Order is attached hereto as **Appendix "K"**.
13. The Appointment Order, together with related Court documents, additional Orders, the previous reports of the Receiver and the Notice to Creditors have been posted on the Receiver's website, which can be found at www.deloitte.ca, and more specifically located under the related links title of Insolvency and Restructuring/current proceedings.

PURPOSE OF THIS THIRD REPORT

14. Upon completion of the Marketing Process, the Receiver received a number of offers to purchase the Property in accordance with the terms of the Marketing Order. The Receiver has now accepted one of those offers, subject to Court approval. The purpose of this third report of the Receiver (the "**Third Report**") is to:
 - (a) provide a summary of the Marketing Process and details of the marketing activities undertaken by the Receiver with respect to the Property since the granting of the Marketing Order on August 10, 2011; and
 - (b) recommend the granting of an order as follows:
 - (i) authorizing and directing the Receiver to enter into and carry out the terms of the agreement of purchase and sale between the Receiver and Mady

Development Corporation (“Mady”) dated October 3, 2011 (the “Mady Agreement”) together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Property in Mady, or as it may further direct in writing, upon closing of the Mady Agreement and the delivery of the Receiver’s Certificate to Mady;

- (ii) if the Mady Agreement is terminated in accordance with its terms, authorizing and directing the Receiver to commence negotiations with any other party or parties identified by the Receiver through the Marketing Process;
- (iii) approving the activities of the Receiver to November 3, 2011 and the activities of the Receiver as described in this Third Report including, without limitation, the steps taken by the Receiver pursuant to the Marketing Process;
- (iv) approving an interim distribution of certain of the net proceeds of sale of the Property to the Applicant and other secured lenders, as more fully described herein, in the event that the sale transaction contemplated by the Mady Agreement is completed;
- (v) approving the professional fees and disbursements of the Receiver for the period May 25, 2011 to October 15, 2011, and its independent legal counsel, Borden Ladner Gervais LLP (“BLG”), for the period from August 4, 2011 to October 31, 2011;
- (vi) approving the professional fees and disbursements of the Receiver’s legal counsel, Thornton Grout Finnigan LLP (“TGF”), for the period from June 30, 2011 to August 4, 2011; and
- (vii) approving the professional fees and disbursements of the Receiver’s independent real estate counsel, Meyer Wassenaar & Banach LLP (“MWB”), for the period July 14, 2011 to October 31, 2011.

TERMS OF REFERENCE

15. In preparing the Third 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 Third Report.
16. Unless otherwise stated, all dollar amounts contained in the Third Report are expressed in Canadian dollars.
17. Unless otherwise provided, all other capitalized terms not otherwise defined in this Third Report are as defined in the First Report, the Second Report or the Appointment Order.

BACKGROUNDThe Property

18. The Debtor is a corporation governed by the laws of the Province of Ontario and is the registered owner of the Property, which is located in the City of Toronto and municipally known as:
 - (a) 5789 Steeles Avenue East (PIN 06050-199), acquired by the Debtor on or about December 15, 2004;
 - (b) 5811 Steeles Avenue East (PIN 06050-0266), acquired by the Debtor on or about September 20, 2004;
 - (c) 5933 Steeles Avenue East (PIN 06050-0263) acquired by the Debtor on or about June 30, 2006;
 - (d) 5945 Steeles Avenue East (PIN 06050-0264) acquired by the Debtor on or about March 14, 2006; and
 - (e) 5951 Steeles Avenue East (PIN 06050-0272) acquired by the Debtor on or about September 11, 2006.

19. Attached hereto as **Appendix "L"** is a partial copy of a survey of the Lands. Attached hereto as **Appendix "M"** are copies of Parcel Registers obtained on October 26, 2011 from Service Ontario with respect to the Lands (collectively, the **"Parcel Registers"**).
20. The Lands are vacant serviced commercial/industrial land comprising approximately 39.01 acres located on the south side of Steeles Avenue East, just west of Markham Road, in the City of Toronto. The Lands are notionally divided into three sections as follows:
- | | |
|------------|-----------------------------------|
| Lands "A": | approximately 10.359 acres |
| Lands "B": | approximately 20.775 acres |
| Lands "C": | approximately <u>7.875 acres</u> |
| Total: | approximately <u>39.009 acres</u> |
21. Lands "B" comprise the bulk of the Property and were intended to be developed by the Debtor with a 1,090 unit two-storey retail condominium mall containing a gross floor area of 435,388 square feet and a saleable area of 228,907 square feet, known as "The Landmark". Lands "A" comprise parcels of land fronting Steeles Avenue East and were proposed to be improved by the Debtor with retail pads totalling approximately 89,000 square feet. Lands "C" were to be held for future development and are currently zoned as industrial.
22. As noted above, the Receiver was appointed over the Property on June 29, 2011. The Receiver understands that internal servicing of the Lands was completed by the Debtor prior to the granting of the Appointment Order, however no significant construction of The Landmark has commenced. Other than site plan approvals and building permits obtained in the normal course, together with payment of any applicable levies in connection with such building permits, the Receiver is not aware of any outstanding municipal approvals still required to commence construction of The Landmark.

Change of Solicitors

23. As noted in the Second Report, the Receiver retained the Applicant's solicitors, TGF, to act as its legal counsel. In late July 2011, it became clear to the Receiver that, due to anticipated contentious issues, it was necessary to retain independent legal counsel. As a

result, on August 4, 2011, the Receiver retained BLG to act as its independent legal counsel.

The Unit Purchasers

24. The Debtor's records indicate that prior to the date of the Appointment Order it entered into approximately 330 agreements of purchase and sale (individually, a "**Landmark Sale Agreement**", and collectively the "**Landmark Sale Agreements**") pursuant to which each purchaser (individually, a "**Unit Purchaser**", and collectively the "**Unit Purchasers**") agreed to purchase un-built condominium units in the Debtor's project at the Lands "B". Such purchases represented approximately 115,000 square feet of retail space. The Debtor has provided to the Receiver copies of the Landmark Sale Agreement for each of the 330 purchasers of condominium units. Copies of two forms of the standard sale agreements entered into by Unit Purchasers are respectively attached hereto as **Appendix "N"** and **Appendix "O"**.
25. The Receiver has been informed by the Debtor that all Unit Purchasers paid deposits to the Debtor upon execution of their respective Landmark Sale Agreement, and the deposits were paid to the Debtor's solicitors to be held in trust pursuant to the provisions of the *Condominium Act* (Ontario) (the "**Condominium Act**"). This arrangement is confirmed in article 58, Schedule "C" of the Landmark Sale Agreements.
26. Pursuant to article 58 of Schedule "C" to the Landmark Sale Agreements, the Debtor was entitled to withdraw from trust and use the deposits of the Unit Purchasers, so long as the Debtor obtained a condominium deposit insurance policy securing the deposits from an insurer authorized under the Condominium Act.
27. The Receiver understands that prior to the granting of the Appointment Order, Lombard General Insurance Company of Canada ("**Lombard**"), an insurer authorized under the Condominium Act, provided a deposit insurance facility for The Landmark to the Debtor in order to secure deposit monies that were released to the Debtor in accordance with the Condominium Act. Lombard has informed the Receiver that it provided insurance policies to Unit Purchasers to protect their right to a return of the deposit paid under the Landmark Sale Agreements in the event that the agreements were terminated.

28. Lombard has further informed the Receiver that approximately \$14.5 million of purchaser deposits was released and replaced by the Lombard's deposit insurance. Of the \$14.5 million, \$12.5 million was released directly to the Debtor and \$2 million was released to an escrow deposit agent pursuant to an escrow agreement dated November 25, 2010. Subsequently, approximately \$2 million was returned by the escrow deposit agent to Lombard's solicitor's trust account and used to fund Unit Purchasers' deposit refunds. The Receiver also understands that approximately \$167,500 remains in Lombard's solicitor's trust account.
29. The Receiver understands that upon the termination of any Landmark Sale Agreement, a Unit Purchaser is entitled to claim recovery of his or her deposit pursuant to the deposit insurance policy. Upon payment of any such claim by Lombard, Lombard would have a subrogated claim against the Debtor for the amount of the deposit. Lombard's subrogated claims against the Debtor are secured by mortgages registered in favour of Lombard against title to the Lands, which are referred to in more detail below.
30. Under the provisions of the Landmark Sale Agreements (see articles, 15 and 16 of Schedule "C" of the agreements), the Unit Purchasers have no interest in the Lands (see article 16), and their deposits are, in any event subordinated to the mortgages registered against title to the Lands (see article 15) and are insured by Lombard or remain held in trust.

ATTEMPTS TO OBTAIN BOOKS AND RECORDS FROM THE DEBTOR

31. As noted in the Receiver's First Report, Second Report and Supplement to the Second Report, the Receiver has expended an inordinate amount of time attempting to obtain the books and records from the Debtor. The Receiver was attempting to obtain, amongst other things, a listing, including the names and addresses of all purchasers of condominium units in order for the Receiver to be able to comply with its statutory obligations pursuant to sections 245 (1) and 246 (1) of the *Bankruptcy and Insolvency Act* (Canada) (the "BIA"). In addition, the Receiver also needed this information in order to include it in the Marketing Process. The failed attempts to obtain this information

resulted in the Receiver bringing the Contempt Motion, which motion, as noted above, was subsequently dismissed on consent.

32. As examples of its attempts to collect information from the Debtor, on July 29, 2011, the Receiver attended at the Debtor's premises to image the computers in an effort to retrieve any books and records of the Debtor that might be used by the Receiver in order to comply with its statutory obligations as noted above. A representative of the Debtor refused to allow the Receiver to image the computers on that day, since the representative claimed he needed to remove certain personal information from the computer server.
33. The representative also refused to provide specific information with respect to the existing active Landmark Sale Agreements claiming that the purchasers of condominium units are not creditors of the Debtor. As a result, the Receiver agreed to leave the premises temporarily and allowed the Debtor to remove personal information from the computer server, however the Receiver advised the Debtor that the Receiver would return the following business day to image the computers.
34. On August 2, 2011, representatives of the Receiver returned to the Debtor's premises and were able to image the Debtor's computer, however the Receiver was still not able to obtain current information with respect to the Landmark Sale Agreements.
35. It wasn't until August 10, 2011, the date the Sale Process Motion was heard that the Receiver was able to obtain the necessary information from the Debtor. This was as a result of the terms of the Marketing Order which provided that:

"with respect to Section 245 of the Act, such Notices shall be sent to all persons who, according to the books and records of the Debtor, have entered into agreements to purchase retail condominium units in the Property"
36. As a result of the Marketing Order, the Debtor finally provided the Receiver with the information it needed in order to comply with its statutory obligations under the BIA as well as the information necessary to include in the Marketing Process.

CLAIMS AGAINST THE PROPERTY

Secured Creditors

37. The Receiver understands, based on its discussions with BLG, that the following chart represents a summary of the parties that have registered charges/mortgages against title to the Lands or against portions of the Lands as of October 26, 2011, and the order of registration against the Lands as a result of certain postponements granted amongst the parties:

| Creditor | Amount of Charge Against Property | Nature of Obligation |
|--|-----------------------------------|---|
| Firm Capital Mortgage Fund Inc. ("Firm Capital") | \$17,500,000 | First Mortgage Loan |
| White Bear Developments Inc. ("White Bear") | \$1,500,000 | Conventional Mortgage |
| Key Pendragon Enterprises Inc. ("Pendragon") | \$5,500,000 | Conventional Mortgage |
| Pendragon | \$1,100,000 | Conventional Mortgage |
| Pendragon | \$1,000,000 | Conventional Mortgage |
| Lombard | \$75,000,000 | Collateral Charge |
| Lombard | \$750,000 | Collateral Charge |
| Lombard | \$1,560,127 | Collateral Charge |
| Con-Drain Company (1983) Limited ("Con-Drain") | \$1,500,000 | Originally a construction lien, converted to a conventional mortgage. |
| Mady Contract Division Ltd. ("MCD") | \$386,190 | Construction lien |

38. The Receiver further understands, based on its discussions with BLG, that the following chart represents a summary of the parties that have registered financing statements against the personal property of the Debtor under the *Personal Property Security Act* (Ontario) ("PPSA"), and the order of registration as a result of certain postponements granted amongst the parties, as of October 25, 2011:

| Creditor | Collateral Classifications |
|----------------------------------|---|
| Firm Capital | Inventory, Equipment, Accounts, Other |
| The Toronto-Dominion Bank ("TD") | Accounts, Other |
| White Bear (Vector) | Inventory, Equipment, Accounts, Other |
| Pendragon | Inventory, Equipment, Accounts, Other, Motor Vehicle Included |

| | |
|--|---------------------------------------|
| Lombard | Accounts, Other |
| Con-Drain | Inventory, Equipment, Accounts, Other |
| An Yuan Lin c.o.b. as An-Dak Trading Company | Inventory, Equipment, Accounts, Other |

39. Attached hereto as **Appendix "P"** is a copy of a PPSA Enquiry Response Certificate obtained from the Ontario Ministry of Government Services with respect to the Debtor, with a currency date of October 25, 2011.
40. The Receiver requested BLG, as its independent legal counsel to, among other things, review the validity and enforceability of the security held by each of Firm Capital, White Bear and Pendragon, being the parties that hold the first (1st) through fifth (5th) charges/mortgages registered against title to the Lands.
41. Subject to the qualifications and assumptions contained in the opinions 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:
- (a) Firm Capital has a valid and enforceable charge/mortgage against the Lands;
 - (b) Pendragon has valid and enforceable charges/mortgages against the Lands; and
 - (c) BLG is not in a position at this time to provide a definitive opinion with respect to the White Bear charge/mortgage.
42. As noted above, it appears that TD has the second-in-time PPSA registration against the personal property of the Debtor. The Receiver understands that TD issued letters of credit to the Debtor in connection with matters relating to the development of the Lands, and that cash collateral was posted as security for the letters of credit. The Receiver further understands that the interests of TD in the personal property of the Debtor will likely not extend to any sale proceeds from the sale of the Lands under the Mady Agreement discussed herein.

RECEIVER'S MARKETING ACTIVITIES

43. In accordance with the Marketing Order, the Receiver has carried out the Marketing Process with respect to the Property. The Receiver, with the assistance of Deloitte Real

Estate (“DRE”), has taken the following steps in accordance with the Marketing Order, all with a view to generating interest in the Property:

- (a) It developed a list of potential purchasers based on discussions with DRE, expressions of interest received by the Receiver and the Receiver’s experience and contacts. The Receiver asked all the secured lenders to provide a list of potential purchasers that might be interested in the Property. Lombard provided the Receiver with a list of contacts who it thought might be interested in the Property (the “**Lombard List**”). It should be noted that prior to the commencement of the Marketing Process, it became apparent to the Receiver that Lombard might become a bidder in the process. The Receiver therefore ensured that Lombard did not have access to any confidential information that could taint the Marketing Process.
- (b) On August 24, 2011, September 1, 2011 and September 8, 2011, the Receiver sent an information overview document (the “**Marketing Flyer**”) providing a description and other basic information regarding the Property to over 120 potential purchasers, including those on the Lombard List, along with a confidentiality agreement to be executed in order to receive further information in respect of the Property.
- (c) The Marketing Flyer along with the confidentiality agreement was also sent to 48 individuals who had made unsolicited enquiries or were contacts of the Receiver.
- (d) On September 1, 2011, an advertisement, offering the Property for sale, appeared in the Globe and Mail newspaper, Toronto edition. A copy of the advertisement is attached hereto as **Appendix “Q”**.
- (e) The Receiver obtained signed confidentiality agreements from 25 of the parties contacted.
- (f) The Receiver prepared a confidential information memorandum (the “**CIM**”) in accordance with the terms of the Marketing Order providing detailed information in respect of the Property, which was sent to all potential purchasers who signed a

confidentiality agreement. A copy of the CIM is attached as **Confidential Appendix "R"**.

- (g) The Receiver provided access to a password protected electronic data room to individuals who requested access and provided the Receiver with an executed Confidentiality Agreement. The data room contained detailed information with respect to the Property, including the Conditions of Sale and Form of Offer. A copy of each of the Conditions of Sale and Form of Offer is attached as **Appendix "S"**.
- (h) The Receiver responded to numerous prospective purchasers who contacted the Receiver with questions regarding the Property.
- (i) The Receiver followed up with numerous parties to whom the Marketing Flyer was sent to determine whether those parties had any interest in the Property.
- (j) Representatives of the Receiver met internally on a regular basis to discuss the status of the Marketing Process and to follow up on any potential leads with regard to prospective purchasers.
- (k) The Receiver prepared and posted to the electronic data room the Template Sale Agreement in respect of the Property. A copy of the Template Sale Agreement is attached as **Confidential Appendix "T"**.
- (l) The Receiver obtained from Cushman Wakefield ("**Cushman**") an appraisal valuation of the Property, a copy of which is attached hereto as **Confidential Appendix "U"**.
- (m) In accordance with the Marketing Order, the Receiver set 12:00 pm, October 3, 2011 as the deadline for submission of binding offers to purchase the Property (the "**Offer Date**").

BINDING OFFERS RECEIVED

44. Pursuant to the Marketing Process, prospective purchasers were required to submit bids by the Offer Date. A summary of the offers received is attached hereto as **Confidential**

Appendix "V". The Receiver is requesting that this document, as well as other documents identified as a Confidential Appendix herein, be sealed pending completion of the Mady sale transaction, as the release of the information contained therein may jeopardize the ability to maximize realizations if the Mady transaction being proposed by the Receiver is not completed.

45. The Receiver met with three of the parties that had submitted binding offers on October 5, 6, and 7, 2011 respectively in order to obtain clarification with respect to those binding offers and to determine whether improvements to those offers could be negotiated.
46. After meeting with the three prospective purchasers and discussing the binding offers received, and after careful review and consideration, the Receiver determined that the offer from Mady was the highest and best offer submitted and, for the reasons noted below, the Receiver recommends that this offer be accepted and approved by the Court.
47. Northbridge Financial Corporation, the parent company of Lombard, has provided partial financing for the Mady offer.

SALE OF THE PROPERTY

48. The Mady offer contains no material amendments from the Template Agreement prepared by the Receiver. For the reasons set forth below, the Receiver accepted the Mady Agreement, subject to Court approval. An unredacted copy of the Mady Agreement is attached hereto as **Confidential Appendix "W"**, and a redacted copy of the Mady Agreement is attached hereto as **Appendix "X"**. The only information that has been redacted is the purchase price.
49. As noted above, the Receiver is proposing that the unredacted copy of the Mady Agreement be kept sealed and not form part of the public record until the transaction is completed so that the stakeholders are not prejudiced in the event that for any reason the transaction does not close and the Property must be re-marketed .
50. The Receiver recommends that this Honourable Court approve the Mady Agreement and authorize and direct the Receiver to complete the transaction for the following reasons:

- (a) The Marketing Process conducted by the Receiver resulted in a broad range and thorough exposure of the Property to the marketplace.
- (b) The Mady Agreement contains no conditions that would permit Mady to unilaterally terminate the Mady Agreement and also provides for a relatively quick closing date.
- (c) The Mady Agreement represents the highest and best offer, in terms of both price and conditions, received by the Receiver. The purchase price exceeds the purchase price of all other offers received by the Receiver and exceeds the appraised value contained in the Cushman appraisal (see Confidential Appendix "U"). The Receiver is reasonably confident that Mady has the financing necessary to close the transaction.
- (d) The next highest offer contained conditions that allowed the offeror to unilaterally terminate the agreement which was not acceptable to the Receiver, and although the third highest offer contained no conditions, the Mady purchase price was the highest offer.
- (e) Mady has familiarity with the Property since, according to Mady, it has been involved with the internal servicing of the Lands from the beginning of the development of the project. As noted above, MCD, a company related to Mady, has a construction lien against title to the Lands in the amount of \$386,190 for internal services provided.

PROPOSED INTERIM DISTRIBUTION

51. As described above in greater detail, the Receiver has obtained independent legal opinions on the validity and enforceability of the security held by Firm Capital, White Bear and Pendragon, being the mortgagees with the 1st through 5th registered mortgages on the Lands.

52. Upon the closing of the Mady Agreement, the Receiver will be in possession of sufficient funds to make payments to Firm Capital and Pendragon to satisfy their mortgages/charges against the Lands, and to maintain a reserve of funds to address additional claims against the Property in the future. At this time, the Receiver has requested that the purchase price under the Mady Agreement be sealed. As a result, the Receiver is not in a position to disclose the amount of proceeds it anticipates it will receive from Mady on closing. The Receiver proposes that the Court grant the Receiver the authority to, in its discretion, make distributions to Firm Capital and Pendragon on account of their claims against the Property, upon receiving written documentation satisfactory to the Receiver as to the amounts of principal, interest and costs owing to such creditors. The Receiver will publicly report to this Honourable Court following the closing of the Mady Agreement as to the amounts distributed to such creditors.
53. At this time, the Receiver continues to collect information from parties that potentially may have a claim to the proceeds of the Property (collectively, the "Claims"), including CRA for unpaid source deductions and unremitted HST (as defined below), former employees of the Debtor for unpaid wages under section 81.4 of the BIA, the City of Toronto for any unpaid municipal taxes, and the Government of Canada and the Province of Ontario for potential costs of remedying any environmental condition or environmental damage affecting the Lands.
54. The Receiver is of the view that, upon the completion of the Mady Agreement and the proposed distribution to secured creditors set out above, it will have sufficient funds in its possession to address and make payment of any potential Claims to the extent such claims are valid and have priority.

PROFESSIONAL FEES

55. The Receiver, BLG, TGF and MWB have maintained detailed records of their professional time and costs since the issuance of the Appointment Order. Pursuant to paragraph 18 of the Appointment Order, the Receiver and its legal counsel were directed to pass their accounts from time to time before this Honourable Court.

56. The total fees of the Receiver during the period from May 25, 2011 to October 15, 2011 amount to \$371,714.00, together with expenses and disbursements in the sum of \$1,060.89 and harmonized sales tax ("HST") in the amount of \$48,460.74, totalling \$421,235.63 (the "**Receiver's Fees**"). The time spent by the Receiver is more particularly described in the Affidavit of Bryan A. Tannenbaum of Deloitte & Touche Inc., sworn November 2, 2011 (the "**Tannenbaum Affidavit**") in support hereof and attached hereto as **Appendix "Y"**.
57. The total legal fees incurred by the Receiver during the period June 30, 2011 to August 4, 2011, for services provided by TGF as the Receiver's legal counsel amount to \$46,145.00, together with disbursements in the sum of \$1,905.02 and HST in the amount of \$6,207.00, totalling \$54,257.02. The time spent by TGF personnel is more particularly described in the Affidavit of Grant B. Moffat, a partner of TGF, sworn October 28, 2011 (the "**Moffat Affidavit**") in support hereof and attached hereto as **Appendix "ZZ"**.
58. The total legal fees incurred by the Receiver during the period August 4, 2011 to October 31, 2011, for services provided by BLG as the Receiver's independent legal counsel amount to \$105,237.50, together with disbursements in the sum of \$1,071.10 and HST in the amount of \$13,805.43 totalling \$120,114.03. The time spent by BLG personnel is more particularly described in the Affidavit of Sam Philip Rappos, an associate of BLG, sworn November 2, 2011 (the "**Rappos Affidavit**") in support hereof and attached hereto as **Appendix "AA"**.
59. The total legal fees incurred by the Receiver during the period July 14, 2011 to October 31, 2011, for services provided by MWB as the Receiver's independent real estate legal counsel amount to \$20,609.00, together with disbursements in the sum of \$809.66 and HST in the amount of \$2,776.63, totalling \$24,195.29. The time spent by MWB is more particularly described in the Affidavit of Joseph Fried, a Partner at MWB sworn November 2, 2011 (the "**Fried Affidavit**") in support hereof and attached hereto as **Appendix "BB"**.
60. The Receiver to date has not taken any interim draws on account of its fees or on account of the fees of its legal counsel BLG, TGF and MWB since, according to paragraph 17 of

the Appointment Order, the Receiver's charge ranks subsequent in priority to the Applicant.

RECEIVER'S RECOMMENDATIONS

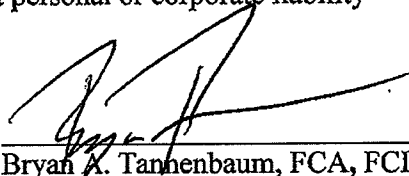
61. For the reasons set out above, the Receiver recommends that the Court make an Order:
- (a) authorizing and directing the Receiver to enter into and carry out the terms of the Mady Agreement, together with any amendments thereto deemed necessary by the Receiver in its sole opinion and vesting title to the Property to Mady, or to such party as Mady directs in writing, upon the closing of the Mady Agreement;
 - (b) if the Mady Agreement is terminated in accordance with its terms, authorizing and directing the Receiver to commence negotiations with any other party or parties identified by the Receiver through the Marketing Process, subject to Court approval;
 - (c) approving the activities of the Receiver to date and the activities of the Receiver as described in the Third Report including, without limitation, the steps taken by the Receiver pursuant to the Marketing Process;
 - (d) approving the interim distribution of certain of the net proceeds of the Mady Agreement to the Applicant and other secured lenders, as more fully described herein, in the event the Mady Agreement is completed; and
 - (e) approving the professional fees and disbursements of the Receiver and its legal counsel set out herein and in the Tannenbaum Affidavit, the Moffat Affidavit, the Rappos Affidavit and the Fried Affidavit and authorizing the Receiver to pay all such fees and disbursements.

All of which is respectfully submitted at Toronto, Ontario this 3rd day of November, 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:



Bryan A. Tannenbaum, FCA, FCIRP
Senior Vice-President

APPENDIX "C"

Court File No. CV11-9242-00CL

**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

**SUPPLEMENT TO THE THIRD REPORT OF THE RECEIVER
DATED NOVEMBER 11, 2011**

PURPOSE OF THIS REPORT

1. By Order of the Court dated June 29, 2011, 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 and all of the assets, undertakings and properties of 2811 Development Corporation acquired for, or used in relation to, the development of the Lands and construction of improvements thereon, including all proceeds thereof.
2. As set out in the Third Report of the Receiver dated November 3, 2011 (the "Third Report"), the Receiver is recommending, in a motion to be heard on November 15, 2011, that the Court grant an order, *inter alia*, authorizing and directing the Receiver to enter into and carry out the terms of the Mady Agreement and vesting title to the Property in

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Mady, or as it may further direct in writing, upon closing of the Mady Agreement and the delivery of the Receiver's Certificate to Mady.

3. The purpose of this Supplement to the Third Report (the "Supplementary Report") is to:
 - (a) provide further information to the Court with respect to the charges, mortgages and claims registered against the Property; and
 - (b) recommend that, in the event that the Mady Agreement is approved by the Court and the Receiver's Certificate filed with the Court, the Court authorize and direct the Receiver to send a letter, substantially in the form of the draft attached as **Appendix "A"** hereto, to each of the Unit Purchasers at their last known addresses based on the books and records of the Debtor, in connection with the Unit Purchasers' potential rights to recover their deposits under the Lombard deposit insurance facility.

TERMS OF REFERENCE

4. In preparing the Supplementary 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 Supplementary Report.
5. Unless otherwise provided, all capitalized terms not otherwise defined in this Supplementary Report are as defined in the Third Report.
6. The Supplemental Report should be read in conjunction with the Third Report.

CLAIMS AGAINST THE LANDS

7. As set out in greater detail in the Third Report, Firm Capital, White Bear, Pendragon, Lombard, Con-Drain and MCD have registered charges/mortgages or claims against title to the Lands or against portions of the Lands as of October 26, 2011.
8. The Receiver has been informed by these secured creditors that the following aggregate amounts are due to them for outstanding principal, interest, fees and other amounts as of November 15, 2011, unless otherwise stated:

| Creditor | Outstanding Amount |
|-----------------|--|
| Firm Capital | \$18,239,434.72 |
| White Bear | \$ 2,347,200.33 ¹ |
| Pendragon | \$ 7,801,962.99 ² |
| Pendragon | \$ 1,405,631.72 ³ |
| Pendragon | \$ 1,239,776.35 ⁴ |
| Lombard | \$12,727,872.80 (as of November 2, 2011) |
| Con-Drain | \$ 1,743,008.13 |
| MCD | \$ 429,190.00 ⁵ |
| TOTAL | \$45,934,077.04 |

9. The Receiver, through its counsel, has requested that each of the above-noted parties provide an affidavit confirming the amounts outstanding under their respective mortgages/claims. As the Receiver is seeking Court authorization to make certain disbursements to Firm Capital, Pendragon and White Bear, it has requested that such

¹ This amount is exclusive of legal fees that have been incurred by the creditor/mortgagee since September 10, 2011.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ This amount is an estimate, as MCD'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.

parties provide sworn affidavits prior to the hearing of the Receiver's motion scheduled for November 15, 2011.

THE UNIT PURCHASERS

10. As set out in greater detail in the Third Report, the Debtor entered into approximately 330 Landmark Sale Agreements prior to the date of the Appointment Order, pursuant to which each Unit Purchaser agreed to purchase un-built condominium units in the Debtor's project at the Lands "B".
11. The Receiver has been informed by the Debtor that: (i) all Unit Purchasers paid deposits to the Debtor upon execution of their respective Landmark Sale Agreement; (ii) the deposits were paid to the Debtor's solicitors to be held in trust pursuant to the provisions of the Condominium Act; (iii) the Debtor was entitled to withdraw from trust and use the deposits of the Unit Purchasers, as the Debtor obtained from Lombard a condominium deposit insurance policy securing the deposits; and (iv) the Lombard insurance policy protects the rights of the Unit Purchasers to a return of the deposit paid under their respective Landmark Sale Agreement in the event that the agreements are terminated.
12. In the event that the Mady Agreement is approved by this Honourable Court, all of the Debtor's right, title and interest in the Lands will vest in Mady, or such party that Mady directs in writing, upon the delivery of the Receiver's Certificate. As a result, following the completion of the Mady sale transaction, the Debtor will no longer have any interest in the Lands, and will no longer be in a position to perform the obligations owed to the Unit Purchasers under the Landmark Sale Agreements.
13. As part of the Mady Agreement, Mady has elected not to take an assignment of the Debtor's rights under the Landmark Sale Agreements. As a result, the Receiver is of the view that the Unit Purchasers should be notified of the sale of the Lands to Mady following the closing of the sale transaction and be made aware of the claims they may have for a return of their deposits under the Lombard insurance policy. Attached hereto as Appendix "A" is a draft form of letter that the Receiver proposes to send to the Unit Purchasers following the closing of the sale transaction with respect thereto.

14. As has been previously reported to this Court, the Receiver obtained the last known addresses of the Unit Purchasers from the books and records of the Debtor so that it could send to the Unit Purchasers, in accordance with the Marketing Order, the statutorily required notice under section 245 of the BIA. The Receiver proposes to send a copy of the draft letter attached hereto to the same addresses to which it sent the BIA notice.

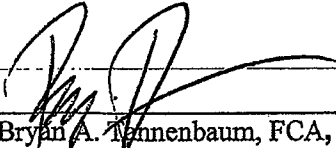
RECEIVER'S RECOMMENDATIONS

15. For the reasons set out above, the Receiver recommends that the Court make an order, in the event that the Mady Agreement is approved by the Court and the Receiver's Certificate filed with the Court, authorizing and directing the Receiver to send a letter following the closing of the sale transaction, substantially in the form of the draft attached as Appendix "A" hereto, to each of the Unit Purchasers at their last known addresses based on the books and records of the Debtor.

All of which is respectfully submitted at Toronto, Ontario this 11th day of November, 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

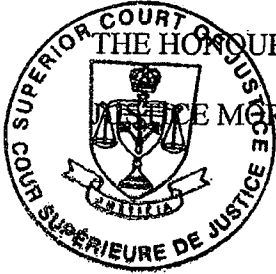
Per: _____


Bryan A. Tannenbaum, FCA, FCIRP

APPENDIX “D”

Court File No. CV-11-9242-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE MR.)
JUSTICE MCGRAWETZ)

TUESDAY THE 15th DAY
OF NOVEMBER, 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

**APPROVAL, VESTING and INTERIM DISBURSEMENT
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 of 2811 Development Corporation (the "**Debtor**"), for an order, *inter alia*, approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Mady Agreement**") between the Receiver and Mady Development Corporation (the "**Purchaser**") dated as of October 3, 2011 and attached in redacted form as Appendix "X" to the Third Report of the Receiver dated November 3, 2011 (the "**Third Report**"), and vesting in the Purchaser the Debtor's right, title and interest in and to the Assets, as such term is defined in the Mady Agreement (the "**Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report and the appendices attached thereto, including the affidavit of Bryan Tannenbaum sworn on November 2, 2011 (the "**Tannenbaum Fee Affidavit**"), the affidavit of Grant Moffat sworn on October 28, 2011 (the "**Moffat Fee Affidavit**"), the affidavit of Joseph Fried sworn on November 2, 2011 (the "**Fried Fee Affidavit**") and the affidavit of Sam P. Rappos sworn on November 2, 2011 (the "**Rappos Fee Affidavit**"), and the Supplement to the Third Report of the Receiver dated November 11, 2011 (the "**Supplementary Report**") and the appendices attached thereto, and on hearing the submissions of counsel for the Receiver, the Debtor, the Purchaser, Key Pendragon Enterprises Inc., White Bear Developments Inc., Lombard General Insurance Company of Canada, Con-Drain Company (1983) Limited, Mady Contract Division Ltd. and Terracap Investments Inc., no one appearing for any other person on the service list, although properly served as appears from the affidavit of Marie Pacheco sworn November 4, 2011, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Amended Notice of Motion, the Motion Record dated November 3, 2011 and the Supplementary Motion Record dated November 11, 2011 is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL AND VESTING

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Mady Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Assets described in the Mady Agreement and listed on Schedule "B" hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual,

statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Mr. Justice C. Campbell dated June 29, 2011; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Land Titles Act* (Ontario) or any other personal or real property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the assumed encumbrances listed on Schedule "D" hereto) and (iv) any other Claims registered or arising between November 13, 2011 and the registration of this Order (the "**Additional Encumbrances**") and, for greater certainty, this Court orders that all of the Encumbrances and Additional Encumbrances affecting or relating to the Assets are hereby expunged and discharged as against the Assets.

4. **THIS COURT ORDERS** that upon the registration in the Toronto Land Titles Office (No. 80) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule "C" hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Assets shall stand in the place and stead of the Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Assets with the same priority as they had with respect to the Assets immediately prior to the sale, as if the Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted

to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such application; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute or be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT ORDERS AND DECLARES** that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

APPROVAL OF FEES AND ACTIVITIES

10. **THIS COURT ORDERS** that the First Report of the Receiver dated July 15, 2011, the Second Report of the Receiver dated July 21, 2011, the Supplement to the Second Report of the Receiver dated July 29, 2011, the Third Report of the Receiver dated November 3, 2011 and the Supplement to the Third Report dated November 11, 2011, and the activities of the Receiver described therein, be and are hereby approved.

11. **THIS COURT ORDERS** that the fees and the disbursements of the Receiver referred to in the Third Report, including its legal fees and disbursements, as set forth in the Tannenbaum Fee Affidavit, the Moffat Fee Affidavit, the Fried Fee Affidavit and the Rappos Fee Affidavit, are hereby approved.

DISBURSEMENTS

12. **THIS COURT ORDERS** that upon completion of the Transaction the Receiver is hereby authorized to disburse from the proceeds of sale of the Assets the full amount of the Receiver's fees and disbursements, including its legal fees and disbursements, as approved herein and described in greater detail in the Third Report. The Receiver shall continue to hold the balance of the sale proceeds pending further order of this court.

SEALING

13. **THIS COURT ORDERS** that the Confidential Information Memorandum, the Template Sale Agreement, the Cushman appraisal, the summary of the offers received and the unredacted version of the Mady Agreement, delivered to the Court as Confidential Appendices "R", "T", "U", "V" and "W" respectively to the Third Report, be and are hereby sealed until the filing with the Court of the Receiver's Certificate, or upon further order of the Court.


NOTICE TO THE UNIT PURCHASERS

14. **THIS COURT ORDERS** that the Receiver is directed, following the filing of the Receiver's Certificate with the Court as provided for in paragraph 6 hereof, to forthwith send a letter substantially in the form attached as Appendix "A" to the Supplementary Report to each of the Unit Purchasers (as such term is defined in the Third Report) at the last known addresses of the Unit Purchasers according to the books and records of the Debtor.

AID AND RECOGNITION


15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this

Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to be "D. J. [unclear]", written over a horizontal line.

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

NOV 15 2011

PER/PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-11-9242-00CL

**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

RECEIVER’S CERTIFICATE**RECITALS**

A. Pursuant to an Order of The Honourable Mr. Justice C. Campbell of the Ontario Superior Court of Justice (the "**Court**") dated June 29, 2011, Deloitte & Touche Inc. was appointed as the receiver (the "**Receiver**") of certain of the undertaking, property and assets of 2811 Development Corporation (the "**Debtor**") as described in the said order.

B. Pursuant to an Order of the Court dated November 15, 2011, the Court approved the agreement of purchase and sale made as of October 3, 2011 (the "**Mady Agreement**") between the Receiver and Mady Development Corporation (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Assets as defined in the Mady Agreement, which vesting is to be effective with respect to the Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the

Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in section 4 of the Mady Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Mady Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Assets payable on the Closing Date pursuant to the Mady Agreement;
2. The conditions to Closing as set out in section 4 of the Mady Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**DELOITTE & TOUCHE INC., in its capacity
as Receiver of certain of the undertakings,
property and assets of 2811 Development
Corporation, and not in its personal capacity**

Per: _____

Name:

Title:

Schedule B – Assets**The Lands**

- (a) The right, title and interest of the Debtor in the real property described as PIN No.06050-0199 (LT) being Part Lots 18 and 19, Con 5; Part Road Allowance between Lots 18 and 19, Concession 5, as closed by By-Law 406 being Part of Part 1, 66R12477 lying north of Plan 66M1996, Save and Except Part of Lots 18 and 19, Con 5, Part 1, 66R16987; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5789 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (b) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0266 (LT) being Part Lot 20, Conc 5 Scarborough designated as Part 1, Plan 66R23210; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5811 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (c) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0263 (LT) being Part Lot 19, Conc 5 Scarborough designated as Part 1, Plan 66R23217; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5933 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (d) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0264 (LT) being Part Lot 18, Conc 5 Scarborough; Part RDAL between Lots 18 and 19, Con 5, Scarborough (Closed by By-Law 406 as in SC608215), designated as Part 2 on Plan 66R23217; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5945 Steeles Avenue East, Toronto, Ontario M2M 3Y2

- (e) The right, title and interest of the Debtor in the real property described as PIN No. 06050-0272 (LT) being Part Lot 18, Conc 5 Scarborough, Part 3 Plan 66R23217 Save and Except Part 32, Plan 66R23655; City of Toronto

Toronto Land Titles Office (No. 80)

Municipally known as 5951 Steeles Avenue East, Toronto, Ontario M2M 3Y2

The Plans

Schedule C – Claims to be deleted and expunged from title to Real Property

(a) Instruments to be deleted from PIN No. 06050-0199 (LT)

| Reg. Num. | Date | Instrument Type | Amount | Parties From | Parties To |
|------------------|-------------|---|---------------|---|---|
| AT974288 | 2005/11/09 | Charge | \$75,000,000 | 2811 Development Corporation | Lombard General Insurance Company of Canada |
| AT1085822 | 2006/03/14 | Charge | \$750,000 | 2811 Development Corporation | Lombard General Insurance Company of Canada |
| AT1187188 | 2006/06/30 | Charge | \$1,560,127 | 2811 Development Corporation | Lombard General Insurance Company of Canada |
| AT1787210 | 2008/05/26 | Postponement (AT974288 to AT1787207) | | Lombard General Insurance Company of Canada | Markham Steeles Realty Inc. |
| AT1787211 | 2008/05/26 | Postponement (AT1085822 to AT1787207) | | Lombard General Insurance Company of Canada | Markham Steeles Realty Inc. |
| AT1787212 | 2008/05/26 | Postponement (AT1187188 to AT1787207) | | Lombard General Insurance Company of Canada | Markham Steeles Realty Inc. |
| AT1842029 | 2008/07/23 | Charge | \$17,500,000 | 2811 Development Corporation | Firm Capital Mortgage Fund Inc. |
| AT1842030 | 2008/07/23 | No Assgn Rent Gen | | 2811 Development Corporation | Firm Capital Mortgage Fund Inc. |

| Reg. Num. | Date | Instrument Type | Amount | Parties From | Parties To |
|-----------|------------|--|-------------|---|------------------------------------|
| AT1842143 | 2008/07/23 | Postponement (AT974288 to AT1842029 & AT1842030) | | Lombard General Insurance Company of Canada | Firm Capital Mortgage Fund Inc. |
| AT1842144 | 2008/07/23 | Postponement (AT1085822 to AT1842029 & AT1842030) | | Lombard General Insurance Company of Canada | Firm Capital Mortgage Fund Inc. |
| AT1842145 | 2008/07/23 | Postponement (AT1187188 to AT1842029 & AT1842030) | | Lombard General Insurance Company of Canada | Firm Capital Mortgage Fund Inc. |
| AT1903983 | 2008/09/23 | Charge | \$5,500,000 | 2811 Development Corporation | Relmi Financial Corp. |
| AT1904325 | 2008/09/23 | Postponement (AT974288 to AT1903983) | | Lombard General Insurance Company of Canada | Relmi Financial Corp. |
| AT1904326 | 2008/09/23 | Postponement (AT1085822 to AT1903983) | | Lombard General Insurance Company of Canada | Relmi Financial Corp. |
| AT1904327 | 2008/09/23 | Postponement (AT1187188 to AT1903983) | | Lombard General Insurance Company of Canada | Relmi Financial Corp. |
| AT2098876 | 2009/06/19 | Apl. Court Order | | Ontario Superior Court of Justice | Terracap Investments Inc. |
| AT2205071 | 2009/10/16 | Transfer of Charge | | Relmi Financial Corp. | Key Pendragon |

| Reg. Num. | Date | Instrument Type | Amount | Parties From | Parties To |
|-----------|------------|---|-------------|---|--------------------------------------|
| | | | | | Enterprises Inc. |
| AT2205083 | 2009/10/16 | Notice (Re AT1903983) | | Key Pendragon Enterprises Inc. | 2811 Development Corporation |
| AT2205105 | 2009/10/16 | Postponement (AT974288 to AT2205083) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2205106 | 2009/10/16 | Postponement (AT1085822 to AT2205083) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2205107 | 2009/10/16 | Postponement (AT1187188 to AT2205083) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2259133 | 2009/12/16 | Charge | \$1,500,000 | 2811 Development Corporation | Vector Financial Services Limited |
| AT2259134 | 2009/12/16 | No Assign Rent Gen | | 2811 Development Corporation | Vector Financial Services Limited |
| AT2259190 | 2009/12/16 | Postponement (AT974288 to AT2259133) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259191 | 2009/12/16 | Postponement (AT974288 to AT2259134) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259192 | 2009/12/16 | Postponement (AT1085822 to AT2259133) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |

| Reg. Num. | Date | Instrument Type | Amount | Parties From | Parties To |
|-----------|------------|--|-------------|---|--------------------------------------|
| AT2259193 | 2009/12/16 | Postponement (AT1085822 to AT2259134) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259194 | 2009/12/16 | Postponement (AT1187188 to AT2259133) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259195 | 2009/12/16 | Postponement (AT1187188 to AT2259134) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259196 | 2009/12/16 | Postponement (AT1903983 & AT2205071 to AT2259133) | | Key Pendragon Enterprises Inc. | Vector Financial Services Limited |
| AT2259197 | 2009/12/16 | Postponement (AT1903983 & AT2205071 to AT2259134) | | Key Pendragon Enterprises Inc. | Vector Financial Services Limited |
| AT2357840 | 2010/04/22 | Charge | \$1,100,000 | 2811 Development Corporation | Key Pendragon Enterprises Inc. |
| AT2449883 | 2010/07/19 | Charge | \$1,000,000 | 2811 Development Corporation | Key Pendragon Enterprises Inc. |
| AT2457585 | 2010/07/26 | Postponement (AT974288 to AT2357840) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2457586 | 2010/07/26 | Postponement (AT1085822 to | | Lombard General Insurance Company of | Key Pendragon Enterprises Inc. |

| Reg. Num. | Date | Instrument Type | Amount | Parties From | Parties To |
|-----------|------------|---|-------------|---|--|
| | | AT2357840) | | Canada | |
| AT2457587 | 2010/07/26 | Postponement (AT1187188 to AT2357840) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2457588 | 2010/07/26 | Postponement (AT1187188 to AT2449883) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2457589 | 2010/07/26 | Postponement (AT1085822 to AT2449883) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2457590 | 2010/07/26 | Postponement (AT974288 to AT2449883) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2561525 | 2010/11/26 | Charge | \$1,500,000 | 2811 Development Corporation | Con-Drain Company (1983) Limited |
| AT2565586 | 2010/11/30 | Transfer of Charge | | Vector Financial Services Limited | White Bear Developments Inc. |
| AT2565587 | 2010/11/30 | No Assgn Rent Gen | | Vector Financial Services Limited | White Bear Developments Inc. |
| AT2665134 | 2011/04/13 | Construction Lien | \$386,190 | Mady Contract Division Ltd. | |
| AT2742192 | 2011/07/05 | Certificate (Re AT2665134) | | Mady Contract Division Ltd. | The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. |

| Reg. Num. | Date | Instrument Type | Amount | Parties From | Parties To |
|-----------|------------|-------------------------------|--------|--|---|
| | | | | | Con Drain Company (1983) Limited White Bear Developments Inc. |
| AT2755074 | 2011/07/05 | App. Court Order | | Ontario Superior Court of Justice (Commercial List) | Firm Capital Mortgage Fund Inc. |
| AT2864312 | 2011/11/08 | Application to Change Name | | Vector Financial Services Limited | Vector Financial Services Limited |

(b) Instruments to be deleted from PIN No. 06050-00266 (LT)

| Reg. Num. | Date | Instrument Type | Amount | Parties From | Parties To |
|-----------|------------|---------------------------|--------------|---------------------------------|---|
| AT969273 | 2005/11/02 | Apl. Change Name Owner | | 1610607 Ontario Inc. | 2811 Development Corporation |
| AT974288 | 2005/11/09 | Charge | \$75,000,000 | 2811 Development Corporation | Lombard General Insurance Company of Canada |
| AT1085822 | 2006/03/14 | Charge | \$750,000 | 2811 Development Corporation | Lombard General Insurance Company of Canada |
| AT1187188 | 2006/06/30 | Charge | \$1,560,127 | 2811 Development Corporation | Lombard General Insurance Company of Canada |
| AT1842029 | 2008/07/23 | Charge | \$17,500,000 | 2811 Development Corporation | Firm Capital Mortgage Fund Inc. |
| AT1842030 | 2008/07/23 | No Assgn Rent Gen | | 2811 Development Corporation | Firm Capital Mortgage Fund Inc. |
| AT1842143 | 2008/07/23 | Postponement | | Lombard General | Firm Capital Mortgage |

| | | | | | |
|-----------|------------|---|-------------|---|---------------------------------|
| | | (AT974288 to AT1842029 & AT1842030) | | Insurance Company of Canada | Fund Inc. |
| AT1842144 | 2008/07/23 | Postponement (AT1085822 to AT1842029 & AT1842030) | | Lombard General Insurance Company of Canada | Firm Capital Mortgage Fund Inc. |
| AT1842145 | 2008/07/23 | Postponement (AT1187188 to AT1842029 & AT1842030) | | Lombard General Insurance Company of Canada | Firm Capital Mortgage Fund Inc. |
| AT1903983 | 2008/09/23 | Charge | \$5,500,000 | 2811 Development Corporation | Relmi Financial Corp. |
| AT1904325 | 2008/09/23 | Postponement (AT974288 to AT1903983) | | Lombard General Insurance Company of Canada | Relmi Financial Corp. |
| AT1904326 | 2008/09/23 | Postponement (AT1085822 to AT1903983) | | Lombard General Insurance Company of Canada | Relmi Financial Corp. |
| AT1904327 | 2008/09/23 | Postponement (AT1187188 to AT1903983) | | Lombard General Insurance Company of Canada | Relmi Financial Corp. |
| AT2205071 | 2009/10/16 | Transfer of Charge | | Relmi Financial Corp. | Key Pendragon Enterprises Inc. |
| AT2205083 | 2009/10/16 | Notice (Re AT1903983) | | Key Pendragon Enterprises Inc. | 2811 Development Corporation |
| | | | | | |

| | | | | | |
|-----------|------------|---|-------------|---|--------------------------------------|
| AT2205105 | 2009/10/16 | Postponement (AT974288 to AT2205083) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2205106 | 2009/10/16 | Postponement (AT1085822 to AT2205083) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2205107 | 2009/10/16 | Postponement (AT1187188 to AT2205083) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2259133 | 2009/12/16 | Charge | \$1,500,000 | 2811 Development Corporation | Vector Financial Services Limited |
| AT2259134 | 2009/12/16 | No Assign Rent Gen | | 2811 Development Corporation | Vector Financial Services Limited |
| AT2259190 | 2009/12/16 | Postponement (AT974288 to AT2259133) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259191 | 2009/12/16 | Postponement (AT974288 to AT2259134) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259192 | 2009/12/16 | Postponement (AT1085822 to AT2259133) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259193 | 2009/12/16 | Postponement (AT1085822 to AT2259134) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259194 | 2009/12/16 | Postponement (AT1187188 to | | Lombard General Insurance Company of | Vector Financial Services Limited |

| | | | | | |
|-----------|------------|--|-------------|---|--------------------------------------|
| | | AT2259133) | | Canada | |
| AT2259195 | 2009/12/16 | Postponement (AT1187188 to AT2259134) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259196 | 2009/12/16 | Postponement (AT1903983 & AT2205071 to AT2259133) | | Key Pendragon Enterprises Inc. | Vector Financial Services Limited |
| AT2259197 | 2009/12/16 | Postponement (AT1903983 & AT2205071 to AT2259134) | | Key Pendragon Enterprises Inc. | Vector Financial Services Limited |
| AT2357840 | 2010/04/22 | Charge | \$1,100,000 | 2811 Development Corporation | Key Pendragon Enterprises Inc. |
| AT2449883 | 2010/07/19 | Charge | \$1,000,000 | 2811 Development Corporation | Key Pendragon Enterprises Inc. |
| AT2457585 | 2010/07/26 | Postponement (AT974288 to AT2357840) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2457586 | 2010/07/26 | Postponement (AT1085822 to AT2357840) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2457587 | 2010/07/26 | Postponement (AT1187188 to AT2357840) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2457588 | 2010/07/26 | Postponement (AT1187188 to | | Lombard General Insurance Company of | Key Pendragon Enterprises Inc. |

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|-----------|------------|---|-------------|--|---|
| | | AT2449883) | | Canada | |
| AT2457589 | 2010/07/26 | Postponement (AT1085822 to AT2449883) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2457590 | 2010/07/26 | Postponement (AT974288 to AT2449883) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2561525 | 2010/11/26 | Charge | \$1,500,000 | 2811 Development Corporation | Con-Drain Company (1983) Limited |
| AT2565586 | 2010/11/30 | Transfer of Charge | | Vector Financial Services Limited | White Bear Developments Inc. |
| AT2565587 | 2010/11/30 | No Assgn Rent Gen | | Vector Financial Services Limited | White Bear Developments Inc. |
| AT2665134 | 2011/04/13 | Construction Lien | \$386,190 | Mady Contract Division Ltd. | |
| AT2742192 | 2011/07/05 | Certificate (Re AT2665134) | | Mady Contract Division Ltd. | The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. Con Drain Company (1983) Limited White Bear Developments Inc. |
| AT2755074 | 2011/07/05 | App. Court Order | | Ontario Superior Court of Justice (Commercial List) | Firm Capital Mortgage Fund Inc. |
| AT2864312 | 2011/11/08 | Application to Change Name | | Vector Financial Services Limited | Vector Financial Services Limited |

(c) Instruments to be deleted from PIN No. 06050-00263 (LT)

| Reg. Num. | Date | Instrument Type | Amount | Parties From | Parties To |
|-----------|------------|--|--------------|---|---|
| AT1187188 | 2006/06/30 | Charge | \$1,560,127 | 2811 Development Corporation | Lombard General Insurance Company of Canada |
| AT1842029 | 2008/07/23 | Charge | \$17,500,000 | 2811 Development Corporation | Firm Capital Mortgage Fund Inc. |
| AT1842030 | 2008/07/23 | No Assgn Rent Gen | | 2811 Development Corporation | Firm Capital Mortgage Fund Inc. |
| AT1842145 | 2008/07/23 | Postponement (AT1187188 to AT1842029 & AT1842030) | | Lombard General Insurance Company of Canada | Firm Capital Mortgage Fund Inc. |
| AT1903983 | 2008/09/23 | Charge | \$5,500,000 | 2811 Development Corporation | Relmi Financial Corp. |
| AT1904327 | 2008/09/23 | Postponement (AT1187188 to AT1903983) | | Lombard General Insurance Company of Canada | Relmi Financial Corp. |
| AT2205071 | 2009/10/16 | Transfer of Charge | | Relmi Financial Corp. | Key Pendragon Enterprises Inc. |
| AT2205083 | 2009/10/16 | Notice (Re AT1903983) | | Key Pendragon Enterprises Inc. | 2811 Development Corporation |
| AT2205107 | 2009/10/16 | Postponement (AT1187188 to AT2205083) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |

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|-----------|------------|---|-------------|---|-----------------------------------|
| AT2259133 | 2009/12/16 | Charge | \$1,500,000 | 2811 Development Corporation | Vector Financial Services Limited |
| AT2259134 | 2009/12/16 | No Assign Rent Gen | | 2811 Development Corporation | Vector Financial Services Limited |
| AT2259194 | 2009/12/16 | Postponement (AT1187188 to AT2259133) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259195 | 2009/12/16 | Postponement (AT1187188 to AT2259134) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259196 | 2009/12/16 | Postponement (AT1903983 & AT2205071 to AT2259133) | | Key Pendragon Enterprises Inc. | Vector Financial Services Limited |
| AT2259197 | 2009/12/16 | Postponement (AT1903983 & AT2205071 to AT2259134) | | Key Pendragon Enterprises Inc. | Vector Financial Services Limited |
| AT2357840 | 2010/04/22 | Charge | \$1,100,000 | 2811 Development Corporation | Key Pendragon Enterprises Inc. |
| AT2449883 | 2010/07/19 | Charge | \$1,000,000 | 2811 Development Corporation | Key Pendragon Enterprises Inc. |
| AT2457587 | 2010/07/26 | Postponement (AT1187188 to AT2357840) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2457588 | 2010/07/26 | Postponement | | Lombard General | Key Pendragon |

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|-----------|------------|-------------------------------|-------------|--|---|
| | | (AT1187188 to AT2449883) | | Insurance Company of Canada | Enterprises Inc. |
| AT2561525 | 2010/11/26 | Charge | \$1,500,000 | 2811 Development Corporation | Con-Drain Company (1983) Limited |
| AT2565586 | 2010/11/30 | Transfer of Charge | | Vector Financial Services Limited | White Bear Developments Inc. |
| AT2565587 | 2010/11/30 | No Assgn Rent Gen | | Vector Financial Services Limited | White Bear Developments Inc. |
| AT2665134 | 2011/04/13 | Construction Lien | \$386,190 | Mady Contract Division Ltd. | |
| AT2742192 | 2011/07/05 | Certificate (Re AT2665134) | | Mady Contract Division Ltd. | The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. Con Drain Company (1983) Limited White Bear Developments Inc. |
| AT2755074 | 2011/07/05 | App. Court Order | | Ontario Superior Court of Justice (Commercial List) | Firm Capital Mortgage Fund Inc. |
| AT2864312 | 2011/11/08 | Application to Change Name | | Vector Financial Services Limited | Vector Financial Services Limited |

(d) Instruments to be deleted from PIN No. 06050-0264 (LT)

| Reg. Num. | Date | Instrument Type | Amount | Parties From | Parties To |
|-----------|------------|-----------------|-----------|---------------------------------|---|
| AT1085822 | 2006/03/14 | Charge | \$750,000 | 2811 Development Corporation | Lombard General Insurance Company of Canada |
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|-----------|------------|--|--------------|---|---|
| AT1187188 | 2006/06/30 | Charge | \$1,560,127 | 2811 Development Corporation | Lombard General Insurance Company of Canada |
| AT1787211 | 2008/05/26 | Postponement (AT1085822 to AT1787207) | | Lombard General Insurance Company of Canada | Markham Steeles Realty Inc. |
| AT1787212 | 2008/05/26 | Postponement (AT1187188 to AT1787207) | | Lombard General Insurance Company of Canada | Markham Steeles Realty Inc. |
| AT1842029 | 2008/07/23 | Charge | \$17,500,000 | 2811 Development Corporation | Firm Capital Mortgage Fund Inc. |
| AT1842030 | 2008/07/23 | No Assgn Rent Gen | | 2811 Development Corporation | Firm Capital Mortgage Fund Inc. |
| AT1842144 | 2008/07/23 | Postponement (AT1085822 to AT1842029 & AT1842030) | | Lombard General Insurance Company of Canada | Firm Capital Mortgage Fund Inc. |
| AT1842145 | 2008/07/23 | Postponement (AT1187188 to AT1842029 & AT1842030) | | Lombard General Insurance Company of Canada | Firm Capital Mortgage Fund Inc. |
| AT1903983 | 2008/09/23 | Charge | \$5,500,000 | 2811 Development Corporation | Relmi Financial Corp. |
| AT1904326 | 2008/09/23 | Postponement (AT1085822 to AT1903983) | | Lombard General Insurance Company of Canada | Relmi Financial Corp. |
| | | | | | |

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|-----------|------------|---|-------------|---|--------------------------------------|
| AT1904327 | 2008/09/23 | Postponement (AT1187188 to AT1903983) | | Lombard General Insurance Company of Canada | Relmi Financial Corp. |
| AT2205071 | 2009/10/16 | Transfer of Charge | | Relmi Financial Corp. | Key Pendragon Enterprises Inc. |
| AT2205083 | 2009/10/16 | Notice (Re AT1903983) | | Key Pendragon Enterprises Inc. | 2811 Development Corporation |
| AT2205106 | 2009/10/16 | Postponement (AT1085822 to AT2205083) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2205107 | 2009/10/16 | Postponement (AT1187188 to AT2205083) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2259133 | 2009/12/16 | Charge | \$1,500,000 | 2811 Development Corporation | Vector Financial Services Limited |
| AT2259134 | 2009/12/16 | No Assign Rent Gen | | 2811 Development Corporation | Vector Financial Services Limited |
| AT2259192 | 2009/12/16 | Postponement (AT1085822 to AT2259133) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259193 | 2009/12/16 | Postponement (AT1085822 to AT2259134) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259194 | 2009/12/16 | Postponement (AT1187188 to AT2259133) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |

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|-----------|------------|--|-------------|---|--------------------------------------|
| AT2259195 | 2009/12/16 | Postponement (AT1187188 to AT2259134) | | Lombard General Insurance Company of Canada | Vector Financial Services Limited |
| AT2259196 | 2009/12/16 | Postponement (AT1903983 & AT2205071 to AT2259133) | | Key Pendragon Enterprises Inc. | Vector Financial Services Limited |
| AT2259197 | 2009/12/16 | Postponement (AT1903983 & AT2205071 to AT2259134) | | Key Pendragon Enterprises Inc. | Vector Financial Services Limited |
| AT2357840 | 2010/04/22 | Charge | \$1,100,000 | 2811 Development Corporation | Key Pendragon Enterprises Inc. |
| AT2449883 | 2010/07/19 | Charge | \$1,000,000 | 2811 Development Corporation | Key Pendragon Enterprises Inc. |
| AT2457586 | 2010/07/26 | Postponement (AT1085822 to AT2357840) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2457587 | 2010/07/26 | Postponement (AT1187188 to AT2357840) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2457588 | 2010/07/26 | Postponement (AT1187188 to AT2449883) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |
| AT2457589 | 2010/07/26 | Postponement (AT1085822 to AT2449883) | | Lombard General Insurance Company of Canada | Key Pendragon Enterprises Inc. |

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|-----------|------------|----------------------------|-------------|---|--|
| AT2561525 | 2010/11/26 | Charge | \$1,500,000 | 2811 Development Corporation | Con-Drain Company (1983) Limited |
| AT2565586 | 2010/11/30 | Transfer of Charge | | Vector Financial Services Limited | White Bear Developments Inc. |
| AT2565587 | 2010/11/30 | No Assgn Rent Gen | | Vector Financial Services Limited | White Bear Developments Inc. |
| AT2665134 | 2011/04/13 | Construction Lien e | \$386,190 | Mady Contract Division Ltd. | |
| AT2742192 | 2011/07/05 | Certificate (Re AT2665134) | | Mady Contract Division Ltd. | The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. Con Drain Company (1983) Limited White Bear Developments Inc. |
| AT2755074 | 2011/07/05 | App. Court Order | | Ontario Superior Court of Justice (Commercial List) | Firm Capital Mortgage Fund Inc. |
| AT2864312 | 2011/11/08 | Application to Change Name | | Vector Financial Services Limited | Vector Financial Services Limited |

(e) Instruments deleted from PIN No. 06050-0272 (LT)

| Reg. Num. | Date | Instrument Type | Amount | Parties From | Parties To |
|-----------|------------|-------------------|--------------|------------------------------|---------------------------------|
| AT1842029 | 2008/07/23 | Charge | \$17,500,000 | 2811 Development Corporation | Firm Capital Mortgage Fund Inc. |
| AT1842030 | 2008/07/23 | No Assgn Rent Gen | | 2811 Development Corporation | Firm Capital Mortgage Fund Inc. |

| | | | | | |
|-----------|------------|--|-------------|--------------------------------|-----------------------------------|
| AT1903983 | 2008/09/23 | Charge | \$5,500,000 | 2811 Development Corporation | Relmi Financial Corp. |
| AT2205071 | 2009/10/16 | Transfer of Charge | | Relmi Financial Corp. | Key Pendragon Enterprises Inc. |
| AT2205083 | 2009/10/16 | Notice (Re AT1903983) | | Key Pendragon Enterprises Inc. | 2811 Development Corporation |
| AT2259133 | 2009/12/16 | Charge | \$1,500,000 | 2811 Development Corporation | Vector Financial Services Limited |
| AT2259134 | 2009/12/16 | No Assign Rent Gen | | 2811 Development Corporation | Vector Financial Services Limited |
| AT2259196 | 2009/12/16 | Postponement (AT1903983 & AT2205071 to AT2259133) | | Key Pendragon Enterprises Inc. | Vector Financial Services Limited |
| AT2259197 | 2009/12/16 | Postponement (AT1903983 & AT2205071 to AT2259134) | | Key Pendragon Enterprises Inc. | Vector Financial Services Limited |
| AT2357840 | 2010/04/22 | Charge | \$1,100,000 | 2811 Development Corporation | Key Pendragon Enterprises Inc. |
| AT2449883 | 2010/07/19 | Charge | \$1,000,000 | 2811 Development Corporation | Key Pendragon Enterprises Inc. |
| AT2561525 | 2010/11/26 | Charge | \$1,500,000 | 2811 Development Corporation | Con-Drain Company (1983) Limited |
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|-----------|------------|-------------------------------|-----------|---|---|
| AT2565586 | 2010/11/30 | Transfer of Charge | | Vector Financial Services Limited | White Bear Developments Inc. |
| AT2565587 | 2010/11/30 | No Assgn Rent Gen | | Vector Financial Services Limited | White Bear Developments Inc. |
| AT2665134 | 2011/04/13 | Construction Lien | \$386,190 | Mady Contract Division Ltd. | |
| AT2742192 | 2011/07/05 | Certificate (Re AT2665134) | | Mady Contract Division Ltd. | The Landmark (Canada) Inc. 2811 Development Corporation Lombard General Insurance Company Firm Capital Mortgage Fund Inc. Key Pendragon Enterprises Ltd. Con Drain Company (1983) Limited White Bear Developments Inc. |
| AT2755074 | 2011/07/05 | App. Court Order | | Ontario Superior Court of Justice (Commercial List) | Firm Capital Mortgage Fund Inc. |
| AT2864312 | 2011/11/08 | Application to Change Name | | Vector Financial Services Limited | Vector Financial Services Limited |

Schedule D – Assumed Encumbrances related to the Real Property

(unaffected by the Vesting Order)

1. Unregistered Subsection 37(1) of the *Planning Act*, R.S.O. 1990, c.P.13 Agreement between 2811 Development Corporation and the City of Toronto dated the 26th day of July 2007.
2. Unregistered Amending Agreement between 2811 Development Corporation and the City of Toronto dated the 18th day of September 2008 amending certain provisions of the Subsection 37(1) agreement dated July 26th, 2007.
3. The following instruments registered on title against the Lands:

(a) Permitted Encumbrances for PIN No. 06050-0199 (LT)

| Reg. Num. | Date | Instrument Type | Parties From | Parties To |
|------------------|-------------|------------------------|---|--|
| 66R17070 | 1995/09/15 | Plan Reference | | |
| C981858 | 1995/12/12 | Transfer Easement | The Treewood Development Corporation | The Municipality of Metropolitan Toronto |
| AT1371078 | 2007/02/05 | Notice | City of Toronto | 2811 Development Corporation Markham Steeles Realty Inc. Steeles Markham Developments Limited Bradgate Investments Limited Runnymede Development Corporation Limited Tapscott Industrial Landowners Group Inc. |
| 66R23193 | 2007/07/18 | Plan Reference | | |
| 66R23655 | 2008/04/10 | Plan Reference | | |

| Reg. Num. | Date | Instrument Type | Parties From | Parties To |
|-----------|------------|--|------------------------------|------------------------------|
| AT1787207 | 2008/05/26 | Transfer Easement | 2811 Development Corporation | Markham Steeles Realty Inc. |
| AT1787250 | 2008/05/26 | Transfer Easement | Markham Steeles Realty Inc. | 2811 Development Corporation |
| 66R25114 | 2010/09/22 | Plan Reference | | |
| AT2616576 | 2011/02/07 | Notice (Cost sharing Agreement re shared roadway) | Markham Steeles Realty Inc. | 2811 Development Corporation |

(b) Permitted Encumbrances for PIN No. 06050-0266 (LT)

| Reg. Num. | Date | Instrument Type | Parties From | Parties To |
|-----------|------------|--|---|------------------------------|
| AT496819 | 2004/05/28 | Notice (Easement relating to development of land) | Norstar Commercial Developments Inc. Gawler Holdings Limited | |
| 66R23210 | 2007/07/25 | Plan Reference | | |
| AT1517543 | 2007/07/25 | Apl. Absolute Title | 2811 Development Corporation | 2811 Development Corporation |

(c) Permitted Encumbrances for PIN No. 06050-0263 (LT)

| Reg. Num. | Date | Instrument Type | Parties From | Parties To |
|-----------|------------|-----------------|-----------------|------------|
| AT1394850 | 2007/03/09 | Bylaw | City of Toronto | |
| 66R23217 | 2007/07/27 | Plan Reference | | |
| | | | | |

| Reg. Num. | Date | Instrument Type | Parties From | Parties To |
|-----------|------------|--|------------------------------|------------------------------|
| AT1520329 | 2007/07/27 | Apl. Absolute Title | 2811 Development Corporation | 2811 Development Corporation |
| AT2616576 | 2011/02/07 | Notice (Cost sharing Agreement re shared roadway) | Markham Steeles Realty Inc. | 2811 Development Corporation |

(d) Permitted Encumbrances for PIN No. 06050-0264 (LT)

| Reg. Num. | Date | Instrument Type | Parties From | Parties To |
|-----------|------------|--|------------------------------|------------------------------|
| 66R23217 | 2007/07/27 | Plan Reference | | |
| AT1520329 | 2007/07/27 | Apl. Absolute Title | 2811 Development Corporation | 2811 Development Corporation |
| 66R23655 | 2008/04/10 | Plan Reference | | |
| AT1787207 | 2008/05/26 | Transfer Easement | 2811 Development Corporation | Markham Steeles Realty Inc. |
| 66R25114 | 2010/09/22 | Plan Reference | | |
| AT2616576 | 2011/02/07 | Notice (Cost sharing Agreement re shared roadway) | Markham Steeles Realty Inc. | 2811 Development Corporation |

(e) Permitted Encumbrances for PIN No. 06050-0272 (LT)

| Reg. Num. | Date | Instrument Type | Parties From | Parties To |
|-----------|------------|-----------------|-----------------|------------|
| AT1309249 | 2006/11/17 | Bylaw | City of Toronto | |
| 66R23217 | 2007/07/27 | Plan Reference | | |

| Reg. Num. | Date | Instrument Type | Parties From | Parties To |
|------------------|-------------|--|------------------------------|------------------------------|
| AT1520329 | 2007/07/27 | Apl. Absolute Title | 2811 Development Corporation | 2811 Development Corporation |
| 66R23655 | 2008/04/10 | Plan Reference | | |
| AT1787207 | 2008/05/26 | Transfer Easement | 2811 Development Corporation | Markham Steeles Realty Inc. |
| AT1837423 | 2008/07/18 | Land. Reg. Order (Correction of typographical error) | Land Registrar | |
| 66R25114 | 2010/09/22 | Plan Reference | | |

FIRM CAPITAL MORTGAGE FUND INC.

- and -

2811 DEVELOPMENT CORPORATION

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

COMMERCIAL LIST

PROCEEDINGS COMMENCED AT TORONTO

**APPROVAL, VESTING and DISBURSEMENT
ORDER**

BORDEN LADNER GERVAIS LLP

Barristers and Solicitors

Scotia Plaza

40 King Street West

Toronto, Ontario

M5H 3Y4

John Marshall

Tel: (416) 367-6024

Fax: (416) 361-2763

(LSUC #16960Q)

Lawyers for the Receiver, Deloitte & Touche Inc.

TOR01: 4739087: v2

APPENDIX "E"

Court File No.: CV11-9242-00CL

**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

**AFFIDAVIT OF MICHAEL WARNER
(Sworn November 14, 2011)**

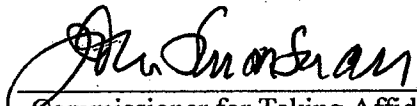
I, **MICHAEL WARNER**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Vice-President with Firm Capital Corporation ("FCC"), the loan servicer of the Applicant, and as such I have knowledge of the matters to which I depose herein. Unless I indicate to the contrary, the facts herein are within my own personal knowledge and are true. Where I have indicated that I have obtained facts from other sources, I believe those facts to be true.
2. Pursuant to a mortgage loan commitment letter dated May 26, 2008, as assigned by FCC to the Applicant and as renewed by agreements dated June 1, 2009, October 3, 2009 and


November 22, 2010, the Applicant made available to the Respondent a first mortgage loan in the original principal amount of \$17,500,000.00 (the "Loan"). As at November 15, 2011, the Respondent's indebtedness to the Applicant under the Loan is \$18,239,434.72. Attached hereto and marked as Exhibit "A" is an updated account statement for the Loan as at November 15, 2011 (the "Account Statement").

3. The Account Statement is only valid until 3:00 p.m. on November 15, 2011. From and after that time, interest will continue to accrue on the Loan and the Applicant may incur further costs in respect thereof.
4. I swear this affidavit in support of a motion by Deloitte & Touche Inc. (the "Receiver") approving the sale of the Assets as defined in the Agreement of Purchase and Sale dated as of October 3, 2011 between the Receiver and Mady Development Corporation and for no other or improper purpose.

SWORN before me at the City of Toronto,
in the Province of Ontario, this 14th day of
November, 2011.



Commissioner for Taking Affidavits



MICHAEL WARNER

Firm Capital

www.FirmCapital.com

MORTGAGE COLLECTION STATEMENT

FIRM CAPITAL CORPORATION
1244 Caledonia Road
Toronto, Ontario M6A 2X5
Phone: (416) 635-0221
Fax: (416) 635-1713

STATEMENT SENT TO : ATTENTION: Mr. Joseph Fried
Meyer, Wassenaar & Banach
5001 Yonge Street, Suite 301
North York, Ontario M6N 6P6
Fax: 416-223-9405

SENT BY :
STATEMENT DATE : November 15, 2011
INTEREST RATE : The greater of 11% or TD Canada Trust Prime + 5.00%
MORTGAGEE : Firm Capital Mortgage Fund Inc
PROPERTY : 5789-5883 Steeles Ave East, Toronto, Ontario
MORTGAGOR : 2811 DEVELOPMENT CORPORATION
MORTGAGE LOAN # : 08-1904


| | |
|---|--------------------------------|
| PRINCIPAL | \$ 16,087,199.80 |
| INTEREST as of November 15, 2011 | \$ 1,858,856.82 |
| OUTSTANDING CHARGES: | |
| - Default Administration fee | \$ 1,000.00 |
| - Late payment charge | \$ 4,000.00 |
| - Notice of Sale Administration Fee | \$ 4,000.00 |
| - Property Tax Administration fee | \$ 400.00 |
| - Statement Administration fee (May 2011) | \$ 250.00 |
| - Information Statement fee (June 2011) | \$ 100.00 |
| - Renewal fee | \$ 225,000.00 |
| - Discharge fee | \$ 250.00 |
| - Legal fee Enforcement | \$ 59,024.69 |
| PROPERTY TAX ACCOUNT CREDIT | (\$ 746.59) |
| Statement & Administration fee | \$ 100.00 |
| TOTAL | <u>\$ 18,239,434.72</u> |

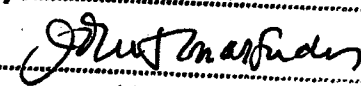
The per diem rates after November 15, 2011 are:
FIRM CAPITAL CORPORATION - Trust \$5,255.39

This statement is valid until November 30, 2011 only.

Please ensure payments are certified and received in this office before 1:00 p.m. Any payments received after 1:00 p.m. shall be deemed, for the purpose of calculation of interest, to have been made and received on the next banking business day.

If you have any questions, please do not hesitate to contact the undersigned
FIRM CAPITAL CORPORATION
As Servicing Agent

PER: 
Michael Warner
Vice President

This is Exhibit A referred to in the
affidavit of MICHAEL WARNER
sworn before me, this 14th
day of NOVEMBER 2011

A COMMISSIONER FOR TAKING AFFIDAVITS

E. & O. E.

INTERNAL:
COMMITMENT: _____ MORTGAGE: _____ P.BY: Vanna Notes: _____ MIBH: _____

FIRM CAPITAL MORTGAGE FUND INC.

and

2811 DEVELOPMENT CORPORATION

Applicant

Respondent

Court File No.: CV11-9242-00CL

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

Proceedings commenced at Toronto

AFFIDAVIT OF MICHAEL WARNER

Thornton Grout Finnigan LLP
Toronto-Dominion Centre
100 Wellington St. West
Suite 3200, P.O. Box 329
Toronto, ON M5K 1K7

Grant B. Moffat (LSUC #32380L)

Tel: (416) 304-0599

Fax: (416) 304-1313

Email: gmoффat@igf.ca

Danny M. Nunes (LSUC # 53802D)

Tel: (416) 304- 0592

Fax: (416) 304-1313

Email: dnunes@tgf.ca

Lawyers for the Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF SECTION 101 of the COURTS OF JUSTICE ACT,
R.S. 1990 c. C. 43, as amended

B E T W E E N:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

-and-

2811 DEVELOPMENT CORPORATION

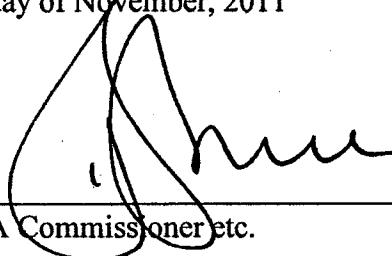
Respondent

AFFIDAVIT OF JEFF SNOW

I, JEFF SNOW, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of White Bear Developments Inc., the second mortgagee to the loan to the Respondent, and as such I have knowledge of the matters to which I hereinafter depose. To the extent that I refer to matters not within my personal knowledge and belief then I verily believe them to be true.
2. Pursuant to a mortgage loan to 2811 Development Corporation, the original principle amount was \$1,500,000.00 (the "Loan"). As at November 15, 2011, the Respondent's indebtedness to the Applicant under the Loan is \$2,347,200.33. Attached hereto and marked as Exhibit "A" to this my affidavit is a copy of the Statement of Mortgage as at November 15, 2011 (the "Account Statement").

This is **Exhibit "A"** referred to in the Affidavit
of, Jeff Snow sworn before me this
day of November, 2011



A Commissioner etc.

WHITE BEAR DEVELOPMENTS INC.
c/o Vantage Point Realty Ltd.
2221 Yonge Street, Suite LL10
Toronto, ON M4E 2B4

STATEMENT OF MORTGAGE

November 15, 2011

| | |
|---|--------------------|
| Principal Balance | \$1,500,000.00 |
| Monthly interest due Aug. 10, 2010 at 20.00% | 25,000.00 |
| Less payment received | <u>(16,875.00)</u> |
| Balance Aug. 10, 2010 | 1,508,125.00 |
| Monthly interest due Sept. 10, 2010 at 20.00%, compounded | 25,135.42 |
| Less payment received | <u>(16,875.00)</u> |
| Balance Sep. 10, 2010 | 1,516,385.42 |
| Monthly interest due Oct. 10, 2010 at 20.00%, compounded | 25,273.09 |
| Balance Oct. 10, 2010 | 1,541,658.51 |
| Monthly interest due Nov. 10, 2010 at 20.00%, compounded | 25,694.31 |
| Balance Nov. 10, 2010 | 1,567,352.82 |
| Monthly interest due Dec. 10, 2010 at 20.00%, compounded | 26,122.55 |
| Legal Fees paid to Vector Financial | 10,388.18 |
| Legal Fees paid to Goldman Stern Nash & Haber to Nov. 30, 2010 (actual) | 11,785.35 |
| Feealty to be capitalized | 78,347.64 |
| Statement Fee Dec. 3, 2010 (including 13% HST - BN 105667935 RT) | 386.50 |
| Legal Fees paid to Goldman Stern Nash & Haber to Dec. 10, 2010 (actual) | 5,036.18 |
| Statement Fee Dec. 10, 2010 (including 13% HST - BN 105667935 RT) | <u>396.50</u> |
| Balance Dec. 10, 2010 | 1,698,714.71 |
| Monthly interest due Jan. 10, 2010 at 20.00%, compounded | 28,129.58 |
| Balance Jan. 10, 2011 | 1,728,104.29 |
| Monthly interest due Feb. 10, 2011 at 20.00%, compounded | 28,801.74 |
| Performance Fee for period ending February 28, 2011 | 25,000.00 |
| Statement Fee Jan. 14, 2010 (including 13% HST - BN 105667935 RT) | 386.50 |
| Legal Fees paid to Goldman Stern Nash & Haber to Jan. 14, 2011 (estimate) | 5,650.00 |
| Balance Feb. 10, 2011 | 1,787,951.53 |
| Monthly interest due Mar. 10, 2011 at 20.00%, compounded | 29,799.19 |
| Legal Fees paid to Goldman Stern Nash & Haber to Feb. 28, 2011 (actual) | 1,464.77 |
| Item \$7,516.77 (actual) less 20,688.00 (Jan 14, 2011 estimate) | |
| Statement Fee Feb. 25, 2011 (including 13% HST - BN 105667935 RT) | 396.50 |
| Performance Fee for period ending March 31, 2011 | 25,000.00 |
| Second Statement Fee Feb. 28, 2011 (including 13% HST - BN 105667935 RT) | <u>396.50</u> |
| Balance Mar. 10, 2011 | 1,843,086.49 |
| Monthly interest due Apr. 10, 2011 at 20.00%, compounded | 30,730.11 |
| Balance Apr. 10, 2011 | 1,901,152.18 |
| Monthly interest due May 10, 2011 at 20.00%, compounded | 31,655.87 |
| Statement Fee Apr. 10, 2011 (including 13% HST - BN 105667935 RT) | 396.50 |
| Performance Fee for period ending Jun. 30, 2011 | 25,000.00 |
| Balance May 10, 2011 | 2,008,233.47 |
| Monthly interest due Jun. 10, 2011 at 20.00%, compounded | 33,478.56 |
| Balance Jun. 10, 2011 | 2,041,704.03 |
| Monthly interest due July 10, 2011 at 20.00%, compounded | 34,628.48 |
| Performance Fee for period ending July 31, 2011 | 25,000.00 |
| Balance July 10, 2011 | 2,109,732.43 |
| Monthly interest due Aug. 10, 2011 at 20.00%, compounded | 35,812.21 |
| Performance Fee for period ending Aug. 31, 2011 | 25,000.00 |
| Balance Aug. 10, 2011 | 2,160,744.63 |
| Monthly interest due Sep. 10, 2011 at 20.00%, compounded | 36,812.41 |
| Performance Fee for period ending Sep. 30, 2011 | 25,000.00 |
| Statement Fee Sep. 10, 2010 (including 13% HST - BN 105667935 RT) | 396.50 |
| Balance Sep. 10, 2011 | 2,222,152.54 |
| Monthly interest due Oct. 10, 2011 at 20.00%, compounded | 37,835.88 |
| Performance Fee for period ending Oct. 30, 2011 | 25,000.00 |
| Balance Oct. 10, 2011 | 2,284,188.42 |
| Monthly interest due Nov. 10, 2011 at 20.00%, compounded | 38,869.81 |
| Performance Fee for period ending Nov. 15, 2011 | <u>17,500.00</u> |
| Balance Nov. 10, 2011 | 2,334,758.23 |
| Per diem interest from Nov. 10, 2011 to Nov. 15, 2011 at 20.00%, compounded | 6,396.60 |
| Statement Fee Nov. 15, 2010 (including 13% HST - BN 105667935 RT) | 396.50 |
| Legal Fees paid to Goldman Stern Nash & Haber to Sep. 10, 2011 (estimate) | 5,650.00 |
| Balance Nov. 15, 2011 | 2,347,508.33 |
| Per diem interest from Nov. 10, 2011 | 55,278.32 |

FIRM CAPITAL MORTGAGE FUND and
INC.
Applicant

2811 DEVELOPMENT CORPORATION
Respondent

Court File No. CV11-9242-00C

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at *TORONTO*

AFFIDAVIT OF JEFF SNOW

GOLDMAN SLOAN NASH & HABER LLP
Barristers & Solicitors
480 University Avenue
Suite 1600
Toronto ON M5G 1V2

R. Brendan Bissell (LSUC # 40354V)
Tel.: (416) 597-64989
Fax: (416) 597-3370
Email: Bissell@gsnh.com

*Lawyers for White Bear Developments Inc. and
Key Pendragon Enterprises Inc.*

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

**IN THE MATTER OF SECTION 101 of the COURTS OF JUSTICE ACT,
R.S. 1990 c. C. 43, as amended**

B E T W E E N:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

-and-

2811 DEVELOPMENT CORPORATION

Respondent

AFFIDAVIT OF S. MILTON SNOW

I, S. MILTON SNOW, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of Key Pendragon Enterprises Inc., the third, fourth and fifth mortgagee to the loan to the Respondent, and as such I have knowledge of the matters to which I hereinafter depose. To the extent that I refer to matters not within my personal knowledge and belief then I verily believe them to be true.
2. Pursuant to a mortgage loan to 2811 Development Corporation, the original principle amount was \$5,500,000.00 (the "Third Mortgage"). As at November 15, 2011, the Respondent's indebtedness to the Applicant under the Third Mortgage is \$7,801,962.99. Attached hereto and marked as Exhibit "A" to this my affidavit is a copy of the Third Mortgage Statement as at November 15, 2011.
3. Pursuant to a mortgage loan to 2811 Development Corporation, the original principle amount was \$1,100,000.00 (the "Fourth Mortgage"). As at November 15, 2011, the Respondent's indebtedness to the Applicant under the Fourth Mortgage is \$1,405,631.72.

Attached hereto and marked as Exhibit "B" to this my affidavit is a copy of the Fourth Mortgage Statement as at November 15, 2011.

- 4. Pursuant to a mortgage loan to 2811 Development Corporation, the original principle amount was \$1,000,000.00 (the "Fifth Mortgage"). As at November 15, 2011, the Respondent's indebtedness to the Applicant under the Fifth Mortgage is \$1,239,776.35. Attached hereto and marked as Exhibit "C" to this my affidavit is a copy of the Fifth Mortgage Statement as at November 15, 2011.
- 5. The aforementioned mortgage statements are only valid until 3:00 p.m. on November 15, 2011. From and after that time, interest will continue to accrue on the Third Mortgage, Fourth Mortgage and Fifth Mortgage and the Applicant may incur further costs in respect thereof.
- 6. I swear this affidavit in support of a motion by Deloitte & Touche Inc. (the "Receiver") approving the sale of the Assets as defined in the Agreement of Purchase and Sale dated as of October 3, 2011 between the Receiver and Mady Development Corporation and for no other or improper purpose.

SWORN BEFORE ME at the)
 City of Toronto, in the Province of)
 Ontario, this the 14th day of)
 November, 2011.)
 _____)
 A Commissioner for taking affidavits, etc.



 S. MILTON SNOW

This is Exhibit "A" referred to in the Affidavit
of, ~~Mickey~~ ^{S. Miller} Snow sworn before me this
day of November, 2011

A handwritten signature in black ink, appearing to be "S. Miller", written over a horizontal line.

A Commissioner etc.

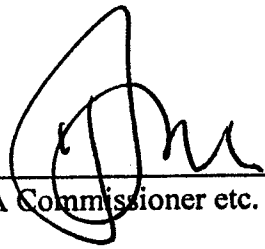
THE LANDMARK - THIRD MORTGAGE STATEMENT
 5.5 MILLION MORTGAGE AND INTEREST CALCULATION
 INTEREST AT 14%

3rd MORTGAGE STATEMENT as of November 15, 2011

| | | | RUNNING BALANCE |
|----------------------|-----------|--------------|-----------------|
| PRINCIPAL | OCT 16/09 | 5,500,000.00 | \$ 5,500,000.00 |
| KEN COHEN | APR 19/10 | 2,990.40 | \$ 5,502,990.40 |
| SACKS | APR 08/10 | 525.00 | \$ 5,503,515.40 |
| INTEREST DUE | MAY 01/10 | 65,000.00 | \$ 5,568,515.40 |
| PRINCIPAL | MAY 10/10 | 16,875.00 | \$ 5,585,390.40 |
| PRINCIPAL | MAY 31/10 | 200,875.00 | \$ 5,786,265.40 |
| INTEREST DUE | JUN 01/10 | 67,506.43 | \$ 5,853,771.83 |
| KEN COHEN | JUN 01/10 | 2,833.05 | \$ 5,856,604.88 |
| TORKIN , MANES | JUN 25/10 | 2,562.46 | \$ 5,859,167.34 |
| KEN COHEN | JUN 30/10 | 4,932.90 | \$ 5,864,100.24 |
| MARK YOUNG MAN | JUN 16/10 | 1,845.64 | \$ 5,865,945.88 |
| INTEREST DUE | JUL 01/10 | 68,436.04 | \$ 5,934,381.91 |
| INTEREST DUE | AUG 01/10 | 69,234.46 | \$ 6,003,616.37 |
| SACKS | AUG 03/10 | 14,700.00 | \$ 6,018,316.37 |
| KEN COHEN | AUG 31/10 | 822.41 | \$ 6,019,138.78 |
| INTEREST DUE | SEP 01/10 | 70,223.29 | \$ 6,089,362.07 |
| SACKS | SEP 02/10 | 2,625.00 | \$ 6,091,987.07 |
| INTEREST DUE | OCT 01/10 | 71,073.18 | \$ 6,163,060.25 |
| KEN COHEN | OCT 04/10 | 2,901.84 | \$ 6,165,962.09 |
| INTEREST DUE | NOV 01/10 | 71,936.22 | \$ 6,237,898.31 |
| LEGAL FEES GSNH | NOV 10/10 | 23,295.33 | \$ 6,261,193.64 |
| INTEREST DUE | DEC 01/10 | 73,047.26 | \$ 6,334,240.90 |
| SACKS | DEC 07/10 | 7,349.00 | \$ 6,341,589.90 |
| PENALTY (3 MTHS INT) | DEC 01/10 | 221,955.51 | \$ 6,563,541.41 |
| INTEREST DUE | JAN 01/11 | 76,574.65 | \$ 6,640,116.06 |
| LEGAL FEES GSNH | DEC 10/10 | 16,776.37 | \$ 6,656,892.43 |
| STATEMENT FEE | DEC 10/10 | 395.50 | \$ 6,657,287.93 |
| SACKS | DEC 31/10 | 1,695.00 | \$ 6,658,982.93 |
| FORBEARANCE FEES | JAN 01/11 | 32,000.00 | \$ 6,690,982.93 |
| LEGAL FEES GSNH | JAN 13/11 | 13,815.18 | \$ 6,704,798.11 |
| INTEREST DUE | FEB 01/11 | 78,222.64 | \$ 6,783,020.75 |
| INTEREST DUE | MAR 01/11 | 79,135.24 | \$ 6,862,156.00 |
| STATEMENT FEE | MAR 04/11 | 395.50 | \$ 6,862,551.50 |
| FORBEARANCE FEE | MAR 01/11 | 32,000.00 | \$ 6,894,551.50 |
| LEGAL FEES GSNH | MAR 04/11 | 6,700.41 | \$ 6,901,251.91 |
| INTEREST DUE | APR 01/11 | 80,514.61 | \$ 6,981,766.51 |
| SACKS | APR 01/11 | 1,130.00 | \$ 6,982,896.51 |
| INTEREST DUE | MAY 1/11 | 81,467.13 | \$ 7,064,363.64 |
| FORBEARANCE FEE | MAY 1/11 | 32,000.00 | \$ 7,096,363.64 |
| INTEREST DUE | JUN 1/11 | 82,790.91 | \$ 7,179,154.55 |
| INTEREST DUE | JUL 1/11 | 83,756.80 | \$ 7,262,911.35 |

| | | | | |
|--|-------------------------------------|-----------|-------------|--------------|
| LEGAL FEES GSNH | JUN 27/11 (period ending Jun 17) | 24,365.15 | \$ | 7,287,276.50 |
| FORBEARANCE FEE | JUL 1/11 | 32,000.00 | \$ | 7,319,276.50 |
| STATEMENT FEE | JUL 15/11 | 395.50 | \$ | 7,319,672.00 |
| LEGAL FEE GSNH (estimated) | JUL 15/11 | 3,000.00 | \$ | 7,322,672.00 |
| INTEREST DUE | AUG 1/11 | 85,431.17 | \$ | 7,408,103.17 |
| INTEREST DUE | SEP 1/11 | 86,427.87 | \$ | 7,494,531.04 |
| FORBEARANCE FEE | SEP 1/11 | 32,000.00 | \$ | 7,526,531.04 |
| LEGAL FEES GSNH | SEP 21/11 | 23,758.85 | \$ | 7,550,289.89 |
| STATEMENT FEE | SEP 21/11 | 395.50 | \$ | 7,550,685.39 |
| INTEREST DUE | OCT 1/11 | 88,091.33 | \$ | 7,638,776.72 |
| INTEREST DUE | NOV 1/11 | 89,119.06 | \$ | 7,727,895.78 |
| FORBEARANCE FEE | NOV 1/11 | 32,000.00 | \$ | 7,759,895.78 |
| STATEMENT FEE | OCT 28-11 | 395.50 | \$ | 7,760,291.28 |
| INTEREST TO NOV 15-11 | | 41,671.70 | \$ | 7,801,962.99 |
| E&OE* | | | per diem \$ | 2,976.55 |
| * GSNH legal fees from Sept 21, 2011, not included | | | | |

This is Exhibit "B" referred to in the Affidavit
of ~~J. K. [unclear]~~ Snow sworn before me this
day of November, 2011

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a cursive 'm'. The signature is written over a horizontal line.

A Commissioner etc.

THE LANDMARK - FOURTH MORTGAGE STATEMENT
1.1MILLION MORTGAGE AND INTEREST CALCULATION
INTEREST AT 12%
4TH MORTGAGE STATEMENT AS OF Nov 15 2011

| | | | <u>RUNNING BALANCE</u> |
|-------------------------|-----------|-----------------|------------------------|
| PRINCIPAL | APR 22/10 | \$ 1,100,000.00 | \$ 1,100,000.00 |
| 10 DAYS INTEREST | MAY 01/10 | \$ 3,616.44 | \$ 1,103,616.44 |
| INTEREST DUE | JUN 01/10 | \$ 11,036.16 | \$ 1,114,652.60 |
| INTEREST DUE | JUL 01/10 | \$ 11,146.53 | \$ 1,125,799.13 |
| INTEREST DUE | AUG 01/10 | \$ 11,257.99 | \$ 1,137,057.12 |
| INTEREST DUE | SEP 01/10 | \$ 11,370.57 | \$ 1,148,427.69 |
| INTEREST DUE | OCT 01/10 | \$ 11,484.28 | \$ 1,159,911.97 |
| INTEREST DUE | NOV 01/10 | \$ 11,599.12 | \$ 1,171,511.09 |
| INTEREST DUE | DEC 01/10 | \$ 11,715.11 | \$ 1,183,226.20 |
| PENALTY (3 MTHS) | DEC 01/10 | \$ 35,496.79 | \$ 1,218,722.98 |
| INTEREST DUE | JAN 01/11 | \$ 12,187.23 | \$ 1,230,910.21 |
| FORBEARANCE FEE | JAN 01/11 | \$ 6,000.00 | \$ 1,236,910.21 |
| INTEREST DUE | FEB 01/11 | \$ 12,369.10 | \$ 1,249,279.32 |
| INTEREST DUE | MAR 01/11 | \$ 12,492.79 | \$ 1,261,772.11 |
| STATEMENT FEE | MAR 01/11 | \$ 395.50 | \$ 1,262,167.61 |
| FORBEARANCE FEE | MAR 01/11 | \$ 6,000.00 | \$ 1,268,167.61 |
| INTEREST DUE | APR 01/11 | \$ 12,681.68 | \$ 1,280,849.29 |
| INTEREST DUE | MAY 01/11 | \$ 12,808.49 | \$ 1,293,657.78 |
| FORBEARANCE FEE | MAY 01/11 | \$ 6,000.00 | \$ 1,299,657.78 |
| INTEREST DUE | JUN 01/11 | \$ 12,996.58 | \$ 1,312,654.36 |
| INTEREST DUE | JUL 01/11 | \$ 13,126.54 | \$ 1,325,780.90 |
| FORBEARANCE FEE | JUL 01/11 | \$ 6,000.00 | \$ 1,331,780.90 |
| STATEMENT FEE | JUL 15/11 | \$ 395.50 | \$ 1,332,176.40 |
| INTEREST DUE | AUG 01/11 | \$ 13,321.76 | \$ 1,345,498.16 |
| INTEREST DUE | SEP 01/11 | \$ 13,454.98 | \$ 1,358,953.15 |
| FORBEARANCE FEE | SEP 01/11 | \$ 6,000.00 | \$ 1,364,953.15 |
| STATEMENT FEE | SEP 21/11 | \$ 395.50 | \$ 1,365,348.65 |
| INTEREST DUE | OCT 1/11 | \$ 13,653.49 | \$ 1,379,002.13 |
| STATEMENT FEE | OCT 28/11 | \$ 395.50 | \$ 1,379,397.63 |
| INTEREST DUE | NOV 1/11 | \$ 13,793.98 | \$ 1,393,191.61 |
| FORBEARANCE FEE | NOV 01/11 | \$ 6,000.00 | \$ 1,399,191.61 |
| INTEREST TO NOV 15 2011 | | \$ 6,440.11 | \$ 1,405,631.72 |

E&OE*
 GSNH legal fees from September 21, 2011 not included

per diem \$ 460.01

This is **Exhibit "C"** referred to in the Affidavit
of, Mickey Snow sworn before me this
day of November, 2011

A Commissioner etc.

**THE LANDMARK - FIFTH MORTGAGE STATEMENT
1 MILLION MORTGAGE AND INTEREST CALCULATION
 INTEREST AT 12%
5TH MORTGAGE STATEMENT as at November 1**

| | | | <u>RUNNING BALANCE</u> |
|-------------------------------|-----------|-----------------|------------------------|
| PRINCIPAL | JUL 19/10 | \$ 1,000,000.00 | \$ 1,000,000.00 |
| 13 DAYS INTEREST | AUG 01/10 | \$ 4,273.97 | \$ 1,004,273.97 |
| INTEREST DUE | SEP 01/10 | \$ 10,042.74 | \$ 1,014,316.71 |
| INTEREST DUE | OCT 01/10 | \$ 10,143.17 | \$ 1,024,459.88 |
| INTEREST DUE | NOV 01/10 | \$ 10,244.60 | \$ 1,034,704.48 |
| INTEREST DUE | DEC 01/10 | \$ 10,347.04 | \$ 1,045,051.52 |
| PENALTY (3 MTHS INT) | DEC 01/10 | \$ 31,351.55 | \$ 1,076,403.07 |
| INTEREST DUE | JAN 01/11 | \$ 10,764.03 | \$ 1,087,167.10 |
| FORBEARANCE FEES | JAN 01/11 | \$ 5,000.00 | \$ 1,092,167.10 |
| INTEREST DUE | FEB 01/11 | \$ 10,921.67 | \$ 1,103,088.77 |
| INTEREST DUE | MAR 01/11 | \$ 11,030.89 | \$ 1,114,119.66 |
| STATEMENT FEE | MAR 01/11 | \$ 395.50 | \$ 1,114,515.16 |
| FORBEARANCE FEE | MAR 01/11 | \$ 5,000.00 | \$ 1,119,515.16 |
| INTEREST DUE | APR 01/11 | \$ 11,195.15 | \$ 1,130,710.31 |
| INTEREST DUE | MAY 01/11 | \$ 11,307.10 | \$ 1,142,017.41 |
| FORBEARANCE FEE | MAY 01/11 | \$ 5,000.00 | \$ 1,147,017.41 |
| INTEREST DUE | JUN 1/11 | \$ 11,470.17 | \$ 1,158,487.59 |
| INTEREST DUE | JUL 1/11 | \$ 11,584.88 | \$ 1,170,072.46 |
| FORBEARANCE FEE | JUL 01/11 | \$ 5,000.00 | \$ 1,175,072.46 |
| STATEMENT FEE | JUL 15/11 | \$ 395.50 | \$ 1,175,467.96 |
| INTEREST DUE | AUG 1/11 | \$ 11,754.68 | \$ 1,187,222.64 |
| INTEREST DUE | SEP 1/11 | \$ 11,872.23 | \$ 1,199,094.87 |
| FORBEARANCE FEE | SEP 1/11 | \$ 5,000.00 | \$ 1,204,094.87 |
| STATEMENT FEE | SEP 21/11 | \$ 395.50 | \$ 1,204,490.37 |
| INTEREST DUE | OCT 1/11 | \$ 12,044.90 | \$ 1,216,535.27 |
| INTEREST DUE | NOV 1/11 | \$ 12,165.35 | \$ 1,228,700.63 |
| FORBEARANCE FEE | NOV 1/11 | \$ 5,000.00 | \$ 1,233,700.63 |
| STATEMENT FEE | OCT 28/11 | \$ 395.50 | \$ 1,234,096.13 |
| INTEREST TO NOVEMBER 15, 2011 | | \$ 5,680.22 | \$ 1,239,776.35 |
| E&OE* | | per diem | \$ 405.73 |

*GSNH legal fees from September 21, 2011 not included

FIRM CAPITAL MORTGAGE FUND and
INC.
Applicant

2811 DEVELOPMENT CORPORATION
Respondent

Court File No. CV11-9242-00C

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at *TORONTO*

AFFIDAVIT OF JEFF SNOW

GOLDMAN SLOAN NASH & HABER LLP
Barristers & Solicitors
480 University Avenue
Suite 1600
Toronto ON M5G 1V2

R. Brendan Bissell (LSUC # 40354V)
Tel.: (416) 597-64989
Fax: (416) 597-3370
Email: Bissell@gsnh.com

*Lawyers for White Bear Developments Inc. and
Key Pendragon Enterprises Inc.*

APPENDIX "F"

Sam P. Rappos
 T (416) 367-6033
 F (416) 361-7306
 srappos@blg.com

Borden Ladner Gervais LLP
 Scotia Plaza, 40 King Street W
 Toronto, ON, Canada M5H 3Y4
 T 416.367.6000
 F 416.367.6749
 blg.com



File No. 082893/000018

November 10, 2011

DELIVERED BY E-MAIL

Messrs. Howard Sloan and Brendan Bissell
 Goldman Sloan Nash & Haber LLP
 480 University Avenue
 Suite 1600
 Toronto, ON M5G 1V2

Mr. John Leslie and Ms. Angela D'Alessandro
 Miller Canfield P.L.C.
 443 Ouellette Avenue
 Suite 300
 Windsor, ON N9A 6R4

Messrs. Irving Marks and Dominique Michaud
 Robins Appleby & Taub
 120 Adelaide Street West
 Suite 2600
 Toronto, ON M5H 1T1

Mr. Ed Hiutin
 Stevenson LLP
 7501 Keele Street
 Suite 200
 Vaughan, ON L4K 1Y2

Dear Sirs/Mesdames,

**Re: Firm Capital Mortgage Fund Inc. v. 2811 Development Corporation,
 Court File No. CV11-9242-00CL (the "Receivership Proceeding")**

We write to you in our capacity as counsel to Deloitte & Touche Inc., the Court-appointed Receiver in the Receivership Proceeding. We write to you in your respective capacities as counsel to Key Pendragon Enterprises Inc., White Bear Developments Inc. ("**White Bear**"), Lombard General Insurance Company of Canada, Con-Drain Company (1983) Limited and Mady Contract Division Ltd.

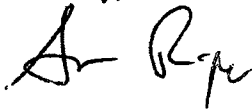
As you know, the Receiver is bringing a motion returnable in the Receivership Proceeding on November 15, 2011 requesting, among other things, Court approval of a sale transaction for The Landmark real property and authorization, upon the closing of the sale transaction, to make certain distributions from the sale proceeds to mortgagees with valid and enforceable charges against the real property. In the Third Report of the Receiver dated November 3, 2011, the Receiver indicated at paragraph 41 that its counsel was not in a position to provide a definitive opinion with respect to the White Bear charge. The reason for this is that there was an inconsistency (being the inclusion of a period) between the chargee's name listed on the Charge in the amount of \$1,500,000 registered on December 16, 2009, being "Vector Financial. Services Limited", and the name of the transferor on the Transfer of Charge registered on November 30, 2010 in favour of White Bear, being "Vector Financial Services Limited".

We have been informed that on November 8, 2011, an Application to Change Name-Instrument was registered on title as instrument no. AT2864312, a copy of which is enclosed, wherein it is indicated that the listing of "Vector Financial. Services Limited" as chargee under the Charge was a typographical error and the name of chargee was properly "Vector Financial Services Limited".

It is the Receiver's opinion that this typographical error does not affect the validity or priority of the White Bear Charge, but we wanted to ensure that all interested parties were apprised of the issue and have the opportunity to address it if they so wish.

Accordingly, we ask that you please consult with your respective clients and confirm in writing whether any of the parties take issue with the amendment made to the White Bear Charge on November 8, 2011. The Receiver understands that, to the extent that the White Bear Charge is determined to be valid and enforceable against the property, it is the effective second-in-time charge against all of the real property that is to be sold as part of the sale transaction.

Yours truly,



Sam P. Rappos
Encl.

Cc: Mr. Brian Tannenbaum and Mr. Ira Gerstein, *Deloitte & Touche Inc.*
Mr. John Marshall, *Borden Ladner Gervais LLP*

TOR01: 4771346: v2

LRO # 80 Application To Change Name-Instrument

Received as AT2864312 on 2011 11 08 at 10:20

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd

Page 1 of 2

Properties

PIN 06050 - 0199 LT
Description PT LOTS 18 & 19, CON 5; PT ROAD ALLOWANCE BETWEEN LOTS 18 & 19 CON 5, AS CLOSED BY BY-LAW 408 BEING PT OF PT 1 66R12477 LYING NORTH OF PLAN 66M1996; SAVE & EXCEPT PT OF LOTS 18 & 19 CON 5 PT 1 66R18987...SUBJ. TO EASE. OVER PTS 1 & 2 66R17070 AS IN C981858. SCARBOROUGH, CITY OF TORONTO; S/T EASEMENT OVER PART 37 PL 66R23655 AS IN AT1787207; TORONTO; T/W EASEMENT OVER PT 35 PL 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655 AS IN AT1787250
Address 5789 STEELES AVENUE EAST
TORONTO

PIN 06050 - 0263 LT
Description PART OF LOT 19 CON 5, SCARBOROUGH, DESIGNATED AS PART 1 ON PLAN 66R-23217, CITY OF TORONTO; T/W EASEMENT OVER PT 35 PL 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655 AS IN AT1787250
Address 5933 STEELES AVENUE EAST
TORONTO

PIN 06050 - 0264 LT
Description PART LOT 18 CON 5, SCARBOROUGH; PT RDAL BTN LOTS 18 AND 19, CON 5, SCARBOROUGH(CLOSED BY BY-LAW NO. 406 AS IN SC608215), CITY OF TORONTO, DESIGNATED AS PART 2 ON PLN 66R-23217; S/T EASEMENT OVER 38 PL 66R23655 AS IN AT1787207; TORONTO; T/W EASEMENT OVER PT 35 PL 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655
Address 5945 STEELES AVENUE EAST
TORONTO

PIN 06050 - 0266 LT
Description PT LT 20 CON 5 SCARBOROUGH DESIGNATED AS PT 1 PL 66R23210; SCARBOROUGH; CITY OF TORONTO
Address 5811 STEELES AVENUE EAST
TORONTO

PIN 06050 - 0272 LT
Description PT LOT 18 CON. 5 SCARBOROUGH, PT 3 PL 66R23217 SAVE AND EXCEPT PT 32 PL 66R23655; CITY OF TORONTO; S/T EASEMENT OVER PT 36 66R23655 AS IN AT1787207; T/W ROW OVER PT 32 66R23655 AS IN AT1787644; T/W EASEMENT OVER PT 35 66R23655 AS IN AT1787250; T/W EASEMENT OVER PTS 24 & 25 PL 66R23655 AS IN AT1787250
Address 5951 STEELES AVENUE EAST
TORONTO

Source Instruments

| Registration No. | Date | Type of Instrument |
|------------------|------------|--------------------|
| AT2259133 | 2009 12 16 | Charge/Mortgage |

Party From(s)

Name VECTOR FINANCIAL SERVICES LIMITED
Address for Service 25 Imperial Street
Suite 500
Toronto, Ontario
M5P 1C1

Applicant(s)**Capacity****Share**

Name VECTOR FINANCIAL SERVICES LIMITED
Address for Service 25 Imperial Street
Suite 500
Toronto, Ontario
M5P 1C1

I, Mickey Baratz, A.S.O., have the authority to bind the corporation

This document is not authorized under Power of Attorney by this party.

Statements

The name has changed as a result of typographical error and this statement is made for no improper purpose.

Schedule: I, Samuel Harry Nash, am the solicitor for the Applicant and hereby apply to have the parcel register amended as a result of a typographical error in the name of the Chargee which name should be Vector Financial Services Limited and this statement is made for no improper purpose.

Signed By

| | | | | |
|-------------------|--|----------------------------|--------|------------|
| Samuel Harry Nash | 480 University Ave, # 1600 Toronto M5G 1V2 | acting for Applicant(s) | Signed | 2011 11 08 |
|-------------------|--|----------------------------|--------|------------|

Tel 4165979922

Fax 4165973370

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

| | | |
|--------------------------------|--|------------|
| GOLDMAN SLOAN NASH & HABER LLP | 480 University Ave, # 1600 Toronto M5G 1V2 | 2011 11 08 |
|--------------------------------|--|------------|

Tel 4165979922

Fax 4165973370

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

FIRM CAPITAL CORPORATION
Applicant

- and -
Respondent

2811 DEVELOPMENT CORPORATION

ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT
TORONTO

MOTION RECORD
(Motion for Interim Distribution, December 5, 2011)

BORDEN LADNER GERVAIS LLP
Barristers and Solicitors
40 King Street West
Toronto, Ontario M5H 3Y4

John D. Marshall
Tel: (416) 367-6024
Fax: (416) 361-2763
(LSUC #: 16960Q)

Sam P. Rappos
Tel: (416) 367-6033
Fax: (416) 361-7306
(LSUC#51399S)

Solicitors for Deloitte & Touche Inc. in its capacity as
Receiver