

**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 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 April 4, 2012, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

**THE MOTION IS FOR:**

- (a) if necessary, an Order abridging and validating the time for service of this Notice of Motion, the Third Report of the Receiver dated March 30, 2012 (the “**Third 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;

- (b) an order approving the Receiver's actions and conduct as set out in the Third Report;
- (c) an order seeking advice and directions relating to the Respondent's motion seeking delivery of certain documents currently in the Receivers position;
- (d) an order approving the Receiver's fees and disbursements for the period of January 1, 2012 to February 29, 2012;
- (e) 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
- (f) such further and other relief as this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) On March 13, 2012 the Respondent served a motion record seeking, amongst other things, an order requiring the Receiver to deliver up certain documents that are currently in its possession relating to the Respondent and the commercial condominium complex located at 50 Sunny Meadow Boulevard, Brampton, Ontario (the "**Condominium Complex**");
- (b) the Receiver is not opposing the Respondent's motion and understands why the Respondent would like access to said documents, however, the Receiver is

concerned about the effect of early disclosure of certain documents prior to instituting a sales process;

- (c) the Receiver has obtained an appraisal from Lebow, Hicks Appraisal Inc. The appraisal was commissioned in anticipation of a sales process and the Receiver will be seeking a sealing order with respect to the appraisal. The Receiver has concerns about disclosing the appraisal to third parties prior to the completion of a sales process;
- (d) both the Applicant and the Respondent have executed confidentiality agreements provided by the Receiver and have been afforded the opportunity to review certain documents and records in the Receivers possession as a result. The Receiver has not permitted either the Applicant or the Respondent to take copies of any of the documents, nor has the Receiver permitted the Applicant and the Respondent to view the appraisal;
- (e) The Applicant and the Respondent wish to disclose this information with certain third parties (in the Applicant's instance, the third party is considering an assignment of its debt and security and in the Respondent's instance, the third party is considering refinancing the company's business and affairs).
- (f) The Receiver is providing these third parties with access to the same documents that have been made available to the Applicant and the Respondent providing that the Receiver is provided with an acknowledgement confirming that the third party will be bound by the terms of the confidentiality agreement; and

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

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

- (a) the Third Report of the Receiver dated March 30, 2012, and appendices attached thereto; and
- (b) such further and other evidence as counsel may advise and this Honourable Court permit.

April 2, 2012

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**TO: MANAGEMENT INC.**  
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Brampton, ON L6S 5N4

**AND ENGLISH PRESTIGE CONTRACTING INC.**

**TO:** 8 Building B Automatic Road  
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Court File No. CV-11-9456-00CL

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

**IRA SMITH TRUSTEE &  
RECEIVER INC.**

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

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

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**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. Msrs. 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 30<sup>th</sup> day of March, 2012.

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

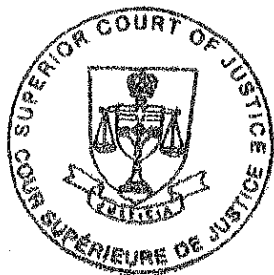


Per: \_\_\_\_\_

Ira Smith  
President

# APPENDIX A

000029



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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE *MP* ) TUESDAY, THE 15<sup>TH</sup>  
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 <sup>Two (2) Clk</sup> ~~seven (7)~~ days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

  
\_\_\_\_\_

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

NOV 15 2011

PER/PAR: 

## 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:

11369058.1

11369058\_1

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

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield 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

000045

# 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 Jadgen 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 4<sup>TH</sup> 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 4<sup>TH</sup> 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:

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

\*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;



- (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 10<sup>th</sup> day of November, 2011.

COMMISSIONER, ETC.

  
KENNETH J. MALCOLM

000067

**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**

Applicant

and

**2012241 ONTARIO LIMITED**

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  
Brookfield 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

000069

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.**  
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**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**

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**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 Keilen 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.

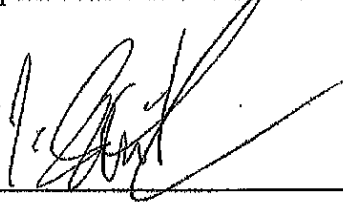
#### **COURT APPROVAL AND DIRECTION**

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 24<sup>th</sup> day of November, 2011.

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

Per:



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President

# APPENDIX D



ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE

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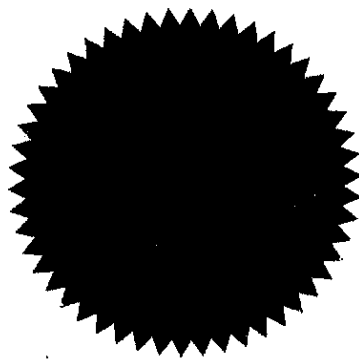
FRIDAY, THE 25<sup>TH</sup> DAY

JUSTICE

*MESKUR*

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 ~~within 72 hours of the date of this Order~~ <sup>✓ by the</sup> 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;

*✓ by the*  
*✓ Ken*  
*Copy of business on November 29 2011 ✓ Ken*

- (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 Plur*
- (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.

*Muslu G.*

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

NOV 25 2011

PER/FAR



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



# APPENDIX E

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

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**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,  
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**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:

<b>Sikder Trust Account Balance</b>	<b>Date</b>	<b>Notes</b>
\$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 Council 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 services<sup>1</sup>. 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.

---

<sup>1</sup> 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 24<sup>th</sup> 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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE )  
JUSTICE SPENCE ) MONDAY, THE 30<sup>TH</sup> 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.

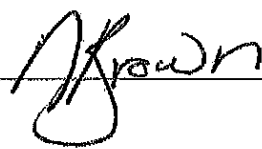
9. **THIS COURT ORDERS** that Home Life /Miracle Realty Ltd and its broker of record, Ajay Shah, shall deliver forthwith any and all information, correspondence, documents and/or contracts, including, but not limited to any agency agreements, commission agreements, relating to the Respondent.

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.



---

Natasha Brown  
Registrar

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

FEB 1 2012



**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 30<sup>TH</sup> 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

**Leu 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

Request ID: 013725311  
Transaction ID: 46014942  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2011/11/21  
Time Report Produced: 12:45:31  
Page: 1

000126

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>	<b>Incorporation Date</b>
2012241	2012241. ONTARIO LIMITED	2002/06/04
		<b>Jurisdiction</b>
		ONTARIO
<b>Corporation Type</b>	<b>Corporation Status</b>	<b>Former Jurisdiction</b>
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE
<b>Registered Office Address</b>		<b>Date Amalgamated</b>
		NOT APPLICABLE
97 SUNFOREST DRIVE		<b>Amalgamation Ind.</b>
		NOT APPLICABLE
		<b>New Amal. Number</b>
		NOT APPLICABLE
BRAMPTON		<b>Notice Date</b>
ONTARIO		NOT APPLICABLE
CANADA L6Z 3Y5		<b>Letter Date</b>
		NOT APPLICABLE
<b>Mailing Address</b>		<b>Revival Date</b>
		NOT APPLICABLE
JAGDEV DHALIWAL		<b>Continuation Date</b>
97 SUNFOREST DR		NOT APPLICABLE
		<b>Transferred Out Date</b>
BRAMPTON		NOT APPLICABLE
ONTARIO		<b>Cancel/Inactive Date</b>
CANADA L6Z 3Y5		NOT APPLICABLE
		<b>EP Licence Eff.Date</b>
		NOT APPLICABLE
		<b>EP Licence Term.Date</b>
		NOT APPLICABLE
		<b>Date Commenced in Ontario</b>
		NOT APPLICABLE
		<b>Date Ceased in Ontario</b>
		NOT APPLICABLE
<b>Activity Classification</b>	<b>Number of Directors</b>	
	<b>Minimum</b>	
	<b>Maximum</b>	
NOT AVAILABLE	00001	00010
		<b>Date Commenced in Ontario</b>
		NOT APPLICABLE
		<b>Date Ceased in Ontario</b>
		NOT APPLICABLE

Request ID: 013725311  
Transaction ID: 46014942  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2011/11/21  
Time Report Produced: 12:45:31  
Page: 2

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## CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2012241	2012241 ONTARIO LIMITED

Corporate Name History	Effective Date
2012241 ONTARIO LIMITED	2002/06/04

Current Business Name(s) Exist:	NO
Expired Business Name(s) Exist:	NO

Administrator: Name (Individual / Corporation)	Address
RAVINDER CHAHAL	17 ADRIONDACK CRES  BRAMPTON ONTARIO CANADA L6R 1E5

Date Began	First Director	Resident Canadian
2008/06/20	NOT APPLICABLE	
Designation	Officer Type	
OFFICER	SECRETARY	

Request ID: 013725311  
Transaction ID: 46014942  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2011/11/20 000128  
Time Report Produced: 12:45:31  
Page: 3

## CORPORATION PROFILE REPORT

<b>Ontario Corp Number</b>	<b>Corporation Name</b>
2012241	2012241 ONTARIO LIMITED

**Administrator:  
Name (Individual / Corporation)**

JAGDEN  
DHALIWAL

**Address**

31 JEWEL CRES.,  
  
BRAMPTON  
ONTARIO  
CANADA L6R 2P5

<b>Date Began</b>	<b>First Director</b>
2002/06/04	NOT APPLICABLE

<b>Designation</b>	<b>Officer Type</b>	<b>Resident Canadian</b>
OFFICER	OTHER	

**Administrator:  
Name (Individual / Corporation)**

JAGDEN  
DHALIWAL

**Address**

31 JEWEL CRES.,  
  
BRAMPTON  
ONTARIO  
CANADA L6R 2P5

<b>Date Began</b>	<b>First Director</b>
2002/06/04	NOT APPLICABLE

<b>Designation</b>	<b>Officer Type</b>	<b>Resident Canadian</b>
DIRECTOR		Y



Request ID: 013725311  
Transaction ID: 46014942  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2011/11/21  
Time Report Produced: 12:45:31  
Page: 4

000129

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2012241

2012241 ONTARIO LIMITED

**Administrator:**

Name (Individual / Corporation)

Address

JAGDEN  
DHALIWAL

31 JEWEL CRES.,  
  
BRAMPTON  
ONTARIO  
CANADA L6R 2P5

Date Began

First Director

2002/06/04

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

PRESIDENT

**Administrator:**

Name (Individual / Corporation)

Address

JASDEW  
DHALIWAL

31 JEWEL CRES  
  
BRAMPTON  
ONTARIO  
CANADA L6K 2P5

Date Began

First Director

2002/06/04

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Request ID: 013725311  
Transaction ID: 46014942  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2011/11/20  
Time Report Produced: 12:45:31  
Page: 5

000130

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2012241

2012241 ONTARIO LIMITED

**Administrator:**

**Name (Individual / Corporation)**

**Address**

JASDEW  
DHALIWAL

31 JEWEL CRES  
  
BRAMPTON  
ONTARIO  
CANADA L6K 2P5

**Date Began**

**First Director**

2002/06/04

NOT APPLICABLE

**Designation**

**Officer Type**

**Resident Canadian**

OFFICER

PRESIDENT

**Administrator:**

**Name (Individual / Corporation)**

**Address**

JAGDEV  
DHALIWAL

31 JEWEL CRES,  
  
BRAMPTON  
ONTARIO  
CANADA L6R 2P5

**Date Began**

**First Director**

2002/06/04

NOT APPLICABLE

**Designation**

**Officer Type**

**Resident Canadian**

OFFICER

OTHER

Request ID: 013725311  
Transaction ID: 46014942  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2011/11/21  
Time Report Produced: 12:45:31  
Page: 6

000131

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2012241

2012241 ONTARIO LIMITED

**Administrator:**

**Name (Individual / Corporation)**

**Address**

JAGDEV  
DHALIWAL

31 JEWEL CRES.,  
  
BRAMPTON  
ONTARIO  
CANADA L6R 2P5

**Date Began**

**First Director**

2002/06/04

NOT APPLICABLE

**Designation**

**Officer Type**

**Resident Canadian**

DIRECTOR

Y

**Administrator:**

**Name (Individual / Corporation)**

**Address**

JAGDEV  
DHALIWAL

31 JEWEL CRES.,  
  
BRAMPTON  
ONTARIO  
CANADA L6R 2P5

**Date Began**

**First Director**

2002/06/04

NOT APPLICABLE

**Designation**

**Officer Type**

**Resident Canadian**

OFFICER

PRESIDENT

Request ID: 013725311  
Transaction ID: 46014942  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2011/11/21  
Time Report Produced: 12:45:31  
Page: 7

000132

## CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

2012241

2012241 ONTARIO LIMITED

**Administrator:**

Name (Individual / Corporation)

Address

JAGDEV

31 JEWEL CRES.

DHALIWAL

BRAMPTON  
ONTARIO  
CANADA L6R 2P5

Date Began

First Director

2006/06/04

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

OTHER

**Administrator:**

Name (Individual / Corporation)

Address

JAGDEV

97 SUNFOREST DR

S

DHALIWAL

BRAMPTON  
ONTARIO  
CANADA L6Z 3Y5

Date Began

First Director

2009/06/22

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Request ID: 013725311  
Transaction ID: 46014942  
Category ID: UNE

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2011/11/21  
Time Report Produced: 12:45:31  
Page: 8

000133

## CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2012241	2012241 ONTARIO LIMITED

Administrator: Name (Individual / Corporation)	Address
JAGDEV S DHALIWAL	97 SUNFOREST DR  BRAMPTON ONTARIO CANADA L6Z 3Y5

Date Began	First Director	Resident Canadian
2009/06/22	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
OFFICER	PRESIDENT	Y

Administrator: Name (Individual / Corporation)	Address
JAGDEV DHALIWAL	97 SUNFOREST DR  BRAMPTON ONTARIO CANADA L6Z 3Y5

Date Began	First Director	Resident Canadian
2009/06/22	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
DIRECTOR		Y

Request ID: 013725311  
Transaction ID: 46014942  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2011/11/24  
Time Report Produced: 12:45:31  
Page: 9

000134

## CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2012241	2012241 ONTARIO LIMITED

Administrator: Name (Individual / Corporation)	Address
JAGDEV DHALIWAL	97 SUNFOREST DR  BRAMPTON ONTARIO CANADA L6Z 3Y5

Date Began	First Director	Resident Canadian
2009/06/22	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
OFFICER	PRESIDENT	Y

Administrator: Name (Individual / Corporation)	Address
JASDEW PHALIWAL	21 JEWEL CRES.  BRAMPTON ONTARIO CANADA L6R 2P5

Date Began	First Director	Resident Canadian
2002/06/04	NOT APPLICABLE	
Designation	Officer Type	Resident Canadian
DIRECTOR		Y

Request ID: 013725311  
Transaction ID: 46014942  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2011/11/21  
Time Report Produced: 12:45:31  
Page: 10

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## CORPORATION PROFILE REPORT

**Ontario Corp Number**

**Corporation Name**

2012241

2012241 ONTARIO LIMITED

**Administrator:**

**Name (Individual / Corporation)**

**Address**

JASDEW

21 JEWEL CRES.

PHALIWAL

BRAMPTON  
ONTARIO  
CANADA L6R 2P5

**Date Began**

**First Director**

2002/06/04

NOT APPLICABLE

**Designation**

**Officer Type**

**Resident Canadian**

OFFICER

OTHER

Request ID: 013725311  
Transaction ID: 46014942  
Category ID: UN/E

Province of Ontario  
Ministry of Government Services

Date Report Produced: 2011/11/21  
Time Report Produced: 12:45:31  
Page: 11

000136

## CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name
2012241	2012241 ONTARIO LIMITED

### Last Document Recorded

Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2009	1C	2010/12/18

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

PLEASE NOTE THAT WHEN THE SAME INDIVIDUAL HOLDS MULTIPLE 'OTHER UNTITLED' OFFICER POSITIONS, AS INDICATED ON A FORM 1 UNDER THE *CORPORATIONS INFORMATION ACT*, ONLY ONE OF THESE 'OTHER UNTITLED' POSITIONS HELD BY THAT INDIVIDUAL WILL BE REFLECTED ON THIS REPORT.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.



# APPENDIX I



LAND  
REGISTRY  
OFFICE #43

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

14223-0956 (LF)

PAGE 1 OF 3  
PREPARED FOR GSA22201  
ON 2011/11/21 AT 13:09:41

SUBJECT TO RESERVATIONS IN CHROM GRANT

**PROPERTY DESCRIPTION:**

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. SUBJECT TO AN EASEMENT IN GROSS OVER PTS 3 & 4, 43R33711 AS IN PR2106932 CITY OF BRAMPTON

**PROPERTY REMARKS:**

CONSENT OF THE LAND DIVISION COMMITTEE OF THE REGIONAL MUNICIPALITY OF PEEL IS ENDORSED IN LT1699650. THE FOLLOWING REMARK HAS BEEN ADDED ON 2002/10/21 AT 09:41 BY ISOBEL STEWART : CONSENT OF THE LAND DIVISION COMMITTEE IS ATTACHED TO LT1699650.

**ESTATE/ODALLIER:**

FEE SIMPLE  
ABSOLUTE  
DIVISION FROM 14223-0041  
RECENTLY.

**OWNERS' NAMES**

2012241 ONTARIO LIMITED  
NC  
CAPACITY SHARE

FIN CREATION DATE:  
1997/03/05

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
**EFFECTIVE	2000/07/29	THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1996/05/07 ON THIS PIN**				
**WAS REPLACED WITH THE	"PIN CREATION DATE" OF 1997/03/05**					
** PRINTOUT	INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **					
43R18419	1991/03/07	PLAN REFERENCE				C
43R21191	1995/09/11	PLAN REFERENCE				C
LT1615145	1996/02/01	TRANSFER EASEMENT			BRAMPTON HYDRO ELECTRIC COMMISSION THE CORPORATION OF THE CITY OF BRAMPTON	C
43R21902	1996/11/14	PLAN REFERENCE				C
LR2057426	2000/03/27	NOTICE		HER MAJESTY THE QUEEN IN RIGHT OF THE DEPARTMENT OF TRANSPORT CANADA		C
		REMARKS: PERSON AIRPORT ZONING REGULATION				
PR325702	2002/10/02	TRANSFER	\$850,000	CHURCH EXTENSION COUNCIL OF DUFFERIN AND PEEL PRESBYTERY OF THE UNITED CHURCH OF CANADA	2012241 ONTARIO LIMITED	C
PR1138739	2006/09/19	NOTICE	\$2	THE CORPORATION OF THE CITY OF BRAMPTON		C
PR1418741	2008/02/21	CHARGE	\$400,000	2012241 ONTARIO LIMITED	1448037 ONTARIO LIMITED	C
PR1418749	2008/02/21	NO ASSGN RENT GEN		2012241 ONTARIO LIMITED	1448037 ONTARIO LIMITED	C
		REMARKS: PR1418741				
PR1539845	2009/09/25	CHARGE	\$864,070	2012241 ONTARIO LIMITED	1448037 ONTARIO LIMITED	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

000137



Ontario ServiceOntario

LAND  
REGISTRY  
OFFICE #43

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 3

PREPARED FOR GSaran01  
ON 2011/11/21 AT 13:09:41

14223-0956 (LT)

SUBJECT TO RESERVATIONS IN CROWN GRANT

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHED
PR153924 REMARKS: PR153945	2008/09/26	NO ASSGN RENT GEN		2012241 ONTARIO LIMITED	1448037 ONTARIO LIMITED	C
PR1554408	2008/10/20	CHARGE	\$12,500,000	2012241 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
PR1569320 REMARKS: PR1418741 TO PR1554408	2008/11/18	POSTPONEMENT		1448037 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
PR1569321 REMARKS: PR1418749 TO PR1554408	2008/11/18	POSTPONEMENT		1448037 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
PR1569322 REMARKS: PR153945 TO PR1554408	2008/11/18	POSTPONEMENT		1448037 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
PR1569323 REMARKS: PR153924 TO PR1554408	2008/11/18	POSTPONEMENT		1448037 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
PR1591143	2009/01/08	NOTICE	\$2	THE CORPORATION OF THE CITY OF BRAMPTON		C
PR1681378 REMARKS: PR1554408, PR1418741, PR153945	2009/08/05	NOTICE	\$2	THE TORONTO-DOMINION BANK		C
PR1720150 REMARKS: PR1554408, PR1418741 AND PR153945.	2009/10/15	NOTICE	\$2	THE TORONTO-DOMINION BANK		C
PR1720151 REMARKS: PR1418741.	2009/10/15	TRANSFER OF CHARGE		1448037 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
PR1720152 REMARKS: PR153945.	2009/10/15	TRANSFER OF CHARGE		1448037 ONTARIO LIMITED	THE TORONTO-DOMINION BANK	C
PR1785468 REMARKS: PENDING LITIGATION	2010/03/03	APL (GENERAL)		H S G PROPERTIES INCORPORATED		C
PR1803331 REMARKS: FROM PR1785468 TO PR1554408	2010/04/12	POSTPONEMENT		H S G PROPERTIES INCORPORATED	THE TORONTO-DOMINION BANK	C
43E33711	2010/12/23	PLAN REFERENCE	\$70			C
PR1992084	2011/03/30	CONSTRUCTION LIEN	\$383,399	VERSA CONSTRUCTION LIMITED		C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

000138



ServiceOntario

LAND  
REGISTRY  
OFFICE #43

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 3 OF 3

PREPARED FOR GS8r2d01  
ON 2011/11/21 AT 13:09:41

14223-0956 (LTP)

SUBJECT TO RESERVATIONS IN CROWN GRANT

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
PR2003637	2011/05/16	CERTIFICATE REMARKS: PR1982084		VERSA CONSTRUCTION LIMITED		
PR2106932	2011/11/14	TRANSFER EASEMENT	\$2	2012241 ONTARIO LIMITED	HYDRO ONE BRAMPTON NETWORKS INC.	C
PR2110730	2011/11/21	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)	IRA SMITH TRUSTEE & RECEIVER INC.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

000439

# APPENDIX J

000140

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
SEARCH RESULTS

Date Search Conducted: 11/21/2011  
File Currency Date: 11/20/2011  
Family(ies): 4  
Page(s): 7

SEARCH : Business Debtor : 2012241 ONTARIO LIMITED

The attached report has been created based on the data received by Cyberbahn, a Thomson Reuters business from the Province of Ontario, Ministry of Government Services. No liability is assumed by Cyberbahn regarding its correctness, timeliness, completeness or the interpretation and use of the report. Use of the Cyberbahn service, including this report is subject to the terms and conditions of Cyberbahn's subscription agreement.

000141

PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM  
SEARCH RESULTS

Date Search Conducted: 11/21/2011  
File Currency Date: 11/20/2011  
Family(ies): 4  
Page(s): 7

SEARCH : Business Debtor : 2012241 ONTARIO LIMITED

FAMILY : 1 OF 4 ENQUIRY PAGE : 1 OF 7  
SEARCH : BD : 2012241 ONTARIO LIMITED

00 FILE NUMBER : 647532792 EXPIRY DATE : 07AUG 2013 STATUS :  
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :  
REG NUM : 20080807 0938 1862 6843 REG TYP: P PPSA REG PERIOD: 5  
02 IND DOB : IND NAME:  
03 BUS NAME: 2012241 ONTARIO LIMITED

OCN : 2012241

04 ADDRESS : 470 CHRYSLER DRIVE, UNIT 20  
CITY : BRAMPTON PROV: ON POSTAL CODE: L6S 0C1  
05 IND DOB : IND NAME:  
06 BUS NAME:

OCN :

07 ADDRESS :  
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
THE TORONTO-DOMINION BANK

09 ADDRESS : 20 MILVERTON DRIVE & HWY. #10  
CITY : MISSISSAUGA PROV: ON POSTAL CODE: L5R 3G2  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
10 X X X X X X X  
YEAR MAKE MODEL V.I.N.

11

12

GENERAL COLLATERAL DESCRIPTION

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15

16 AGENT: ROSE, PERSIKO, RAKOWSKY, MELVIN LLP (RBM / 2080223)

17 ADDRESS : 390 BAY STREET, SUITE 600  
CITY : TORONTO PROV: ON POSTAL CODE: M5H 2Y2

FAMILY : 2 OF 4  
SEARCH : BD : 2012241 ONTARIO LIMITED

ENQUIRY PAGE : 2 OF 7

00 FILE NUMBER : 648058536 EXPIRY DATE : 27AUG 2012 STATUS :  
01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :  
REG NUM : 20080827 1451 1530 5685 REG TYP: P PPSA REG PERIOD: 4  
02 IND DOB : IND NAME:  
03 BUS NAME: MARIO'S FURNITURE & UPHOLSTERY LIMITED

OCN :

04 ADDRESS : 200 EDGELEY BLVD 29  
CITY : CONCORD PROV: ON POSTAL CODE: L4K 3Y8  
05 IND DOB : 11MAR1964 IND NAME: VITTORIO PAGNANI  
06 BUS NAME:

OCN :

07 ADDRESS : 70 HAMBLY AVE  
CITY : KING CITY PROV: ON POSTAL CODE: L7B 1J1

08 SECURED PARTY/LIEN CLAIMANT :  
FORD CREDIT CANADA LEASING, A DIVISION OF CANADIAN ROAD LEASING COMPANY

09 ADDRESS : PO BOX 2400  
CITY : EDMONTON PROV: AB POSTAL CODE: T5J 5C7  
CONS. MV DATE OF OR NO FIXED  
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
10 X X X X X  
YEAR MAKE MODEL V.I.N.  
11 2008 LINCOLN NAVIGATOR 5LMFU28568LJ02030

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GENERAL COLLATERAL DESCRIPTION

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15  
16 AGENT: CANADIAN SECURITIES REGISTRATION SYSTEMS  
17 ADDRESS : 4126 NORLAND AVENUE  
CITY : BURNABY PROV: BC POSTAL CODE: V5G 3S8



FAMILY : 2 OF 4 ENQUIRY PAGE : 3 OF 7  
 SEARCH : BD : 2012241 ONTARIO LIMITED

FILE NUMBER 648058536  
 PAGE TOT REGISTRATION NUM REG TYPE  
 01 CAUTION : 01 OF 001 MV SCHED: 20111109 1949 1531 7493  
 21 REFERENCE FILE NUMBER : 648058536  
 22 AMEND PAGE: NO PAGE: X CHANGE: A AMNDMNT REN YEARS: CORR PER:  
 23 REFERENCE DEBTOR/ IND NAME:  
 24 TRANSFEROR: BUS NAME: MARIO'S FURNITURE & UPHOLSTERY LIMITED

25 OTHER CHANGE:  
 26 REASON: ADDING 1 DELETING 2  
 27 /DESCR:  
 28 :  
 02/05 IND/TRANSFEEE:  
 03/06 BUS NAME/TRFEE: 2012241 ONTARIO LIMITED

OCN:  
 04/07 ADDRESS: 17 ADIRONDACK CRESCENT  
 CITY: BRAMPTON PROV: ON POSTAL CODE: L6R 1E5  
 29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :  
 CITY : PROV : POSTAL CODE :  
 CONS. MV DATE OF NO FIXED  
 GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE  
 10 X X X X  
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16 NAME : CANADIAN SECURITIES REGISTRATION SYSTEMS  
 17 ADDRESS : 4126 NORLAND AVENUE  
 CITY : BURNABY PROV : BC POSTAL CODE : V5G 3S8

FAMILY : 3 OF 4  
 SEARCH : BD : 2012241 ONTARIO LIMITED

ENQUIRY PAGE : 4 OF 7

00 FILE NUMBER : 648818028 EXPIRY DATE : 26SEP 2013 STATUS :  
 01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :  
 REG NUM : 20080926 1407 1462 1596 REG TYP: P PPSA REG PERIOD: 5  
 02 IND DOB : IND NAME:  
 03 BUS NAME: 2012241 ONTARIO LIMITED

OCN : 2012241

04 ADDRESS : 7050A BRAMALEA ROAD, UNIT 11  
 CITY : MISSISSAUGA PROV: ONT POSTAL CODE: L5S1T1  
 05 IND DOB : IND NAME:  
 06 BUS NAME:

OCN :

07 ADDRESS :  
 CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :  
 1448037 ONTARIO LIMITED

09 ADDRESS : 7050A BRAMALEA ROAD  
 CITY : MISSISSAUGA

PROV: ONT POSTAL CODE: L5S1T1

CONS. MV DATE OF OR NO FIXED

GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

10 X 864070 X

YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

13 CHARGE AND NOTICE OF ASSIGNMENT OF RENTS-GENERAL REGISTERED

14 SEPTEMBER 25, 2008

15

16 AGENT: RON E. FOLKES

17 ADDRESS : 14 NELSON STREET WEST, SUITE 1

CITY : BRAMPTON PROV: ON POSTAL CODE: L6X1B7

FAMILY : 4 OF 4  
 SEARCH : BD : 2012241 ONTARIO LIMITED

ENQUIRY PAGE : 5 OF 7

00 FILE NUMBER : 652974381 EXPIRY DATE : 27APR 2012 STATUS :  
 01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :  
 REG NUM : 20090427 1002 1462 3058 REG TYP: P PPSA REG PERIOD: 1  
 02 IND DOB : IND NAME:  
 03 BUS NAME: 2012241 ONTARIO LIMITED

OCN : 2012241

04 ADDRESS : C/O 470 CHRYSLER DRIVE, UNIT 20  
 CITY : BRAMPTON PROV: ONT POSTAL CODE: L6S0C1  
 05 IND DOB : IND NAME: JAGDEV DHALIWAL  
 06 BUS NAME:

OCN :

07 ADDRESS : C/O 470 CHRYSLER DRIVE, UNIT 20  
 CITY : BRAMPTON PROV: ONT POSTAL CODE: L6S0C1

08 SECURED PARTY/LIEN CLAIMANT :  
 1448037 ONTARIO LIMITED

09 ADDRESS : 7050 BRAMALEA ROAD, UNIT 11  
 CITY : MISSISSAUGA PROV: ONT POSTAL CODE: L5S1T1  
 CONS. MV DATE OF OR NO FIXED  
 GOODS INVTY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE  
 10 YEAR MAKE X X 400000 X  
 MODEL V.I.N.

11  
 12

GENERAL COLLATERAL DESCRIPTION

13 CHARGE AND ASSIGNMENT OF RENTS REGISTERED ON FEBRUARY 21, 2008

14  
 15

16 AGENT: RON E. FOLKES

17 ADDRESS : 14 NELSON STREET WEST, SUITE 1  
 CITY : BRAMPTON PROV: ON POSTAL CODE: L6X1B7

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FAMILY : 4 OF 4  
SEARCH : BD : 2012241 ONTARIO LIMITED

ENQUIRY PAGE : 6 OF 7

FILE NUMBER 652974381

PAGE TOT REGISTRATION NUM REG TYPE  
01 CAUTION : 001 OF 1 MV SCHED: 20100426 1517 1793 4907  
21 REFERENCE FILE NUMBER : 652974381  
22 AMEND PAGE: NO PAGE: CHANGE: B RENEWAL REN YEARS: 1 CORR PER:  
23 REFERENCE DEBTOR/ IND NAME:  
24 TRANSFEROR: BUS NAME: 2012241 ONTARIO LIMITED

25 OTHER CHANGE:  
26 REASON:  
27 /DESCR:  
28 :  
02/05 IND/TRANSFEE:  
03/06 BUS NAME/TRFEE:

OCN:

04/07 ADDRESS:  
CITY: PROV: POSTAL CODE:  
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :  
CITY : PROV : POSTAL CODE :  
CONS. MV DATE OF NO FIXED  
GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

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16 NAME : FOLKES LEGAL PROFESSIONAL CORPORATION  
17 ADDRESS : 14 NELSON STREET WEST, SUITE 1  
CITY : BRAMPTON PROV : ON POSTAL CODE : L6X1B7

000146

FAMILY : 4 OF 4  
SEARCH : BD : 2012241 ONTARIO LIMITED

ENQUIRY PAGE : 7 OF 7

FILE NUMBER 652974381  
REGISTRATION NUM REG TYPE  
01 CAUTION : PAGE TOT 001 OF 1 MV SCHED: 20110426 0813 1793 8652  
21 REFERENCE FILE NUMBER : 652974381  
22 AMEND PAGE: NO PAGE: CHANGE: B RENEWAL REN YEARS: 1 CORR PER:  
23 REFERENCE DEBTOR/ IND NAME:  
24 TRANSFEROR: BUS NAME: 2012241 ONTARIO LIMITED

25 OTHER CHANGE:  
26 REASON:  
27 /DESCR:  
28 :  
02/05 IND/TRANSFEREE:  
03/06 BUS NAME/TRFEE:

04/07 ADDRESS: OCN:  
CITY: PROV: POSTAL CODE:  
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

09 ADDRESS :  
CITY : PROV : POSTAL CODE :  
CONS. MV DATE OF NO FIXED  
GOODS INVTRY EQUIP ACCTS OTHER INCL AMOUNT MATURITY OR MAT DATE

10  
11  
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16 NAME : FOLKES LEGAL PROFESSIONAL CORPORATION  
17 ADDRESS : 14 NELSON STREET WEST, SUITE 1  
CITY : BRAMPTON PROV : ON POSTAL CODE : L6X1B7

# APPENDIX K

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**

**AFFIDAVIT OF THERESA KELLEN  
(Sworn November 15, 2011)**

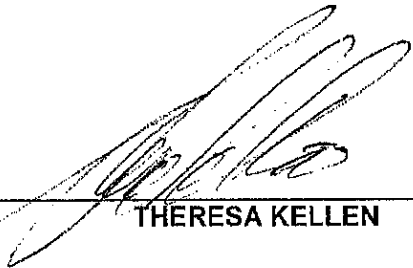
I, THERESA KELLEN, of the City of Toronto, MAKE OATH AND SAY AS FOLLOWS:

1. I am a legal assistant employed at Aird & Berlis LLP. I assist Sanj Sood, the lawyer at Aird & Berlis LLP that has carriage of this matter. As such, I have knowledge of the matters to which I hereinafter depose.
2. Attached as Exhibit "A" hereto is a copy of an e-mail received by Kenneth Malcolm from Ravinder Singh Chahal on November 15, 2011 at 1:01 p.m.
3. Attached as Exhibit "B" hereto is a copy of an e-mail sent by Kenneth Malcolm to Ravinder Singh Chahal on November 15, 2011 at 2:32 p.m.

4. Attached as Exhibit "C" hereto is a copy of an e-mail received by Kenneth Malcolm from Ravinder Singh Chahal on November 15, 2011 at 3:01 p.m.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 15th day of November, 2011

\_\_\_\_\_  
COMMISSIONER, ETC.



\_\_\_\_\_  
THERESA KELLEN



Sanj Sood

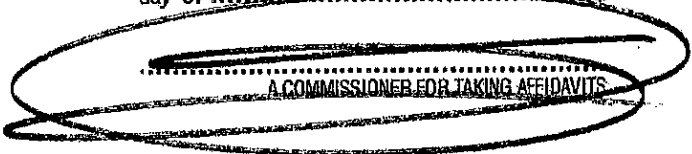
**From:** ravi chahal [mailto:ravi@chahalwilshire.com]  
**Sent:** Tuesday, November 15, 2011 01:01 PM  
**To:** MALCOLM, Kenneth  
**Subject:** Hope you had an excellent weekend we got no feed back from your office,

Respectfully!!!

Ravinder Singh Chahal  
Ceo.  
The Chahal Wilshire Group Inc.  
Business Developments and Investments.  
50 Sunny Meadow Blvd Unit 103  
Brampton, Ontario  
L6R 0Y7  
Tel# 416.823.6684  
E-mail: [ravi@chahalwilshire.com](mailto:ravi@chahalwilshire.com)  
[www.chahalwilshire.com](http://www.chahalwilshire.com)

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AVIS : Message confidentiel dont le contenu peut être privilégié. Utilisation/divulgateion Interdites sans permission. Si reçu par erreur, prière d'aller au [www.td.com/francais/avis\\_juridique](http://www.td.com/francais/avis_juridique) pour des instructions.

This is Exhibit A referred to in the  
affidavit of T. Kellen  
sworn before me, this 15<sup>th</sup>  
day of November 2011

  
A COMMISSIONER FOR TAKING AFFIDAVITS

Theresa Kellen

This is Exhibit B referred to in the  
 affidavit of T. Kellen  
 sworn before me, this 15<sup>th</sup>  
 day of November 2011

A COMMISSIONER FOR TAKING AFFIDAVITS

**From:** MALCOLM, Kenneth [mailto:kenneth.malcolm@td.com]  
**Sent:** November 15, 2011 2:32 PM  
**To:** 'ravi chahal'  
**Cc:** Dinino, Frank; Zamanis, Dennis  
**Subject:** FW: Hope you had an excellent weekend we got no feed back from your office,

Mr Chahal:

You sent to me an update yesterday on the status of registration. The body of it appears to be something drafted by someone else and forwarded by you. It refers to items which are not attached and to events which cannot be verified as to status and time line from the email. We had asked you to allow a consultant to provide an independent review of the status of the project and you declined to allow that to occur. Accordingly we have no credible or reliable evidence as to the true status of the project.

You have not brought current the interest and other payments that are in arrears as was promised on several occasions.

The cash receipts of the project are being diverted to another financial institution which you have declined to identify.

This situation is not acceptable to TD Bank nor would it be to any other lender. You have generally failed to cooperate in addressing the bank's concerns and the promises that have been given have not been kept. Absent corroboration from an independent consultant, in the circumstances we are not able to rely upon the information or assurances received. We have therefore asked our counsel to deal with the matter and you should hear from them shortly.

Kenneth J. Malcolm | Senior Manager Commercial Credit | Financial Restructuring Group | TD Business Banking  
 3140 Dufferin Street, Toronto, Ontario M6A 2T1  
 T: 416 785 5108 F: 416 785 5068

**From:** ravi chahal [mailto:ravi@chahalwilshire.com]  
**Sent:** Tuesday, November 15, 2011 01:01 PM  
**To:** MALCOLM, Kenneth  
**Subject:** Hope you had an excellent weekend we got no feed back from your office,

--  
Respectfully!!!

Ravinder Singh Chahal  
Ceo.  
The Chahal Wilshire Group Inc.  
Business Developments and Investments.  
50 Sunny Meadow Blvd Unit 103  
Brampton, Ontario  
L6R 0Y7  
Tel# 416.823.6684  
E-mail: [ravi@chahalwilshire.com](mailto:ravi@chahalwilshire.com)  
[www.chahalwilshire.com](http://www.chahalwilshire.com)

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Sanj Sood

This is Exhibit C referred to in the  
affidavit of T. Kellen  
sworn before me, this 15<sup>th</sup>  
day of November 2011



**From:** ravi chahal [mailto:ravi@chahalwilshire.com]  
**Sent:** Tuesday, November 15, 2011 3:01 PM  
**To:** MALCOLM, Kenneth  
**Subject:** No option if I don't get a phone call by 5 today

You leave me with option we are going to go to court to file a law suit against TD, as we were treated unfairly and the court will give us a chance and hear is out for example;

- 1.) Your surprise meeting that we had in our office
- 2.) You tried to enforce trustee upon me and the statement breakdown included \$60000 for default and earlier it was that this amount was for an extension. Our account was not to circulated properly

1. I held an emergency meeting with all the purchasers of the units on Sunday October 16 to 18. During which I had disclosed then current situation of possible power of sale proceedings by Td Bank. I had forward then my email correspondence to the purchasers to be reviewed with their lawyers showing direct interference of Td with our general contractors from august 2010 to July 2011, taking the power out of our hands and causing delays. All the purchasers have reviewed the situation with their lawyers and have been advised that the delays were caused due to the bank which lead to loss of tenants, loss of income, loss of value and their lawyers have advice to release \$20,000 from their deposits to me to retain a lawyer to file a claim against TD Bank , . I f I don't get a response by 3 o'clock today I am thinking of two options;

A. I will release all deposits to the purchasers and cancel all agreement of purchase and sale. Mutual release all the agreements releasing them of their responsibilities completely. As per the mutual release \$20,000 will be released to Ravinder Singh Chahal, which will be used to retain a lawyer to file a claim as TD Bank.

B. And for all purchasers who still want the units I will amend the purchase price on the units to be sold for \$95 per sq foot, to compensate for their loss of income and value caused by delays. I will be ensuring that each and everyone purchaser has interest and the full ability to close the units, which you can try to argue in court with each and every purchaser and to pursue this on their own would take you a few years.

After my meeting with the Purchaser's they have given me in writing their total confidence and also the authorization to make decision on their behalf for the completion of the project. They all are willing and ready close their deals when I tell them we are ready to close.

2. I have advised all of my engineers that as per part of our contract they are working with us in full confidentiality and not the bank, you can hire your own engineers to reverse the engineering and then do your registration from scratch, as I will be destroying all engineering reports, drawings and cancelling contracts with all engineers and other trustees.

3. We had hired a Real estate company to sell the units. Their clients are willing and able to close and if the units don't close they will go to court for their full commission. If we amend the price on the agreement they will claim the difference of their commission between the new and the old agreement. Once TD Bank takes over all commission statements will be transferred over and they will hold the bank liable to pay their commission, as you will be taking over the project.

4. You are forcing me hire Solicitor and Trustee to file for bankruptcy and getting Bankruptcy protection. Everything I have is in this project and after I claim bankruptcy there is nothing you can claim from me as I don't own anything else.

As you know buildings are empty everywhere around in Brampton and if I release all my tenants and purchasers you will have to re market the units and try to find tenants again, as I will be placing my tenants into other new and empty facilities in the area, and without any engineering reports, drawings, tenants and purchasers TD will be in a similar situation as the white hotel on Dixon road, which is being demolished now, it will be another financial disaster for TD Bank.

--  
Respectfully!!!

Ravinder Singh Chahal  
Ceo.  
The Chahal Wilshire Group Inc.  
Business Developments and Investments.  
50 Suany Meadow Blvd Unit 103  
Brampton, Ontario  
L6R 0Y7  
Tel# 416.823.6684  
E-mail: [ravi@chahalwilshire.com](mailto:ravi@chahalwilshire.com)  
[www.chahalwilshire.com](http://www.chahalwilshire.com)

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000154

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

AFFIDAVIT OF THERESA KELLEN  
(sworn November 15, 2011)

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield 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 L

Court File No. CV-10-1090-00

**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 and JAGDEV DHALIWAL**

WE, RAVINDER CHAHAL and JAGDEV DHALIWAL, of the City of Brampton, in the  
Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. We are the officers and directors of 2012241 Ontario Limited as well as the  
shareholders in the company and as such have personal knowledge of the matters  
here and after deposed to. We have read the Receiver's Reports and attachments in  
regard to the Motion returnable on January 30th, 2012.



2. We regret that it may have appeared that we were uncooperative and in the face of the receivership and the Bank's demand we unfortunately began to act at cross purposes with one another in an attempt to obtain financing and save the project we invested so much into. We have turned over all of the information available to us to the Receiver although, we believe that it would have been much more helpful for that transfer of information to have been coordinated with our actual attendance with the Receiver in order to go through the materials and explain to him what was and was not available in relation to each condominium purchase and answer specific questions about the operations of the bank accounts.
3. The original withdrawal of \$50,000.00 was for the purposes of retaining professionals to assist us in the restructuring of the company and to see our creditors paid and to give us representation in dealing with the Receiver. This was perhaps unwise on our part and when our solicitor explained to us that this should not have been done we returned the funds.
4. Much has been made in the Affidavit of Material of the fact that funds were used from the closing of condominium sales to pay the second and third mortgagees.
5. This was actually undertaken at the instigation of TD Bank; although we made serious errors in implementing what we thought was their wishes.
6. The TD Bank became aware of the second and third mortgages and the fact that they were at a substantially higher interest rate than the first mortgage from TD Bank. They felt that the mortgages were an economic drag on the development and demanded they be paid out. We now realize that TD Bank intended us to pay these mortgages out from our own resources but with the best of intentions and now

realizing that we made a serious error we used funds available from the closing of the condominium transactions to pay the second and third mortgagees to remove this burden from the development. We thought we had achieved what TD Bank had sought, but in fact all we did was aggravate them and apparently breach a trust relationship in regard to the funds. It was not our intention to do this but rather to comply with what was demanded of us with the funds we then had available to us in discharging the second and third mortgages.

7. The payment of funds to HomeLife Realty took place with the knowledge of TD Bank and actually the cheque was written with their permission. These were costs associated with the development of the project and the marketing of the project for sale and at all times we understood were proper and appropriate costs to be paid with funds from the transactions. At no time did we realize there would be any issue with this, and in fact the funds have been paid and we are putting together the documentation in regard to the payments. We believe that Mr. Shah panicked when confronted by TD Bank and the Receiver about the payments.
8. The transfer of funds to 1732037 Ontario Inc. is mischaracterized by the Receiver although it is not out of any bad faith or deliberate misrepresentation on its part.
9. Over the years from 2002 to 2008 173 Ontario advanced funds to 201 Ontario for the purposes of the development. Now produced and shown to me and marked as **Exhibit "A"** to this my Affidavit are the records showing 173 Ontario's contributions to 201 Ontario. Now shown to me and marked as **Exhibit "B"** is the record of payments made by 201 Ontario returning these funds referred to by the Receiver. The Court will see that the majority of these fund were repaid before the TD Bank loan was arranged or any funds were ever advanced, and in fact only

approximately \$22,000.00 was repaid after that advance and at a time where there was not default whatsoever on the part of 201 Ontario in its obligations to TD Bank.

10. We are only months away from completing the registration of the condominium and being able to close all of the transactions.
11. We have already lost several potential purchasers as a result of the Receivership and Notices served on them by the Receiver. We have also been distressed in receiving materials from the Receiver since there seems to be some sort of disconnect between preparing materials to serve on us and then actually sending them to us. An example is the Notice, which is now produced and shown to me and marked as "Exhibit C" to this my Affidavit which is a Notice and Statement of the Receiver dated December 15<sup>th</sup>, 2011. That document is dated December 15<sup>th</sup>, 2011 but the envelope it came in, which I now produce and mark as "Exhibit D" to this my Affidavit is post stamped at the postage reference January 10<sup>th</sup>, 2012. In other words it was mailed some 26 days after the date on the document itself and the date when it was signed by the Receiver. This has created an atmosphere where it appears like that we do not respond to the Receiver's letters or communications for lengthy periods of time, when in fact we sometimes do not get the material until several weeks after the Receiver has prepared it despite what the date is on the document itself.
12. Further and now produced and shown to us and marked as Exhibit "E" to this our Affidavit is a Notice to Rectify from the fire department. We have become aware during the course of the Receivership of certain issues with the property that the Receiver does not address. The issues seem to be issues which will result in

tenants or potential purchasers backing out of the transactions they are involved in and this is an ongoing and disturbing circumstance. The Receiver has been controlling the ability to turn off and turn on lights in the tenanted units and therefore has been creating a adversarial situation between us and the tenants occupying the property already. This can only aggravate these tenants and other potential purchasers and result in losing opportunities for sale.

13. I have been advised that the Receiver and TD Bank were disturbed by the correspondence sent at the time that the Receivership was initiated. They suggest that Mr. Chahal threatened to terminate or frustrate the existing agreements of purchase and sale. If this lengthy letter is read in its full context the Court will see that Mr. Chahal was simply expressing his frustration that, being so close to completing the registration of the condominium and the transactions that would have seen the Bank and all creditors paid, steps were now being taken which were frustrating our ability to close those transactions and maintain good faith with our potential purchasers and existing tenants. The letter expresses frustration but was not meant as a threat or a suggestion of inappropriate conduct on our part. It was actually trying to highlight for the Bank particularly the possible negative repercussions of precipitate action.
14. We have a great deal of money and time invested in this development. We have many years invested in it. We do wish to see it through to registration and we do wish to pay all of our obligations arising out the development itself and particularly, of course, to TD Bank the secured creditor.
15. To the extent that we have made any mistakes in dealing with this matter it is because we are inexperienced in these matters and also we were focusing on trying

to refinance. The Receiver has highlighted in several areas of the documents that people named Chahal are involved in various aspects of this transaction. No other Chahal that is mentioned in the Receiver's Reports are related to Ravinder Chahal, except Hardinder Chahal who is a junior lawyer at Sikder Professional Corporation and who is a potential purchaser of one of the units. Chahal is a very common family name like Smith or Kelly or Lee and any other Chahal mentioned in the materials is simply a coincidental same last name and not a relative of Ravinder Chahal. Therefore, for example, the fact that a Mr. Chahal is involved in English Prestige Contracting is simply a coincidence.


16. We would like to sit down with the Receiver and go through the documentation that it does have and assist in putting it in order and attempting to fill in any blanks that are possible and we should really have done this in the last two months but we intend to do it now and would be willing to agree to a schedule to do so at the return of the Motion. We are also willing to agree in regard to a schedule of examinations and wish to attend at the meeting with tenants to be held on January 31<sup>st</sup>, 2012, with the Receiver and its counsel.
17. There is a condominium approval for 62 units rather than 47 units and this material should be in the hands of the Receiver. We did not have a Minute Book or seal but the balance of the documents that the Receiver wants should be available and in the hands of the Receiver and to the extent they are not we are willing to meet with the Receiver and go through a list and find everything that the Receiver requires provided that it of course exists in the first place.
18. We would like to receive a copy of any appraisal prepared by Lebo Hicks in relation to the condominium complex. We have authorized and directed Sikder


Professional Corporation to assist and provide any and all information to the Receiver that is required. Obviously the amount of funds held by way of trust funds had been reduced by payment to the second and third mortgagees and payment to the real estate company.

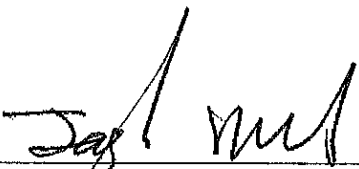
19. To the extent that the record appears to suggest that we have been uncooperative or that we have not been getting along one with the other we now regret this and wish to remedy it and shall cooperate together to make sure that the receiver has all the information that it needs but are also working diligently towards refinancing with First National for the purposes of honoring all obligations and being able to take back control of the property so that we may close the transaction with our potential purchasers

20. This Affidavit is sworn in support of a motion for summary judgment and for no other or improper purpose.

SWORN BEFORE US AT THE CITY )  
of Toronto, in the province of Ontario, )  
on the 27 day of January, 2012 )  
)  
)  
)  
)

  
\_\_\_\_\_  
A Commissioner, etc. )

  
\_\_\_\_\_  
RAVINDER CHAHAL

  
\_\_\_\_\_  
JAGDEV DHALIWAL

# APPENDIX M



1220 Eglinton Avenue West  
Toronto, Ontario M6C 2E3  
Telephone (416) 789-0652 000162  
Facsimile (416) 789-9015

**Anthony J. O' Brien, B.A., LL.B**  
Tel: (416) 789-0652 ext 306  
tobrien@lzwlaw.com

January 31, 2012

**SENT BY EMAIL**

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

Attention: Domenico Magisano

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street  
Suite 1800, Box 754  
Toronto, ON  
M5J 2T9

Attention: D. Robb English

Dear Sirs:

**Re: Toronto Dominion Bank and 2012241 Ontario Limited**

---

As you know, my client hopes to be in a position to have arranged alternate financing in order to address the issues of the Receivership and of TD Bank. In the event that we are in a position to put together that financing, I would suggest that a meeting be held specifically in regard to the outstanding issues of TD Bank and of the Receiver and that we have a discussion towards attempting to save this property and produce the maximum possible benefit for all of those involved. I look forward to dealing with you on this file.

I will provide a list of any objections my clients have to the property management function of the Receiver on or before February 6, 2012. I do hope however to be able to resolve this matter with you without extensive adversarial proceedings.



000163

Yours very truly,

**LIPMAN, ZENER & WAXMAN LLP**

Per: Anthony J. O' Brien  
AJO/ta

# APPENDIX N

**Victoria Gifford**

000164

**From:** Tony O'Brien <toobrien@rogers.blackberry.net>  
**Sent:** March 08, 2012 2:36 PM  
**To:** Domenico Magisano  
**Subject:** Re: TD Bank and 2012241 Ontario Ltd. matter

My client wish to pay out the Bank and take back their property so item 2 is no good. Its their property.

---

**From:** Domenico Magisano <[dmagisano@blaney.com](mailto:dmagisano@blaney.com)>  
**Date:** Thu, 8 Mar 2012 19:31:42 +0000  
**To:** 'Tony O'Brien' <[TObrien@lzwlaw.com](mailto:TObrien@lzwlaw.com)>  
**Cc:** 'Robb English' <[renglish@airdberlis.com](mailto:renglish@airdberlis.com)>; 'Ira Smith' <[ira@irasmithinc.com](mailto:ira@irasmithinc.com)>  
**Subject:** TD Bank and 2012241 Ontario Ltd. matter

Tony,

We are in receipt of the attached letter and have considered the request with my client. We will consider releasing the appraisal and the report of the condominium consultant on the following basis:

1. Your clients agree to keep the reports confidential;
2. Your clients (including the principals) confirm that they will not be involved, directly or indirectly, in any bid for the assets of the Respondent;
3. Your clients agree that the Receiver may share the same reports with TD Bank providing the same terms are met; and
4. The Receiver is not responsible for any loss to any party resulting from breach of the confidentiality agreement.

If your clients agree to the foregoing the Receiver will not oppose your proposed motion. Please provide us with a copy of the draft order which you will be seeking.

Yours truly

Dom

**Domenico Magisano**

Direct TEL 416.593.2996  
Direct FAX 416.593.2977  
[dmagisano@blaney.com](mailto:dmagisano@blaney.com)

Blaney McMurtry LLP  
2 Queen Street East, Suite 1500  
Toronto, Canada M5C 3G5  
416.593.1221 TEL  
416.593.5437 FAX  
[www.blaney.com](http://www.blaney.com)

EXPECT THE BEST



**Blaney  
McMurtry**  
BARRISTERS & SOLICITORS LLP

---

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Consider the environment. Please don't print this email unless you really need to.

# APPENDIX O



**LIPMAN ZENER WAXMAN LLP**  
BARRISTERS AND SOLICITORS

1220 Eglinton Avenue West  
Toronto, Ontario M6C 2E3  
Telephone (416) 789-0652  
Facsimile (416) 789-9015

000165

**Anthony J. O' Brien, B.A., LL.B**  
Tel: (416) 789-0652 ext 306  
tobrien@lzwlaw.com

March 12, 2012

**SENT BY EMAIL**

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

Attention: Domenico Magisano

**AIRD & BERLIS LLP**  
Barristers and Solicitors  
Brookfield Place  
181 Bay Street  
Suite 1800, Box 754  
Toronto, Ontario M5J 2T9

Attention: D. Robb English

Dear Sirs:

**Re: Toronto Dominion Bank and 2012241 Ontario Limited**

---

Could you please let me know your availability for a 9:30 a.m. to schedule a Motion and further whether or not you would be attending at the Motion itself and your availability if you intend to. Enclosed is the draft Order we would be seeking.

We will be seeking the condo report, appraisal report and leases and agreements of purchase and sale for our client and TD.

Yours very truly,

**LIPMAN, ZENER & WAXMAN LLP**

Per: Anthony J. O' Brien  
AJO/mf

# APPENDIX P

000166

Court File Number: CU - 11 - 9456 - 00 CC

Superior Court of Justice  
Commercial List

FILE/DIRECTION/ORDER

TD Bank  
Plaintiff(s)

AND

2012241 Ont. Mt.  
Defendant(s)

Case Management  Yes  No by Judge: \_\_\_\_\_

Counsel	Telephone No:	Facsimile No:
A. O'Brien	416-789-0652	416-789-9025
D. Magisano	416-593-2996	416-593-5437
R. English	416-865-4742	416-863-1575

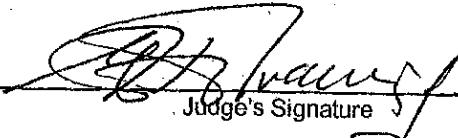
- Order  Direction for Registrar (No formal order need be taken out)
- Above action transferred to the Commercial List at Toronto (No formal order need be taken out)
- Adjourned to: \_\_\_\_\_
- Time Table approved (as follows):

*Motion for Directors to Recieve*

*Returnable Wed April 4, 2012.*

*20 minutes is expected to be required.*

March 20, 2012  
Date

  
Judge's Signature

Additional Pages \_\_\_\_\_

# APPENDIX Q



## Confidentiality Agreement

Confidentiality Agreement dated as of March \_\_\_\_\_, 2012 (this "**Agreement**") between \_\_\_\_\_ (the "**Stakeholder**") and Ira Smith Trustee & Receiver Inc. in its capacity as court appointed receiver (the "**Receiver**") of 2012241 Ontario Limited (the "**Debtor**") pursuant to a court order of the Honourable Mr. Justice Campbell dated November 15, 2011 (the "**Appointment Order**")

The Stakeholder is a lender to and/or holds securities of and/or has other claims against the Borrower and/or is acting in its capacity as a representative of the Debtor. The Stakeholder has approached the Receiver and expressed an interest in accessing certain information regarding the business and affairs of the Debtor for the purpose of \_\_\_\_\_ (the "**Stated Purpose**").

As used herein: (a) "**Evaluation Material**" refers to (i) non-public information furnished by the Receiver, including any loan and security documents, agreements of purchase and sale, rental agreements, other documents, loan balances, financial statements, cash flow statements, business plans, computer records and/or other information that the Receiver, in its sole discretion, elects to supply to the Stakeholder in respect of the Stated Purpose; (ii) all memoranda, notes, and other documents and analysis internally developed by the Receiver that it elects, in its sole discretion, to supply to the Stakeholder; and (iii) all memoranda, notes, and other documents and analyses developed by the Stakeholder using any information specified under clauses (i) and (ii) above ("**Internal Evaluation Material**").

The Stakeholder acknowledges that it is aware that the Receiver may be subject to duties of confidentiality ("**Receiver's Duties**") arising as a result of its appointment as the Receiver of the Debtor. Accordingly, the Stakeholder has entered into this Agreement in order to induce the Receiver to provide Evaluation Material to the Stakeholder. The Stakeholder agrees that the Receiver is making no commitment to provide any or all Evaluation Material to the Stakeholder. The Stakeholder agrees that the actual provision of any Evaluation Material to it shall be good and sufficient consideration for this Agreement.

The Stakeholder agrees that it will use all Evaluation Material solely for the Stated Purpose and that the Stakeholder will keep such information confidential in accordance with the terms of this Agreement; provided, however, that any such information may be disclosed to the partners, directors, officers, employees, legal counsel, auditors, affiliates, advisors and representatives (collectively, "**Representatives**") of the Stakeholder it being understood that such Representatives shall be informed by the Stakeholder of the confidential nature of such information, shall be directed by it to treat such information in accordance with the terms of this Agreement, and if required by the Receiver, for the Representatives and/or the Counterparty to sign a confidentiality agreement substantially in the form of this Agreement.

The Stakeholder advises that it may wish to release some or all of the Evaluation Material to \_\_\_\_\_, a proposed [**lender / assignee etc**] (the "**Counterparty**") who is an integral party to the Stakeholder achieving the Stated Purpose. The Receiver will permit the Stakeholder to disclose the Evaluation Material to the Counterparty providing that an acknowledgement is executed by the Counterparty (the "**Acknowledgement**") wherein the Counterparty agrees: (i) to be bound by the terms of this Agreement; and (ii) that it is jointly and severally liable with the Stakeholder for any of its breaches of this Agreement.

The Stakeholder agrees to be responsible for any breach of this Agreement that results from the actions or omissions of the Representatives and/or the Counterparty. In addition, the Stakeholder agrees that it will not disclose the Evaluation Material, to any person, other than its Representatives and the Counterparty without the express written consent of the Receiver and/or an Order of the Ontario Superior Court of Justice - Commercial List.

The Stakeholder shall be permitted to disclose any Evaluation Material (and the fact that such Evaluation Material has been made available to it) if, in the opinion of its legal counsel, in consultation with the Receiver's counsel: (i) the Stakeholder is required by applicable law or regulation or any governmental agency or other regulatory authority; or (ii) in connection with any legal proceedings so long as the Stakeholder takes such steps as reasonably available to it to make the disclosure on a confidential basis. The Stakeholder agrees that it will notify the Receiver as soon as practical in the event of any request or efforts to obtain disclosure of any Evaluation Material pursuant to applicable law or other requirement referred to in the previous sentence and will cooperate with any timely reasonable efforts of the Receiver to obtain protective orders or other relief, unless such notification shall be prohibited by applicable law or legal process.

The Stakeholder, the Representatives and the Counterparty shall have no obligation hereunder with respect to any information in any Evaluation Material to the extent that such information (i) is or becomes generally available to the public other than as a result of a disclosure by the Stakeholder, its Representatives and/or the Counterparty in violation of this Agreement; (ii) was within the Stakeholder's possession prior to it being furnished to it pursuant hereto, provided that the source of such information was not known by the Stakeholder to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Borrower or any other party with respect to such information; or (iii) is or becomes available to the Stakeholder on a non-confidential basis from a source other than the Receiver, or its Representatives, provided that such source is not known by the Stakeholder to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Receiver or any other party with respect to such information.

The Stakeholder agrees to return to the Receiver or destroy all Evaluation Material (including, for greater certainty, Internal Evaluation Material) promptly upon written request of the Receiver without retaining any copies thereof.

The Receiver has relied upon the financial records of the Debtor, as well as other information supplied by staff and management of the Debtor, its service providers, its financial institutions and other third parties. The Receiver assumes no responsibility or liability for loss or damage occasioned by any party as a result of the use of the Evaluation Material. Any use which any party makes of the Evaluation Material or any reliance on or decision made based on the Evaluation Material is the responsibility of such party.

The Stakeholder acknowledges and agrees that the execution and delivery of this Agreement and the delivery of any Evaluation Material does not give rise to any legal obligations of the Receiver, whether in contract, in negligence or other tort, by way of fiduciary duty or otherwise. Without limiting the foregoing, the Stakeholder acknowledges and agrees that the Receiver is not and will not be under any obligation, express or implied, to provide or to continue to provide any or all Evaluation Material, to entertain any offers or proposals relating to the Debtor, its business, its assets or any matters relating to the Appointment Order, or to complete any transaction with the Stakeholder, unless and until the Receiver and the Stakeholder execute and deliver a legally binding agreement expressly providing for such obligations. Without limiting the foregoing, the Stakeholder acknowledges and agrees that the Receiver has not and will not give any representations or warranties, either express or implied, concerning the accuracy or completeness of, or otherwise relating in any way to, any Evaluation Material provided to the Stakeholder, and that the Receiver shall not have any liability whatsoever to the Stakeholder, the Representatives, the Counterparty or any other party for any transaction entered into, or not entered into, or any other act, omission or decision made or taken, relying upon or in any way affected by, any Evaluation Material; the foregoing being subject to any representations and warranties concerning any Evaluation Material expressly given in writing in a legally binding agreement executed and delivered by the Receiver.

The Stakeholder hereby agrees to indemnify and hold the Receiver harmless from any and all claims, losses or damages and expenses (including legal costs) which arise directly or indirectly from any breach of this Agreement by the Stakeholder, the Representatives and/or the Counterparty, including without limitation any claims that any such breach also constitutes a breach of any of Receiver's Duties or of applicable laws.

The Stakeholder agrees that money damages would not be a sufficient remedy for breach of this Agreement, and that in addition to all other remedies available at law or in equity, the Receiver shall be entitled to seek equitable relief, including injunction and specific performance, without proof of actual damages. The Stakeholder acknowledges and agrees that no failure by the Receiver in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

This Agreement embodies the entire understanding and agreement between the parties with respect to all Evaluation Material and supersedes all prior understandings

and agreements relating thereto. The terms of this Agreement may not be amended, varied, waived or terminated except by a written document executed by the Receiver.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without giving effect to any choice of law principles.

This Agreement may be signed in counterparts, each of which shall be an original and both of which taken together shall constitute the same instrument.

This Agreement and any demand, notice or other communication to be given in connection with this Agreement including, without limitation, any confirmation or other document may be executed and delivered by personal delivery, electronic mail or fax to the following:

IF TO THE RECEIVER:

Ira Smith: e-mail address - [ira@irasmithinc.com](mailto:ira@irasmithinc.com); fax - (905) 738-9848

IF TO THE STAKEHOLDER:

\_\_\_\_\_

The parties agree that all telecopied or telefaxed copies of this Agreement, confirmations and other documents, and signatures hereto and thereto, shall be duplicate originals.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the date first written above.

**IRA SMITH TRUSTEE & RECEIVER  
INC.**  
solely in its capacity as court appointed  
receiver of **2012241 Ontario Limited**

**[COMPANY NAME]**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the Receiver

I have authority to bind the corporation

**ACKNOWLEDGEMENT**

**FROM:** \_\_\_\_\_ (the "Counterparty")

**TO:** **IRA SMITH TRUSTEE & RECEIVER INC (the "Receiver") in its capacity  
as court appointed receiver of 2012241 Ontario Limited**

**RE:** **ACKNOWLEDGEMENT OF OBLIGATIONS UNDER  
CONFIDENTIALITY AGREEMENT ATTACHED HERETO AS  
APPENDIX "A" (the "Agreement")**

---

The Counterparty has had the opportunity to review, with its legal advisors, the Agreement attached as Appendix "A" hereto and acknowledges and agrees to be bound by the terms contained therein, including, but not limited to, liability for any breach of the Agreement by the Counterparty.

**[NAME OF COUNTERTPARTY]**

\_\_\_\_\_  
Name:

Title:

I have authority to bind the Company

# APPENDIX R

## Confidentiality Agreement

Confidentiality Agreement dated as of March 21, 2012 (this "**Agreement**") between The Toronto-Dominion Bank (the "**Stakeholder**") and Ira Smith Trustee & Receiver Inc. in its capacity as court appointed receiver (the "**Receiver**") of 2012241 Ontario Limited (the "**Debtor**") pursuant to a court order of the Honourable Mr. Justice Campbell dated November 15, 2011 (the "**Appointment Order**")

The Stakeholder is a lender to and/or holds securities of and/or has other claims against the Borrower and/or is acting in its capacity as a representative of the Debtor. The Stakeholder has approached the Receiver and expressed an interest in accessing certain information regarding the business and affairs of the Debtor for the purpose of purchasing TD Bank security (the "**Stated Purpose**").

As used herein: (a) "**Evaluation Material**" refers to (i) non-public information furnished by the Receiver, including any loan and security documents, agreements of purchase and sale, rental agreements, other documents, loan balances, financial statements, cash flow statements, business plans, computer records and/or other information that the Receiver, in its sole discretion, elects to supply to the Stakeholder in respect of the Stated Purpose; (ii) all memoranda, notes, and other documents and analysis internally developed by the Receiver that it elects, in its sole discretion, to supply to the Stakeholder; and (iii) all memoranda, notes, and other documents and analyses developed by the Stakeholder using any information specified under clauses (i) and (ii) above ("**Internal Evaluation Material**").

The Stakeholder acknowledges that it is aware that the Receiver may be subject to duties of confidentiality ("**Receiver's Duties**") arising as a result of its appointment as the Receiver of the Debtor. Accordingly, the Stakeholder has entered into this Agreement in order to induce the Receiver to provide Evaluation Material to the Stakeholder. The Stakeholder agrees that the Receiver is making no commitment to provide any or all Evaluation Material to the Stakeholder. The Stakeholder agrees that the actual provision of any Evaluation Material to it shall be good and sufficient consideration for this Agreement.

The Stakeholder agrees that it will use all Evaluation Material solely for the Stated Purpose and that the Stakeholder will keep such information confidential in accordance with the terms of this Agreement; provided, however, that any such information may be disclosed to the partners, directors, officers, employees, legal counsel, auditors, affiliates, advisors and representatives (collectively, "**Representatives**") of the Stakeholder it being understood that such Representatives shall be informed by the Stakeholder of the confidential nature of such information, shall be directed by it to treat such information in accordance with the terms of this Agreement, and if required by the Receiver, for the Representatives and/or the Counterparty to sign a confidentiality agreement substantially in the form of this Agreement.



of FC MORTGAGE CREDIT CORP.

The Stakeholder advises that it may wish to release some or all of the Evaluation Material to ~~Firm Capital Corporation~~, a proposed lender (the "Counterparty") who is an integral party to the Stakeholder achieving the Stated Purpose. The Receiver will permit the Stakeholder to disclose the Evaluation Material to the Counterparty providing that an acknowledgement is executed by the Counterparty (the "Acknowledgement") wherein the Counterparty agrees: (i) to be bound by the terms of this Agreement; and (ii) that it is jointly and severally liable with the Stakeholder for any of its breaches of this Agreement.

The Stakeholder agrees to be responsible for any breach of this Agreement that results from the actions or omissions of the Representatives and/or the Counterparty. In addition, the Stakeholder agrees that it will not disclose the Evaluation Material, to any person, other than its Representatives and the Counterparty without the express written consent of the Receiver and/or an Order of the Ontario Superior Court of Justice - Commercial List.

The Stakeholder shall be permitted to disclose any Evaluation Material (and the fact that such Evaluation Material has been made available to it) if, in the opinion of its legal counsel, in consultation with the Receiver's counsel: (i) the Stakeholder is required by applicable law or regulation or any governmental agency or other regulatory authority; or (ii) in connection with any legal proceedings so long as the Stakeholder takes such steps as reasonably available to it to make the disclosure on a confidential basis. The Stakeholder agrees that it will notify the Receiver as soon as practical in the event of any request or efforts to obtain disclosure of any Evaluation Material pursuant to applicable law or other requirement referred to in the previous sentence and will cooperate with any timely reasonable efforts of the Receiver to obtain protective orders or other relief, unless such notification shall be prohibited by applicable law or legal process.

The Stakeholder, the Representatives and the Counterparty shall have no obligation hereunder with respect to any information in any Evaluation Material to the extent that such information (i) is or becomes generally available to the public other than as a result of a disclosure by the Stakeholder, its Representatives and/or the Counterparty in violation of this Agreement; (ii) was within the Stakeholder's possession prior to it being furnished to it pursuant hereto, provided that the source of such information was not known by the Stakeholder to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Borrower or any other party with respect to such information; or (iii) is or becomes available to the Stakeholder on a non-confidential basis from a source other than the Receiver, or its Representatives, provided that such source is not known by the Stakeholder to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Receiver or any other party with respect to such information.

The Stakeholder agrees to return to the Receiver or destroy all Evaluation Material (including, for greater certainty, Internal Evaluation Material) promptly upon written request of the Receiver without retaining any copies thereof.



The Receiver has relied upon the financial records of the Debtor, as well as other information supplied by staff and management of the Debtor, its service providers, its financial institutions and other third parties. The Receiver assumes no responsibility or liability for loss or damage occasioned by any party as a result of the use of the Evaluation Material. Any use which any party makes of the Evaluation Material or any reliance on or decision made based on the Evaluation Material is the responsibility of such party.

The Stakeholder acknowledges and agrees that the execution and delivery of this Agreement and the delivery of any Evaluation Material does not give rise to any legal obligations of the Receiver, whether in contract, in negligence or other tort, by way of fiduciary duty or otherwise. Without limiting the foregoing, the Stakeholder acknowledges and agrees that the Receiver is not and will not be under any obligation, express or implied, to provide or to continue to provide any or all Evaluation Material, to entertain any offers or proposals relating to the Debtor, its business, its assets or any matters relating to the Appointment Order, or to complete any transaction with the Stakeholder, unless and until the Receiver and the Stakeholder execute and deliver a legally binding agreement expressly providing for such obligations. Without limiting the foregoing, the Stakeholder acknowledges and agrees that the Receiver has not and will not give any representations or warranties, either express or implied, concerning the accuracy or completeness of, or otherwise relating in any way to, any Evaluation Material provided to the Stakeholder, and that the Receiver shall not have any liability whatsoever to the Stakeholder, the Representatives, the Counterparty or any other party for any transaction entered into, or not entered into, or any other act, omission or decision made or taken, relying upon or in any way affected by, any Evaluation Material; the foregoing being subject to any representations and warranties concerning any Evaluation Material expressly given in writing in a legally binding agreement executed and delivered by the Receiver.

The Stakeholder hereby agrees to indemnify and hold the Receiver harmless from any and all claims, losses or damages and expenses (including legal costs) which arise directly or indirectly from any breach of this Agreement by the Stakeholder, the Representatives and/or the Counterparty, including without limitation any claims that any such breach also constitutes a breach of any of Receiver's Duties or of applicable laws.

The Stakeholder agrees that money damages would not be a sufficient remedy for breach of this Agreement, and that in addition to all other remedies available at law or in equity, the Receiver shall be entitled to seek equitable relief, including injunction and specific performance, without proof of actual damages. The Stakeholder acknowledges and agrees that no failure by the Receiver in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

This Agreement embodies the entire understanding and agreement between the parties with respect to all Evaluation Material and supersedes all prior understandings

and agreements relating thereto. The terms of this Agreement may not be amended, varied, waived or terminated except by a written document executed by the Receiver.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without giving effect to any choice of law principles.

This Agreement may be signed in counterparts, each of which shall be an original and both of which taken together shall constitute the same instrument.

This Agreement and any demand, notice or other communication to be given in connection with this Agreement including, without limitation, any confirmation or other document may be executed and delivered by personal delivery, electronic mail or fax to the following:

**IF TO THE RECEIVER:**

Ira Smith: e-mail address - [ira@irasmithinc.com](mailto:ira@irasmithinc.com); fax - (905) 738-9848

**IF TO THE STAKEHOLDER:**

Dennis Zamanis: e-mail address - [dennis.zamanis@td.com](mailto:dennis.zamanis@td.com); fax - (416) 785-5082

The parties agree that all telecopied or telefaxed copies of this Agreement, confirmations and other documents, and signatures hereto and thereto, shall be duplicate originals.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the date first written above.

**IRA SMITH TRUSTEE & RECEIVER  
INC.**

solely in its capacity as court appointed  
receiver of ~~2012241~~ Ontario Limited

By: \_\_\_\_\_

Name: Ira Smith  
Title: President

I have authority to bind the Receiver

**THE TORONTO-DOMINION BANK**

By: \_\_\_\_\_

Name: DENNIS ZAMANIS  
Title: ANALYST

I have authority to bind the corporation

ACKNOWLEDGEMENT

FROM: Firm Capital Corporation (the "Counterparty")

TO: IRA SMITH TRUSTEE & RECEIVER INC (the "Receiver") in its capacity as court appointed receiver of 2012241 Ontario Limited

RE: ACKNOWLEDGEMENT OF OBLIGATIONS UNDER CONFIDENTIALITY AGREEMENT ATTACHED HERETO AS APPENDIX "A" (the "Agreement")

The Counterparty has had the opportunity to review, with its legal advisors, the Agreement attached as Appendix "A" hereto and acknowledges and agrees to be bound by the terms contained therein, including, but not limited to, liability for any breach of the Agreement by the Counterparty.

PER FC MORTGAGE CREDIT CORP.  
~~FIRM CAPITAL CORPORATION~~

Name: MICHAEL WALNER  
 Title: A.S.D

I have authority to bind the Company

# APPENDIX S

**Victoria Gifford**

**From:** Michael Warner <MWarner@firmcapital.com>  
**Sent:** March 22, 2012 2:08 PM  
**To:** Ira Smith  
**Cc:** Dennis Zamanis; Frank DiNino; Ken Malcolm; Robb English; Domenico Magisano; Brandon Smith; Stanley Sugar  
**Subject:** RE: 50 Sunny Meadow

Ira

I will be there in the morning at 10:30

---

**From:** Ira Smith [<mailto:ira@irasmithinc.com>]  
**Sent:** Thursday, March 22, 2012 11:40 AM  
**To:** Michael Warner  
**Cc:** Dennis Zamanis; Frank DiNino; Ken Malcolm; Robb English; Domenico Magisano; Brandon Smith; Stanley Sugar  
**Subject:** RE: 50 Sunny Meadow  
**Importance:** High

Hi Michael. We are actually in a position to have the Agreements reviewed by you in our office. We are not in a position to distribute them or allow a copy to be made. Of course, we are in a position to allow you to make any notes you may wish to make.

In the meantime, attached is the summary schedule of the APS's, all subject to the acknowledgement and confidentiality agreement that was signed by FC Mortgage Credit Corp.

If you wish, you may attend at our office at 10:30AM tomorrow, when my colleague, Stan Sugar, who is familiar with all the Agreements will be available to provide the APS's to you for your review.

Please advise.

Best regards.



**IRA SMITH MBA, CA-CIRP**  
 President

167 Applewood Cres. Suite 6, Concord, ON L4K 4K7

P: 905.738.4167 ext.111 | C: 905.738.4167 ext. 211  
 F: 905.738.9848 | E: [ira@irasmithinc.com](mailto:ira@irasmithinc.com)  
[www.irasmithinc.com](http://www.irasmithinc.com)

---

This e-mail is intended only for the person to whom it is addressed (the "addressee") and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use that a person other than the addressee makes of this communication is prohibited and any reliance or decisions made based on it, are the responsibility of such person. We accept no responsibility for any loss or damages suffered by any person other than the addressee as a result of decisions made or actions taken based on this communication or otherwise. If you received this in error, please contact the sender and destroy all copies of this e-mail.

---

**From:** Michael Warner [<mailto:MWarner@firmcapital.com>]  
**Sent:** March-22-12 10:26 AM  
**To:** Ira Smith  
**Subject:** 50 Sunny Meadow

Ira

It is my understanding that you are now in a position to send all the agreements regarding the above noted property. Is it possible to send them via PDF to our office.

Thanks



**Michael Warner**

Vice President, Mortgage Lending

Firm Capital Corporation

Mortgage Banking • Real Estate Capital

Tel: (416) 635-0221, ext. 230 | Fax: (416) 635-1713

1244 Caledonia Road, Toronto, Ontario M6A 2X5

email: [mwarner@firmcapital.com](mailto:mwarner@firmcapital.com) | Website: [www.FirmCapital.com](http://www.FirmCapital.com)

**Important Notice:** This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by email and delete the message. Thank you. Firm Capital Corporation ("FCC") – *Disclaimer if e-mail relates to an FCC matter;* Ontario Mortgage Brokerages, Lenders and Administrators Act License #10164, Administrators License #11442, Registered Agent #M08000109

# APPENDIX T

000179



1220 Eglinton Avenue West  
Toronto, Ontario M6C 2E3  
Telephone (416) 789-0652  
Facsimile (416) 789-9015

**Anthony J. O' Brien, B.A., LL.B**  
Tel: (416) 789-0652 ext 306  
tobrien@lzwlaw.com

March 23, 2012

**SENT BY FAX**

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

Attention: Domenico Magisano

Dear Sir:

**Re: Toronto Dominion Bank and 2012241 Ontario Limited**

Please provide me with a full set of Leases and Agreements of Purchase and Sale pursuant to the executed Acknowledgment and Confidentiality Agreement. At this point we will not yet be sending them to First National until we have further discussions with you.

Yours very truly,

**LIPMAN ZENER & WAXMAN LLP**

Per: Anthony J. O' Brien  
AJO/mf  
Enclosures



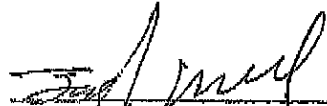
**ACKNOWLEDGEMENT**

**FROM:** 2012241 Ontario Limited (the "Counterparty")  
**TO:** IRA SMITH TRUSTEE & RECEIVER INC (the "Receiver") in its capacity as court appointed receiver of 2012241 Ontario Limited  
**RE:** ACKNOWLEDGEMENT OF OBLIGATIONS UNDER CONFIDENTIALITY AGREEMENT ATTACHED HERETO AS APPENDIX "A" (the "Agreement")

---

The Counterparty has had the opportunity to review, with its legal advisors, the Agreement attached as Appendix "A" hereto and acknowledges and agrees to be bound by the terms contained therein, including, but not limited to, liability for any breach of the Agreement by the Counterparty.

2012241 ONTARIO LIMITED

  
Name: JAGDEV DHALIMBAL  
Title: PRESIDENT

I have authority to bind the Company

### Confidentiality Agreement

Confidentiality Agreement dated as of March 22, 2012 (this "Agreement") between 2012241 Ontario Limited (the "Stakeholder") and Ira Smith Trustee & Receiver Inc. In its capacity as court appointed receiver (the "Receiver") of 2012241 Ontario Limited (the "Debtor") pursuant to a court order of the Honourable Mr. Justice Campbell dated November 15, 2011 (the "Appointment Order")

The Stakeholder is a lender to and/or holds securities of and/or has other claims against the Borrower and/or is acting in its capacity as a representative of the Debtor. The Stakeholder has approached the Receiver and expressed an interest in accessing certain information regarding the business and affairs of the Debtor for the purpose of complying with and putting together a re-financing package (the "Stated Purpose").

As used herein: (a) "Evaluation Material" refers to (i) non-public information furnished by the Receiver, including any loan and security documents, agreements of purchase and sale, rental agreements, other documents, loan balances, financial statements, cash flow statements, business plans, computer records and/or other information that the Receiver, in its sole discretion, elects to supply to the Stakeholder in respect of the Stated Purpose; (ii) all memoranda, notes, and other documents and analysis internally developed by the Receiver that it elects, in its sole discretion, to supply to the Stakeholder; and (iii) all memoranda, notes, and other documents and analyses developed by the Stakeholder using any information specified under clauses (i) and (ii) above ("Internal Evaluation Material").

The Stakeholder acknowledges that it is aware that the Receiver may be subject to duties of confidentiality ("Receiver's Duties") arising as a result of its appointment as the Receiver of the Debtor. Accordingly, the Stakeholder has entered into this Agreement in order to induce the Receiver to provide Evaluation Material to the Stakeholder. The Stakeholder agrees that the Receiver is making no commitment to provide any or all Evaluation Material to the Stakeholder. The Stakeholder agrees that the actual provision of any Evaluation Material to it shall be good and sufficient consideration for this Agreement.

The Stakeholder agrees that it will use all Evaluation Material solely for the Stated Purpose and that the Stakeholder will keep such information confidential in accordance with the terms of this Agreement; provided, however, that any such information may be disclosed to the partners, directors, officers, employees, legal counsel, auditors, affiliates, advisors and representatives (collectively, "Representatives") of the Stakeholder if being understood that such Representatives shall be informed by the Stakeholder of the confidential nature of such information, shall be directed by it to treat such information in accordance with the terms of this Agreement, and if required by the Receiver, for the Representatives and/or the Counterparty to sign a confidentiality agreement substantially in the form of this Agreement.

The Stakeholder advises that it may wish to release some or all of the Evaluation Material to First National Financial LP, a proposed [lender / assignee etc] (the "Counterparty") who is an integral party to the Stakeholder achieving the Stated Purpose. The Receiver will permit the Stakeholder to disclose the Evaluation Material to the Counterparty providing that an acknowledgement is executed by the Counterparty (the "Acknowledgement") wherein the Counterparty agrees: (i) to be bound by the terms of this Agreement; and (ii) that it is jointly and severally liable with the Stakeholder for any of its breaches of this Agreement.

The Stakeholder agrees to be responsible for any breach of this Agreement that results from the actions or omissions of the Representatives and/or the Counterparty. In addition, the Stakeholder agrees that it will not disclose the Evaluation Material, to any person, other than its Representatives and the Counterparty without the express written consent of the Receiver and/or an Order of the Ontario Superior Court of Justice - Commercial List.

The Stakeholder shall be permitted to disclose any Evaluation Material (and the fact that such Evaluation Material has been made available to it) if, in the opinion of its legal counsel, in consultation with the Receiver's counsel: (i) the Stakeholder is required by applicable law or regulation or any governmental agency or other regulatory authority; or (ii) in connection with any legal proceedings so long as the Stakeholder takes such steps as reasonably available to it to make the disclosure on a confidential basis. The Stakeholder agrees that it will notify the Receiver as soon as practical in the event of any request or efforts to obtain disclosure of any Evaluation Material pursuant to applicable law or other requirement referred to in the previous sentence and will cooperate with any timely reasonable efforts of the Receiver to obtain protective orders or other relief, unless such notification shall be prohibited by applicable law or legal process.

The Stakeholder, the Representatives and the Counterparty shall have no obligation hereunder with respect to any information in any Evaluation Material to the extent that such information (i) is or becomes generally available to the public other than as a result of a disclosure by the Stakeholder, its Representatives and/or the Counterparty in violation of this Agreement; (ii) was within the Stakeholder's possession prior to it being furnished to it pursuant hereto, provided that the source of such information was not known by the Stakeholder to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Borrower or any other party with respect to such information; or (iii) is or becomes available to the Stakeholder on a non-confidential basis from a source other than the Receiver, or its Representatives, provided that such source is not known by the Stakeholder to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligation of confidentiality to the Receiver or any other party with respect to such information.

The Stakeholder agrees to return to the Receiver or destroy all Evaluation Material (including, for greater certainty, Internal Evaluation Material) promptly upon written request of the Receiver without retaining any copies thereof.

The Receiver has relied upon the financial records of the Debtor, as well as other information supplied by staff and management of the Debtor, its service providers, its financial institutions and other third parties. The Receiver assumes no responsibility or liability for loss or damage occasioned by any party as a result of the use of the Evaluation Material. Any use which any party makes of the Evaluation Material or any reliance on or decision made based on the Evaluation Material is the responsibility of such party.

The Stakeholder acknowledges and agrees that the execution and delivery of this Agreement and the delivery of any Evaluation Material does not give rise to any legal obligations of the Receiver, whether in contract, in negligence or other tort, by way of fiduciary duty or otherwise. Without limiting the foregoing, the Stakeholder acknowledges and agrees that the Receiver is not and will not be under any obligation, express or implied, to provide or to continue to provide any or all Evaluation Material, to entertain any offers or proposals relating to the Debtor, its business, its assets or any matters relating to the Appointment Order, or to complete any transaction with the Stakeholder, unless and until the Receiver and the Stakeholder execute and deliver a legally binding agreement expressly providing for such obligations. Without limiting the foregoing, the Stakeholder acknowledges and agrees that the Receiver has not and will not give any representations or warranties, either express or implied, concerning the accuracy or completeness of, or otherwise relating in any way to, any Evaluation Material provided to the Stakeholder, and that the Receiver shall not have any liability whatsoever to the Stakeholder, the Representatives, the Counterparty or any other party for any transaction entered into, or not entered into, or any other act, omission or decision made or taken, relying upon or in any way affected by, any Evaluation Material; the foregoing being subject to any representations and warranties concerning any Evaluation Material expressly given in writing in a legally binding agreement executed and delivered by the Receiver.

The Stakeholder hereby agrees to indemnify and hold the Receiver harmless from any and all claims, losses or damages and expenses (including legal costs) which arise directly or indirectly from any breach of this Agreement by the Stakeholder, the Representatives and/or the Counterparty, including without limitation any claims that any such breach also constitutes a breach of any of Receiver's Duties or of applicable laws.

The Stakeholder agrees that money damages would not be a sufficient remedy for breach of this Agreement, and that in addition to all other remedies available at law or in equity, the Receiver shall be entitled to seek equitable relief, including injunction and specific performance, without proof of actual damages. The Stakeholder acknowledges and agrees that no failure by the Receiver in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

This Agreement embodies the entire understanding and agreement between the parties with respect to all Evaluation Material and supersedes all prior understandings

and agreements relating thereto. The terms of this Agreement may not be amended, varied, waived or terminated except by a written document executed by the Receiver.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without giving effect to any choice of law principles.

This Agreement may be signed in counterparts, each of which shall be an original and both of which taken together shall constitute the same instrument.

This Agreement and any demand, notice or other communication to be given in connection with this Agreement including, without limitation, any confirmation or other document may be executed and delivered by personal delivery, electronic mail or fax to the following:

**IF TO THE RECEIVER:**

Ira Smith: e-mail address - [ira@irasmithinc.com](mailto:ira@irasmithinc.com); fax - (905) 738-9848

**IF TO THE STAKEHOLDER:**

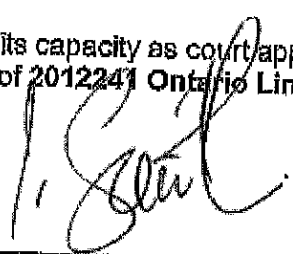
Anthony J. O'Brien: e-mail address - [tobrien@lzwlaw.com](mailto:tobrien@lzwlaw.com); fax - (416)789-9015

The parties agree that all telecopied or telefaxed copies of this Agreement, confirmations and other documents, and signatures hereto and thereto, shall be duplicate originals.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the date first written above.

**IRA SMITH TRUSTEE & RECEIVER  
INC.**

solely in its capacity as court appointed  
receiver of 2012241 Ontario Limited

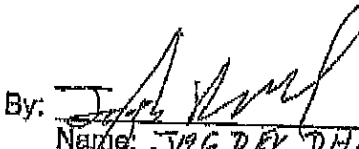


By: \_\_\_\_\_

Name: Ira Smith  
Title: President

I have authority to bind the Receiver

**2012241 ONTARIO LIMITED**



By: \_\_\_\_\_  
Name: JAGDEV DHALI WAL  
Title: PRESIDENT

I have authority to bind the corporation

# APPENDIX U

**From:** Tony O'Brien <TObrien@lzwlaw.com>  
**Sent:** March 26, 2012 5:53 AM  
**To:** Domenico Magisano  
**Cc:** Ira Smith; renglish@airdberlis.com  
**Subject:** RE: Viewing of Documents

"Viewing of the Documents". Unfortunately I will be proceeding with my Motion on all issues against the Receiver including costs on April 4, 2012. For some reason you are now refusing to provide copies of the documents (agreements of purchase and sale and leases) so we will go to Court and get that Order no matter what else occurs and recover the costs of having to do so. Obviously this about face was unexpected and I hope no documents have been released to any other entity or party but that will probably come out in the next few days.

-----Original Message-----

From: Domenico Magisano [<mailto:dmagisano@blaney.com>]  
Sent: Friday, March 23, 2012 1:12 PM  
To: Tony O'Brien  
Cc: 'Ira Smith'  
Subject: Viewing of Documents

Tony,

I am in receipt of the attached letter and note that your client is not intending to disclose Evaluation Material to First National at this time. I am sure your client also understands that it cannot discuss the contents of the Evaluation Material with First National until an acknowledgement is provided. Finally, given the change in what was the previous understanding for accessing the documents, I must confirm that your individual clients (the principals of the Respondent) and any other individual acting on behalf of the Respondent are not permitted to share or discuss the Evaluation Material with any third party (including, but not limited to, any new company that may be created in the future).

With all of that said, I believe the Receiver will be pleased to make an appointment with your client so that they may review the leases and APS' at the Receiver's offices.

Ira: Can you advise Tony of availability?

Regards

Dom

Domenico Magisano

Direct TEL 416.593.2996  
Direct FAX 416.593.2977  
[dmagisano@blaney.com](mailto:dmagisano@blaney.com)

Blaney McMurtry LLP  
2 Queen Street East, Suite 1500

Toronto, Canada M5C 3G5  
416.593.1221 TEL  
416.593.5437 FAX  
[www.blaney.com](http://www.blaney.com)

000186

This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality.

If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

Consider the environment, please don't print this email unless you really need to.



# APPENDIX V

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**THE TORONTO-DOMINION BANK**

Applicant

- and -

**2012241 ONTARIO LIMITED**

Respondent

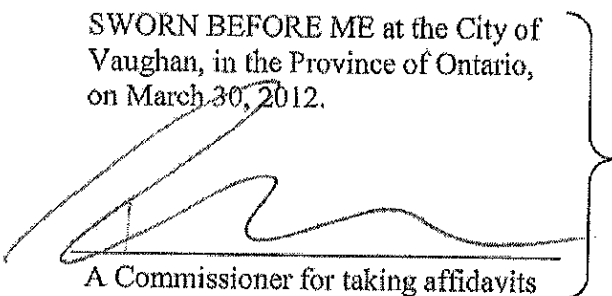
**AFFIDAVIT OF IRA SMITH  
(Sworn March 30, 2012)**

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 verify 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 15<sup>th</sup>, 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.

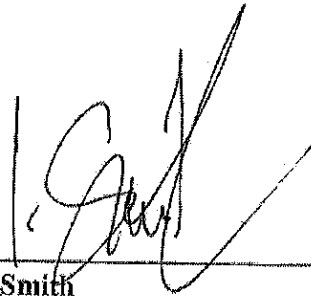
4. Attached hereto and marked as **Exhibit "A"** to this my Affidavit is a summary of the fees charged and accounts rendered by the Receiver in respect of the proceedings (the "**Accounts Summary**") for the period from January 1, 2012 to February 29, 2012 (the "**Time Period**"). A copy of the invoice 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 Third Report with this Honourable Court, which outlines, among other things, the Receiver's overall actions and activities since December 31, 2011.
6. A total of 254.9 hours were expended by the Receiver in connection with this matter during the Time Period, giving rise to fees totaling \$88,257.50 (excluding HST) for an average hourly rate of \$346.24 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 March 30, 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 December 21, 2011 to February 28, 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. 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 March 30, 2012.



A Commissioner for taking affidavits

**Brandon Smith, a Commissioner,  
etc., Province of Ontario, for Ira  
Smith Trustee & Receiver Inc.,  
Trustee in Bankruptcy. Expires  
May 2, 2014.**



Ira Smith

## EXHIBIT "A"

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

January 1, 2012 – February 29, 2012

Staff Member	Title	Total Hours	Hourly Rate (\$CDN)	Amount Billed (\$CDN)
Ira Smith MBA, CA•CIRP, Trustee	President	43.9	425.00	18,657.50
Brandon Smith BA	Senior Vice-President	83.7	350.00	29,295.00
Martin Wolfe CA	Senior Consultant	19.4	325.00	6,305.00
S. Sugar CA	Senior Consultant	101.8	325.00	33,085.00
Cheryl Deshane	Associate	<u>6.1</u>	150.00	<u>\$915.00</u>
<b>Total</b>		<b><u>254.9</u></b>	<b>Average hourly rate of \$346.24</b>	<b>88,257.50</b>
<b>Disbursements</b>				<b>344.80</b>
<b>Net Fees and Disbursements (excluding HST)</b>				<b><u>\$88,602.30</u></b>

This Exhibit A referred to in the  
 Affidavit of IRA SMITH  
 Sworn before me this 30 day of MAR, 2012

  
 A Commissioner, etc.

Brandon Smith, a Commissioner,  
 etc., Province of Ontario, for Ira  
 Smith Trustee & Receiver Inc.,  
 Trustee in Bankruptcy. Expires  
 May 2, 2014.

This Exhibit 3 referred to in the Affidavit of IRA SMITH Sworn before me this 30 day of MAR, 2012



**IRA SMITH**  
TRUSTEE & RECEIVER INC.  
STARTING OVER, STARTING NOW

*Brandon Smith*  
A Commissioner, etc.  
etc., Province of Ontario, for Ira  
Smith Trustee & Receiver Inc.,  
Trustee in Bankruptcy. Expires  
May 2, 2014.

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

R-Sunny Meadow

March 12, 2012

GST/HST # 86236 5699

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

For professional services rendered for the period from January 1, 2012 to February 29, 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	43.9
B. Smith, BA, Senior Vice-President	\$350	83.7
M. Wolfe, CA, Senior Consultant	\$325	19.4
S. Sugar, CA, Senior Consultant	\$325	101.8
C. Deshane, Associate	\$150	6.1
		<u>254.9</u>
		\$ 88,257.50

Disbursements:

Fax	\$ 58.75	
Postage	96.74	
Long Distance	13.46	
Parking/Mileage/Travel	136.41	
Equipment	1.44	
Courier	<u>38.00</u>	
		<u>344.80</u>
		\$ 88,602.30
	HST	<u>11,518.30</u>
		<u>\$100,120.60</u>

Ira Smith Trustee & Receiver Inc.

Detail Time Sheet

Period from: 01/01/2012 to 29/02/2012

Keyname	Full Estate Name	Date	Employee	Hours Remark	Amount (\$)
Sunny Meadow	In the Matter of the Receivership of 2012241 Ontrario Limited				
		03/01/2012	Stanley Sugar	4.2 meeting w Marty W, emails from Brandon S., review of documents re units 111 & 104, emails to and from re rent roll, meeting w unit holder 206-207 Ranbir Gill re status & NSF cheque, meeting w T Illangovan RBC Dominion Securities re building prospect	1,365.00
		04/01/2012	Stanley Sugar	4.8 catalogue box listing schedule	1,560.00
		05/01/2012	Martin Wolfe	2.8 site visit re unknown occupant as advised by security and visit to tenants	910.00
		05/01/2012	Martin Wolfe	0.5 prelim meeting with RBC Dominion personnel	162.50
		05/01/2012	Stanley Sugar	2.4 catalogue box listing schedule	780.00
		05/01/2012	Stanley Sugar	2.1 2nd meeting with unit holder 206-207 Ranbir Gill & unit holder 202 Daljit Gill occupancy rent status & payments due, email rec'd & response to Merwars PC re deposit unit 215	682.50
		06/01/2012	Stanley Sugar	3.7 emails to group, meeting with Marty W, catalogue box listing schedule, unit deposits	1,202.50
		09/01/2012	Stanley Sugar	2.3 meeting w B. Smith review and update re current and outstanding issues insurance and unit holders occupancy, meeting with M Wolfe & B Smith, telcon unit 211 C Gill re rent & verify, telcon w unit 213 P Samra re rent & verify	747.50
		10/01/2012	Brandon Smith	5.0 Mtgs w/ Stan & Marty; call w/ Pellican; updating rent roll; banking; matters re security concerns; call w/ Dom	1,750.00
		10/01/2012	Cheryl Deshane	0.3 endorsement of chqs per I. Smith	45.00
		10/01/2012	Cheryl Deshane	0.2 Creditor correspondence	30.00
		10/01/2012	Martin Wolfe	0.2 phone P Vitesse re documentation	65.00

Ira Smith Trustee & Receiver Inc.

Detail Time Sheet

Period from: 01/01/2012 to 29/02/2012

Keyname	Full Estate Name	Date	Employee	Hours	Remark	Amount (\$)
Sunny Meadow	In the Matter of the Receivership of 2012241 Ontrario Limited					
		10/01/2012	Stanley Sugar	4.2	telcon w T Decoito unit 108 re rent, lease commencement and deposit provided, meeting w B Smith re other tenant matters, rent roll schedule to Jan 10th, memo to file	1,365.00
		11/01/2012	Brandon Smith	2.5	call w/ Marty and dom; rtn calls to unit owners and unsec creds; emails re PM matters; prepare R&D	875.00
		11/01/2012	Brandon Smith	0.3	pmt of PM/operating expenses	105.00
		11/01/2012	Cheryl Deshane	1.7	Scanning documents per M. Wolfe	255.00
		11/01/2012	Ira Smith	3.4	Rvw and changes to Agenda and backup materials for meeting w. TD on Friday, mtgs and discs w. M. Wolfe re issues arising from documentation, final amendments and issuance of Agenda and attachments	1,445.00
		11/01/2012	Martin Wolfe	0.6	conference call B Smith & D Magiacocino	195.00
		11/01/2012	Martin Wolfe	0.5	making arrangements with potential purchaser group for meeting	162.50
		11/01/2012	Martin Wolfe	2.8	preparation of materials for I Smith & discussion of issues	910.00
		11/01/2012	Stanley Sugar	0.9	meetings w M Wolfe re various schedules and issues to date	292.50
		12/01/2012	Ira Smith	0.3	Telcon w. K. Malcolm re meeting tomorrow at TD re update on receivership	127.50
		12/01/2012	Ira Smith	1.8	Meeting w. D. Magisano to go over issues and process for next attendance in Court and recommendations of Receiver	765.00
		12/01/2012	Ira Smith	2.9	Rvw and amendments to draft Second Report to Court and email to Blaney's re changes and additional appendices	1,232.50
		12/01/2012	Ira Smith	0.4	Rvw of material for prep for mtg w. TD tomorrow	170.00



Ira Smith Trustee & Receiver Inc.

Detail Time Sheet

Period from: 01/01/2012 to 29/02/2012

Keyname	Full Estate Name	Date	Employee	Hours	Remark	Amount (\$)
Sunny Meadow	In the Matter of the Receivership of 2012241 Ontarrio Limited					
		12/01/2012	Stanley Sugar	5.6	meetings w M Wolfe re schedules to source & provide for meeting w counsel, emails rec'd & review of materials for TD Bank meeting, meeting w D Magisano, preparation of chart sales information schedule	1,820.00
		13/01/2012	Brandon Smith	2.0	banking, prepare memo w/ Stan re compliant/non compliant occupant/unit owners	700.00
		13/01/2012	Ira Smith	1.1	Meeting w. potential purch's group represented by RBC Dominion	467.50
		13/01/2012	Ira Smith	1.9	Attend meeting at TD FRG for update session and travel back to office	807.50
		13/01/2012	Martin Wolfe	1.1	meeting with potential purchasers group represented by RBC Dominion	357.50
		13/01/2012	Stanley Sugar	4.3	further letter to Merwars PC re deposit unit 2.15, meeting w I Smith & M Wolfe update, meeting w B Smith rent roll & memo summary of current status of all bidg units, update of files, additional preparation of chart sales information schedule	1,397.50
		15/01/2012	Brandon Smith	3.5	prepare notices for unit 312 and 315, travel to from and attend at site w/ S. Sugar; corresp w/ PM	1,225.00
		16/01/2012	Ira Smith	0.3	Final rvw of 12 31 billing and email to K. Malcolm with Blaney billing	127.50
		16/01/2012	Ira Smith	0.2	Telcon w. Amar of First National	85.00
		16/01/2012	Stanley Sugar	8.0	site visit attendance w B. Smith at 50 Sunny Meadow, meetings w M Wolfe information and schedules, analysis & preparation sales information schedule	2,600.00
		17/01/2012	Brandon Smith	3.5	TC w/ TD's insurance dept; discussions w/ M. Wolfe & Emails to B. Bone re insurance; Correspondence with occupants/counsel re continued rqt for docs/rent/occupancy pmts; review w/ S. Sugar re vitesse and finalize memo; mtg w/ all staff re status	1,225.00

Ira Smith Trustee & Receiver Inc.

Detail Time Sheet

Period from: 01/01/2012 to 29/02/2012

Keyname  
Sunny Meadow

Full Estate Name  
In the Matter of the Receivership of 2012241 Ontrario Limited

Date	Employee	Hours	Remark	Amount (\$)
17/01/2012	Brandon Smith	0.5	corresp w/ English Prestige and Adeste Global re invoices and receivership stay; put English prestige on notice re chiller damage	175.00
17/01/2012	Cheryl Deshane	0.1	Bank reconciliation	15.00
17/01/2012	Martin Wolfe	0.4	discussion with B Smith re insurance & other matter	130.00
17/01/2012	Stanley Sugar	4.6	meetings w B Smith re tenancy issues , update meeting w I Smith & M. Wolfe, preparation of sales information schedule	1,495.00
18/01/2012	Brandon Smith	2.0	corresp and other matters re PM and occupant issues, edits to memo; discussions w/ S. Sugar re his reviews; matters re insurance	700.00
18/01/2012	Martin Wolfe	1.4	numerous emails & conversations with Bruce Bone re: insurance renewal (over several days)	455.00
18/01/2012	Stanley Sugar	6.3	analysis and revision of sales information data and schedules	2,047.50
19/01/2012	Brandon Smith	2.0	email and TC w/ D. Magisano; preparation of additional schedules w/ S. Sugar re defining # of tenants and sold units and their compliance status	700.00
19/01/2012	Brandon Smith	1.0	review lease for unit 108 re claims of 3 months rent free and respond to tenant re demand for payment; review all 6 leases w/ Stan to determine who in fact is landlord, email to group to the extent it affects the report	350.00
19/01/2012	Brandon Smith	0.7	corresp re PM, insurance and pelican consulting agreements; TC w/ TD's risk group	245.00
19/01/2012	Ira Smith	0.4	Discussion w. M. Wolfe re insurance status, rvw of emails re tenants	170.00
19/01/2012	Martin Wolfe	0.4	Discussion with I smith re insurance status phone P Vitesse re: documentation	130.00
19/01/2012	Stanley Sugar	4.9	meeting w B. Smith, further changes and revisions re analysis and data re memo schedules, APS and rent roll issues and file up date, emails rec'd re draft court report review	1,592.50

Ira Smith Trustee & Receiver Inc.

Detail Time Sheet

Period from: 01/01/2012 to 29/02/2012

Keyname	Full Estate Name	Date	Employee	Hours	Remark	Amount (\$)
Sunny Meadow	In the Matter of the Recevlership of 2012241 Ontrario Limited	20/01/2012	Brandon Smith	2.5	finalize notice of meeting w/ occupants, send, corresp w/ misc occupants & counsel re same; disc w/ s sugar re prep for appraiser; matters re insurance; pmt of inv	875.00
		20/01/2012	Brandon Smith	1.0	mtg w/ ins brokers	350.00
		20/01/2012	Cheryl Deshane	0.6	Mailing of notice of Meeting	90.00
		20/01/2012	Ira Smith	4.1	Rvw of Second Report draft, changes, prep of new Exhibits, email to legal counsel	1,742.50
		20/01/2012	Ira Smith	3.2	Rvw and final changes to Property Mgt Agreement, email to Y. Hendler	1,360.00
		20/01/2012	Martin Wolfe	1.0	meeting with insurance broker	325.00
		20/01/2012	Stanley Sugar	5.7	meetings w I & B Smith, preparation of schedules re unit bldg details for appraiser J Lee	1,852.50
		22/01/2012	Brandon Smith	1.5	matters re occupant compliance, security, moving, elevators, conf call w/ ire, Dom & Shawn	525.00
		23/01/2012	Brandon Smith	1.0	preparation of exhibits, R&D for 2nd report; corresp w/ PM	350.00
		23/01/2012	Brandon Smith	3.3	travel to from and attend at premises for mtg w/ M. Winnick (PW); corresp w/ occupants re docs, rent utils etc	1,155.00
		23/01/2012	Stanley Sugar	0.9	meeting w M Wolfe & J Lee re building appraisal information & schedules provided	292.50
		24/01/2012	Brandon Smith	2.0	rvw utility bills and send to occupants, pay maintenance and utility bills; email to PM	700.00
		24/01/2012	Brandon Smith	2.0	mtg w/ unit 211 owners; mtg w/ Pelican Woodcliff; corresp re prop mgmt matters; tc re potential purchase	700.00

Ira Smith Trustee & Receiver Inc.

Detail Time Sheet

Period from: 01/01/2012 to 29/02/2012

Keyname	Full Estate Name	Date	Employee	Hours	Remark	Amount (\$)
Sunny Meadow	In the Matter of the Receivership of 2012241 Ontario Limited					
		24/01/2012	Brandon Smith	0.8	corresp from English prestige; discussion w/ M. Wolfe re utilities bills; TC w/ pot purchase	280.00
		24/01/2012	Cheryl Deshane	0.7	Preparing fee affidavit and collation of appendices re: 2nd report	105.00
		24/01/2012	Ira Smith	2.8	Final rvw and changes to second report, email to Blaney's re same, rvw of draft Order	1,190.00
		24/01/2012	Martin Wolfe	0.9	discussion with B Smith re utility bill and emails & tel with Enercare	292.50
		24/01/2012	Martin Wolfe	1.7	preparation & meeting with Pelican Woodcliff	552.50
		25/01/2012	Brandon Smith	4.0	corresp w/ occupants, t/c and f/u l;tr; ltr to Pelican; prop mgmt and security matters; rvw bond security proposal and reply w/ RFC; email to Dom re Vitesse/Sgro chq	1,400.00
		25/01/2012	Martin Wolfe	1.5	correspondence with Enercare	487.50
		26/01/2012	Brandon Smith	3.0	Mtg w/ property manager; corresp w/ occupants/purchasers; rvw corresp from Sikdar and discuss review implications and compare to documents in file	1,050.00
		26/01/2012	Stanley Sugar	0.4	meeting w B Smith rent roll & tenant lease issues	190.00
		26/01/2012	Stanley Sugar	1.4	meetings w B Smith APS & deposit info re units 302 & 303	455.00
		26/01/2012	Stanley Sugar	1.1	update rent roll & other issues unit 112	357.50
		26/01/2012	Stanley Sugar	2.5	examination of transactions Sikdar trust ledger	812.50
		27/01/2012	Brandon Smith	2.0	corresp re PM/security; corresp w/ occupants re mtg; tel cal w/ Dom re status/tues mtg; arrange security	700.00
		27/01/2012	Ira Smith	0.8	Telcon w. D. Magisano re Monday and Tuesday, rvw of letter from Chahal and Dhaliwal lawyer	340.00
		27/01/2012	Stanley Sugar	1.2	meeting w B Smith Sikdar trust ledgers further research	390.00

Ira Smith Trustee & Receiver Inc.  
 Detail Time Sheet  
 Period from: 01/01/2012 to 29/02/2012

Keyname	Full Estate Name	Date	Employee	Hours	Remark	Amount (\$)
Sunny Meadow	In the Matter of the Receivership of 2012241 Ontario Limited	30/01/2012	Brandon Smith	3.0	mtg w/ Darrin from bond securcom re security proposal; investigate w/ bell re client provided items for security; tc's emails re prop mgmt, pot purchase; prep for tomorrows mtg; corresp re rsyp	1,050.00
		30/01/2012	Ira Smith	3.7	Travel to and from and attend in Court re approval of second report to court	1,572.50
		30/01/2012	Ira Smith	0.8	emails and telcon w K Malcolm and R English	340.00
		31/01/2012	Brandon Smith	4.5	prep for, travel to, from and attend at site for occupants mtg; corresp w/ occupants	1,575.00
		31/01/2012	Brandon Smith	0.5	call w/ Dom & Ira re distilling information for TD re sales data; direct Ira to schedules prepared by S. Sugar that provided most of the distilled information	175.00
		31/01/2012	Cheryl Deshane	0.2	Occupant calls	30.00
		31/01/2012	Ira Smith	4.4	mtg w D Magisano to prep for owner/occupant mtg, travel to and from and attend mtg	1,870.00
		31/01/2012	Ira Smith	0.6	emails and telcons w D Magisano	255.00
		31/01/2012	Stanley Sugar	3.7	meetings w I & B Smith, review of meeting at Sunny Meadow to-day, preparation of schedule TMI calculations per unit holders	1,202.50
		01/02/2012	Brandon Smith	2.0	INSTRUCT STAN RE SCHEDULE FOR TD; banking re occupancy; corresp re prop mgmt matters	700.00
		01/02/2012	Cheryl Deshane	0.2	Dealing with occupants coming in to pay rent	30.00
		01/02/2012	Cheryl Deshane	0.2	Corresp. With occupants re: rent chqs	30.00
		01/02/2012	Stanley Sugar	5.6	meeting & review w M Wolfe, meetings & reviews w B Smith, preparation of schedule sales info for TD 02-01-12	1,820.00
		02/02/2012	Brandon Smith	0.5	corresp w/to/from occupants re TMI	175.00

Ira Smith Trustee & Receiver Inc.

Detail Time Sheet

Period from: 01/01/2012 to 29/02/2012

Keyname	Full Estate Name	Date	Employee	Hours	Remark	Amount (\$)
Sunny Meadow	In the Matter of the Receivership of 2012241 Ontrario Limited	02/02/2012	Brandon Smith	2.0	review Stan's analysis and discuss with him regarding appropriate notes; send to Dom and Ira; email to PW re status update rqd	700.00
		02/02/2012	Brandon Smith	0.5	banking and update rent roll	175.00
		02/02/2012	Cheryl Deshane	0.6	Dealing with various occupants re: cheque and docs	90.00
		02/02/2012	Martin Wolfe	0.2	update by Smith re utilities	65.00
		02/02/2012	Stanley Sugar	6.1	meetings & review w B Smith revisions schedule sales info for TD 02-01-12 data retrieval	1,982.50
		03/02/2012	Stanley Sugar	2.3	Telcons w J Lee Lebow Hicks building measurements file check cal re sq footage, email re TD from counsel for follow up	747.50
		06/02/2012	Brandon Smith	3.5	review Dom's comments re schedule & respond; corresp w/ unit owners; review incoming chqs re occupancy, update rent roll; corresp re TD position and requests from ire and correspondence w/ counsel	1,225.00
		06/02/2012	Martin Wolfe	0.3	phone Jason Lee - appraiser	97.50
		06/02/2012	Stanley Sugar	2.2	meetings w B Smith, assist & review response to counsel emails & sq footage issue, emails to & from group re other issues & concerns	715.00
		07/02/2012	Brandon Smith	6.5	conf call w/ Dom, Shawn & Ira, prepare schedules, letters reports for TD and for circulation to specific occupants; discussions with Blaneys/Ira re drafts of same; banking re occupancy	2,275.00
		07/02/2012	Brandon Smith	0.5	PM matters; corresp w/ PW; TC w/ pot purchase	175.00
		07/02/2012	Ira Smith	3.6	various tenant issues, emails, draft report to TD	1,530.00
		07/02/2012	Ira Smith	1.3	teleconference call w B. Smith, D. Magisano, S. Wolfson re issues of occupants and status and agreement on steps to take	552.50

Ira Smith Trustee & Receiver Inc.

Detail Time Sheet

Period from: 01/01/2012 to 29/02/2012

Keyname	Full Estate Name	Date	Employee	Hours	Remark	Amount (\$)
Sunny Meadow	In the Matter of the Receivership of 2012241 Ontrario Limited					
		07/02/2012	Stanley Sugar	1.0	meetings w B Smith, review & calcs current outstanding rent issues, CAM and taxes, unit holder issues	325.00
		08/02/2012	Brandon Smith	0.5	send ltr to unit 224, send APS to Grace for 206/7; get update from M Wolfe re utilities	175.00
		08/02/2012	Brandon Smith	0.6	call and fax peel water; email to Brampton property tax	210.00
		08/02/2012	Brandon Smith	0.5	rcv fax re unit 223, rvw and reply to solicitor; send ltr to unit 104/105	175.00
		08/02/2012	Ira Smith	2.1	Amend, finalize and issue report to TD	892.50
		08/02/2012	Stanley Sugar	2.2	meetings w M Wolfe & B Smith, emails rec'd & responses to group re documents & requests thereto, other lease & unit holder matters	715.00
		09/02/2012	Brandon Smith	0.5	rcv and rvw lease for unit 223, send with instructions to Blaneys	175.00
		09/02/2012	Brandon Smith	2.5	review purchaser files to determine what additional documentation needs to be collected, create schedule for merge re o/s information; discussion w/ S. Sugar re findings	875.00
		09/02/2012	Martin Wolfe	1.2	prepare materials for meeting with appraiser	390.00
		09/02/2012	Stanley Sugar	1.5	meetings w B Smith, review of email letter to TD Bank & APS transaction files	487.50
		10/02/2012	Brandon Smith	1.5	draft form ltr re doc cixn process; draft letters to 2 units who wish to lease; corresp w/ Blaneys re approval of drafts of correspondence to unit owners	525.00
		10/02/2012	Brandon Smith	1.5	merge 3rd round request for docs	525.00
		10/02/2012	Martin Wolfe	1.6	meeting with Jason Lee	520.00
		13/02/2012	Brandon Smith	1.0	payment of operating expenses for building	350.00
		13/02/2012	Brandon Smith	0.3	corresp w/ solicitor for & occupants	105.00
		13/02/2012	Cheryl Deshane	0.9	Mailing occupancy letters	135.00

Ira Smith Trustee & Receiver Inc.

Detail Time Sheet

Period from: 01/01/2012 to 29/02/2012

Keyname	Full Estate Name	Date	Employee	Hours	Remark	Amount (\$)
Sunny Meadow	In the Matter of the Receivership of 2012241 Ontrario Limited	14/02/2012	Stanley Sugar	1.3	meetings w B Smith, review of current issues re tenants & associated legal issues	422.50
		15/02/2012	Brandon Smith	1.2	conf call w/ ira and Dom re status of occupants; send letters and additional corresp w/ non compliant occupants; send ltr to pot purchase re no sales process; mtg w/ ire re Ravi allegations of conduct	420.00
		15/02/2012	Ira Smith	0.7	Conf call w. Brandon Smith and Dom Magisano re occupant status and proposed reply by Blaneys to principals' legal counsel'	297.50
		15/02/2012	Ira Smith	0.2	Telcon w. K. Malcolm re Firm Capital request re Agr's of P&S	85.00
		15/02/2012	Ira Smith	0.4	Rvw of O'Brien letter re occupants' meeting, fire inspector, RBC Wealth Management, prep of commentary and email to Dom Magisano	170.00
		16/02/2012	Ira Smith	0.2	Telcon w. M. Warner of Firm Capital	85.00
		16/02/2012	Ira Smith	0.6	Emails w. Blaneys re rvw of draft letters and comments, postponement of examinations scheduled for next week	255.00
		16/02/2012	Ira Smith	0.4	Rvw w. B. Smith of mortgage brokers lease, discussion of same and agreement of how to proceed	170.00
		16/02/2012	Ira Smith	0.4	Telcon w. D. Magsano re O'Brien letters, proposed reply, telcon w. M. Warner and postponement of examinations	170.00
		16/02/2012	Stanley Sugar	1.2	meetings w I & B Smith, rent roll & lease updates, review re unit 315	390.00
		17/02/2012	Stanley Sugar	0.6	file administration and assistance	195.00
		21/02/2012	Brandon Smith	1.5	matters re occupant compliance	525.00
		21/02/2012	Stanley Sugar	1.3	meetings w I & B Smith, emails rec'd from & to group re ongoing tenant issues , rent roll docs re 320-321, 223	422.50



Ira Smith Trustee & Receiver Inc.  
 Detail Time Sheet  
 Period from: 01/01/2012 to 29/02/2012

Keyname	Full Estate Name	Date	Employee	Hours	Remark	Amount (\$)
Sunny Meadow	In the Matter of the Receivership of 2012241 Ontrario Limited	22/02/2012	Ira Smith	0.6	Conf call w. B. Smith, D. Magisano and S. Wolfson re Condo Act, tenants/occupants in arrears, potential refinancing by principals	255.00
		22/02/2012	Stanley Sugar	0.8	meeting w B Smith, various lease tenant issues, unit 100 memo	260.00
		23/02/2012	Brandon Smith	1.5	matters re prop mgmt/security/tenants/owners/occupants/document collection	525.00
		23/02/2012	Cheryl Deshane	0.2	Bank reconciliation	30.00
		24/02/2012	Brandon Smith	0.5	issue payments re insurance and utils; corresp w/ occupants solicitors	175.00
		24/02/2012	Martin Wolfe	0.3	communicate with T Lee Enercare re billings	97.50
		24/02/2012	Stanley Sugar	0.5	meeting w I & B Smith % M Wolfe, update review of current issues	162.50
		28/02/2012	Brandon Smith	0.5	rcv and rrv responses to 3rd round rfi	175.00
		29/02/2012	Cheryl Deshane	0.2	Dealing with occupant re: unit 200 re: cheques and agreement	30.00
		29/02/2012	Ira Smith	0.3	Telcon w. F. DiNino re certain issues	127.50
				254.9		88,257.50

Employee	Hours	Amount
Ira Smith	43.9	\$ 18,657.50
Brandon Smith	83.7	\$ 29,295.00
Martin Wolfe	19.4	\$ 6,305.00
Stan Sugar	101.8	\$ 33,085.00
Cheryl Deshane	6.1	\$ 915.00
<b>Average Hourly Rate:</b>	<b>254.9</b>	<b>\$ 88,257.50</b>

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 March 30, 2012)

Ira Smith Trustee & Receiver Inc.  
167 Appplewood 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

000203

# APPENDIX W

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 of the Respondent ("**Receiver**") 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 December 21, 2011 to February 28, 2012.
3. A total of approximately 139.8 hours were expended by Blaney McMurtry LLP during the period noted above in performing legal services to the Receiver.

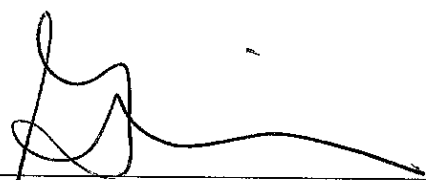
4. The hourly billing rates, outlined in detail in the accounts at Exhibit "A" hereto, are in the range of normal average hourly rates charged by legal counsel for services rendered in relation to engagements similar to its engagement as counsel to the Receiver.
5. To the best of knowledge, the rates charged by Blaney McMurtry LLP are comparable to the rates charged for the provision of similar services by other legal firms in the Toronto market.
6. This affidavit is sworn in connection with a motion for an Order of this Honourable Court to, among other things, approve the fees and disbursements of counsel to the Receiver and for no improper purpose.

**SWORN BEFORE ME**

at the City of Toronto,  
 in the Province of Ontario,  
 on March 30, 2012

  
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 A Commissioner for Taking Affidavits

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**GRACE KIM**

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

This is **Exhibit "A"** referred to  
in the Affidavit of Grace Kim  
sworn before me, this  
30<sup>th</sup> day of March, 2012



A Commissioner, etc.

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

Expires September 17, 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 December 21, 2011 to January 31, 2012

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
December 21, 2011	DM	0.50	Review e-mails regarding tenant complaints; preparation of materials for motion;
December 23, 2011	GS	0.20	Obtaining update of parcel register and providing to G. Kim;
December 28, 2011	DM	2.40	Review e-mails regarding tenants not paying rent and tenant complaints; respond to same; review and respond to e-mails regarding service providers threatening to cease providing service; preparation of motion material;
December 29, 2011	DM	2.60	Continue preparation of motion record;
December 29, 2011	TC	0.10	Conduct nuans preliminary search regarding Homelife Realty;
December 30, 2011	DM	0.20	Review e-mails regarding real estate agent commissions;
January 3, 2012	DM	1.00	Review e-mail regarding complaints about tenant at premises;
January 3, 2012	GJK	0.70	Revise Notice of Motion;
January 4, 2012	SW	0.20	Reviewing response from City confirming security in place for site plan agreement; e-mail to client regarding same;
January 4, 2012	DM	0.30	Review e-mails regarding deposit held by City of Brampton; continue work on report;

Date January 31, 2012 000208

Account No.  
470907

File No.  
102242-0002

-2-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 4, 2012	GJK	1.50	Begin drafting Statement of Claim; draft letter to Ford Credit Canada regarding: 2008 Lincoln Navigator;
January 5, 2012	DM	0.40	Amendments to letter to Chahal regarding navigator; conference with G. Kim regarding same; review e-mails regarding tenant related matters;
January 5, 2012	GJK	0.70	Revise letter to Ford Credit Canada Leasing; receipt and review email from M. Wolfe regarding; the initial lessee; respond to email;
January 6, 2012	DM	1.00	Review of e-mails regarding discussion with counsel to J. Dhaliwal; e-mails regarding previous purchasers of condominium units; finalize letter regarding Lincoln Navigator; conference with counsel to J. Dhaliwal; conference with L. Brzezinski regarding same;
January 6, 2012	GJK	0.40	Meet with D. Magisano regarding; the Notice of Motion and Statement of Claim;
January 9, 2012	DM	0.20	E-mails regarding update on investigation;
January 10, 2012	DM	2.10	Amendments to report; review correspondence and documents for report; conference with G. Kim regarding same; conference with L. Brzezinski and G. Kim regarding 173 funds; conference with B. Smith and M. Wolfe regarding request for information from TD;
January 10, 2012	GJK	3.30	Begin review of voluminous correspondence and file material in preparation for drafting the Second Report of the Court-Appointed Receiver and Notice of Motion;



Date  
January 31, 2012

Account No.  
470907

File No.  
102242-0002

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 11, 2012	SW	2.50	Conference call with client regarding steps remaining to complete condominium registration, to get a handle on various deposits and inconsistencies in respect of same as between Agreements of Purchase and Sale and trust ledger and regarding various occupancy and closing dates to determine which purchasers may have right to terminate agreement for delay; reviewing sample form Agreement of Purchase and Sale and noting various key dates and amounts as compared to trust ledger, correspondence from Purchaser's solicitor and interim closing documents; meeting with D. Magisano to review same;
January 11, 2012	DM	4.50	Amendments to report; e-mail exchanges with client regarding information for lender; e-mail exchange with R. Chahal regarding Lincoln Navigator; review template APS; prepare chatt regarding APS analysis; conference call with Receiver regarding above; meeting with L. Brzezinski and G. Kim regarding report;
January 11, 2012	GJK	4.50	Continue drafting the Second Report; meet with L. Brzezinski and D. Magisano to review draft report; continue revising the Second Report; draft email to I. Smith attaching the draft Second Report;

Date  
January 31, 2012

000210

Account No.  
470907

File No.  
102242-0002

-4-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 12, 2012	LB	4.40	Telephone discussions with Charles Chang; Electronic correspondence received and reviewed from Charles Chang; Meet with D. Magisano; Meet with Grace Kim; Letter to Charles Chang; receiving and reviewing property search for Orangeville; Receiving and reviewing corporate search regarding 173; Receiving and reviewing corporate search regarding English Prestige; Continue Draft of report and Order; Electronic correspondence received and reviewed from Ira Smith (12); Electronic correspondence received and reviewed from Stanley at Ira Smith;
January 12, 2012	SW	0.30	E-mails to and from counsel and client regarding payment to brokerage and trust account inconsistencies;
January 12, 2012	DM	3.50	Preparation and attendance at meeting at I. Smith's office; review of certain APS regarding condominium complex; e-mails regarding payments received from Sikder Professional Corp; final changes to Report; meeting with S. Sugar regarding summary of APS agreements;
January 12, 2012	GJK	1.00	Revise the Second Report;
January 13, 2012	DM	1.20	Review e-mails regarding operational matters; review revised property management agreement; review letter to purchaser regarding inquiry on closing condominium transaction; conference with I. Smith regarding meeting today;

Date  
January 31, 2012

Account No.  
470907

File No.  
102242-0002

-5-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 13, 2012	GJK	3.00	Revise draft Second Report to include details regarding English Prestige Contracting, English Prestige Project Management and English Prestige Property Management; receipt and review of comments from I. Smith regarding; draft Second Report; revise draft Notice of Motion;
January 13, 2012	DK	0.20	Attend to land registration records and obtain copies of register est lien and certificate;
January 16, 2012	DM	0.50	Preparation for upcoming motion; e-mails to other counsel and receiver regarding same; instructions to G. Kim regarding notice of motion and order;
January 17, 2012	DM	0.50	Review e-mails regarding landlord / tenant matters; consider same; review e-mails regarding management matters;
January 17, 2012	GJK	0.30	Begin drafting Order;
January 18, 2012	DM	3.30	Review motion material; review management agreement; discussions with Receiver regarding management agreement; review and revise Notice of Meeting; amend motion material to reflect same; review information provided in spreadsheets;
January 18, 2012	GJK	4.50	Receipt and review of changes to Second Report sent by the Receiver; email to Receiver requesting appendices;
January 19, 2012	LB	4.00	Continue work on Motion material;
January 19, 2012	DM	1.00	Review of motion material; conference with L. Brzezinski regarding same; e-mail regarding charts of purchases;

Date  
January 31, 2012

Account No.  
470907

File No.  
102242-0002

-6-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 19, 2012	GJK	1.10	Receipt and review of email from Receiver regarding leases and notice of meeting; revise Second Report accordingly;
January 20, 2012	DM	0.30	Conference with B. Smith regarding management agreement; e-mails regarding same; review notice sent to tenant;
January 20, 2012	GJK	3.50	Revise Second Report of the Receiver; receipt and review of Notice regarding meeting with tenants;
January 23, 2012	DM	0.30	Preparation of motion material; review e-mails regarding same and meeting with unit holders;
January 24, 2012	LB	3.60	Review and redraft Report; Review and Redraft Notice of Motion; Review and redraft Motion Record and Order;
January 24, 2012	DM	1.70	E-mails with TD counsel regarding upcoming motion; preparation regarding same; conference with G. Kim regarding finalizing materials;
January 25, 2012	DM	1.80	Review and finalize motion material; conference with new counsel to respondent; e-mail reporting regarding same; conference with receiver regarding same and unit holder meeting next week; preparation for meeting and upcoming motion; e-mail exchanges with counsel to secured lender;
January 26, 2012	DM	2.00	Conference with receiver regarding motion Monday; preparation for same; e-mails regarding trust ledgers from Sikder Professional Corporation; conference with secured creditor regarding motion on Monday and next steps; conference with G. Kim regarding factum;

Date  
January 31, 2012

Account No.  
470907

File No.  
102242-0002

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 26, 2012	GJK	4.10	Draft factum; research case law on Mareva injunctions and Receiver's powers to examine third parties;
January 27, 2012	LB	2.00	Review and redraft Factum
January 27, 2012	DM	1.60	Preparation of additional material; review of factum; review letters from counsel regarding motion Monday; conference with receiver regarding agenda for Tuesday meeting; preparation for motion and meeting;
January 27, 2012	GJK	4.90	Continue drafting factum and Brief of Authorities; draft Order; email correspondence to and from C. Chang and L. Brzezinski regarding terms of the Order;
January 29, 2012	LB	1.00	Prepare for hearing;
January 29, 2012	DM	0.80	Prepare agenda for meeting on Tuesday; e-mail to I. Smith enclosing same; review draft order regarding Orangeville property and e-mail regarding same;
January 29, 2012	GJK	0.40	Revise draft Orders;
January 30, 2012	LB	3.00	Attend at Court before Spence J and Obtain Orders; Negotiate with Counsel; Receiving and reviewing material filed in response by respondents;
January 31, 2012	DM	3.80	Conference with counsel to the lender; review e-mail exchanges regarding same; travel to/from meeting with unit holders; participate in meeting with unit holders; conference with Receiver regarding analysis of purchase agreements;
January 31, 2012	GJK	1.10	Attend at court to vary Order of Justice Spence dated January 30, 2012;

OUR FEE HEREIN:

\$29,785.00

000214

Date  
January 31, 2012Account No.  
470907File No.  
102242-0002

-8-

LESS COURTESY DISCOUNT: ..\$2,470.50  
 TOTAL FEES: \$27,314.50

FEE HST: \$3,550.89

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Lou Brzezinski	18.00	\$500.00	\$9,000.00
Shawn Wolfson	3.00	\$340.00	\$1,020.00
Domenico Magisano	37.50	\$315.00	\$11,812.50
Grace J. Kim	35.00	\$225.00	\$7,875.00
Giorgena Sarantopoulos	0.20	\$155.00	\$31.00
Dawn Kearns	0.20	\$155.00	\$31.00
Terri Cutbush	0.10	\$155.00	\$15.50

Filing Fees* - Non-Taxable	\$127.00
Profile Report/Point in Time Report* - Non-Ta	\$32.00
Cyberbahn Agent Service Fee	\$44.00
Courier	\$33.90
Long Distance Charges	\$33.60
Serve Documents	\$268.00
Postage	\$10.16
Computer Searches - R.E. (Teraview)	\$6.00

TOTAL DISBURSEMENTS: \$554.66

\*HST is not charged

DISBURSEMENT HST: \$51.44

TOTAL FEES AND DISBURSEMENTS: \$27,869.16

TOTAL HST: \$3,602.33

TOTAL AMOUNT DUE AND PAYABLE: \$31,471.49

TOTAL AMOUNT CLAIMED FOR FEES AND DISBURSEMENTS

ONTARIO SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)

000215

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

## BILL OF COSTS OF SOLICITOR TO TRUSTEE

From February 1, 2012 to February 29, 2012

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
February 1, 2012	DM	0.20	Message to receiver regarding sales figures; consider need for motion to set up document collection process;
February 2, 2012	DM	0.60	E-mails regarding registration of order; conference with I. Smith regarding material required to analyze unit purchases; e-mails regarding same;
February 2, 2012	GJK	0.80	Receipt and review of email correspondence from B. Smith regarding status of interim payments by remaining unit-holders;
February 2, 2012	DK	1.00	Receipt and review of court order and instructions to register same on title; obtain and review copy of property parcel register and registered instruments; prepare electronic application for restrictions based on court order and acknowledgment and direction for execution by client authorizing electronic completion of application;
February 3, 2012	DM	2.50	Review information regarding unit sales provided by receiver and conduct analysis; e-mail regarding comments on same; review e-mails regarding registration of order on 173; review documents and information provided by alleged unit holder; respond to counsel for unit holder;

Date March 13, 2012 000216

Invoice No.  
474648

File No.  
102242-0002

-2-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
February 3, 2012	DK	0.60	Receipt and review of executed authorization; finalize application for restrictions based on court order and attend to electronic registration; obtain and review property parcel register;
February 6, 2012	SW	0.50	Various e-mails to and from client regarding condominium occupancy matters;
February 6, 2012	DM	0.40	Review e-mails regarding payments of occupancy rent and outstanding amounts; conference with L. Brzezinski regarding occupation matters; e-mail exchange with clients regarding tenant documents;
February 7, 2012	JLF	0.80	Meeting with S. Wolfson to discuss use of deposit funds released by excess deposit insurance, disclosure statement, deposits under reservation agreements;
February 7, 2012	SW	2.20	Conference call with client regarding condominium occupancy and tenancy issues; further e-mails to and from client regarding same; reviewing draft letters and related documentation;
February 7, 2012	DM	1.90	Conference call with receiver regarding rent payments and summary of sales to date; conference with S. Wolfson regarding same; provide instruction to G. Kim regarding demand letters regarding occupancy fees; message from P. Chahal; e-mail to client regarding same; message to P. Chahal; review letters to parties who have not paid occupancy rent; conference with G. Kim regarding same; review letter regarding funds paid to Capp Sgro;



000217

Date  
March 13, 2012

Invoice No.  
474648

File No.  
102242-0002

-3-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
February 7, 2012	GJK	3.70	Draft letters to unit holders 206, 207, 320 and 321 regarding: overdue payments; draft letter to F. Sgro requesting accounting of all monies;
February 8, 2012	DM	0.50	Review letter from counsel to 201 and consider same; e-mail to client regarding same; review letters to non paying unit holders; review letter to lender;
February 8, 2012	GJK	1.50	Receipt and review of Agreement of Purchase and Sale for units 206 and 207; draft email to B. Smith regarding discrepancy between unit holders listed in Excel spreadsheet and the agreements of purchase and sale;
February 9, 2012	SW	0.40	Brief perusal of lease in respect of Unit 223 and e-mails to and from client regarding same; voicemail to Tenant's solicitor to flesh out intentions of Tenant;
February 9, 2012	DM	0.20	Review e-mails regarding demands of tenants and occupiers for payment of monthly remittances; review reporting letter;
February 9, 2012	GJK	0.10	Finalize letter to F. Sgro;
February 9, 2012	TC	0.20	Conduct Corporate profile search regarding 2262248 Ontario Inc.;
February 10, 2012	LB	5.40	Telephone discussions with Charles Chang and numerous e-mail exchanged regarding Mareva Injunction; Meet with D. Magisano and Grace Kim; Telephone discussions with Ira Smith; Electronic correspondence received and reviewed and Drafting and transmitting Electronic Correspondence to Ita Smith; All matters relating to work on file;

Date  
March 13, 2012

Invoice No.  
474648

File No.  
102242-0002

-4-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
February 10, 2012	DM	0.20	Review e-mails regarding demand letters for occupancy payments; review e-mails providing notices of examination;
February 10, 2012	GJK	0.70	Revise letter to 2262248 Ontario Inc; draft email to B. Smith attaching same;
February 13, 2012	SW	0.50	E-mails to and from and telephone conversations with client and consultant regarding cost and timing of registration of condominium;
February 13, 2012	DM	0.30	Review e-mails regarding debtor's suggestion that it will pay out senior lender; review e-mails regarding upcoming examinations and draft letters regarding Prestige's failure to comply with Spence J's order;
February 14, 2012	SW	0.90	Discussion with T. Evans regarding materials required to be reviewed to advise as to timing and cost of proceeding with steps to have condominium registered; telephone conversation with solicitor for unit 223 regarding intention to occupy and pay rent; e-mail to client regarding same;
February 14, 2012	DM	0.90	Review e-mail and letters from counsel to debtor regarding possible refinancing; e-mail to debtor's counsel regarding same; review e-mails from TD Bank counsel regarding same; e-mail exchange with Receiver regarding same;
February 15, 2012	DM	1.70	Conference with receiver regarding response to letter from debtor's counsel; draft response to letter from debtor's counsel; review new letter from debtor's counsel and consult with receiver regarding same; review and consider e-mails regarding payments from occupiers/tenants;

000219

Date  
March 13, 2012

Invoice No.  
474648

File No.  
102242-0002

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
February 16, 2012	DM	2.50	Preparation of letters and correspondence to debtor's counsel; conference with Receiver regarding letters from debtor and prospect of adjourning examinations; e-mails from counsel to TD regarding same; discussion regarding unsolicited offers for property; review letters regarding payment of occupancy rent;
February 17, 2012	SW	0.20	Letter to City confirming appointment of Receiver to obtain information with respect to proposed condominium;
February 17, 2012	DM	1.60	E-mail exchanges regarding unit holder payments; conference with G. Kim regarding same; e-mails; review draft notices of termination and e-mail regarding same; conference with counsel to Sikder Professional corporation; e-mails and letters regarding examinations; preparation for meeting with counsel to debtor;
February 17, 2012	DK	0.80	Telephone with City official regarding status of condominium approval of property; review court order; prepare correspondence to City confirming authorization and request for information regarding development and plan approval;
February 21, 2012	SW	1.20	Various e-mails to and from client and telephone conversation with D. Magisano regarding equating rent to occupancy fee prescribed by the condominium act if an Agreement of Purchase and Sale was entered into; discussions with T. Evans regarding prescribed rate of interest and mechanics of adjustments for interest fluctuating on a month to month basis;

Date  
March 13, 2012

Invoice No.  
474648

File No.  
102242-0002

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<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
February 21, 2012	DM	1.30	Review e-mails regarding payments from occupants; meeting with counsel to debtor regarding potential payout of senior lender and receiver's role after payout; e-mail exchanges regarding correct rate of TMI; conference with S. Wolfson regarding same; consider Sikder release of trust funds; conference with G. Kim regarding research on same;
February 21, 2012	GJK	0.60	Review lease for unit 223;
February 22, 2012	SW	0.60	Conference call with client to review and discuss debtor overcharging occupants in respect of occupancy fee (interest on balance due on closing) and strategy to deal with same going forward;
February 22, 2012	DM	1.00	Conference call with clients regarding interest calculations under Condominium Act and how to resolve; consider same; review further e-mails regarding payment of TMI and/or rent;
February 22, 2012	GJK	0.80	Draft letters to unit holders;
February 23, 2012	DM	0.30	Conference with R. English regarding financing matters; confirm adjournment of A. Shah examination; draft letter regarding same;
February 23, 2012	GJK	0.20	Email to and from D. Magisano regarding the adjournment of the examination of A. Shah;
February 24, 2012	GF	1.70	Obtaining certificate of non-attendance;

Date  
March 13, 2012

Invoice No.  
474648

File No.  
102242-0002

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<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
February 24, 2012	DK	0.90	Telephone with City official regarding status of site plan conditions and outstanding consultant certificates; receipt and review of email of previous correspondence generated in this regard by City; prepare memorandum regarding same;
February 25, 2012	DM	0.30	Review valuation; e-mail from I. Smith regarding same;
February 27, 2012	SW	0.70	Reviewing appraisal report; e-mail to D. Magisano regarding assumptions and qualifications contained therein and advice in respect of same;
February 27, 2012	DM	0.80	Conference with K. Malcolm regarding bank security and sale matters; conference with I. Smith regarding same; conference with R. English regarding same;
February 27, 2012	GJK	0.70	Draft termination letter regarding; unit 223;
February 28, 2012	DM	0.60	Conference with receiver regarding appraisal; e-mails regarding same; conference with lender regarding receivership matters;
February 28, 2012	GJK	0.30	Receipt and review of letter from F. Sgro; draft email to L. Brzezinski and D. Magisano regarding; alleged funds transfer to F. Sgro;

OUR FEE HEREIN:	\$14,586.00
LESS COURTESY DISCOUNT:	-\$1,045.50
TOTAL FEES:	\$13,540.50
FEE HST:	\$1,760.27

<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Jeffery L. Freelan	0.80	\$560.00	\$448.00
Lou Brzezinski	5.40	\$500.00	\$2,700.00

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Date  
March 13, 2012

Invoice No.  
474648

File No.  
102242-0002

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<u>Lawyer</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Shawn Wolfson	7.20	\$340.00	\$2,448.00
Domenico Magisano	17.80	\$340.00	\$6,052.00
Grace J. Kim	9.40	\$225.00	\$2,115.00
Dawn Kearns	3.30	\$155.00	\$511.50
Terri Cutbush	0.20	\$155.00	\$31.00
Gary Fung	1.70	\$165.00	\$280.50

Profile Report/Point in Time Report* - Non-Ta	\$8.00
Registration Fees* - Non-Taxable	\$60.00
Computer Searches - R.E. (Teraview) * - No-Ta	\$27.00
Cyberbahn Agent Service Fee	\$11.00
Agent's Fees & Disbursements	\$60.00
Courier	\$185.89
Fax Charges	\$5.00
Reproduction Charges	\$3.50
Registration Fees	\$10.00
Binding and Tab Charges	\$21.80
Computer Searches - R.E. (Teraview)	\$75.00

TOTAL DISBURSEMENTS: \$467.19

\*HST is not charged

DISBURSEMENT HST: \$48.38

TOTAL FEES AND DISBURSEMENTS: \$14,007.69

TOTAL HST: \$1,808.65

TOTAL AMOUNT DUE AND PAYABLE: \$15,816.34

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 X



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 March 27, 2012**

<b>RECEIPTS</b>
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Cash in bank	\$ 64,451.45
Collection of Rent, TMI and Occupancy Fees (Incl. HST)	180,911.46

<b>TOTAL RECEIPTS:</b>	<b>\$ 245,362.91</b>
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<b>DISBURSEMENTS</b>
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Filing Fee Paid to Official Receiver	\$ 70.00
Locksmith	1,294.00
Security	15,989.75
Maintenance & Repairs	31,786.33
Insurance	70,982.57
Bank Charges	71.43
Garbage Disposal	504.00
HST Paid	15,805.16
PST Paid	4,490.00
Pelican Woodcliff LLP Consulting Fees	19,318.20
Appraisal	11,000.00
Property Manager's Fee	5,700.00
Utilities	42,746.01

<b>TOTAL DISBURSEMENTS</b>	<b>\$ 219,757.45</b>
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<b>AMOUNT ON HAND AS AT MARCH 27, 2012</b>	<b>\$ 25,605.46</b>
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