

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended and SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43, as amended**

MOTION RECORD

May 3, 2012

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**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**MOTION UNDER RULES 59.06, 60.05 and 60.11 OF THE *RULES OF CIVIL
PROCEDURE*, R.R.O. 1990 Reg. 194**

I N D E X

Tab

1. Notice of Motion dated May 3, 2012
2. Fourth Report of the Receiver dated May 3, 2012
- A. Order of the Honourable Mr. Justice Campbell dated November 15, 2011
- B. Affidavit of Kenneth J. Malcolm sworn November 10, 2011, without exhibits
- C. Receiver's First Report dated November 24, 2011, without appendices
- D. Order of the Honourable Madam Justice Mesbur dated November 25, 2011
- E. Receiver's Second Report dated January 24, 2012, without appendices
- F. Order of the Honourable Justice Spence dated January 30, 2012
- G. Order of the Honourable Justice Spence dated January 30, 2012 regarding the Orangeville Property
- H. Affidavit of Ravinder Chahal sworn March 12, 2012, without exhibits

- I. Receiver's Third Report dated March 30, 2012, without appendices
- J. Order of the Honourable Mr. Justice Wilton-Siegel dated April 4, 2012
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- M. City of Brampton Notice dated April 5, 2012
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- P. Letter from Sikder Professional Corporation to Blaney McMurtry LLP dated January 26, 2012
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- U. Fee affidavit of Ira Smith Trustee & Receiver Inc.
- V. Fee affidavit of Blaney McMurtry LLP
- W. Receiver's Statement of Receipts and Disbursements
- 3. Draft Discharge Order
- 4. Blackline of Draft Discharge Order to Model Discharge Order.

TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

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Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
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COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43, as amended**

NOTICE OF MOTION

IRA SMITH TRUSTEE & RECEIVER INC., in its capacity as court appointed receiver of the Respondent (the “**Receiver**”) will make a motion to a judge of the Superior Court of Justice – Commercial List on a date to be set by the court at a 9:30 am chambers appointment scheduled for May 4, 2012, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

- (a) an Order substantially in the form found at Tab 3 to this motion record (the “**Draft Discharge Order**”), including, but not limited to:

- (i) if necessary, an Order abridging and validating the time for service of this Notice of Motion, the Fourth Report of the Receiver dated May 3, 2012 (the “**Fourth Report**”) and Motion Record herein and directing that any further service of same be dispensed with such that the motion is properly returnable on the date that it is heard;
- (ii) an Order approving the Receiver’s actions and conduct as set out in the Fourth Report;
- (iii) an Order approving the Receiver’s fees and disbursements from March 1, 2012 (the “**Receiver Fees**”);
- (iv) an Order approving the fees and disbursements of the Receiver’s legal counsel, Blaney McMurtry LLP, from January 13, 2012 (the “**Counsel Fees**”);
- (v) an Order confirming that the Receiver continues to enjoy the protection of the Receiver’s Charge (as more particularly described in the Appointment Order, hereinafter defined) until its fees and disbursements and the fees and disbursements of its counsel are paid in full;
- (vi) an Order discharging the Receiver;
- (vii) an Order releasing the Receiver and its counsel from liability associated from its efforts as the Receiver; and
- (viii) such further and other relief as this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

- (a) on November 15, 2011, the Receiver was appointed over the assets, property and undertaking (the “**Property**”) of the Respondent (the “**Appointment Order**”);
- (b) since the Appointment Order the Receiver has tended to a number of operational and investigative matters, the particulars of which were outlined in the Receiver’s first three reports, each of which was previously approved by this Honourable Court;
- (c) on or about April 5, 2012, the Receiver was advised that the Applicant had assigned its debt and security (the “**Assignment**”) to Firm Capital Mortgage Fund Inc. (“**Firm Capital**”);
- (d) prior to the Assignment, the Receiver had been in possession of the Debtor’s assets with the consent and full support of the Applicant. However, since the Assignment, Firm Capital has advised that it will be proceeding with a motion to substitute the Receiver (the “**Substitution Motion**”) with Deloitte & Touche Inc. (the “**Proposed Receiver**”).
- (e) Firm Capital requested that the Receiver maintain the status quo and not take any unnecessary steps leading up to the Substitution Motion;
- (f) while the Receiver has been able to maintain the “status quo” to this point, there are a number of operational matters which must be tended to in the upcoming days and weeks (including repair of the air conditioning system and cooling

tower). These operational matters will either require Firm Capital's financial support or the Receiver to seek financing pursuant to Receiver's certificates.

- (g) given the forgoing and Firm Capital's preference is for the Proposed Receiver to act on a go forward basis, the Receiver does not oppose the relief sought in the Substitution Motion, including Proposed Receiver's appointment (the "**Draft Substitution Order**") and contemporaneously seeks its discharge;
- (h) as part of this motion the Receiver seeks a discharge order substantially in the form of the Draft Discharge Order;
- (i) the effect of the Draft Substitution Order and the Draft Discharge Order (over and above the provisions contained in the model discharge order) will be:
 - (i) a transfer of the Property (including the Condominium Complex itself) to the Proposed Receiver;
 - (ii) a transfer of certain funds currently held in escrow by the Receiver's counsel to Meyer Wassenaar & Banach LLP which will continue to be held in escrow;
 - (iii) confirmation that the Receiver Fees and Counsel Fees continue to enjoy a first charge over the Premises until paid in full; and
 - (iv) provide certain amendments to the Appointment Order including an amendment to the style of cause so as to name Firm Capital as the applicant; and

- (j) 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 Fourth Report of the Receiver dated May 3, 2012, and appendices attached thereto; and
- (b) such further and other evidence as counsel may advise and this Honourable Court permit.

May 3, 2012

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appointed Receiver of 2012241 Ontario Limited

TO THE ATTACHED SERVICE LIST

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
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as amended and SECTION 101 OF *THE COURTS OF JUSTICE ACT*,
R.S.O. 1990 c. C.43, as amended**

**FOURTH REPORT OF THE RECEIVER
DATED MAY 3, 2012**

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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**FOURTH REPORT OF THE RECEIVER
DATED MAY 3, 2012**

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Court File No. CV-11-9456-00CL

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**FOURTH REPORT OF THE RECEIVER
DATED MAY 3, 2012**

APPENDICES

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INTRODUCTION

1. On November 15, 2011, the Honourable Mr. Justice Campbell appointed Ira Smith Trustee & Receiver Inc. as receiver (the "**Receiver**") of all of the property, assets and undertaking (the "**Property**") of the Respondent (the "**Appointment Order**"). Attached hereto and marked as **Appendix "A"** is a copy of the Appointment Order.
2. The Respondent's principal asset is a 64 unit commercial condominium complex (the "**Condominium Complex**") located at 50 Sunny Meadow Blvd., Brampton, Ontario (the "**Premises**"). The Respondent's principals are Ravinder Chahal ("**Chahal**") and Jagdev Dhaliwal ("**Dhaliwal**") (and together with Chahal are referred to as the "**Principals**").
3. As part of its application seeking the appointment of the Receiver, The Toronto-Dominion Bank (the "**Bank**" or the "**Applicant**") relied upon the affidavit of Kenneth J. Malcolm sworn November 10, 2011 (the "**Malcolm Affidavit**"). Attached hereto and marked as **Appendix "B"** is a copy of the Malcolm Affidavit (without exhibits).
4. Following the Appointment Order a bank draft payable to Rena Setwant Dhaliwal in the amount of \$50,000 was improperly issued from the Respondent's bank account. Furthermore (and in spite of numerous requests), the principals of the Respondent failed to provide the Receiver with requested documents and information relating to the Respondent's business. This resulted in the Receiver preparing its first report dated November 24, 2011 (the "**First Report**"). Attached hereto and marked as **Appendix "C"** is a copy of the First Report (without appendices).

5. On November 25, 2011 the Honourable Madam Justice Mesbur ordered, among other things, that the Principals (as defined in the Order) provide responses to the Receiver's written request for information before the close of business on November 29, 2011, failing which the Receiver may pursue a contempt order (the "**Production Order**"). Pursuant to the Production Order, the Principals, Jagden Dhaliwal and Jasdew Dhaliwal were ordered to provide responses to all requests contained in the Receiver's letter dated November 16, 2011. Attached hereto and marked as **Appendix "D"** is a copy of the Production Order.
6. Following the Production Order the Principals produced some of the information required, but much remained outstanding. Furthermore, the Receiver's investigations uncovered, among other things, that the Respondent had transferred at least \$116,917.89 to 1732037 Ontario Inc. (a company also controlled by one or both the Principals), and a further \$420,000 in commissions paid to the Respondent's real estate agent even though none of the condominium unit sales in question had closed. A detailed explanation of the Receiver's findings can be found in the Receiver's second report dated January 24, 2012 (the "**Second Report**"). Attached hereto and marked as **Appendix "E"** is a copy of the Second Report (without appendices).
7. By motion returnable January 30, 2012, the Receiver sought an order (the "**January 30 Order**") approving the Receiver's hiring of a property manager together with authorizing the retaining of a construction consultant and an appraiser. The January 30 Order also compelled the principals of the Respondent, among others, to submit to an examination. Attached hereto and marked as **Appendix "F"** is a copy of the January 30, Order.

8. As part of the motion returnable January 30, 2012 the Receiver obtained a further order (the "**Orangeville Property Order**") restraining the dealing with and/or sale of a property municipally known as 50 Rolling Hills Drive, Orangeville, Ontario (the "**Orangeville Property**"). The Orangeville Property is owned by 1732037 Ontario Inc. ("**173**") which is related to the Respondent. Attached hereto and marked as **Appendix "G"** is a copy of the Orangeville Property Order.
9. By motion returnable April 4, 2012 (the "**Respondent's Motion**") the Respondent sought an Order compelling the Receiver to deliver certain documents, including a copy of an appraisal commissioned from Lebow, Hicks Appraisers Inc. (the "**Appraisal**"). Attached hereto and marked as **Appendix "H"** is a copy of the affidavit of Ravinder Chahal sworn March 12, 2012 (without exhibits) in support of the Respondent's Motion.
10. The Receiver brought a motion (the "**Receiver's Motion**") returnable on the same day as the Respondent's Motion seeking, among other things, advice and directions relating to the Respondent's request, and specifically production of the Appraisal. Attached hereto and marked as **Appendix "I"** is a copy of the Receiver's third report (the "**Third Report**") dated March 30, 2012 (without appendices) in support of the Receiver's Motion.
11. On April 4, 2012 the Honourable Mr. Justice Wilton-Siegel issued an Order with respect to the Receiver's Motion and an endorsement relating to the Respondent's Motion (the "**April Endorsement**"). Attached hereto and marked as **Appendix "J"** and **Appendix "K"** respectively is a copy of the Honourable Mr. Justice Wilton-Siegel's Order and the April Endorsement.

PURPOSE OF THE REPORT

12. The purpose of this fourth report of the Receiver (the "**Fourth Report**") is to:
- (a) update the court on operations and affairs relating to the Condominium Complex;
 - (b) advise the Court of the recent assignment of the Applicant's debt and security (the "**Assignment**") to Firm Capital Mortgage Fund Inc. ("**Firm Capital**");
 - (c) seek approval of the Receiver's actions to date as outlined in this Fourth Report;
 - (d) seek approval of the Receiver's fees and disbursements together with the fees and disbursements of its counsel Blaney McMurtry LLP;
 - (e) advise the Court of Firm Capital's motion to substitute Deloitte & Touche Inc. (the "**Proposed Receiver**") as receiver over the Property;
 - (f) seek an Order discharging Ira Smith Trustee & Receiver Inc. as Receiver over the Property; and
 - (g) seek an Order releasing Ira Smith Trustee & Receiver Inc. and its counsel from any and all liability as more particularly described in the Draft Order attached as Tab 3 to this motion record.

DISCLAIMER

13. The Receiver has relied upon the financial records of the Respondent, as well as other information supplied by staff and management of the Respondent, its service providers and its financial institutions. The Receiver assumes no responsibility or liability for loss

or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this Fourth Report. Any use which any party, other than the Court, makes of this Fourth Report or any reliance on or decision made based on this Fourth Report is the responsibility of such party.

BACKGROUND AND OPERATIONS

(i) General Background

14. The Condominium Complex at the Premises was originally approved for 47 condominium units, however, the Receiver's investigations discovered that there were 64 units at the Condominium Complex (the "**Condominium Units**").
15. As described in previous reports (including at paragraph 27 of the Third Report), the Receiver experienced extreme difficulty obtaining information and documentation (as required in the Appointment Order and the Production Order) from the Respondent and the Principals concerning the affairs of the Respondent. The Respondent's books and records were not complete and did not provide (among other things) an accurate account of the number of Condominium Units sold prior to the Receiver's appointment. The Receiver conducted its own investigations and inquiries as to the number of Condominium Units that have been sold or alternatively, are occupied pursuant to a tenancy agreement with the Respondent. Currently the Receiver has been provided with twenty four (24) agreements of purchase and sale ("**APS**") for thirty five (35) Condominium Units. The Receiver has also been provided with seven (7) leases (the "**Leases**") relating to eight (8) Condominium Units. A significant number of the APS' and Leases have deficiencies or discrepancies, some of which were outlined in the Third

Report. Attached hereto and marked as **Appendix "L"** is a summary of the APS' and Leases in the Receiver's possession.

16. The Receiver understands that nine (9) parties are occupying thirteen (13) condominium units in the Condominium Complex. There are other units in the Condominium Complex which are substantially complete, however, some unit owners have not taken possession of their condominiums.
17. The Condominium Complex has not been registered and in the January 30 Order the Court authorized the Receiver to retain Pelican Woodcliff Inc. as its construction consultant (the "**Consultant**"). As previously reported by the Receiver at paragraph 16 of the Third Report, the Consultant provided the Receiver with its interim report and was in the process of attempting to gather the required information in order to prepare the Consultant's Report that it was retained to provide. For the reasons indicated below, subsequent to the Receiver's Court attendance on April 4, 2012 referred to above, the Receiver requested the Consultant to not advance its work until further notice.
18. While there are tenants and/or unit holders (the "**Occupants**") who are in possession of their condominiums there were some that were not paying rent and/or occupancy fees (or paying an insufficient amount towards rent and/or occupancy fees) to the Respondent (the "**Occupancy Payments**"). As part of the meeting with the Occupants held on January 31, 2012 (and further described at paragraphs 17 through 20 of the Third Report) the Receiver advised the Occupants that they were expected to honour all obligations under their respective APS' and/or Leases beginning February 1, 2012 (and without prejudice to the Receiver's claims to unpaid amounts for prior months).

19. At paragraph 20 of the Third Report the Receiver provided an update on the outstanding issues relating to Occupancy Payments. Since the Third Report the following has occurred:

- (a) Unit 108 – the Receiver’s opinion based on its review of the lease agreement provided by the tenant is that payment of rent was to commence on March 15, 2012. The tenant took the view that rent is not due until April 15, 2012 and has provided the Receiver with a series of post-dated cheques commencing on that date. The cheque dated April 15, 2012 has been returned by the Receiver’s bank, marked “NSF”. The Receiver has made demand on the tenant and the amount due April 15 was brought current on May 2, 2012.
- (b) Unit 109 – this owner was granted occupancy but is not occupying the unit. Payment for April occupancy has not been made and the owner’s advisor has indicated that the owner is experiencing financial hardship in making the payments and has requested relief. Given the Assignment and related substitution discussions, the Receiver has not yet responded to the owner’s request.
- (c) Unit 200 – the unit owner’s cheque for payment of the March Occupancy Fee was replaced and honoured, and this owner is current in all Occupancy payments.
- (d) Unit 223 – this is a leased premises and in the Third Report, the Receiver advised of this attempt to extricate the itself from its obligations under the lease. The Receiver also advised that the Receiver did not believe that the tenant actually occupied the premises and that a security deposit was paid to the Respondent and rent was not paid to the Receiver. This matter has not been resolved and the

Proposed Receiver, if appointed, will have to continue discussions with this tenant.

- (e) Unit 224 – As previously reported in the Third Report, this tenant advised the Receiver that it could no longer afford the rental payments and proposed that the Receiver allow for a rent reduction for approximately twenty five per cent (25%) of the amount indicated in the tenant's lease. The Receiver advised the tenant that it would allow such accommodation for a ninety (90) day period and not waive any of the rental arrears. After the period expired, the Receiver and tenant would revisit the tenant's ability to pay. Also as previously reported, the tenant was dissatisfied by that accommodation and the security guard reported that they believed the tenant moved out based on the sighting of a moving truck and moving activity. No further action has been taken at this time.
- (f) Unit 302 – The Receiver has recently received a letter from legal counsel to the purchaser of this unit advising that the Purchaser wishes to withdraw from its commitment to purchase due to perceived default on the part of the Vendor relating to occupancy date and requests a return of the deposit funds. The Purchaser's legal counsel is under the impression that the Purchaser has merely executed a reservation contract while the Receiver has a fully executed APS in its possession. The purchaser's counsel has not responded to the Receiver's position that it is in possession of a fully executed APS.
- (g) Units 323 and 324 – the Receiver previously reported that the unit owner's cheque for payment of the March Occupancy Fee was returned by the Receiver's

bank, marked "NSF". The payment of the April Occupancy Fee was made and the cheque was honoured by the unit owner's bank. The payment for May 2012 has not yet been made. The Receiver has made demand on the unit owner for the arrears but due to the Assignment and upcoming motion to substitute the Receiver with the Proposed Receiver, the Receiver has not initiated any further action in respect of this matter.

- (h) Units 110, 202, 206 and 207, 216 and 217 and 218 and 219 – these unit owners have not made their payment for the respective May 2012 Occupancy Fee and the Receiver has made written demand on these unit owners.
- (i) Recently, there have been a few requests from unit owners regarding either leasing their respective unit, obtaining a construction permit or assigning their APS. Where appropriate, the Receiver has sought the advice of its counsel however given the discussions upcoming motion to substitute the Receiver with the Proposed Receiver, the Receiver has not initiated any further action in respect of these matters.

(ii) Operational Matters

(a) Variance Notice

- 20. The Receiver previously reported that it commissioned a fire inspection of the Condominium Complex. The inspector noted that while access to all units was not available, the noted deficiencies existed primarily in common areas and related to signage, insufficient number of fire extinguishers, batteries in emergency lighting and

miscellaneous hardware and accessories for hoses and sprinklers. The Receiver has requested that the company that conducted the inspection remedy the deficiencies. The remedial work began on May 2, 2012 and should be completed in the near future.

21. The Receiver previously reported that it had retained a mechanical contractor to inspect and repair the mechanical systems at the Condominium Complex and specifically to address deficiencies that include a defective domestic hot water boiler that needed replacement. That repairs were performed. The mechanical contractor also determined that the previous property manager and/or the Respondent did not maintain the roof top cooling tower (a component essential for air conditioning to operate) and significant repairs will be required for there to be air conditioning. The Receiver has now received a quotation from the mechanical contractor to perform such repairs which total the amount of \$40,655.14 (HST included). The mechanical contractor also advised that if the Receiver wished to also install an anti-freeze system to prevent future freeze damage in the building, there would be an additional cost of approximately \$10,000. The mechanical contractor estimates that the repairs will take five (5) days, and this cost includes both the repairs and the cost of crane rental, all permits, signage and police paid duty, as the street will have to be closed off for a portion of the time to allow for the crane operation. The mechanical contractor also advised that the repair work must be scheduled six (6) weeks in advance. Given the upcoming motion to substitute the Receiver with the Proposed Receiver, the Receiver has not initiated any further action in respect of this matter. Accordingly, the Condominium Complex currently does not have an operating air conditioning system.

(b) **Minor Variance**

22. On April 10, 2012, the Receiver received Notice (the "**Variance Notice**") from the City of Brampton that one of the occupants of the Condominium Complex had made application for a minor variance to permit the operation of a commercial school, for the purpose of a driving school, which is presently not permitted by the City's zoning by-law (the "**Minor Variance Application**"). The Variance Notice also stated that the Committee of Adjustment had scheduled a public hearing for April 17, 2012 to hear from all interested parties. The Receiver was also made aware that one of the occupants, whose existing business (a learning centre) does not compete with the occupant who made the Minor Variance Application, has as a term of its lease signed with the Respondent, that it has the exclusive right to operate a "commercial school (learning centre)" at the Condominium Complex. All of this is notwithstanding that the Condominium Complex was developed as a medical building. Attached hereto as and marked as **Appendix "M"** is a copy of the Variance Notice.
23. On April 11, 2012, the Receiver was copied on an email from the occupant whose APS contained the commercial school exclusivity clause to the Committee of Adjustment objecting to the Minor Variance Application. Attached as **Appendix "N"** is the occupant's email dated April 11, 2012 to the Committee of Adjustment.
24. On April 11 and April 12, 2012, Receiver's counsel had discussions with the Committee of Adjustment and was advised by them that at no point did the occupant make the Committee of Adjustment aware of the receivership, that had they been made aware they would not have permitted the Variance Application to be filed without the Receiver's

consent, and that if the Condominium Complex was a registered condominium they would as a matter of course require the consent of the condominium board, but as the Condominium Complex was not yet registered they accepted a copy of the occupant's APS, assuming that the occupant had received the owner's consent.

25. As a result of the Receiver's discussions with its counsel, and as requested by the Committee of Adjustment, on April 13, 2012 the Receiver's counsel provided the Committee of Adjustment the Receiver's position in respect of the Minor Variance Application. Attached as **Appendix "O"** is the letter from Receiver's counsel dated April 13, 2012 to the Committee of Adjustment.
26. On April 17, 2012, the Committee of Adjustment advised the Receiver's counsel that they decided to defer the Minor Variance Application indefinitely. The Receiver has not taken any further action in connection with this matter since then.

(c) MPAC Request

27. The Receiver was recently contacted by a representative of the Municipal Property Assessment Corporation ("MPAC") requesting information regarding the building, its status, owners of individual Condominium units and/or tenants and rent roll. The property was last assessed by MPAC and the City of Brampton as vacant land, and updated information is now required in order to properly assess the Property for realty tax purposes. Given the Assignment and substitution discussions, the Receiver has not yet responded to MPAC.

(iii) Trust Deposits and Withdrawals

28. At paragraphs 22 to 26 of the Second Report, the Receiver advised the Court of discrepancies in trust ledgers provided to the Receiver's counsel by Sikder Professional Corporation ("SPC"), real estate counsel to the Respondent.
29. On January 26, 2012 SPC wrote to the Receiver's counsel to advise that, far from there being a negative discrepancy in trust funds remitted, SPC had in fact over advanced \$55,023 which ought to be returned to SPC. Attached hereto and marked as **Appendix "P"** is a copy of the letter from SPC to the Receiver's counsel dated January 26, 2012.
30. Further investigation may be required regarding the discrepancies between the trust funds collected by SPC and the trust funds remitted by SPC to the Receiver's counsel after the Appointment Order.

(iv) Examination of Third Parties

31. In paragraphs 22 to 26 and 35 to 56 of the Second Report the Receiver outlined its preliminary findings from its investigation of the Respondent's affairs. Specifically, the Receiver discovered:
- (a) An unexplained discrepancy of \$2,293,351.10 in the trust ledgers provided by SPC, the particulars of which are described above;
 - (b) Unexplained transfers of funds from the Respondent to 173 totalling \$116,917.89, the particulars of which are described below; and

- (c) An unexplained payment of \$420,000 to HomeLife Realty Investments Inc., purportedly for real estate commissions for the sale of condominium units at the Condominium Complex (the particulars of which are described in paragraphs 48 to 56 of the Second Report.
32. As part of the January 30 Order, the Receiver was provided the right, but was not obligated, to examine a number of third parties (the “**Examinable Parties**”) including Chahal and Dhaliwal; Ajay Shah (the broker of record at HomeLife Realty Miracle Realty Ltd, the Respondent’s real estate agent); Harjinder Chahal and Paltu Kumar Sikder (both are lawyers at SPC); and Parm Chahal (principal of English Prestige Property Management Inc., the manager of the Condominium Complex prior to the Appointment Order).
33. Shortly after receipt of the January 30 Order, counsel to the Receiver issued notices of examination to both lawyers at SPC and Ajay Shah. Attached hereto and marked as **Appendix “Q”** is a copy of the notices of examination served by the Receiver.
34. At the request of certain parties being examined together with the Respondent, and with the consent of the Applicant, the Receiver consented to adjourn the examinations sine die, on the understanding that the Receiver could re-issue notices of examination compelling attendance on five days’ notice. Attached hereto and marked as **Appendix “R”** is a copy of the letters sent to the parties regarding the adjournment of the examinations.
35. On February 17, 2012 SPC consented to the terms of the adjournment while Ajay Shah did not respond at all. On February 23, 2012 counsel to the Receiver provided a follow

up letter to Mr. Shah requesting a response. The Receiver did not receive a response to the follow up letter and accordingly obtained a certificate of non-attendance as against Mr. Shah. Attached hereto and marked as **Appendix "S"** is a copy of the certificate of non-attendance.

36. Throughout these receivership proceedings, the Respondent, either through the Principals or its counsel, advised the Receiver of its intention to refinance the indebtedness to the Applicant and to then make application to this Honourable Court to terminate the receivership. As recently as April 4, 2012 counsel to the Principals and the Respondent advised the Court and the Receiver of a refinancing attempt. As described below the Receiver also became aware of the discussions between representatives of the Applicant and Firm Capital resulting in the Assignment. As a result of the Assignment, further discussions have taken place between representatives of the Receiver, Firm Capital and respective counsel. Given recent developments, the Receiver has not taken any further steps to examine the Examinable Parties.

(v) Production of Documents to the Applicant and Respondent

37. As discussed above, the Respondent brought the Receiver's Motion which sought an Order compelling the Receiver to deliver the report prepared by the Consultant, the Appraisal together with the Leases and the APS' in the Receiver's possession (the "**Requested Documents**").
38. The events giving rise to the Respondent's Motion are contained in paragraphs 27 to 44 of the Third Report. The Applicant did not take a position on the Respondent's motion

other than to state it ought to be entitled to any of the Requested Documents that are Ordered produced to the Respondent (and/or the Respondent's proposed financier).

39. The Receiver was not opposed to granting the Applicant and the Respondent access to the Leases and APS' providing that they each executed a confidentiality agreement (the "CA").
40. As described in the Third Report, the Applicant and the Respondent executed the CA and both were offered access to the Leases and the APS, however, both the Applicant and the Respondent had requested that the Leases and APS' be made available to a third party. The Applicant requested that FC Mortgage Credit Corp. ("FCC") be granted access to the APS' and Leases, while the Respondents requested that First National Financial ("FNF") be granted access to the APS' and Leases.
41. The Receiver was prepared to allow both FCC and FNF to access the Leases and the APS' providing that each executed an acknowledgement to be bound by the terms of the CA (the "**Acknowledgement**"). FCC executed the Acknowledgement and was granted access to the Leases and APS'. FNF did not execute the Acknowledgement.
42. In the Third Report the Receiver advised the Court that while it did not oppose the Respondent's Motion it could not produce a report from the Consultant as it had not been completed. The Receiver also advised the Court that it had concerns about disclosing the Appraisal (that had been commissioned in part to assist in a potential sales process) to the Respondent when its principals could be a bidder in a future sales process.

43. In the April Endorsement the Court confirmed that the Leases and APS' could be disclosed to both the Applicant and the Respondent but that the Appraisal may not be disclosed.
44. Following the April Endorsement (and at the request of both the Applicant and the Respondent) the Receiver provided copies of the APS' and the Leases to both the Applicant and the Respondent.

(vi) Orangeville Property

45. At paragraphs 35 to 43 the Second Report the Receiver advised the Court of transfers from the Respondent to 173 totalling \$116,917.89 over approximately two years. 173 is listed as the owner of the Orangeville Property and both Chahal and Dhaliwal are listed as Directors and Officers of 173.
46. The Honourable Mr. Justice Spence granted the Orangeville Property Order which is registered on title to the Orangeville Property.
47. On April 12, 2012, counsel to 173 advised that it intended to bring a motion seeking an Order removing the Orangeville Property Order from title to the Orangeville Property. Counsel to 173 had originally arranged for a 9:30am scheduling appointment in this matter which has now been adjourned to May 9, 2012.

(vii) Assignment of Debt and Security to Firm Capital

48. The Applicant advised the Receiver that it had assigned its debt and security to Firm Capital and that the transaction closed on April 5, 2012.
49. The Receiver had been in possession of the Debtor's assets with the consent and full support of the Applicant. However, since the Assignment there have been discussions about substituting the Receiver with the Proposed Receiver (the "**Proposed Substitution**"). During this time counsel to Firm Capital has requested that the Receiver maintain the status quo and not take any unnecessary steps. Attached hereto and marked as **Appendix "T"** is a copy of correspondence from counsel to Firm Capital to the Receiver dated April 9, 2012.

(viii) Discharge of Receiver and Appointment of Proposed Receiver

50. We understand that the Proposed Substitution (and the scope of the Receivership on a go-forward basis) may be tied to larger negotiations between Firm Capital and the Respondent. However, there are a number of operational matters which must be tended to in the upcoming days and weeks (including repair of the air conditioning system and cooling tower) that will require Firm Capital's financial support.
51. The Receiver has been able to maintain the status quo at this time but there are many operational matters that must be tended to. Firm Capital's preference is for the Proposed Receiver to act on a go forward basis and the Receiver does not oppose this request.
52. As part of the Proposed Substitution the Receiver seeks a discharge order substantially in the form of the draft order at tab 3 to this motion record (the "**Draft Discharge Order**").

In addition to the standard discharge terms, the Draft Discharge Order contemplates a transition of the Property (including the Condominium Complex itself) to the Proposed Receiver.

FEES AND DISBURSEMENTS

53. The Receiver and its counsel have maintained detailed records of their professional time and costs since the Appointment Order.
54. The Receiver seeks approval of its fees and the fees and disbursements of its counsel, Blaney McMurtry LLP (including the estimate of fees and disbursements to be incurred after the dates indicated in the respective fee affidavits referred to herein to complete the administration) (the "**Professional Fees**"). Attached hereto and marked as **Appendix "U"** and **Appendix "V"** are the fee affidavits for Ira Smith Trustee & Receiver Inc. and Blaney McMurtry LLP, respectively.

RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

55. Attached hereto and marked as **Appendix "W"** is the Receiver's Statement of Receipts and Disbursements for the period from November 15, 2011 to May 2, 2012 inclusive, indicating funds on hand of \$95,426.71. The Receiver will provide an updated Statement of Receipts and Disbursements which will be current up to the day before this motion.
56. To date, the fees and disbursements of the Receiver and its counsel that have been approved by this Honourable Court, have been paid directly to the Receiver and its counsel, respectively, by the Applicant and have not been paid from funds on hand in the Receiver's trust account. Accordingly, that amount is not shown as a disbursement on

the Statement of Receipts and Disbursements. The arrangement that the Receiver and its counsel has agreed to with the Applicant is, given that the Assignment took place on April 5, 2012, the Applicant will continue to directly fund the fees and disbursements incurred up to and including April 4, 2012.

57. The Receiver proposes that it use the funds on hand to pay the Professional Fees and any outstanding obligations of the Receiver. The Receiver is also requesting that it and its counsel continue to receive the benefit of the Receiver's Charge (as defined in paragraph 17 of the Appointment Order) until the Professional Fees are paid in full.

COURT APPROVAL AND DIRECTIONS

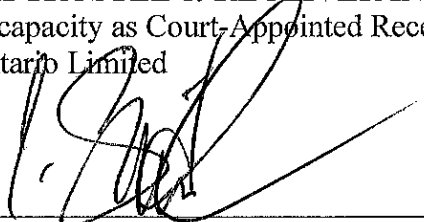
58. The Receiver seeks:
- (a) an Order approving the Receiver's actions and conduct as set out in this Fourth Report;
 - (b) an Order approving the Receiver's fees and disbursements from March 1, 2012;
 - (c) an Order approving the fees and disbursements of the Receiver's legal counsel, Blaney McMurtry LLP from January 13, 2012;
 - (d) an Order discharging the Receiver;
 - (e) an Order releasing the Receiver and its counsel from liability associated from its efforts as the Receiver; and

- (f) advice and direction on such ancillary matters as the Receiver may advise and this Honourable Court may wish to entertain.

All of which is respectfully submitted this 3rd day of May, 2012.

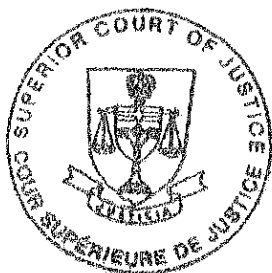
IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court-Appointed Receiver of
2012241 Ontario Limited

Per:



Ira Smith
President

APPENDIX A



Court File No. CV-11-9456-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE *mD*) TUESDAY, THE 15TH
JUSTICE *Cr Campbell*) DAY OF NOVEMBER, 2011
)

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY
ACT, R.S.C. 1985, c. B-3, as amended and SECTION 101 OF THE COURTS OF JUSTICE
ACT, R.S.O. 1990 c. C.43, as amended**

ORDER

THIS APPLICATION made by the Applicant, *ex parte*, for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing Ira Smith Trustee and Receiver Inc. as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2012241 Ontario Limited (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Kenneth Malcolm sworn November 10, 2011 and the exhibits thereto, and the affidavit of Theresa Kellen sworn November 15, 2011 and the exhibits attached thereto and on hearing the submissions of counsel for Applicant and on reading the consent of Ira Smith Trustee and Receiver 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 and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Ira Smith Trustee and Receiver Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

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, 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 \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$150,000; 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; and

- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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 in respect of any "eligible financial contract" as defined in 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.

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 first charge on the Property in priority to all 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, 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 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 \$250,000 (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, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to 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.

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 "A" 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.

GENERAL

24. **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.

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

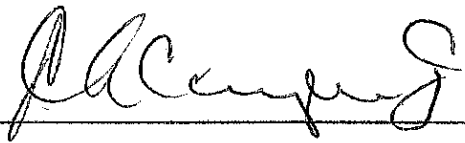
26. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

27. **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.

28. **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

29. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than ^{Two (2) ~~seven~~ 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.:

NOV 15 2011

PERFECTED 

Schedule "A"

RECEIVER CERTIFICATE

CERTIFICATE NO.

AMOUNT \$

1. THIS IS TO CERTIFY that Ira Smith Trustee and Receiver Inc., the receiver (the "Receiver") of the assets, undertakings and properties 2012241 Ontario Limited acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the _____ of MONTH, 20YR (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, 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.

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 MONTH, 20YR.

Ira Smith Trustee and Receiver Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:
Title:

THE TORONTO-DOMINION BANK

and

2012241 ONTARIO LIMITED

Applicant

Respondent

Court File No. CV-11-9456-00CL

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

PROCEEDING COMMENCED AT TORONTO

ORDER

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Sanj Sood – LSUC No. 42137R

Lawyers for the Applicant

APPENDIX B

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

and

2012241 ONTARIO LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C.43, as amended

**AFFIDAVIT OF KENNETH J. MALCOLM
(Sworn November 10, 2011)**

I, KENNETH J. MALCOLM, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Senior Manager, Commercial Credit, Financial Restructuring Group, of the applicant ("**TD Bank**"). I am the individual at TD Bank now responsible for managing and collecting the loans advanced to the respondent (the "**Debtor**"). As such, I have knowledge of the matters to which I hereinafter depose. To the extent that I do not have direct first-hand knowledge of particular facts or events, I have obtained that information from others, and have indicated the source of that information in my affidavit, which I believe to be true.

THE PURPOSE OF THE APPLICATION

2. TD Bank is seeking an order to appoint Ira Smith Trustee & Receiver Inc. ("**Ira Smith Trustee**"), a licensed bankruptcy trustee, as receiver ("**Receiver**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended ("**BIA**"), and/or section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended ("**CJA**"), without security, of all of the Debtor's current and future assets, undertakings and properties.

THE INDIVIDUALS AND ENTITIES REFERENCED HEREIN

3. TD Bank is a chartered bank that carries on business throughout Canada, including in Toronto, Ontario.

4. The Debtor is an Ontario corporation. Its registered office address was 470 Chrysler Drive, Unit 20, Brampton, Ontario. Its current registered office address is 97 Sunforest Drive, Brampton, Ontario. Attached hereto as **Exhibit A** is a corporate profile report for the Debtor dated November 7, 2011.

5. The Debtor owns certain lands known municipally as 50 Sunny Meadow Circle, Brampton, Ontario (the "**Property**"), on which it is building a three storey commercial condominium (the "**Condominium**"). The Property's legal description is attached at Schedule A to this affidavit. A parcel register for the Property, dated November 7, 2011 (the "**Parcel Register**"), is attached hereto as **Exhibit B**.

6. Ravinder Singh Chahal ("**Chahal**") is an Ontario resident. He is an officer and director of the Debtor and holds fifty percent of the Debtor's shares.

7. Jagdev Dhaliwal ("**Dhaliwal**") is an Ontario resident. He is an officer and director of the Debtor and holds fifty percent of the Debtor's shares. I am unaware who Jagdev Dhaliwal and Jasdev Dhaliwal are even though they are listed to be directors of 201.

8. 1611161 Ontario Limited ("161") is an Ontario corporation. Sandeep Chahal and Jaldev Dhaliwal are reported to be the directors of 161. A corporate profile report for 161 dated November 7, 2011, is attached hereto as **Exhibit C**.

THE DEBTOR'S INDEBTEDNESS TO TD BANK

The Loan Agreement

9. The Debtor is, as at October 26, 2011, indebted to TD Bank in the amount of \$12,729,112.54, plus legal fees, pursuant to a commitment letter dated July 3, 2008, as amended by commitment letters dated December 12, 2008, July 28, 2009, January 27, 2010, June 23, 2010 and March 30, 2011 (collectively the "**Loan Agreement**"), between the Debtor and TD Bank. Interest and fees continue to accrue. The Loan Agreement is attached hereto as **Exhibit D-1 – D-6**.

10. The Loan Agreement provides that TD Bank will make available to the Debtor two credit facilities (together the "**Loan**"), as follows:

- (a) A loan, repayable on demand, in the amount of \$12,225,883, with interest accruing at TD Bank's prime rate of interest (as defined in the Loan Agreement) plus 1.75% *per annum*, to finance construction of the Property (the "**First Credit Facility**"); and
- (b) Letters of Credit/Guarantee in the amount of \$274,117, with interest accruing at 1.00% *per annum*, to support performance guarantees issued by the Debtor (the "**Second Credit Facility**").

11. Interest on the First Credit Facility is calculated daily and payable monthly in arrears based on the number of days that the monies are outstanding. Interest on the Second Credit Facility is payable monthly in advance.

12. As set out below, the Loan Agreement was amended on several occasions because, among other things, the Debtor failed to repay the Loan Agreement in accordance with its terms.

13. The July 3, 2008 commitment letter (Exhibit D-1) provides that the Debtor shall repay the First Credit Facility by January 31, 2010, assuming that the First Credit Facility was activated in July 2008. If the First Credit Facility was not activated in July 2008, then the Debtor was obliged to repay the First Credit Facility within eighteen months of activation. The First Credit Facility was activated on December 18, 2008.

14. At the Debtor's request, the date for repayment of the First Credit Facility was extended to May 31, 2010, pursuant to a commitment letter dated January 27, 2010 (Exhibit D-4).

15. Pursuant to a further request from the Debtor, the date for repayment of the First Credit Facility was again extended, to November 30, 2010, pursuant to a commitment letter dated June 23, 2010 (Exhibit D-5).

16. Pursuant to yet another request from the Debtor, the date for repayment of the First Credit Facility was again extended, to June 15, 2011, pursuant to a commitment letter dated March 30, 2011 (Exhibit D-6).

17. Alan Bensky, Vice-President, Mississauga Real Estate, was the individual at TD Bank who was managing the Debtor's account when the above-noted extensions to repay the First Credit Facility were requested by the Debtor. I am advised by Mr. Bensky, and believe, that each time that the repayment term of the First Credit Facility was extended, it was because:

- (a) the Debtor had not completed the measures required to register the Condominium;

- (b) the Debtor was accordingly unable to close the agreements of purchase and sale in which it had entered with purchasers of the Condominium's units; and
- (c) as a result, the Debtor had not received proceeds of sale from the aforementioned purchasers from which it could repay the First Credit Facility.

The Security – General Security Agreements

18. The Debtor's indebtedness to TD Bank is secured by the following:

- (a) a general security agreement made by the Debtor in favour of TD Bank (the "**Debtor GSA**"), dated September 10, 2008, along with a corporate resolution authorising the Debtor to grant the GSA, and a lawyer's letter of opinion, all of which are attached hereto as **Exhibit E**; and
- (b) a general security agreement from 161 (the "**161 GSA**"), dated September 10, 2008, along with a corporate resolution from 161 authorising 161 to grant the GSA, and a lawyer's letter of opinion, all of which are attached hereto as **Exhibit F**.

19. TD Bank made the following registrations pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") in respect of its security interest in the Debtor's and 161's assets:

- (a) on August 7, 2008, for five years, pursuant to Registration No. 20080807 0938 1862 6843 against the inventory, equipment, accounts, other (motor vehicle included) of the Debtor; and
- (b) on August 7, 2008, for five years, pursuant to Registration No. 20080807 0936 1862 6842 against the inventory, equipment, accounts, other (motor vehicle included) of 161.

20. A copy of the PPSA search results for the Debtor, with currency to September 29, 2011, is attached hereto as **Exhibit G**. A copy of the PPSA search results for 161, with currency to September 29, 2011, is attached hereto as **Exhibit H**.

21. By virtue of the PPSA registrations referenced above, the TD Bank security constitutes a perfected security interest in and to all of the assets and undertaking of the Debtor and of 161. Further, TD Bank holds a first registered priority general security interest against the inventory, equipment, accounts, and other (motor vehicle included) of the Debtor and of 161.

The Security – Collateral Mortgage Granted to TD Bank Against the Property

22. As further security for its obligations, the Debtor granted TD Bank a demand collateral mortgage on the Property in the amount of \$12,500,000 (the "**TD Bank Mortgage**"). The TD Bank Mortgage was registered against title to the Property as a first Charge/Mortgage in the applicable land registry office on October 20, 2008 as instrument number PR1554408. The TD Bank Mortgage, along with the standard charge terms and a signed acknowledgement of receipt of the standard charge terms are attached hereto as **Exhibit I**.

23. The Parcel Register (attached at Exhibit B) evidences four encumbrances registered prior to that of TD Bank, all in favour of 1448037 Ontario Limited ("**144**"). Each one of these encumbrances has been subordinated and postponed by 144 in favour of the TD Bank Mortgage, as follows:

- (a) a charge in the original principal amount of \$400,000, attached hereto as **Exhibit J**, registered as instrument number PR1418741 on February 21, 2008, was postponed in favour of the TD Bank Mortgage pursuant to an Acknowledgment and Direction (Postponement of \$400,000 Charge), attached hereto as **Exhibit K**, and registered against title to the Property on November 18, 2008 as instrument number PR1569920;

- (b) an encumbrance pertaining to the assignment of rents, attached hereto as **Exhibit L**, and registered as instrument number PR1418749 on February 21, 2008, was postponed in favour of the TD Bank Mortgage pursuant to an Acknowledgment and Direction (Postponement of GAR re: \$400,000 Charge), attached hereto as **Exhibit M**, and registered against title to the Property on November 18, 2008 as instrument number PR1569921;
- (c) a charge in the original principal amount of \$864,070, attached hereto as **Exhibit N**, registered as instrument number PR1539845 on September 25, 2008, was postponed in favour of the TD Bank Mortgage pursuant to an Acknowledgment and Direction (Postponement of \$864,070.00 Charge), attached hereto as **Exhibit O**, and registered against title to the Property on November 18, 2008 as instrument number PR1569922; and
- (d) an encumbrance pertaining to the assignment of rents, attached hereto as **Exhibit P**, registered as instrument number PR1539924 on September 26, 2008, was postponed in favour of the TD Bank Mortgage pursuant to an Acknowledgment and Direction (Postponement of GAR re: \$864,070.00 Charge), attached hereto as **Exhibit Q**, and registered against title to the Property on November 18, 2008 as instrument number PR1569923.

24. In addition to the subordination and postponement of the encumbrances referenced above, TD Bank and 144 also entered into an Acknowledgement of Priority and Standstill Undertaking (the "**Standstill Undertaking**"), attached hereto as **Exhibit R**, and registered against title to the Property as instrument number PR1681378 on August 5, 2009. This agreement provides that TD Bank shall have undisputed priority over all rights, title and interest which 144 may have in the Property pursuant to its registrations.

25. Additionally, TD Bank, 144, 161, Chahal, Dhaliwal and the Debtor entered into an Inter-Lender Agreement on September 22, 2009, attached hereto as **Exhibit S**, and registered against title to the Property as instrument number PR1720150 on October 15, 2009. Pursuant to this agreement, all of the parties to this agreement consented to be bound by the terms of the Standstill Undertaking.

26. As a result of all of the above, the TD Bank Mortgage represents a first charge against title to the Property.

27. The Parcel Register also reveals that the following additional instruments have been registered on title since the Debtor granted TD Bank the TD Bank Mortgage:

Instrument No	Document Type	Granted to/on
PR1785468	Application (General) being a Certificate of Pending Litigation	H S G Properties Incorporated
PR1803331	Postponement of the Certificate of Pending Litigation to PR1554408 (Charge in favour of TD)	H S G Properties Incorporated
PR1982084	Construction Lien in the amount of \$383,399	Versa Construction Limited
PR2003837	Certificate of Action in connection with the above construction lien	Versa Construction Limited

28. Additionally, I have learned that there are currently tax arrears relating to the Property owed to the City of Brampton totalling \$29,220.18 as of October 4, 2011. A copy of the tax certificate is attached hereto as **Exhibit T**.

Additional Security

29. TD Bank also received the following additional security:
- (a) an unlimited corporate guarantee from 161, dated September 10, 2008, attached hereto as **Exhibit U**;
 - (b) personal guarantees from Chahal and Dhaliwal, each limited to the amount of \$4 million, attached hereto as **Exhibits V** and **W** respectively;
 - (c) Assignment of Term Deposits and Credit Balances in the amount of \$500,000 issued by the Debtor, attached hereto as **Exhibit X**;
 - (d) General Hypothecation of Stocks and Bonds issued by the Debtor, attached hereto as **Exhibit Y**.

THE DEBTOR'S DEFAULTS ON ITS OBLIGATIONS TO TD BANK***The Failure to Make Payments Due to TD Bank – Repayment of the First Credit Facility***

30. The Loan Agreement provides that the Debtor shall repay the First Credit Facility by June 15, 2011. The First Credit Facility was not repaid on this date. As of the date of this affidavit, the First Credit Facility has still not been repaid.

The Failure to Make Payments Due to TD Bank – Extension Fee

31. When the date for repayment of the First Credit Facility was extended from November 30, 2011 to June 15, 2011, the Debtor agreed to pay TD Bank an extension fee of \$60,000. As of the date of this affidavit, the Debtor has failed to pay this amount to TD Bank.

The Failure to Make Payments Due to TD Bank – Repayment of Overdraft

32. Further, the Debtor has allowed its account to remain overdrawn by \$75,000, which overdraft has not been repaid.

33. TD Bank permitted the overdraft because the Debtor advised TD Bank that it was required to pay Versa Construction Limited ("**Versa Construction**"), the general contractor retained by the Debtor to construct the Condominium, the final holdback due to it. The Debtor advised TD Bank that although it had the majority of the funds to pay the final holdback, it required some further funds to make the full payment.

34. The overdraft was accordingly authorized for the purpose of allowing the Debtor to pay the full amount of the final holdback to Versa Construction. The overdraft was to be repaid.

35. As set out below, Versa Construction has registered a lien against title to the Property. The Debtor has not advised TD Bank the reason that this lien was registered given that it was required to use the overdraft to pay the full amount of the final holdback due to Versa Construction. In any event, the overdraft has still not been repaid.

The Failure to Make Payments Due to TD Bank – Interest Payments

36. Further, contrary to the terms of the Loan Agreement, commencing August 31, 2011 and continuing to the date that this affidavit is sworn, being a period of approximately three months, the Debtor has failed to make the monthly interest payments due to TD Bank. As at October 20, 2011, interest arrears are approximately \$147,000 and continue to accrue.

The Failure to Discharge Liens Registered Against Title to the Property

37. The Loan Agreement provides that in the event that construction liens are registered against title to the Property, such liens are to be cleared from title to the Property no later than thirty days after they are registered.

38. Contrary to its obligations in this regard, as of the date of my affidavit, the Debtor has failed to discharge a construction lien registered by Versa Construction Limited against title to the Property on March 30, 2011 as Instrument No. PR1982084 in the amount of \$383,399 (the

"Versa Lien"). The Versa Lien and the associated Certificate, which was registered against title to the Property on May 16, 2011, as Instrument No. PR2003837, are attached hereto as **Exhibit Z**.

THE OCTOBER 4TH MEETING WITH THE DEBTOR

39. On October 4, 2011, I attended at the Property and met with Chahal. I was concerned with the Debtor's failure to pay the amounts due to TD Bank and its failure to discharge the Versa Lien. These failures suggested to me that the Debtor did not have the financial means to meet its obligations to TD Bank.

40. I was also concerned about the status of agreements of purchase and sale entered into by purchasers of units in the Condominium. The Debtor had missed the June 15, 2011 deadline to repay the First Credit Facility, presumably because it was unable to register the Condominium. Although TD Bank had previously agreed to extend the date for repayment of the Loan, as set out above, the Debtor had not provided TD Bank with evidence that agreements of purchase and sale with unit holders had been similarly extended. I was concerned that the significant delays in registering the Condominium could result in purchasers rescinding their agreements to purchase units in the Condominium, over which TD Bank has security, and TD Bank required comfort that its security was not in jeopardy.

41. Accordingly, the purpose of the meeting, from my point of view, was to determine:
- (a) why the Debtor had failed to make the interest payments due pursuant to the Loan Agreement;
 - (b) why the Debtor had not repaid the overdraft;
 - (c) why the Debtor had failed to vacate the Versa Lien;

- (d) the status of the Condominium project;
- (e) when the Condominium was likely to be registered and the TD Bank repaid;
- (f) the status of the purchase and sale agreements with buyers who had purchased units in the Condominium; and
- (g) the status of existing and additional cost over-runs.

42. I also intended on impressing on Chahal and Dhaliwal the need to immediately repay to TD Bank the interest arrears, the overdraft and the extension fee, and to retain an expert to review the Debtor's financial wherewithal, the status of the agreements of purchase sale, review why there had been a delay in registering the Condominium, and determine how the registration of the Condominium could be expedited and the agreements of purchase and sale with purchasers of the units closed.

43. At the meeting, Chahal gave me a tour of the Condominium. I noted that some units appeared to be occupied. Chahal confirmed to me that some purchasers had closed on an interim basis. Assuming this to be true, I expected that these purchasers would be paying the Debtor interim occupancy fees. I was accordingly concerned why the Debtor had failed to fulfill its monetary obligations to TD Bank, since it should be receiving this stream of revenue.

44. Once the tour was completed, I expressed my concerns to Chahal about the Debtor's failure to pay the amounts owed to TD Bank, the delay in registering the Condominium, and the failure to repay the Loan. Chahal stated that he understood and appreciated TD Bank's concerns. He advised me that he would cause the Debtor to:

- (a) immediately pay the interest arrears, the overdraft and the extension fee; and

- (b) retain, at the Debtor's own cost, a consultant suggested by TD Bank, to review and assess the Debtor's books, records, assets and operations (the "**Review and Assessment**"), and report on:
 - (i) the agreements of purchase and sale entered into by the Debtor with purchasers of the Condominium's units, including all amending or extension agreements, and the reconciliation of the deposits being held in trust as they relate to such agreements;
 - (ii) the status of the registration of the Condominium and the reasons for the delay in registering it; and
 - (iii) any other matter pertaining to the Debtor's viability and relationships with its creditors.

THE DEBTOR RENEGES ON THE OCTOBER 4TH AGREEMENT

45. Between October 4, 2011 and October 26, 2011, the Debtor engaged in a course of conduct in which it appeared to be renegeing on the agreement that we reached on October 4, 2011, and to avoid its payment obligations to TD Bank and its commitment to retain a consultant to conduct the Review and Assessment.

46. By email dated October 7, 2011, attached hereto as **Exhibit AA**, I wrote to Chahal and asked that he contact me immediately. I was required to communicate with Chahal in this manner because he rarely, if ever, answered the telephone when I called him, and his voicemail was unable to accept messages because the mailbox was inevitably full and would not accept messages.

47. When Chahal returned my call, I reminded him of the commitments that he made on October 4, 2011 to repay the monies owed to TD Bank and to engage a consultant to conduct the Review and Assessment.

48. On October 12, 2007, Chahal responded by email and asked me to send him a breakdown of the funds that he had agreed to pay. This email is attached hereto as **Exhibit BB**.

49. That same day, I responded to Chahal by email, attached hereto as **Exhibit CC**. I confirmed to Chahal that the monies were due no later than October 14, 2011, and provided him with a detailed breakdown of the amounts TD Bank required the Debtor to pay, as follows:

		Rounded*
Overdraft	\$73,491.02	
Interest Due	<u>\$ 887.88</u>	
Total	\$74,378.90	\$74,000
Demand Loan		
Interest Aug/Sept	\$98,644.16	
Oct to Oct. 20, 2011	<u>\$47,731.19</u>	
Total	\$146,375.35	\$147,000
Monthly Letter of Credit Fees	\$228.43	\$1,000
Contingency		\$3,000
Negotiated Default Fee Due June 30, 2011	\$60,000.00	\$60,000
Total		\$285,000*

*Includes contingencies

50. I am advised by Marty Wolfe, a chartered accountant employed at Ira Smith Trustee, the consultant selected by TD Bank to conduct the Review and Assessment, and believe, that on October 11, 2011, he wrote to Chahal, enclosed the engagement letter which outlined the

services to be performed by Ira Smith Trustee, and scheduled a meeting for October 12, 2011. Mr. Wolfe's email to the Debtor, and the engagement letter, are attached hereto as **Exhibit DD**.

51. By email dated October 11, 2011, attached hereto as **Exhibit EE**, Chahal wrote to Wolfe and advised him that he would be forwarding the engagement letter ". . .to my Lawyer and waiting for thier instructions, will contact you as soon as he has reviewed it. I guess their is no sense in meeting tomorrow untill I get my councils input" [sic].

52. That same day, Wolfe responded to Chahal by email, which is attached hereto as **Exhibit FF**. Wolfe advised Chahal that it was of great urgency that the meeting take place the following day, to advise his lawyer that time is of the essence, and that he would not cancel the meeting that had been scheduled.

53. On October 11, 2011, Chahal responded to Wolfe by email, attached hereto as **Exhibit GG**, and stated that:

That is impossible, I have a large investment here that I have to protect and make sure all my clients interests are protected, are you trying to force yourself upon this project without our council properly instructing us? I will met with you when my council has time and instructed us. You are to work with us not against us, and if that is your manner then we will do everything to protect ourselves, we are in our final stages ok getting off work condominium registered, we do not want to take any actions work that will jeopardize everybody's interests!!! [sic]

54. Wolfe responded to this email by requesting that the Debtor sign the engagement letter by the end of day tomorrow (October 12) or at the latest by noon on Thursday (October 13, 2011). This email is attached hereto as **Exhibit HH**.

55. Chahal responded to Wolfe's request by email dated October 11, 2011 and stated that he wished to work with Wolfe and anticipated to be able to meet on Thursday (October 13) morning. This email is attached hereto as **Exhibit II**.

56. I am advised by Wolfe, and believe, that on October 12, 2011, Chahal unilaterally cancelled the meeting scheduled for October 13, 2011, and re-scheduled it for the following day (October 14, 2011).

57. On October 13, 2011, I wrote to Chahal and directed him to provide Wolfe with the cheque for \$285,000 when they met. This email is attached hereto as **Exhibit JJ**.

58. I am advised by Wolfe, and believe, as follows:

- (a) he attended at the Debtor's premises on October 14, 2011, for a meeting;
- (b) the purpose of the meeting was to collect the engagement letter signed by the Debtor, collect the cheque in the amount of \$285,000 and commence the Review and Assessment;
- (c) he met with Chahal and Dhaliwal;
- (d) after receiving a tour of the Condominium, he was provided with an uncertified cheque made payable to TD Bank in the amount of \$285,000;
- (e) the cheque was post-dated to October 20, 2011; and
- (f) he was advised by Chahal and Dhaliwal that the engagement letter was not signed because it had not been reviewed by the Debtor's legal counsel, however, its lawyer would do so on Monday (October 17, 2011).

59. On October 16, 2011, I received an email from Chahal, which is attached hereto as **Exhibit KK**. The email provides as follows:

Kenneth, hope you had a great weekend,

did you received the check? please deposit so we can bring our account up to date, I was jut told by Jagdev that the funds where on hold on our account till Tuesday that is why he wrote Thursday, if I would of known this I would of went to the branch myself to get the funds cleared RIGHT AWAY AS SOON AS DEPOSITED, I will go to the branch tomorrow to see if i can get it cleared, if not our checks don't bounce and it Will cleared as soon as it is deposited> [sic]

60. I understood this email to mean that TD Bank should proceed to deposit the cheque and that the Debtor would take measures to ensure that is clears. TD Bank was unable to immediately deposit the cheque, however, since it was post-dated to October 20, 2011.

61. The Debtor had advised TD Bank that it held a bank account at Duca Financial Services Credit Union Ltd. ("**Duca Financial**"). Accordingly, on October 20, 2011, I attended at Duca Financial to attempt to certify the cheque provided to me by the Debtor. A copy of the cheque is attached hereto as **Exhibit LL**. The branch manager with whom I spoke, named Ramsey Fashho, advised me, and I believed, that Duca Financial would not certify the cheque as there were insufficient funds in the Debtor's bank account to honour it.

62. I accordingly deposited the cheque for conventional clearing on October 20, 2011. Despite Chahal's representations contained in his email dated October 16, 2011, the cheque was dishonoured. A copy of the cheque and Returned Item Advice dated October 24, 2011 is attached hereto as **Exhibit MM**.

63. As of the date of my affidavit, the Debtor:

- (a) has failed to provide TD Bank with a replacement cheque or otherwise pay the amount of \$285,000 as agreed on October 4, 2011;
- (b) has failed to return a signed engagement letter permitting the consultant to engage in the Review and Assessment;

- 18 -

- (c) has failed to repay the Loan;
- (d) has failed to provide TD Bank with details regarding the delay in the status of the registration of the Condominium; and
- (e) has failed to provide TD Bank with details regarding the status of the agreements of purchase and sale entered into between the Debtor and the purchasers of Condominium units.

TD BANK ISSUES DEMANDS AND SECTION 244 NOTICES AND THE FALLOUT

64. Accordingly, TD Bank caused demand letters and notices of intention to enforce its security under section 244(1) of the BIA to be issued on October 26, 2011. Copies of these demands and notices are attached hereto as **Exhibit NN**.

65. On November 5, 2011, the day that the stay period under section 244(1) of the BIA was to expire, I received an email from Chahal. He advised me that the demands and notices had been sent to the Debtor's previous address and not its current registered office address. He acknowledged receiving the demands and notices on November 1, 2011, and that the ten day stay period would accordingly expire on November 11, 2011. This email is attached hereto as **Exhibit OO**.

66. On November 7, 2011, I received a letter from the Debtor, which is attached hereto as **Exhibit PP**. Chahal advised me in the letter that the Debtor intends to close agreements of purchase and sale with purchasers of units in the Condominium by January 30, 2012. However, on page three of this letter, the Debtor set out a list of twelve items that need to be completed before the Condominium could be registered. Many of the items on the list are dependent on third parties completing various reviews, including the City of Brampton, Peel Region, the Land Titles Registry, and the architect. In my experience, given the number of tasks that remain to be

completed, it is unlikely these will be completed by January 30, 2012 and that the agreements of purchase and sale will close by January 30, 2012.

67. I am also concerned by the fact that the Debtor, in the letter:

- (a) states that the Debtor has removed all of its funds held in the bank account at Duca Financial and moved them to a different institution, which institution is not disclosed;
- (b) states that Chahal has advised purchasers of units that TD Bank may be bringing power of sale proceedings and stating to them that TD Bank has interfered with the Debtor's general contractors, thereby causing delay; and
- (c) threatens to release deposits to purchasers and cancel agreements of purchase and sale ". . . for those requesting same...", or, for all purchasers who still want the units, to ". . . amend the purchase price on units to compensate for their loss of income and value caused by delays. . ." even though the purchasers ". . . all are willing and ready close their deals when I tell them we are ready to close."

68. Chahal appears to threaten that if TD Bank takes measures with which the Debtor does not agree, then the Debtor will take measures to undermine the value of TD Bank's security by cancelling agreements of purchase and sale or making payments to purchasers.

69. The appointment of a Receiver to attend at the Debtor's premises, preserve the Debtor's assets, conduct a review of the status of the registration of the Condominium and the agreements of purchase and sale with purchasers of units is necessary for the protection and realisation of TD Bank's interests and the interests of all stakeholders, including all construction lien claimants. It is also in the interests of purchasers of units in the Condominium, including

those who have closed on an interim basis, to ensure that the Condominium is registered in an expeditious manner and the agreements of purchase and sale are closed.

THE NEED FOR A RECEIVER

70. It is just and equitable that a Receiver be appointed because the Debtor has committed events of default under the Loan Agreement and TD Bank's security, and has jeopardised the value of its security, by:

- (a) failing to pay the interest due to TD Bank pursuant to the Loan Agreement;
- (b) failing to discharge the Versa Lien within thirty days of its registration;
- (c) failing to repay the overdraft;
- (d) failing to account for the use of the funds for which the over-draft was authorised;
- (e) reneging on an agreement to pay TD Bank \$285,000 for interest arrears, repayment of the over-draft and the extension fee;
- (f) providing TD Bank with a cheque that it was unable to negotiate and which was dishonoured;
- (g) reneging on an agreement to retain a consultant to conduct the Review and Assessment;
- (h) failing to provide TD Bank details regarding the delay in registering the Condominium or the status of agreements of purchase and sale; and
- (i) failing to repay the Loan.

71. The appointment of a Receiver will benefit all of the Debtor's creditors, lien claimants and other stakeholders, including purchasers of units in the Condominium, since it will allow for the preservation of the Debtor's assets, an assessment of the Debtor's financial viability, a determination of why the Condominium has not yet been registered, and likely, the expediting of the registration of the Condominium.

72. TD Bank proposes that Ira Smith Trustee be appointed as Receiver of the Debtor. Ira Smith Trustee is an experienced, licensed trustee in bankruptcy. Ira Smith Trustee has consented to act as Receiver. The consent is attached hereto as **Exhibit QQ**.

SWORN BEFORE ME at
the City of Toronto,
in the Province of Ontario,
this 10th day of November, 2011.

COMMISSIONER, ETC.



KENNETH J. MALCOLM

SCHEDULE A**Legal Description of the Property**

PT OF LT 11, CON 5 EAST OF HURONTARIO ST, DES AS PTS 6 AND 7, PL 43R21902. S/T
A EASEMENT IN FAVOUR OF BRAMPTON HYDRO ELECTRIC COMMISSION AND THE
CORPORATION OF THE CITY OF BRAMPTON OVER PT OF LT 11, CON 5 EHS, DES AS PT
7, PL 43R21902 AS IN LT1615145. CITY OF BRAMPTON

THE TORONTO-DOMINION BANK

and

2012241 ONTARIO LIMITED

Applicant

Respondent

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF KENNETH MALCOLM
(sworn November 10, 2011)

AIRD & BERLIS LLP
Barristers and Solicitors
Brockfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9
Tel: (416) 863-1500
Fax: (416) 863-1515

Sanj Sood – LSUC No. 42137R

Lawyers for the Applicant

APPENDIX C

Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3,
as amended and **SECTION 101 OF THE *COURTS OF JUSTICE ACT*,**
R.S.O. 1990 c. C.43, as amended**

**FIRST REPORT OF THE RECEIVER
DATED NOVEMBER 24, 2011**

**IRA SMITH TRUSTEE &
RECEIVER INC.**
167 Applewood Crescent, Suite 6
Concord, ON L4K 4K7

Telephone: 905.738.4167
Fax: 905.738.9848

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

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**FIRST REPORT OF THE RECEIVER
DATED NOVEMBER 24, 2011**

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Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

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Applicant

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R.S.O. 1990 c. C.43, as amended**

**FIRST REPORT OF THE RECEIVER
DATED NOVEMBER 24, 2011**

APPENDICES

- A. Order of the Honourable Mr. Justice Campbell dated November 15, 2011
- B. The Affidavit of Kenneth J. Malcolm sworn November 10, 2011, without exhibits
- C. E-mail from Ravinder Singh Chahal to Mr. Malcolm dated November 15, 2011
- D. The Affidavit of Theresa Kellen sworn November 15, 2011
- E. Corporate Profile Report of 2012241 Ontario Limited
- F. Parcel Register of 50 Sunny Meadow Blvd., Brampton, Ontario
- G. Personal Property Security Registration Database search of 2012241 Ontario Limited
- H. Receiver's preliminary draft rent roll

- I. Template form of letter to occupants of the Condominium Complex
- J. Letter from Ira Smith Trustee & Receiver Inc. to Sikder Professional Corporation dated November 16, 2011
- K. E-mail from Paltu Kumar Sikder to Ira Smith dated November 23, 2011 enclosing the Sikder Professional Corporation Trust Ledger Statement dated November 23, 2011
- L. Sikder Professional Corporation Trust Ledger Statement dated June 17, 2011
- M. E-mail exchange between Paltu Kumar Sikder and Shawn Wolfson dated November 23, 2011
- N. E-mail from Ravinder Singh Chahal to Ira Smith cancelling November 16, 2011 meeting
- O. Letter from Ira Smith Trustee & Receiver Inc. to Ravinder Singh Chahal and Jagdev Dhaliwal dated November 16, 2011
- P. E-mail from Roman Humeniuk to Ira Smith dated November 16, 2011
- Q. E-mail from Ira Smith to Ravinder Singh Chahal and Jagdev Dhaliwal dated November 17, 2011
- R. Letter from Domenico Magisano to Ravinder Singh Chahal and Jagdev Dhaliwal dated November 19, 2011
- S. Bank Draft in the amount of \$50,000.00 payable to Rena Setwant Dhaliwal dated November 16, 2011

INTRODUCTION

1. On November 15, 2011, the Honourable Mr. Justice Campbell appointed Ira Smith Trustee & Receiver Inc. as receiver (the "**Receiver**") of all of the property, assets and undertaking (the "**Property**") of the Respondent (the "**Appointment Order**"). A copy of the Appointment Order is attached hereto and marked as **Appendix "A"**.
2. As part of its application seeking the appointment of the Receiver, The Toronto-Dominion Bank (the "**Bank**") relied upon the affidavit of Kenneth J. Malcolm sworn November 10, 2011 (the "**Malcolm Affidavit**"). A copy of the Malcolm Affidavit (without exhibits) is attached hereto and marked as **Appendix "B"**.
3. The application for the Appointment Order was originally scheduled for November 18, 2011, however, on November 15, 2011, Ravinder Singh Chahal, one of the principals of the Respondent, wrote to Mr. Malcolm sent at 3:01pm threatening to take immediate steps that could adversely affect the Bank's security (the "**Chahal e-Mail**"). A copy of the Chahal e-mail is attached hereto and marked as **Appendix "C"**.
4. As a result of receiving the e-mail attached at Appendix "C" to this report, Theresa Kellen swore a supplemental affidavit dated November 15, 2011 (the "**Kellen Affidavit**") and the Bank's legal counsel, Aird & Berlis LLP, attended before the Honourable Mr. Justice Campbell later that day seeking the Appointment Order. A copy of the Kellen Affidavit (together with exhibits) is attached hereto and marked as **Appendix "D"**.

PURPOSE OF THE REPORT

5. The purpose of this report (the "**First Report**") is to:
 - (a) Report on the Receiver's attempts to secure the Property;
 - (b) Report on the discrepancy of trust deposits held by Sikder Professional Corporation;
 - (c) Report on attempts to obtain certain books and records from the principals of the Respondent;

- (d) Report on the Receiver's discovery that the Respondent (without the Receiver's approval) issued a \$50,000 bank draft from the its bank account at DUCA Financial Services Credit Union Ltd. ("DUCA") payable to Rana Setwant Dhaliwal on November 16, 2011; and
- (e) Request a minor revision to the Appointment Order.

DISCLAIMER

- 6. The Receiver has relied upon the financial records of the Respondent, as well as other information supplied by staff and management of the Respondent, its service providers and its financial institutions. The Receiver assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this report. Any use which any party, other than the Court, makes of this report or any reliance on or decision made based on this report is the responsibility of such party.

BACKGROUND AND OPERATIONS

- 7. The Respondent is an Ontario corporation which owns certain lands municipally known as 50 Sunny Meadow Blvd., Brampton, Ontario (the "**Premises**"). The Respondent has substantially completed building a three story, commercial condominium building on the Real Property (the "**Condominium Complex**"). The Condominium Complex was originally approved for 47 units, but the Receiver's investigation to date indicates that there may be up to 62 units. The Receiver to date has not found any evidence of zoning approval for the increased number of units, but the Receiver's review is ongoing and currently, as described herein, the Receiver is missing a large amount of documentation concerning the building of the Condominium Complex.
- 8. A copy of the corporate profile report for the Respondent is attached hereto and marked as **Appendix "E"** and a copy of the parcel register for the Premises is attached hereto and marked as **Appendix "F"**.
- 9. The principals of the Respondent are Ravinder Singh Chahal ("**Chahal**") and Jagdev Dhaliwal ("**Dhaliwal**") ("**Principals**").

10. The Receiver has been advised that the Bank is owed \$12,729,112.54 as at October 26, 2011 and that said indebtedness is secured by certain security provided by the Respondents, including, but not limited to a mortgage over the Premises and a general security agreement granted by the Respondents and dated October 10, 2008. The Receiver has not obtained an opinion as to the validity and enforceability of the Bank's security although we expect to do so in the near future.
11. A search of the Personal Property Security Registration Database has been completed and the results of that search are attached hereto and marked as **Appendix "G"**.

ATTENDING THE PREMISES AND SECURING ASSETS

12. The Receiver attended at the Premises on the evening of November 15, 2011. Mrs. Chahal was at the Premises when the Receiver arrived. She contacted Chahal and he arrived shortly thereafter. The Receiver met with Chahal and provided him with a copy of the Appointment Order. The Receiver also changed the locks to Chahal's office on the Premises and removed whatever documentation could be found concerning the Condominium Complex, as well as what appears to be a full set of keys for various units, and mechanical and storage rooms.
13. Significant work on the Condominium Complex has been completed and certain people have moved in, however, the Condominium Complex has not been registered pursuant to the *Condominium Act*.
14. The Condominium Complex is managed by English Prestige Property Management Inc. (the "**Manager**"). It appears that the principal of the Manager may be related to the Respondent. The Receiver has contacted the Manager to attempt to meet with the Manager to determine its suitability to continue as the Manager of the Condominium Complex.
15. On November 21, 2011, the Receiver put the Manager on notice that all property, books, records and documents of the Respondent, or related to the assets, properties and undertakings of the Respondent, including the Condominium Complex, must be provided to the Receiver. The Manager and the Receiver are in communication and the Manager

has undertaken to provide the Receiver with the requested information and documentation and to meet with the Receiver early in the week of November 28, 2011 to provide the Receiver with such documentation and information.

16. The Manager has asked the Receiver if it should continue in its role as Manager and the Receiver has requested a copy of the property management agreement to review, and has advised the Manager that it should continue to provide its services at least until representatives of the Manager and the Receiver meet. The Receiver believes that it requires the services of an experienced and independent property manager and will advise this Honourable Court of its conclusions as to the proposed property manager to be retained by the Receiver in its Second Report to Court.
17. As described herein, the Receiver currently has limited documentation in its possession relating to the assets, properties and undertakings of the Respondent. The Receiver's understanding is that there are currently fifteen (15) parties occupying units in the Condominium Complex. Based on documentation and post-dated cheques seized by the Receiver, the Receiver has prepared a preliminary draft rent roll. Attached as **Appendix "H"** is a copy of such rent roll. The Receiver's investigation concerning these occupants is ongoing to determine if these occupants are tenants, or if some are purchasers who have not yet been able to take title to their respective units as the Condominium Complex has yet to be registered. The Receiver cautions that this preliminary draft rent roll is tentative and subject to change.
18. On November 23, 2011 the Receiver delivered a letter to each of the occupants to provide each with a copy of the Appointment Order, confirming where post-dated cheques were being held for rent and advising that all rent payments must be only to the Receiver until further notice. Attached hereto as **Appendix "I"** is a copy of the template of the letters issued, without the enclosures.
19. Mr. Malcolm provided the Receiver with a binder of Agreements of Purchase and Sale that the Respondent previously provided to the Bank as part of its ongoing obligations to the Bank in support of the financing it obtained. The Receiver has performed a review on a test-check basis and has determined that the summary prepared by the Bank is accurate.

The Receiver also found some Agreements of Purchase and Sale on the premises. The Receiver's review to determine which Agreements of Purchase and Sale exist, and which are currently valid is ongoing and the Receiver will report its findings to this Honourable Court as the Receiver's analysis unfolds.

20. From the review of the documentation previously provided to the Bank by the Principals of the Respondent, the Receiver found a trust account statement dated June 17, 2011 (the "**June 17, 2011 Trust Ledger**") from Sikder Professional Corporation, Barristers and Solicitors ("**Sikder**") indicating that it was holding in trust deposits totaling \$3,446,766.20 from purchasers of units in the Condominium Complex. On November 16, 2011, the Receiver wrote to Sikder advising of the Appointment Order, requesting an accounting of all such deposits being held, and an accounting of any assets, properties, undertakings and documents of the Respondent being held and that all such Property must be delivered to the Receiver. Attached as **Appendix "J"** is a copy of that letter. As of this date, Sikder has confirmed receipt of the letter but has failed to provide substantially all of the requested information, documents or Property.

DISCREPANCY IN TRUST DEPOSITS

21. On November 23, 2011 the Receiver received an e-mail from Sikder attaching an updated trust ledger statement dated November 23, 2011 (the "**November 23, 2011 Trust Ledger**") a copy of the e-mail from Sikder's office to the Receiver and a copy of the November 23, 2011 Trust Ledger are attached as **Appendix "K"**. A review of the November 23, 2011 Trust Ledger indicates a substantial discrepancy in the trust deposits being held by Sikder from that shown from the June 17, 2011 Trust Ledger. The total amount held in trust as stipulated in the November 23, 2011 Trust Ledger is \$995,384.76 as opposed to the sum of \$3,446,766.20 shown in the June 17, 2011 Trust Ledger.
22. In response to an e-mail from Shawn Wolfson of Blaney McMurtry LLP, counsel for the Receiver, Mr. Paltu Kumar Sikder indicated that the June 17, 2011 Trust Ledger did not originate from his office and as a result could not make any comment on this document. He further indicated that his firm had no knowledge of this document. Mr. Wolfson thereafter replied to Mr. Sikder asking him to provide a detailed trust reconciliation

showing all debits and credits in respect of this file from its outset to present. Attached as **Appendix "L"** is the June 17, 2011, Trust Ledger.

23. In response thereto, Mr. Sikder sent an e-mail to Mr. Wolfson indicating that he would get his information from his accountant which is coming to his office this Saturday. Attached and marked as **Appendix "M"** is an email exchange between Shawn Wolfson and Mr. Paltu Sikder all dated November 23, 2011.
24. In addition, the November 23, 2011 Trust Ledger indicates that the sum of \$1,200,042.20 of trust deposits previously held by Sikder was released to 2012241 as same was "disbursed on purchasers direction". No corroborating directions were delivered to the Receiver to support the release/disbursement of trust funds to 2012241. The Receiver has received advice from its counsel that release of deposits are not permitted by the provisions of the *Condominium Act*, 1998, S.O. 1998, c. 19.
25. A further comparison of the June 17, 2011 Trust Ledger and the November 23, 2011 Trust Ledger indicates that the name Harjinder Chahal was removed from the mast-head of the June 17, 2011, Trust Ledger as a lawyer of the firm in question. Our review of the corporation profile report (Appendix "E") indicates that one of the officers and director of 2012241 is a Mr. Ravinder Chahal, who has the same last name as the lawyer whose name is missing from the mast-head of the June 17, 2011 Trust Ledger. Further, one of the entries on the June 17, 2011 Trust Ledger discloses Harjinder Chahal as a purchaser of three of the units, but is not noted as a purchaser of any of the units on the November 23, 2011 Trust Ledger.
26. On November 24, 2011, Blaney McMurtry LLP, counsel for the Receiver, delivered a letter to Sikder requiring the immediate delivery of all deposits held in trust together with all documentation of all documents relating to the purchase and sale of the condominium units.
27. Given the aforementioned facts, including the discrepancies in the trust ledgers, the failure to deliver documentation as requested by the Receiver and the release of trust funds to the Respondent by Sikder, the Receiver has no confidence in Sikder and seeks an

order for the transfer of all trust deposits presently held by Sikder in respect of the sale of condominium units and the delivery of all documentation in its possession relating to the development, sale and marketing of the condominium units.

FAILURE TO DELIVER DOCUMENTS

28. On November 15, 2011 the Receiver attended both the Premises and the registered address for the Respondent as indicated in its corporate profile report seeking all of the Respondent's books and records. The Receiver was not provided with the Respondent's books and records but Mr. Chahal agreed to meet with the Receiver at 3pm on November 16, 2011 and provide the required books and records and full disclosure regarding the building of and the status of the Condominium Complex.
29. By e-mail executed on November 16, 2011 between Chahal and the Receiver, Chahal cancelled his 3:00 p.m. meeting with the Receiver. A copy of the e-mail exchange is attached hereto and marked as **Appendix "N"**.
30. Following receipt of Chahal's e-mail attached as Appendix "N" hereto, the Receiver wrote to the Principals requiring immediate compliance with the Appointment Order and providing a preliminary list of documents required. A copy of the letter from the Receiver to the Principals dated November 16, 2011 is attached hereto and marked as **Appendix "O"**.
31. At 6:38 p.m. on November 16, 2011, the Receiver received an e-mail from Roman Humeniuk advising that the Respondent had retained Kerr Waid & Associates to represent it in this matter. The Receiver's understanding is that Mr. Humeniuk may have been assisting the Respondent in its attempt to refinance the indebtedness to the Bank prior to the Receiver's appointment. Ten minutes later, the Receiver forwarded its letter to the Principals to Kerr Waid & Associates. A copy of the e-mail chain containing Mr. Humeniuk's e-mail at 6:38 p.m. and the Receiver's e-mail to Kerr Waid & Associates at 6:48 p.m. are attached hereto and marked as **Appendix "P"**.
32. The Receiver did not receive a response to the request for information contained in the letter attached as Appendix "O" hereto. Furthermore, the Receiver had a telephone

conversation with Mr. R. English of Aird & Berlis LLP, advising that his firm received a telephone call from a representative of Kerr Waid & Associates wherein they were advised that Kerr Waid & Associates had not been formally retained by the Respondent.

33. On November 17, 2011, the Receiver sent an e-mail to the Principals following up on its November 16, 2011 letter. A copy of the e-mail from the Receiver to the Principals is attached hereto and marked as **Appendix "Q"**.
34. The Receiver did not receive a response to its e-mail attached as Appendix "Q" hereto. On November 19, 2011, Domenic Magisano of Blaney McMurtry LLP, counsel for the Receiver, wrote to the Principals requiring a response to the Receiver's letter by no later than 5:00 p.m. on November 21, 2011. A copy of the letter from the Receiver's counsel to the Principals dated November 19, 2011, is attached hereto and marked as **Appendix "R"**.
35. On November 21, 2011, counsel for the Receiver received a response to the November 19, 2011, correspondence with the Principals, indicating that the Respondent had retained Mr. G. Kerr of Kerr Waid & Associates as its counsel.
36. On November 21, 2011, Mr. Magisano received a telephone call from Mr. G. Kerr of Kerr Waid and Associates. Mr. Kerr advised Mr. Magisano that:
 - a. he has been retained by the Respondent;
 - b. he has instructed his client to fully cooperate with the Receiver. To that end his client was pulling together all of the documents requested by the Receiver and hopes to begin delivering documents in the upcoming days (and hopes to have most of it by the end of the week);
 - c. apparently the principals tried to use \$20,000 of the \$50,000 taken from DUCA to pay Mr. Kerr's retainer. Mr. Kerr advised the Principals he could not accept that as the retainer and instructed his client to return the \$50,000 to the Receiver. Mr. Kerr advises that the Receiver should receive the \$50,000 by the end of the day on November 22, 2011;

- d. Mr. Kerr has contacted Sikder Professional Corporation and asked them to provide all documents relating to the Premises or the Condominium Complex (including an accounting of trust funds); and
 - e. the Principals are in the midst of securing a pool of investors who will be providing sufficient financing to repay the Applicant.
37. Counsel for the Receiver was also advised of concerns and requests by the Respondent pertaining to security, utilities and access to the Premises for ongoing landscaping work, all of which are addressed in the November 21, 2011, correspondence.
38. Counsel for the Receiver requested certain documentation and also advised that as the Receiver has not yet either found or been provided with the documentation requested of the Principals, the Receiver was not in a position to have a definitive discussion on those administrative matters.
39. Mr. Kerr was advised that a motion would be brought on November 25, 2011, if the Respondent failed to comply with the details outlined in November 21, 2011, correspondence.
40. On November 21, 2011, counsel for the Receiver contacted Mr. Sikder of Sikder Professional Corporation advising of the request the books, records and documents referenced in paragraph 20 of this Report.
41. A response to the November 21, 2011, correspondence from Mr. Sikder was received by counsel to the Receiver on November 22, 2011, advising that Mr. Kerr had confirmed that all such documents would be forwarded to the Receiver by the Respondent.
42. While it is always important for a Receiver to have access to the books and records of a company in receivership, it is particularly important (and urgent) that the Receiver obtain the documents requested in its November 17, 2011 letter.
43. As previously discussed, certain people have already taken possession of units in the Condominium Complex. Without the documentation requested the Receiver has no way of knowing the basis on which the particular unit holders have taken possession (or if

they are in fact entitled to take possession), whether there are additional amounts owing from these unit holders, whether additional unit holders will be moving into the Condominium Complex in the upcoming days and weeks and what legal and financial responsibilities may exist.

44. Furthermore, the Receiver cannot assess whether the Principals have acted on the threats made in the Chahal E-Mail and if acted upon, whether the Receiver can reverse the actions in question.
45. Based on the Receiver's written request, DUCA also provided the Receiver with a copy of the Respondent's bank statements and cancelled cheques for the twelve (12) months prior to the date of the Receiver's appointment. The Receiver is currently reviewing those bank statements for transactions to determine which parties may have information concerning the assets, properties and undertakings of the Respondent.
46. As of the date of this First Report, the Respondent has begun sending copies of certain documents that he has deemed important to the Receiver. Many documents listed in the November 16, 2011 letter however, remain outstanding.

POST RECEIVERSHIP WITHDRAWAL FROM RESPONDENT'S BANK

47. As previously mentioned, on the evening of November 15, 2011 the Receiver personally delivered a copy of the Appointment Order to Chahal. The Appointment Order was also attached to the Receiver's letter attached as Appendix "O" to this First Report.
48. Notwithstanding receipt of the Appointment Order on November 15, 2011, a representative of the Respondent issued a bank draft (without the Receiver's knowledge or consent) from the Respondent's bank account at DUCA the very next day, prior to the Receiver determining the existence of accounts at DUCA and putting DUCA on notice to freeze all accounts on that same day. The bank draft was in the amount of \$50,000 and payable to Rena Setwant Dhaliwal (the "**Bank Draft**"). The Receiver does not know the relationship between Rena Setwant Dhaliwal and the Respondent but notes that the last name is the same as one of the Principals. A copy of the bank draft is attached hereto and marked as **Appendix "S"**.

49. The Bank Draft is dated November 16, 2011, a day after the Appointment Order was granted and personally delivered to Chahal.
50. After withdrawal of the bank draft, the Respondent's account at DUCA still contained \$14,461.45. This amount has been forwarded to the Receiver by DUCA and deposited by the Receiver into its trust bank account maintained with the Applicant for the administration of this receivership.
51. As part of its letter dated November 19, 2011, counsel to the Receiver demanded that the funds withdrawn pursuant to the Bank Draft be returned by 5:00pm on November 21, 2011. As of the date of this First Report the funds in question have not been returned.
52. The funds withdrawn by way of the Bank Draft were finally delivered to the Receiver on November 24, 2011.

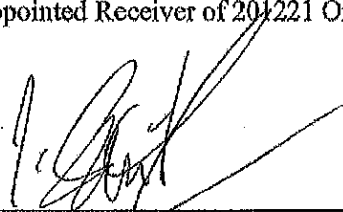
COURT APPROVAL AND DIRECTION

53. The Receiver seeks an Order approving the within report and further seeks an Order in the form attached as Schedule A to the Notice of Motion.

All of which is respectfully submitted this 24th day of November, 2011.

IRA SMITH TRUSTEE & RECEIVER INC.
Court-Appointed Receiver of 201221 Ontario Limited

Per:



President

APPENDIX D

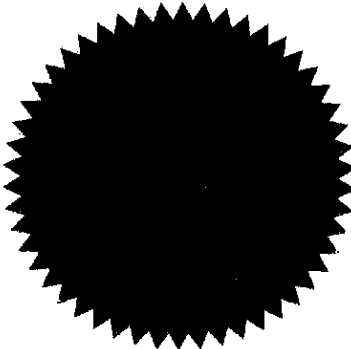
Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE *MESKUR*

)
)
)
FRIDAY, THE 25TH DAY
OF NOVEMBER, 2011.

BETWEEN:



THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C.43, as amended

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as court appointed receiver of the Respondent (the "Receiver"), for an Order requiring the principals of the Respondent and its counsel to deliver certain documents and funds, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated November 24, 2011, and the Appendices thereto (the "First Report") and on hearing submissions from counsel to the Receiver, to the Applicant and any other stakeholders present,

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

2. **THIS COURT ORDERS** that the Order of the Honourable Mr. Justice Campbell dated November 15, 2011, be and the same is hereby amended by inserting at paragraph 2 the following wording: "including but not limited to the municipal property known as 50 Sunny Meadows Circle in Brampton, Ontario" and whose legal description is Pt of Lt 11, Con 5 East of Hurontario St, des as Pts 6 and 7, Pl 43R21902. S/T an easement In favour of Brampton Hydro Electric Commission and The Corporation of the City of Brampton Over Pt of Lt 11, Con 5 EHS, des as Pt 7, Pt 43R21902 as in LT1615145, City Of Brampton in the definition of "Property" (hereinafter referred to as the "**Building**")".

3. **THIS COURT ORDERS** that Sikder Professional Corporation, Barristers and Solicitors, shall transfer to Blaney McMurtry LLP, all deposits presently held by it, in trust, for all purchases of the units in the Building within 72 hours of the date of this Order. In this regard, this Court Orders and appoints Blaney McMurtry LLP as escrow agent for the sole purposes of holding the said trust fund deposits without liability.

4. **THIS COURT ORDERS** that Sikder Professional Corporation shall deliver up ^{✓ by 16} ~~within~~ ^{end of business on November 29 2011 ✓ Kew} 72 hours of the date of this Order to the Receiver copies of all documents and accounting relating to the purchase and sale of the condominium units, including but not limited to:

- (a) All agreements of purchase and sale, including amendments thereto;
- (b) All documents relating to all interim occupancies;

- (c) Detailed trust ledger and reconciliation in respect of all deposits and releases of deposits;
- (d) All directions signed by purchasers permitting the disbursements to 2012241 of deposits held in trust by you;
- (e) All correspondence and documentation exchanged between Sikder and all purchasers and their solicitors;
- (f) All draft condominium documents including draft declaration, by-laws and condominium plans, *in its possession* *Rew*
- (g) Details of all occupancy fees being paid; and
- (h) All documents requested by the Receiver in his November 16, 2011 letter.

5. **THIS COURT ORDERS** that Jagdev Dhaliwal, Jagden Dhaliwal, Jasdew Dhaliwal and Ravinder Chahal (the "Principals") provide responses to all requests contained in the Receiver's requests contained in its letter of November 16, 2011 (and attached as Schedule "A" to this Order) on or before the close of business on November 29, 2011.

6. **THIS COURT ORDERS** that if the Principals fail to comply with paragraph 4 of this Order, the Receiver shall be free to bring a contempt motion against the Principals on three calendar days' notice.

Meslin G.

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

NOV 25 2011

PER/PAR *[Signature]*



167 Applewood Cres. Suite 6, Concord, ON L4K 4K7
Phone: 905.738.4167
Fax: 905.738.9848
irasmithinc.com

Ira Smith
Phone: 905.738.4167 ext. 111
Email: ira@irasmithinc.com

November 16, 2011

VIA EMAIL ravi@chahalwilshire.com

VIA EMAIL dhaliwalj10@hotmail.com

Mr. R. Chahal, Project Manager
2012241 Ontario Limited
c/o 470 Chrysler Drive Unit 20
Brampton, ON L6S 0C1

Mr. J. Dhaliwal, President
2012241 Ontario Limited
c/o 7420 Airport Road Unit 105
Mississauga, Ontario L4T 1E5

Dear Sirs

**2012241 Ontario Limited ("2012241")
Receivership Order dated November 15, 2011
50 Sunny Meadow Blvd., Brampton, ON (the "Building")**

We are writing further to the meeting last evening between Mr. and Mrs. Chahal and our Messrs. I. Smith, B. Smith and M. Wolfe. We advise that on November 15, 2011, The Honourable Mr. Justice Campbell of the Ontario Superior Court of Justice (Commercial List) made an Order (the "Appointment Order") appointing Ira Smith Trustee & Receiver Inc. as Receiver (the "Receiver") of the assets, undertakings and properties of 2012241. We enclose a copy of the Appointment Order and the file directions issued yesterday. We confirm that both Mr. and Mrs. Chahal were each provided with a copy of the Appointment Order last evening.

Paragraphs 4 and 5 of the Appointment Order require all persons with notice of the Appointment Order to deliver all Property (as defined in the Appointment Order) and books, records and all documents in their possession to the Receiver. We obtained certain records last evening from the 50 Sunny Meadow Blvd. premises, but many records we would have expected to have seen were not stored in the main floor office.

Although this listing is not meant to be exhaustive, we would have expected to have found, and taken possession of at least the following additional records of 2012241:

1. Quantity Surveyor reports and Architect's Certificates.
2. Contracts with contractors and suppliers for both the construction and ongoing maintenance and property management of the Building.
3. All files relating to the construction of the Building, including all Statutory Declarations and/or lien claims (both registered and unregistered) of the trades used in the construction of the Building.
4. Bank statements and cancelled cheques for all accounts maintained by 2012241 whether at The Toronto-Dominion Bank or elsewhere.
5. The documents relating to all secured indebtedness and leases of equipment.
6. Accounting records and software showing full disclosure of the affairs of 2012241.
7. Minute Book, corporate seal and other corporate records, financial statements and income tax returns.
8. Statements received from Canada Revenue Agency, Workers' Safety and Insurance Board and various provincial and municipal government agencies.
9. Payroll records.
10. Extension Agreements for all Agreements of Purchase and Sale.
11. Identification of the whereabouts and amount of all deposits being held relating to Agreements of Purchase and Sale, by purchaser.
12. Identification of the whereabouts and amount of all security deposits and last month's rent being held from tenants of the Building.
13. All Offers to Lease and Leases from prospective or actual tenants of the Building.
14. The current rent roll for the Building.
15. Extension Agreements for all Agreements of Purchase and Sale entered into with purchasers of the condominium units.
16. Licenses required for the operation of the Building and machinery and equipment located thereon.
17. Occupancy Certificates.

18. The declaration and the description required to register a condominium building under the *Ontario Condominium Act, 1998* S.O. 1998, CHAPTER 19.
19. Documentation relating to owners paying phantom rent for the units they are respectively using.
20. Paid and unpaid billings for the supply of goods and services for the Building, including, but not limited to, property tax, hydro, water and gas.
21. Documentation to clearly identify all assets, properties and undertakings of 2012241 in addition to the Building.
22. A copy of all insurance policies/insurance endorsements detailing the insurance coverage held by 2012241 in relation to the Building, any vehicles and any other assets being insured.

As new information becomes available to us, we will update this listing, although it is your responsibility to deliver all Property of 2012241 without receiving specific requests from us, otherwise, you will be in contravention/contempt of the Appointment Order.

As you know, as Court-appointed Receiver, we are an Officer of the Court and we act on behalf of all the creditors of 2012241 and we must report our actions, activities and all issues concerning this receivership administration to the Court. We must be able to quickly identify the location of all of the assets, properties and undertakings of 2012241 and take possession of same. As indicated above, all persons with notice of the Appointment Order, including you, have a positive duty to disclose the whereabouts of all such assets, properties and undertakings and deliver them to the Receiver immediately.

We therefore advise that we require knowing the whereabouts of, and for you to deliver to the Receiver, all such assets, properties and undertakings of 2012241. We confirm that last evening, our Mr. I. Smith and Mr. Chahal agreed that they would meet at 3PM today, in order for Mr. Chahal to provide Mr. Smith with complete disclosure concerning 2012241's affairs, however, at 12:03PM today by email, Mr. Chahal cancelled the meeting without rescheduling. As you can appreciate, this occurrence is disappointing, and we still require full disclosure and possession of all of 2012241's assets, properties and undertakings immediately. We look forward to your immediate cooperation. Please contact us immediately to make satisfactory arrangements.

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We are copying our independent legal counsel, Mr. D. Magisano of Blaney McMurtry LLP with this communication.

Yours truly,

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court-appointed Receiver of
2012241 Ontario Limited



Per:

Ira Smith
President

Enc

cc Mr. D. Magisano - Blaney McMurtry LLP - dmagisano@blaney.com (letter only)

THE TORONTO-DOMINION BANK
Applicant

and **2012241 ONTARIO LIMITED**
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at **Toronto**

ORDER

BLANEY McMURTRY LLP
Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Lou Brzezinski LSUC #19794M
Domenico Magisano LSUC# 45725E
Tel: (416) 593-1221
Fax: (416) 593-5437

Lawyers for Ira Smith Trustee & Receiver Inc., court appointed
Receiver of 2012241 Ontario Limited

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APPENDIX E

Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3,
as amended and SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990 c. C.43, as amended**

**SECOND REPORT OF THE RECEIVER
DATED JANUARY 24, 2012**

**IRA SMITH TRUSTEE &
RECEIVER INC.**
167 Applewood Crescent, Suite 6
Concord, ON L4K 4K7

Telephone: 905.738.4167

Fax: 905.738.9848

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE
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as amended and SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990 c. C.43, as amended**

**SECOND REPORT OF THE RECEIVER
DATED JANUARY 24, 2012**

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Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3,
as amended and **SECTION 101 OF THE COURTS OF JUSTICE ACT**,
R.S.O. 1990 c. C.43, as amended**

**SECOND REPORT OF THE RECEIVER
DATED JANUARY 24, 2012**

APPENDICES

1. Order of the Honourable Mr. Justice Campbell dated November 15, 2011
2. Affidavit of Kenneth J. Malcolm sworn November 10, 2011, without exhibits
3. Receiver's First Report dated November 24, 2011, without appendices
4. Order of the Honourable Madam Justice Mesbur dated November 25, 2011
5. Corporation Profile Report for 2012241 Ontario Limited
6. Parcel register for 50 Sunny Meadow Blvd., Brampton, Ontario
7. Personal Property Security Registration Database search of 2012241 Ontario Limited
8. Unit Status Matrix Chart

9. Agreement between Y.L. Hendler Ltd. and Ira Smith Trustee & Receiver Inc.
10. Ira Smith Trustee & Receiver Inc.'s memorandum to file dated January 10, 2012
11. Email exchange between Ira Smith Trustee & Receiver Inc. and Lebow, Hicks Appraisal Inc.
12. Notice of Meeting from Ira Smith Trustee & Receiver Inc. to the owners and tenants of condominium units located at 50 Sunny Meadow Blvd., Brampton, Ontario
13. Letter from Sikder Professional Corporation to Blaney McMurtry LLP dated November 28, 2011
14. Letter from Blaney McMurtry LLP to J. Dhaliwal and R. Chahal dated December 15, 2011
15. Letter from Capo Sgro LLP to Blaney McMurtry LLP dated December 22, 2011
16. Letter from Blaney McMurtry LLP to Ford Credit Canada Leasing and R. Chahal dated January 6, 2011
17. Email exchange between R. Chahal and Blaney McMurtry LLP dated January 11, 2011
18. 2012241 Ontario Limited general ledger dated November 30, 2011
19. Spreadsheet summarizing payments made by 2012241 Ontario Limited to 1732037 Ontario Inc.
20. Corporation Profile Report for 1732037 Ontario Inc.
21. Parcel register for 50 Rolling Hills Drive, Orangeville, Ontario
22. Corporation Profile Report for 1662850 Ontario Inc.
23. Corporation Profile Report for 1616292 Ontario Limited
24. Charge registered as DC125497 on October 28, 2011
25. Internet posting showing 50 Rolling Hills Drive, Orangeville, Ontario listed for sale
26. Letter from Blaney McMurtry LLP to 1732037 Ontario Inc. dated December 19, 2011
27. Email correspondence from Charles Chang to Blaney McMurtry LLP dated December 22, 2011
28. Email exchange between Blaney McMurtry LLP and Charles Chang dated December 23, 2011
29. Lien registered as DC100790 on July 28, 2009

30. Certificate of Action registered as DC102335 on September 11, 2009
31. Corporation Profile Report for English Prestige Property Management Inc.
32. Corporation Profile Report for English Prestige Contracting Inc.
33. NUANS corporate search results for HomeLife Realty Investments Inc.
34. Fax document from HomeLife Realty Investments Inc. dated December 8, 2008
35. Letter from Blaney McMurtry LLP to HomeLife Miracle Realty Ltd. dated December 15, 2011
36. Letter from HomeLife Miracle Realty Ltd. to Blaney McMurtry LLP dated December 23, 2011
37. Search results from the Real Estate Counsel for Ontario as at January 12, 2012
38. HomeLife Miracle Realty Ltd. webpage print out dated January 12 2012
39. Corporation Profile Report for Chahal Wilshire Group Inc.
40. Chahal Wilshire Group Inc. contact webpage for the 50 Sunny Meadow Blvd. project
41. Agreement between Pelican Woodcliff Inc. and Ira Smith Trustee & Receiver Inc.
42. Letter from Nacora Insurance Brokers Ltd. to the Respondent dated March 9, 2011
43. Receiver's insurance binder for coverage for the period January 22, 2012 to January 22, 2013
44. Fee Affidavit of Ira Smith Trustee & Receiver Inc.
45. Fee Affidavit of Blaney McMurtry LLP
46. Receiver's Statement of Receipts and Disbursements for the period from November 15, 2011 to January 20, 2012

INTRODUCTION

1. On November 15, 2011, the Honourable Mr. Justice Campbell appointed Ira Smith Trustee & Receiver Inc. as receiver (the "**Receiver**") of all of the property, assets and undertaking (the "**Property**") of the Respondent (the "**Appointment Order**"). Attached hereto and marked as **Appendix "1"** is a copy of the Appointment Order.
2. As part of its application seeking the appointment of the Receiver, The Toronto-Dominion Bank (the "**Bank**" or the "**Applicant**") relied upon the affidavit of Kenneth J. Malcolm sworn November 10, 2011 (the "**Malcolm Affidavit**"). Attached hereto and marked as **Appendix "2"** is a copy of the Malcolm Affidavit (without exhibits).
3. Following the Appointment Order a bank draft payable to Rena Setwant Dhaliwal in the amount of \$50,000 was improperly issued from the Respondent's bank account. Furthermore (and in spite of numerous requests), the principals of the Respondent failed to provide the Receiver with requested documents and information relating to the Respondent's business. This resulted in the Receiver preparing its first report dated November 24, 2011 (the "**First Report**"). Attached hereto and marked as **Appendix "3"** is a copy of the First Report (without appendices).
4. On November 25, 2011 the Honourable Madam Justice Mesbur ordered, among other things, that the Principals (as defined in the Order) provide responses to the Receiver's written request for information before the close of business on November 29, 2011, failing which the Receiver may pursue a contempt order (the "**Production Order**"). Pursuant to the Production Order, Jagdev Dhaliwal, Jagden Dhaliwal, Jasdew Dhaliwal and Ravinder Chahal were ordered to provide responses to all requests contained in the Receiver's letter dated November 16, 2011. Attached hereto and marked as **Appendix "4"** is a copy of the Production Order.
5. Any capitalized terms not defined in this Second Report shall have the meaning ascribed to them in the First Report.

PURPOSE OF THE REPORT

6. The purpose of this report is to:
- (a) Seek approval of the Receiver's actions to date, as outlined in the First Report and the Second Report of the Receiver dated January 24, 2012 (the "**Second Report**");
 - (b) Seek approval, *nunc pro tunc*, of the Receiver entering into a property management agreement with Y.L. Hendler Ltd. for management of the condominium complex located at 50 Sunny Meadow Blvd, Brampton, Ontario (the "**Condominium Complex**");
 - (c) Report on operations and management of the Property, including the Condominium Complex;
 - (d) Seek an Order, *nunc pro tunc*, authorizing and directing the Receiver to engage Lebow, Hicks Appraisal Inc. to provide an appraisal of the Condominium Complex;
 - (e) Seek an Order, *nunc pro tunc*, authorizing and directing the Receiver to engage Pelican Woodcliff Inc. to provide condominium registration and construction consulting services concerning the Condominium Complex;
 - (f) Provide an update on the receipt and accounting of trust funds and deposits received by Sikder Professional Corporation ("**Sikder**") in relation to the Condominium Complex;
 - (g) Provide an update on the production of books and records as provided for in the Production Order together with a list of what documentation and information remains outstanding;
 - (h) Report on the Receiver's investigation of the Respondent's business and affairs, including:

- (i) the transfer of funds from the Respondent to 1732037 Ontario Inc. ("1732037"); and
 - (ii) the payment of \$420,000.00 by the Respondent to HomeLife Realty Investments Ltd. for commissions.
- (i) Seek an Order compelling the attendance of Jagdev Dhaliwal, Ravinder Chahal, Ajay Shah, Parm Chahal, Parm Singh Chahal, Harjinder Chahal and Paltu Kumar Sikder at an examination under oath by the Receiver in respect of the affairs of the Respondent;
 - (j) Seek an Order directing 1732037 to repay to the Receiver \$116,917.89 representing funds transferred from the Respondent's bank account to 1732037;
 - (k) Seek an Order restraining the sale, disposition or encumbrance of the real property owned by 1732037 and more particularly described in paragraph 36, herein;
 - (l) Seek an Order directing HomeLife Miracle Realty Ltd and its broker of record, Ajay Shah, to deliver forthwith any and all information, correspondence, documents and/or contracts, including, but not limited to any agency agreements, commission agreements, relating to the Respondent;
 - (m) Seek approval of the Receiver's Statement of Receipts and Disbursements as at January 20, 2012; and
 - (n) Seek approval of the Receiver's fees and disbursements together with the fees and disbursements of its counsel Blaney McMurtry LLP ("Blaney McMurtry").

DISCLAIMER

7. The Receiver has relied upon the financial records of the Respondent, as well as other information supplied by staff and management of the Respondent, its service providers and its financial institutions. The Receiver assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, re-

production or use of this report. Any use which any party, other than the Court, makes of this report or any reliance on or decision made based on this report is the responsibility of such party.

BACKGROUND AND OPERATIONS

8. The Respondent has substantially completed building the Condominium Complex on property which it owned. The Condominium Complex was originally approved for 47 units, but the Receiver's investigation to date indicates that there may be up to 62 units. The Receiver to date has not found any evidence of zoning approval for the increased number of units, but the Receiver's review is ongoing. As described herein, the Receiver continues to experience difficulty in recovering documentation concerning the building and operation of the Condominium Complex.
9. A copy of the Corporation Profile Report for the Respondent is attached hereto and marked as **Appendix "5"** and a copy of the parcel register for the Condominium Complex is attached hereto and marked as **Appendix "6"**.
10. Ravinder Singh Chahal ("**Chahal**") and Jagdev Dhaliwal ("**Dhaliwal**") (collectively, the "**Principals**") are principals of the Respondent.
11. The Receiver has been advised that the Bank is owed \$12,729,112.54 as at October 26, 2011 and that said indebtedness is secured by certain security provided by the Respondents, including, but not limited to a mortgage over the Premises and a general security agreement granted by the Respondents and dated October 10, 2008. The Receiver has not obtained an opinion as to the validity and enforceability of the Bank's security although we expect to do so in the near future.
12. A search of the Personal Property Security Registration Database has been completed and the results of that search are attached hereto and marked as **Appendix "7"**.
13. The Condominium Complex was managed by English Prestige Property Management Inc. (the "**Prior Manager**"). It appears that the principal of the Prior Manager may be

related to the Respondent. The Receiver met with the Prior Manager and discussed management and operations at the Condominium Complex.

14. There are currently ten (10) parties occupying thirteen (13) units in the Condominium Complex. Based on documentation and post-dated cheques seized by the Receiver, the Receiver has prepared a preliminary draft rent roll which was included in the First Report. Attached hereto and marked as **Appendix "8"** is a Unit Status Matrix Chart showing all units in inventory and demonstrating whether the unit is sold, unsold, leased occupied or vacant.
15. The Receiver has also retained the services of Y.L. Hendler Ltd. as property manager for the Condominium Complex (the "**Property Manager**"). The Receiver retained the Property Manager based on its knowledge and experience in managing commercial condominium complexes. Attached hereto and marked as **Appendix "9"** is a copy of the agreement between the Property Manager and the Receiver. As indicated in the agreement, it is subject to the approval of this Honourable Court.
16. Since its appointment, in addition to the activities of the Receiver described in the First and Second Reports and ongoing occupant communications, the Receiver and the Property Manager have tended to various matters at the Condominium Complex as described in the Receiver's memo to file attached hereto and marked as **Appendix "10"**.
17. The Receiver also retained Lebow, Hicks Appraisal Inc. (the "**Appraiser**") to provide an appraisal of the Condominium Complex. Attached hereto and marked as **Appendix "11"** is a copy of the emails between the Receiver and the Appraiser forming the Receiver's agreement with the Appraiser.
18. The Receiver is missing documents pertaining to the tenancies in the Condominium Complex. The Receiver has concerns regarding the legitimacy of each of the tenancies, whether occupancy rent has been, and continues to be, paid by each tenant and whether the tenants are in compliance with their respective agreements of purchase and sale. Accordingly, the Receiver proposes to hold a meeting with the tenants of the Condominium Complex. Attached hereto and marked as **Appendix "12"** is a copy of the

Notice to the tenants, which was delivered on January 20, 2012. The meeting will provide an opportunity to the Receiver and the tenants to express their concerns and gather further information.

RETURN OF THE FUNDS FROM A BANK DRAFT MADE PAYABLE TO RENA SETWANT DHALIWAL IN THE AMOUNT OF \$50,000

19. Notwithstanding receipt of the Appointment Order on November 15, 2011, on November 16, 2011, a representative of the Respondent issued a bank draft (without the Receiver's knowledge or consent) to Rena Setwant Dhaliwal in the amount of \$50,000 (the "**Bank Draft**") from the Respondent's bank account at DUCA. The Bank Draft was issued prior to the Receiver determining the existence of accounts at DUCA and putting DUCA on notice to freeze all accounts on that same day.
20. The funds were delivered to the Receiver on November 24, 2011, after several demands for repayment.
21. On November 30, 2011, the Receiver met with Dhaliwal, at his request. At this meeting, Dhaliwal confirmed that Rena Setwant Dhaliwal is his daughter. He further advised that he withdrew the Bank Draft based on the advice of Chahal's assistant, Ms. Aman Manget.

DISCREPANCY IN TRUST DEPOSITS

22. Pursuant to the Production Order, Sikder was required to transfer to Blaney McMurtry all deposits it held in trust for purchasers of condominium units at the Condominium Complex (the "**Sikder Deposits**").
23. On November 28, 2011, Sikder Professional Corporation delivered a Trust Ledger indicating that \$1,158,415.17 was being held in the trust account. On November 29th, the Sikder Deposits in the sum of \$1,158,415.17 was delivered to Blaney McMurtry and was deposited in the firm's trust account in compliance with the provisions of the *Condominium Act*, 1998, S.O. 1998, c. 19. Attached hereto and marked as **Appendix**

"13" is a copy of the November 28, 2011 letter from Sikder Professional Corporation to the Receiver's counsel enclosing the Sikder Deposits.

24. Pursuant to the Production Order, the Receiver obtained a number of trust ledgers.
25. The following table outlines the trust balances in Sikder's trust ledgers of the various dates:

Sikder Trust Account Balance	Date	Notes
\$2,560,781.98	April 24, 2008	
\$3,446,766.20	August 25, 2009	Plus \$25,362.30 for "interest till date on deposit"
\$3,346,766.20	June 17, 2011	On November 23, 2011, Sikder advised the Receiver that this document did not originate from his office and that his firm has no knowledge of its contents
\$995,384.73	November 23, 2011	
\$1,158,415.17	November 25, 2011	Plus occupancy fees in the amount of \$32,573.58 and interest in the amount of \$5,736.64

26. The Receiver is continuing to investigate the unexplained discrepancy of \$2,293,351.10 between the August 25, 2009 Trust Ledger and the November 25, 2011 Trust Ledger. As well, Sikder advised that the trust account was out of trust by the amount of \$79,568 and that Sikder's accountant would be providing a reconciliation. To date, no such reconciliation or further explanation has been received.

PRODUCTION OF DOCUMENTS

27. Pursuant to the Production Order, the Principals were required to respond to the requests contained in the Receiver's November 16, 2011 letter on or before the close of business on November 29, 2011. A substantial portion of the requested information remains outstanding.

28. On November 30, 2011, the Receiver met with Dhaliwal at his request. Dhaliwal confirmed that he had delivered to the Receiver all documents in his possession and advised that he did not have access to any corporate records other than those, which he previously delivered. Dhaliwal further advised that Chahal would have most of the information sought.
29. On December 6, 2011, the Receiver met with Bateman MacKay LLP ("Bateman"), the external accountants for the Respondent. The documents obtained from Bateman evidenced the transfer of funds by the Respondent to 1732037 Ontario Inc. and to HomeLife Realty Investments Inc., which transfers are summarized in paragraphs 33 to 48, below.
30. By way of letter dated December 15, 2011, counsel to the Receiver wrote to Dhaliwal and Chahal advising that the following items listed in the November 16th letter remained outstanding:
- (a) Item 4 - Information or documentation relating to the TD bank statements with cancelled cheques from July 2009 to October 2010;
 - (b) Item 7 - Minute books and corporate seal of the Respondent;
 - (c) Items 11 and 12 - The whereabouts of the security deposits and last month's rent for tenants at the Condominium Complex;
 - (d) Item 14 - Rent roll for the Condominium Complex;
 - (e) Item 16 - Licences required for operation of the building, machinery and equipment at the Condominium Complex;
 - (f) Item 17 - Occupancy certificates for the Condominium Complex;
 - (g) Item 20 - Billings for the supply of goods and services at the Condominium Complex; and

(h) Item 21 - Documents and information relating to all of the Respondent's assets, including the Condominium Complex.

31. By way of letter dated December 22, 2011, Alistair Riswick of Capo Sgro LLP, counsel to Chahal, advised counsel to the Receiver that he had been retained by Chahal for the purpose of responding to the December 15th letter. Contrary to Dhaliwal's statements to the Receiver during the November 30th meeting, the December 22nd letter states that Chahal was involved in the "construction side of the business" and that Dhaliwal may have more information with respect to the outstanding documents. Mr. Riswick advised that Chahal did not have any of the outstanding documents. He further advised as follows:

- (a) the external accountant may have a copy of the rent roll;
- (b) Dhaliwal may have the minute books;
- (c) the Respondent was not in possession of any licences;
- (d) the occupancy certificates were last located in the "bottom drawer of the desk in the office", presumably at the Condominium Complex;
- (e) Chahal had been contacted by certain unidentified suppliers and has instructed them to contact the Receiver;
- (f) The Respondent's only asset of value is the Condominium Complex; and
- (g) Chahal was in possession of a 2008 Lincoln Navigator which was leased to the Respondent by Ford Credit Canada Leasing. Chahal claimed to be paying the monthly lease payments. He further indicated that there was no equity in the lease.

Attached hereto and marked as **Appendices "14"** and **"15"**, respectively, is a copy of the December 15, 2011 letter from Counsel to the Receiver and the December 22nd letter from Mr. Riswick.

32. On or about January 6, 2012, counsel to the Receiver wrote to Ford Credit Canada Leasing and Chahal requesting that arrangements be made for an assignment of the lease to reflect Chahal as a new assignee within ten (10) days of the date of the letter. The letter asked that, in the alternative, Chahal return the vehicle to either the Receiver or Ford Credit Canada Leasing within ten (10) days of the date of the letter. The letter also requested a copy of the lease and the balance outstanding on the lease pursuant to section 18 of the Ontario *Personal Property Securities Act*, R.S.O. 1990, c. P.10. Attached hereto and marked as **Appendix "16"** is a copy of the January 6, 2012 letter.
33. By way of email dated January 11, 2012, Chahal advised counsel to the Receiver that he is in the process of obtaining financing for the 2008 Lincoln Navigator and requested a meeting with counsel. Counsel to the Receiver responded by email of the same date requesting that Chahal advise of any arrangements to assign the lease and to contact the Receiver directly. Attached hereto and marked as **Appendix "17"** is a copy of the January 11, 2012 exchange between Chahal and counsel to the Receiver.
34. Ford Credit Canada Leasing advised that if they need to take possession of the vehicle, they will do so without further notice to the Receiver. The Receiver performed a desktop appraisal of the vehicle and determined that there is not equity available to the Receiver. Accordingly, notwithstanding the stay of proceedings concerning any action against the Respondent, without either the written consent of the Receiver or the approval of this Honourable Court, as there is no equity in the vehicle, the Receiver is not taking any further action in connection with either the vehicle or the position of Ford Credit Canada Leasing.

RECEIVER'S INVESTIGATIONS

(i) **Transfer of Funds to 1732037 Ontario Inc.**

35. A review of the general ledger and bank statements of the Respondents indicate that, over the span of approximately two years, the Respondent remitted at least \$116,917.89 to 1732037 for the "Orangeville Project". Counsel for 1732037 and Dhaliwal has informed the Receiver that the Orangeville Property is in the process of being developed. Attached

hereto and marked as **Appendix "18"** is a copy of the Respondent's general ledger dated November 30, 2011. Attached hereto and marked as **Appendix "19"** is a copy of the spreadsheet summarizing the payments made by the Respondent to 1732037 prepared by the Receiver.

36. 1732037 is the owner of premises municipally known as 50 Rolling Hills Drive, Orangeville, Ontario (the "**Orangeville Property**"). Both Dhaliwal and Chahal are listed as officers and directors of 1732037. Attached hereto and marked as **Appendix "20"** and **Appendix "21"**, respectively, is a copy of the corporate profile of 1732037 and the parcel register for the Orangeville Property.
37. The Receiver has determined that 1732037 mortgaged the Orangeville Property in favour of 1662850 Ontario Inc. ("**1662850**") and 1616292 Ontario Limited ("**1616292**") pursuant to a charge dated October 26, 2011. The Corporation Profile Report for 1662850 lists Sandeep Chahal and Jagden Dhaliwal as the directors of the company. Jagden Dhaliwal is a director of the Respondent. Attached hereto and marked as **Appendices "22"**, "**23**" and "**24**", respectively, is a copy of the Corporation Profile Reports for 1662850 and 1616292 and the charge registered as DC125497 on October 28, 2011.
38. On or about December 7, 2011, counsel to the Receiver determined that the Orangeville Property was listed for sale. Attached hereto and marked as **Appendix "25"** is a copy of an internet posting, which shows the Orangeville Property for sale. Dhaliwal, a principal of the Respondent, is listed as the contact person and Homelife/Miracle Realty, the realtor engaged by the Respondent to sell units in the Condominium Complex, as the realtor.
39. By way of letter dated December 19, 2011, counsel to the Receiver demanded payment of the \$116,917.89 from 1732037 to the Receiver within ten (10) days of the date of the letter (the "**Demand Letter**"). Attached hereto and marked as **Appendix "26"** is a copy of the December 19, 2011 letter.

40. By way of email dated December 22, 2011, counsel to the Receiver was advised by Charles C. Chang of Chang Advocacy Professional Corporation that he was in the process of being retained by 1732037 and Dhaliwal. Attached hereto and marked as **Appendix "27"** is a copy of the email from Mr. Chang dated December 22, 2011. In an email dated December 23, 2011, counsel to the Receiver wrote to Mr. Chang requesting an undertaking on behalf of 1732037 that it would not take any steps to transfer or further encumber the Orangeville Property. Mr. Chang responded on the same date advising that the Orangeville Property is an ongoing development, and accordingly, he was not sure whether his client would be agreeable to the requested undertaking. An undertaking has yet to be given by 1732037. Attached hereto and marked as **Appendix "28"** is a copy of the email correspondence between counsel to the Receiver and Mr. Chang dated December 23, 2011.
41. On or about January 6, 2012, Mr. Chang advised counsel to the Receiver that Dhaliwal was willing to discuss the affairs of 2012241 and also, on a without prejudice basis, the affairs of 1732037 and its connection to the Respondent. Counsel to the Receiver requested that Dhaliwal attend an examination under oath, which request was refused by Dhaliwal.
42. By way of email dated January 6, 2012, Mr. Chang advised counsel to the Receiver that Dhaliwal and 1732037 deny the claims made in the Demand Letter and intend to "vigorously defend" any proceedings commenced against them.
43. The Receiver is not aware of any other property or assets owned by 1732037 other than the Orangeville Property.
- (ii) **Payments to English Prestige Contracting**
44. A review of the parcel register for the Orangeville Property reveals the existence of a Construction Lien Registration and a Certificate of Action in favour of English Prestige Contracting Inc. ("**English Prestige Contracting**"). Parm Chahal, who shares the same last name with both a principal of the Respondent and a lawyer at Sikder law firm, is listed on the registered construction lien as the agent for English Prestige Contracting.

The lien indicates that English Prestige Contracting entered into a \$1.6 million contract with 1732037 to perform construction work on the Orangeville Property (the "**English Prestige Construction Contract**"). Attached hereto and marked as **Appendices "29"** and "**30**" respectively are copies of the lien registration registered as DC100790 on July 28, 2009 and the Certificate of Action registered as DC102335 on September 11, 2009.

45. The principal of the Prior Manager is the same as the principal of English Prestige Contracting Inc. In addition, the registered had office address and the mailing address of both corporations is identical. Attached hereto and marked as **Appendices "31"** and "**32**" respectively are copies of the Corporation Profile Reports for English Prestige Property Management Inc. and English Prestige Contracting Inc.
46. The Receiver is missing documents evidencing payments to the Prior Manager (i.e. English Prestige Property Management Inc.), which may have ultimately been used to finance the English Prestige Contracting construction contract for the Orangeville Property.
47. The Prior Manager has advised the Receiver that it is owed the amount of \$162,326.75 by the Respondent for property management services provided to the Respondent at the Condominium Complex.

(iii) **Real Estate Commissions to HomeLife Realty Investments Inc.**

48. Based on a review of the Respondent's record, it appears that HomeLife Miracle Realty Ltd. ("**HomeLife Miracle**") was the real estate agency retained to sell the condominium units of the Condominium Complex.
49. However, the Receiver located a fax document dated December 3, 2008 sent by HomeLife Miracle to "Carlos" enclosing a bank draft payable to HomeLife Realty Investments Inc. ("**HomeLife Realty**") in the amount of \$420,000.00. The NUANS corporate search results indicate that HomeLife Realty is not a corporation incorporated pursuant to the laws of Ontario or Canada. Attached hereto and marked as **Appendix "33"** is a copy of the NUANS corporate search results.

50. The fax further enclosed bank statements which indicated that the payment was for "Comiss on sale of units of Sunny Meadow".
51. The Receiver further discovered handwritten notes on the fax cover page indicating "\$1,051,280.99" as "total commissions" and "paid 28/01/09 \$420,000.00". The Receiver has yet to determine the basis for this payment. Attached hereto and marked as **Appendix "34"** is a copy of the fax document dated December 3, 2008 sent by HomeLife Realty.
52. The Receiver thereafter instructed counsel to contact the broker of record, Ajay Shah, to determine the reason for the payment for purported commissions. By way of letter dated December 15, 2011, counsel to the Receiver wrote to Ajay Shah, broker of record at HomeLife Miracle, advising him of the Appointment Order. Counsel to the Receiver requested from Mr. Shah the following information before December 21, 2011:
- (a) an accounting of all commissions received by HomeLife Realty by the Respondent;
 - (b) copies of all agency agreements, commission agreements or any other agreements relating to the Respondent retaining HomeLife Realty as the breakage and listing agent for the Condominium Complex; and
 - (c) all information in the possession of HomeLife Realty relating to the sale of any of the condominium units at the Condominium Complex, including, but not limited to, agreements of purchase and sale, extension agreements, closing documents and any correspondence relating thereto.

Attached hereto and marked as **Appendix "35"** is a copy of counsel to the Receiver's letter dated December 15, 2011.

53. By way of letter dated December 23, 2011 (the "**December 23rd letter**"), Mr. Shah advised counsel to the Receiver that "we" did not receive any payments in relation to the Condominium Complex. He further advised that the total commission owing is estimated

to be \$1,088,362.99. Attached hereto and marked as **Appendix "36"** is a copy of Mr. Shah's letter dated December 23, 2011.

54. By way of letter dated December 29, 2011, counsel to the Receiver advised Mr. Shah of the discrepancy between the December 23rd letter and the results of the investigations of the Receiver. Counsel to the Receiver requested copies of all agency agreements, commission agreements or any other agreements relating to the Respondent retaining HomeLife Miracle as listing agent for the Condominium Complex and all information in the possession of HomeLife Miracle relating to the sale of any condominium units at the Condominium Complex, including, but not limited to, agreements of purchase and sale, extension agreements, closing documents and any related correspondence. Neither the Receiver nor its solicitor has received a response.
55. Upon further investigation, the Receiver discovered that Dhaliwal is a registered broker at HomeLife Miracle according to the website for the Real Estate Counsel for Ontario ("RECO"). Attached hereto and marked as **Appendix "37"** is a copy of the search results from the RECO website as at January 12, 2012.
56. The head office for HomeLife Miracle is listed as 470 Chrysler Drive, Unit 20, Brampton, Ontario. This is also the office address for Chahal Wilshire Group Inc. Attached hereto and marked as **Appendices "38"** and **"39"**, respectively, is a copy of the HomeLife Miracle webpage dated January 12, 2012 and the Corporation Profile Report for Chahal Wilshire Group Inc. The Chahal Wilshire Group Inc., through its website, <http://www.chahalwilshire.com/>, describes itself as healthcare real estate owner and developer, and the developer of the Condominium Complex. Through its website, <http://www.sunnymeadow.ca/contact-information>, the Principals are listed as two of the three persons to contact and the Chrysler Drive address is displayed. Attached hereto and marked as **Appendix "40"** is a copy of the contact webpage.

CONSTRUCTION CONSULTANT

57. As described in the First and Second Reports, the Receiver has spent a considerable amount of time collecting information and documents which should have been found at the Respondent's office located at the Condominium Complex, or should be in the possession of the Principals at locations not owned or leased by the Respondent and provided to the Receiver in accordance with the Appointment Order and the Production Order. Based on the information now available to the Receiver, the Receiver believed that it must retain a Consultant experienced in quantity surveying and construction project management, to advise the Receiver as to what steps must be taken and the costs to be incurred, for the registration of a freehold condominium corporation under the *Condominium Act*, 1998, S.O. 1998, c. 19.
58. Ira Smith Trustee & Receiver Inc., as Receiver of a different unfinished condominium project, previously retained Pelican Woodcliff Inc., to provide consulting services¹. In that matter, Pelican Woodcliff Inc. advised the Receiver on the state of the construction of that project, what construction work needed to be carried out immediately for health and safety reasons, and what work needed to be completed if the Receiver wished to complete that Project. Pelican Woodcliff Inc. ran a request for proposals process for the work the Receiver decided to undertake, advised the Receiver on the various proposals received, assisted the Receiver in entering into construction contracts and monitored the construction work.
59. The Receiver believes that it must retain a Construction Consultant, in order to advise the Receiver on what work needs to be completed in order to be in a position to complete the Condominium Complex for registration, and the costs involved, to allow the Receiver to be in a position to complete sales of condominium units. Such Report along with the appraisal report being obtained as described in this Second Report, will then allow the Receiver to advise this Honourable Court of its recommendations on how to proceed in realizing on the Condominium Complex and to obtain approval for such specific actions.

¹ ICICI BANK CANADA (Applicant) - and - 1539304 ONTARIO LIMITED (Respondents), COURT FILE NO.: CV-08-7714-00CL

60. The Receiver has retained the services of Pelican Woodcliff Inc. as Construction Consultant. The Receiver retained Pelican Woodcliff Inc. based on its knowledge and experience as described herein. Attached hereto and marked as **Appendix "41"** is a copy of the agreement between Pelican Woodcliff Inc. and the Receiver. As indicated in the agreement, it is subject to the approval of this Honourable Court.

INSURANCE

61. The Receiver identified that the insurance coverage obtained by the Respondent for the period from February 15, 2011 to February 15, 2012, was cancelled for payment arrears prior to the appointment of the Receiver and set to expire on January 22, 2012. Attached as **Appendix "42"** is a copy of the letter dated March 9, 2011 from the Respondent's insurance broker, Nacora Insurance Brokers Ltd. ("**Nacora**") summarizing the coverage obtained by the Respondent.
62. Upon identifying the issue, the Receiver contacted its insurance agent who manages the insolvency insurance program across Canada for trustees and receivers, Firstbrook, Cassie & Anderson Ltd. ("**Firstbrook**"). Firstbrook advised that since the building was primarily vacant, the monthly insurance premium for the Condominium Complex would be in the approximate amount of \$12,000 and the Receiver would have to provide proof of insurance coverage from the parties occupying units.
63. The Receiver also contacted Nacora to determine if they could obtain coverage for the Receiver. The Receiver also contacted one other insurance broker known to the Receiver as well as the in house risk manager of the Applicant, to see if either one could obtain suitable coverage.
64. Only Nacora could obtain coverage from one insurer, being Lloyd's London as represented by Southwestern Insurance Group. The monthly insurance premium is \$10,075.50 (including PST), with a minimum earned premium of six months' coverage.
65. The Receiver discussed the insurance situation with representatives of the Applicant that there was no choice but to accept the coverage obtained by Nacora. The Applicant has concurred with this. On January 20, 2012, the Receiver provided Nacora with certified

funds in the amount of \$60,615 and obtained insurance coverage. Attached as Appendix "43" is a copy of the Receiver's insurance binder for the period January 22, 2012 to January 22, 2013.

FEES AND DISBURSEMENTS

66. The Receiver and its legal counsel have maintained detailed records of their professional time and costs since the Receivership Order.
67. The Receiver seeks the approval of its fees and the fees of its counsel, Blaney McMurtry LLP. The fee affidavits for Ira Smith Trustee & Receiver Inc. and Blaney McMurtry LLP are attached hereto and marked as Appendix "44" and Appendix "45" respectively.

RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

68. Attached as Appendix "46" is the Receiver's Statement of Receipts and Disbursements for the period from November 15, 2011 to January 20, 2012, inclusive, indicating funds on hand at that date of \$55,043.42.

COURT APPROVAL AND DIRECTION

69. The Receiver seeks an Order approving the within report and further seeks an Order in the form attached as Schedule A to the Notice of Motion.

All of which is respectfully submitted this 24th day of January, 2012.

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court-Appointed Receiver of
2012241 Ontario Limited

Per:



President

APPENDIX F

Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE SPENCE) MONDAY, THE 30TH DAY
) OF JANUARY, 2012.

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent



APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C.43, as amended

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as Court Appointed Receiver of the Respondent (the "**Receiver**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated November 24, 2011, and the Appendices thereto (the "**First Report**") and the Second Report of the Receiver dated January 24, 2012, and the Appendices thereto (the "**Second Report**") and on hearing the submissions of counsel for the Receiver, counsel for the Applicant and all others present, no other party

attending although duly served, counsel for Jagdev Dhaliwal ("**Dhaliwal**") and 1730237 Ontario Inc. ("**1730237**") not opposing the relief requested,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the Receiver is authorized, *nunc pro tunc*, to enter into a management contract with Y.L. Hendler Ltd. for the management of premises municipally known as 50 Sunny Meadows Blvd, Brampton, Ontario (the "**Condominium Complex**") on the terms of the agreement at Appendix 9 to the Second Report.
3. **THIS COURT ORDERS** that the Receiver is authorized to retain Pelican Woodcliff Inc. as construction consultant to the Condominium Complex.
4. **THIS COURT ORDERS** that the Receiver is authorized to retain Lebow, Hicks Appraisal Inc. to provide an appraisal of the Condominium Complex.
5. **THIS COURT ORDERS** that English Prestige Property Management Inc. and English Prestige Contracting Inc. shall provide to the Receiver an accounting of all monies received from the Respondent and directs English Prestige Property Management Inc. and, upon counsel filing with the Court within 48 hours an affidavit of service on English Prestige Contracting Inc. English Prestige Contracting Inc. to deliver forthwith any and all invoices, receipts, correspondence, documents and or contracts relating to the Respondent.
6. **THIS COURT AUTHORIZES** but does not obligate the Receiver and its counsel to examine under oath any or all of Dhaliwal, Ravinder Chahal ("**Ravinder**", and together with

Dhaliwal, the "Principals"), Ajay Shah ("Shah"), Harjinder Chahal ("Harjinder"), Paltu Kumar Sikder ("Sikder"), Parm Chahal ("Parm") (subject, in respect of Parm Chahal, to counsel filing with the Court in 48 hours an affidavit of service on English Prestige Contracting Inc. and Parm Chahal) and Parm Singh Chahal ("Singh" and together with the Principals, Shah, Harjinder, Sikder, Singh and Parm are collectively the "Examinable Parties") with respect to any and all matters relating to the property, assets or business of the Respondent or any dealing relating thereto.

7. **THIS COURT ORDERS** that should the Receiver serve a Notice of Examination in accordance with the *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194 on any or all of the Examinable Parties, said Examinable Party(s) shall attend an examination under oath (an "Examination") at the date, time and location prescribed in the Notice of Examination, on 5 days' notice.

8. **THIS COURT ORDERS** that if an Examinable Party is required to attend an Examination it shall bring all books, records, correspondence or other information or documentation in its possession to said Examination and the Receiver shall be permitted to take copies of same.

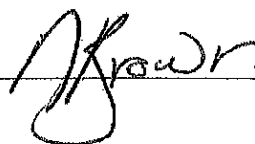
9. **THIS COURT ORDERS** that Home Life /Miracle Realty Ltd and its broker of record, Ajay Shah, shall deliver forthwith any and all information, correspondence, documents and/or contracts, including, but not limited to any agency agreements, commission agreements, relating to the Respondent.

10. **THIS COURT ORDERS** that the relief sought in the within motion as against 1730237 be adjourned on the terms and conditions set forth in a separate Order in this matter dated January 30, 2012.

11. **THIS COURT ORDERS** that the actions of the Receiver and its counsel set forth in the First Report and the Second Report be and the same is hereby approved, subject, in respect of any property management issues addressed in the Second Report, to any objection raised by Mr. Chahal or Mr. Dhaliwal as officers of the Respondent within 7 days.

12. **THIS COURT ORDERS** that the Receiver's fees and disbursements for the period of October 6, 2011 to December 31, 2011 are approved.

13. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, Blaney McMurtry LLP from November 16, 2011 to December 31, 2011 are approved.



Nataasha Brown
Registrar

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

FEB 1 2012

NB

THE TORONTO-DOMINION BANK
Applicant.

and **2012241 ONTARIO LIMITED**
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at **Toronto**

ORDER

BLANEY McMURTRY LLP

Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Lou Brzezinski (LSUC# 19794M)

Domenico Magisano (LSUC# 45725E)

Grace Kim (LSUC# 55262D)

Tel: (416) 593-1221

Fax: (416) 593-5437

Lawyers for Ira Smith Trustee & Receiver Inc., court appointed
Receiver of 2012241 Ontario Limited

APPENDIX G

Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



THE HONOURABLE
JUSTICE SPENCE

) MONDAY, THE 30TH DAY
)
) OF JANUARY, 2012.

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended and SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C.43, as amended

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as Court Appointed Receiver of the Respondent (the "**Receiver**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated November 24, 2011, and the Appendices thereto and the Second Report of the Receiver dated January 24, 2012, and the Appendices thereto and on hearing the submissions of counsel for the Receiver, counsel for the Applicant and all others present, no other party attending although duly served, and on consent of the Receiver and 1730237 Ontario Inc. ("**1730237**"),

1. **THIS COURT ORDERS** that the relief sought in the within motion as against 1730237 be and the same is hereby adjourned to a date to be set by the Registrar, and in any event, upon five days' notice, on the following terms and conditions, on a without prejudice basis:

- (a) 1730237, and any other person having notice of this Order, shall not transfer, encumber or deal in any way with the property municipally known as 50 Rolling Hills Drive, Orangeville, Ontario (more particularly described in Schedule "A", hereto), pending the return of the motion or further Order of this Court.



Natasha Brown
Registrar

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

FEB 4 1 2012
NB

SCHEDULE A**50 Rolling Hills Drive, Orangeville, Ontario**

PCL BLK 106-1 SEC 43M1120; BLK 106, PL 43M1120, EXCEPT PTS 1 & 2, 43R21032; S/T
LT1486454, LT1576532 ORANGEVILLE

THE TORONTO-DOMINION BANK
Applicant

and **2012241 ONTARIO LIMITED**
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

ORDER

BLANEY McMURTRY LLP
Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Lou Brzezinski (LSUC# 19794M)
Domenico Magisano (LSUC# 45725E)
Grace Kim (LSUC# 55262D)
Tel: (416) 593-1221
Fax: (416) 593-5437

Lawyers for Ira Smith Trustee & Receiver Inc., court appointed
Receiver of 2012241 Ontario Limited

APPENDIX H

Court File No. CV-119456-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF SECTION 47.1(1) OF THE BANKRUPTCY
AND INSOLVENCY ACT, R.S.C. 1995, c. B-3, AS AMENDED; and

IN THE MATTER SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990 c. C-43, AS AMENDED

BETWEEN:

TORONTO DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.s.c. 1985, c. B-3, as amended and SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O 1990 c. C.43, as amended

AFFIDAVIT OF RAVINDER CHAHAL

I, RAVINDER CHAHAL, of the City of Brampton, in the Province of Ontario, MAKE
OATH AND SAY AS FOLLOWS:

1. I am one of the officers and directors of the respondent in this matter which, subject to the Receivership Order is the owner of 50 Sunny Meadow.
2. The Court granted an Order to the Receiver allowing them to retain a condominium consultant and an appraiser for the purposes of preparing a report on

the stage of completion of the condominium development and what would be required to complete and register it and to provide an appraisal of the value of the property. The costs of these reports are being charged to the property and estate of the Respondent which we own.

3. The Receiver has taken control of the company books and records that were available to us and copies of the Agreements of Purchase and Sale and Leases in relation to the property and we did not retain copies of those documents.
4. We are attempting to refinance the property and arrange a payout of TD Bank and honor our commitments to the purchasers and tenants of the property and to complete the condominium registration and the sale of units. In order to do this we have had to provide certain information to First National, who we are dealing with in regard to a refinancing, and now produced and shown to me and marked as **Exhibit "A"** to this my Affidavit is the commitment letter in regard to the refinancing.
5. First National wants copies of the Agreements of Purchase and Sale and Leases in regard to the property as part of its due diligence and we likewise need copies in order to prepare to move forward with the refinancing and work towards registration of the condominium in the interests of our company and all of the unit purchasers. These documents are our property and would normally be in our possession.
6. Now produced and shown to and marked as **Exhibit "B"** to this my Affidavit are letters from my counsel to the Receiver's counsel requesting production of the

condo consultant's report, the appraisal report, and subsequently the leases and agreements of purchase and sale.

7. Now produced to shown to me and marked as Exhibit "C" to this my Affidavit are the responses of the Receiver's counsel.
8. I do not believe that we are in the same category as other possible potential purchasers of the building or other stake holders. We are the owners of the property. I believe that we are being charged with the cost of the condo consultant's report and the appraisal report and further that the agreements of purchase and sale and leases are our property and that we do need copies of these in order to deal with the refinancing of the property.
9. There is no reason to impose obligations of confidentiality on us since we are the last ones who would disclose this information to any third party other than the company that is providing us with financing.
10. We wish to refinance the property and save it and complete the condominium registration and the closings of the Agreements of Purchase and Sale. We have no agenda other than this and we wish access to this information in order to accomplish this task.
11. We have no objection to TD receiving copies of these documents but believe other parties should not and are not entitled to Notice of this Motion since we are seeking this Order to facilitate the refinancing of our property and will keep the documents confidential from anyone other than First national. In the circumstance where the refinancing is unsuccessful we do wish to still be in a position to

purchase our building back and do not believe a restriction against this is reasonable.

- 12. We therefore seek provision of the appraisal and the condominium report which we will not share with anyone other than the company that provides us financing for the property. We further seek the Leases and Agreements of Purchase and Sale and will again only share them with the company providing us with financing on the property and we will impress on them and require confidentiality in that regard.
- 13. We therefore request the Court Order the Receiver to provide us with these materials forthwith.
- 14. This Affidavit is sworn in support of a motion for an Order that the Receiver provide to the Respondent's officers copies of the appraisal report, condominium consultants report and all leases and agreements of Purchase and Sale in possession of the Receiver on the basis that these documents will be used for the purposes of seeking refinancing of the property by the Respondent and for no other or improper purpose.

SWORN BEFORE US AT THE CITY)
of Toronto, in the province of Ontario,)
on the 12 day of March, 2012)
_____)
A Commissioner, etc.)
Anthony D. Brien

_____)
RAVINDEER CHAHAL

APPENDIX I

Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3,
as amended and SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990 c. C.43, as amended**

**THIRD REPORT OF THE RECEIVER
DATED MARCH 30, 2012**

**IRA SMITH TRUSTEE &
RECEIVER INC.
167 Applewood Crescent, Suite 6
Concord, ON L4K 4K7**

Telephone: 905.738.4167

Fax: 905.738.9848

Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

THE TORONTO-DOMINION BANK

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**APPLICATION UNDER SUBSECTION 243(1) OF THE
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**THIRD REPORT OF THE RECEIVER
DATED MARCH 30, 2012**

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Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

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**APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3,
as amended and SECTION 101 OF THE COURTS OF JUSTICE ACT,
R.S.O. 1990 c. C.43, as amended**

**THIRD REPORT OF THE RECEIVER
DATED MARCH 30, 2012**

APPENDICES

- A. Order of the Honourable Mr. Justice Campbell dated November 15, 2011
- B. Affidavit of Kenneth J. Malcolm sworn November 10, 2011, without exhibits
- C. Receiver's First Report dated November 24, 2011, without appendices
- D. Order of the Honourable Madam Justice Mesbur dated November 25, 2011
- E. Receiver's Second Report dated January 24, 2012, without appendices
- F. Order of the Honourable Justice Spence dated January 30, 2012
- G. Order of the Honourable Justice Spence dated January 30, 2012
- H. Corporation Profile Report for 2012241 Ontario Limited

- I. Parcel register for 50 Sunny Meadow Blvd., Brampton, Ontario
- J. Personal Property Security Registration Database search of 2012241 Ontario Limited
- K. Affidavit of Teresa Kellen sworn November 15, 2011
- L. Affidavit of Ravinder Singh Chahal and Jagdev Dhaliwal sworn January 27, 2012, without exhibits
- M. Letter to Blaney McMurtry LLP from Lipman Zener Waxman LLP dated January 31, 2012
- N. E-mail correspondence between Domenico Magisano and Tony O'Brien dated March 8, 2012
- O. Letter to Blaney McMurtry LLP from Lipman Zener Waxman LLP dated March 12, 2012
- P. Endorsement of the Honourable Justice Morawetz dated March 20, 2012
- Q. Confidentiality Agreement and Acknowledgement
- R. Confidentiality Agreement executed by The Toronto-Dominion Bank and Acknowledgment executed by Firm Capital Corporation
- S. E-mail correspondence between Ira Smith and Michael Warner dated March 22, 2012
- T. Letter to Blaney McMurtry LLP from Lipman Zener Waxman LLP dated March 23, 2012, enclosing a Confidentiality Agreement executed by 2012241 Ontario Limited and an Acknowledgment executed by First National Financial
- U. E-mail correspondence between Domenico Magisano and Tony O'Brien dated March 26, 2012
- V. Fee affidavit of Ira Smith Trustee & Receiver Inc.
- W. Fee affidavit of Blaney McMurtry LLP
- X. Receiver's Statement of Receipts and Disbursements

INTRODUCTION

1. On November 15, 2011, the Honourable Mr. Justice Campbell appointed Ira Smith Trustee & Receiver Inc. as receiver (the "**Receiver**") of all of the property, assets and undertaking (the "**Property**") of the Respondent (the "**Appointment Order**"). Attached hereto and marked as **Appendix "A"** is a copy of the Appointment Order.
2. As part of its application seeking the appointment of the Receiver, The Toronto-Dominion Bank (the "**Bank**" or the "**Applicant**") relied upon the affidavit of Kenneth J. Malcolm sworn November 10, 2011 (the "**Malcolm Affidavit**"). Attached hereto and marked as **Appendix "B"** is a copy of the Malcolm Affidavit (without exhibits).
3. Following the Appointment Order a bank draft payable to Rena Setwant Dhaliwal in the amount of \$50,000 was improperly issued from the Respondent's bank account. Furthermore (and in spite of numerous requests), the principals of the Respondent failed to provide the Receiver with requested documents and information relating to the Respondent's business. This resulted in the Receiver preparing its first report dated November 24, 2011 (the "**First Report**"). Attached hereto and marked as **Appendix "C"** is a copy of the First Report (without appendices).
4. On November 25, 2011 the Honourable Madam Justice Mesbur ordered, among other things, that the Principals (as defined in the Order) provide responses to the Receiver's written request for information before the close of business on November 29, 2011, failing which the Receiver may pursue a contempt order (the "**Production Order**"). Pursuant to the Production Order, Jagdev Dhaliwal, Jagden Dhaliwal, Jasdew Dhaliwal and Ravinder Chahal were ordered to provide responses to all requests contained in the

Receiver's letter dated November 16, 2011. Attached hereto and marked as **Appendix "D"** is a copy of the Production Order.

5. Following the Production Order the Respondent and its principals Ravinder Singh Chahal ("**Chahal**") and Jagdev Dhaliwal ("**Dhaliwal**") produced some of the information required, but much remained outstanding. Furthermore, the Receiver's investigations uncovered, among other things, that the Respondent had transferred funds to 1732037 Ontario Inc. (a company also controlled by one or both of Mssrs. Chahal and Dhaliwal), together with \$420,000 of commissions paid to the Respondent's real estate agent even though none of the condominium unit sales in question had closed. A detailed explanation of the Receiver's findings can be found in the Receiver's second report dated January 24, 2012 (the "**Second Report**"). A copy of the Second Report is attached hereto and marked as **Appendix "E"**.
6. By motion returnable January 30, 2012, the Receiver sought an order (the "**January 30 Order**") which approved the Receiver's hiring of a property manager together with authorizing the retaining of a construction consultant and an appraiser. The January 30 Order also compelled the principals of the Respondent, among others, to submit to an examination. A copy of the January 30, 2012 Order is attached hereto and marked as **Appendix "F"**.
7. As part of the motion returnable January 30, 2012 the Receiver obtained a further order (the "**Orangeville Property Order**") restraining the dealing with and/or sale of a property municipally known as 50 Rolling Hills Drive, Orangeville, Ontario (the "**Orangeville Property**"). The Orangeville Property is owned by 1732037 Ontario Inc.

which is related to the Respondent. A copy of the Orangeville Property Order is attached and marked as **Appendix "G"**.

PURPOSE OF THE REPORT

8. The purpose of this third report of the Receiver (the "**Third Report**") is to:
- (a) Report on operations and management at the condominium complex located at 50 Sunny Meadow Blvd., Brampton, Ontario;
 - (b) Report on the Receiver's discussions with both the Applicant and the Respondent regarding access to certain documents, reports and appraisals currently in the Receiver's possession;
 - (c) Seek approval of the Receiver's actions to date as outlined in this Third Report;
and
 - (d) Seek approval of the Receiver's fees and disbursements together with the fees and disbursements of its counsel Blaney McMurtry LLP.

DISCLAIMER

9. The Receiver has relied upon the financial records of the Respondent, as well as other information supplied by staff and management of the Respondent, its service providers and its financial institutions. The Receiver assumes no responsibility or liability for loss or damage occasioned by any party as a result of the circulation, publication, reproduction or use of this Third Report. Any use which any party, other than the Court,

makes of this Third Report or any reliance on or decision made based on this report is the responsibility of such party.

BACKGROUND AND OPERATIONS

10. The Respondent has substantially completed building the Condominium Complex on property which it owned. The Condominium Complex was originally approved for 47 units, but the Receiver's investigation to date indicates that there are 64 units. The Receiver to date has not found any evidence of zoning approval for the increased number of units, but the Receiver's review is ongoing. As described herein, the Receiver continues to experience difficulty in recovering documentation concerning the building and operation of the Condominium Complex.
11. A copy of the Corporation Profile Report for the Respondent is attached hereto and marked as **Appendix "H"** and a copy of the parcel register for the Condominium Complex is attached hereto and marked as **Appendix "I"**.
12. Mssrs. Chahal and Dhaliwal (collectively, the "**Principals**") are principals of the Respondent.
13. The Receiver has been advised that the Bank is owed \$12,729,112.54 as at October 26, 2011 and that said indebtedness is secured by certain security provided by the Respondents, including, but not limited to a mortgage over the Premises and a general security agreement granted by the Respondents and dated October 10, 2008. The Receiver has not obtained an opinion as to the validity and enforceability of the Bank's security.

14. A search of the Personal Property Security Registration Database has been completed and the results of that search are attached hereto and marked as **Appendix "J"**.
15. Subsequent to its appointment, the Receiver retained Y.L. Hendler Ltd. to manage the Condominium Complex (the "**Manager**"). The Manager's hiring was approved by this Honourable Court as part of the January 30 Order.
16. As part of the January 30 Order the Receiver was also authorized to retain Pelican Woodcliff Inc. as a construction consultant (the "**Consultant**") and Lebow, Hicks Appraisers Inc. to provide an appraisal of the Condominium Complex (the "**Appraiser**"). The Receiver has been provided with the Appraiser's report (the "**Appraisal**") and is awaiting the Consultant's initial report (the "**Consultant's Report**"). The Consultant has provided the Receiver with an interim report dated February 15, 2012 outlining its findings as of that date, and additional information the Consultant requires from the Receiver and its legal counsel, as well as other certain third parties, before being able to finalize and issue the Consultant's Report.
17. In its Second Report the Receiver advised that it intended to hold a meeting with the tenants and unit owners (collectively, the "**Occupants**") at the Condominium Complex on January 31, 2012 (the "**Condo Meeting**"). The Condo Meeting was attended by 26 parties, who are either tenants, unit owners or counsel thereto, with representatives of the Manager, the Receiver and the Receiver's counsel. As a courtesy, the Receiver permitted the Respondent's counsel to attend the Condo Meeting as an observer.
18. At the Condo Meeting the Receiver provided a summary of its role and an update on operations since its appointment while responding to questions from the Occupants who

attended the meeting. The Receiver also stressed to the Occupants in attendance that it expects each party to honour all obligations under their respective agreements, including, but not limited to, payment of rent and/or occupancy. At the meeting, various Occupants raised issues of concern regarding their respective occupancies and dealings with the Respondent prior to the Receiver's Appointment. The Receiver was concerned that if those concerns as described were accurate, they could possibly lead to such respective Occupants having claims which would have a right of set-off as against any future amounts owing to the Respondent as either occupancy fees or rent.

19. Accordingly, the Receiver advised those in attendance that it was the Receiver's position that the Occupants would have to begin making all required payments under their respective Agreements or Leases with the Respondent beginning February 1, 2012, failing which the Receiver would consult its legal counsel and take whatever action the Receiver deemed appropriate against each such Occupant in arrears. The Receiver also advised that any arrears prior to February 1, 2012 would not be waived and that the Receiver would attempt to reach resolution with each respective Occupant allowing for payment to the Receiver of an agreed upon amount.
20. Many Occupants complied with the Receiver's request, however the following Occupant issues remain:
 - (a) Unit 108 -- the Receiver's opinion based on its review of the lease agreement provided by the tenant is that payment of rent was to commence on March 15, 2012. The tenant took the view that rent is not due until April 15, 2012 and has

provided the Receiver with a series of post-dated cheques commencing on that date.

- (b) Unit 223 -- Counsel for the tenant provided the Receiver with a copy of the lease and advised that his client had concerns with respect to the actual size of the unit. The Receiver offered to pro-rate the monthly rent based on the architect's certified area for the unit, which was slightly smaller than the area in the lease. Counsel for the tenant indicated that his client "does not wish to pursue any entitlement to lease the subject premises, and is prepared to waive and release any leasehold rights that may (sic) have acquired". Counsel also requested a mutual release and the opportunity for the tenant to retrieve its furniture.

While the premises was finished and furnished, the Receiver does not believe that the tenant actually occupied the premises. A security deposit was paid to the Respondent and rent was not paid to the Receiver.

On March 20, 2012, the Receiver advised the tenant's counsel that although it could not provide a release, the tenant may arrange with the Manager to vacate the premises and surrender its keys. As of the date of this Third Report the tenant has not made any arrangements with the Manager to move out and the Receiver is consulting its legal counsel.

- (c) Unit 224 -- The tenant provided payment in the latter half of January for base rent only (as defined in the lease) for the months of December 2011 and January 2012. The Receiver wrote to the tenant and requested payment of all rent owing under the lease plus outstanding rent for the month of February. The tenant indicated

that it had difficulty in making the payments under the lease and suggested that it pay a lesser amount (being approximately a 25% reduction in gross rent). The Receiver advised the tenant that it would accept the proposed payment, but the arrears would not be waived but rather, the situation would be reviewed again in 90 days. The tenant was dissatisfied by that accommodation and the security guard reported that they believed the tenant moved out on February 21, 2012 based on the sighting of a moving truck and moving activity. The Receiver is consulting its legal counsel.

- (d) Unit 200 – the unit owner's cheque for payment of the March Occupancy Fee was returned by the Receiver's bank, marked "Account Closed". The unit owner advised the Receiver on March 30, 2012 that it would look into the matter and replace the cheque.
- (e) Units 323 and 324 – the unit owner's cheque for payment of the March Occupancy Fee was returned by the Receiver's bank, marked "NSF".

The Receiver intends to negotiate a resolution with each of these Occupants.

21. In the Second Report the Receiver reported to this Honourable Court, *inter alia*, about its review of Agreements of Purchase and Sale and the number of units the Receiver believed were sold, leased or available for sale. Not included in that report and related analyses was an Agreement of Purchase and Sale dated October 15, 2011, to acquire units 100, 101, 102 and 103 (the "APS"). In the course of the Receiver's review of documents it had located the APS accompanied by an un-cashed deposit cheque, payable to "Sikder

Professional Corporation". At the time of the Second Report the Receiver did not believe the APS to be bona fide as it did not appear to be accepted by the Vendor.

22. Based on the Receiver's discussions with the Purchaser's counsel, as part of the Receiver's review finalized subsequently, the Receiver's understanding is that the APS: (i) was entered into prior to the date of the Appointment Order; (ii) it was accepted by the Respondent; (iii) payment was stopped on the deposit cheque out of prudence as the Purchaser was concerned as the cheque remained outstanding; (iv) the Purchaser is aware that there is an existing tenant occupying unit 100; and (v) the Purchaser maintains his interest in completing the sales transaction contemplated by the APS.
23. The Receiver sought an opinion from its legal counsel who advised that subject to certain criteria, the APS could be treated in the same manner that the Receiver is treating all other bona fide Agreements of Purchase and Sale, in existence prior to the date of the Appointment Order.
24. The Receiver commissioned a fire inspection of the Condominium Complex, which took place on January 26, 2012. The inspector noted that while access to all units was not available, the noted deficiencies existed primarily in common areas and related to signage, insufficient number of fire extinguishers, batteries in emergency lighting and miscellaneous hardware and accessories for hoses and sprinklers. The Receiver has requested that the company that conducted the inspection remedy the deficiencies. The Receiver received the fire inspection recommendations and costing recently and has approved the work to be completed.

25. The Receiver, through the Manager, has engaged a mechanical contractor to inspect and repair the mechanical systems at the Condominium Complex and to address deficiencies that include a defective domestic hot water boiler that needed replacement (the boiler was covered by a warranty, the additional parts and labour were not) and repairs to circulation pumps. The mechanical contractor has also determined that the previous property manager and/or maintenance personnel did not maintain the roof top cooling tower (a component essential to cooling the building in the summer) and significant repairs will be required.
26. The Receiver has renewed the elevator maintenance contract and has made other minor repairs to the building to enhance safety and security.

NEGOTIATIONS WITH RESPECT TO DISCLOSURE OF DOCUMENTS

27. As described above, and in the prior Receiver Reports filed with this Honourable Court, the Receiver has experienced extreme difficulty obtaining information and documentation (as required in the Appointment Order and the Production Order) from the Respondent and the Principals concerning the affairs of the Respondent. Furthermore, either one or both of them have taken steps before and after the Appointment Order which resulted in frustrating the receivership process. Examples of the Respondent's interactions in the hours prior to obtaining the Appointment Order can be found in the affidavit of Theresa Kellen sworn November 15, 2011 and attached hereto and marked as **Appendix "K"**. The Principals' explanation for some of their actions can be found in their affidavit sworn January 27, 2012 and attached hereto (without exhibits) and marked as **Appendix "L"**.

28. Since obtaining the Appointment Order the Respondent has repeatedly stated that it is on the precipice of a financing arrangement with alternate lender. To date the Respondent has neither advised that alternate financing is in place nor has it provided a financing commitment letter from a new lender.
29. In late January 2012 the Respondent (and presumably the Principals) retained Lipman Zener Waxman LLP as counsel. On January 31, 2012 counsel to the Respondent wrote to counsel for the Receiver reiterating that the Respondent was pursuing alternate financing arrangements. A copy of the letter from counsel to the Respondent to counsel for the Receiver is attached as **Appendix "M"**.
30. The Receiver's legal counsel had agreed with the Respondent's legal counsel that the Receiver would hold the examinations of the Principals under the provisions of the January 30, Order in abeyance, as after the refinancing of the Respondent's indebtedness to the Applicant, it was the Respondent's intention to make application to this Honourable Court for the termination of the receivership. If it was not for the representation that such refinancing was imminent, the Receiver would not have acceded to the request of the Respondent and the Principals.
31. Over the next month both the Applicant and Respondent requested production of certain documentation and records (including the Appraisal and the Consultant's Report, when available) relating to the Respondent's business and operations.
32. The Receiver is cognisant of the fact that the Applicant and the Respondent are likely the largest stakeholders in this Receivership and have a vested interest in the process.

However, the Receiver must balance this position with the potential of compromising a future sales process.

33. The Receiver's concerns are twofold: the first concern is related to the fact that both the Applicant and the Respondent wish to disclose some, or all, of the information obtained to third parties; the second concern relates to disclosure of the Appraisal which was obtained in anticipation of a sales process and will likely be subject to a request for a sealing order.
34. In early March 2012 the Respondent stated that it is contemplating a motion compelling production of documents in the Receiver's possession. On March 8, 2012 the Receiver proposed a resolution to the Respondent's request for documents which was rejected by the Respondent. A copy of the e-mail exchange between counsel to the Respondent and counsel to the Receiver dated March 8, 2012 is attached hereto and marked as **Appendix "N"**.
35. On March 12, 2012 the Respondent wrote to counsel for the Receiver and counsel for the Applicant seeking availability for a 9:30am scheduling appointment so that the Respondent may bring its motion seeking an Order (the "**Disclosure Order**") to require disclosure of various documents including the Appraisal and the Consultant's Report (when received). A copy of the letter from Respondent's counsel dated March 12, 2012 is attached hereto and marked as **Appendix "O"**.
36. On March 16, 2012 counsel for the Respondent and counsel for the Receiver attended a chambers appointment before the Honourable Mr. Justice Wilton-Siegel in hopes of obtaining the Disclosure Order. At the chambers appointment His Honour was advised

that the Applicant consents to the relief sought by the Respondent and the Receiver outlined its concerns but indicated that the Receiver would not oppose the relief sought. His Honour articulated many of the same concerns raised by the Receiver in the March 8, 2012 e-mail and advised that the matter ought to be heard in open court.

37. The parties attended before the Honourable Mr. Justice Morawetz on March 20, 2012 who set the Respondent's motion down for a hearing on April 4, 2012. A copy of the Honourable Mr. Justice Morawetz's endorsement is attached hereto and marked as **Appendix "P"**.
38. In a further attempt to assist the Applicant and the Respondent, the Receiver agreed to permit both parties to view all Agreements of Purchase and Sale and Leases in the Receiver's possession, but not the Appraisal, providing that each party enter into a confidentiality agreement (the "CA"). As the Receiver is aware that both parties may want to disclose the information to third parties (in the Applicant's instance, so that the third party may complete due diligence relating to a potential assignment of debt and security and in the instance of the Respondent so that a third party may complete due diligence relating to a refinancing), the Receiver provided each party with an acknowledgement to be executed by the third party confirming that they are bound by the CA (the "**Acknowledgement**"). A copy of the CA and the Acknowledgement is attached hereto and marked as **Appendix "Q"**.
39. The Applicant executed the CA and had its third party, FC Mortgage Credit Corp. ("**FCC**") execute the Acknowledgement. The Receiver then made arrangements with FCC for review of the documents (with the exception of the Appraisal) at the Receiver's

office. A copy of the CA and Acknowledgement executed by the Applicant and FCC respectively is Attached as **Appendix "R"**. A copy of the e-mail exchange between the Receiver and FCC making arrangements for review of the documents is attached as **Appendix "S"**.

40. The Respondent executed the CA and also executed the Acknowledgement while advising that the Respondent's third party, First National Financial ("FNF") would not be reviewing the documents at this time. A copy of the executed CA and Acknowledgement together with a letter from the Respondent's counsel dated March 23, 2012 is attached hereto and marked as **Appendix "T"**.
41. Once the Receiver obtained the executed CA from the Respondent it attempted to make arrangements with the Respondent to view the documents in question. When advised of the opportunity to view the documents the Respondent responded that it would now be proceeding with its motion and seeking costs against the estate. Needless to say the Receiver was surprised with the tenor of the response. A copy of the e-mail exchange between counsel to the Respondent and counsel to the Receiver on March 26, 2012 is attached hereto and marked as **Appendix "U"**.
42. In the days following the e-mail correspondence of March 26, 2012 there have been numerous other pieces of correspondence between the parties which are not included in this report as they will not aid this Honourable Court in determining the merits of the motion. The Receiver has been advised by the Respondent that it no longer seeks a costs award for this motion.

43. The Receiver remains concerned about the effect of certain disclosure on a future sales process. Having said this, the Receiver has sympathy for both the Applicant and the Respondent who are both trying to ameliorate a difficult situation. The Receiver is also cognisant of the fact that the Applicant's security permits it access to the books and records of the Respondent.
44. The Receiver has advised both the Applicant and the Respondent that it will not oppose the relief sought by the Respondent in its motion.

FEES AND DISBURSEMENTS

45. The Receiver and its counsel have maintained detailed records of their professional time and costs since the Appointment Order.
46. The Receiver seeks approval of its fees and the fees of its counsel, Blaney McMurtry LLP. The fee affidavits for Ira Smith Trustee & Receiver Inc. and Blaney McMurtry LLP are attached hereto and marked as **Appendix "V"** and **Appendix "W"** respectively.

RECEIVER'S STATEMENT OF RECEIPTS AND DISBURSEMENTS

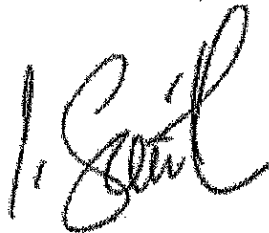
47. Attached as **Appendix "X"** is the Receiver's Statement of Receipts and Disbursements for the period from November 15, 2011 to March 27, 2012 inclusive, indicating funds on hand of \$25,605.46.

COURT APPROVAL AND DIRECTIONS

48. The Receiver seeks:
- (a) an Order approving the Receiver's actions and conduct as set out in this Third Report;
 - (b) an Order approving the Receiver's fees and disbursements for the period of January 1, 2012 to February 29, 2012;
 - (c) an Order approving the fees and disbursements of the Receiver's legal counsel, Blaney McMurtry LLP from December 21, 2011 to February 28, 2012; and
 - (d) advice and directions with respect to the Respondent's motion for production of certain documents currently in the Receiver's possession.

All of which is respectfully submitted this 30th day of March, 2012.

IRA SMITH TRUSTEE & RECEIVER INC.
solely in its capacity as Court-Appointed Receiver of
2012241 Ontario Limited



Per: _____

Ira Smith
President

APPENDIX J



Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE WILTON-SIEGEL

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MONDAY, THE 4TH DAY
OF APRIL, 2012.

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY
AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended and SECTION
101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990 c. C.43, as amended**

ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc., in its capacity as Court Appointed Receiver of the Respondent (the "**Receiver**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Third Report of the Receiver dated March 30, 2012, and the appendices thereto (the "**Third Report**") and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Respondent and all others present, no other party attending although duly served,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the actions of the Receiver and its counsel set forth in the Third Report be and the same is hereby approved.
3. **THIS COURT ORDERS** that the Receiver's fees and disbursements for the period of January 1, 2012 to February 29, 2012 are approved.
4. **THIS COURT ORDERS** that the fees and disbursements of the Receiver's legal counsel, Blaney McMurtry LLP from December 21, 2011 to February 27, 2012 are approved.



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

APR 5 - 2012

MS

THE TORONTO-DOMINION BANK
Applicant

and **2012241 ONTARIO LIMITED**
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at **Toronto**

ORDER

BLANEY McMURTRY LLP
Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Lou Brzezinski (LSUC# 19794M)
Domenico Magisano (LSUC# 45725E)
Grace Kim (LSUC# 55262D)
Tel: (416) 593-1221
Fax: (416) 593-5437

Lawyers for Ira Smith Trustee & Receiver Inc., court appointed
Receiver of 2012241 Ontario Limited

APPENDIX K

THE TORONTO-DOMINION BANK
Respondent

and 2012241 ONTARIO LIMITED
Respondent

April 4/12

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

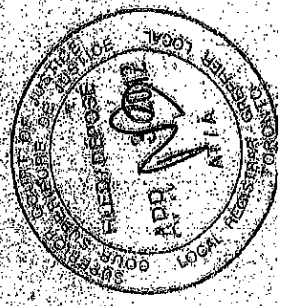
Proceeding Commenced at Toronto

MOTION RECORD

BLANEY McMURTRY LLP
Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Leon Brzezinski (LSUC# 19794M)
Domenico Magsang (LSUC# 45725E)
Grace Kim (LSUC# 55262D)
Tel: (416) 593-1221
Fax: (416) 593-5437

Lawyers for Ira Smith Trustee & Receiver Inc., court appointed
Receiver of 2012241 Ontario Limited



*Applicant
A. O'Brien for applicant
1 Avenue for the Toronto-Dominion Bank
D. Magsano for the Receiver*

*The applicant seeks copies of the
entire set of documentation in the hands of
the Receiver. The Toronto-Dominion Bank asks
copies of whatever is ordered in favour
of the applicant.
The court's request is not yet
completed and therefore not yet
set of material for the Receiver of the
same. The agreement of purchase and sale
and the loan should be available to
both parties upon payment of the
costs set forth by the bank and inclusion of
confidentiality by elements satisfactory
to the Receiver.*

*The applicant's request should not be
denied all other things. The court should be
notified that such documents would not
affect the order of any other matter
that might be brought by the Receiver.
PTD*

000155

The effect of such disclosure for the purposes of disclosure to prospective financiers of the redemption by the applicant runs the risk of excluding an interested party from such sales process. The Receiver, although not objecting to the request, acknowledges similar concerns. Accordingly this request is denied at this time.

The applicant is, however, actively seeking financing to permit a redemption of the T-D mortgage financing and a termination of the receivership. In the event that binding financing arrangements are entered into, the court may be prepared to consider arrangements for such disclosure in order to permit closing of the financing depending upon the circumstances at that time.

The Receiver seeks ~~W. Wilson - h. J.~~ approval of its actions as set out in the third report and of the fees and disbursements of the Receiver and its legal counsel. The T-D bank does not object and no objection has been raised by the applicant. Order to go in the form attached.

W. Wilson - h. J.

APPENDIX L

Ira Smith Trustee & Receiver Inc.
Receiver of 2012241 Ontario Limited

Status of units at 50 Sunny Meadow Blvd.

<u>Unit</u>	<u>Status</u>
100	Leased, being fixtured by tenant & included in Incomplete sale with Units 101-103
101-103	Incomplete Sale
104-105	Occupied pursuant to Reservation Contract only, paying occupancy rent to Receiver
106	Unsold Inventory
107	Unsold Inventory
108	Leased
109	Sold, unoccupied
110	Sold, occupied
111	Unsold Inventory
112	Sold, occupied
113	Unsold Inventory
200	Sold, unoccupied
201	Sold, unoccupied
202	Sold, unoccupied
203	Unsold Inventory
204	Unsold Inventory
205	Sold, unoccupied
206-207	Sold, unoccupied
208-209	Sold, unoccupied
210	Unsold Inventory
211	Sold, unoccupied
212	Unsold Inventory
213	Sold, unoccupied
214	Sold, unoccupied
215	Unsold Inventory
216-217	Sold, unoccupied
218-219	Sold, unoccupied
220-221	Sold, occupied
222	Unsold Inventory

Ira Smith Trustee & Receiver Inc.
Receiver of 2012241 Ontario Limited

Status of units at 50 Sunny Meadow Blvd.

<u>Unit</u>	<u>Status</u>
223	Leased - potentially abandoned
224	Leased - potentially abandoned
300	Unsold Inventory
301	Unsold Inventory
302	Sold, unoccupied
303	Sold, unoccupied
304	Unsold Inventory
305	Unsold Inventory
306-307	Leased
308	Sold, unoccupied
309	Sold, unoccupied
310	Unsold Inventory
311	Unsold Inventory
312	Oral lease for tenant of 313 to use for 1 year rent free
313	Leased
314	Sold, unoccupied
315	Leased
316	Unsold Inventory
317	Unsold Inventory
318-319	Sold, unoccupied
320-321	Sold, unoccupied
322	Unsold Inventory
323-324	Sold, unoccupied

APPENDIX M

APPENDIX N

REDACTED

From: Tejinder Kaushik [mailto:tejinder_kaushik@yahoo.com]
Sent: April-11-12 3:23 PM
To: Jeanie.myers@brampton.ca
Cc: Ira Smith; Brandon Smith
Subject: Objection to the Application # A12-095 (50 Sunny Meadow Blvd, Brampton)

Hi Jeanie

As discussed this morning over the phone, I was informed yesterday by the receiver of the building that an application (A12-095) has been made by 2263105 Ontario Inc seeking permission to use Unit 202 for a commercial school. There is a requirement that a sign needs to be posted at the entrance of the building to inform the buyers/tenants in the building and people in the neighborhood that an application has been made for the minor variance, there was no sign posted in or at the entrance of the building for this application as of 9 o'clock this morning.

I have been operating commercial school (learning center) in Unit # 110, 50 Sunny Meadow Blvd, since March 2011. I got the minor variance approved thru the owner of the building (Application # A10-077 filed by 2012241 Ontario Limited) on May 11, 2010 to operate commercial school. We have the exclusive rights to operate commercial school in this building, no other buyer/tenant within this building is allowed to operate a business of commercial school that could compete with our business.

I spoke with the receiver (Brandon Smith) of the building this morning, their office was not aware of this application until they received this notice from the City of Brampton directly. I don't think that the applicant (2263105 Ontario Inc) has any locus standi to file this application for the minor variance as the applicant is neither the owner of the unit # 202 in the land registry office nor the applicant took the permission from the court appointed receiver. My understanding of the court order appointing the receiver is that all the applications for permits, licenses, or any other kind needs to be approved by the receiver.

The application made by 2263105 Ontario Inc seeking permission to use Unit 202 for the commercial school is in violation of our exclusive use agreement. The second point is that the applicant (2263105 Ontario Inc) has no locus standi to file this application for the minor variance as the applicant is neither the owner of the unit # 202 in the land registry office nor

the applicant took the permission from the court appoint receiver. I request the Committee of Adjustment (City of Brampton) not to allow this minor variance and reject this application.

Please find attached herewith our purchase and sale agreement (first page only) and the exclusive use agreement. Please let me know if you want me to forward you the copy of court order appointing Ira Smith Trustee & Receiver Inc. as the receiver of this building.

Should you need any other info, please let me know.

Thanks

Respectfully submitted,

Tejinder Kaushik
2238104 Ontario Inc.
50 Sunny Meadow Blvd, Unit # 110
Brampton, ON L6R 0Y7
Phone: 416-409-2732

CC:

Brandon Smith, Ira Smith Trustee & Receiver Inc
Ira Smith, Ira Smith Trustee & Receiver Inc
Ira Smith, Ira Smith Trustee & Receiver Inc

APPENDIX O



EXPECT THE BEST

April 13, 2012

Via E-Mail

City of Brampton
Committee of Adjustment
City Clerk's Office
Brampton City Hall
2 Wellington Street West
Brampton, Ontario
L6Y 4R2

2 Queen Street East
Suite 1500
Toronto, Canada M5C 3G5
416.593.1221 TEL
416.593.5437 FAX
www.blaney.com

Attention: Jeanie Myers, Acting Secretary-Treasurer

Dear Sirs:

**Re: Application for Minor Variance No. A12-095 (the "Application")
50 Sunny Meadow Boulevard, Brampton, Ontario (the "Property")**

This will confirm that we act as counsel to Ira Smith Trustee & Receiver Inc. (the "Receiver"), the court-appointed receiver for and on behalf of 2012241 Ontario Limited, the owner of the Property. We understand that Brandon Smith, Senior Vice-President of the Receiver, has provided you with a copy of the receivership order.

The application was brought by 2263105 Ontario Inc. (the "Applicant"), being the occupant of Unit 202 at the Property. The Applicant did not seek the Receiver's consent to bring the Application, and the Receiver only became aware of it upon receipt on April 10, 2012 of the Public Notice mailed to the Receiver by the Committee of Adjustment.

The Receiver is not in a position at this time to consent or withhold its consent to the bringing of the Application, which involves consultation with various stakeholders and, possibly, direction from the court.

Yours very truly,

Blaney McMurtry LLP

Shawn Wolfson
SW/ cs

c. - Ira Smith Trustee & Receiver Inc.

APPENDIX P

SIKDER PROFESSIONAL CORPORATION
Barristers & Solicitors
Paltu Kumar Sikder, LL.M. **Harjinder Chahal, BA, JD**

1620 Albion Road
Suite 306
Toronto, Ontario
M9V 4B4

Tel: (416) 740-2957
Fax: (416) 740-2642
Email: sikder@sikderlaw.ca
Website: www.sikderlaw.ca

January 26, 2012

Blaney McMurtry LLP
Barristers & Solicitors
2 Queen Street East
Suite 1500
Toronto, Ontario
M5C 3G5

Private & Confidential

Attention: Lou Brzezinski

Dear Sir:

Re: Receivership of 2012241 Ontario Limited ("2012241")

Further to our letter dated November 28, 2011 enclosing our remittance for \$1,153,415.17 representing the funds in above Receivership, we may inform that a portion of funds remitted did not relate to the builder and were paid out of our own funds for the following reasons.

In respect of four of the occupancy closings, initial deposits by the purchasers were over accounted and funds were short collected from the purchasers. The deposits made with the builders as shown in our previous communication did not represent the actual moneys received on account of above builder. The deposits were over – stated to a tune of \$ 55,023.00 as the same deposit was factored into computation two times due to our inadvertence at the time of occupancy closing. The initial deposits from four of purchasers were first placed in GIC and subsequently these GI Certificates were cancelled and replaced with another GIC for the same amount. However, while preparing the occupancy closing note, we considered both the GICs not withstanding one GIC was cancelled.

As we over – remitted the funds, we now reserve our right to seek reimbursement of the moneys over – paid to the Official Receiver. The details of overpayment are attached herewith. Please send this money payable to '*Sikder Professional Corporation*'.

JAN/26/2012/THU 02:23 PM

Received:

Jan 26 2012 02:19pm
FAX No.

P. 003000153

We sent our correspondence to all these four lawyers and we received no correspondence back from them. In the meantime, our accountant Mr. Divakar Jeedigunta, C.G.A, reconciled the account this morning and after his reconciliation, we are sending this correspondence to you.

Thanking you,

Yours truly,

SIKDER PROFESSIONAL CORPORATION



Palti Kumar Sikder

Court File No. CV-11-9456-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

THE TORONTO DOMINION BANK

Applicant

-and-

2012241 ONTARIO LIMITED

Respondent

AFFIDAVIT of KAMALDEEP DHALIWAL

I, Kamaldeep Dhaliwal, of the city of Brampton, in the Regional Municipality of Peel, MAKE OATH AND SAY AS FOLLOWS:

1. I am a legal assistant at Sikder Professional Corporation, and as such have personal knowledge of the matters and facts hereinafter deposed to, except where stated to be on information and belief, and where so stated, I verily believe the same to be true.
2. That since Ira Simth Trustees became involved in this matter we have fully complied with all their demands.
3. That we have sent all documents in our control to the trustee.
4. That our office never denied or rejected any requests made by the trustee.
5. That no requests were ever made by the trustee to examine or question any member of our staff including our solicitors.
6. That no requests for questioning of our staff has ever been rejected or denied.

JAN/26/2012/THU 02:24 PM

Received:

Jan 26 2012 02:19pm

FAX No.

P. 006

000166

7. That I make this affidavit for no improper purposes.

SWORN before me at the City
of Toronto, in the Province of Ontario

this 26 day of January 2012

Rohini Prasad
A Commissioner for taking oaths

)
)
)
)
)
)
)
)

Kamaldeep Dhaliwal

Kamaldeep Dhaliwal

Rohini Prasad, a Commissioner,
etc., City of Toronto, for
Sikder Professional Corporation,
Barrister and Solicitor.
Expires February 20, 2012.

JAN/26/2012/THU 02:24 PM

Received:

FAX No. Jan 26 2012 02:19pm

P. 007 000157

THE TORONTO DOMINION BANK v 2012241 ONTARIO
LIMITED

Court file no.: CV-11-9456-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT

Sikder Professional Corporation
1620 Albion Road, Suite 306
Toronto, Ontario
M9V 4B4

Tel: (416) 740-2957
Fax: (416) 740-2642

APPENDIX Q

Court File No. CV-11-9456-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY
AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended and
SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990 c. C.43, as amended

NOTICE OF EXAMINATION

TO: AJAY SHAH

YOU ARE REQUIRED TO ATTEND FOR AN EXAMINATION

- for discovery
 for discovery on behalf (or in place of):
 in aid of execution against:
 on your affidavit dated:
 pursuant to the Order of Mr. Justice Spence dated January 30, 2012
and amended by him on January 31, 2012

ON Friday, the 24th day of February, 2012, at 10:00 a.m., at the offices of:

Victory Verbatim Reporting Services
222 Bay Street
9th Floor
Toronto, ON
Tel: (416) 360-6117

YOU ARE REQUIRED TO BRING WITH YOU and produce at the examination the documents mentioned in subrule 30.04(4) of the Rules of Civil Procedure, and the following documents and things:

all books, accounts, invoices, contracts, letters, statements, records, bills, notes, securities, vouchers, plans, photographs and copies of the same in your possession or under your control in any way relating to the matters which are within the scope of this proceeding or have any reference thereto.

February 10, 2012

BLANEY McMURTRY LLP

Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Lou Brzezinski (LSUC# 19794M)

Domenico Magisano (LSUC# 45725E)

Grace Kim (LSUC# 55262D)

Tel: (416) 593-1221

Fax: (416) 593-5437

Lawyers for Ira Smith Trustee & Receiver Inc., court
appointed Receiver of 2012241 Ontario Limited

AND AJAY SHAH

TO: c/o Home Life Miracle Realty Ltd.
5010 Steeles Ave West, Suite 11A
Toronto, ON M9V 5C6

Tel: (416) 747-9777

Fax: (416) 747-7135

THE TORONTO-DOMINION BANK
Applicant

and **2012241 ONTARIO LIMITED**
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

NOTICE OF EXAMINATION

BLANEY McMURTRY LLP
Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Lou Brzezinski (LSUC# 19794M)
Domenico Magisano (LSUC# 45725E)
Grace Kim (LSUC# 55262D)
Tel: (416) 593-1221
Fax: (416) 593-5437

Lawyers for Ira Smith Trustee & Receiver Inc., court appointed
Receiver of 2012241 Ontario Limited

Court File No. CV-11-9456-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY
AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended and
SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990 c. C.43, as amended

NOTICE OF EXAMINATION

TO: PALTU KUMAR SIKDER

YOU ARE REQUIRED TO ATTEND FOR AN EXAMINATION

- for discovery
 for discovery on behalf (or in place of):
 in aid of execution against:
 on your affidavit dated:
 pursuant to the Order of Mr. Justice Spence dated January 31, 2012.

ON Tuesday, the 21st day of February, 2012, at 10:00 a.m., at the offices of:

Victory Verbatim Reporting Services
222 Bay Street
9th Floor
Toronto, ON
Tel: (416) 360-8117

YOU ARE REQUIRED TO BRING WITH YOU and produce at the examination the documents mentioned in subrule 30.04(4) of the Rules of Civil Procedure, and the following documents and things:

all books, accounts, invoices, contracts, letters, statements, records, bills, notes, securities, vouchers, plans, photographs and copies of the same in your possession or under your control in any way relating to the matters which are within the scope of this proceeding or have any reference thereto.

January 31, 2012.

BLANEY McMURTRY LLP

Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Lou Brzezinski (LSUC# 19794M)

Domenico Magisano (LSUC# 45725E)

Grace Kim (LSUC# 55262D)

Tel: (416) 593-1221

Fax: (416) 593-5437

Lawyers for Ira Smith Trustee & Receiver Inc., court
appointed Receiver of 2012241 Ontario Limited

AND **PALTU KUMAR SIKDER**
TO: c/o Sikder Professional Corporation
Barristers and Solicitors
306-1620 Albion Road
Toronto, ON M9V 4B4

Tel: (416) 740-2957

Fax: (416) 740-2642

THE TORONTO-DOMINION BANK
Applicant

and **2012241 ONTARIO LIMITED**
Respondent

Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

NOTICE OF EXAMINATION

BLANEY McMURTRY LLP

Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Lou Brzezinski (LSUC# 19794M)

Domenico Magisano (LSUC# 45725E)

Grace Kim (LSUC# 55262D)

Tel: (416) 593-1221

Fax: (416) 593-5437

Lawyers for Ira Smith Trustee & Receiver Inc., court appointed
Receiver of 2012241 Ontario Limited

000173

Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY
AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended and
SECTION 101 OF THE *COURTS OF JUSTICE ACT*,
R.S.O. 1990 c. C.43, as amended**

NOTICE OF EXAMINATION**TO: HARJINDER CHAHAL****YOU ARE REQUIRED TO ATTEND FOR AN EXAMINATION**

- for discovery
- for discovery on behalf (or in place of):
- in aid of execution against:
- on your affidavit dated:
- pursuant to the Order of Mr. Justice Spence dated January 31, 2012.

ON Tuesday, the 21st day of February, 2012, at 11:30 a.m., at the offices of:

Victory Verbatim Reporting Services
222 Bay Street
9th Floor
Toronto, ON
Tel: (416) 360-8117

YOU ARE REQUIRED TO BRING WITH YOU and produce at the examination the documents mentioned in subrule 30.04(4) of the Rules of Civil Procedure, and the following documents and things:

all books, accounts, invoices, contracts, letters, statements, records, bills, notes, securities, vouchers, plans, photographs and copies of the same in your possession or under your control in any way relating to the matters which are within the scope of this proceeding or have any reference thereto.

January 31, 2012.

BLANEY McMURTRY LLP

Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Lou Brzezinski (LSUC# 19794M)

Domenico Magisano (LSUC# 45725E)

Grace Kim (LSUC# 55262D)

Tel: (416) 593-1221

Fax: (416) 593-5437

Lawyers for Ira Smith Trustee & Receiver Inc., court
appointed Receiver of 2012241 Ontario Limited

AND HARJINDER CHAHAL

TO: c/o Sikder Professional Corporation
Barristers and Solicitors
306-1620 Albion Road
Toronto, ON M9V 4B4

Tel: (416) 740-2957

Fax: (416) 740-2642

THE TORONTO-DOMINION BANK
Applicant

and **2012241 ONTARIO LIMITED**
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at Toronto

NOTICE OF EXAMINATION

BLANEY McMURTRY LLP
Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Lou Brzezinski (LSUC# 19794M)
Domenico Magisano (LSUC# 45725E)
Grace Kim (LSUC# 55262D)
Tel: (416) 593-1221
Fax: (416) 593-5437

Lawyers for Ira Smith Trustee & Receiver Inc., court appointed
Receiver of 2012241 Ontario Limited

APPENDIX R

**Blaney
McMurtry**
BARRISTERS & SOLICITORS LLP



February 16, 2012

VIA FACSIMILE

Sikder Professional Corporation
Barristers & Solicitors
1620 Albion Road
Suite 306
Toronto, ON M9V 4B4

Attention: Paltu Kumar Sikder and Harjinder Chahal

Dear Sirs:

**Re: Receivership of 2012241 Ontario Limited
Court File Number: CV-11-9456-00CL**

2 Queen Street East
Suite 1500
Toronto, Canada M5C 3G5
416.593.1221 TEL
416.593.5437 FAX
www.blaney.com

Domenico Magisano
416.593.2996
dmagisan@blaney.com

We have received a request to postpone your examination currently scheduled for February 21, 2012. The Receiver will consent to an adjournment on a *sine die* basis providing that both Mr. Sikder and Mr. Chahal acknowledge and agree that the Receiver may issue a new notice of examination compelling their attendance on five (5) days' notice.

We look forward to hearing from you tomorrow providing your anticipated consent to the adjournment on terms.

Yours very truly,

Blaney McMurtry LLP

Domenico Magisano

DM/vg

cc: Client
Lou Brzezinski

**Blaney
McMurtry**
BARRISTERS & SOLICITORS LLP



EXPECT THE BEST

February 17, 2012

VIA FACSIMILE

HomeLife Miracle Realty Ltd.
5010 Steeles Avenue West, Unit 11A
Toronto, ON M9V 5C6

Attention: Ajay Shah, Broker of Record

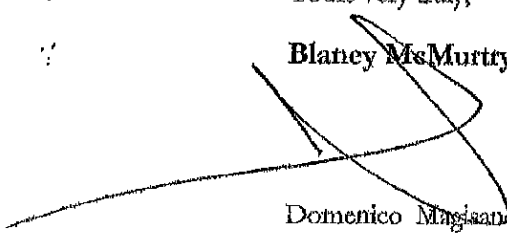
Dear Mr. Shah,

**Re: Receivership of 2012241 Ontario Limited (the "Debtor")
Court File Number CV-11-9456-00CL**

We have received a request to postpone your examination currently scheduled for February 24, 2012. The Receiver will consent to an adjournment on a *sine die* basis providing that you acknowledge and agree that the Receiver may issue a new notice of examination compelling your attendance on five (5) days' notice.

We look forward to hearing from you on Tuesday, February 21, 2012 providing your anticipated consent to the adjournment on terms.

Yours very truly,

Blaney McMurtry LLP


Domenico Magisano

DM/vg

Enclosure

cc: Client
Lou Brzezinski

2 Queen Street East
Suite 1500
Toronto, Canada M5C 3C5
416.593.1221 TEL.
416.593.5437 FAX
www.blaney.com

Domenico Magisano
416.593.2996
dmagisan@blaney.com

**Blaney
McMurtry**
BARRISTERS & SOLICITORS LLP



EXPECT THE BEST

February 23, 2012

VIA FACSIMILE

HomeLife Miracle Realty Ltd.
5010 Steeles Avenue West, Unit 11A
Toronto, ON M9V 5C6

Attention: Ajay Shah, Broker of Record

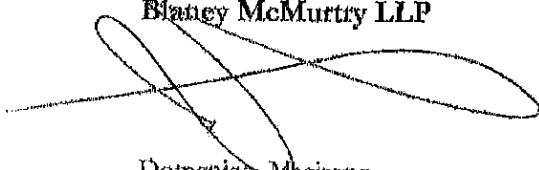
Dear Mr. Shah,

Re: Receivership of 2012241 Ontario Limited (the "Debtor")
Court File Number CV-11-9456-00CL

May we please have a response to our letter dated February 17, 2012, a copy of which is enclosed?

Yours very truly,

Blaney McMurtry LLP


Domenico Magisano

DM/vg

Enclosure

cc: Client
Lou Brzezinski

2 Queen Street East
Suite 1500
Toronto, Canada M5C 3G5
416.593.1221 TEL
416.593.5437 FAX
www.blaney.com

Domenico Magisano
416.593.2996
dmagisan@blaney.com

APPENDIX S

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

Certificate of Non-Attendance

I, Robyn Arndt, Examiner, hereby certify:

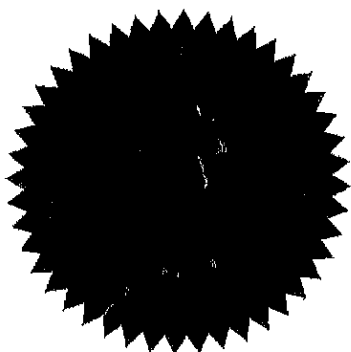
That an appointment was issued for the 24th day of February, 2012, at my office, Victory Verbatim Reporting Services, Suite 900, Ernst & Young Tower, 222 Bay Street, Toronto, Ontario, at the hour of 10:00 a.m. for the examination of Ajay Shah.

That at the said last above mentioned time and place, I was attended by Gary Fung, from the offices of Blaney McMurtry LLP, appearing as solicitors for Ira Smith Trustee & Receiver Inc., court appointed Receiver of 2012241 Ontario Limited, who waited more than fifteen (15) minutes, but the said Ajay Shah did not appear, nor did anyone on their behalf.

Dated at Toronto this 24th day of February, 2012.

Chris Orr (per)

Robyn Arndt
Examiner



APPENDIX T

**meyer, wassenaar
& banach, LLP, Barristers & Solicitors**

Royal Bank Building, 5001 Yonge Street, Suite 301, North York, Ontario, Canada M2N 6P6

Telephone: (416) 223-9191

Fax: (416) 223-9405

Solicitor: Joseph Fried (Ext 230)

Email: jfried@mwb.ca

Please reply to: Deanna Wehby (Ext 224)

Email: dwehby@mwb.ca

Sy. L. Wassenaar, Q.C. (Retired)

Martin Banach, LL.B.

Joseph Fried, LL.B.

Gary D. Goldfarb, LL.B.

Bryan Whealen, B.A., LL.B.

File No. 2012-1164

April 9, 2012

DELIVERED BY EMAIL; ira@irasmithinc.com and FAX: 905.738.9848

Ira Smith Trustee & Receiver Inc.

Trustee in Bankruptcy

Suite 6 - 167 Applewood Crescent

Concord, Ontario L4K 4K7

Attention: Ira Smith

Dear Sir:

**RE: The Toronto-Dominion Bank (the "Bank") Assignment of Mortgage No. PR1554408 to Firm Capital Mortgage Fund Inc. ("Firm") on 50 Sunny Meadow Boulevard, Brampton, Ontario (the "Property")
Mortgagor: 2012241 Ontario Limited**

As you are aware, Firm Capital Mortgage Fund Inc. has purchased the Toronto -Dominion Mortgage.

You have also signed a Consent to resign as the Receiver.

An application is being prepared to the commercial list to appoint a new receiver. We would ask that in the meantime, that only the barest minimum of work be done on this matter.

Yours very truly,

MEYER, WASSENAAR & BANACH, LLP


Martin Banach

MB:dw

APPENDIX U

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**AFFIDAVIT OF IRA SMITH
(Sworn May 3, 2012)**

I, Ira Smith, of the City of Vaughan, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the President of Ira Smith Trustee & Receiver Inc. (“**ISI**”), the court-appointed receiver (the “**Receiver**”) of 2012241 Ontario Limited (the “**Debtor**”). As such, I have knowledge of the matters hereinafter deposed to, except where stated to be on information and belief and whereso stated I verily believe it to be true.
2. ISI was appointed Receiver of all of the assets, properties and undertakings of the Debtor pursuant to an Order of the Ontario Superior Court of Justice dated November 15th, 2011 (the “**Receivership Order**”).
3. Pursuant to paragraph 18 of the Receivership Order, the Receiver and its legal counsel are required to pass their accounts from time to time.

4. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a summary of the fees charged and accounts rendered by the Receiver in respect of the proceedings (the "**Accounts Summary**") for the period from March 1, 2012 to May 1, 2012 plus an additional estimate for the time to complete the receivership administration (the "**Time Period**"). A copy of the invoices rendered by the Receiver and referenced in the Accounts Summary is attached to this my Affidavit as **Exhibit "B"**.

5. The Receiver has filed its Fourth Report with this Honourable Court, which outlines, among other things, the Receiver's overall actions and activities since March 30, 2012.

6. A total of 92.0 hours were expended by the Receiver in connection with this matter during the Time Period, giving rise to fees totaling \$34,100.00 (excluding HST) for an average hourly rate of \$370.65 and allocated approximately as outlined in the Accounts Summary.

7. To the best of my knowledge, the rates charged by the Receiver throughout the course of these proceedings are comparable to the rates charged by other accounting firms in the Greater Toronto Area for the provision of similar services.

8. The hourly billing rates outlined on the Accounts Summary are the normal hourly rates charged by the Receiver for services rendered in relation to similar proceedings.

9. I verily believe that the Receiver's accounts are fair and reasonable in the circumstances.

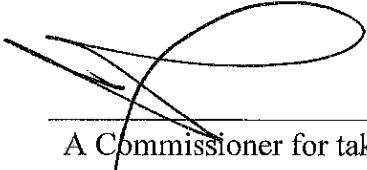
10. Attached as Exhibit "A" to the Affidavit of Grace Kim sworn May 3, 2012 and filed in support of the within motion are copies of the accounts rendered by Blaney McMurtry LLP ("**Blaneys**"), counsel to the Receiver, for the period from January 13, 2012 to April 30, 2012.

11. Blaneys has rendered services throughout these proceedings consistent with instructions from the Receiver, the Receiver has approved all such accounts and I verily believe that the fees and disbursements of Blaneys are fair and reasonable in the circumstances.

12. Providing that there is no opposition to the Receiver's discharge motion ISI expects to incur additional fees not to exceed \$12,500.00 with respect to activities from May 1, 2012 onward to complete its administration of the Debtor's estate. ISI reserves the right to seek payment of additional fees and disbursements should it face opposition to its discharge motion.

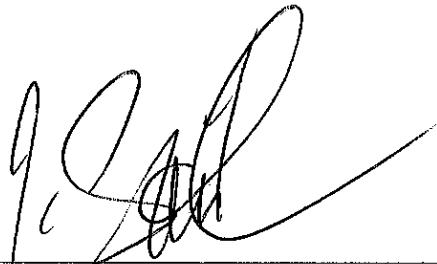
13. The said Affidavit is sworn in connection with the Receiver's motion to have, among other things, its fees and disbursements approved by this Honourable Court and for no improper purpose.

SWORN BEFORE ME at the City of
Vaughan, in the Province of Ontario,
on May 3, 2012.



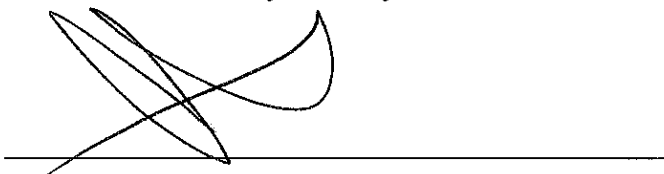
A Commissioner for taking affidavits

D. MAGISANO



Ira Smith

This is **Exhibit "A"** referred to
in the Affidavit of Ira Smith
sworn before me, this
3rd day of May, 2012

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke, positioned above a solid horizontal line.

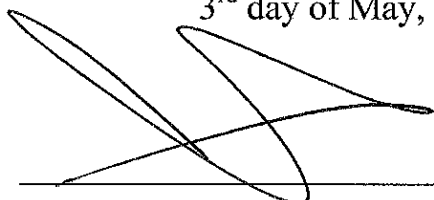
D. Mark Skive Commissioner, etc.

IRA SMITH TRUSTEE & RECEIVER INC.
INTERIM RECEIVER AND RECEIVER OF
2012241 ONTARIO LIMITED

March 1, 2012 – May 1, 2012

Staff Member	Title	Total Hours	Hourly Rate (\$CDN)	Amount Billed (\$CDN)
Ira Smith MBA, CA•CIRP, Trustee	President	37.8	425.00	16,065.00
Brandon Smith BA	Senior Vice- President	26.6	350.00	9,310.00
Martin Wolfe CA	Senior Consultant	1.4	325.00	455.00
S. Sugar CA	Senior Consultant	24.8	325.00	8,060.00
Cheryl Deshane	Associate	<u>1.4</u>	150.00	<u>210.00</u>
Total		<u>92.0</u>	Average hourly rate of \$370.65	34,100.00
Disbursements				187.20
				34,287.20
Add: Estimate to complete (excluding HST)				<u>12,500.00</u>
Net Fees and Disbursements (excluding HST)				<u>\$46,787.20</u>

This is **Exhibit "B"** referred to
in the Affidavit of Ira Smith
sworn before me, this
3rd day of May, 2012

A handwritten signature in black ink, appearing to read 'D. Magisano', is written over a horizontal line.

A Commissioner, etc.
D. MAGISANO

Ira Smith Trustee & Receiver Inc.
Detail Time Sheet

Period from: 01/03/2012 to 04/04/2012

Keyname Sunny Meadow	Full Estate Name in the Matter of the Receivership of 2012241 Ontrario Limited	Date	Employee	Hours Remark	Amount (\$)
		01/03/2012	Cheryl Deshane	0.2 Dealing with occupant coming in discussion and photocopying same	30.00
		01/03/2012	Stanley Sugar	2.3 meeting w I Smith, APS file review examination	747.50
		01/03/2012	Stanley Sugar	0.9 rent roll update & file administration	292.50
		02/03/2012	Stanley Sugar	0.3 rent roll update & file administration	97.50
		05/03/2012	Stanley Sugar	0.7 emails rec'd, rent roll update unit 314, file administration	227.50
		07/03/2012	Cheryl Deshane	0.1 Arranging courier	15.00
		07/03/2012	Stanley Sugar	1.0 Tel call w I Smith, research and email response re current o/s realty taxes	325.00
		08/03/2012	Brandon Smith	1.5 Meeting with Stan re TD's request, prepare schedule to respond, discussion w/ Ira and Stan, revise and issue to TD re unit status	525.00
		08/03/2012	Brandon Smith	0.3 corresp w/ unit owners/PM matters	105.00
		08/03/2012	Ira Smith	2.7 emails w. Ken Matcolm re info needs, telcon w. S. Sugar, Rvw of draft schedule, telcons w. B. Smith and S. Sugar re amendments to schedule and issuance as pdf	1,147.50
		08/03/2012	Stanley Sugar	0.2 TC w Menwars lawyers inquiry re claim of Suzy Johal	65.00
		08/03/2012	Stanley Sugar	2.9 TC w Ira S emails rec'd and instructions, meeting w B Smith, research and preparation re schedule requested	942.50
		08/03/2012	Stanley Sugar	1.2 further revisions and updates requested per I and B Smith	390.00
		09/03/2012	Stanley Sugar	0.4 meeting w B Smith on going issues outstanding	130.00
		12/03/2012	Brandon Smith	0.5 TC w/ Uma @ Sekhon law re 104/5, 302 & 32X; banking, update rent roll/compliance status	175.00
		12/03/2012	Cheryl Deshane	0.2 Bank reconciliation	30.00
		12/03/2012	Stanley Sugar	0.6 meeting w B Smith tenant issues and research	195.00
		14/03/2012	Brandon Smith	0.5 TC w/ Peel water; prep print of o/s invs for prop maintenance	175.00
		14/03/2012	Ira Smith	0.8 Emails re Respondents proposed application to Court re appraisal et al	340.00
		15/03/2012	Ira Smith	0.6 Emails w. legal counsel re proposed app to court by respondents re appraisal and other docs access	255.00
		15/03/2012	Stanley Sugar	0.3 emails rec'd, meeting w B Smith re content and issues	97.50
		15/03/2012	Stanley Sugar	1.2 TC w K Malcolm, email request rec'd, conference call w I & B Smith re request and resulting legal problem identified	390.00
		15/03/2012	Stanley Sugar	0.3 further TC w K Malcolm, email response to group	97.50

Ira Smith Trustee & Receiver Inc.
 Detail Time Sheet
 Period from: 01/03/2012 to 04/04/2012

Keyname	Date	Employee	Full Estate Name	Hours Remark	Amount (\$)
Sunny Meadow	16/03/2012	Brandon Smith	In the Matter of the Receivership of 2012241 Ontrario Limited	0.7 r/w corresp from overnight re production order; matters re NSF occupancy fees; matters re utility bills and occupant matters	245.00
	16/03/2012	Brandon Smith		0.7 review docs and correspondence re APS for units 100-103	245.00
	16/03/2012	Brandon Smith		0.3 matters re RJU motion to compel tovr to release docs	105.00
	16/03/2012	Stanley Sugar		0.7 compile service list for owners/occupants and their counsel	245.00
	19/03/2012	Brandon Smith		2.6 emails rec'd, meetings re current w B Smith, rent roll file admin, conference calls w I & B Smith	845.00
	20/03/2012	Brandon Smith		0.5 corresp w/ dom re unit 100-103 ; fire safety and other PM matters	175.00
	20/03/2012	Brandon Smith		0.8 TC w/ Dom & Shawn re 100-103, email to lawyer for 223 re no release but they can leave; TC w/ Uma @ Sekhon re 104/5, accepted \$5500/mo rent incl HST, rent retroactive to Feb 1/12 and will park prior arrears	280.00
	20/03/2012	Brandon Smith		0.4 ISSUANCE OF PAYMENTS RE OPERATING COSTS	140.00
	20/03/2012	Ira Smith		0.2 Telcon w. D. Lorimer re appraisal issues; Voicemail to D. Magisano re same	85.00
	21/03/2012	Brandon Smith		0.3 matters re property management; corresp w/ mech contractor re chiller	105.00
	21/03/2012	Brandon Smith		0.3 update sale scheds to include 100-103	105.00
	21/03/2012	Brandon Smith		0.2 tc w/ unsec cred	70.00
	21/03/2012	Ira Smith		2.6 emails w. D. Magisano, secured creditor and its counsel, telcon w. D. Magisano, telcon w. D. Lorimer, r/w of updated APS schedule, discussion re same	1,105.00
	22/03/2012	Brandon Smith		0.5 r/w utilities bills, speak w/ M. Wolfe re same; tc w/ mech contractor & corresp w/ PW re parking lot capacity; tc w/ Mr. Anand, pot purch of unit	175.00
	22/03/2012	Martin Wolfe		0.3 tel T L Lengua Enercare re account	97.50
	22/03/2012	Stanley Sugar		4.4 meetings w I & B Smith, complete file review of APS agreements, file administration for third party APS examination and attendance	1,430.00
	23/03/2012	Brandon Smith		2.0 reconcile hydro bills and issue payment; scan and send APS/leases as requested by Blaney's	700.00
	23/03/2012	Stanley Sugar		1.2 meeting w M Warner and I Smith re APS agreement review, APS file administration	390.00
	26/03/2012	Ira Smith		0.8 Various emails from Tony O'Brien, emails and telcon w. D. Magisano re same	340.00

Ira Smith Trustee & Receiver Inc.
Detail Time Sheet
Period from: 01/03/2012 to 04/04/2012

Keyname	Full Estate Name	Date	Employee	Hours	Remark	Amount (\$)
Sunny Meadow	In the Matter of the Receivership of 2012241 Ontrario Limited					
		27/03/2012	Brandon Smith	0.9	prep for and attend conf call w/ Ira, F. Dinino, D. Zamanis, K. Malcolm et al	315.00
		27/03/2012	Brandon Smith	0.7	prepare interim R&D for TD; perform rough calc with Stan re potential sales proceeds; call w/ C. Trotter re tax opinion	245.00
		27/03/2012	Brandon Smith	0.5	email to Grace re Sgro (104/5 deposit) discussion w/Stan re same; request Stan and Martin provide information required by C. trotter for prop tax opinion	175.00
		27/03/2012	Ira Smith	0.6	Telcon w. K. Malcolm re R&D, email R&D to Ken, telcon w. F. DiNino re conf call this afternoon	255.00
		27/03/2012	Ira Smith	0.9	Conf call w. K. Malcolm, F. DiNino, D. Lonimer, A. Pellegriano et al	382.50
		27/03/2012	Stanley Sugar	0.8	meeting w B Smith, calculation of estimated range of values for the building	260.00
		27/03/2012	Stanley Sugar	1.2	cheque deposit issues re unit 104-105	390.00
		27/03/2012	Stanley Sugar	1.0	emails rec'd and research re building specs	325.00
		27/03/2012	Stanley Sugar	0.4	administration matters	130.00
		28/03/2012	Brandon Smith	0.7	provide C. trotter with information required to render tax opinion; update rent roll/compliance schedules re occupancy pmts and confirm; banking re rent pmt	245.00
		28/03/2012	Brandon Smith	0.8	contact CRA to obtain RT0002 account, perform lease review and allocation / separating HST	280.00
		28/03/2012	Stanley Sugar	0.3	meeting with I & B Smith, file update and current issues	97.50
		29/03/2012	Brandon Smith	0.2	discussion w/ M. Wolfe and S. Sugar re HST opinion	70.00
		29/03/2012	Ira Smith	2.1	Emails, telcons w. Dom Magisano and emails w. Robb English re substitution order and consent, working with legal counsel on wording of consent, signing of consent	892.50
		29/03/2012	Martin Wolfe	0.4	tel Andrew McGee Peel Region & submit documentation for deposit refund	130.00
		30/03/2012	Brandon Smith	0.3	TC w/ unit owner for Unit 200 re NSF chq; rcv revised opinion from M Wolfe re HST and brief discussion w/ S. Sugar re impact on budget	105.00
		30/03/2012	Brandon Smith	1.5	rvw draft of 3rd report, independent and w/ IS; make changes etc	525.00
		30/03/2012	Brandon Smith	0.2	Review and commissioning of I. Smith fee affidavit for Third Report	70.00



167 Applewood Cres. Suite 6, Concord, ON L4K 4K7
 Phone: 905.738.4167
 Fax: 905.738.9848
 irasmithinc.com

R-Sunny Meadow

GST/HST # 86236 5699

May 2, 2012

**IN THE MATTER OF THE RECEIVERSHIP OF
2012241 Ontario Limited**

For professional services rendered for the period from April 5, 2012 to May 1, 2012 inclusive, in acting as Receiver of 2012241 Ontario Limited in accordance with the Order of the Ontario Superior Court of Justice (Commercial List) dated November 15, 2011 as follows (detail attached):

<u>Staff</u>	<u>Hourly rate</u>	<u>Hours</u>	
I. Smith, President and Trustee	\$425	18.1	
B. Smith, BA, Senior Vice-President	\$350	8.6	
C. Deshane, Associate	\$150	0.4	
		<u>27.1</u>	
			\$ 10,762.50
 Disbursements:			
Fax	\$ 2.75		
Postage	7.39		
Courier	<u>130.22</u>		
			<u>140.36</u>
			\$ 10,902.86
		HST	<u>1,417.37</u>
			<u>\$ 12,320.23</u>

Account Due When Rendered

Ira Smith Trustee & Receiver Inc.
 Detail Time Sheet
 Period from: 05/04/2012 to 01/05/2012

Keyname	Full Estate Name	Date	Employee	Hours Remark	Amount (\$)
Sunny Meadow	In the Matter of the Receivership of 2012241 Ontario Limited				
		05/04/2012	Brandon Smith	1.0 r/w Witon-Seigel J's endorsement and separate APS from other corresp in files, make copies in accordance w/ WS's order	350.00
		10/04/2012	Brandon Smith	2.0 r/w letter re 202 zoning change, corresp w/ Dom/shawn; call city; corresp w/ Hendler; transmit to owners/occupants	700.00
		11/04/2012	Brandon Smith	1.3 matters re 202/110 zoning; r/w utlis and svc contracts re transition and cancel	455.00
		12/04/2012	Brandon Smith	0.6 conf call w/ Blaneys re Substitution and 202's variance application	210.00
		12/04/2012	Cheryl Deshane	0.2 Dealing with occupants coming in	30.00
		13/04/2012	Brandon Smith	0.2 TC w/ shawn re 202 and ltr to city	70.00
		13/04/2012	Brandon Smith	0.5 emails from unit owners re not able top pay April, emails re unit 202 application to zoning, TC w Jeanie from city of Brampton	175.00
		17/04/2012	Ira Smith	0.6 Email from and reply to D. Magisano re Firm, status of substitution motion and current status from J. Marshall of BLG	255.00
		18/04/2012	Ira Smith	0.6 Telcon w. D. Magisano and follow up emails re status of substitution hearing and need to get it on	255.00
		23/04/2012	Cheryl Deshane	0.2 Bank reconciliation	30.00
		24/04/2012	Ira Smith	3.1 Begin r/w and changes to Fourth Report to Court and emails w. D. Magisano re Report, Draft Order and proposed Court Date	1,317.50
		25/04/2012	Ira Smith	2.7 Continue review and changes to Fourth Report	1,147.50
		26/04/2012	Ira Smith	3.2 Complete review and changes to Fourth Report, disc w. B. Smith re operational issues for Fourth Report	1,360.00
		26/04/2012	Ira Smith	1.4 Changes to Fourth Report and review of current draft	595.00
		27/04/2012	Brandon Smith	1.5 assist I. Smith re 4th report; corresp re PM matters and occupant matters	525.00
		27/04/2012	Ira Smith	6.3 Finalizing and emailing to counsel the Fourth Report to Court v2	2,677.50
		27/04/2012	Ira Smith	0.2 Telcon w. Michael Warner and Joe Freed re security and property management	85.00
		01/05/2012	Brandon Smith	0.5 banking re occupancy prmts, update rent roll; TC w/ lawyer for unit owner	175.00
		01/05/2012	Brandon Smith	1.0 correspond with occupants/counsel who have not provided payment of May occupancy	350.00
				27.1	10,762.50
				Hours	Amount
			Ira Smith	18.1	\$ 7,692.50
			Brandon Smith	8.6	\$ 3,010.00
			Cheryl Deshane	0.4	\$ 60.00
				27.1	\$ 10,762.50
				Average Hourly Rate:	\$ 397.14

THE TORONTO-DOMINION BANK

2012241 ONTARIO LIMITED

And

Applicants

Respondent

Court File No.: CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST -**

Proceeding commenced at Toronto

**AFFIDAVIT OF IRA SMITH
(Sworn May 3, 2012)**

Ira Smith Trustee & Receiver Inc.
167 Applewood Crescent, Suite 6
Concord, ON L4K 4K7

Ira Smith CA●CIRP
Tel: 905-738-4167
Fax: 905-738-9848

Court-appointed receiver of
2012241 Ontario Limited

000195

APPENDIX V

Court File No. CV-11-9456-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

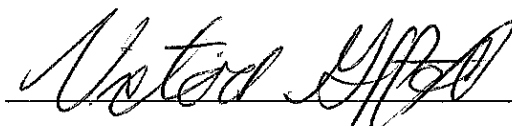
Respondent

AFFIDAVIT OF GRACE KIM

I, **GRACE KIM**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am a lawyer with Blaney McMurtry LLP, counsel for Ira Smith Trustee & Receiver Inc., the court-appointed Receiver (the "**Receiver**") of 2012241 Ontario Limited (the "**Debtor**") in these proceedings. As such, I have knowledge of the matters hereinafter deposed to except where stated to be on information and belief, and where so stated, I verily believe it to be true.
2. Attached and marked as **Exhibit "A"** to this affidavit are copies of the accounts rendered by Blaney McMurtry LLP to the Receiver for legal fees and disbursements for the period from January 13, 2012 to April 30, 2012.
3. A total of approximately 68.9 hours were expended by Blaney McMurtry LLP during the period noted above in performing legal services to the Receiver.

This is **Exhibit "A"** referred to
in the Affidavit of Grace Kim
sworn before me, this
3rd day of May, 2012



A Commissioner, etc.

Victoria Lois Gifford, a Commissioner, etc.,
Province of Ontario, for Blaney McMurtry LLP,
Barristers and Solicitors.
Commissioned on 1, 2014.

ONTARIO SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF
Acting for Court Appointed Receiver of
2012241 Ontario Limited

BILL OF COSTS OF SOLICITOR TO TRUSTEE

From January 13, 2012 to April 12, 2012

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 13, 2012	TC	0.30	Conduct Corporate profile search regarding English Prestige Contracting Inc.; conduct Corporate profile search regarding Chahal Wilshire Group Inc.;
March 2, 2012	DM	0.30	Review emails regarding request from Firm Capital; emails regarding appraisal; consider same;
March 7, 2012	DM	0.20	Email exchange with counsel to TD; conference with counsel to lien claimant;
March 8, 2012	DM	1.10	Review letter from counsel to debtor; conference with lender counsel; conference with client regarding response to letter and consider same; email exchanges with debtor's counsel;
March 12, 2012	DM	1.10	Review email from debtor counsel and respond to same; review termination notice prepared and provide comment; email to client reporting on letter from debtor;
March 13, 2012	SW	0.50	Emails to and from client and discussion with T. Evans regarding proceeding with review of condominium matters to determine costs and timing of proceeding with condominiumization and unit closings;

Date
April 13, 2012

Invoice No.
476514

File No.
102242-0002

-2-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
March 13, 2012	DM	0.60	Review letter from counsel to debtor regarding motion for document production; email exchanges between various counsel regarding same; conference with S. Wolfson regarding information for Pelican Woodcliffe report; emails regarding same;
March 14, 2012	SW	0.40	Various emails to and from client and T. Evans regarding surveyor and planner assistance in determination of estimate and timing and costs to complete condominium;
March 14, 2012	DM	0.70	Review emails regarding production of reports; review draft order and comments thereto; email regarding same; email exchange with S. Wolfson regarding information required from third party and payment for services rendered;
March 14, 2012	TAE	2.30	Discussion with Jason Alfonso, planner with Glen Schnarr's office; discussion with Ophir Dzaldov (surveyor); email exchanges with Shawn and client regarding court order and response from Ophir; follow up call to Colin Chung at Schnarr's office; call to Carmen Caruso at City of Brampton planning; review court order; letter to Colin Chung enclosing court order and requesting disclosure; discussion with Shawn;

Date
April 13, 2012

000201

Invoice No.
476514

File No.
102242-0002

-3-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
March 15, 2012	DM	2.30	Review letter regarding NITES from mortgagee on Orangeville property; consider response to same; review emails regarding information requests; consider options regarding same; conference with R. English regarding same; voicemail exchange with I. Smith regarding same; review motion material served by respondent; email to parties regarding potential hearing tomorrow; message from counsel to lien claimant; draft letter to counsel for lender who issued notice of intention to enforce security; prepare confidentiality agreement;
March 16, 2012	DM	2.20	Emails regarding hearing today; review draft confidentiality agreement; amend same; review respondent's motion record; attend hearing; finalize letter to party serving BIA notice; conference with R. English regarding motion;
March 19, 2012	SW	0.60	Reviewing and considering Agreement of Purchase and Sale produced in respect of Units 100-104 and whether properly constituted; telephone conversation with D. Magisano regarding same and issues in respect of pharmacy exclusivity granted; reviewing emails to and from client regarding same;
March 19, 2012	DM	2.00	Email exchanges regarding upcoming chambers appointment; consider need for receiver's report to court; review APS which includes pharmacy; consider issues with agreement and failure to pay deposit; conference with S. Wolfson regarding exclusive use provision; emails with client regarding same;

Date
April 13, 2012

Invoice No.
476514

File No.
102242-0002

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<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
March 20, 2012	SW	1.30	Conference call with D. Magisano and client regarding Agreement of Purchase and Sale in respect of units 100-104 and specifically issues in respect of exclusivity granted in Agreement of Purchase and Sale and draft condominium declaration; compiling of information required to access timing and costs of proceeding with condominiumization;
March 20, 2012	DM	2.90	Attend chambers appointment; conference with B. Smith regarding purchase of units 100-103; conference with B. Smith and S. Wolfson regarding same; amend and finalize confidentiality agreement; prepare acknowledgement; conference with I. Smith regarding same;
March 21, 2012	DM	0.40	Conferences with R. English regarding production of documents; emails regarding confidentiality agreement; conference with I. Smith regarding above;
March 22, 2012	DM	0.60	Review emails regarding due diligence documents; conference with I. Smith regarding same; begin preparation of receiver's report;
March 22, 2012	TAE	1.00	Review sample agreement of purchase and sale; instruction to clerk; instruction to colleague regarding City discussions;
March 23, 2012	DM	0.50	Email exchanges and discussions with S. Wolfson regarding APS'; review documents regarding same; review letter from counsel to the respondent and respond to same;
March 26, 2012	SW	0.40	Completion of compilation of condominium, title and Agreement of Purchase and Sale documentation;

Date
April 13, 2012

Invoice No.
476514

File No.
102242-0002

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<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
March 26, 2012	DM	1.80	Email exchange with T. O'Brien regarding production of documents;
March 27, 2012	DM	0.10	E-mail exchange with I. Smith regarding review of security documents etc;
March 28, 2012	DM	1.50	Review letter from respondent's counsel; revise draft letter; e-mail to receiver with letters for review; conference with G. Kim regarding termination notices; conferece with I. Smith regarding review of documents requests and preparation of report;
March 29, 2012	DM	3.10	E-mail exchange with respondent's counsel and applicant's counsel; e-mail exchange with I. Smith; conference with I. Smith regarding same and report; continue preparation of report;
March 30, 2012	DM	5.00	Complete draft report; prepare notice of motion; e-mails regarding upcoming motion; make amendments to draft report;
Match 30, 2012	GJK	2.10	Review Agreements of Purchase and Sale for units 200, 323, 324; draft letter to counsel regarding: March occupancy fees; email cottespondence to and from B. Smith regarding: draft letters;
April 2, 2012	DM	0.60	Finalize and serve receiver's report; review letters to unit occupiers / owners who have failed to make payments;
April 2, 2012	TC	0.20	Conduct PPSA verbal search regarding 2012241 Ontario Limited;
April 3, 2012	MPK	0.50	Review background plannning information for the proposed condominium development

Date
April 13, 2012

Invoice No.
476514

File No.
102242-0002

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<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
April 4, 2012	MPK	0.50	Telephone attendance with J Alfonso regarding information on development approvals for proposed condominium project; review Site Plan Agreement for the development
April 4, 2012	SW	1.10	E-mails to and from client and discussions with D. Magisano and T. Evans regarding request by Unit 302 to terminate agreement; reviewing Agreement of Purchase and Sale and related materials provided by client regarding same;
April 4, 2012	DM	3.40	Preparation and attendance at motion court today; e-mail exchanges with B. Smith regarding APS termination for one unit; conference with S. Wolfson regarding same;

OUR FEE HEREIN:	\$13,860.00
FEE HST:	\$1,801.80

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Marc P. Kemerer	1.00	\$390.00	\$390.00
Shawn Wolfson	4.30	\$340.00	\$1,462.00
Domenico Magisano	30.40	\$340.00	\$10,336.00
Tammy Evans	3.30	\$340.00	\$1,122.00
Grace J. Kim	2.10	\$225.00	\$472.50
Terri Cutbush	0.50	\$155.00	\$77.50

Filing Fees* - Non-Taxable	\$127.00
Computer Searches - R.E. (Teraview) * - No-Ta	\$20.00
Cyberbahn Agent Service Fee	\$36.00
Agent's Fees & Disbursements	\$95.00
Courier	\$68.10
Fax Charges	\$29.50
Postage	\$20.70
Binding and Tab Charges	\$15.60
Computer Searches - R.E. (Teraview)	\$121.00

000205

Date
April 13, 2012

Invoice No.
476514

File No.
102242-0002

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TOTAL DISBURSEMENTS:	\$532.90
*HST is not charged	
DISBURSEMENT HST:	<u>\$50.17</u>

TOTAL FEES AND DISBURSEMENTS:	\$14,392.90
TOTAL HST:	<u>\$1,851.97</u>

TOTAL AMOUNT DUE AND PAYABLE:	<u>\$16,244.87</u>
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TOTAL AMOUNT CLAIMED FOR FEES AND DISBURSEMENTS

ONTARIO SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF
Acting for Court Appointed Receiver of
2012241 Ontario Limited - Continuing Matters

BILL OF COSTS OF SOLICITOR TO TRUSTEE

From April 5, 2012 to April 30, 2012

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
April 5, 2012	DM	0.30	Review emails regarding suppliers seeking payment; emails regarding Orangeville property; review emails regarding upcoming Pelican Woodcliff report;
April 9, 2012	DM	1.70	Conference with J. Marshall; review of file in preparation of fourth report; conference with S. Wolfson regarding condominium related matters; email to I. Smith regarding call with J. Marshall; review letter from counsel to respondent and response from TD Bank counsel; email regarding tasks to be completed prior to substitution motion;
April 10, 2012	SW	0.40	Various emails to and from client regarding obligations in respect of minor variance application filed by occupant; brief review of disclosure materials to confirm restrictions on use;
April 10, 2012	DM	1.60	Review letter from counsel to Firm Capital; response to same; review emails regarding variance matter; review and respond to emails regarding disclosure of leases; email exchanges with counsel to Firm Capital regarding work prior to substitution order;

Date
April 30, 2012

Invoice No.
477089

File No.
102242-0003

-2-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
April 11, 2012	SW	0.50	Various emails to and from and telephone conversations with client and D. Magisano regarding application for minor variance brought by occupant and position, if any, to be taken by receiver;
April 11, 2012	DM	1.10	Review emails regarding operational matters; review email from J. Marshall regarding draft substitution order; review email from construction consultant; conference with S. Wolfson regarding request to provide information to committee of adjustments; consider same; call from counsel to BMO regarding English Prestige;
April 12, 2012	MPK	0.50	Review background information regarding development approvals; draft correspondence to Brampton staff regarding status of approvals and site plan matters;
April 12, 2012	SW	1.40	Conference call with client regarding minor variance application brought by unit occupant; lengthy telephone conversation with Secretary-Treasurer of Committee of Adjustment regarding same; email to client advising with respect to discussion with Committee of Adjustment;
April 12, 2012	DM	0.80	Conference call with S. Wolfson, I. Smith and B. Smith regarding minor variance matter and consultant report;
April 13, 2012	SW	1.00	Emails to and from and telephone conversations with Committee of Adjustment and client regarding application for minor variance; letter to Committee of Adjustment confirming receiver yet to have an opportunity to review request with stakeholders;

Date
April 30, 2012Invoice No.
477089File No.
102242-0003

-3-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
April 13, 2012	DM	0.50	Emails regarding committee of adjustment hearing; conference with S. Wolfson regarding same; emails from Deloitte counsel regarding order; message to Deloitte counsel regarding same; preparation of fourth report;
April 16, 2012	SW	0.50	Various emails to and from D. Magisano and T. Evans regarding Condominium Act issues in respect of transferring purchaser deposits to new receiver's trust account;
April 16, 2012	DM	1.30	Preparation of discharge materials; conference with J. Marshall; email exchange with I. Smith regarding rumour that building to be returned to debtor; draft discharge order;
April 17, 2012	DM	1.70	Continue work on report; revise and send order to I. Smith; emails regarding variance application; conferences and voicemails with J. Marshall regarding transition to Deloitte; emails to I. Smith regarding same;
April 18, 2012	DM	0.50	Review emails regarding operational matter; preparation of fourth report; conference with I. Smith regarding operations issues and funding for same; conference with J. Marshall regarding same;
April 19, 2012	DM	5.20	Complete draft receiver's report;
April 20, 2012	DM	2.40	Further additions to the fourth report; message from J. Marshall; email to I. Smith;
April 23, 2012	SW	0.40	Perusing draft Fourth Report; email to D. Magisano regarding same;
April 23, 2012	DM	0.20	Email to I. Smith; consider terms of discharge order;

Date
April 30, 2012

Invoice No.
477089

File No.
102242-0003

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
April 24, 2012	DM	0.20	Conference with S. Wolfson regarding minor variance matters in report;
April 25, 2012	DM	0.20	Arrange for 9:30 appointment; review notice of NSF cheque on unit 108;
April 26, 2012	DM	1.40	Conference with counsel to mortgagee of Orangeville property; email report to client; consider position of mortgagee on Orangeville property; preparation for motion to discharge receiver;
April 27, 2012	DM	0.70	Conference with J. Marshall; emails with I. Smith regarding motion dates; emails from B. Smith regarding collection of rents; review issues regarding notice of sale on Orangeville property with S. Wolfson;
April 30, 2012	DM	2.80	Revise and amend fourth report; begin notice of motion preparation; email exchanges regarding upcoming hearings;

OUR FEE HEREIN: \$9,307.00
 FEE HST: \$1,209.91

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Marc P. Kemetzer	0.50	\$390.00	\$195.00
Shawn Wolfson	4.20	\$340.00	\$1,428.00
Dotmenico Magisano	22.60	\$340.00	\$7,684.00

TOTAL FEES AND DISBURSEMENTS: \$9,307.00
 TOTAL HST: \$1,209.91
 TOTAL AMOUNT DUE AND PAYABLE: \$10,516.91

TOTAL AMOUNT CLAIMED FOR FEES AND DISBURSEMENTS

THE TORONTO-DOMINION BANK
Applicant

and **2012241 ONTARIO LIMITED**
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at **Toronto**

AFFIDAVIT OF GRACE KIM

BLANEY McMURTRY LLP
Barristers and Solicitors
1500 - 2 Queen Street East
Toronto, ON M5C 3G5

Lou Brzezinski (LSUC# 19794M)
Domenico Magisano (LSUC# 45725E)
Grace Kim (LSUC# 55262D)
Tel: (416) 593-1221
Fax: (416) 593-5437

Lawyers for **Ira Smith Trustee & Receiver Inc.**, court appointed
Receiver of 2012241 Ontario Limited

APPENDIX W

Court No: CV-11-9456-00CL
Estate No: 32-158435

Receiver's Interim Statement of Receipts and Disbursements
IN THE MATTER OF THE RECEIVERSHIP OF
2012241 ONTARIO LIMITED
FOR THE PERIOD FROM NOVEMBER 15, 2011 TO May 2, 2012

RECEIPTS	
Cash in bank	\$ 64,451.45
Collection of Rent, TMI and Occupancy Fees (Incl. HST) ¹	284,899.60
TOTAL RECEIPTS:	\$ 349,351.05
DISBURSEMENTS	
Filing Fee Paid to Official Receiver	\$ 70.00
Locksmith	1,294.00
Security	22,867.88
Maintenance & Repairs	40,163.62
Insurance	77,963.50
Bank Charges	104.01
Garbage Disposal	816.00
HST Paid	18,928.91
PST Paid	4,490.00
Pelican Woodcliff LLP Consulting Fees	21,058.20
Appraisal	11,000.00
Property Manager's Fee	7,125.00
Utilities	48,043.22
TOTAL DISBURSEMENTS	\$ 253,924.34
AMOUNT ON HAND AS AT MAY 2, 2012²	\$ 95,426.71

Note 1: Includes \$32,776.06 of HST. Net of input tax credits of \$18,923.91, \$13,852.15 will need to be remitted to Canada Revenue Agency. The Receiver has applied for but has not yet received a remittance account from Canada Revenue Agency.

Note 2: Gross of uncleared receipts.

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 10TH

JUSTICE

)

DAY OF MAY, 2012

)

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

- and -

2012241 ONTARIO LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, as amended and SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43, as amended**

DISCHARGE ORDER

THIS MOTION, made by Ira Smith Trustee & Receiver Inc. in its capacity as the Court-appointed receiver (the "**Receiver**") of the undertaking, property and assets of 2012241 Ontario Limited (the "**Debtor**"), for an order:

1. approving the activities of the Receiver as set out in the Fourth Report of the Receiver dated May 3, 2012 (the "**Fourth Report**");
2. approving the fees and disbursements of the Receiver and its counsel as outlined in the Affidavit of Grace Kim sworn May 3, 2012 and of Ira Smith dated May 3, 2012;
3. approving the distribution of the remaining proceeds available in the estate of the Debtor;

4. discharging Ira Smith Trustee & Receiver Inc. as Receiver of the undertaking, property and assets of the Debtor;
5. confirming that the Receiver's Charge, as defined in the Order of the Honourable Mr. Justice Campbell dated November 15, 2011 (the "**Initial Order**") remains in force until the Receiver's fees and disbursements and the fees and disbursements of its counsel are paid in full; and
6. releasing Ira Smith Trustee & Receiver Inc. and its counsel from any and all liability, as set out in paragraph 9 of this Order,

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report, the affidavits of the Receiver and its counsel as to fees (the "**Fee Affidavits**"), and on hearing the submissions of counsel for the Receiver, Firm Capital, the Respondent and all others present, no one else appearing although served as evidenced by the Affidavit of Victoria Gifford, sworn May 3, 2012, filed;

1. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Fourth Report, are hereby approved.
2. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out in the Fourth Report and the Fee Affidavits, are hereby approved.
3. **THIS COURT AUTHORIZES AND DIRECTS** the Receiver to transfer all of the undertaking, property and assets of the Debtor to Deloitte and Touche Inc. in its capacity as the proposed receiver of the Respondent (the "**Proposed Receiver**").
4. **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved and the remaining obligations of the Receiver, the Receiver shall pay the monies remaining in its hands to the Proposed Receiver.
5. **THIS COURT ORDERS** that the Receiver continues to have the benefit of the Receiver's Charge until its fees and disbursements and the fees and disbursements of its counsel are paid in full.

6. **THIS COURT ORDERS** that all deposits held by the Receiver's counsel as escrow agent (the "**Condominium Deposits**") pursuant to paragraph 3 of the Order of the Honourable Madam Justice Mesbur dated November 25, 2011 (the "**Escrow Agent Order**") be transferred to Meyer, Wassenaar & Banach LLP (the "**New Escrow Agent**").

7. **THIS COURT ORDERS** that the New Escrow Agent shall hold the Condominium Deposits as escrow agent, without liability, in accordance with the terms of the Escrow Agent Order.

8. **THIS COURT ORDERS** that upon payment of the amounts set out in paragraphs 4 and 6 hereof and upon the Receiver filing a certificate certifying that it has completed said activities, the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver and its counsel shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of Ira Smith Trustee & Receiver Inc. in its capacity as Receiver.

9. **THIS COURT ORDERS AND DECLARES** that Ira Smith Trustee & Receiver Inc. and its counsel Blaney McMurtry LLP are hereby released and discharged from any and all liability that they now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of Ira Smith Trustee & Receiver Inc. while acting in its capacity as Receiver and/or Escrow Agent herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, Ira Smith Trustee & Receiver Inc. and its counsel are hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.

TAB 4

1. approving the activities of the Receiver as set out in the ~~report~~Fourth Report of the Receiver dated [~~DATE~~]May 3, 2012 (the "Fourth Report");
2. approving the fees and disbursements of the Receiver and its counsel; as outlined in the Affidavit of Grace Kim sworn May 3, 2012 and of Ira Smith dated May 3, 2012;
3. approving the distribution of the remaining proceeds available in the estate of the Debtor; ~~and~~
4. discharging [~~RECEIVER'S NAME~~]Ira Smith Trustee & Receiver Inc. as Receiver of the undertaking, property and assets of the Debtor; ~~and~~
5. confirming that the Receiver's Charge, as defined in the Order of the Honourable Mr. Justice Campbell dated November 15, 2011 (the "Initial Order") remains in force until the Receiver's fees and disbursements and the fees and disbursements of its counsel are paid in full;
and
6. ~~5.~~ releasing [~~RECEIVER'S NAME~~]Ira Smith Trustee & Receiver Inc. and its counsel from any and all liability, as set out in paragraph 59 of this Order¹;

was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report, the affidavits of the Receiver and its counsel as to fees (the "Fee Affidavits"), and on hearing the submissions of counsel for the Receiver, Firm Capital, the Respondent and all others present, no one else appearing although served as evidenced by the Affidavit of [~~NAME~~]Victoria Gifford, sworn [~~DATE~~]May 3, 2012, filed²;

1. **THIS COURT ORDERS** that the activities of the Receiver, as set out in the Fourth Report, are hereby approved.
2. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its counsel, as set out in the Fourth Report and the Fee Affidavits, are hereby approved.

¹~~If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.~~

²~~This model order assumes that the time for service does not need to be abridged.~~

3. THIS COURT AUTHORIZES AND DIRECTS the Receiver to transfer all of the undertaking, property and assets of the Debtor to Deloitte and Touche Inc. in its capacity as the proposed receiver of the Respondent (the "Proposed Receiver").

4. ~~3.~~ THIS COURT ORDERS that, after payment of the fees and disbursements herein approved and the remaining obligations of the Receiver, the Receiver shall pay the monies remaining in its hands to [NAME OF PARTY]³, the Proposed Receiver.

5. THIS COURT ORDERS that the Receiver continues to have the benefit of the Receiver's Charge until its fees and disbursements and the fees and disbursements of its counsel are paid in full.

6. THIS COURT ORDERS that all deposits held by the Receiver's counsel as escrow agent (the "Condominium Deposits") pursuant to paragraph 3 of the Order of the Honourable Madam Justice Mesbur dated November 25, 2011 (the "Escrow Agent Order") be transferred to Meyer, Wassenaar & Banach LLP (the "New Escrow Agent").

7. THIS COURT ORDERS that the New Escrow Agent shall hold the Condominium Deposits as escrow agent, without liability, in accordance with the terms of the Escrow Agent Order.

8. ~~4.~~ THIS COURT ORDERS that upon payment of the amounts set out in paragraph ~~3~~ paragraphs 4 and 6 hereof [and upon the Receiver filing a certificate certifying that it has completed the ~~othersaid~~ activities described in the Report], the Receiver shall be discharged as Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Receiver shall remain Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Receiver and its counsel shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of [RECEIVER'S NAME] Ira Smith Trustee & Receiver Inc. in its capacity as Receiver.

³ ~~This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.~~

9. 5. ~~[THIS COURT ORDERS AND DECLARES that [RECEIVER'S NAME] is~~Ira Smith Trustee & Receiver Inc. and its counsel Blaney McMurtry LLP are hereby released and discharged from any and all liability that ~~[RECEIVER'S NAME]they~~ now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of ~~[RECEIVER'S NAME]~~Ira Smith Trustee & Receiver Inc. while acting in its capacity as Receiver and/or Escrow Agent herein, save and except for any gross negligence or wilful misconduct on the Receiver's part. Without limiting the generality of the foregoing, ~~[RECEIVER'S NAME] is~~Ira Smith Trustee & Receiver Inc. and its counsel are hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Receiver's part.]⁴

⁴~~The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.~~

Document comparison by Workshare Compare on May 03, 2012 12:56:17 PM

Input:	
Document 1 ID	file://H:\File\Word\Precedents\Orders\model_receivership_discharge_order.doc
Description	model_receivership_discharge_order
Document 2 ID	file://H:\File\Word\CLIENTS\ACTIVE\Ira Smith re Sunny Meadows\pleadings\Fourth Report\Order.doc
Description	Order
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	54
Deletions	84
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	138

THE TORONTO-DOMINION BANK
Applicant

and **2012241 ONTARIO LIMITED**
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding Commenced at **Toronto**

MOTION RECORD

BLANEY McMURTRY LLP
Barristers and Solicitors
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Toronto, ON M5C 3G5

Lou Brzezinski (LSUC# 19794M)
Domenico Magisano (LSUC# 45725E)
Grace Kim (LSUC# 55262D)
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Lawyers for **Ira Smith Trustee & Receiver Inc.**, court appointed
Receiver of 2012241 Ontario Limited