

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

**IN THE MATTER OF AN APPLICATION UNDER PURSUANT TO SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED (THE "CJA")
AND SECTION 243 OF THE *BANKRUPTCY AND INSOLVENCY ACT*,
R.S.C. 1985, C.B-3., AS AMENDED**

BETWEEN

**THE EQUITABLE TRUST COMPANY and
TREZ CAPITAL CORPORATION**

Applicants

-and-

1598490 ONTARIO LIMITED

Respondent

**SECOND REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
1598490 ONTARIO LIMITED
VOLUME 1**

DATED NOVEMBER 28, 2013

**SECOND REPORT OF IRA SMITH TRUSTEE & RECEIVER INC.
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
1598490 ONTARIO LIMITED
VOLUME 1**

DATED NOVEMBER 28, 2013

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Exhibits

Exhibit “A”	Order of the Honourable Madam Justice Mesbur dated May 24, 2013
Exhibit “B”	Order of the Honourable Mr. Justice Newbould dated August 16, 2013
Exhibit “C”	Agreement of Purchase and Sale from from Centurion Acquisition Corporation
Exhibit “D”	Court-approved Terms and Conditions of Sale
Exhibit “E”	Receiver’s Information Teaser for prospective purchasers
Exhibit “F”	Confidentiality Agreement used in the Sales Process
Exhibit “G”	Sales Process Confidential Information Memorandum
Exhibit “H”	Copy of communication to successful bidders
Exhibit “I”	Copy of communication to unsuccessful bidders
Exhibit “J”	Copy of communication to unsuccessful Potential Bidder on their Offer to Purchase
Exhibit “K”	Copy of communication to Centurion
Exhibit “L”	Redacted schedule of Letters of Intent submitted to the Receiver in the Sales Process
Exhibit “M”	Redacted schedule of Agreements of Purchase and Sale submitted to the Receiver in the Sales Process
Exhibit “N”	Telus Communications Inc. contract with the Receiver to provide forensic computer services

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Exhibits (Cont'd)

Exhibit "O"	Opinion of Steinberg Morton Hope Israel LLP on the security held by the Applicants
Exhibit "P"	Receiver's estimated realization schedule from the sale of the Project
Exhibit "Q"	Receiver's Statement of Receipts and Disbursements for the period May 24 to October 31, 2013
Exhibit "R"	Receiver's fee affidavit
Exhibit "S"	Legal counsel fee affidavit
Exhibit "T"	Commercial property tax consultant opinion dated November 27, 2013

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1.0 INTRODUCTION

1. Pursuant to the application to the Court by The Equitable Trust Company and Trez Capital Corporation (“**Trez**”) (jointly described as the “**Applicants**”), Ira Smith Trustee & Receiver Inc. (“**ISI**”) was appointed receiver (the “**Receiver**”) without security, of all of the assets, properties and undertakings of 1598490 Ontario Limited (the “**Company**” or the “**Debtor**”) by Order of the Honourable Madam Justice Mesbur dated May 24, 2013 (the “**Appointment Order**”) pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, C.43, as amended (the “**CJA**”) and section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3., as amended (the “**BIA**” or the “**Act**”). A copy of the Appointment Order is attached as **Exhibit “A”**.

2. By Order of the Honourable Mr. Justice Newbould dated August 16, 2013, the actions

and activities of the Receiver, as contained in the Receiver's First Report to Court dated August 2, 2013 (the "**First Report**"), and the First Report, were approved by this Honourable Court (the "**First Approval Order**"). A copy of the First Approval Order is attached as **Exhibit "B"**.

2.0 PURPOSE OF THE SECOND REPORT

3. The purpose of this Second Report is to report to this Honourable Court on:

- i. the actions and activities of the Receiver since the First Report;
- ii. the status and outcome of the Court-approved Sales Process (as described and defined in the First Report and approved in the First Approval Order) (the "**Sales Process**");
- iii. the independent appraisal commissioned by the Receiver from Metrix Realty Group (Ontario) Inc. (contained in the Confidential Volume 2 of this Second Report) dated July 24, 2013 (the "**Metrix Appraisal**");
- iv. the Receiver's recommendation for Court approval of the Offer to Purchase received through the Sales Process from Centurion Acquisition Corporation ("**Centurion**") in the amount of \$8.0 million (the "**Centurion APA**");
- v. the existence of lien claims that may rank in priority to the claim of the first mortgagee;
- vi. the cash flow requirements of and the proposed distribution by the Receiver;
- vii. the accounting for the receipts and disbursements of the Receiver from May 24 to October 31, 2013; and

- viii. the fees and costs incurred by the Receiver and its legal counsel, Steinberg Morton Hope & Israel LLP (“SMHI”), for the period subsequent to those fees approved in the First Report.

3.0 DISCLAIMER

4. In preparing this First Report, the Receiver, where stated, has relied upon unaudited and draft, internal financial information obtained from the Debtor’s books and records and discussions with former management, contractors and other third parties as stated herein (collectively, the “**Information**”). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information and expresses no opinion, or other form of assurance, in respect of the Information.

5. This report is prepared solely for the use of the Court and the stakeholders in this proceeding, for the purpose of assisting the Court in making a determination whether to approve the actions and activities of the Receiver, and other relief being sought. It is based on the Receiver’s analysis of information provided to it by the management, directors, staff, and contractors of the Debtor, and other third parties as stated herein, which included unaudited financial statements and internal financial reporting. The Receiver’s procedures did not constitute an audit or financial review engagement of the Debtor’s financial reporting. Where stated, the Receiver has relied upon the financial statements and financial and other records of the Debtor in reaching the conclusions set out in this report.

4.0 CONFIDENTIAL VOLUME 2

6. Confidential Volume 2 of this Second Report contains the Metrix Appraisal, the realtor proposals obtained by the Receiver and commentary on the desktop analysis performed by the Receiver for its estimate of the value of the Project (as defined below), prior to receiving the Metrix Appraisal. The purpose of the Metrix Appraisal was to provide the Receiver with an independent opinion of value of the Project (as defined below) on an as is, where is basis, reflective of the current real estate market in Toronto. The Confidential Volume 2 also contains all Asset Purchase Agreements received by the Receiver, other than the Centurion APA, which is attached as **Exhibit “C”** to this Volume 1 of the Second Report.

7. The Receiver is seeking an Order sealing Volume 2 of this Second Report until the discharge of the Receiver, after which time Volume 2 shall become unsealed. The Receiver makes this request to avoid any prejudice that might be caused by publicly disclosing the appraisal and the identities of the other potential purchasers in the event that the sale contemplated by the Centurion APA being recommended by the Receiver is either not approved by this Honourable Court or is not completed.

8. For reasons stated above, the Receiver believes that the appraisal and other documents in Volume 2 must be sealed at this time, so that no party will obtain any special insight into, or advantage with respect to, the Project or the Sales Process as disclosed in such documents.

5.0 BACKGROUND AND OVERVIEW

9. In its capacity as Receiver, ISI has reported to this Honourable Court on the nature of the Debtor's business operation and the major asset, a six storey residential condominium building (not including the mechanical and utility spaces) under construction, located at 3443 Bathurst Street, Toronto, ON in which there are 23 units of varying sizes from approximately 915 to 2,050 square feet, none of which were occupied upon the Appointment Date (the "**Project**"). The Receiver refers the readers of this Second Report to the First Report for a complete overview of the business and its sole asset.

6.0 ACTIVITIES OF THE RECEIVER

10. Since its First Report, the Receiver has undertaken the following activities:
- i. assessment of damage from the July 2013 flood, communications and meetings with insurance adjuster, remediation consulting and trades regarding remediation of damage and ongoing negotiations with due to July 2013 flood damage;
 - ii. continued retention of Pelican Woodcliff Inc. ("**PWI**") to assist the Receiver with matters related to the building and the quantification of damage due to the flood damage;

- iii. obtaining the opinion of Mr. C.L. Trottier, B.Se., S.C.V., a licensed paralegal and commercial property tax consultant known to the Receiver to assist the Receiver in determining if the property tax assessment of the Project is appropriate or not;
- iv. proceeding with response to litigation commenced by purported Israeli purchasers of individual residential condominium units prior to the Receiver's appointment, including, review of corporate books and records, documents provided by third parties, communications and meetings with legal counsel, conference calls with the stakeholders and respective legal counsel and preparation of affidavits;
- v. communications and meeting with second mortgagee regarding its estimate of value of the Project;
- vi. communications with certain realtors, including those suggested by second mortgagee, to obtain realtor proposals;
- vii. retention of and communications with Metrix Realty Group (Ontario) Inc. to perform appraisal of the Project;

- viii. drafting of all documents related to the proposed sales process to be recommended to the Court for approval in the First Report (the “**Sales Process**”);
- ix. assisting legal counsel in attempting to obtain information from the sole Officer and Director of the Debtor, Mr. C. Bialostozky, in preparing the Affidavit of Mr. I. Smith in connection with a contempt motion against Mr. Bialostozky for not delivering all property of the Debtor to the Receiver in accordance with the Appointment Order, retaining and communicating with representatives of Telus Security Solutions to perform a forensic examination of the laptop and smartphone devices ultimately provided by Mr. Bialostozky when served with the contempt motion material;
- x. consultations with stakeholders regarding the Sales Process and the purchaser litigation;
- xi. preparation and issuance of the First Report;
- xii. dealings with Tarion Warranty Corporation (“**Tarion**”) for the recovery of the security deposit previously lodged with Tarion by the Receiver, once the

Receiver concluded that the Sales Process would not involve the sale of individual condominium units;

- xiii. preparation of Supplementary First Report to Court (not issued) given Tarion's initial refusal to return the security deposit to the Receiver until the deposit was replaced by the eventual purchaser of the real property;
- xiv. assisting legal counsel in resolving the matter with Tarion resulting in Tarion returning the Receiver's security deposit without the need for an application to Court;
- xv. implementation and conduct of the Sales Process including advertisement in The Globe & Mail;
- xvi. receipt and review of eighteen (18) non-binding Letters of Intent (the "LOI's");
- xvii. establishment of online data room, communications with parties who submitted non-binding LOI's;

- xviii. dealing with the eleven (11) parties whose LOI's were not rejected by the Receiver to perform further due diligence including access to the online data room and site tours of the Project;
- xix. receipt and review of five (5) binding Agreements of Purchase and Sale (the "APA's"), discussions with certain parties regarding their APA's to obtain further clarification, communications with the four (4) unsuccessful parties and return of their deposit funds, finalization and acceptance of the Centurion APA being recommended by the Receiver; and
- xx. in connection with the lien claims, reviewing the books and records of the Debtor, financial information supplied by the second mortgagee, Vector Financial Services Limited ("Vector"), reviewing financial information supplied by the lien claimants, communications with legal counsel and assisting legal counsel in calculations of contract amounts, payments made and potential holdback claims.

7.0 RECEIVER'S SALES PROCESS

11. As stated above, the Sales Process was approved by this Honourable Court in the First Approval Order. As reported in the First Report, based on communications received from each of the two mortgagees, the Receiver initially developed the Sales Process on the basis that there would be a Stalking Horse Bid, from one of these stakeholders. The Receiver advises that no

Stalking Horse Bid was received and all potential purchasers were advised of this during communications with the Receiver.

12. The steps involved in the Sales Process were:

- i. compile the list of four hundred and seventy four (474) pre-screened targeted potential purchasers based primarily on the potential purchasers known to the Receiver, PWI and the first and second mortgagees;
- ii. compile a summary description of the transaction (“**Teaser**”), a Confidentiality Agreement to be signed by any party requesting more detailed information and a Confidential Information Memorandum (“**CIM**”) to present the opportunity to potential purchasers;
- iii. prepare and publish the advertisement of this opportunity in The Globe & Mail Report on Business on September 3 and 5, 2013 (the “**Advertisement**”);
- iv. publish the business opportunity on the Receiver’s website, http://www.irasmithinc.com/case_studies/Deloraine/index.html;
- v. issue an email to the pre-screened targeted potential purchasers with a copy of the Advertisement on September 3, 2013 inviting such parties to contact the Receiver if they, or anyone familiar to them, were interested in further exploring the opportunity;
- vi. provide a copy of the Teaser to all parties who responded to either the email blast or the Advertisement requesting more information;

- vii. discussions with potential purchasers regarding the opportunity, the Sales Process, the time lines involved and referring parties to the Receiver's webpage dedicated to this receivership administration for anyone interested in the background and history of the Debtor and the Project;
- viii. prepare a password protected web based data room for such approved potential buyers to perform due diligence;
- ix. receive and evaluate eighteen (18) non- binding Letters of Intent ("LOI") submitted to the Receiver on or before the deadline for submission of 5PM Toronto time on September 20, 2013 (and two LOI's received after the deadline, one which the Receiver considered appropriate to allow the bidder to become a Potential Bidder and proceed further in the Sales Process and one which the Receiver did not consider appropriate to further continue);
- x. consultation with representatives of the Applicants and Vector and obtaining their concurrence with the Receiver's analysis and recommendations as to which parties should be considered Potential Bidders (as defined in the Court-approved Terms and Conditions of Sale) and allowed to proceed further in the Sales Process;
- xi. communicate with all bidders on September 25, 2013 advising that the Receiver has reviewed their respective LOI and whether or not based on such review the respective party is considered a Potential Bidder to proceed further in the Sales Process;

- xii. provide all Potential Bidders with instructions on how to access the documents contained in the password protected online data room established by the Receiver and inviting them to contact the Receiver to make an appointment for a tour of the building;
- xiii. receipt and review of five (5) binding Agreements of Purchase and Sale (the “APA’s”) by the deadline of noon Toronto time on October 18, 2013 and discussions with certain Potential Bidders regarding their APA’s to obtain further clarification;
- xiv. consultation with representatives of the Applicants and Vector and obtaining their concurrence with the Receiver’s analysis and recommendation to accept the Centurion APA, subject to receiving a response acceptable to the Receiver concerning an additional query the Receiver had concerning Centurion’s APA (such consultation was done without divulging the name of any of the Potential Bidders);
- xv. discussion with representatives of Centurion and its legal counsel to obtain further clarification;
- xvi. communication on October 25, 2013 with the four (4) unsuccessful parties and return of their deposit funds, whose respective APA’s the Receiver was not prepared to accept; and

xvii. finalization and acceptance of Centurion's amended APA.

13. Attached hereto are the following Sales Process documents as Exhibits as described below:

<u>Document</u>	<u>Exhibit</u>
Terms and Conditions of Sale	"D"
Teaser	"E"
Confidentiality Agreement	"F"
CIM	"G"
Copy of communication to successful bidders	"H"
Copy of communication to unsuccessful bidders	"I"
Copy of communication to unsuccessful Potential Bidder	"J"
Copy of communication to Centurion	"K"

14. The schedule of LOI's received, with the Receiver's recommendation, with the names of the bidders redacted, and the list of APA's received, with the Qualified Bidder's names redacted, is attached hereto as Exhibits "L" and "M" respectively. These schedules without any redaction are included in Volume 2 of this Second Report.

15. As indicated in Exhibit "L", the range of proposed purchase prices in the LOI's was

\$3.45 million to \$10.0 million. After the due diligence was performed, six (6) of the bidders did not submit an APA. As indicated in Exhibit “M”, the range of purchase prices as contained in the five (5) APA’s was \$4.05 million to \$8.0 million. In the LOI phase, there were two LOI’s at \$8.0 million and two LOI’s in excess of \$8.0 million. Neither of the two parties whose respective LOI’s were above \$8.0 million submitted an APA. Centurion was one of the two parties that submitted an LOI at \$8.0 million and there was no reduction in the purchase price in the Centurion APA.

16. The Receiver conducted the Sales Process as approved by this Honourable Court, as amended for there not being a Stalking Horse Bid. The Project for sale was well advertised and all parties had full access to all information and documents in the possession of the Receiver and had the opportunity to inspect the real property. The Receiver has recommended to the Applicants and Vector that the Receiver accept the Centurion APA and these stakeholders agree with the Receiver’s recommendation. There are no conditions remaining to be satisfied by either the Receiver or Centurion, other than for the approval of this Honourable Court and the obtaining of a Vesting Order in order to complete the sale.

17. In addition to the Metrix Appraisal, the Receiver obtained three (3) realtor proposals to market the Project which included the respective realtor’s estimate of value. The Receiver also prepared its own desktop analysis of its estimate of value, prepared prior to the receipt of the Metrix Appraisal for discussion with representatives of Trez, as well as information concerning

discussions held with Mr. F. Laurie, President of Vector, concerning Vector's estimate of value of the Project after understanding the actual status of the Project as described in the First Report. The Receiver submits that the Metrix Appraisal, the realtor proposals and the Receiver's desktop analysis all support the sale under the Centurion APA.

8.0 LIEN CLAIMS

18. In the First Report, the Receiver advised that it was working with its legal counsel, Mr. D. Brooker of SMHI, in connection with three (3) lien claimants registered against title to the property:

- i. Ronen Management Services Inc. and Eli Ronen ("**Ronen**") - \$536,896.90;
- ii. Trio Mechanical Contractors Ltd. ("**Trio**") - \$375,370.50; and
- iii. Air-F Inc. o/a Husky Heating and Air Conditioning - \$21,292.82

19. As a result of Mr. Brooker's efforts, with the approval of the Applicants and Vector, the Receiver has settled the claim of Air-F Inc. on the basis that the Receiver will reserve from the proceeds of sale of the Project the amount of \$15,000 for payment to Air-F Inc. and the lien will be vacated, and a mutual release exchanged.

20. With respect to the lien claim of Trio, Mr. Brooker advised the Receiver that as Trio failed to perfect its lien claim, it could not assert a valid lien claim. Mr. Brooker communicated the Receiver's position to Trio's legal counsel who replied that Trio was sheltering its lien in

accordance with Section 36(4) of the *Construction Lien Act*, R.S.O. 1990, CHAPTER C.30, under the Ronen lien claim. As a settlement of the Ronen lien claim has not yet been achieved (see further discussion below), Mr. Brooker agreed with Trio's counsel that the amount of \$32,537.50 will be held back as a reserve by the Receiver from the sale proceeds of the sale of the Project. On November 27, 2013, Trio's counsel made a written offer of settlement to the Receiver that Trio will accept the above-noted amount of the reserve in full and final settlement of its claim. Mr. Brooker, on behalf of the Receiver, accepted this settlement offer, conditional on, *inter alia*, mutual releases being exchanged and that payment would be from the proceeds of sale of the Project as soon as practical after the completion of the sale.

21. With respect to the Ronen lien claim, Mr. Brooker has been involved in assessing the Ronen claim and the Receiver has assisted Mr. Brooker by providing information as contained in the available books and records of the Company and in reviewing documentation provided by Mr. Ronen's lawyer, Mr. A. Price, to assist Mr. Brooker in assessing the proper amount of the holdback obligation the Company, and therefore the Receiver.

22. On August 23, 2013, the cross-examination of Mr. Ronen was held, on his Affidavit of Verification in connection with Ronen's action for a Claim for Lien in Court File No. CV-13-483202. Since that date, Mr. Ronen has provided additional documentation in fulfilment of his undertakings for the Receiver's review to assist Mr. Brooker.

23. As of this date, the matter has not been resolved. The Receiver's view is that the appropriate holdback amount is \$52,852.19 while Ronen believes that the holdback amount is in excess of \$300,000. The Receiver is prepared to reserve the proper amount of the owner's holdback claim from the sale proceeds of the real property, should this Honourable Court approve the Centurion APA as recommended by the Receiver. However, notwithstanding the exchange of communications and case law in support of the Receiver's position between Messrs. Brooker and Price, Ronen disagrees with the Receiver's position.

24. Given the above and the Centurion APA being recommended herein by the Receiver, on November 27, 2013, Mr. Brooker, under instructions from the Receiver, made a written settlement offer to Mr. Price that the Receiver will pay in full and final settlement to Ronen, the amount of \$52,852.19, upon receipt of the funds from the sale of the Project, in return for the exchanging of mutual releases and Ronen vacating its claim for lien and certificate of action, and all other claims and cross-claims against all parties would also be withdrawn. Mr. Brooker further advised Mr. Price that should his client not accept the Receiver's settlement offer, and then Mr. Price should as quickly as possible take out an appointment before a Construction Lien Master on an urgent basis so that the proper amount of the owner's holdback could be settled prior to the completion of the sale of the Project.

25. As further described in Section 11.0 below, the Receiver does not anticipate that there will be any funds available for lien claimants, even if their claims are proven, above and beyond the amount of the priority holdback being reserved by the Receiver from the sale of the Project.

9.0 OTHER COURT PROCEEDINGS

9.1 Purchaser litigation

26. In the First Report, the Receiver advised that:

- i. before the date of the Appointment Order, there were Agreements of Purchase and Sale for seventeen (17) of the condominium units, and the purchasers were purportedly prepared to complete the transaction as soon as the Occupancy Permit was obtained;
- ii. notwithstanding this, immediately prior to the date of the issuance of the Appointment Order, legal counsel for the purchasers advised that they were not compelled to complete the transaction given that the Company and the purchasers already executed Mutual Release and Termination Agreements purportedly terminating the transactions and releasing each other from any liability;
- iii. on May 23, 2013 (one day prior to the issuance of the Appointment Order), the purchasers served their application material under Court File No.: CV-13-10120-00CL claiming the following:
 - a) an order directing the respondent Gabriel Krikunez to pay the sum of \$2,699,615.00 to the Applicants or as they direct;

- b) a declaration that the Applicants are not bound by any agreements of purchase and sale with the respondent, the Company;
 - c) costs of the application on a substantial indemnity basis as against ISI in its capacity as private receiver of the vendor;
 - d) such further and other relief as this Honourable Court may seem just; and
- iv. a timetable was agreed to by all counsel, and approved by Justice Morawetz.

27. At the present time the following records have been delivered by the parties:

- i. original Application Record (2 volumes) of the purchasers containing the original Notice of Application, the Affidavit of Yoseph Shtizberg affirmed May 19, 2013 and the Affidavit of Sheldon Weinles affirmed May 27, 2013;
- ii. responding Application Record of the Receiver dated June 27, 2013 which contains the Affidavit of Ira Smith sworn June 27, 2013;
- iii. reply Affidavit of Yoseph Shtizberg affirmed August 20, 2013; and
- iv. responding Application Record of Linum Corp. dated November 7, 2013 which contains the Affidavit of Avraham Lavi affirmed November 4, 2013.

28. The last of the above noted documents, being the Linum Corp. material, was received by SMHI on November 7, 2013. Linum Corp., which was added as a party pursuant to an Order of the Court made on consent, was to serve its material on or before October 11, 2013 and was almost four weeks late in doing so, with no reasonable explanation offered. The Receiver (and

any of the other parties) may serve material in response to the Linum Corp. material. Linum Corp. is making its own claim to \$1.5 million of the disputed funds referred to above and at this time it is not clear if Linum Corp.'s claim is being disputed by the purchasers.

29. At the present time the proceeding is still framed as an application although no Notice of Application was served on behalf of Linum Corp. Further, the Receiver has not at this point made any formal claim to the funds at issue although the Receiver does intend to make a formal notice of cross-application with a formal claim for the funds being made by the Receiver should these proceedings continue.

30. The matter is being dealt with by the Court in tandem with the Court's supervision of this receivership administration, and the Receiver will report further on this matter as it progresses. The Receiver has been in constant communication with both the Applicants and Vector, and their respective legal counsel, who are supporting the decisions made to date by and the efforts of the Receiver in this litigation.

9.2 The sole Officer and Director of the Debtor

31. In the First Report the Receiver advised of the difficulties in obtaining the books and records and information from Mr. C. Bialostozky. Mr. Brooker has been in constant communication with Mr. Bialostozky's legal counsel, Mr. M.A. Katzman. Notwithstanding such communication, obtaining information that the Receiver believes must exist, has proven near

impossible. Finally, in August 2013, Mr. Bialostozky, through his legal counsel, indicated that he had one laptop computer and one cellphone which he used for business conducted by the Debtor. On August 12, 2013, the Receiver retained the forensic services division of Telus Communications Inc. (“**Telus**”), to review the contents of such laptop and cellphone, under a protocol agreed to by Messrs. Brooker and Katzman. Attached as **Exhibit “N”** is a copy of the contract entered into with Telus to perform forensic services, primarily identifying emails and files, whether deleted on the devices or not, pertaining to all of the Debtor’s dealings in connection with the Project.

32. Messrs. Brooker and Katzman agreed upon a protocol so that the Receiver would only be able to view items found by Telus pertaining to the Debtor’s business in connection with the Project. Telus, in accordance with the protocol prepared a listing of files found. Unfortunately, Mr. Bialostozky has not been cooperative in making the proper identification for the Receiver.

33. The Receiver has now been able to review reports prepared by Telus. Such reports indicate that there still remains a large amount of missing information. Specifically, on the devices Mr. Bialostozky provided, there are no files or communications in connection with the above-noted purchasers, their Agreements of Purchase and Sale, their Termination and Mutual Release documentation, communications regarding the funds they are claiming to have advanced, any communications with Linum Corp., its representatives or agents, or any brokers involved in the raising and delivery of the funds being claimed by the purchasers and Linum Corp.

34. Mr. Brooker has raised this issue with Mr. Katzman on many occasions, and Mr. Bialostozky, through Mr. Katzman, is adamant that no other computers or communication devices were used by the Debtor or exist. As the Receiver finds it incredulous that purchases of real estate, termination of such purchases, the provision of millions of dollars from around the globe, could be conducted with absolutely no communication whatsoever. Therefore on October 24, 2013, the Receiver served its motion record for a contempt Order against Mr. Bialostozky. Reply material has been served and cross-examinations to have been held in November 2013 were adjourned upon consent as the Receiver had not yet received additional reports requested from Telus. Those reports would assist the Receiver in further understanding whether or not any communications the Receiver expected to have found on the Debtor's devices exist thereon. The Receiver wished to have Telus perform additional testing prior to exposing the receivership administration to further costs if such further testing would produce information not previously obtained from the initial forensic review.

35. The Receiver will further report on this matter to this Honourable Court as it progresses.

10.0 SECURED CREDITORS

36. In the First Report, the Receiver described its understanding that the Applicants and Vector are both mortgagees of the real property comprising the Project, as well as having registrations under the Ontario Personal Property Security Act registration system.

37. As the Receiver is recommending a distribution of the net sale proceeds from the sale of the Project to the Applicants in this Second Report, the Receiver requested Mr. M. Cass of SMHI to provide the Receiver with an opinion on the validity and ranking of the security held by the Applicants. As indicated below, the Receiver has calculated that the Applicants will suffer a shortfall from the sale of the Project. Accordingly, the Receiver at this time has not requested a legal opinion on the Vector security.

38. Attached as **Exhibit “O”** is the opinion of SMHI dated November 27, 2013, indicating, *inter alia*, that the security of the Applicants is valid and ranks as a first charge, subject to any statutory trust claims and priority lien claims, as against all of the assets, properties and undertaking of the Company.

39. In the First Report, the Receiver advised that the Receiver had not found any documents to suggest that the Company had any employees, the Receiver provided Canada Revenue Agency (“**CRA**”) with a copy of the Receiver’s Notice pursuant to Sections 244/245 of the *Bankruptcy and Insolvency Act* (Canada), that other than for the receipt of an HST refund cheque issued to the Company, CRA has not contacted the Receiver and therefore, the Receiver concluded that CRA did not believe at that time that the Company was indebted to it on account of either unremitted source deductions or HST. There continues to be no contact from CRA and therefore the Receiver continues to not have any information to suggest that there are any claims

that by statute would rank in priority to the claim of the Applicants and that there is no need for the Receiver to register with and provide Wage Earner Protection Program information to Service Canada.

40. The Receiver has prepared and filed the unremitted Company income tax returns, based on the available books and records, and has requested that the Company's HST account be closed down after payment of the HST refund credits calculated by the Receiver totalling \$30,575.49. In order to attempt to collect this refund, the Company must be in compliance with all of its filing obligations with CRA.

11.0 ESTIMATED REALIZATION

41. The Receiver prepared a Statement of Estimated Realization as at November 15, 2013 indicating that from the completion of the sale of the Project under the Centurion APA, the Receiver estimates that the approximate amount of \$7.1 million, after providing for sufficient holdbacks for lien claims and other required reserves, is available for distribution. Attached as **Exhibit "P"** is the Receiver's analysis. Following a conference call held on November 15, 2013 between representatives of the Receiver, the Applicants and Vector, and respective legal counsel, the Receiver circulated this analysis to those individuals, as requested.

42. The Applicants have calculated that as at November 15, 2013, the indebtedness of the Company to the Applicants is the amount of \$8,423,027.64 on account of both principal and

interest, with a per diem interest charge of \$5,714.40. The Applicants have requested the Receiver to obtain Court approval to distribute to them the entire net funds on hand from the sale of the Project under the Centurion APA, net of the Receiver's reserves/holdbacks. The Applicants will suffer a shortfall from the sale of the Project.

43. As indicated herein, the amount that will be available for distribution, net of the Receiver's holdbacks/reserves, is less than the outstanding indebtedness. Given the legal opinion of SMHI on the security held by the Applicants, the Receiver recommends that the net funds on hand be distributed as soon as practical after the completion of the sale of the Project under the Centurion APA. The Receiver does not anticipate that there will be sufficient funds to pay any of the lien claimants, even if their claims are proven, above and beyond the priority holdback being reserved by the Receiver.

12.0 SETTLEMENT OF INSURANCE CLAIM

44. In the First Report, the Receiver advised of the damage to the interior of the Project due to the major flooding in the City of Toronto in July 2013. The Receiver also advised that the Receiver reported the claim to its insurance broker, who assigned an insurance adjuster who the Receiver was working with in connection with the claim.

45. Through the insurance adjuster, the Receiver had all damaged property removed and the building remediated, but not repaired. The Receiver believed that the repairs would interfere with the timing of the Sales Process and may not provide any additional value to the Project or

sales price to be obtained under the circumstances. Accordingly, the Receiver worked with its consultant, PWI, and the insurance adjuster, to properly estimate the extent of repairs necessary and the payment to be made by the insurer to the Receiver on account of such loss.

46. After extensive discussions, negotiations and certain work carried out by contractors retained directly by the Receiver, the Receiver estimates that net of HST payable, and the policy deductible, it will receive approximately \$85,000 from the insurer on account of the claim. This amount is estimated in Exhibit "P" in this Second Report.

13.0 RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

47. As the Project does not have any income producing elements to it, there has been no cash flow available for the Receiver to utilize. Accordingly, the Receiver initially borrowed necessary funding from Trez under Receiver's Certificates. Vector also agreed to advance funds to the Receiver. Prior to October 31, 2013, the Receiver borrowed from Trez under Receiver's Certificates nos. 1 and 2, the total amount of \$464,210.69.

48. Attached as **Exhibit "Q"** is the Receiver's Statement of Receipts and Disbursements for the period May 24 to October 31, 2013 indicating funds on hand of \$52,294.81.

49. Subsequent to October 31, 2013, at the request of Vector, the Receiver refinanced the Trez indebtedness primarily through borrowing on Receiver's Certificates from Vector. At this

time, the amount of \$NIL is outstanding to Trez, as the Receiver has repaid the previous borrowing under Receiver's Certificates nos. 1 and 2, and the amount of \$342,000 plus accrued interest is outstanding to Vector under Receiver's Certificates nos. 3 and 4. No other amounts have been borrowed or are outstanding other than the indebtedness to Vector described herein.

50. The borrowing from Vector to refinance the debt owing to Trez was done on a phased basis so that the Receiver did not have outstanding borrowings in excess of the Court-approved borrowing authority of \$500,000 as allowed for in paragraph 20 of the Order. The Receiver will be repaying Vector's principal and interest in full from the net sale proceeds of the Project.

14.0 PROFESSIONAL FEES AND DISBURSEMENTS

51. Attached hereto as **Exhibit "R"** is the Affidavit of Mr. Ira Smith, President of ISI, attesting to the fees and disbursements of the Receiver for the period from July 1 to November 15, 2013 in the amount of \$145,917.69 (inclusive of HST). To date, the amount of \$NIL has been advanced on account of these fees and disbursements.

52. Attached as **Exhibit "S"** is the Affidavit of Mr. Michael Cass in connection with SMHI's fee and disbursements including the detailed statement of account for the period August 1 to November 15, 2013 in the amount of \$110,350.00 (inclusive of HST). As indicated in the Statement of Receipts and Disbursements, to date, the amount of \$NIL has been advanced on account of these fees and disbursements.

15.0 PROPERTY TAX

53. The Receiver consulted with a commercial property tax consultant known to the Receiver to satisfy itself that the property tax assessment of the Project was reasonable. Attached hereto as **Exhibit “T”** is the written opinion of Mr. C.L. Trottier, B.Se. S.C.V., a licensed paralegal and commercial property tax consultant indicating that the property tax assessment of the Project is reasonable. Accordingly, there is no further action for the Receiver to take in connection with the Project’s property tax assessment for 2013 and prior years.

16.0 CONCLUSION AND RECOMMENDATIONS

54. For the reasons set out in this Second Report, the Receiver respectfully requests that this Honourable Court approve:

- i. the actions and activities of the Receiver since the First Report;
- ii. the status and outcome of the Court-approved Sales Process (as described and defined in the First Report and approved in the First Approval Order);
- iii. the Receiver’s recommendation for Court approval of the Centurion APA in the amount of \$8.0 million and authorizing the Receiver to complete that transaction;
- iv. the distribution of the net funds on hand, net of the Receiver’s holdbacks/reserves, to the Applicants; and

- v. the fees and costs incurred by the Receiver and its legal counsel, SMHI, for the period subsequent to those fees approved in the First Report.

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All of which is respectfully submitted at Toronto, Ontario this 28th day of November, 2013.

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court Appointed Receiver
of 1598490 Ontario Limited
and not in its personal capacity

Per:

President