Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGMENT ACT,
R.S.C. 1985, c. c-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

And in the matter of a reference under the *Construction Lien Act*, R.S.O. c. C. 30 as amended
And in the matter of R. 54, Ontario *Rules of Civil Procedure*

MOTION RECORD

VOLUME II OF II

Date: October 12, 2016

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TO: SEE SERVICE LIST ATTACHED
AS SCHEDULE "A" TO NOTICE OF MOTION

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j. The Order of The Honourable Mr. Justice Newbould made January 8, 2015.

TAB D

Lee Guarino

From: Lee Guarino <Lee.Guarino@ACLaw.ca>
Sent: September-16-16 7:11 PM
To: Duncan Glaholt
Cc: Marco Drudi
Subject: Silver Streams Homes Inc. CCAA Proceeding
Attachments: Reply Cost Submissions of Bank of Montreal, September 16, 2016.pdf; Tab A - BMO.pdf; Tab B - BMO.pdf; Tab C - BMO.pdf; Tab D - BMO.pdf; Tab E - BMO.pdf

Dear Mr. Glaholt,

We attach the Reply Cost Submissions of Bank of Montreal dated September 16, 2016, inclusive of Tabs A to E.

LEE GUARINO, LL.B.

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Reply Cost Submissions of Bank of Montreal to the Cost Submissions of Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, DaPaul Management Limited, Nastell Investments Limited and Castle Lane Design Group Inc.

1. These Reply Cost Submissions of Bank of Montreal ("BMO") are submitted in reply to the Cost Submissions of Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, DaPaul Management Limited, Nastell Investments Limited and Castle Lane Design Group Inc. (the "Private Mortgagees") dated September 8, 2016.

2. The power of the Referee to order that a party's costs be paid from the funds held by the Monitor arises from the Judgment of Reference of The Honourable Justice Newbould dated January 8, 2015 (the "Judgment of Reference"), and specifically, section 4 thereof, which states, in part, that "the Referee shall maintain the right to assess costs in the Report/Award

against any party, including, without limitation, the right to reallocate the Referee's Costs, and any such assessment shall attract the same deference and appeal rights as provided in paragraph 3 of this Order." This power has been partially exercised in section 7(b) of the Partial Report/Award of the Referee dated August 11, 2016 (the "Partial Report"), declaring BMO second in priority to the money held by the Monitor for its costs (fees, disbursements and taxes) of this Reference before the Private Mortgagees are paid monies from such funds. It is important to stress that the monies the Monitor is holding are monies of Silver Streams Homes Inc. and its associated entities, who are the Applicants in this CCAA proceeding.

3. For the reasons set out below BMO takes the positon that it is entitled to costs of the Reference, that those costs should be on a substantial indemnity scale as per its Bill of Costs and invoices submitted previously, and that all work in the accounts delivered by BMO should be included as properly assessable work on the Reference. If it is ordered that costs be recovered by BMO on a partial indemnity scale, it is submitted by BMO that the appropriate hourly rate assessed for its counsel should be $421.00 per hour, which is the rate suggested by the courts for costs orders on a partial indemnity scale for the most complex and important matters for lawyers with over twenty years of experience, as explained below.

Part I - Background

4. BMO provided financing to the various companies that were developing the three-phase Silver Streams Homes residential housing project (the "Project") in question. That financing

was secured in relation to each phase by a first mortgage charge.

5. In each case, the BMO mortgages were supported by Debentures, and subject to Standard Charge Terms 882.

6. Copies of the two mortgages registered on title at the commencement of Phase I of the Project are attached hereto at Tab A for reference, along with the corresponding Debentures attached to them, and the Standard Charge Terms 882 incorporated by reference into the mortgages. Further mortgages were registered on Phases II and III of the Project.

7. There is no doubt that the Private Mortgagees postponed/subordinated their mortgages to BMO's mortgage security on each phase of the Project. By way of example, a copy of the Subordination and Priority Agreement signed by one of the Private Mortgagees, Puccini Mortgage Corp. in this regard and dated December 19, 2011 is found at Tab B hereto. The Private Mortgagees all executed similar agreements. Subparagraph 2.1 of each such Agreement is the general provision whereby the Private Mortgagees each postponed and subordinated their mortgage security to that of BMO such that the "full and final payment and satisfaction" of the monies owed by the borrowers to BMO could be assured. Given the wording of the Partial Report, the priority issue can no longer be an issue for the purposes of this Reference, as a ruling has been made ranking BMO in priority to the funds held by the Monitor for its costs of this Reference.

8. The Debentures noted above also include in paragraph 9 thereto, the following wording (the

"Company" being the borrower/owner of the Project):

> The Company agrees to pay to the Bank forthwith upon demand all reasonable expenses incurred by the Bank in taking this Debenture or in recovering or enforcing payment of moneys owing hereunder or realizing upon this Debenture or any other security for such moneys including reasonable expenses of taking possession, protecting and realizing upon any property comprised in any such security, together with interest at the rate provided herein for this Debenture from the date of such expenditures.

9. There is no doubt that Justice Newbold and the Monitor have accepted the priority position of BMO in this CCAA matter in relation to the Private Mortgagees, and such priority has been accepted by the Referee on the consent of the parties. In that regard BMO completed a Proof of Secured Interest pursuant to s. 81(1) of the *Bankruptcy and Insolvency Act* and filed same with the Court and Monitor more than three years ago. The Proof of Secured Interest was accepted by the Court and Monitor with the effect being that BMO is the first ranking secured creditor in the within CCAA Proceeding. The Private Mortgagees have of course made no crossclaims seeking priority over BMO.

10. BMO received approximately $973,000.00 during the CCAA proceeding on account of its mortgage security from the proceeds of sale of the properties making up the Project which were sold under court supervision, but signed Reimbursement Agreements with the Monitor agreeing to pay these funds back if necessary should other parties be found to have priority over BMO for the funds. One such Reimbursement Agreement is attached hereto as Tab C.

11. The Monitor has been holding in the range of $2,000,000.00 to $2,200,000.00 as proceeds

from the sale of the lots in the Project as security in this matter. The exact amount is not known to BMO at this time, but this estimate should be reasonably accurate. The monies the Monitor is holding are as a result of the monitization of the assets of Silver Streams Homes Inc. and its associated entities involved in the Project. As stated above, BMO's security extends to those funds the Monitor is holding and BMO has a first priority charge over those funds.

12. BMO submits that it has always been known by all parties to this Reference that the deficiency in the funds that should have been held back by the owner(s) of the Project as statutory holdbacks (the "holdbacks") required by the *Construction Lien Act* (the "CLA") could be as much as $1,500,000.00 (plus costs) if the lien claimants were successful in proving all of the liens they registered (the aggregate of the Claims for Lien as filed being approximately $16,000,000.00, and all of the lien claimants claiming to have "contracts" as defined under the CLA with the owner(s) of the Project). It is therefore clear that had the Private Mortgagees been found to be in priority to the lien claimants for the in excess of $11,000,000.00 claimed to be owing to the Private Mortgagees by the owner(s), then the Private Mortgagees would have (or could have) received the funds held by the Monitor in priority to the lien claimants, leaving BMO to reimburse the lien claimants for the deficiency in the holdbacks, and then litigate with the Private Mortgagees over the funds held by the Monitor. A concession by the Private Mortgagees that the lien claimants were in priority to the Private Mortgagees for the funds held by the Monitor for any deficiency in the holdbacks would ensure that the lien claimants would be paid by the Monitor, and BMO would not have to be called upon to reimburse the lien claimants either pursuant to a Reimbursement

Agreement, or from other funds received during the Project from sale proceeds. Until these priorities were established, BMO was required to actively participate in the Reference. The delay in establishing these priorities, and the delay in the parties releasing BMO, arises directly and solely from the unreasonable decision by the Private Mortgagees to maintain their claims to priority over the lien claimants.

Part II - Entitlement to Costs

13. Contrary to the allegations of the Private Mortgagees, the Private Mortgagees delayed and complicated this matter and were the sole cause of BMO's involvement in the matter because the Private Mortgagees chose to utilize the pressure tactic on the lien claimants that they were in priority to the lien claimants vis-à-vis the security held by the Monitor so as to force the lien claimants to make last-minute settlements of their lien claims for fear that the Private Mortgagees would be treated as regular lenders without building mortgages, and as a result, have priority over any security held by the Monitor. In fact, the Statements of Defence filed by the Private Mortgagees confirm that their official positon was (as per paragraph 4 of the Statements of Defence) that the "Private Mortgagees advanced funds with respect to the acquisition and/or financing and/or development, and not the construction thereon, of the Lands..". From this one must conclude that the Private Mortgagees' position from the start of the litigation was that they were subject to no priority risk in relation to any deficiency in the holdbacks, and therefore, they were in priority to all lien claimants in relation to the proceeds of sale of the Lands. The Private Mortgagees also generally denied the various allegations of priority made by the lien claimants in their Statements of Claim. Therefore,

while there were no crossclaims made by the Private Mortgagees against BMO, their strategy was to take the monies held by the Monitor in priority to the lien claimants, or threaten to do so, leaving BMO no choice but to defend itself against the lien claimants' argument that BMO should refund monies it received from the Monitor or from the sale of lands pursuant to the Reimbursement Agreements to fund any deficiency in the holdbacks.

14. It was not until July 8, 2016, on the eve of the trial, that the Private Mortgagees' counsel finally conceded officially that the Private Mortgagees were not seeking priority over the lien claimants to the security held by the Monitor. No such concession was ever made prior to this time by the Private Mortgagees. As a result, BMO had no choice but to be as actively involved in this matter as possible so as to protect against the possibility that the Reference would result in a finding that the Private Mortgagees were in fact in priority to the lien claimants, and would be entitled to all of the funds held by the Monitor, leaving BMO to reimburse the lien claimants. Given that the totality of the lien claims as filed were approximately $16,000,000.00, plus an unknown amount of costs, and given that therefore the deficiency in the holdbacks could conceivably be in excess of $1,500,000.00 plus costs, and it not being known how much monies the Monitor and their counsel would claim from the said security for their fees and costs, BMO acted in the only fashion that it could, which was to actively be involved in the Reference until completion.

15. Had the Private Mortgagees acted more reasonably by conceding from the outset that the lien claimants had priority over them to the security being held by the Monitor for any holdback deficiency, BMO would have seen no reason to be involved in the process any

longer, or at least its involvement would have been minimized. Therefore, BMO cannot be faulted for participating in the litigation as fully as it has. The litigation was as complex and lengthy as it was solely as a result of the actions of the Private Mortgagees.

16. In fact, it appears that maintaining the position that they had priority over the lien claimants was part of an overall strategy by the Private Mortgagees to create uncertainty for the lien claimants in relation to their ultimately recovering any money the Monitor was holding. Only on July 8, 2016 (the day prior to the commencement of the trial) did the Private Mortgagees finally concede by way of settlement agreements with the various lien claimants that any funds used to pay the lien claimants would come from the funds held by the Monitor in priority to the claims of the Private Mortgagees. On July 8, 2016, the Private Mortgagees struck settlements with Paris Kitchens, the Union Local, and Con-Drain, without the knowledge, assistance or acknowledgment of BMO. In fact, BMO was excluded by the Private Mortgagees from any settlement discussions. In fact, as further proof that BMO was being excluded from negotiations, BMO points to the fact that Mr. Drudi made written offers to settle to Argo Lumber and Newmar Windows on June 30, 2016 (See Tab D) which included BMO's counsel as an addressee, but which Mr. Drudi never in fact sent to BMO's counsel (and were ultimately obtained by BMO's counsel from other counsel).

17. By the morning of the first day of the Reference, the Private Mortgagees had struck more settlements with other lien claimants, without the input, knowledge, assistance or acknowledgment of BMO. The settlements are known to the court now, and would appear to constitute settlements equal to hundreds of thousands of dollars less than the possible

holdback entitlement of the lien claimants estimated above. Such suasion over the lien claimants would have been impossible if the Private Mortgagees had conceded upfront that the lien claimants were in priority to them for any deficiency in the holdbacks. It is submitted that the Private Mortgagees, by their tactics and strategies employed from day one of this litigation right up to the eve of trial, ensured that BMO would remain in this litigation and forced BMO to fully participate in all aspects of the litigation thereby driving up the costs of BMO. The Private Mortgagees did this as part of a strategy to exert pressure on the lien claimants for the Private Mortgagees' sole benefit.

18. Then, on the eve of trial, being July 8, 2016, the Private Mortgagees' strategy took a seismic shift which resulted in a break in the log jam, enabling them to cut deals with all of the lien claimants to the direct benefit of the Private Mortgagees. On that day, and for the very first time, counsel to BMO was advised by counsel for some of the lien claimants that the Private Mortgagees had commenced negotiating settlements with lien claimants whereby the Private Mortgagees acknowledged that any monies found to be owing to the lien claimants would be paid from the monies being held by the Monitor in priority to the Private Mortgagees' claims. Until that time, and due to the positions taken by the Private Mortgagees, which were ultimately abandoned by them, BMO had no choice but to be a very active participant in this litigation.

19. BMO would have had no interest in the litigation if it had been conceded upfront by the Private Mortgagees that the lien claimants had priority over everyone for any deficiency in the holdbacks, since there appeared to be more than sufficient funds in the Monitor's hands

to pay them (always in excess of $2,000,000.00 it appears). Based on the amount of each lien claimants' contracts as stated in their liens as registered, it appeared to BMO with some certainty that the most the deficiency in the holdbacks would have been was approximately $1,500,000.00, plus costs. (This by the way could have been easily discerned from a review of the liens claims as registered, which set out the contract amounts of all of the contracts the lien claimants had with the owners. The Private Mortgagees also appear to concede in paragraph 3 of their Statements of Defence that the lien claimants were "contractors" and not subcontractors).

20. Throughout this process BMO could only wonder why it was being kept in the litigation given that the security being held by the Monitor was clearly sufficient to protect the lien claimants as long as their priority over the Private Mortgagees was established. It appears that the lien claimants could not consider releasing BMO until they knew for certain that they would have first entitlement to the security held by the Monitor. That required a concession by the Private Mortgagees that only came on July 8, 2016, as set out above.

21. The authority of the Referee to order costs arises from the Judgment of Reference, but we believe the Referee can also rely on section 86 of the *Construction Lien Act*, which reads as follows:

> **86.** (1) Subject to subsection (2), any order as to the costs in an action, application, motion or settlement meeting is in the discretion of the court, and an order as to costs may be made against,
>
> (a) a party to the action or motion; or

(b) a person who represented a party to the action, application or motion, where the person,

(i) knowingly participated in the preservation or perfection of a lien, or represented a party at the trial of an action, where it is clear that the claim for a lien is without foundation or is for a grossly excessive amount, or that the lien has expired, or

(ii) prejudiced or delayed the conduct of the action,

and the order may be made on a substantial indemnity basis, including where the motion is heard by, or the action has been referred under section 58, to a master, case management master or commissioner.

Where least expensive course not taken

(2) Where the least expensive course is not taken by a party, the costs allowed to the party shall not exceed what would have been incurred had the least expensive course been taken.

22. While an order that BMO is in priority to the Private Mortgagees to the funds held by the Monitor for it costs of the Reference may not technically be a direct order "against, a party to the action", it has the same effect in this case since the Private Mortgagees may be entitled to all remaining funds the Monitor continues to hold after BMO is paid its costs, and is consistent with the spirit of the CLA. Section 86 also provides persuasive authority for setting the scale of costs recoverable by BMO from the funds held by the Monitor on a substantial indemnity scale due to the actions of the Private Mortgagees as described herein.

23. Furthermore, it cannot be said that BMOs costs of the Reference assessable on this motion are limited to the actual work performed in direct furtherance of the particular arbitration ordered by the Judgment of Reference, as BMO's costs of the Reference properly include its involvement in the entire CCAA process since the Reference was ordered to ensure that any security it is entitled to is preserved (be it PPSA security or otherwise), which would not

have been necessary had there been no risk of having to repay lien claimants monies in the event the security being held by the Monitor were insufficient to pay them their priority entitlement/judgments. BMO has, in any event, made conscious decisions not to attend various motions and hearings so as to keep its costs down.

24. It should be noted that the docket entries claimed by BMO commence February 26, 2015, shortly after the Judgment of Reference was made on January 8, 2015. Bank of Montreal would not have been involved other than marginally in this CCAA matter from January of 2015 onward without the existence of the lien claims and related issues since the Monitor approved of all of its security and its ranking as first secured creditor immediately and paid it out in full.

25. The factors in Rule 57.01(1) furthermore mitigate in favour of BMO being entitled to substantial/full indemnity costs, and supports its claim to the quantum of its time dockets for the reasons set out below.

26. When BMO became aware of the intensity of the dispute between the Private Mortgagees and the lien claimants, it was forced to become more actively involved than it wanted to in the Reference. While Mr. Drudi argues that he performed a lot of the "heavy lifting" in the arbitration, this was co-ordinated with him to ensure that on the usual examination issues in a lien matter (price, timeliness of registration, last date of work, contracting parties, etc.) there would be no duplication of effort. Regardless of Mr. Drudi's assertions, counsel to BMO had to actively and significantly participate in all aspects of this litigation in order to

protect BMO's interests. At no point did BMO abdicate its responsibilities to Mr. Drudi. Furthermore, on the issue of examining the Private Mortgagees, there was no need to duplicate the efforts of the lien claimants since they were clearly trying to establish that the Private Mortgagees were either owners under the CLA or construction/building mortgagees, both positions that would ultimately assist BMO in its priority position against everyone.

27. There is no doubt that Mr. Greenberg, as principal of the Private Mortgagees, and a lawyer himself, knew that BMO's mortgage security would be in priority to those of the Private Mortgagees; yet, he continued to instruct Mr. Drudi to employ the tactics above, which he clearly knew were adding costs to the matter, which the Private Mortgagees would somehow have to account for.

Part III – Quantum of Costs

28. In setting costs therefore, an analysis of Rule 57.01(1) would favour BMO for the following reasons:

Rule 57.01(1)

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and hours spent by that lawyer;

Submissions of BMO: The Private Mortgagees were aware of the experience level of the lawyers for BMO, and that CCAA and construction lien matters are quite complex. This matter extended over three phases of a project, included over twenty parties, and included complex issues such as: i) who were statutory owners in a complex maze of ownership, ii) were the liens to be registered on a lot-by-lot basis, iii) the calculation of holdback over different phases of a project, and, iv) whether the mortgages of the Private Mortgagees were building mortgages (see moreover the full List of Issues prepared during the Reference conference calls). Complex construction lien matters are typically handled by lawyers with extensive experience in construction lien matters, and CCAA matters are typically handled by lawyers who have experience in bankruptcy law. The Private Mortgagees (whose principal, Jack Greenberg is also a lawyer and participated in the Project as such) being financially sophisticated parties would surely know that the rates charged by the lawyers for BMO would be at the top end of the scale for this matter, and certainly more than historical cost grids previously in use would have permitted in litigation matters. It is submitted that it is not unusual in a CCAA and construction lien matters for lawyers to recover the hourly rates claimed by BMO, especially on a substantial or full indemnity basis. This Reference is also a construction lien Reference, within a CCAA matter, and such duplication of complexity surely entitles counsel to charge higher rates for either matter as it is arguably not easy to locate counsel experienced in both areas. The costs sought are therefore proportional to the claim and amounts in dispute.

Furthermore, Mr. Drudi's criticism of BMO's counsel not asking questions during the cross-examinations of the various parties is disingenuous in that he is now criticizing such involvement at all. It would have been improper for BMO not to be at the cross-examinations, in the event the need to cross-examine arose. It should be noted that during the cross-examination of the representative of BMO conducted primarily by Emilio Bisceglia, Mr. Drudi was also present and asked almost no questions. BMO was forced, as a result of Mr. Drudi's tactics and strategies to participate to the extent it had to in order to protect BMO's interests. Had Mr. Drudi and his clients not engaged in and embraced such tactics BMO's involvement would have been far less.

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay;

Submissions of BMO: The Private Mortgagees knew that this matter was protracted, and that they were responsible for that for the reasons noted above. In such circumstances, and given the wording of s. 86 of the *Construction Lien Act*, they knew that playing the game of threatening the lien claimants with "zero recovery" should the Private Mortgagees be given priority over them would result in serious cost consequences to the Private Mortgagees. BMO repeats that the Private Mortgagees should have stated from the outset that they were not seeking priority over the lien claimants in relation to the security. This would have reduced BMO's involvement substantially.

(a) the amount claimed and the amount recovered in the proceeding;

Submissions of BMO: It can be said that the lien claimants and the Private Mortgagees were seeking to have BMO be responsible for the entire deficiency in the holdbacks, which is approximately $1,500,000.00 plus costs, as noted above. BMO was able to avoid any liability. BMO had huge exposure as long as the Private Mortgagees refused to concede priority to the lien claimants. The costs sought by BMO are well below the amount of loss that it might have incurred.

(i) any other matter relevant to the question of costs

Submissions of BMO: BMO did not initially provide a Book of Evidence when all other parties did as it was not actively involved in the Reference initially. It then provided an Affidavit, productions that were quite extensive (about 150 documents), and answered substantial undertakings (57 of them). BMO's attendances on the cross-examinations of all of the various parties was necessary since one either has to be present during them or review the transcripts before trial to prepare. There were too many parties being examined for BMO to take the risk of "learning the facts" at the last second by reading twenty or so transcripts in advance of trial. Notes were taken of key evidence so that in advance of trial BMO's counsel were able to zero-in on any evidence in the transcripts relevant to the issues impacting on BMO. Not being present would have put BMO at a disadvantage if any serious settlement negotiations had taken place prior to trial. If certain of the steps BMO was involved in are seen as "outside the Reference", they were all necessary in ultimately opposing the risk of losing priority to the lien claimants and having to pay back monies received from the Monitor or from the sale of homes prior the CCAA proceeding. The accounts submitted by BMO's counsel therefore do include some work related generally to the CCAA proceeding, and not directly to the Reference, but BMO sent global accounts for all work done to BMO rather than separating the accounts into work related directly to the Reference, and that not related directly to it. The only work performed by BMO's counsel that is specifically outside the Reference and included in these cost submissions would have been some issues arising in relation to Tarion and motions brought by the various lien claimants against Tarion, and a minimal amount of time discussing the matter generally with counsel for the Monitor and the owners. A reasonable estimate of this time "outside the Reference" is $20,000.00 to $25,000.00 of billed time. Once again, this work is directly related to the Reference because it is the uncertainty as to who was to pay the lien claimants the deficiency in the holdbacks that necessitated BMO's continued involvement in the CCAA matter generally. Work performed for BMO in the initial CCAA filing was performed prior to 2015, and is not included in the costs claimed herein.

It is also pointless to compare BMO's account with the account of the Private Mortgagees with Mr. Drudi's firm because without Mr. Drudi disclosing the full particulars of his relationship with Mr. Greenberg and his companies, and how much legal work he does for them, it is impossible to assess the Drudi account for this matter. Perhaps Mr. Drudi does so much work for Mr. Greenberg and his companies that he has created a special arrangement with respect to the charging of docketed time. In any event, one cannot speculate as to why or whether Mr. Drudi gave Mr. Greenberg a "special deal" nor should there be any consideration given as to the dockets Mr. Drudi says relate to his involvement in this Reference. One thing all parties, including counsel to the lien claimants agree upon, is that the totality of all legal fees in this Reference was well into the seven figures. Again, had the Private Mortgagees employed a more reasonable stance those global fees would have been drastically reduced.

29. To the extent that BMO delayed in producing evidence, claims for costs should have been made by the Private Mortgagees against BMO in relation to such delays at the time they occurred. Any such delays cannot now be used to support some punitive order or denial of costs to BMO.

30. The Private Mortgagees are also incorrect that a mortgage document does not bind third parties. A mortgage entitles a mortgagee to tack any costs of recovery onto its mortgage debt, thereby in effect binding third parties who are subsequent in priority on title so as to lessen their security in the property. While BMO has conceded that it will not tack such

costs on to prejudice the lien claimants, no such promise was made to the Private Mortgagees. The Debentures noted above were available to the Private Mortgagees, and they would have known all along that full recovery of costs from any source of funds available would have been sought by BMO. Any litigant also knows that costs will be sought against them by any party who is forced to stay in prolonged litigation due to their actions. The Court should be loath to reduce BMO's claim for costs where its contracts/mortgages with the owners are premised on BMO recovering fully any costs it incurs in recovering on its security, a fact that could be discerned by any party from a reading of the mortgage security.

31. In fact it is respectfully submitted that it is trite law that a senior secured lender's mortgage security ranking in first position is intended to make the lender whole, and only when the said lender is made whole, is the security to be discharged. This is in fact supported by the immediate payment of BMO's debt by the Monitor, which included payment of its costs to that time.

32. Counsel for the Private Mortgagees is getting quite "nit-picky" in analysing the number of times that "0.1" was docketed, or whether he made corresponding dockets for emails or telephone calls between the parties. All litigation counsel have nuances in their billing practices that might result in docketing more or less time than another lawyer for the same task. What is certain is that multiple liens had to be closely analysed, numerous cross-examinations had to be attended, BMO had to be cross-examined, BMO had to answer undertakings, trial preparation had to be done, attendance at an arbitration did take place, a review of all of the materials in the CCAA matter and the Reference (including all

productions of parties, Redfern Schedules, procedural orders, orders made on motions between the other parties, undertakings of other parties) had to be done, and extensive negotiations to settle took place, not to mention the time spent analysing legal issues such as the manner in which the CLA would be applied in this matter.

33. BMO has paid its legal accounts submitted in this matter in support of this costs claim in full.

Partial Indemnity Costs

34. Should the Referee order costs on Partial Indemnity Scale, in *Walker v. DaimlerChrysler*, 2015 ON SC 1429 CanLii (at Tab E) at paragraphs 22-25 and footnote 6, The Honourable Mr. Justice Price states that in calculating costs on a partial indemnity basis (in relation to a personal bankruptcy matter) that:

> In determining the appropriate hourly rates to be assigned to the lawyers involved in the motion, the court follows the approach taken by Aitkin J. in *Geographic Resources*. That is, the starting point is the successor of the Costs Grid, namely, the "Information for the Profession" bulletin from the Costs Sub-Committee of the Rules Committee (the "Costs Bulletin"), which can be found immediately before Rule 57 in the Carthy or Watson & McGowan editions of the *Rules*, sets out maximum partial indemnity hourly rates for counsel of various levels of experience.
>
> The Costs Bulletin suggests maximum hourly rates (on a partial indemnity scale) of \$80.00 for law clerks, \$225.00 for lawyers of less than 10 years' experience, \$300.00 for lawyers of between 10 and 20 years' experience, and \$350.00 for lawyers with 20 years' experience or more. The upper limits in the Costs Bulletin are generally intended for the most complex and important of cases. Having regard to the complexity of the motion, Mr. Farooq, who was senior counsel at the hearing, is entitled to the maximum hourly rate for a lawyer of between 10 and 20 years' experience.
>
> The Costs Bulletin, published in 2005, is now dated. Aitkin J. considered adjusting the Costs Subcommittee's hourly rates for inflation, as Smith J. did in *First Capital*

(Canholdings) Corp. v. North American Property Group, but the unadjusted rates of the lawyers in her case were only slightly less than the actual fees they charged, so she elected to use their unadjusted rates. Normally, however, it is appropriate to adjust the hourly rates in the Costs Bulletin to account for inflation since 2005.

35. The Honourable Mr. Justice Price notes that the "Information for the Profession" bulletin has "advisory status only" and not statutory authority. If one accounts for inflation, then according to the Bank of Canada inflation calculator (suggested by The Honourable Mr. Justice Price in the above-noted decision) $350.00 in 2005, being the maximum partial indemnity rate for lawyers with more than 20 years' experience, is $421.24 in 2016 and this would be for the most complex and important of cases. This is clearly a complex case. This would reduce the claim for fees by BMO from $375,855.00 plus HST to $249,331.95 plus HST (being 591.90 hrs x $421.24 plus HST), plus disbursements for a total bill of costs of $299,602.66 inclusive of fees, disbursements and HST calculated as follows:

Totals for Time:

Jeffrey Spiegelman (1990 Call) – 542.70 hours @ $421.24/hour = $228,606.95
Lee Guarino (1994 Call) – 49.20 hours @ $421.24/hour = $20,725.00

FEES	$249,331.94
(H.S.T. at 13.0%)	$ 48,861.15

DISBURSEMENTS

Photocopying (598 pages @ 0.30 per page)	$ 279.40
Parking (July 11, 2016 @ $58.00 and July 12, 2016 @ $25.00)	$ 83.00
Photocopying at Print Three	$ 1,047.17

TOTAL FEES AND DISBURSEMENTS INCLUDING H.S.T.:	$299,602.66

Conclusion

36. As a consequence of the tactics employed by the Private Mortgagees in causing BMO to be kept in this litigation, the Private Mortgagees were able to negotiate favourable settlements with all of the lien claimants such that the lien claims were settled for approximately $780,000.00 (see Column 4, Lien Amount - Partial Report/Award referenced above), on what appears to be a potential maximum holdback deficiency of approximately $1,500,000.00, as stated above. These favourable benefits to the Private Mortgagees were obtained at the expense of BMO being forced to incur significant costs as set out in its Bill of Costs. The Private Mortgagees should not be entitled to benefit from this tactic and at the same time deprive BMO of the costs it incurred.

37. All of which is respectfully submitted.

Date: September 16, 2016

AGUECI & CALABRETTA
Barristers & Solicitors
5700 Yonge Street
Suite 1110
Toronto, Ontario
M2M 4K2

Att: Jeffrey Spiegelman
LSUC# 312990

Tel: (416) 250-5700
Fax: (416) 250-5797

Lawyers for the Defendant,
Bank of Montreal

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGMENT ACT, R.S.C. 1985, c. c-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at TORONTO

Reply Cost Submissions of Bank of Montreal

AGUECI & CALABRETTA
Barristers & Solicitors
5700 Yonge Street, Suite 1110
Toronto, Ontario
M2M 4K2

Attn: Jeffrey Spiegelman
Law Society of Upper Canada
Member # 312990

Tel. (416) 250-5700
Fax. (416) 250-5797

Lawyers for Bank of Montreal

TAB A

LRO # 65 Charge/Mortgage

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

Registered as YR1273792 on 2009 01 05 at 13:30
yyyy mm dd

Properties

PIN	03206 - 0307 LT	*Interest/Estate*	Fee Simple
Description	PCL 7-1 SEC M807; LT 7 PL M807 ; S/T LB43081 RICHMOND HILL		
Address	RICHMOND HILL		
PIN	03206 - 0308 LT	*Interest/Estate*	Fee Simple
Description	PCL 60-1 SEC M807; LT 60 PL M807 ; RICHMOND HILL		
Address	RICHMOND HILL		

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name	2148990 ONTARIO INC.
Address for Service	103 Naughton Drive Richmond Hill, Ontario L4C 8B3

I, IMRAN JINNAH, PRESIDENT, have the authority to bind the corporation.

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

Chargee(s) *Capacity* *Share*

Name	BANK OF MONTREAL
Address for Service	First Canadian Place 11th Floor 100 King Street West Toronto, Ontario M5X 1A1

Statements

Schedule: See Schedules

Provisions

Principal	$12,387,000.00	*Currency*	CDN
Calculation Period	monthly		
Balance Due Date	ON DEMAND		
Interest Rate	Prime Rate + 1.25%		
Payments			
Interest Adjustment Date			
Payment Date			
First Payment Date			
Last Payment Date			
Standard Charge Terms	862		
Insurance Amount	full insurable value		
Guarantor	Imran Jinnah and Silver Streams Homes Inc.		

Additional Provisions

"Prime Rate" is the floating annual rate of interest established from time to time by the Bank of Montreal as the base rate it will use to determine rates
of interest on Canadian dollar loans to customers in Canada and designated as Prime Rate.

The Chargor hereby acknowledges and agrees that this Charge is given concurrently with a charge given to 2148993 Ontario Limited over another
property (the "Other Charge") described as follows:

Lot 6, Plan M807, s/t LB43081, Richmond Hill, being PIN 03206-0306 (LT) and Lot 5, Plan M807, s/t LB43081, Richmond Hill, being PIN 03206-0305
(LT).

Additional Provisions

A payment made to the Chargee under this Charge shall constitute and be deemed a payment under the Other Charge and the occurrence of an event
of default under the provisions of either this Charge or the Other Charge shall, at the option of the Chargee, constitute and be deemed to be an event
of default under this Charge and the Other Charge and shall entitle the Chargee to pursue its remedies under this Charge and/or under the Other
Charge.

Signed By

Anne Teixeira	Suite 1200, 95 Wellington St. West, TD Centre Toronto M5J 2Z9	acting for Chargor (s)	Signed	2008 12 30

Tel 4168649700
Fax 4169418852

Submitted By

FOGLER, RUBINOFF LLP	Suite 1200, 95 Wellington St. West, TD Centre Toronto M5J 2Z9	2009 01 05

Tel 4168649700
Fax 4169418852

Fees/Taxes/Payment

Statutory Registration Fee	$60.00
Total Paid	$60.00

DEMAND DEBENTURE

Date: December 18, 2008
Principal Sum: $12,387,000.00
Issuer: 2148990 Ontario Inc.

1. 2148990 Ontario Inc. (hereinafter collectively called the "Company"), for value received, hereby covenants with BANK OF MONTREAL (hereinafter called the "Bank") that it will pay to the Bank the sum of TWELVE MILLION THREE HUNDRED AND EIGHTY-SEVEN THOUSAND ($12,387,000.00) DOLLARS in lawful money of Canada, at the Branch of the Bank at First Canadian Place, 11th Floor, Toronto, Ontario, M5X 1A1 or at any other Branch of the Bank to which the Company's account may have been transferred hereafter, together with interest at the rate of the Bank's Prime Interest Rate (as hereinafter defined) plus ONE AND ONE-QUARTER PERCENT (1.25 %) per annum in effect from time to time, on demand, or on such earlier date or dates as any of the said sum (TWELVE MILLION THREE HUNDRED AND EIGHTY-SEVEN THOUSAND ($12,387,000.00) DOLLARS) may become payable as hereinafter provided, together with interest thereon as well after as before maturity at the rate aforesaid computed from the date hereof (collectively referred to herein as the "Indebtedness") payable monthly on the last day of each and every month in like money at the same place:

(a) For the purpose hereof, Prime Interest Rate is the floating annual rate of interest announced from time to time by the Bank as the base rate it will use for determining interest rates on Canadian dollar loans in Canada and designated as Prime Interest Rate; and

(b) In the event that it may be necessary at any time for the Bank to prove the Prime Interest Rate applicable as at any time or times, it is agreed that a Certificate in writing of the Manager for the time being of the Branch of the Bank responsible for the collection of the moneys payable under this Debenture, setting forth the Bank's Prime Interest Rate as at any time or times shall be, and shall be deemed to be, prima facie evidence as to the Bank's Prime Interest Rate as in the said Certificate set forth, notwithstanding that the Manager determined or calculated the Bank's Prime Interest Rate from the books or records of the Bank prepared by an employee or employees of the Bank other than the said Manager.

2. As security for the payment of the Indebtedness and of all other moneys from time to time owing hereunder the Company hereby grants, mortgages, charges, assigns and transfers by way of a fixed and specific mortgage and charge to and in favour of the Bank:

(a) all of the Company's right, title and interest or the undivided interest (as the case may be) in the lands and premises relating to a portion of the "Puccini" project being a 39 lot subdivision in Richmond Hill as described in Schedule "A" hereto and municipally known as 56 and 58 Puccini Drive, Richmond Hill (the "Lands") which Lands are owned by the Company;

(b) all of the right, title and interest of the Company in and to all buildings, erections, fixtures, fixed plant, fixed machinery and equipment now upon the said Lands or any part or parts thereof or which may at any time hereafter be constructed or brought or placed thereon or used in connection therewith (the "Buildings");

(c) all rights-of-way, easements, franchises and privileges, appurtenant or appertaining to the Lands and Buildings;

(d) all the chattels, machinery, equipment, plant, vehicles, goods and personal property of every nature and kind now or hereafter owned or acquired by the Company and located in, on or under the Lands and Buildings or used in connection therewith;

(e) any and all existing or future agreements of purchase and sale, options to purchase and mortgage loans or other financing commitments affecting any of the Lands and Buildings and all of the proceeds thereof; and

(f) all of the undertaking, property and assets, both present and future of every nature and kind whatsoever owned or used by the Company respecting the Lands and Buildings or any part or parts thereof, including, without limitation, all inventory and equipment, book accounts, book debts, all contractual rights and insurance claims, all plans and specifications, building permits and applications, rentals, bank deposits and accounts, all monies (other than trust monies lawfully belonging to others) and all cash and non-cash proceeds therefrom,

all of which are collectively referred to as the "**Mortgaged Property**" or the "**Property**".

To have and to hold the Property hereby charged and all rights hereby conferred unto the Bank, its successors and assigns forever, nevertheless, for the uses and purposes and with the powers and authorities and subject to the terms and conditions herein set forth.

3. It is hereby declared that the last day of any term reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Company and whether falling within the general or particular description of the Mortgaged Property hereunder, is hereby and shall be excepted out of the mortgage and charge hereby or by any other instrument created, but the Company shall stand possessed of the reversion of one day remaining in it or them in respect of any such term, for the time being demised, as aforesaid, upon trust for the Bank to assign and dispose of the same as the Bank shall, for such purpose, direct.

Upon any sale or sales of such leasehold interest or any part thereof, the Bank, for the purpose of vesting the aforesaid one day residue of such term or renewal thereof in any purchaser or purchasers thereof, shall be entitled by deed or writing to appoint such purchaser or purchasers or any other person or persons a new trustee or trustees of the aforesaid residue of any such term or renewal thereof in the place of the Company and to vest the same accordingly in the new trustee or trustees so appointed free and discharged from any obligation respecting the same.

4. The mortgages, charges and assignments hereby created shall have effect whether or not the moneys hereby secured or any part thereof shall be advanced before or after or at the time of the issue of this Debenture or before or after the date of this Debenture.

5. Without in any way derogating from the rights of the Bank hereunder including, without limitation, the right of the Bank to make demand hereunder at any time, the Indebtedness and other moneys hereby secured shall at the discretion of the Bank become immediately payable and the security hereby constituted shall become enforceable upon any of the following events ("**Event of Default**"):

(a) If the Company fails to pay when due any of the principal, interest or other amounts due hereunder;

(b) If the Company makes default in the observance or performance of anything hereby required to be done or some covenant or condition hereby required to be performed or observed;

(c) If the Company fails to observe or perform any term or provision of any agreement with the Bank relating to the Property, including a certain Offer of Financing dated August 25, 2008, as amended by Agreement dated September 24, 2008 (the "**Commitment Letter**") issued by the Bank and accepted by the Company.

(d) If any representation or warranty of the Company contained herein, the Commitment Letter or in any other agreement, commitment, instrument or document relating to the Property is or becomes inaccurate or false or misleading;

(e) If an order is made or a resolution passed, or if a petition is filed for the winding up of the Company;

(f) If the Company becomes insolvent or makes an authorized assignment or bulk sale of the property and assets hereby charged or if a bankruptcy petition is filed or presented against the Company;

(g) If any proceedings with respect to the Company are commenced under the *Companies' Creditors Arrangement Act*;

(h) If any execution, sequestration, extent or any other process of any court becomes enforceable against the Company and remains enforceable for ten (10) days after notice thereof has been given to the Company, as the case may be, by the Bank or if a distress or analogous process is levied upon the property of the Company or any part thereof;

(i) If the Company shall permit any sum which has been admitted as due by the Company or is not disputed to be due by it and which forms or is capable of being made a charge upon any of the Mortgaged Property to remain unpaid for thirty (30) days after proceedings have been taken to enforce the same;

(j) If the Company ceases or threatens to cease to carry on its business or if the Company commits or threatens to commit any act of bankruptcy;

(k) If the Company fails to observe or perform any term or provision contained in the Standard Charge Terms filed by the Bank as No. 882 incorporated by reference herein subject to the amendments set out in Schedule "B" hereto;

(l) If there is an occurrence of an Event of Default under any of the Debentures of even date issued to the Bank by each of the Beneficial Owners; or

(m) If in the opinion of the Bank acting reasonably any material adverse change has occurred in the financial condition, ownership or operation of the Company.

6. If the security hereby constituted shall become enforceable, the Bank may by instrument in writing appoint any person or persons, whether an officer or officers or employee or employees of the Bank or not, to be a receiver or receivers of the Mortgaged Property or any part or parts thereof and may remove any receiver or receivers so appointed and appoint another or others in his or their stead. Any such receiver or receivers shall have power to take possession of the Mortgaged Property or any part or parts thereof and to carry on or concur in carrying on the business of the Company as same relates solely to the Mortgaged Property charged and to sell or concur in selling any part of the Mortgaged Property and to convey, transfer and assign to a purchaser or purchasers the title to any of the Mortgaged Property so sold. The net profits of carrying on the said business and the net proceeds of sale shall be applied by the receiver subject to the claims of all secured and unsecured creditors (if any) ranking in priority to this Debenture:

(a) First, in payment of all costs, charges and expenses of and incidental to the appointment of the receiver and the exercise by him of all or any of the powers aforesaid, including the reasonable remuneration of the receiver and all outgoings properly paid by him;

(b) Secondly, in or towards payment to the Bank of all moneys due hereunder; and

(c) Thirdly, any surplus shall be paid to the Company.

The rights and powers conferred by this paragraph are in supplement of and not in substitution for any rights the Bank may from time to time have as the Holder of this Debenture. The term "receiver" as used in this Debenture includes a receiver and manager. That every such receiver shall, so far as concerns responsibility for his acts or omissions, be deemed the agent or attorney of the Company and in no event the agent of the Bank. The appointment of the receiver shall not have the effect of constituting the Bank a mortgagee in possession in respect of the Property or any part thereof.

7. If the security hereby constituted shall have become enforceable and the Bank shall have determined to enforce the same as herein provided, the Bank may in its discretion:

(a) by its officers, agents or attorneys take possession of all or any part or parts of the Mortgaged Property with power to exclude the Company, its agents and servants therefrom; carry on, manage, and conduct the business operations of the Company relating to the Mortgaged Property; preserve and maintain the Mortgaged Property and make such replacements thereof and additions thereto as it shall deem judicious; receive the rents, incomes and profits thereof of any kind whatsoever and pay therefrom any expenses it may have of maintaining, preserving, protecting and operating the Mortgaged Property and all charges which rank or may rank *pari passu* with or prior to the lien of this Debenture, or payment of which may be necessary to preserve or protect the Mortgaged Property, or any part thereof, and to establish reasonable reserves in respect thereof and for the payment of the principal of and premium, if any, and interest on the monies then due or thereafter becoming due, and pay out the remainder of the moneys so received and not in the opinion of the Bank required for the purposes provided for in this Section in accordance with the provisions of Section 6; renew from time to time any leases; and enjoy and exercise all powers necessary to the performance of all functions provided for in this Section, including, but not in limitation thereof, the power to purchase on credit, borrow money in the Company's name, and advance its own moneys at such rates of interest as it may deem reasonable (the debts representing all of which purchases, borrowings, and advances, together with interest thereon, while unpaid, to be entitled to the security hereof in priority to the Debenture); provided that the Bank shall, upon all defaults being made good, or waived as herein provided, restore the Mortgaged Property to the applicable Company subject to the mortgages and charges created by this Debenture as if no default had occurred; and/or

(b) with or without taking possession, and in accordance with the provisions of Section 8 hereof, sell all or part of the Mortgaged Property, either as a whole or in separate parcels, at public auction, by public tender or by private sale, at such times and places, subject to adjournment from time to time by the Bank, and on such terms and conditions as to upset or reserve bid or price and as to payment as the Bank shall appoint; and/or

(c) realize all or any part or parts of the security hereby constituted by any other means of any nature or kind whatsoever that a Court of competent jurisdiction shall approve as being just and expedient in the circumstances, having regard to the character of the Mortgaged Property and the nature of the operations of the Mortgaged Property, including any other action, suit, remedy or proceedings authorized or permitted by this Debenture or by law or by equity, and not necessarily limited to those means of realization which the Court is given jurisdiction to approve by statute; and/or

(d) take any action or proceedings to enforce payment of the monies due hereunder or performance of any other covenant contained herein, or to enforce the security hereby constituted and to bring to sale the Mortgaged Property or any part or parts thereof under a judgment or decree of a Court or Courts of competent jurisdiction or by the enforcement of any other legal remedy which the Bank, on the advice of Counsel shall deem most effective to protect and enforce any of its rights.

8. If the security hereby constituted shall become enforceable, the Bank may enter on, take possession of, lease and enforce any right or remedy it has with respect to the Mortgaged Property or any part or parts thereof, and on default of payment for at least fifteen (15) days, may, on at least thirty-five (35) days' notice enter on and lease the Mortgaged Property or any part or parts thereof or on default of payment for at least fifteen (15) days, may, on at least thirty-five (35) days' notice sell all or any part of the Mortgaged Property; such notice shall be given to such persons and in such manner and form and within such time as under Part III of *The Mortgages Act*, R.S.O. 1990, M.40, as amended; and the Bank may lease or sell as aforesaid without entering into possession of the said Mortgaged Property. In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable it is agreed that notice may be effectually given by mailing it in a registered letter addressed to the Company at its last known address. It is further agreed that the title of a purchaser or lessee upon a sale or lease made in professed exercise of the above power and conducted according to law shall not be liable to be impeached on the ground that no cause has arisen to authorize the

exercise of such power, or that such power had been improperly or irregularly exercised, but any person damaged by an unauthorized, improper or irregular exercise of the power shall have his remedy against the person exercising the power in damages only; and that the Bank may either before or after entry sell the whole or any part or parts of the said Mortgaged Property by public auction or by private tender or private contract, or partly one and partly the other, on such terms as to credit and otherwise as to the Bank shall appear most advantageous and for such prices as can reasonably be obtained therefor and at such time and place as the Bank may determine and with or without advertisement, and with or without reserve bid as the Bank may deem proper; and the Bank may buy in or rescind or vary any contract for sale of any of the said Mortgaged Property and re-sell, with or without the powers conferred hereunder, and adjourn such sale from time to time without being answerable for loss occasioned thereby; and in the case of a sale on credit the Bank shall only be bound to pay to the Company such moneys as have been actually received from purchasers after the satisfaction of the Bank's claim; and for any such purposes the Bank may execute all agreements, deeds, transfers and assurances the Bank deems fit, and the Bank being hereby constituted the attorney of the Company for the purpose of making any such sale shall be a perpetual bar both in law and in equity against the Company and all other persons claiming the said property or any part thereof, by, from, through or under the Company; and that the purchaser at any sale hereunder and the lessee under any lease hereunder, except to the extent required by law, shall not be bound to see to the propriety or regularity thereof or be affected by express notice that any sale or lease is improper; and no want of notice or publication where required hereby shall invalidate any sale or lease hereunder; and the above powers may be exercised by the successors and assigns of the Bank and against the successors and assigns of the Company and are in addition to and not in limitation of any other rights or powers of the Bank herein or by law conferred.

9. The Company agrees to pay to the Bank forthwith upon demand all reasonable expenses incurred by the Bank in taking this Debenture or in recovering or enforcing payment of moneys owing hereunder or realizing upon this Debenture or any other security for such moneys including reasonable expenses of taking possession, protecting and realizing upon any property comprised in any such security, together with interest at the rate provided herein for this Debenture from the date of such expenditures.

10. This Debenture may be assigned, pledged, hypothecated or deposited by the Company as security for advances or loans to or for indebtedness or other obligations or liabilities of the Company, and in such event this Debenture shall not be deemed to have been redeemed by reason of the account of the Company having ceased to be in debit whilst it remained so assigned, pledged, hypothecated or deposited and no payment to the Bank shall constitute payment on account of any of the principal, interest or other moneys from time to time owing hereunder unless specifically so appropriated by the Bank by notation of such payment on this Debenture.

11. The Indebtedness and other moneys hereby secured will be paid and shall be assignable free from any right of set-off or counter-claim or equities between the Company and the Bank.

12. This security is in addition to and not in substitution for any other security now or hereafter held by the Bank.

13. If the Company, its successors or assigns, shall pay or cause to be paid to the Bank the moneys secured by this Debenture and shall otherwise observe and perform the terms hereof, the Bank shall at the request and at the expense of the Company, its successors and assigns, cancel and discharge the charge of this Debenture and execute and deliver to the Company, their successors and assigns, such deeds and other instruments as shall be requisite to satisfy the charge thereby constituted and release the Company from the terms and conditions hereof; provided, however, that until such cancellation and discharge, this Debenture shall be and remain in full force and effect.

14. This Debenture and all its provisions shall enure to the benefit of the Bank, its successors and assigns, and shall be binding upon the Company and its successors and assigns.

15. The Company hereby acknowledges having received a true copy of this Debenture.

16. This Debenture is being issued by the Company to the Bank pursuant to the terms of the Commitment Letter. The warranties, representation, agreements and covenants contained in the Commitment Letter shall not merge but shall survive and continue in force despite the advancement of funds under this Debenture. In the event of any ambiguity, conflict or inconsistency between the provisions of this Debenture and the Commitment Letter, the Commitment Letter shall prevail.

IN WITNESS WHEREOF the Company has executed this Debenture as at the date set out above.

2148990 ONTARIO INC.

Per: ______________________

Imran Jannah
President
I have authority to bind the Corporation

SCHEDULE "A"

LEGAL DESCRIPTION OF LANDS

Lot 60, Plan M807, Richmond Hill, being PIN 03206-0308 (LT) and Lot 7, Plan M807, s/t LB43081, Richmond Hill, being PIN 03206-0307 (LT)

SCHEDULE "B"
STANDARD CHARGE TERM AMENDMENTS

Land Registration Reform Act 1984
for use with Standard Charge Terms No. 882

The provisions of the set of Standard Charge Terms filed as No. 882 shall be amended as follows:

1. Subparagraph (o) shall be deleted from paragraph 2 and the following shall be substituted for the said subparagraph (o):

   (o) "Sum" means the amount inserted on Page 1 of the charge and is the principal amount of the indebtedness of the Chargor to the Chargee for debts contracted to the Chargee and/or all or any part of the liability of the Chargor to the Chargee pursuant to or with respect to any guarantee, guarantees, note, notes, agreement or agreements referred to in the charge.

2. Subparagraph (aa) of paragraph 5 shall be amended by the insertion of the word "No" as the first word of the said subparagraph (aa).

3. Subparagraph (bb) of paragraph 5 shall be amended by the insertion of the word "The" as the first word of the said subparagraph (bb).

4. Paragraph 7 shall be amended by replacing the word "change" with the word "charge" in the first line of the said paragraph 7.

5. Paragraph 13 shall be amended by deleting the following from line 5: "(other than as set out in paragraph 11 hereof)".

LRO # 65 Charge/Mortgage

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

Registered as YR1273794 on 2009 01 05 at 13:30

yyyy mm dd Page 1 of 10

Properties

PIN	03206 - 0305 LT	*Interest/Estate*	Fee Simple
Description	PCL 5-1 SEC M807; LT 5 PL M807 ; S/T LB43081 RICHMOND HILL		
Address	RICHMOND HILL		
PIN	03206 - 0306 LT	*Interest/Estate*	Fee Simple
Description	PCL 6-1 SEC M807; LT 6 PL M807 ; S/T LB43081 RICHMOND HILL		
Address	RICHMOND HILL		

Chargor(s)

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name 2148993 ONTARIO INC.

Address for Service 103 Naughton Drive
Richmond Hill, Ontario
L4C 8B3

I, IMRAN JINNAH, PRESIDENT, have the authority to bind the corporation.

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

Chargee(s) *Capacity* *Share*

Name BANK OF MONTREAL

Address for Service First Canadian Place
11th Floor
100 King Street West
Toronto, Ontario
M5X 1A1

Statements

Schedule: See Schedules

Provisions

Principal	$12,387,000.00	*Currency*	CDN
Calculation Period	monthly		
Balance Due Date	ON DEMAND		
Interest Rate	Prime Rate + 1.25%		
Payments			
Interest Adjustment Date			
Payment Date			
First Payment Date			
Last Payment Date			
Standard Charge Terms	882		
Insurance Amount	full insurable value		
Guarantor	Imran Jinnah and Silver Streams Homes Inc.		

Additional Provisions

"Prime Rate" is the floating annual rate of interest established from time to time by the Bank of Montreal as the base rate it will use to determine rates
of interest on Canadian dollar loans to customers in Canada and designated as Prime Rate.

The Chargor hereby acknowledges and agrees that this Charge is given concurrently with a charge given to 2148990 Ontario Limited over another
property (the "Other Charge") described as follows:

Lot 60, Plan M807, Richmond Hill, being PIN 03206-0308 (LT) and Lot 7, Plan M807, s/t LB43081, Richmond Hill, being PIN 03206-0307 (LT).

LRO # 65 Charge/Mortgage

Registered as YR1273794 on 2009 01 05 at 13:30

yyyy mm dd Page 2 of 10

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

Additional Provisions

A payment made to the Chargee under this Charge shall constitute and be deemed a payment under the Other Charge and the occurrence of an event
of default under the provisions of either this Charge or the Other Charge shall, at the option of the Chargee, constitute and be deemed to be an event
of default under this Charge and the Other Charge and shall entitle the Chargee to pursue its remedies under this Charge and/or under the Other
Charge.

Signed By

Anne Teixeira | Suite 1200, 95 Wellington St. West, TD Centre, Toronto, M5J 2Z9 | acting for Chargor (s) | Signed 2008 12 30

Tel 4168649700
Fax 4169418852

Submitted By

FOGLER, RUBINOFF LLP | Suite 1200, 95 Wellington St. West, TD Centre, Toronto, M5J 2Z9 | 2009 01 05

Tel 4168649700
Fax 4169418852

Fees/Taxes/Payment

Statutory Registration Fee	$60.00
Total Paid	$60.00

DEMAND DEBENTURE

Date: December 18, 2008
Principal Sum: $12,387,000.00
Issuer: 2148993 Ontario Inc.

1. 2148993 Ontario Inc. (hereinafter collectively called the "Company"), for value received, hereby covenants with BANK OF MONTREAL (hereinafter called the "Bank") that it will pay to the Bank the sum of TWELVE MILLION THREE HUNDRED AND EIGHTY-SEVEN THOUSAND ($12,387,000.00) DOLLARS in lawful money of Canada, at the Branch of the Bank at First Canadian Place, 11th Floor, Toronto, Ontario, M5X 1A1 or at any other Branch of the Bank to which the Company's account may have been transferred hereafter, together with interest at the rate of the Bank's Prime Interest Rate (as hereinafter defined) plus ONE AND ONE-QUARTER PERCENT (1.25 %) per annum in effect from time to time, on demand, or on such earlier date or dates as any of the said sum (TWELVE MILLION THREE HUNDRED AND EIGHTY-SEVEN THOUSAND ($12,387,000.00) DOLLARS) may become payable as hereinafter provided, together with interest thereon as well after as before maturity at the rate aforesaid computed from the date hereof (collectively referred to herein as the "Indebtedness") payable monthly on the last day of each and every month in like money at the same place:

(a) For the purpose hereof, Prime Interest Rate is the floating annual rate of interest announced from time to time by the Bank as the base rate it will use for determining interest rates on Canadian dollar loans in Canada and designated as Prime Interest Rate; and

(b) In the event that it may be necessary at any time for the Bank to prove the Prime Interest Rate applicable as at any time or times, it is agreed that a Certificate in writing of the Manager for the time being of the Branch of the Bank responsible for the collection of the moneys payable under this Debenture, setting forth the Bank's Prime Interest Rate as at any time or times shall be, and shall be deemed to be, prima facie evidence as to the Bank's Prime Interest Rate as in the said Certificate set forth, notwithstanding that the Manager determined or calculated the Bank's Prime Interest Rate from the books or records of the Bank prepared by an employee or employees of the Bank other than the said Manager.

2. As security for the payment of the Indebtedness and of all other moneys from time to time owing hereunder the Company hereby grants, mortgages, charges, assigns and transfers by way of a fixed and specific mortgage and charge to and in favour of the Bank:

(a) all of the Company's right, title and interest or the undivided interest (as the case may be) in the lands and premises relating to a portion of the "Puccini" project being a 39 lot subdivision in Richmond Hill as described in Schedule "A" hereto and municipally known as 60 and 62 Puccini Drive, Richmond Hill (the "Lands") which Lands are owned by the Company;

(b) all of the right, title and interest of the Company in and to all buildings, erections, fixtures, fixed plant, fixed machinery and equipment now upon the said Lands or any part or parts thereof or which may at any time hereafter be constructed or brought or placed thereon or used in connection therewith (the "Buildings");

(c) all rights-of-way, easements, franchises and privileges, appurtenant or appertaining to the Lands and Buildings;

(d) all the chattels, machinery, equipment, plant, vehicles, goods and personal property of every nature and kind now or hereafter owned or acquired by the Company and located in, on or under the Lands and Buildings or used in connection therewith;

(e) any and all existing or future agreements of purchase and sale, options to purchase and mortgage loans or other financing commitments affecting any of the Lands and Buildings and all of the proceeds thereof; and

(f) all of the undertaking, property and assets, both present and future of every nature and kind whatsoever owned or used by the Company respecting the Lands and Buildings or any part or parts thereof, including, without limitation, all inventory and equipment, book accounts, book debts, all contractual rights and insurance claims, all plans and specifications, building permits and applications, rentals, bank deposits and accounts, all monies (other than trust monies lawfully belonging to others) and all cash and non-cash proceeds therefrom,

all of which are collectively referred to as the "**Mortgaged Property**" or the "**Property**".

To have and to hold the Property hereby charged and all rights hereby conferred unto the Bank, its successors and assigns forever, nevertheless, for the uses and purposes and with the powers and authorities and subject to the terms and conditions herein set forth.

3. It is hereby declared that the last day of any term reserved by any lease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Company and whether falling within the general or particular description of the Mortgaged Property hereunder, is hereby and shall be excepted out of the mortgage and charge hereby or by any other instrument created, but the Company shall stand possessed of the reversion of one day remaining in it or them in respect of any such term, for the time being demised, as aforesaid, upon trust for the Bank to assign and dispose of the same as the Bank shall, for such purpose, direct.

Upon any sale or sales of such leasehold interest or any part thereof, the Bank, for the purpose of vesting the aforesaid one day residue of such term or renewal thereof in any purchaser or purchasers thereof, shall be entitled by deed or writing to appoint such purchaser or purchasers or any other person or persons a new trustee or trustees of the aforesaid residue of any such term or renewal thereof in the place of the Company and to vest the same accordingly in the new trustee or trustees so appointed free and discharged from any obligation respecting the same.

4. The mortgages, charges and assignments hereby created shall have effect whether or not the moneys hereby secured or any part thereof shall be advanced before or after or at the time of the issue of this Debenture or before or after the date of this Debenture.

5. Without in any way derogating from the rights of the Bank hereunder including, without limitation, the right of the Bank to make demand hereunder at any time, the Indebtedness and other moneys hereby secured shall at the discretion of the Bank become immediately payable and the security hereby constituted shall become enforceable upon any of the following events ("**Event of Default**"):

(a) If the Company fails to pay when due any of the principal, interest or other amounts due hereunder;

(b) If the Company makes default in the observance or performance of anything hereby required to be done or some covenant or condition hereby required to be performed or observed;

(c) If the Company fails to observe or perform any term or provision of any agreement with the Bank relating to the Property, including a certain Offer of Financing dated August 25, 2008, as amended by Agreement dated September 24, 2008 (the "**Commitment Letter**") issued by the Bank and accepted by the Company,

(d) If any representation or warranty of the Company contained herein, the Commitment Letter or in any other agreement, commitment, instrument or document relating to the Property is or becomes inaccurate or false or misleading;

(e) If an order is made or a resolution passed, or if a petition is filed for the winding up of the Company;

(f) If the Company becomes insolvent or makes an authorized assignment or bulk sale of the property and assets hereby charged or if a bankruptcy petition is filed or presented against the Company;

(g) If any proceedings with respect to the Company are commenced under the *Companies' Creditors Arrangement Act*;

(h) If any execution, sequestration, extent or any other process of any court becomes enforceable against the Company and remains enforceable for ten (10) days after notice thereof has been given to the Company, as the case may be, by the Bank or if a distress or analogous process is levied upon the property of the Company or any part thereof;

(i) If the Company shall permit any sum which has been admitted as due by the Company or is not disputed to be due by it and which forms or is capable of being made a charge upon any of the Mortgaged Property to remain unpaid for thirty (30) days after proceedings have been taken to enforce the same;

(j) If the Company ceases or threatens to cease to carry on its business or if the Company commits or threatens to commit any act of bankruptcy;

(k) If the Company fails to observe or perform any term or provision contained in the Standard Charge Terms filed by the Bank as No. 882 incorporated by reference herein subject to the amendments set out in Schedule "B" hereto;

(l) If there is an occurrence of an Event of Default under any of the Debentures of even date issued to the Bank by each of the Beneficial Owners; or

(m) If in the opinion of the Bank acting reasonably any material adverse change has occurred in the financial condition, ownership or operation of the Company.

6. If the security hereby constituted shall become enforceable, the Bank may by instrument in writing appoint any person or persons, whether an officer or officers or employee or employees of the Bank or not, to be a receiver or receivers of the Mortgaged Property or any part or parts thereof and may remove any receiver or receivers so appointed and appoint another or others in his or their stead. Any such receiver or receivers shall have power to take possession of the Mortgaged Property or any part or parts thereof and to carry on or concur in carrying on the business of the Company as same relates solely to the Mortgaged Property charged and to sell or concur in selling any part of the Mortgaged Property and to convey, transfer and assign to a purchaser or purchasers the title to any of the Mortgaged Property so sold. The net profits of carrying on the said business and the net proceeds of sale shall be applied by the receiver subject to the claims of all secured and unsecured creditors (if any) ranking in priority to this Debenture:

(a) First, in payment of all costs, charges and expenses of and incidental to the appointment of the receiver and the exercise by him of all or any of the powers aforesaid, including the reasonable remuneration of the receiver and all outgoings properly paid by him;

(b) Secondly, in or towards payment to the Bank of all moneys due hereunder; and

(c) Thirdly, any surplus shall be paid to the Company.

The rights and powers conferred by this paragraph are in supplement of and not in substitution for any rights the Bank may from time to time have as the Holder of this Debenture. The term "receiver" as used in this Debenture includes a receiver and manager. That every such receiver shall, so far as concerns responsibility for his acts or omissions, be deemed the agent or attorney of the Company and in no event the agent of the Bank. The appointment of the receiver shall not have the effect of constituting the Bank a mortgagee in possession in respect of the Property or any part thereof.

7. If the security hereby constituted shall have become enforceable and the Bank shall have determined to enforce the same as herein provided, the Bank may in its discretion:

(a) by its officers, agents or attorneys take possession of all or any part or parts of the Mortgaged Property with power to exclude the Company, its agents and servants therefrom; carry on, manage, and conduct the business operations of the Company relating to the Mortgaged Property; preserve and maintain the Mortgaged Property and make such replacements thereof and additions thereto as it shall deem judicious; receive the rents, incomes and profits thereof of any kind whatsoever and pay therefrom any expenses it may have of maintaining, preserving, protecting and operating the Mortgaged Property and all charges which rank or may rank *pari passu* with or prior to the lien of this Debenture, or payment of which may be necessary to preserve or protect the Mortgaged Property, or any part thereof, and to establish reasonable reserves in respect thereof and for the payment of the principal of and premium, if any, and interest on the monies then due or thereafter becoming due, and pay out the remainder of the moneys so received and not in the opinion of the Bank required for the purposes provided for in this Section in accordance with the provisions of Section 6; renew from time to time any leases; and enjoy and exercise all powers necessary to the performance of all functions provided for in this Section, including, but not in limitation thereof, the power to purchase on credit, borrow money in the Company's name, and advance its own moneys at such rates of interest as it may deem reasonable (the debts representing all of which purchases, borrowings, and advances, together with interest thereon, while unpaid, to be entitled to the security hereof in priority to the Debenture); provided that the Bank shall, upon all defaults being made good, or waived as herein provided, restore the Mortgaged Property to the applicable Company subject to the mortgages and charges created by this Debenture as if no default had occurred; and/or

(b) with or without taking possession, and in accordance with the provisions of Section 8 hereof, sell all or part of the Mortgaged Property, either as a whole or in separate parcels, at public auction, by public tender or by private sale, at such times and places, subject to adjournment from time to time by the Bank, and on such terms and conditions as to upset or reserve bid or price and as to payment as the Bank shall appoint; and/or

(c) realize all or any part or parts of the security hereby constituted by any other means of any nature or kind whatsoever that a Court of competent jurisdiction shall approve as being just and expedient in the circumstances, having regard to the character of the Mortgaged Property and the nature of the operations of the Mortgaged Property, including any other action, suit, remedy or proceedings authorized or permitted by this Debenture or by law or by equity, and not necessarily limited to those means of realization which the Court is given jurisdiction to approve by statute; and/or

(d) take any action or proceedings to enforce payment of the monies due hereunder or performance of any other covenant contained herein, or to enforce the security hereby constituted and to bring to sale the Mortgaged Property or any part or parts thereof under a judgment or decree of a Court or Courts of competent jurisdiction or by the enforcement of any other legal remedy which the Bank, on the advice of Counsel shall deem most effective to protect and enforce any of its rights.

8. If the security hereby constituted shall become enforceable, the Bank may enter on, take possession of, lease and enforce any right or remedy it has with respect to the Mortgaged Property or any part or parts thereof, and on default of payment for at least fifteen (15) days, may, on at least thirty-five (35) days' notice enter on and lease the Mortgaged Property or any part or parts thereof or on default of payment for at least fifteen (15) days, may, on at least thirty-five (35) days' notice sell all or any part of the Mortgaged Property; such notice shall be given to such persons and in such manner and form and within such time as under Part III of *The Mortgages Act*, R.S.O. 1990, M.40, as amended; and the Bank may lease or sell as aforesaid without entering into possession of the said Mortgaged Property. In the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable it is agreed that notice may be effectually given by mailing it in a registered letter addressed to the Company at its last known address. It is further agreed that the title of a purchaser or lessee upon a sale or lease made in professed exercise of the above power and conducted according to law shall not be liable to be impeached on the ground that no cause has arisen to authorize the

exercise of such power, or that such power had been improperly or irregularly exercised, but any person damaged by an unauthorized, improper or irregular exercise of the power shall have his remedy against the person exercising the power in damages only; and that the Bank may either before or after entry sell the whole or any part or parts of the said Mortgaged Property by public auction or by private tender or private contract, or partly one and partly the other, on such terms as to credit and otherwise as to the Bank shall appear most advantageous and for such prices as can reasonably be obtained therefor and at such time and place as the Bank may determine and with or without advertisement, and with or without reserve bid as the Bank may deem proper; and the Bank may buy in or rescind or vary any contract for sale of any of the said Mortgaged Property and re-sell, with or without the powers conferred hereunder, and adjourn such sale from time to time without being answerable for loss occasioned thereby; and in the case of a sale on credit the Bank shall only be bound to pay to the Company such moneys as have been actually received from purchasers after the satisfaction of the Bank's claim; and for any such purposes the Bank may execute all agreements, deeds, transfers and assurances the Bank deems fit, and the Bank being hereby constituted the attorney of the Company for the purpose of making any such sale shall be a perpetual bar both in law and in equity against the Company and all other persons claiming the said property or any part thereof, by, from, through or under the Company; and that the purchaser at any sale hereunder and the lessee under any lease hereunder, except to the extent required by law, shall not be bound to see to the propriety or regularity thereof or be affected by express notice that any sale or lease is improper; and no want of notice or publication where required hereby shall invalidate any sale or lease hereunder; and the above powers may be exercised by the successors and assigns of the Bank and against the successors and assigns of the Company and are in addition to and not in limitation of any other rights or powers of the Bank herein or by law conferred.

9. The Company agrees to pay to the Bank forthwith upon demand all reasonable expenses incurred by the Bank in taking this Debenture or in recovering or enforcing payment of moneys owing hereunder or realizing upon this Debenture or any other security for such moneys including reasonable expenses of taking possession, protecting and realizing upon any property comprised in any such security, together with interest at the rate provided herein for this Debenture from the date of such expenditures.

10. This Debenture may be assigned, pledged, hypothecated or deposited by the Company as security for advances or loans to or for indebtedness or other obligations or liabilities of the Company, and in such event this Debenture shall not be deemed to have been redeemed by reason of the account of the Company having ceased to be in debit whilst it remained so assigned, pledged, hypothecated or deposited and no payment to the Bank shall constitute payment on account of any of the principal, interest or other moneys from time to time owing hereunder unless specifically so appropriated by the Bank by notation of such payment on this Debenture.

11. The Indebtedness and other moneys hereby secured will be paid and shall be assignable free from any right of set-off or counter-claim or equities between the Company and the Bank.

12. This security is in addition to and not in substitution for any other security now or hereafter held by the Bank.

13. If the Company, its successors or assigns, shall pay or cause to be paid to the Bank the moneys secured by this Debenture and shall otherwise observe and perform the terms hereof, the Bank shall at the request and at the expense of the Company, its successors and assigns, cancel and discharge the charge of this Debenture and execute and deliver to the Company, their successors and assigns, such deeds and other instruments as shall be requisite to satisfy the charge thereby constituted and release the Company from the terms and conditions hereof; provided, however, that until such cancellation and discharge, this Debenture shall be and remain in full force and effect.

14. This Debenture and all its provisions shall enure to the benefit of the Bank, its successors and assigns, and shall be binding upon the Company and its successors and assigns.

15. The Company hereby acknowledges having received a true copy of this Debenture.

16. This Debenture is being issued by the Company to the Bank pursuant to the terms of the Commitment Letter. The warranties, representation, agreements and covenants contained in the Commitment Letter shall not merge but shall survive and continue in force despite the advancement of funds under this Debenture. In the event of any ambiguity, conflict or inconsistency between the provisions of this Debenture and the Commitment Letter, the Commitment Letter shall prevail.

IN WITNESS WHEREOF the Company has executed this Debenture as at the date set out above.

2148993 ONTARIO INC.

Per: Imran Jinnah

Imran Jinnah
President
I have authority to bind the Corporation

SCHEDULE "A"

LEGAL DESCRIPTION OF LANDS

Lot 6, Plan M807, s/t LB43081, Richmond Hill, being PIN 03206-0306 (LT) and Lot 6, Plan M807, s/t LB43081, Richmond Hill, being PIN 03206-0305 (LT)

SCHEDULE "B"
STANDARD CHARGE TERM AMENDMENTS

Land Registration Reform Act 1984
for use with Standard Charge Terms No. 882

The provisions of the set of Standard Charge Terms filed as No. 882 shall be amended as follows:

1. Subparagraph (o) shall be deleted from paragraph 2 and the following shall be substituted for the said subparagraph (o):

   (o) "Sum" means the amount inserted on Page 1 of the charge and is the principal amount of the indebtedness of the Chargor to the Chargee for debts contracted to the Chargee and/or all or any part of the liability of the Chargor to the Chargee pursuant to or with respect to any guarantee, guarantees, note, notes, agreement or agreements referred to in the charge.

2. Subparagraph (aa) of paragraph 5 shall be amended by the insertion of the word "No" as the first word of the said subparagraph (aa).

3. Subparagraph (bb) of paragraph 5 shall be amended by the insertion of the word "The" as the first word of the said subparagraph (bb).

4. Paragraph 7 shall be amended by replacing the word "change" with the word "charge" in the first line of the said paragraph 7.

5. Paragraph 13 shall be amended by deleting the following from line 5: "(other than as set out in paragraph 11 hereof)".

BMO Bank of Montreal

LAND REGISTRATION REFORM ACT, 1984

SET OF STANDARD CHARGE TERMS
(COLLATERAL — COMMERCIAL AND RESIDENTIAL)

FILED BY BANK OF MONTREAL

FILING NO. 882
FILING DATE: February 8, 1988

The following set of Standard Charge Terms shall be deemed to be included in every charge in which the set is referred to by its filing number, as provided in section 9 of the Act.

1. **CONTENTS**

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2. DEFINITIONS

All terms used herein that are defined in the Act shall have the same meanings herein as in the Act except as expressly varied by this set of Standard Charge Terms. In this set of Standard Charge Terms and in each charge:

(a) "Act" means the Land Registration Reform Act, 1984 and any amendments thereto in effect at the time of execution and delivery of the charge.

(b) "Agreed Charge" is defined in paragraph 5(d) hereof.

(c) "charge" means the Form 2 Charge/Mortgage of Land made pursuant to the Act and the regulations thereunder in which this set of Standard Charge Terms is included by reference therein to its filing number and includes all Schedules thereto, and for greater certainty includes a Form 2 Charge/Mortgage of Land in which one or more of such Standard Charge Terms are expressly excluded or are varied in accordance with the Act.

(d) "Chargee" means Bank of Montreal and its successors and assigns.

(e) "Chargor" means the party or parties so identified in the charge and his, her or their successors and assigns, as the case may be.

(f) "Interest Adjustment Date" means the date for the adjustment of interest provided for in the charge.

(g) "land" means land, tenements, hereditaments and appurtenances and any estate or interest therein, and for greater certainty includes all buildings, plant, machinery, erections and improvements fixed or otherwise, present or future, built, placed or put thereon including, without limitation, all fences, heating, plumbing, antennae, radiators, mirrors, air-conditioning, ventilating, fire alarm and protective systems, lighting and lighting fixtures, furnaces, boilers, oil burners, stokers, water heating equipment, cooking and refrigeration equipment, window blinds, floor coverings, storm windows and doors, window and door screens, shutters and awnings, and all other apparatus and equipment appurtenant thereto, and all other fixtures, accessions and accretions of any kind or nature.

(h) "charged land" means the land described in the charge.

(i) "Indebtedness" means the Sum, all interest thereon and all other present and future indebtedness and liability of the Chargor to the Chargee whether direct or indirect, absolute or contingent, revolving or non-revolving, whether incurred by the Chargor alone or together with any other debtor or debtors and whether incurred pursuant to the provisions of the charge or otherwise, including all interest thereon.

(j) "interest" unless the context otherwise requires means interest payable by the Chargor to the Chargee at the rate or rates of interest applicable to the Indebtedness or any part or parts thereof from time to time as agreed between the Chargor and the Chargee in writing from time to time and if no rate of interest has been so agreed upon in respect of any part or parts of the Indebtedness, the highest rate of interest applicable to the other part or parts of the Indebtedness and subject to the aforesaid means of determination, the rate of interest, if any, specified in the charge.

(k) "Other Claims" is defined in paragraph 5(d) hereof.

(l) "regulations" means the regulations made under Part I of the Act.

(m) "Schedule" means a schedule to the charge as contemplated by the Act and regulations thereunder.

(n) "successor" means an heir, executor, administrator or successor.

(o) "Sum" means the principal amount in which the Chargor is indebted to the Chargee for debts contracted to the Chargee in the course of its banking business in the amount set out in the charge and/or pursuant to any guarantee, guarantees, agreement or agreements referred to in the charge.

(p) "Taxes" means all taxes, rates and assessments, municipal, local, parliamentary or otherwise, in regard to the charged land.

3. OPERATION OF CHARGE

Charge of Charged Land

(a) In consideration of the premises, other valuable consideration and the sum of two ($2.00) dollars of lawful money of Canada now paid by the Chargee to the Chargor, (the receipt and sufficiency of which are acknowledged by the Chargor), the Chargor hereby charges the charged land to and in favour of the Chargee as security for payment to the Chargee of the Indebtedness (including the Sum) and as security for the observance and performance of all other obligations of the Chargor arising pursuant to or in respect of the charge.

Defeasance

(b) The charge is given upon the express condition that if the Chargor shall duly pay or cause to be paid to the Chargee all Indebtedness (including the Sum) and all notes, bills of exchange and other instruments now or hereafter evidencing the Indebtedness or any part thereof and all renewals and replacements of and substitutions for the same or any of them or any part thereof and all such other sums as the Chargee may be entitled to by virtue of the charge as and when such Indebtedness, notes, bills of exchange and other instruments, renewals, replacements, substitutions and sums shall respectively become due and payable with interest as well after as before maturity, default or judgment and upon the observance and performance of all the Chargor's obligations, agreements, covenants and conditions set out in the charge, the Chargor may request from the Chargee a discharge of the charge and upon delivery by the Chargee to the Chargor of a discharge of the charge, the charge shall terminate; provided that, for greater certainty, the charge shall not terminate while any Indebtedness remains unpaid only because, at any prior time or times, all Indebtedness had been paid in full. The right of foreclosure is hereby expressly given and reserved to and retained by the Chargee in the same manner and to the same extent as if the Chargor had transferred the charged land to the Chargee by way of mortgage subject to a proviso for redemption.

Repayment

(c) The Chargor shall pay the Indebtedness (including the Sum) to the Chargee on demand for payment unless there are specific dates for payment in the charge, in which case, the Chargor shall (subject to all other provisions hereof) pay the Sum to the Chargee on the specific dates as so indicated and the Chargor shall pay the remainder of the Indebtedness, if any, to the Chargee on demand by the Chargee for payment.

Continuing Security

(d) The charge shall be a continuing security to the Chargee for the payment of all Indebtedness, notwithstanding at any time and from time to time there is:

(i) any change in the nature, state or form of any account between the Chargor and the Chargee;

(ii) any new advance by the Chargee to the Chargor, whether by way of loan, discount, the drawing of a cheque against an account of the Chargor or otherwise;

(iii) any discount or acceptance by the Chargee from or for the Chargor of any note, bill of exchange or other negotiable instrument or commercial paper;

(iv) any credit of any amount to any account of the Chargor by reason of deposit of moneys or otherwise; or

(v) any renewal, replacement, substitution or alteration of any note, bill of exchange or other negotiable instrument or other commercial paper from time to time held by the Chargee or any reduction, satisfaction, payment, release or discharge thereof or of any other security therefor.

No such event or act shall constitute or be deemed to be a payment on account of the Indebtedness or any part thereof or call for or require any application, appropriation or payment on account of the Indebtedness or any part thereof unless such application, appropriation or payment shall have been expressly agreed to in writing by the Chargee or until the charge shall have been fully released and discharged by the unconditional delivery of a discharge of the charge executed by the Chargee and the charge shall be deemed to be taken as security for the ultimate balance of the Indebtedness. The charge and any provision thereof shall not operate so as to create any merger, rebate or discharge of any debt owing to the Chargee or of any lien, bond, note, bill of exchange or other security held by or which may hereafter be held by the Chargee from the Chargor or from any other person or persons whomsoever and the charge shall not in any way prejudicially affect any security held or which may hereafter be held by the Chargee as security for payment of the Indebtedness or any part or parts thereof or the liability of any endorser or any other person or persons upon any such lien, bond, note, bill of exchange or other security or contract or any renewal or renewals thereof held by the Chargee for or on account of the Indebtedness or any part or parts thereof nor shall the remedies of the Chargee in respect thereof be prejudiced or delayed in any manner whatsoever by the taking of the charge.

Application of Amounts Paid

(e) Any and all payments made in respect of the Indebtedness and the moneys or other proceeds realized from any securities held therefor (unless otherwise agreed in writing) shall, prior to default by the Chargor, be applied firstly to reduce compound interest, secondly to reduce interest (other than compound interest), thirdly to reduce principal and fourthly to reduce any other Indebtedness. All amounts received by the Chargee on account of the Indebtedness after default of the Chargor shall be applied in the manner determined by the Chargee in its sole discretion. Every certificate signed by a manager, acting manager or assistant manager of the branch or banking unit of the Chargee where the Chargor's account is kept at the time such certificate is signed or any certificate signed by an executive officer of the Chargee or any officer or agent appointed by the Chargee for such purpose purporting to show at any particular time the amount of the Indebtedness or the amount due and payable pursuant to or in respect of the charge shall be prima facie evidence as against the Chargor of the amount of the Indebtedness or the amount due and payable pursuant to or in respect of the charge at such time.

Payment of Interest

(f) For greater certainty, the Chargor shall pay to the Chargee interest on the Sum at the rate specified in the charge (unless the Chargor and the Chargee agree in writing that interest shall be payable by the Chargor to the Chargee at a rate other than the rate specified in the charge.)

4. IMPLIED COVENANTS EXCLUDED

In accordance with subsection 7(3) of the Act, the covenants deemed to be included in a Charge/Mortgage of Land by subsection 7(1) of the Act are expressly excluded from every charge in which this set of Standard Charge Terms is referred to by its filing number.

5. EXPRESS COVENANTS AND TERMS

The following covenants and terms shall be deemed included in every charge in which this set of Standard Charge Terms is referred to by its filing number, except to the extent they are expressly excluded from a charge or are varied by setting out the covenant or term appropriately amended in the charge, and shall be construed and applied as covenants made by the Chargor for the Chargor and the Chargor's successors and assigns to and in favour of the Chargee, its successors and assigns, to the same extent as if set out as such in the charge executed and delivered by the Chargor.

Payment of Principle and Interest

(a) The Chargor shall pay to the Chargee the Indebtedness (including the Sum and all interest) as and when the same becomes due, in lawful money of Canada, without deduction or set-off of any kind.

Observance and Performance of Terms and Conditions

(b) The Chargor shall duly and punctually observe and perform all the terms and conditions of the charge which are to be observed and performed by the Chargor.

Taxes

(c) The Chargor shall promptly pay or cause to be paid as they become due all taxes already charged or hereafter to be charged by any authority on the charged land as and when they shall become due and within one (1) month from the date fixed for the payment of the last instalment of Taxes in each year, shall furnish the Chargee with receipted tax bills showing all such Taxes for the year paid.

Good Title and Free From Encumbrances

(d) At the time of execution and delivery of the charge, the Chargor is, subject to any charge prior to the charge to which priority the Chargee has consented to in writing (hereinafter singularly or collectively as the case may be called the "Agreed Charge"), the legal and beneficial owner of, and has a good, absolute and indefeasible title and estate in fee simple to the charged land and appurtenances thereto, without any encumbrances, liens, charges, mortgages, reservations, limitations, provisos or conditions whatsoever except those contained in the original grant thereof from the Crown; the Chargor has good right, full power and lawful and absolute authority to charge the charged land and its appurtenances to the Chargee in accordance with the terms of the charge; the Chargor has not done, omitted or permitted anything whereby the charged land or the Chargor's estate, right, title or interest therein is or may be alienated, encumbered, liened, charged, mortgaged, impeached or affected save as to any Agreed Charge; and save as to any Agreed Charge, the charged land is free and clear of and from all encumbrances, liens, charges and mortgages including, without limitation, any outstanding statutory liens or charges on the charged land, arrears of Taxes, executions, former mortgages, conveyances and rights (which encumbrances, liens, charges and mortgages including the Agreed Charge, if any, are hereinafter collectively called "Other Claims").

Insurance

(e) The Chargor shall forthwith insure and during the continuance of the charge keep insured in favour of the Chargee against loss or damage by fire, lightning and tempest and such other risks and perils as hereinafter set out, all buildings, plant, machinery, equipment, erections and improvements, fixed or otherwise, now or hereafter forming part of the charged land, both during erection and placement and thereafter, and also crops and other personal property or produce of the land which may be charged by the charge, to their full insurable value or if the Chargee so requires, to their replacement cost, and in an amount sufficient to avoid the application of any co-insurance provision, in Canadian funds. Such insurance shall include loss or coverage normally included, in the opinion of the Chargee, in an extended coverage endorsement, provided that, if required by the Chargee, such insurance shall be "all risks" insurance. The covenant of the Chargor to insure shall also include, where appropriate or if required by the Chargee, boiler, plate glass, rental and public liability insurance in amounts and on terms satisfactory to the Chargee. Evidence of continuation or replacement of such insurance having been effected shall be produced to the Chargee at least fifteen (15) days before the expiration thereof or at least five (5) days before the cancellation thereof, should notice of the cancellation be given, otherwise the Chargee may provide therefor and charge to the Chargor the premiums paid therefor and the same shall be a part of the Indebtedness and shall be secured by the charge upon the charged land and shall be payable forthwith with interest. And in default, the balance of the Indebtedness shall at the Chargee's option, immediately become due and payable and all powers hereby conferred upon the Chargee shall become exercisable. The Chargee may require any insurance aforesaid to be effected with a company or companies approved by the Chargee and may also, of its own accord without reference to the Chargor, effect or maintain any insurance herein provided for with such companies as it may see fit and any amount paid by it therefor shall be forthwith payable to it with interest and shall be part of the Indebtedness and shall be secured by the charge upon the charged land. The Chargor shall arrange for the Chargee to be named as beneficiary and mortgagee in all insurance contracts with preference in favour of the Chargee over any claim of any other person or persons, firm, company, commission or government and for a mortgage clause, in form and substance satisfactory to the Chargee, to be attached as an endorsement to each of such policies. The Chargor shall arrange for the delivery to the Chargee, prior to the making of any advance of principal by the Chargee, of certified copies of all such policies and of receipts evidencing the payment of premiums for such insurance. As additional and separate security for payment of the Indebtedness, the Chargor hereby assigns, transfers and sets over to the Chargee, all the Chargor's present and future interests in and to all such present and future insurance policies and all proceeds therefrom. For greater certainty, the Chargee shall have a lien for the payment of the Indebtedness on all insurance effected and may elect to have the insurance moneys applied in reinstatement or towards payment of the Indebtedness (whether due or not) but shall not be obligated to accept the said moneys in payment of any principal or other part or parts of the Indebtedness not then due. In the event of any loss or damage, the Chargor shall, at the Chargor's sole expense, promptly after the occurrence of such loss or damage, notify the Chargee of such loss or damage, furnish all necessary proofs and do all acts required to enable the Chargee to obtain all insurance proceeds. Production of the charge and this set of Standard Charge Terms shall be sufficient authority for any insurer concerned (and such insurer is hereby so directed) to pay any such loss to the Chargee. No damage to property insured may be repaired or any reconstruction effected without the prior written approval of the Chargee.

Payments by Chargee

(f) The Chargee may pay the whole or any part of any Other Claims now or hereafter existing in respect of the charged land or in respect of the Indebtedness and may pay all costs, charges, expenses (including legal fees as between a solicitor and his own client), commissions and fees which may be incurred in taking, recovering and keeping possession of the charged land and of inspecting the same and in instituting any proceedings and in negotiating the loan secured by the charge, investigating the title to the charged land and in preparing and registering the charge and other instruments and in collecting the Indebtedness or any moneys payable by the Chargor under the charge and generally in taking any other proceedings in connection with or to realize the Indebtedness. The amounts so paid and insurance premiums and any other moneys paid by the Chargee including payments made for Taxes, repairs, utilities, heating and maintenance of the charged land shall be payable forthwith by the Chargor to the Chargee with interest thereon and shall be a part of the Indebtedness and shall be secured by the charge upon the charged land and, in default of payment, the balance of the Indebtedness shall immediately become due and payable at the option of the Chargee and all powers hereby conferred on the Chargee shall become exercisable. In the event of the Chargee satisfying any Other Claims it shall be entitled to all the equities, rights and securities of the person or persons, firm, company, commission or government so paid and to obtain an assignment of any Other Claims so paid and of any right to payment and is hereby authorized to retain any discharge thereof without registration for so long as it may think fit so to do and, in any event, for a longer period than six (6) months if the Chargee deems it proper to do so.

Power of Chargee to Sell or Lease on Default

(g) If default of payment shall be made, in respect of any amount due pursuant to or in respect of the charge, whether for principal, interest or otherwise, the Chargee on such default of payment continuing for at least fifteen (15) days may on at least thirty-five (35) days' notice enter on and lease the charged land or any part or parts thereof and receive and take the rents, issues and profits thereof or on such default of payment continuing for at least fifteen (15) days may on at least thirty-five (35) days' notice sell the charged land or any part or parts thereof, in accordance with the following provisions

(i) notice shall be given to such persons and in such manner and form and within such time as provided under Part III of the Mortgages Act, R.S.O. 1980, Chapter 296, as amended and supplemented from time to time, or under such statutory provision as may be enacted in substitution or amendment of Part III; provided that in the event that the giving of such notice shall not be required by law or to the extent that such requirements shall not be applicable, notice may be effectually given by leaving it with a person on the charged land, if occupied, or by placing the same on some portion thereof, if unoccupied, or at the option of the Chargee, by mailing it in a registered letter addressed to the Chargor at his last known address, or by publishing it once in a newspaper published in the area or region in which the charged land is situate;

(ii) such notice shall be sufficient although not addressed to any person or persons by name or designation, and notwithstanding that any person to be affected thereby may be unknown, unascertained or under disability;

(iii) sale of the charged land may be by public auction or private sale or partly by one and partly by the other, for such price as can reasonably be obtained therefor and on such terms as to credit and otherwise and with such conditions of sale and stipulations as to title or evidence or commencement of title or otherwise as the Chargee in its discretion shall deem proper;

(iv) in the event of any sale on credit or for part cash and part credit, the Chargee shall not be accountable for or charged with any moneys until actually received;

(v) the Chargee may rescind or vary any contract of sale and may buy in and re-sell the charged land or any part thereof without being answerable for any loss occasioned thereby;

(vi) the Chargee may sell all or any part of the buildings, fixtures, machinery, equipment, crops and standing or fallen trees apart from the charged land and the purchaser shall have all necessary access for severing, cutting and removal;

(vii) no purchaser or lessee shall be bound to enquire into the legality, regularity or propriety of any sale or lease or be affected by notice of any irregularity or impropriety and no lack of default or want of notice or other requirement or any irregularity or impropriety of any kind shall invalidate any sale or lease hereunder;

(viii) the Chargee may sell or lease without entering into actual possession of the charged land and when it desires to take possession it may break locks and bolts and while in possession shall only be accountable for moneys received by it;

(ix) subject to compliance with the Planning Act, 1983, S.O. 1983, Chapter 1, as amended and supplemented from time to time, sales may be made from time to time of any part or parts of the charged land to satisfy any portion of the principal or interest or other indebtedness owing to the Chargee pursuant to or in respect of the charge, leaving the principal or residue thereof secured with the interest payable under the charge on the remainder of the charged land or the Chargee may take proceedings to sell and may sell the charged land for part of any sums owing or in arrears subject to the balance of said sums not yet due at the time of the said sale;

(x) the Chargor hereby appoints the Chargee the Chargor's true and lawful attorney and agent to make application under the said Planning Act and to do all things and execute all documents to effectually complete any such sale or lease;

(xi) the Chargee may lease or take sale proceedings notwithstanding that other mortgage proceedings have been taken or are then pending;

(xii) the proceeds of any sale or lease hereunder shall be applied firstly in payment of any costs, charges including legal fees on a solicitor and his own client basis, expenses, commissions and fees which may be incurred in taking, recovering or keeping possession of the charged land or in making sales, leases and conveyances as aforesaid or by reason of non-payment or procuring payment of any of the Indebtedness and secondly, to pay and satisfy the Indebtedness which remains due and unsatisfied; and after full payment and satisfaction of the Indebtedness the balance, if any, of such proceeds shall be paid to the Chargor, its successors and assigns, and/or any encumbrances entitled thereto as their interests may appear;

(xiii) the Chargee shall not be responsible for any loss which may arise by reason of any such leasing or sale as aforesaid unless the same shall happen by its wilful neglect or default; and

(xiv) no sale or other dealing by the Chargee with the charged land or any part thereof shall in any way change the liability of the Chargor or in any way alter the rights of the Chargee as against the Chargor or any other person liable for payment of any Indebtedness secured by the charge.

Quiet possession

(h) In default of payment of the Indebtedness or in the doing, observing, performing, fulfilling or keeping of one or more of the terms, provisions, covenants, agreements or stipulations contained or included in the charge, the Chargee may peaceably and quietly enter upon and use, occupy, possess and enjoy the charged land free from all Other Claims, without hindrance, interruption or denial of the same by the Chargor or by any other person or persons.

Right of Entry

(i) Without limitation to the immediately preceding provision, in default of payment of the principal amount or other indebtedness secured by the charge or the payment of interest as provided in the charge or in the doing, observing, performing, fulfilling or keeping of one or more of the terms, provisions, covenants, stipulations, or agreements contained or included in the charge, the Chargee may, at such time or times as the Chargee may deem necessary and without the concurrence of any person, enter upon and take and hold possession of the charged land and may make such arrangements for completing the construction of, repairing or putting in order any buildings or other improvements thereon or therein, or for inspecting, taking care of, leasing, collecting the rents of and managing generally the charged land as the Chargee may deem expedient and all reasonable costs, charges and expenses, including legal fees on a solicitor and his own client basis, commissions and allowances for the time and service of any employees of the Chargee or other persons appointed for the above purposes shall be forthwith payable by the Chargor to the Chargee with interest thereon and shall be a part of the Indebtedness and shall be secured by the charge upon the charged land,

Further Assurances

(j) The Chargor and each and every person having or claiming to have an estate, right, title, interest or trust of, in or to the charged land shall, at any time and from time to time, make, execute and deliver or cause to be made, executed and delivered to the Chargee such further and other reasonable acts, deeds, conveyances and assurances as may be required to fully and effectually carry out the true intention and meaning of the charge and the terms, conditions, provisions, stipulations and agreements contained or included in the charge and the reasonable cost of such further assurances shall be added to the Indebtedness and secured by the charge.

Right to Distrain

(k) In default of payment of the Indebtedness, the Chargee may distrain for payment of same upon the charged land or any part thereof and all chattels situated thereon and by distress warrant recover, by way of rent reserved from the charged land, so much moneys as shall from time to time be or remain in arrears and all costs, charges and expenses incurred by or on behalf of the Chargee with respect to or in connection therewith as in like cases of distress for rent. The Chargor waives the right to claim exceptions and agrees that the Chargee shall not be limited in the amount for which it may distrain.

Attornment

(l) To the extent the charged land or any part thereof is not residential premises so as to be subject to the provisions of Part IV of the Landlord and Tenant Act, R.S.O. 1980, Chapter 232, as amended from time to time, the Chargor hereby attorns to and becomes a tenant of such charged land to the Chargee from year to year from the day of the execution of the charge during the term of the charge and any renewal or renewals thereof at a rental equivalent to and applicable in satisfaction of the interest payments forming part of the Indebtedness, the legal relation of landlord and tenant being hereby constituted between the Chargee and the Chargor in regard to the charged land. It is agreed that neither the existence of this provision nor anything done by virtue hereof shall render the Chargee a mortgagee in possession or accountable for any moneys except those actually received by it and the Chargee may, on default of payment or in breach of any of the covenants contained or included in the charge, enter on the charged land and determine the tenancy hereby created without notice.

Release of Part of Charged Land

(m) The Chargee may at its discretion subject to the provisions of the Planning Act aforesaid at all times release any part or parts of the charged land or any other security or any surety for the Indebtedness secured by the charge either with or without any sufficient consideration therefor, without responsibility therefor and without thereby releasing any other part of the charged land or any person or other surety from the charge or from any covenants contained or incorporated in the charge and without being accountable to the Chargor for the value thereof or for any money other than that actually received by the Chargee, it being expressly agreed that every part or lot into which the charged land is or may hereafter be divided does and shall stand charged with the whole of the Indebtedness secured by the charge.

Granting of time, etc.

(n) The Chargee may grant time, renewals, extensions, indulgences, releases and discharges to, may take securities from and give the same and any and all existing securities up to, may abstain from taking securities from or from perfecting securities of, may accept compositions from, and may otherwise deal with the Chargor and all other persons (including any principal debtor or guarantor) and securities as the Chargee may see fit without prejudicing the rights of the Chargee under the charge.

Compliance with Laws and Inspection

(o) The Chargor shall comply with all laws, by-laws and regulations affecting the charged land of any governmental authority and agency having jurisdiction and at the Chargor's own expense, shall promptly and in a good and workmanlike manner make all improvements, alterations and repairs and effect any change in use that may be required from time to time to effect such compliance. Without limiting the foregoing, the Chargee or agent thereof may from time to time, enter upon the charged land and inspect the same and make such repairs as the Chargee deems necessary without thereby being deemed a mortgagee in possession and the reasonable cost of such inspection and repairs shall be a part of the Indebtedness and be secured by the charge on the charged land.

Waste

(p) The Chargor shall not permit waste to be committed or suffered on the charged land of any part thereof and shall maintain the buildings, erections and improvements on the charged land in good order and repair to the satisfaction of the Chargee. If the Chargor neglects to keep the charged land and, without limitation, the buildings, erections and improvements forming part thereof in good condition and repair or commits or permits any act of waste on the charged land (as to which the Chargee shall be the sole judge), the Chargee may make such repairs as it deems necessary and the cost thereof shall be payable by the Chargor forthwith and shall with interest thereon until paid be a part of the Indebtedness and secured by the charge upon the charged land and, in default, the balance of the Indebtedness shall, at the Chargee's option, immediately become due and payable and all powers hereby conferred upon the Chargee shall become exercisable.

Acceleration of Principal

(q) Notwithstanding anything contained in any note or other instrument or agreement evidencing or relating to any part of the Indebtedness and without prejudice to any right of the Chargee under the charge to demand payment of the Indebtedness at any time, if the Chargor defaults in paying any of the Indebtedness when due or if the Chargor is in default pursuant to any such note, instrument or agreement or under any covenant, agreement or provision of the charge or of any Agreed Charge or upon discovery by the Chargee that any covenant or representation contained in the charge or in any loan or charge application made in connection with the Indebtedness or any part thereof is breached or untrue or upon any judgment being issued against the Chargor or upon registration of any construction lien against the charged land or upon the Chargor allowing any buildings forming part of the charged land to remain unfinished without any work being done thereon for ten (10) days or upon the expropriation of all or any part of the charged land or upon the bankruptcy or insolvency of the Chargor or upon the filing of a petition in bankruptcy against the Chargor or upon the making of a proposal in bankruptcy by the Chargor, the whole of the Indebtedness (or any part thereof determined by the Chargee) shall, at the option of the Chargee, forthwith become due and payable and, in default of payment of same with interest as in the case of payment before maturity, the powers of entering upon and leasing or selling hereby given the Chargee may be exercised forthwith and all other powers conferred under the charge shall become exercisable.

Judgments and Non-Merger

(r) The taking of a judgment or judgments on any of the covenants herein or in the charge contained shall not operate as a merger of the said covenants or affect the Chargee's right to interest under the charge and the said judgment may provide at the option of the Chargee that interest thereon shall be computed and payable until the said judgment shall have been fully paid and satisfied.

Effect of Sale

(s) No sale, conveyance, transfer or other dealing by the Chargor with the charged land or any part thereof or any approval of the Chargee relating thereto shall in any way change or affect the liability of the Chargor (save as hereinafter otherwise set out) or in any way alter the rights of the Chargee as against the Chargor or any other person or persons liable for payment of the Indebtedness or any part thereof.

Waiver

(t) No waiver, condonation or excusing by the Chargee of any default, breach or other non-performance by the Chargor at any time or times in respect of any covenant, agreement, proviso, stipulation or condition contained or included in the charge shall operate as a waiver by the Chargee of any subsequent default, breach or non-performance nor so as to defeat or affect in any way the rights of the Chargee in respect of any such subsequent default, breach or non-performance.

Alterations

(u) The Chargor shall not make or permit to be made, any alterations or additions to the charged land and buildings thereon without the consent of the Chargee and the Chargor will not allow the charged land to remain unoccupied or unused.

Assignment of Rents

(v) As additional and separate security for payment of the Indebtedness, the Chargor assigns, transfers and sets over to the Chargee all rents, incomes and other profits now or hereafter arising from or out of the charged land or any part thereof or any building, improvement, fixture or part thereof forming part of the charged land.

Successors and Assigns

(w) All rights, advantages, privileges, immunities, powers and things secured to the Chargee shall be equally secured to and exercisable by its successors and assigns. All covenants and liabilities entered into or imposed upon the Chargor shall be equally binding upon the Chargor's successors and assigns. All such covenants, liabilities and obligations made or assumed by more than one person shall be joint and several unless the charge otherwise specifies. Where the context so requires, words in the singular shall include the plural, words in the plural shall include the singular and words importing the masculine gender shall include the feminine and neuter genders. Time shall be of the essence of the charge. All provisions of the charge shall have effect notwithstanding any statute to the contrary. If any provision of the charge should be found by a Court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall not apply and the charge shall remain in full force and effect without such provision.

Discharge or Assignment

(x) The Chargee shall be entitled to prepare or have its counsel prepare a discharge or assignment of the charge and any other documents necessary to release or assign any security held by the Chargee and shall have a reasonable time after payment of the Indebtedness in full within which to prepare, execute and deliver such instruments. Interest shall continue to run and accrue to the date of receipt of such payment in full if such payment is received prior to the close of business of the Chargee on such date and, otherwise to the next business day. All reasonable costs, fees and disbursements of the Chargee and the Chargee's counsel in connection with the preparation, review, execution and delivery of such instruments shall be borne by the Chargor.

Change in Spousal Status

(y) Upon any change or happening affecting any of the following, namely:

(i) the spousal status of the Chargor,

(ii) the qualification of the charged land as a matrimonial home within the meaning of Part II of the Family Law Act, 1986, S.C. 1986, Chapter 4, as amended, or

(iii) the ownership of the charged land,

the Chargor will forthwith advise the Chargee accordingly and furnish the Chargee with full particulars thereof, the intention being that the Chargee shall be kept fully informed of the names and addresses of the owner or owners for the time being of the charged land and of any spouse who is not an owner but who has a right of possession in the charged land by virtue of Section 19 of the said Family Law Act, 1986. In furtherance of such intention, the Chargor shall furnish the Chargee with such evidence in connection with any of subparagraphs (i), (ii) and (iii) of this provision as the Chargee may from time to time request.

Advances

(z) Nothing herein and nothing contained in the charge shall obligate the Chargee to loan any amount to the Chargor.

Extension of Time

(aa) extension of time given by the Chargee to the Chargor or anyone claiming under the Chargor or any other amendment to the charge or any other dealing by the Chargee with the owner of the charged land shall in any way affect or prejudice the rights of the Chargee against the Chargor or any other person or persons liable for payment of the Indebtedness secured by the charge.

Other Security

(bb) charge is in addition to and not in substitution for any other security at any time held by the Chargee for all or any part of the Indebtedness secured by the charge, and it is understood and agreed that the Chargee may pursue its remedies thereunder or under the charge concurrently or successively at its option. Any judgment or recovery under the charge or under any other security held by the Chargee for the Indebtedness secured by the charge shall not affect the right of the Chargee to realize upon the charge or any other such security.

6. **OPTIONAL USE OF NOTES TO EVIDENCE INDEBTEDNESS**

In the event any part of the Indebtedness is evidenced by any note or notes made by the Chargor to the Chargee, such note or notes shall constitute prima facie evidence of such part of the Indebtedness secured by the charge; provided that it shall not be necessary that the Indebtedness or any part thereof, be evidenced by a note or notes.

7. **MULTIPLE PARTIES AND ENFORCEMENT**

Where a change is made or assumed by more than one person, the covenants, liabilities and obligations entered into or imposed under the charge shall be deemed to bind such persons jointly and severally unless the charge otherwise specifies. The covenants, liabilities and obligations of the Chargor entered into or imposed under a charge upon a Chargor, shall be equally binding upon the Chargor's successors and assigns and may be enforced by the Chargee or by a successor or assignee of the Chargee. Where the context so requires, words in the singular shall include the plural, words in the plural shall include the singular and words importing the masculine gender shall include the feminine and neuter genders. Time shall be of the essence of the charge. All provisions of the charge shall have effect notwithstanding any statute to the contrary. If any provision of the charge should be found by a Court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall not apply and the charge shall remain in full force and effect without such provision.

8. **NOTICE**

Except as otherwise herein provided, any notice, demand or other communication to the Chargor referred to herein or in the charge may be forwarded to the Chargor by personal delivery or mailed by prepaid ordinary or registered mail to the Chargor at the Chargor's last known address as shown on the Chargee's records. The Chargor shall be deemed to have received the same on the date of delivery, if personally delivered, and on the fourth (4th) day after the same is mailed, by prepaid ordinary or registered mail, if mailed, even if the Chargor does not actually receive it.

9. **TITLES AND MARGINAL NOTES**

Titles and marginal notes in this set of Standard Charge Terms and in any Schedule or Schedules to the charge are inserted for convenience of reference only and shall not affect or modify the interpretation or construction of the charge, this set of Standard Charge Terms or any provision hereof or of the charge.

10. **DATE OF CHARGE**

Unless otherwise specified in the charge, the date of the charge shall be the Interest Adjustment Date.

11. **GOVERNING LAW**

These Standard Charge Terms and any charge in which they are included in whole or in part shall be governed by the laws of Ontario and the laws of Canada applicable therein.

12. **UNAPPROVED CHARGE OR ENCUMBRANCE BY CHARGOR**

THE CHARGOR SHALL NOT WITHOUT THE CHARGEE'S PRIOR WRITTEN APPROVAL, CHARGE OR ENCUMBER THE CHARGED LAND OR ANY PART THEREOF OR INTEREST THEREIN OR PERMIT ANY LIEN OR CHARGE THEREON EXCEPTING A CHARGE FOR CURRENT MUNICIPAL TAXES.

13. **UNAPPROVED SALE BY CHARGOR**

WITHOUT PREJUDICE TO ANY RIGHT OF THE CHARGEE TO DEMAND PAYMENT OF THE INDEBTEDNESS AT ANY TIME, THE CHARGE AND THE INDEBTEDNESS (OR ANY PART THEREOF DETERMINED BY THE CHARGEE) SHALL, AT THE OPTION OF THE CHARGEE, FORTHWITH BECOME DUE AND PAYABLE: (a) ON THE SALE, TRANSFER, LEASE OR DISPOSITION IN ANY OTHER MANNER OF THE CHARGED LAND OR ANY PART THEREOF OR INTEREST THEREIN (OTHER THAN AS SET OUT IN PARAGRAPH 11 HEREOF); OR (b) IF THE CHARGOR IS A CORPORATION, IF A CHANGE IN CONTROL OF THE CHARGOR SHALL OCCUR WITHOUT THE PRIOR WRITTEN CONSENT OF THE CHARGEE. FOR PURPOSES HEREOF, A CHANGE IN CONTROL OF A CORPORATE CHARGOR SHALL BE DEEMED TO OCCUR IF THERE IS A SALE, ASSIGNMENT OR OTHER TRANSFER OF THE EXISTING BENEFICIAL OWNERSHIP OF MORE THAN 50% OF THE VOTING SHARES OF THE CHARGOR OR OF ANY OTHER CORPORATION WHICH DIRECTLY OR INDIRECTLY OWNS MORE THAN 50% OF SUCH SHARES.

14. **RELEASE**

Subject to the terms and provisions contained or included in the charge, the Chargor releases to the Chargee all of the Chargor's claims upon the charged land.

TAB B

SUBORDINATION AND PRIORITY AGREEMENT

THIS AGREEMENT is made as of the 19TH day of December, 2011.

BETWEEN:

BANK OF MONTREAL, a corporation incorporated under the laws of Canada

(the "Senior Lender") OF THE FIRST PART

- and -

PUCCINI MORTGAGE CORP. , a corporation incorporated under the laws of Ontario

(the "Subordinate Lender") OF THE SECOND PART

- and -

2147650 ONTARIO INC., 2148990 ONTARIO INC. AND 2148993 ONTARIO INC., each a corporation incorporated under the laws of Ontario

(collectively the "Borrower") OF THE THIRD PART

WHEREAS:

A. The Borrower has entered into an amendment letter with the Senior Lender dated November 25, 2011 amending in part the original commitment letter dated January 28, 2011 and previously amended on April 12, 2011 (such amendment letter dated November 25, 2011 is hereinafter referred to as the "**Senior Loan Agreement**"), under which all liabilities and obligations of the Borrower to the Senior Lender with respect to new advances in respect of the properties described in Schedule "A" hereto will be secured by a charge on the properties described in Schedule "A" hereto and all of the other property and assets of the Borrower with respect thereto (collectively, the "**Charged Property**");

B. The Borrower had previously entered into a **Subordinate Loan Agreement** with the Subordinate Lender, under which the Subordinate Lender made loan(s) to the Borrower which are secured by, among other things, a charge on the Charged Property;

C. It was a condition of the Senior Loan Agreement that the Senior Lender and the Subordinate Lender enter into a subordination and priority agreement (the "**Subordination and Priority Agreement**") with respect to the Charged Property to provide that each of the holders of a security interest in the Charged Property agree that, the Senior Lender shall have first priority in respect of the Charged Property with respect to the obligations of the Borrower to the Senior Lender in connection with the new advances by the Senior Lender under the Senior Loan Agreement in connection with the Charged Property..

NOW THEREFORE in consideration of the sum of One Dollar ($1.00) and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

ARTICLE I
INTERPRETATION

1.1 Definitions

In this Agreement, in addition to the definitions set out in the recitals hereto, and the terms defined in the Senior Loan Agreement:

(a) **"this Agreement"**, **"hereto"**, **"herein"**, **"hereby"**, **"hereunder"** and any similar expressions refer to this Agreement as it may be amended or supplemented from time to time, and not to any particular Article, section or other portion hereof;

(b) **"Business Day"** means any day other than a Saturday or Sunday on which banks are open for business in Toronto, Ontario;

(c) **"Charged Property"** has the meaning ascribed thereto in Recital A;

(d) **"Event of Bankruptcy"** means any of the following:

(i) the filing by the Borrower of a voluntary petition or assignment in bankruptcy under any provision of any bankruptcy law (including, without limitation, the *Bankruptcy and Insolvency Act* (Canada)) or the filing by the Borrower of any other petition filing, request, assignment, appointment or the taking of any action to take advantage of any receivership or insolvency laws, including, without limitation, any plan of arrangement pursuant to the *Companies' Creditors Arrangement Act* (Canada), or any petition seeking the dissolution, winding up, total or partial liquidation, reorganization, composition, arrangement, adjustment or readjustment or other relief of the Borrower, the Borrower's debts or the Borrower's assets;

(ii) the admission in writing by the Borrower of its inability to pay its debts generally as they become due;

(iii) the appointment of a receiver, liquidator, trustee, custodian or other similar official for the Borrower or all or a material part of the Borrower's assets;

(iv) the filing of any petition against the Borrower under any provision of any bankruptcy law (including, without limitation, the *Bankruptcy and Insolvency Act* (Canada)) or any other receivership or insolvency law, including, without limitation, any petition seeking the dissolution, winding up, total or partial liquidation, reorganization, composition, arrangement, adjustment or readjustment or other relief of the Borrower, the Borrower's debts or the Borrower's assets;

(v) an assignment by the Borrower for the benefit of the Senior Lender, Subordinate Lender or any other marshalling of the assets and liabilities of the Borrower; or

(vi) any corporate action taken by the Borrower to authorize any of the foregoing;

(e) **"Interest Reserve"** means the interest reserve account established pursuant to the Senior Loan Agreement;

(f) **"Net Proceeds"** means the sale price of a lot in a plan of subdivision or of a condominium unit less:

(i) any monies paid by the Borrower to a *bona fide* arm's length licensed real estate agent on account of a real estate commission for such sale approved by the Senior Lender; and

(ii) the Borrower's reasonable legal cost to complete that sale.

thereafter adjusted as to all incomings and outgoings normally the subject of adjustments upon the sale of such property, excluding HST payable under the provisions of the *Excise Tax Act* (Canada).

(g) **"Senior Debt"** means all present and future obligations, liabilities and indebtedness of the Borrower to the Senior Lender in connection with the Senior Loan Agreement, including, without limitation:

(i) principal, premium, if any, and interest (including, without limitation, interest accruing after an Event of Bankruptcy) on loans, advances, accommodations or other extensions of credit by the Senior Lender to or for the benefit of the Borrower in connection with the Senior Loan Agreement for the Charged Property whether now outstanding or hereafter made and however evidenced;

(ii) accrued interest, reasonable costs, reasonable lawyers' fees and expenses incurred by the Senior Lender in enforcing the Senior Lender's rights under the Senior

Loan Agreement in the event of a default by the Borrower in its obligations to the Senior Lender in connection with the Senior Loan Agreement for the Charged Property; and

(iii) any and all renewals and extensions of all or any part thereof;

(h) **"Senior Loan Documents"** means the Senior Loan Agreement, together with:

(i) all other instruments, documents and agreements executed by the Borrower and/or the Senior Lender in connection therewith;

(ii) all other financing agreements, security agreements and instruments now or hereafter existing between the Senior Lender and the Borrower in connection with the Senior Loan Agreement for the Charged Property;

(iii) all amendments, modifications, and supplements to any one or more of the foregoing; and

(iv) all renewals, extensions, restatements, refunding or refinancing of any one or more of the foregoing;

(i) **"Subordinate Lender Agreements"** means the Subordinate Loan Agreement, together with all other loan agreements, security agreements, credit arrangements (whether reduced to writing or otherwise), contracts, agreements and other documents relating thereto in connection with the Charged Property, together with all amendments, modifications, and supplements to any one or more of the foregoing and all renewals, extensions and restatements of any one or more of the foregoing, between the Borrower and the Subordinate Lender relating to any extension of credit by the Subordinate Lender to the Borrower in connection with the Charged Property, including without limitation any vendor's lien whether documented or otherwise in connection with the Charged Property; and

(j) **"Subordinate Debt"** means all of the Borrower's obligations, liabilities and indebtedness now or hereafter owed to the Subordinate Lender in connection with the Charged Property pursuant to the Subordinate Lender Agreements, including, without limitation, any unpaid vendor's lien, any obligations of the Borrower for services rendered or materials supplied, and all costs and expenses (including lawyers' fees) owing by the Borrower to the Subordinate Lender in connection with the exercise of Subordinate Lender's rights under, and the enforcement of, the Subordinate Lender Agreements with respect to the Charged Property. The principal amount of the Subordinate Debt will not exceed $ 2,600,000.00;

1.2 Headings

The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

1.3 References to Articles and Sections

Whenever in this Agreement a particular Article, section or other portion thereof is referred to, such reference pertains to the Article, section or portion thereof contained herein unless otherwise indicated.

1.4 References to Agreements and Enactments

Except as otherwise specifically provided:

(a) reference in this Agreement to any contract, agreement or any other document shall be deemed to include (i) reference to the same as supplemented, amended or restated from time to time and (ii) reference to any contract, agreement or any other document which substitutes, in whole or in part, for the same time to time;

(b) reference in this Agreement to any enactment, including, without limitation, any statute, law, by-law, regulation, rule, ordinance or order, shall be deemed to include reference to such enactment as re-enacted or amended from time to time and to any enactment in substitution therefor;

(c) Wherever there is a reference to costs, expenses and professional fees in this agreement the parties agree that same shall be reasonable.

1.5 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.6 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.7 No Conditions Precedent

This Agreement is effective upon execution and delivery of this Agreement by the Senior Lender and the Subordinate Lender. Such execution and delivery constitutes conclusive evidence that this Agreement was not delivered in escrow and that any conditions precedent to the effectiveness of this Agreement have been satisfied or waived by the Senior Lender or the Subordinate Lender.

1.8 Entire Agreement

This Agreement and/or the Senior Loan Agreement constitute the entire agreement between the parties pertaining to the subject matter of this Agreement. There are no warranties, representations or agreements between the parties in connection with such subject matter except as specifically set forth or referred to in this Agreement and/or the Senior Loan Agreement. No reliance is placed on any representation, opinion, advice or assertion of fact made by any party hereto, or its directors, officers and agents, to any other party hereto or its directors, officers and agents, except to the extent that the same has been reduced to writing and included as a term of this Agreement and/or the Senior Loan Agreement. Accordingly, there shall be no liability, either in tort or in contract, assessed in relation to any such representation, opinion, advice or assertion of fact, except to the extent aforesaid.

1.9 Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

1.10 Governing Law, Attornment

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 and the Senior Lender and the Subordinate Lender hereby irrevocably attorn to the jurisdiction of the courts of Ontario.

ARTICLE II
SUBORDINATION

2.1 Subordination to the Senior Lender

Subject to Section 2.2 of this Agreement, the Subordinate Lender hereby agrees to subordinate and postpone, and does hereby subordinate and postpone:

(a) the payment by the Borrower of all or any part of the Subordinate Debt to the full and final payment and satisfaction of the Senior Debt, including the full cash collateralization of any and all outstanding letters of credit issued by the Senior Lender to the Borrower in connection with the Senior Loan Agreement; and

(b) all liens on, and security interests in the Charged Property to the liens and security interests of the Senior Lender in the Charged Property to secure the Senior Debt.

2.2 Permitted Payments to the Subordinate Lender

The Senior Lender agrees that:

(a) The Subordinate Lender shall not be entitled to receive any payments pursuant to the Subordinate Loan Agreements, other than payments of interest to the Subordinate Lender and other permitted payments pursuant to the Senior Loan Agreement, provided that the Senior Loan Agreement is not in default;

(b) Should the Subordinate Lender receive:

(i) a payment in any form and from any source with respect to the Subordinate Debt other than a payment permitted to be made under paragraph (a) of this Section 2.2, or

(ii) any proceeds from the Charged Property,

the Subordinate Lender shall immediately deliver to the Senior Lender, for application against the Senior Debt, in the form received (except for proper endorsements or assignments, if necessary), such payment until the Senior Debt has been repaid in full. Pending such delivery the Subordinate Lender shall hold such payment in trust for the account of the Senior Lender.

2.3 <u>Enforcement of Rights</u>

(a) While any portion of the Senior Debt remains outstanding, the Subordinate Lender shall not accelerate the maturity or payment of any of the Subordinate Debt or assert, participate in or bring any sort of action, suit or proceeding, either at law or in equity, for the enforcement, collection or realization of all, or any part of, the Subordinate Debt, unless:

(i) there occurs an Event of Bankruptcy;

(ii) the Senior Lender accelerates the maturity of the Senior Debt in accordance with the terms of the Senior Loan Agreement, and fifteen (15) days have elapsed from the effective date of such acceleration and the Senior Lender has not rescinded or revoked such acceleration; or

(iii) a period of three (3) years has elapsed from the date hereof.

(b) While any portion of the Senior Debt remains outstanding, the Subordinate Lender shall not, without the Senior Lender's prior written consent:

(i) commence or join with any other subordinating chargee or subordinating chargees of the Borrower in commencing any bankruptcy, reorganization, receivership or insolvency proceeding against the Borrower; or

(ii) take any action to enforce or foreclose any liens on or security interests in, or levy against, or exercise any other rights or remedies which the Subordinate Lender may have under any of the Subordinate Loan Documents or applicable law with respect to, the Charged Property or any other property of the Borrower,

unless the conditions set out in Section 2.3(a)(i), (ii) or (iii) have first occurred.

(c) Any amounts received by the Subordinate Lender as a result of any acceleration, action, suit or proceeding permitted in paragraph (a) of this Section 2.3, and any amounts received by the Subordinate Lender as a result of any acceleration, action, suit or proceeding permitted in paragraph (b) of this Section 2.3, if received prior to the full and final payment and satisfaction of the Senior Debt, shall be held in trust by the recipient for the Senior Lender and promptly paid to the Senior Lender in accordance with the provisions of this Agreement to the extent that the Senior Debt has not been repaid in full.

(d) Notwithstanding any other provision herein, in the event that the Borrower is in default of the Subordinate Loan Agreement, the Subordinate Lender shall have the right after providing the Senior Lender forty-five (45) days written notice to repay the entire amount of the Senior Debt in exchange for an assignment of the Senior Lender's Loan Agreement.

ARTICLE III
<u>INSOLVENCY PROCEEDINGS</u>

3.1 <u>Insolvency Proceedings</u>

Upon the occurrence of an Event of Bankruptcy:

(a) Any payment or distribution of assets of the Borrower of any kind or character that occurs after the Event of Bankruptcy with respect to the Charged Property, whether in cash, property or securities, to which the Subordinate Lender would be entitled except for the provisions of this Agreement, shall be paid or delivered by any debtor, debtor in possession, receiver, liquidator, custodian, conservator, trustee or other entity making such payment or distribution, directly to the Senior Lender for application to the payment of the Senior Debt remaining unpaid, to the extent necessary to pay the Senior Debt in full in cash after giving effect to any concurrent payment or distribution, or provision therefor, to the Senior Lender and after payment in full of the Senior Debt, shall be paid or delivered by any debtor, debtor in possession, receiver, liquidator, custodian, conservator, trustee or other entity making such payment or distribution, directly to Subordinate Lender for application to the payment of the Subordinate Debt remaining unpaid, to the extent necessary to pay such Senior Debt in full in cash after giving effect to any concurrent payment or distribution, or provision therefor, to such Senior Lender. To facilitate the foregoing, at the request of the Senior Lender, the Subordinate Lender shall authorize, empower and direct any such debtor, debtor in possession, receiver, liquidator, custodian, conservator, trustee or other entity having authority in the premises to effect all such payments and deliveries.

(b) Prior to the payment in full of the Senior Debt, other than at the request of the Senior Lender, the Subordinate Lender shall not seek or request relief from any automatic stay as provided in the *Companies' Creditors Arrangement Act* (Canada), *Bankruptcy and Insolvency Act* (Canada) or otherwise with respect to the Charged Property. In addition, the Subordinate Lender shall not contest (or support any other entity contesting) any request by the Senior Lender for relief or protection under the *Companies' Creditors Arrangement Act* (Canada) or the *Bankruptcy and Insolvency Act* (Canada).

ARTICLE IV
COOPERATION

4.1 Cooperation with the Senior Lender

(a) In the event that the Borrower defaults on its obligations to the Senior Lender and, as a result, the Senior Lender undertakes to enforce the Senior Lender's security interests in the Charged Property, the Subordinate Lender agrees that it will not hinder, delay or otherwise prevent the Senior Lender from taking any and all action which the Senior Lender deems necessary to enforce the Senior Lender's security interests in the Charged Property and to realize thereon. The Subordinate Lender further agrees that the provisions of this Agreement shall remain in full force and effect notwithstanding a successful challenge to the validity, perfection, priority or enforceability of all or any of the Senior Debt or the security interests of the Senior Lender in the Charged Property.

(b) If the Senior Lender releases any of its security interests in any of the Charged Property in connection with the sale, lease, exchange, transfer or other disposition thereof, or in connection with any restructuring of all or a portion of the indebtedness of the Borrower, notwithstanding any consent or other approval of any kind required under the terms of the Senior Loan Agreements, the Subordinate Lender Agreements with regard to any such release, the Subordinate Lender agrees that its security interests in such Charged Property, if any, shall simultaneously be released and the Subordinate Lender shall execute and deliver to the Senior Lender such termination statements, releases and other documents as the Senior Lender may request to effectively confirm such release. Notwithstanding the foregoing, the security interests of the Subordinate Lender in such Charged Property shall, subject to all of the provisions of this Agreement, continue in the proceeds of any sale, lease, exchange, transfer or other disposition of such Charged Property to the extent such proceeds are not applied in satisfaction of the Senior Debt.

4.2 Transfer of Collateral and Documents

At any time that the Senior Lender receives payment of all of its remaining Senior Debt, including all fees, interest and reasonable costs related to such Senior Debt, the Senior Lender shall forthwith transfer and assign all of its security documents to the Subordinate Lender together with any collateral held by the Senior Lender in which the Subordinate Lender has a security interest, together with all directions, acknowledgements, powers of attorney or other documents in the possession or control of the Senior Lender. The Borrower authorizes the Senior Lender to make such deliveries.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

5.1 Representations, Warranties and Covenants of the Subordinate Lender

The Subordinate Lender represents and warrants to the Senior Lender and covenants with the Senior Lender that:

(a) As of the date hereof, the total principal amount of the Subordinate Debt does not exceed TWO MILLION SIX HUNDRED THOUSAND Dollars ($2,600,000.00) with interest accruing at Seventeen percent (17.0 %) per annum;

(b) The Subordinate Lender is the lawful owner of the Subordinate Debt, free and clear of all liens and encumbrances, and the Subordinate Lender has not subordinated, encumbered, assigned or transferred any right, claim or interest of any kind in or to the Subordinate Debt other than pursuant to this Agreement;

(c) The Subordinate Lender will not subordinate, encumber, assign or transfer, at any time while this Agreement remains in effect, any right, claim or interest of any kind in or to the Subordinate Debt;

(d) The Subordinate Lender has full power and legal capacity to execute and deliver this Agreement to the Senior Lender, and this Agreement constitutes a legal, valid and binding obligation of Subordinate Lender, enforceable against it in accordance with its terms.

ARTICLE VI
SENIOR LENDERS' RIGHTS

6.1 Exercise of the Senior Lender's Rights

While any portion of the Senior Debt remains outstanding, the Subordinate Lender agrees that:

(a) the Senior Lender may, in the Senior Lender's sole discretion:

(i) increase the principal amount of the Senior Debt in order to make available funds for hard costs of improvements to the Charged Property;

(ii) renew, extend or otherwise modify in any manner (A) the market rate of interest on the Senior Debt, (B) the time and/or terms of payment of the Senior Debt, or (C) any other condition, term or provision relative to the Senior Debt or any provision of the Senior Loan Documents; or

(iii) waive or release any Charged Property or guarantees which may be held as security for all or any part of the Senior Debt; in each case, without necessity of notice to or consent from the Subordinate Lender and without impairing or affecting this Agreement or any of the Senior Lender's obligations and the Senior Lender's rights hereunder.

The Subordinate Lender acknowledges that the Senior Lender has not made any warranties or representations with respect to the due execution, legality, validity, completeness or enforceability of the Senior Loan Documents, or the collectability of the Senior Debt, or the perfection of the Senior Lender's security interests in the Charged Property, and that the priorities provided in this Agreement shall not be affected or impaired in any manner whatsoever, including, without limitation, on account of the invalidity, irregularity or unenforceability of all or any part of the Senior Loan Documents.

(b) Notwithstanding anything to the contrary contained in the Senior Loan Documents, or otherwise provided in law or equity, so long as any Senior Debt is outstanding, the Senior Lender shall have the exclusive right (whether exercised pursuant to an Event of Bankruptcy or otherwise), without the consent of the Subordinate Lender:

(i) to take action with respect to, or to sell or otherwise dispose of, the Charged Property in accordance with the Senior Loan Documents or as permitted by applicable law;

(ii) to enforce and realize upon the liens held by the Senior Lender in accordance with the Senior Loan Documents or as permitted by applicable law, including to conduct any public or private sale of all or any portion of the Charged Property;

(iii) to enforce all rights and privileges accruing to the Senior Lender by reason of, and in accordance with, the Senior Loan Documents including, without limitation, to grant or refuse to grant any and all consents, approvals and waivers, to exercise all of its rights and privileges as attorney-in-fact of the Borrower for purposes of carrying out the terms of the Senior Loan Documents; and

(iv) to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement.

In exercising its rights as aforesaid, the Senior Lender shall have sole control over the timing, circumstances and manner of exercising its rights hereunder, provided that the Senior Lender shall handle all transactions relating to the Charged Property in accordance with its usual practices in the ordinary course of its business, modified from time to time as the Senior Lender may deem appropriate under the circumstances.

(c) Until the Senior Debt is fully and finally paid and satisfied, the Senior Lender shall have the sole and exclusive right to adjust and settle any claim made under any insurance policy covering the Charged Property in the event of any loss thereunder, to approve any award granted in any condemnation or similar proceeding affecting the Charged Property and to determine whether to apply any such settlement or award to the outstanding Senior Debt or to return it to the Borrower for purposes of repairing, replacing or rebuilding such Charged Property. In addition, until the Senior Debt is fully and finally paid and satisfied, all proceeds of any such policy and any such award shall be paid to the Senior Lender. In the event the Senior Lender allows any portion of such insurance proceeds or condemnation or similar award to be used by the Borrower to repair, replace or rebuild any Charged Property affected or for any other purpose, the Subordinate Lender agrees to consent to such use and to take all action necessary to permit such use.

(d) The Subordinate Lender agrees that the Senior Lender shall have no liability to the Subordinate Lender for, and the Subordinate Lender hereby waives any claim which the Subordinate Lender may have at any time against the Senior Lender with respect to, any action which the Senior Lender takes or omits to take, not otherwise in violation of the express provisions of this Agreement, in connection with the foreclosure upon and sale, liquidation or other disposition, or valuation, use, protection or release, of the Charged Property, except to the extent that a court of competent jurisdiction shall render a final judgment, not subject to review on appeal, that such disposition of the Charged Property was not conducted in a commercially reasonable manner.

ARTICLE VII
WAIVER OF SUBROGATION RIGHTS

7.1 Waiver of Subrogation Rights by the Subordinate Lender

The Subordinate Lender waives any and all rights to be subrogated to the rights of the Senior Lender with respect to any of the Senior Debt or the Charged Property until the Senior Debt is fully and finally paid and satisfied.

ARTICLE VIII
SUBDIVISION/CONDOMINIUM PLAN

8.1 Plan of Subdivision/Condominium Plan

(a) All of the parties acknowledge that the Borrower intends to cause the Charged Property to be subject to the registration of a Plan of Subdivision or condominium plan pursuant to the *Condominium Act*, 1998, as amended, or any successor legislation. The Subordinate Lender shall take all such actions, execute all such documents and support all such proceedings as may be required to facilitate the registration of any plan of subdivision or condominium plan pursuant to the *Condominium Act*, 1998, as amended, or any successor legislation, on all or any part of the Charged Property and to facilitate the completion of the sale of the lots in the plan of subdivision or the sale of units in such condominium plan, pursuant to the sale agreements entered into by the Borrower.

(b) The Subordinate Lender shall execute and deliver all such consents as may be required to complete the registration of any plan of subdivision or condominium plan pursuant to the *Condominium Act*, 1998, as amended, or any successor legislation, on all or any part of the Charged Property to the extent that the Senior Lender has consented to such registration and the Subordinate Lender waives any and all right to object to or oppose to the registration of a plan of subdivision or condominium plan until the Senior Debt is fully and finally paid and satisfied.

(c) The Subordinate Lender and the Senior Lender agree that all of the Net Proceeds of the lots or condominium units on the Charged Property, shall be applied in accordance with the Senior Loan Agreement. The Senior Lender shall be entitled to the discharge fees provided in the Senior Debt. The Subordinate Lender shall execute and deliver discharges of all of its respective security documents in respect of the lots or condominium units created on all or part of the Charged Property as and when requested by the Senior Lender in accordance with the Senior Loan Agreement and without payment of any amount on account of principal, interest, expenses or other charges unless otherwise set out in the Senior Loan Agreement.

(d) The Subordinate Lender shall execute and deliver an authorization and direction in the form attached hereto as Schedule "B" authorizing such law firm as may be designated by the Senior Lender to attend to electronic registrations of discharges of the sold lots or condominium units provided it is in accordance with the Senior Loan Agreement.

(e) Each of the parties hereto (a "**Responding Party**") agree to provide to any other party (the "**Requesting Party**") that may request a statement from time to time within five (5) Business Days of receipt of the request, a Statement confirming the Net Proceeds received by the Responding Party, the amount of the Responding Party's debt outstanding and confirming whether the Borrower is in default.

ARTICLE IX
MISCELLANEOUS

9.1 Communication

Any demand, notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by prepaid first-class mail, by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such demand, notice or other communication, if mailed by prepaid first-class mail at any time other than during or within three Business Days prior to a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the individual designated below as the person to whose attention demands, notices and other communications are to be given or to the addressee at the applicable address noted below to the attention of the individual designated below. Notice of change of address shall also be governed by this section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, demands, notices or other communications shall be delivered by hand or sent by facsimile or other means of electronic communication and shall be deemed to have been received in accordance with the foregoing. Demands, notices and other communications shall be addressed as follows:

if to the Senior Lender:

First Canadian Place
11th Floor
100 King Street West
Toronto, ON M5X 1A1
Attention: Anna Klepinin
Associate Director
Facsimile number: 416 867-6366

with a copy to:

Fogler, Rubinoff LLP
1200 – 95 Wellington Street West

Toronto, ON M5J 2Z9
Attention: Lou Natale
Facsimile number: 416 941-8852

if to the Subordinate Lender:

Suite 204, 181 Eglinton Ave East
Toronto, Ontario, M4P 1J4

Attention: Jack Greenberg
Facsimile number: 416-485-3246

if to the Borrower:

103 Naughton Drive
Richmond Hill, ON L4C 8B3
Attention: Imran Jinnah, President
Facsimile number: 905-508-3671

with a copy to:

Jack Greenberg
Suite 204
181 Eglinton Avenue East
Toronto, ON M4P 1J4
Facsimile number: (416) 485-3246

9.2 Successors and Assigns

This Agreement shall continue in full force and effect until the Senior Debt is fully and finally paid and satisfied, and shall be binding upon the Subordinate Lender and its successors and assigns, including, without limitation, any future holder of all or any part of the Subordinate Debt and shall inure to the benefit of the Senior Lender and its successors and assigns, including, without limitation, any future holder of all or any part of the Senior Debt, it being expressly acknowledged that the Senior Lender's rights under this Agreement may be assigned by the Senior Lender in connection with any assignment or transfer of all or any portion of the Senior Debt and that each subsequent holder of any portion of the Senior Debt shall be equally and ratably entitled to the benefits of this Agreement. References herein to the Borrower shall include any successor to, or assign of, the Borrower, including without limitation any debtor-in-possession or trustee for the Borrower in any proceeding under the *Companies' Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*. The obligations of the Subordinate Lender under this Agreement shall continue to be effective, or be reinstated, as the case may be, as to any payment in respect of any Senior Debt that is rescinded or must otherwise be returned by the holder of such Senior Debt upon the occurrence or as a result of any Event of Bankruptcy, all as though such payment had not been made. Each of the Subordinate Lender Agreements shall expressly reference this Agreement and the Subordinate Lender shall not assign any of its rights in respect of the Charged Property to any person without obtaining an acknowledgement from the assignee in favour of the Senior Lender confirming that the assignee will be bound by the terms of this Agreement.

9.3 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original hereof, and all of which together shall be deemed to be a single agreement.

9.4 Further Assurances

The Senior Lender, the Subordinate Lender and the Borrower shall promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the Senior Lender may reasonably require from time to time for the purpose of giving effect to this Agreement and shall take all such steps as may be reasonably within their power to implement to their full extent the provisions of this Agreement. If the Subordinate Lender shall fail to execute and deliver any documents that the Senior Lender may reasonably require pursuant to this section within a period of ten (10) days after request therefor has been made by the Senior Lender, then the Senior Lender shall be entitled to execute and deliver such documents as the attorney of the Subordinate Lender, and for such purpose the Subordinate Lender hereby appoints the Senior Lender, its successors and assigns, as the Subordinate Lender's attorney, with full power of substitution, in the name of the Subordinate Lender but on behalf of and for the benefit of the Senior Lender, its successors and assigns, and at the expense of the Borrower, its successors and assigns, to execute and do any consents, partial discharges, acknowledgements, deeds, transfers, conveyances, assignments, assurances and things which the

Subordinate Lender ought to do in connection with the development of the Charged Property pursuant to the provisions hereof. This appointment, coupled with an interest, is irrevocable by the Subordinate Lender until Senior Debt is paid in full and shall not be revoked by the insolvency or bankruptcy of the Subordinate Lender or by the dissolution, liquidation or other termination of the existence of the Subordinate Lender or for any other reason. The Subordinate Lender shall, upon request by the Senior Lender, execute the form of Power of Attorney attached as Schedule "C" hereto.

9.5 Consent of Borrower

The Borrower consents to all of the terms and conditions of this Agreement and agrees that it will not pay any of the Subordinate Debt, except as provided therein. The Borrower acknowledges and agrees that any breach of the provisions of this Agreement by the Subordinate Lender, or any payment made by the Borrower to the Subordinate Lender in violation of this Agreement shall constitute an Event of Default under the Senior Loan Agreement.

9.6 Wherever there is a reference to costs, expenses and professional fees in this agreement the parties agree that same shall be reasonable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

BANK OF MONTREAL

Per: ______________________________
Name:
Title:

Per: ______________________________
Name:
Title:
We have authority to bind the Corporation

PUCCINI MORTGAGE CORP.

Per: ______________________________
Name: JACK GREENBERG
Title: PRESIDENT

____
I have authority to bind the Corporation

2147650 ONTARIO INC.

Per: ______________________________
Imran Jinnah
President
I have authority to bind the Corporation

2148990 ONTARIO INC.

Per: ______________________________

Imran Jinnah
President
I have authority to bind the Corporation

2148993 ONTARIO INC.

Per: ______________________________

Imran Jinnah
President
I have authority to bind the Corporation

SCHEDULE "A"

CHARGED PROPERTY

The remaining 11 lots in the Phase II lands in the "Puccini Project" on the north side of Puccini Drive in Richmond Hill, Ontario and legally described in Property Identifier Nos. 03206-3408, 03206-3410, 03206-3411, 03206-3450 (LT)

DMSTORLegal\047879\00016\464991v1

SCHEDULE "B"

AUTHORIZATION AND DIRECTION

TO:

RE: Bank of Montreal (the "**Bank**") loan facilities to 2148990 Ontario Inc., 2148993 Ontario Inc., and 2147650 Ontario Inc. (collectively the "**Borrower**") and guaranteed by 2148991 Ontario Inc., Silver Streams Homes Inc. and Imran Jinnah (collectively the "**Guarantor**") pursuant to an amendment letter dated November 25, 2011 to a commitment letter dated January 28, 2011 as amended April 12, 2011 (collectively the "**Commitment**"), secured by, *inter alia*, a collateral first mortgage in favour of the Bank in respect of lands represented by Property Identifier Nos. 03206-3408, 03206-3410, 03206-3411, 03206-3450 (LT) and known as a part of the Phase II lands in the "Puccini Project" in Richmond Hill, Ontario (the "**Property**")

The undersigned, the owner of a charge on the Property, hereby authorizes and directs Fogler Rubinoff LLP (or other law firm appointed by the Bank) to electronically register partial discharges of each of the lots or condominium units and its appurtenant common interest (together, a "**Unit**") as each lot or Unit is sold provided that the proceeds of sale pursuant to the Senior Loan Agreement are applied in accordance therewith and for so doing this shall be your good, sufficient and irrevocable authority.

DATED this 19TH day of December , 2011.

PUCCINI MORTGAGE CORP.

Per: ______________________

Name: JACK GREENBERG
Title: PRESIDENT
I have the authority to bind the corporation

SCHEDULE "C"

POWER OF ATTORNEY

PUCCINI MORTGAGE CORP. (the "**Grantor**") hereby nominates and appoints Bank of Montreal, its successors and assigns, (the "**Attorney**") as the Grantor's Attorney, with full power of substitution, in the name of the Grantor but on behalf of and for the benefit of the Attorney, to execute and do any consents, partial discharges, acknowledgements, subordination agreements, postponements, deeds, transfers, conveyances, assignments, assurances and things which the Grantor may be requested to do in connection with the property described in Schedule "A" attached hereto in accordance with the Senior Loan Agreement and a Subordination and Priority Agreement dated as of the 19TH day of December, 2011 and until the Senior Debt referred to therein is paid in full. This appointment, coupled with an interest, is irrevocable by the Grantor or by the dissolution, liquidation or other termination of the existence of the Grantor or for any other reason in accordance with the Senior Loan Agreement and a Subordination and Priority Agreement dated as of the 19TH day of December, 2011 and until the Senior Debt referred to therein is paid in full.

IN WITNESS WHEREOF the Grantor has executed this Power of Attorney this 19TH day of December, 2011.

DATED this 19TH day of December, 2011.

PUCCINI MORTGAGE CORP.

Per: ______________________

Name: JACK GREENBERG
Title: PRESIDENT
I have the authority to bind the corporation

2011-082/POSTPONEMENT AND STANDSTILL AGREEMENT.PMC.191211

DMSTORLegal\047879\00016\464991v1

TAB C

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (as may be amended, restated, supplemented or replaced, from time to time, this "**Agreement**") is dated as of January 21, 2014.

BETWEEN:

BANK OF MONTRÉAL
("BMO")

-and-

GRANT THORNTON LIMITED ("GTL"), in its capacity as court-appointed monitor of Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc. (the "**Monitor**")

RECITALS:

A. Silver Streams Homes Inc. ("**Silver Streams**") is a residential home builder in the Greater Toronto Area.

B. Silver Streams Homes (Puccini) Inc. ("**Puccini**") was incorporated in October 2008 for the purpose of developing and selling homes in a development located at Bathurst St. and King Rd. in Richmond Hill, Ontario (the "**Puccini Project**").

C. Title to some (but not all) of the lands in Phases II and III of the Puccini Project is held by 2148993 Ontario Inc. ("**2148993**"), 2148990 Ontario Inc. ("**2148990**"), 2147681 Ontario Inc. ("**2147681**") or 2147650 Ontario Inc. ("**2147650**" and, collectively, the "**Title Holders**"). Silver Streams, Puccini and the Title Holders are collectively referred to as the "**Companies.**"

D. BMO made available to the Companies three credit facilities for the purpose of, among other things, financing the servicing and construction of homes in the Puccini Project (the "**Credit Facilities**"). All of the indebtedness owing to BMO under the credit facilities is secured by, *inter alia*, demand first mortgages registered against title to the Phase I, II and III lands and a general security agreement from the Companies in favour of BMO.

E. Currently, the Companies' outstanding indebtedness to BMO is in excess of $900,000.

F. A number of trades have registered claims for lien ("**Construction Lien Claimants**") against title to all or some of the lots in the Puccini Project pursuant to the *Construction Lien Act* (Ontario). The total amount of the construction lien claims is estimated to be approximately $3.5 million.

G. On December 17, 2013, the Companies made an application to the Ontario Superior Court of Justice (Commercial List) (the "**Court**") to commence proceedings under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**"). On that date, the Court issued an order which, *inter alia*, granted the Companies protection from their creditors and appointed GTL as the Monitor.

H. Also on December 17, 2013, the Court granted the Companies' request for an order vesting title to Lots 22 and 25 in Phase III of the Puccini Project (the "**Lots**") in the respective purchasers of such Lots, free and clear of all liens, charges and encumbrances. The Court further ordered that, for the purposes of determining the nature and priority of all claims – including those asserted by the Construction Lien Claimants – all claims and encumbrances shall attach to the net proceeds from the sale of the Lots with the same priority as they had attached to the Lots before the sale.

I. On December 31, 2013, the sale of Lot 22 was closed. The net proceeds in the amount of $919,227.86 from the sale of Lot 22 were paid to the Monitor.

J. On January 16, 2014, the Court granted an order (the "**Distribution Order**"), *inter alia*, approving a distribution of proceeds from the sale of the Lots to BMO in an amount not exceeding $570,000 subject to BMO and the Monitor entering into a reimbursement agreement.

K. On January 17, 2014, the sale of Lot 25 was closed. The net proceeds in the amount of $897,434.74 from the sale of Lot 25 were paid to the Monitor.

L. In accordance with the Distribution Order, the Monitor proposes to make an interim distribution to BMO in an amount of $536,105.52 (the "**Distribution Funds**") subject to the terms of this Agreement.

NOW THEREFORE IN CONSIDERATION of the premises and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), BMO and the Monitor hereby agree as follows:

1. BMO hereby irrevocably and unconditionally undertakes to repay to the Monitor all or any portion of the Distribution Funds within 30 days of any final, conclusive determination by a court of competent jurisdiction that the Distribution Funds (or any portion thereof) should have been paid to the Construction Lien Claimants or any other creditor or claimant of the Companies in priority to BMO.

2. BMO's repayment obligation pursuant to this Agreement shall be total and complete, without any right of reduction, abatement, or deferral, on account of any claim, counterclaim or setoff.

3. Without prejudice to its payment obligations pursuant to this Agreement, BMO shall have the full benefit and use of the Distribution Funds, and shall have no obligation to hold them in trust or keep them separate and apart from the general assets of BMO.

4. From the date of payment of the Distribution Funds by the Monitor to BMO until the date of any reimbursement of the Distribution Funds by BMO to the Monitor, the Monitor will treat the amount distributed to BMO as payment or repayment on account of the Companies' indebtedness owing to BMO, which payment or repayment shall be reversed and the liability of the Companies reinstated, with interest charged thereafter as per the rates agreed in the Credit Facilities, if and to the extent BMO is required to reimburse the Monitor pursuant to paragraph 1 hereof.

5. The execution, delivery and performance of this Agreement is on a "without-prejudice" basis and shall not be used by BMO to demonstrate its entitlement to the Distribution Funds.

6. All notices provided for in this Agreement and other communications pursuant to this Agreement shall be in writing and delivered by hand or sent by registered or certified mail or facsimile at or to the applicable addresses or facsimile numbers (as the case may be), charges prepaid, set opposite the party's name below or at or to such address or addresses or facsimile number or numbers as any party hereto may from time to time designate to the other parties in such manner:

(a) in the case of BMO:

Bank of Montreal
First Canadian Place, 7th Floor
100 King Street West
Toronto, Ontario M5X 1A1

Attention: Rachel Pollock
Email: Rachel.pollock@bmo.com

with a copy to:

Macdonald Sager Manis LLP
150 York Street, Suite 800
Toronto, Ontario M5H 3S5

Attention: Jeffrey Spiegelman
Email: jspiegelman@msmlaw.ca

(b) in the case of the Monitor:

Grant Thornton Limited
Royal Bank Plaza
200 Bay Street, South Tower, 19th Floor
Toronto, Ontario M5J 2P9

Attention: Jonathan Krieger / Daniel Sobel
Email: jonathan.krieger@ca.gt.com / daniel.sobel@ca.gt.com

with a copy to:

Aird & Berlis LLP
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Attention: Steven Graff / Ian Aversa
Email: sgraff@airdberlis.com / iaversa@airdberlis.com

Any communication which is hand delivered or transmitted by email shall be deemed to have been validly and effectively given on the date of such delivery or transmission if such date is a Business Day and such delivery or transmission was made during normal business hours of the recipient; otherwise, it shall be deemed to have been validly and effectively given on the Business Day next following such date of delivery or transmission. Any communication which is sent by mail shall be deemed to have been validly and effectively given four (4) Business Days after the date on which it is mailed by certified or registered mail, save in the event of a disruption of postal service. "**Business Day**" means any day other than Saturday, Sunday or a statutory holiday in the Province of Ontario.

7. This Agreement is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

8. This Agreement may be executed by the parties in counterparts and may be executed and delivered by email or other electronic method and all such counterparts and email shall together constitute one and the same agreement.

9. This Agreement shall enure to the benefit of, and shall be binding upon the heirs, administrators, executors, estate trustees, successors and assigns of each of the parties, as the case may be.

[Signature page to follow]

IN WITNESS WHEREOF the parties have duly executed this agreement as of the date first written above.

BANK OF MONTREAL

By: ______________________________
Name: Rachel Pollock
Title: Senior Manager

By: ______________________________
Name: Greg Fedoryn
Title: Director National Accounts

GRANT THORNTON LIMITED,
in its capacity as court-appointed monitor of Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc.

By: ______________________________
Name: Jonathan Krieger
Title: Senior Vice President

TAB D

DRUDI • ALEXIOU • KUCHAR LLP

BARRISTERS-AT-LAW

Writer's Ext. 225
Secretary's Ext. 233
Writer's email mdrudi@dakllp.com
Our File No. 130285

June 30, 2016

VIA EMAIL: ebisceglia@lawtoronto.com
VIA FACSIMILE: (905) 695-5201

Bisceglia & Associates Professional Corporation
Barristers-at-Law
7941 Jane Street
Suite 200
Concord, Ontario
L4K 4L6

Attention: Emilio Bisceglia

Dear Sir:

Re: Puccini Mortgage Corp. et al. re CCAA Application

Enclosed please find our clients' Offers to Settle which are served upon you pursuant to the *Rules of Civil Procedure.*

Yours very truly,

DRUDI ALEXIOU KUCHAR LLP

Per:

Marco Drudi

MD*sr
Encl.

DRUDI•ALEXIOU•KUCHAR LLP
7050 WESTON ROAD, SUITE 610, VAUGHAN, ONTARIO, L4L 8G7 TEL (905) 850-6116 FAX (905) 850-9146

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
IN THE MATTER OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, as ammended

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 214983 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC., and 2146750 ONTARIO INC.

APPLICANTS

OFFER TO SETTLE

THE DEFENDANTS, Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited, 53 Puccini Mortgage Corp., Nastell Investments Limited and Castle Lane Design Group Inc. (the "Private Mortgagees") hereby Offer to Settle the claims of Newmar Window Manufacturing Inc. with respect to the Reference on the following basis:

(a) The Referee declares that the Lien Claimant has a valid and timely Claim for Lien;

(b) The Referee declares that the Private Mortgages are valid Mortgages;

(c) The Referee declares that the deficiency in holdback in regards to the Lien Claimant is determined to be in the amount of $60,000.00;

(d) The Referee declares that the Lien Claimant has priority over the Private Mortgagees with respect to the deficiency in holdback, inclusive of interest and costs, fixed in the amount of $60,000.00;

(e) The Lien Claimant be paid $60,000.00, inclusive of interest and costs, from the funds presently deposited with the Monitor; and

(f) The Lien Claimant and the Private Mortgagees exchange a Release with respect to the issues raised in the Reference and agree to a Dismissal Order, if necessary, with respect to the Lien Claimant's involvement.

THIS OFFER expires five (5) minutes after the commencement of the Arbitral Hearing scheduled to commence on July 11, 2016.

Date: June 30, 2016

DRUDI ALEXIOU KUCHAR LLP
Barristers-at-Law
7050 Weston Road
Suite 610
Vaughan, Ontario L4L 8G7

Marco Drudi - #27267H
Tel: (905) 850-6116
Fax: (905) 850-9146

Lawyers for Private Mortgagees,
Puccini Mortgage Corp., Da Paul Management Limited, 388242 Ontario Limited, 53 Puccini Mortgage Corp., Nastell Investments Limited and Castle Lane Design Group Inc.

TO:

AGUECI & CALABRETTA
5700 Yonge Street
Suite 1110
North York, ON M2M 4K2

Jeffrey K. Spiegelman
Tel: (416) 250-5700 ext. 243
Fax: (416) 250-5797

Lawyers for the Bank of Montreal

AND TO: **BISCEGLIA & ASSOCIATES**

7941 Jane Street
Suite 200
Concord, ON L4T 4G6

Emilio Bisceglia
Tel: (905) 695-3100
Fax: (905) 695-5201
Lawyer for Argo Lumber Inc. and Newmar Window Manufacturing Inc.

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
IN THE MATTER OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, as ammended

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 214983 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC., and 2146750 ONTARIO INC.

APPLICANTS

OFFER TO SETTLE

THE DEFENDANTS, Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited, 53 Puccini Mortgage Corp., Nastell Investments Limited and Castle Lane Design Group Inc. (the "Private Mortgagees") hereby Offer to Settle the claims of Argo Lumber Inc. with respect to the Reference on the following basis:

(a) The Referee declares that the Lien Claimant has a valid and timely Claim for Lien;

(b) The Referee declares that the Private Mortgages are valid Mortgages;

(c) The Referee declares that the deficiency in holdback in regards to the Lien Claimant is determined to be in the amount of $65,979.54;

(d) The Referee declares that the Lien Claimant has priority over the Private Mortgagees with respect to the deficiency in holdback, inclusive of interest and costs, fixed in the amount of $65,979.54;

(e) The Lien Claimant be paid $65,979.54, inclusive of interest and costs, from the funds presently deposited with the Monitor; and

(f) The Lien Claimant and the Private Mortgagees exchange a Release with respect to the issues raised in the Reference and agree to a Dismissal Order, if necessary, with respect to the Lien Claimant's involvement.

THIS OFFER expires five (5) minutes after the commencement of the Arbitral Hearing scheduled to commence on July 11, 2016.

Date: June 30, 2016

DRUDI ALEXIOU KUCHAR LLP
Barristers-at-Law
7050 Weston Road
Suite 610
Vaughan, Ontario L4L 8G7

Marco Drudi - #27267H
Tel: (905) 850-6116
Fax: (905) 850-9146

Lawyers for Private Mortgagees,
Puccini Mortgage Corp., Da Paul Management Limited, 388242 Ontario Limited, 53 Puccini Mortgage Corp., Nastell Investments Limited and Castle Lane Design Group Inc.

TO: **AGUECI & CALABRETTA**
5700 Yonge Street
Suite 1110
North York, ON M2M 4K2

Jeffrey K. Spiegelman
Tel: (416) 250-5700 ext. 243
Fax: (416) 250-5797

Lawyers for the Bank of Montreal

AND TO: **BISCEGLIA & ASSOCIATES**
7941 Jane Street
Suite 200
Concord, ON L4T 4G6

Emilio Bisceglia
Tel: (905) 695-3100
Fax: (905) 695-5201
Lawyer for Argo Lumber Inc. and Newmar Window Manufacturing Inc.

TAB E

Jeffrey Spiegelman

From: Marco Drudi <mdrudi@dakllp.com>
Sent: September-17-16 9:25 PM
To: Duncan Glaholt (DuncanGlaholt@glaholt.com)
Cc: Jeffrey Spiegelman (JSpiegelman@ACLaw.ca)
Subject: FW: Silver Streams Homes Inc. CCAA Proceeding
Attachments: Reply Cost Submissions of Bank of Montreal, September 16, 2016.pdf; Tab A - BMO.pdf; Tab B - BMO.pdf; Tab C - BMO.pdf; Tab D - BMO.pdf; Tab E - BMO.pdf

Mr. Glaholt,

I apologize for sending this to you on the weekend but we received the "Reply" Costs Submissions, which are actually "Responding" in nature, late last night. Given the late delivery of the Submissions by BMO, and the need to have the Costs determined without further delay, our Reply is informal and brief. Below is the response by the Private Mortgagees:

1. Referring to paragraphs 5-11, not surprisingly, the Mortgage documents signed by Silver Streams ("SS") deals with costs and the rights of BMO as they relate to SS. The Private Mortgagees did not claim that their Mortgages ranked ahead of the Mortgages of BMO. In fact, the consent order found at Schedule "D" of the Partial Report/Award acknowledges the priority. The point was, and continues to be, can BMO rely upon what SS agreed in its Mortgages when seeking costs as against other parties? No authority has been provided to support the assertion;
2. SS did not challenge the BMO Mortgages. The Private Mortgagees did not challenge the BMO Mortgages. The Lien Claimants sued BMO alleging BMO failed to retain the proper holdback, and after great delay and expense incurred by both BMO and Argo/Newmar, the Lien Claimant which pursued the issue, the Lien Claimants were correct as BMO failed to retain any holdback; however, given the acknowledged priority of the BMO mortgages, the source of any payment/settlement would be the Fund held by the Monitor. If you recall, and as set out in [27] of your Reasons, you refused to order costs in favour of Argo/Newmar as against SS as SS did not challenge the claims. In other words, the costs should flow from the adversity. This is the very same principle at play here as BMO now seeks from the Private Mortgagees, or perhaps SS, the legal costs allegedly sustained due to the actions/inactions of the Lien Claimants and/or BMO and not costs caused by the Private Mortgagees or SS. We would submit there is no reason to take an inconsistent position when dealing with BMO's costs. Furthermore, in paragraph [24] of the Reasons, you found that Argo/Newmar was not entitled to costs as they agreed to settle their claims without costs. Similarly, BMO consented to orders with all of the Lien Claimants that the Lien Actions be dismissed without costs without but thereafter sought all of its costs with the Lien Claimants as against the Private Mortgagees where there was no adversity;
3. The suggestion made in para. 12 is difficult to comprehend. What was clear to all, or at least should have been, is that the Fund held by the Monitor would be available for distribution based upon the findings of priority of the Referee. As the Monitor held in excess of $2,000,000.00, and as confirmed by BMO in paragraph 12 that the maximum pay-out to the Lien Claimants would be $1,500,000.00, the Fund would be available to pay out the deficiency in holdback advanced by the Lien Claimants and, as the Private Mortgagees never cross-claimed as against BMO, there was no risk to BMO throughout. With respect, the submission that the Private Mortgagees would be entitled to their $11,000,0000.00 in advance of the Lien Claimants, which would exhaust the Fund and jeopardize BMO, displays a lack of knowledge or professed expertise which BMO relies upon to support their billable rates;
4. BMO suggests there was an agreement that BMO obtain its costs and those costs be fixed on a substantial indemnity basis. BMO does not support such an assertion with any documents, and none exists, or a reference to an oral agreement, as none occurred. In fact, if you refer to the Partial Report and the consent at Schedule

"D", you will note that we agreed that BMO could be paid, **without prejudice,** from the Fund with the caveat that:

a. BMO sign a Reimbursement Agreement;
b. The issue of costs would be agreed upon or determined by you; and
c. BMO return funds if so determined by you.

In other words, the very agreement reached by the parties contemplates that BMO would only be able to retain the costs you find are payable to them, if any. If BMO were entitled to all costs they incurred, as now suggested, then why specify the disbursal of money from the Fund was without prejudice and why would your discretion not be limited to assessing/fixing costs on a substantial indemnity basis? There is no agreement to entitlement, nor scale nor quantum;

5. The submissions in paragraphs 13-14 are troubling as they are not true and ignore the many statements made by me from the first attendance at Aird & Berlis, with Mr. Spiegelman in attendance, where I stated that deficiency in holdback should be determined on a contract-by-contract basis with the deficiency in Holdback being determined by taking 10% of the value of materials and services on the Contract of each Lien Claimant (as set out in *Lansing* and *RSG Mechanical cases).* As counsel is fully aware, and as the evidence revealed on the cross-exams of the trades, many if not most of the Lien Claims were based upon materials and services performed under different contracts over different lands which were thrown into the Lien Claims. As counsel for BMO was intimately aware, as BMO was cross-examined on the point, the Lien Claimants were calculating holdback based upon the value of materials and services provided by all trades, not just the Lien Claimants, over Phase I, II and Phase III of the development, even though Phases I and II had been completed years before. Moreover, the Lien Claimants chose to pursue the Private Mortgagees as "statutory owners" claiming they were liable for the full amount of the Liens(an issue irrelevant to BMO). As I am working remotely over the weekend, I will send separately the email chain between myself and counsel on the issue exchanged just before the hearing and shortly after some of the Lien Claimants decided to accept the Offers made by the Private Mortgagees to the Lien Claimants. Although we concede the Private Mortgagees pleaded that they were not construction lenders, as they were not, we did not advance a position that Lien Claimants who proved their Liens would not be entitled to priority regarding deficiency in holdback or that the Fund would not be available to them. Please note BMO has not presented any evidence to support such an assertion. When I set out the position of the Private Mortgagees and how it remained consistent throughout, Mr. Spiegelman never suggested that I was in error;
6. Regarding the assertion in paragraph 16 and the fact that BMO did not receive a copy of the Offer to Settle sent to Argo/Newmar, BMO did not get served with any Offers to my knowledge as all of the Offers made by the Private Mortgagees, subject to individual variations based upon differences involving preservation, proper quantum, were all based upon the proper calculation of holdback and all would be paid from the Fund. This further supports that the Private Mortgagees never looked to BMO to assist in financing the settlement of the Lien Claimants. Moreover, if the Private Mortgagees had made a "seismic shift" in their position, as submitted by BMO, would you have not heard any such comment made by one of the counsel for the Lien Claimants or perhaps you might have dealt with a cost request by one of the Lien Claimants as a result of an alleged "seismic shift";
7. In paragraph 17, BMO makes it appear as if counsel for BMO was kept in the dark which is not true and contradicted by the dockets of Mr. Spiegelman in late June and July of 2016 which confirm the many hours spent by counsel discussing the file and the settlement. The suggestion that the Private Mortgagees had a strategy to exert pressure on the Lien Claimants is both false and offensive. Perhaps Mr. Spiegelman can send one, just one, Offer to Settle received from the Lien Claimants which would indicate that they offered to accept payment for the proper holdback....there is none. Moreover, BMO did not produce one Offer sent by BMO as, to my knowledge, there were no Offers made by BMO;
8. In paragraph 20, BMO suggests that the Private Mortgagees only agreed to make a concession on July 8th, 2016. What counsel does not provide to you, as it does not exist, is any evidence of any request made by the lawyers for the Lien Claimants, or by himself, for this alleged concession. We would suggest that as the Hearing date approached and the Klein and Bisceglia clients appreciated the cost consequences of their positions, they accepted Offers sent by the Private Mortgagees;

9. We agree that S. 86 of the CLA may also be relied upon when you exercise your discretion; however, other than making bald assertions in submissions, there is no evidence adduced to support the claims and they are vehemently denied;
10. Regarding paragraphs 23-24 of the submissions, aside from not challenging the specific entries which are being impugned, the Tarion Motion dealt with issues involving Letters of Credit, and the underlying security, which has nothing to do with the issues referred. Moreover, the costs for the Motion are with Justice Wilton-Siegal. The costs before you must be restricted to the Reference, which is your jurisdiction, and not the BMO claims under their security as BMO needed to secure their right to costs under the appropriate security by way of a proper assessment proceeding and then as against SS. This is a separate proceeding;
11. The bald assertions in paragraph 27 are baseless and offensive;
12. In regards to paragraph 28:
    a. Counsel for BMO appears to have little experience in Construction Lien matters which may have contributed to the excessive costs but that not cannot be visited upon other parties;
    b. Within the Reference, and over which you are determining costs, there were no CCAA issues and BMO ought to have retained experienced counsel with knowledge in construction lien issues. The reality was that BMO had no exposure, counsel for BMO did little, other than to chase his own client to provide a proper accounting and chase his client to answer undertakings, and relied entirely upon counsel for the Private Mortgagees to challenge the Lien Claimants on the claims;
    c. I will ignore the comments about "Drudi's tactics" as they are baseless and offensive and if the same approach was employed when BMO dealt with counsel for Argo/Newmar, it may help explain why BMO's costs are absurd;
    d. As stated, if the maximum exposure to the Lien Claimants was $1,500,000.00, and the Fund with the Holdback was over $2,000,000.00, the Fund, which were the net sale proceeds of the houses of SS, would satisfy the deficiency in holdback payable to the Lien Claimants. There was never a suggestion that the Private Mortgagees had somehow developed priority over BMO or that the Subordination and Postponement Agreement dated September 2011 (Tab B attached) was void;
    e. The reference to my accounts is interesting. I had requested on several occasions for counsel for BMO to produce evidence of payment for his accounts which he has yet to do. I will not pursue the issue further. Regarding my accounts, I have no "special deal" with the Private Mortgagees or Greenberg; the clients were billed, and paid, my standard hourly rate;
    f. Regarding the quantum of the accounts, counsel for Argo/Newmar had produced his dockets when seeking costs as against SS and sought approximately $209,000.00 inclusive of all disbursements and HST (paragraph [19] of your reasons). How is it possible that the counsel for the Private Mortgagees who did the heavy lifting had about $130,000.00 in substantial indemnity costs and counsel for Argo/Newmar who not only pursued the Reference, but also lead counsel on the Tarion Motion, brought several Motions dealing with a Trust Matter, challenged one or more stay Motions and dealt with an attempt to Petition an affiliated company to SS into bankruptcy, charged his clients $209,000.00 inclusive of all disbursements and taxes. In light of the dockets of both counsel, the claims of BMO for costs are extremely excessive and simply unjustifiable.

'o conclude, I regret the informality or the lack of attachments but I know we need to dispose of this issue this week ınd I will not be back in the office until September 22nd, 2016. The submissions of BMO are troubling. BMO knew or ›ught to have known it had no exposure to the Lien Claimants. In this case, all parties agreed to settle the actions vithout costs and BMO did not seek its costs as against the Lien Claimants that might have caused the costs to be ncurred. It would be unreasonable to now have the Private Mortgagees bear the excessive legal costs that BMO claims vhich legal costs were not sustained due to the actions of the Private Mortgagees.

Marco Drudi
Drudi, Alexiou, Kuchar LLP
Barristers-at-law
'050 Weston Road, Suite 610
Vaughan, Ontario, L4L 8G7

(P) (905) 850-6116 ext. 225
(F) (905) 850-9146
(E) mdrudi@dakllp.com
Toll Free 1-866-690-8010

From: Lee Guarino [mailto:Lee.Guarino@ACLaw.ca]
Sent: September-16-16 7:11 PM
To: Duncan Glaholt
Cc: Marco Drudi
Subject: Silver Streams Homes Inc. CCAA Proceeding

Dear Mr. Glaholt,

We attach the Reply Cost Submissions of Bank of Montreal dated September 16, 2016, inclusive of Tabs A to E.

LEE GUARINO, LL.B.

AGUECI
CALABRETTA
BARRISTERS & SOLICITORS

NORTH AMERICAN CENTRE
5700 YONGE STREET, STE 1110 TORONTO, ONTARIO M2M 4K2
TEL. 416 250 5700 x222 | FAX. 416 250 5797
ACLAW.CA

TAB F

Lee Guarino

From: Lee Guarino <Lee.Guarino@ACLaw.ca>
Sent: September-21-16 6:53 PM
To: Duncan Glaholt
Cc: Marco Drudi
Subject: Re: CCAA - Silver Streams - CLA Reference
Attachments: BMO Costs Submissions Letter dated September 21, 2016.pdf; BMO Cost Submissions - Tabs A to D.pdf

Dear Mr. Glaholt,

We attach Bank of Montreal's Reply Costs Submissions dated September 21, 2016 to the Costs Submissions of the Private Mortgagees dated September 17, 2016 at 9:25 PM.

LEE GUARINO, LL.B.

AGUECI
CALABRETTA
BARRISTERS & SOLICITORS

NORTH AMERICAN CENTRE
5700 YONGE STREET, STE 1110 TORONTO, ONTARIO M2M 4K2
TEL. 416 250 5700 x222 | FAX. 416 250 5797
ACLAW.CA

AGUECI
CALABRETTA

BARRISTERS & SOLICITORS

September 21, 2016

Sent Via Email to: DuncanGlaholt@glaholt.com

Glaholt LLP
Construction Lawyers
800-141 Adelaide Street West
Toronto, Ontario
M5H 3L5

Att: Duncan W. Glaholt

Dear Sir:

Re: Silver Streams Homes Inc. CCAA Proceeding
Construction Reference
Further Reply Costs Submissions of Bank of Montreal

We submit the following Further Reply Cost Submissions on behalf of Bank of Montreal ("BMO") in response to the submissions of the Private Mortgagees sent by email on September 17, 2016 at 9:25 PM. We will utilize the same numbering utilized by Marco Drudi in his said email. We are limiting the submissions below to what we believe to be genuine "Reply" submissions arising from Mr. Drudi's said email; therefore, BMO should not be taken to have agreed to Mr. Drudi's submissions if a response to same is not provided below.

1. As stated previously, the Private Mortgagees ultimately conceded priority to the lien claimants on the eve of the hearing notwithstanding taking a contrary position in their Defences, Affidavit materials, and at cross-examination. This had a direct impact on BMO because if the security held by the Monitor (the "Security") was dissipated to pay the Private Mortgagees first, it was BMO that the lien claimants would look to for recovery under the Reimbursement Agreements. Mr. Drudi implies that even in such a scenario BMO was fully protected by the Security. This is false. Mr. Drudi is well aware that the lien claimants' costs would attract the same priority as their liens for materials and services. These costs are easily in the many hundreds of thousands of dollars. It is not inconceivable that the Security could be dissipated to zero after paying the lien claimants $1,500,000.00 for the deficiency

in the holdbacks, plus their costs (not to mention any further legal costs of the Monitor which would also be in priority to BMO). This could have resulted in BMO paying the lien claimants under the Reimbursement Agreements. BMO would then be left to pursue the Private Mortgagees for recovery either within the CCAA proceeding or outside same. Therefore, while BMO and Mr. Drudi challenged the lien claims in terms of timeliness, quantum, etc., BMO had to also remain entirely involved in the process in the event that it had to make submissions that the lien claimants were entitled to priority over the Private Mortgagees.

Therefore, Mr. Drudi may be technically correct in saying that: "The Private Mortgagees did not claim that their Mortgages ranked ahead of the Mortgages of BMO." Mr. Drudi is however completely missing the point, which is that his clients' claims to priority over the lien claimants would have resulted in BMO being ordered to fully reimburse the lien claimants. There is no need for any legal authority on this point. Mr. Drudi is intentionally attempting to obfuscate and create an air of confusion by failing to acknowledge that his clients' legal theory in seeking priority over the lien claimants in the Security is tantamount to his clients seeking priority over BMO. The Private Mortgagees continued to press for priority over the lien claimants throughout and were asked numerous times by the lien claimants to concede that the lien claimants had priority, without avail.

It cannot be stressed enough that BMO is not seeking that the Private Mortgagees pay BMO's costs; BMO is seeking that BMO's costs be paid from the Security. Again, Mr. Drudi continually maintains a fallacious argument that BMO is seeking costs as against the Private Mortgagees.

2. Mr. Drudi continually argues that "BMO failed to retain any holdback", and that BMO "now seeks from the Private Mortgagees, or perhaps SS, the legal costs allegedly sustained due to the actions/inactions of the lien claimants and/or BMO and not costs caused by the Private Mortgagees or SS." In fact, Mr. Drudi and the lien claimants continually asked counsel for BMO what amount BMO was holding back, to which BMO continually answered that it was holding back nothing and was not required to hold back anything. It is as if the Private Mortgagees and the lien claimants were arguing that BMO's failure to holdback funds as statutory holdback caused the dispute. Furthermore, contrary to Mr. Drudi's assertion, there has been no finding that "BMO failed to retain any holdback" as there have been no findings on the merits on this point. Mr. Drudi is providing his opinion on how he thinks the arbitration would have turned out on this point, which is pure

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speculation given that the hearing was never held. Mr. Drudi also refers once again to the "acknowledged priority of the BMO mortgages", as if trying to indoctrinate the reader on this point, even though the Private Mortgagees failed to acknowledge this priority given their continued claim to priority over the lien claimants as set out above. It was precisely as a result of the various theories and blanket denials of the Private Mortgagees that BMO had no choice but to maintain its high level of involvement in this litigation. Had Mr. Drudi made the concessions regarding priority between the Private Mortgagees and the lien claimants earlier than he did (on July 8, 2016, effectively the eve of trial) no doubt BMO would have been in a much better position to resile from the arbitration. That, regrettably, did not occur and Mr. Drudi, through his steadfast refusal to make these concessions earlier, kept BMO in this litigation until the bitter end.

BMO has further responded that lenders, not being owners, have no obligation under the CLA to hold back funds. While many lenders do out of an abundance of caution hold back funds, there is no legal requirement under the CLA for anyone above the level of an owner to holdback monies as statutory holdback in a case such as this. Any "failure" of BMO to holdback funds is therefore incorrect and irrelevant, and once again, a decision that is outside the fact-finding authority of the Referee on this costs hearing.

Mr. Drudi's comments on costs flowing from the "adversity" are also indefensible. He has suggested that the Referee's decision to dismiss the request of Argo Lumber and Newmar Windows for an order for costs against Silver Streams is relevant to the costs submissions before you herein when they are not. BMO is not seeking costs as against the Private Mortgagees, or as against any other person or entity other than the Security. It is therefore not inconsistent to refuse the request of Argo Lumber and Newmar Windows for costs directly against Silver Streams, and to grant the BMO request that its costs be paid from the Security. BMO's costs did not arise because of the lien claimants, but because of the Private Mortgagees' insistence on claiming priority over the lien claimants. Therefore, BMO is not seeking its costs arising from actions of the lien claimants, nor is it claiming any costs as against Mr. Drudi's clients. Therefore any agreement by BMO to consent to a dismissal of the action by the lien claimants without costs does not preclude BMO from seeking its costs from the Security, which has already been decided in BMO's favour in the Partial Report/Award, and namely Schedule D thereof as further explained below.

BMO has also made clear that it is not asking for any monies as against the Private Mortgagees. It is seeking its costs from the Security. The Security is made up of the monetized assets of Silver Streams, now entrusted to the Monitor. It is entirely incorrect and

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totally misleading to say that any order the Referee makes for costs in favour of BMO is the Private Mortgagees' money.

There has been a clear accommodation made on consent in the matter as set out in the Partial Report/Award that BMO would be paid its costs in priority to the Private Mortgagees being paid, and that a Reimbursement Agreement would be adhered to by BMO "in favour of the Private Mortgagees wherein BMO agrees to reimburse the Private Mortgagees after costs are fixed by me should I reduce the Accounts/Bill of Costs;" in the event that any advance payment from the Security to BMO was found to be too high. No such payment has yet been made so the Reimbursement Agreement referred to in the Partial Report/Award, Schedule D is not relevant at all.

3. Mr. Drudi's alleged "factual findings" that the "maximum pay-out to the Lien Claimants would be $1,500,000.00" and that therefore the "Fund would be available to pay out the deficiency in the holdback" are not included in any agreed statement of fact or factual finding by the Court, nor are the allegations accurate. Therefore, it would be pure speculation by Mr. Drudi to conclude that there was no risk to BMO. BMO has never agreed that the Private Mortgagees would be entitled to $11,000,000.00 in advance of the lien claimants. BMO asserts that the Private Mortgagees maintained their priority argument throughout the litigation until the eve of trial, for tactical reasons. In further support of the argument that the Private Mortgagees continued to claim priority over the lien claimants until the eve of trial, we submit the following emails (and although some are marked "Without Prejudice", we believe we are entitled to use them as these are costs submissions):

    TAB A - An email from Sonja Turajlich dated July 5, 2016 11:00 AM attaching a letter from Emilio Bisceglia to Mr. Drudi dated July 5, 2016 wherein he confirms that the Private Mortgagees have "consistently taken the position that the private mortgages were <u>not</u> taken for the purposes of financing the construction of lands in question." He also asserts that the effect of this is that the Private Mortgagees are "claiming priority with respect to approximately the $2,000,000.00 which is held in trust by the Monitor." He also concludes that the result of this would be for liability to entirely fall upon BMO if the Private Mortgagees were to prevail in this priority argument. He further concludes that Mr. Drudi has indicated to him recently that if there is a deficiency in the holdback, the trades would be able to access and be paid by the funds held by the Monitor, and he describes this as a "significant change in

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position" by the Private Mortgagees.

TAB B - An email from James Klein dated July 5, 2016 3:43 PM to Marco Drudi and various people. In his email, Mr. Klein indicates that the "position of the Private lenders throughout was that there is nothing owing to the Trades and that the Private Mortgagees were not construction lenders but mortgagees with priority over the liens." Mr. Klein concludes that this was why it was necessary to keep BMO in the litigation.

TAB C - An email from Sonja Turajlich to Marco Drudi and others dated July 7, 2016 6:41 PM attaching a proposed Agreed Statement of Facts signed by counsel to the lien claimants, but not signed by Mr. Drudi on behalf of the Private Mortgagees wherein it is sought to have the parties agree that "Any Lien Claimant that proves its claims will have priority over the mortgages of the Bank of Montreal and all of the Private Mortgagees.........to the extent of any deficiency in the holdback....which Holdback Deficiency is to be paid from the funds held by the Monitor."

TAB D - An email from Emilio Bisceglia to Jeffrey Spiegelman dated July 9, 2016 at 10:03 AM wherein he states that "I view the matters in very simple terms. I believe that until last weekend it was clear the Bank was a necessary party given Greenberg took the position the private mortgages were not taken to finance an improvement. There was a break in this position when the first offers to settle were sent after 3 years of litigation." (It is believed by counsel for BMO that the reference to the "first offers to settle" is to the offers to settle submitted by Mr. Drudi to Argo Lumber and Newmar Lumber dated June 30, 2016 and set out in our previous cost submissions as attachments). An email from Jeffrey Spiegelman to Emilio Bisceglia and Marco Drudi and others dated July 9, 2016 10:34 AM is also enclosed with TAB D confirming BMO expected a motion would be brought at the start of day one of the hearing so that the Arbitrator could assist, if necessary, to craft an order or make a ruling "permitting the Claims against the bank to be dismissed without prejudice to the bank's right to make cost submissions."

BMO states that Mr. Drudi is once again entirely wrong in saying that there was no risk to BMO given his clients' position throughout this matter. Furthermore, Mr. Drudi's assertion that the "maximum pay-out to the Lien Claimants would be $1,500.000.00" is incorrect as it ignores the lien claimants' costs, and implicitly ignores any further costs accruing to the

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Monitor for its fees. BMO was always at risk of the Security being insufficient. BMO's counsel has also not failed to properly assess that the lien claimants would be in priority to the Private Mortgagees. It is Mr. Drudi that, for tactical reasons, sought priority over the lien claimants until the last minute, leaving the issue of priority a fundamental issue to be determined in this litigation. While BMO believed that the lien claimants would ultimately prevail over the Private Mortgagees, this was an issue of seminal importance should the hearing have proceeded, and it was Mr. Drudi's clients that continued to maintain the position that they rank in priority to the lien claimants in the Security held by the Monitor.

4. We repeat for the reasons set out in item 2 above that there is an agreement on BMO's entitlement to costs as set out in Schedule D of the Partial Report/Award, and only quantum is in issue in these costs submissions. If there is no such agreement, which is denied by BMO, BMO has at no time taken the position that it is releasing its claim to have its costs paid from the Security, and Mr. Drudi's position in this regard suggesting otherwise is completely disingenuous as there would be no reason for the process set out in the said Schedule D being put in place (which contemplates an advance payment to BMO for costs from the Security) if entitlement was in issue after the said consent (Schedule D) was filed. If Mr. Drudi's position is that BMO has waived an entitlement to its costs being paid from the Security that concession should have been extracted in a clear and explicit fashion from BMO. In fact, and to the contrary, this agreement contemplates BMO having its costs paid directly from the Security. The use of the words in Schedule D "after costs are fixed by me should I reduce the Accounts/Bill of Costs", words chosen by counsel for BMO and by Mr. Drudi, make clear the entitlement of BMO to receive its costs from the Security is not in issue.

5. Briefly, what Mr. Drudi believes the Referee would have ruled in a hearing is irrelevant. However, the risk to BMO persisted. It is at least conceivable that the lien claimants would have proven an entitlement to a general lien if the hearing proceeded. The Referee must assume that anything was possible, as pleaded, as there have been no factual findings in this regard and no agreed statement of facts. Mr. Drudi appears to not distinguish fact from fiction. None of these issues were ultimately litigated and any attempts by Mr. Drudi to suggest factual or legal conclusions that have not been ruled upon must be ignored.

6. As noted in the emails above, Mr. Bisceglia and Mr. Klein agree that the Private

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Mortgagees made a "seismic shift" in their position on the eve of trial. While the Private Mortgagees did not directly seek that BMO assist in the financing of any settlements made at the last minute, up to that time, Mr. Drudi was prepared to unload all of the liability for the statutory holdback deficiency upon Bank of Montreal in the form of his position throughout this long and arduous process that the Private Mortgagees have priority over the lien claimants to the Security.

7. While it is true that counsel for BMO spent time in July discussing settlement with some of the parties, what is beyond dispute is that I learned about the offers to settle from the Private Mortgagees to Argo, Newmar Windows and various other lien claimants from the counsel for the lien claimants well after the offers to settle were sent by Mr. Drudi, notwithstanding the offers included Agueci & Calabretta as an addressee. BMO's counsel was kept in the dark by Mr. Drudi as to the ongoing negotiations between Mr. Drudi and the lien claimants' counsel until the very last minute. This is part and parcel of his strategy to keep pressure on the lien claimants because he knew that if I were involved in such negotiations that I would be arguing strenuously that the lien claimants had priority over the Private Mortgagees to the Security and this would negatively impact Mr. Drudi's efforts. Nothing could be better for the Private Mortgagees than having the lien claimants believe that there was some risk they would lose priority over the Security.

8. It is absurd for Mr. Drudi to suggest that nobody ever requested of the Private Mortgagees that they concede priority to the lien claimants. What exactly was the litigation all about then? The lien claimants clearly claimed priority over the Private Mortgagees in their nineteen Statements of Claim, their Affidavits, their other materials filed, and in their respective cross-examinations.

9. With respect to s. 86 of the CLA, BMO has not made bald assertions. If the Referee accepts the assertions in these costs submissions, and specifically that the Private Mortgagees continued to claim priority over the lien claimants until the eve of trial, then the Private Mortgagees are to blame for keeping BMO in this litigation, and BMO's costs payable from the Security should be on a substantial indemnity scale.

10. We have already responded to this assertion about what legal work relates to the Reference;

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however, it should be stated that I offered to have BMO's costs assessed but Mr. Drudi flatly refused. As a result, the costs are being determined by the Referee.

11. Mr. Greenberg is a sophisticated lawyer and businessman, with extensive experience in mortgage matters, and he was wearing multiple hats in the project including investor (through his companies), and lawyer to some parties and escrow agent to others. He would have been well aware of the risk he was exposing BMO to by allowing the Private Mortgagees to maintain their claim to priority. He also knew that by employing these tactics BMO's costs would rise significantly.

12. Generally as to the comments in item 12 of Mr. Drudi's letter, counsel for BMO has been involved in all manner of Bankruptcy and Insolvency Act (BIA)/CCAA matters for almost 27 years including some of the largest, most contentious and extraordinarily complex BIA/CCAA matters in Canadian history (e.g. Nortel Networks, Air Canada, Olympia & York, Eaton's, Stelco, amongst others) acting for trustees, lenders, municipalities and secured and unsecured creditors, many of which included complex construction lien issues, including priority claims. It would be evident to anyone with any real and extensive experience dealing with such BIA/CCAA matters outside of dabbling in the process that the hourly rate that counsel for BMO is seeking is low relative to fees regularly sought in such matters by litigation counsel. Finally, it is beneath me to engage in name-calling or making matters between counsel personal in nature. As such I prefer to take the high road insofar as Mr. Drudi's misguided and uninformed personal attacks on me are concerned. I merely observe that those comments made in obiter about having "little experience" or that BMO should have retained "experienced counsel with knowledge in construction lien issues" are petty, inflammatory and untrue remarks that are not deserving of a response.

All of which is respectfully submitted.

Yours very truly,
AGUECI & CALABRETTA
Per:
Jeffrey Spiegleman
JS/

cc. Marco Drudi by email: mdrudi@dakllp.com

TAB A

Jeffrey Spiegelman

From: Sonja Turajlich <sturajlich@lawtoronto.com>
Sent: July-05-16 11:00 AM
To: Lee Guarino; Marco Drudi; cclynick@cavalluzzo.com; thenry@cavalluzzo.com; ahanif@cavalluzzo.com; dmg@goodmansolomon.com; finegold@gsnh.com; Lori Goldberg; rmazar@mazarlaw.com; s.zomorodi@zomorodilaw.com; Michael Mazzuca; krish@rousseaumazzuca.com; monica@rousseaumazzuca.com; Jeffrey Spiegelman; Lida Aghazadeh; Jeffrey J. Long
Cc: jklein@kalaw.ca; ebisceglia@lawtoronto.com
Subject: OUR LETTER RE: BMO INVOLVEMENT - Silver Streams Homes (Puccini) Inc.
Attachments: Ltr to Marco Drudi.pdf

Please see attached.

Thank-you.

Sonja Turajlich
Lawyer
BISCEGLIA & ASSOCIATES
Professional Corporation

Direct Dial: 905-695-3424
Main Tel: 905-695-5200 ext.206
Assistant: Lena 905-695-5200 ext.200
Fax: 905-695-5201

BISCEGLIA & ASSOCIATES
PROFESSIONAL CORPORATION
BARRISTERS-AT-LAW

WITHOUT PREJUDICE

July 5, 2016

Marco Drudi
Drudi, Alexiou, Kuchar LLP
Barristers-at-Law
7050 Weston Road
Suite 610
Vaughan, Ontario
L4L 8G7

Dear Sir:

RE: In the Matter of a Plan of Compromise or Arrangement of Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc. and 2146750 Ontario Inc.

As you know Mr. Greenberg has consistently taken the position that the private mortgages were not taken for the purposes of financing the construction of lands in question.

At paragraph 10 of his Affidavit, he indicates:

> *"Give the dates of registration of the Private Mortgages and the dates and purposes of the advances thereunder, none of the Private Mortgages were for the purposes of financing construction on the lands in question. Instead the funds from the various advances under those Private Mortgages were advanced from time to time for non-construction of purposes including the following:*
>
> *(a) To purchase and extend expired vendor take-back financing;*
> *(b) To re-finance third party financing obtained to acquire the lands initially;*
> *(c) To provide interest reserves; and*
> *(d) To pay costs of the financing and provide working capital for the Applicants."*

As a result of your client's position, the practical effect is that he is claiming priority with respect to approximately the $2,000,000.00 which is held in trust by the Monitor.

As a result of your position, this has necessitated the Bank of Montreal being a party in this proceeding. If your client is entitled to all the funds held by the Monitor, and if there is a deficiency in the holdback required to be maintained by the owner, liability would fall to the Bank of Montreal, which loan is clearly admitted to be for the purposes of financing a construction loan.

In recent communications, you have indicated that if there is a deficiency in the holdback, the trades would be able to access and be paid by the funds held by the Monitor. If your client is agreeable to this, this is a significant change in position. It may also mean that the Bank of Montreal no longer has to be a party to this proceeding.

Could you please confirm your position. Please get back to us quickly. If your client is agreeable to this, we should formulate a formal consent order so as to shorten the hearing in this matter.

Yours very truly,

EMILIO BISCEGLIA
EB/c

TAB B

Jeffrey Spiegelman

From: James Klein <jklein@kalaw.ca>
Sent: July-05-16 3:43 PM
To: 'Marco Drudi'; 'Sonja Turajlich'; 'Lee Guarino'; cclynick@cavalluzzo.com; thenry@cavalluzzo.com; ahanif@cavalluzzo.com; dmg@goodmansolomon.com; finegold@gsnh.com; 'Lori Goldberg'; rmazar@mazarlaw.com; s.zomorodi@zomorodilaw.com; 'Michael Mazzuca'; krish@rousseaumazzuca.com; monica@rousseaumazzuca.com; 'Jeffrey Spiegelman'; 'Lida Aghazadeh'; 'Jeffrey J. Long'
Cc: ebisceglia@lawtoronto.com; 'Robert Zigler'
Subject: RE: OUR LETTER RE: BMO INVOLVEMENT - Silver Streams Homes (Puccini) Inc.

WITHOUT PREJUDICE

Marco,

The position of the Private lenders throughout was that there is nothing owing to the Trades and that the Private Mortgagees were not construction lenders but mortgagees with priority over the liens. Without agreeing that your position is correct, BMO as construction lender definitely had liability for any holdback deficiency. As such BMO was a necessary party.

If the Private mortgagees are consenting to the priority of any lien holdback deficiency being ahead of their mortgages then we can proceed forward with that consent and BMO would not be a necessary party although their evidence will be necessary. To be clear, it is BMO's liability, if the Private mortgagees are content that BMO's obligations for such deficiency comes out of the proceeds held by the monitor, so be it. That is an issue between the Private mortgagees and BMO. Though it is not an argument I need to make, for all practical purposes any holdback deficiency would be added to the BMO mortgage anyways and they are ahead of your client's mortgages.

As for any costs for BMO should they be sought or payable those are properly payable out of the monies held by the monitor as those costs are added to their mortgage as well. As a further matter, I understood that BMO was also challenging all the liens.

James Klein
Klein & Associates Professional Corporation
Barristers & Solicitors
Suite 1101, 390 Bay Street
Toronto, Ontario M5H 2Y2

Tel: 416-366-9494, Ext. 225
Fax: 416-366-9442
jklein@kalaw.ca
www.kalaw.ca

TAB C

Jeffrey Spiegelman

From: Sonja Turajlich <sturajlich@lawtoronto.com>
Sent: July-07-16 6:41 PM
To: mdrudi@dakllp.com; JSpiegelman@aclaw.ca; Lee.Guarino@aclaw.ca
Cc: lena@lawtoronto.com; jklein@kalaw.ca; jlong@kmlaw.ca; rzigler@cfflaw.com; finegold@gsnh.com; goldberg@gsnh.com; rmazar@mazarlaw.com; Daniela Office; David Goodman; Emilio Bisceglia
Subject: Re: Silverstream - WITH PREJUDICE Agreed Statement of Fact
Attachments: Agreed Statement of Facts.pdf
Importance: High

WITH PREJUDICE

Marco & Jeffrey,

Further to the below, we attach the Agreed Statement of Facts signed by Lien Claimants counsel (we anticipate hearing from Richard Mazar and Len Finegold/Lori Goldberg tomorrow morning and anticipate no issues).

Thank-you,
Sonja

Sonja Turajlich
Lawyer
BISCEGLIA & ASSOCIATES
Professional Corporation

Direct Dial: 905-695-3424
Main Tel: 905-695-5200 ext.206
Assistant: Lena 905-695-5200 ext.200
Fax: 905-695-5201

From: Emilio <ebisceglia@lawtoronto.com>
Date: Thursday, July 7, 2016 at 11:30 AM
To: <mdrudi@dakllp.com>, <JSpiegelman@aclaw.ca>, <Lee.Guarino@aclaw.ca>
Cc: Sonja Turajlich <sturajlich@lawtoronto.com>, Lena Office <lena@lawtoronto.com>, <jklein@kalaw.ca>, <jlong@kmlaw.ca>, <rzigler@cfflaw.com>, <finegold@gsnh.com>, <goldberg@gsnh.com>, <rmazar@mazarlaw.com>, Daniela Office <daniela@lawtoronto.com>
Subject: Silverstream - WITH PREJUDICE Agreed Statement of Fact

WITH PREJUDICE

Marco & Jeffrey,

The Lien Claimants are prepared to agree to the attached. We understand Jim Klein and Jeff Long will be signing it shortly.

Marco and Jeffrey (Spiegelman), will you both confirm that your clients are prepared to agree and sign off.

Thank-you,

Emilio Bisceglia ?

Court File No.: CV-13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C.C-36, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE OF ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

AGREED STATEMENT OF FACTS

WHEREAS pursuant to the Order of The Honourable Mr. Justice Newbould dated January 8, 2015, issues (as listed in paragraph 2 of the Order) with respect to the Construction Claims, the Private Mortgagees, and the Mortgagees (all as defined in the Order) were referred to Duncan Glaholt as Referee for hearing (the "Reference/Arbitral Hearing");

AND WHEREAS pursuant to the Sixth Procedural Order of Duncan Glaholt dated January 13, 2016, the Reference/Arbitral Hearing is scheduled to start and finish over ten consecutive days during the weeks of July 11, 2016 and July 18, 2016;

THE PARTIES HERETO DO HEREBY ADMIT the truth of the following facts for the purposes of the Reference/Arbitral Hearing:

1. Any Lien Claimant that proves its claims will have priority over the mortgages of the Bank of Montreal and all of the Private Mortgagees (namely, DaPaul Management Limited, 388242 Ontario Limited, 53 Puccini Mortgage Corp., Nastell Investments Limited, and Castle Lane Design Group Inc.) to the extent of any deficiency in the holdback ("Holdback Deficiency"), which Holdback Deficiency is to be paid from the funds held by the Monitor.

All of which is agreed to by the undersigned.

July___, 2016

____
Marco Drudi
Counsel for the Private Mortgagees,
Puccini Mortgage Corp., Da Paul Management Limited,
388242 Ontario Limited, 53 Puccini Mortgage Corp.,
Nastell Investments Limited and Castle Lane Design Group Inc.

July 7th, 2016

James Klein / per S. Turajlich

James Klein
Counsel for Pilbro III Inc., Medi Group Incorporated, Cardeli Florring Ltd., Foremont Drywall Inc., 1382479 Ontario Inc., 1382503 Ontario Inc., 2203579 Ontario Inc. c.o.b. Foremont Drywall Contracting, Canadian Concrete Forming Limited, Pave Plumbing & Heating Inc., E.D. Carpenters Ltd., Solo Electric Ltd., 1865721 Ontario Inc., GM Exterior Inc., Giancola Aluminum

July 7, 2016

Emilio Bisceglia
Counsel for Argo Lumber Inc. and Newmar Window Manufacturing Inc.

July 7th, 2016

Jeffrey Long / per S. Turajlich

Jeffrey Long
Counsel for Con Drain (1983) Limited

July___, 2016

Lori Goldberg/Leonard Finegold
Counsel for Paris Kitchens, a Division of Sanderson-Harold Company Limited

July___, 2016

Richard Mazar
Counsel for Alma Mechanical

3

July___, 2016

Jeffrey Spiegelman/Lee Guarino
Counsel for Bank of Montreal

July 7th, 2016

David Goodman /per
David Goodman
Counsel for King-Con Corporation

S. Turajlich

TAB D

Jeffrey Spiegelman

REDACTED DUE TO SOLICITOR AND CLIENT PRIVILEGE

From: Jeffrey Spiegelman <Jeffrey.Spiegelman@aclaw.ca>
Sent: Saturday, July 9, 2016 10:34 AM
To: ebisceglia@lawtoronto.com
Cc: Marco Drudi; Jeffrey Spiegelman; jklein@kalaw.ca; rmazar@mazarlaw.com; Lee Guarino; Sonja Turajlich; fsouza@lawtoronto.com
Subject: Re: Amended Order

Thank you for your email Emilio.
I absolutely agree with you and Jim that B MO is no longer a necessary party to this proceeding and that it should be let out immediately.
Please confirm that a motion shall be brought first thing Monday at the outset of the hearing so that the Arbitrator can assist, if necessary, to craft such order or make such ruling permitting the Claims against the bank to be dismissed without prejudice to the bank's right to make cost submissions.
Please also confirm, and Jim as well, that the Bank need not continue preparing for the hearing. In doing so all parties are limiting any further costs of the bank.
I look forward to hearing from each of you in a timely fashion.
Thank You,
Jeff

Jeffrey Spiegelman
Partner
Agueci & Calabretta
5700 Yonge Street, Suite 1110
Toronto, Ontario
M2M 4K2
JSpiegelman@ACLaw.ca
ACLaw.ca

On Jul 9, 2016, at 10:03 AM, "ebisceglia@lawtoronto.com" <ebisceglia@lawtoronto.com> wrote:

Without prejudice

Good morning

I view matters in very simple terms. I believe that until last weekend it was clear the Bank was a necessary party given Greenberg took the position the private mortgages were not taken to finance an improvement. There was a break in this position when the first offers to settle were sent after 3 years of litigation.

As a result, I wanted to get the Bank out. So did Jim and Jeff.

I drafted an agreed statement tracking Marco language in his e mail to us. As I told Jeffrey, I can convert it to an order. I thought it was fair since I was using Marco's words.

I cannot agree to the format of Marco's draft order. It is not fair. The draft order creates a presumption in favour of Marco's client i.e. that the monies should be treated "Phase by Phase". That is not fair, as this is Issue 4 to be determined by the Referee.

I spoke to Jim. Both Jim and I are prepared to convey to the Referee the position that the Bank is not a needed Party in that the funds the obligations will come from the funds with the Monitor.

If there is a fair order – maybe one that tracks the draft agreed statement of facts please send it and we can consider. As noted, I am prepared to convert it to an order. I note all the lien cliamants, and Jeffery agreed to the format so its just Marco that has not provided his consent.

Thank you

Emilio

TAB G

Court File No. 13-10362-00CL

ONTARIO SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148893 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC., and 2147650 ONTARIO INC.

Duncan W. Glaholt, Referee)	**Wednesday, the 28th**
)	**day of September, 2016**
)	

FINAL REPORT/AWARD
(Pursuant to the *Construction Lien Act*)

IN ACCORDANCE WITH the judgment of reference of The Honourable Mr. Justice Newbould dated 8 January 2015, (the "Judgment of Reference") a Partial Report/Award issued in this matter on 11 August 2016, reproduced at Schedule "A", attached;

UPON READING submissions regarding facility costs by counsel for Argo Lumber Inc. and Newmar Window Manufacturing Inc. dated 15 August 2016, by counsel for the Medi Group of Lien Claimants on 16 August 2016 and by counsel for the Private Mortgagees dated 15 August 2016; submissions regarding 25 July 2016 costs by counsel for Silver Streams Homes Inc. on 17 August 2016 and by counsel for Argo Lumber and Newmar Window dated 23 August 2016; and submissions regarding Bank of Montreal's costs by counsel for the Bank of Montreal dated 15 August 2016 amended 26 August 2016, by counsel for the Private Mortgagees dated 9 September 2016; reply submissions by counsel for the Bank of Montreal on 16 September 2016; reply submissions by counsel for the Private Mortgagees on 17 September 2016; and further reply costs submissions by counsel for the Bank of Montreal on 21 September 21 September 2016:

1. **I FIND AND DECLARE** that the Partial Report/Award, Schedule 'A' attached, is affirmed and incorporated by reference into this Final Report/Award.

2. **I FIND AND DECLARE** that the amount of costs to which the Bank of Montreal is entitled pursuant to paragraph 8 (b) of the Partial Report/Award, fixed and assessed by me inclusive of all fees, disbursements and taxes, is $50,000.

3. **I ORDER** that any and all other claims for interest and costs arising from this reference are dismissed.

4. **I ORDER** that the following payments be made forthwith by the Monitor in the following priority:

   a) *First in priority*, the Monitor shall pay the Lien Claimants the amounts found due and owing to them as set out in my Partial Report/Award, Schedule A hereto, and upon payment each Lien Claimant's corresponding lien shall be discharged, the certificate of action, if any, shall be vacated, and its lien action, if any, together with all crossclaims, if any, shall be dismissed without costs;

   b) *Second in priority*, the Monitor shall pay the Bank of Montreal, $50,000 in full satisfaction of the Bank of Montreal's costs of this reference;

   c) *Third in priority*, the Monitor shall pay to "Jack Greenberg, in Trust for Private Mortgagees", the balance of the funds held with respect to the subject lands and premises, up to but not exceeding the sum of $11,960,703.22.

   d) *Fourth*, any surplus remaining in the Monitor's hands after payments as above, if any, shall be retained by the Monitor subject to further disposition by the Court.

Dated at Toronto, this 28th day of September 2016

Duncan W. Glaholt
Referee

SCHEDULE A

Court File No. 13-10362-00CL

ONTARIO SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, as amended

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148893 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC., and 2147650 ONTARIO INC.

Duncan W. Glaholt, Referee)
)
)

Wednesday, the 11th
day of August, 2016

PARTIAL REPORT/AWARD
(Pursuant to Section 62(1)(b) and Form 21 of the *Construction Lien Act*)

IN ACCORDANCE WITH the judgment of reference of The Honourable Mr. Justice Newbould dated 8 January 2015, (the "Judgment of Reference") the trial of the actions referred to on Schedule "A" attached, commenced on 11 July, 2016, at the City of Toronto, Ontario, in the presence of counsel for the Lien Claimants Pilbro III Inc., Medi Group Incorporated, Cardell Flooring Ltd., Foremont Drywall Inc., 1382479 Ontario Inc., 1382503 Ontario Inc., 2203579 Ontario Inc. cob Foremont Drywall Contracting, Canadian Concrete Forming Limited, Pave Plumbing & Heating Inc., E.D. Carpenters Ltd., Solo Electric Ltd., 1865721 Ontario Inc., GM Exterior Inc., Giancola Aluminum Contractors Inc., counsel for the Lien Claimants Argo Lumber Inc. and Newmar Window Manufacturing Inc., counsel for Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, Dapaul Management Limited, Nastell Investments Limited and Castle Lane Design Group Inc. (the "Private Mortgagees"), and counsel the Bank of Montreal, all claims against Home Trust Company having been dismissed on consent without costs by order dated 29 June 2015, the claim by Trudel & Sons Roofing having been dismissed on consent without costs by order dated 29 June 2015, and the claims against Foremost

Mortgage Holding Corporation having been dismissed on consent without costs by order dated 9 September 2015;

AND UPON READING THE EVIDENCE FILED, including the Affidavit of Andreas Havenga sworn 24 March 2015 and exhibits thereto, filed on behalf of Argo Lumber Inc.; the affidavit of Lou D'Ambrosio sworn 24 March 2015 and exhibits thereto, filed on behalf of Newmar Window Manufacturing Inc.; the affidavit of Nunzio Bitondo sworn 30 March 2015 and exhibits thereto, filed on behalf of Con-Drain Company (1983) Limited); the affidavit of Tony Pileggi sworn 12 March 2015 and exhibits thereto, filed on behalf of Pilbro III Inc.; the affidavit of Dominic Montemurro sworn 24 March 2015 and exhibits thereto, filed on behalf of Medi Group Incorporated; the affidavit of Gord Ellis sworn 13 March 2015 and exhibits thereto, filed on behalf of Cardell Flooring Ltd.; the affidavit of Mary Montagner sworn 19 March 2015 and exhibits thereto, filed on behalf of Foremont Drywall Inc., 1382479 Ontario Inc., 1382503 Ontario Inc., 2203579 Ontario Inc. cob Foremont Drywall Contracting; the affidavit of Pat Lamanna sworn 17 March 2015 and exhibits thereto, filed on behalf of Canadian Concrete Forming Limited; the affidavit of Pat Di Stefano sworn 17 March 2015 and exhibits thereto, filed on behalf of Pave Plumbing & Heating Inc.; the affidavit of Sam Dibacco sworn 13 March 2015 and exhibits thereto, filed on behalf of E.D. Carpentry Limited; the affidavit of Sandy Ragno sworn 16 March 2015 and exhibits thereto, filed on behalf of Solo Electric Ltd.; the affidavit of Ismail Parmaksizoglu sworn 16 March 2016 and exhibits thereto, filed on behalf of 1865721 Ontario Inc.; the affidavit of John Giancola sworn 23 March 2015 and exhibits thereto, filed on behalf of GM Exterior Inc.; the affidavit of John Giancola sworn 23 March 2015 and exhibits thereto, filed on behalf of Giancola Aluminum Contractors Inc.; the affidavit of Munira Budhdeao sworn 8 July 2016 and exhibits thereto, filed on behalf of Argyle Hardwood & Flooring Ltd.; and the affidavit of Jack Greenberg sworn 27 March 2015 and exhibits thereto, along with the supplementary affidavit of Jack Greenberg sworn and filed 14 July 2016 filed on behalf of the Private Mortgagees;

AND ON READING THE PLEADINGS AND PROCEEDINGS HEREIN AND CONSENTS FILED, including the consents of the Private Mortgagees, the Bank of Montreal, and the Lien Claimants Labourers' Union of North America Local 183 Members' Benefit Trust Fund, 1865721

Ontario Inc., Paris Kitchens, a Division of The Sanderson-Harold Company Limited, Con-Drain Company (1983) Ltd., Argo Lumber Inc., Newmar Window Manufacturing Inc., King-Con Construction Corporation, 669857 Ontario Inc. o/a Alma Mechanical, Cardell Flooring Limited, Foremont Drywall Inc. et al. carrying on business as Foremont Drywall Contracting, Solo Electric Limited, 1865721 Ontario Inc., GM Exteriors Inc., Pilbro III Inc., Medi Group Incorporated, Canadian Concrete Forming Limited, Pave Plumbing & Heating Inc., E. D. Carpenters Limited, and Giancola Aluminum Contractors Inc., filed, no-one appearing for Renova Recycling or Argyle Hardwood & Flooring Ltd. (although not a Lien Claimant, a motion was filed on behalf of Argyle Hardwood & Flooring Ltd. and is dealt with herein), or any of the Schedule C claimants as identified in the Judgment of Reference;

AND UPON HEARING THE SUBMISSIONS OF COUNSEL attending, including submissions made on 14 July 2016 on behalf of the lien claimants Argo Lumber and Newmar Mechanical;

1. **I FIND AND DECLARE** that each of the persons named in Column 1 of Schedule A to this Partial Report/Award has a lien under the *Construction Lien Act* as against the lands described in Schedule "C" attached, in the amount shown opposite their names in Column 4 of Schedule A, constituting a charge under section 21 of the *Construction Lien Act* upon the holdback required to be retained by the defendant-owners Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc., for which the said defendant-owners are jointly and severally personally liable to the Lien Claimants

2. **I FIND AND DECLARE** that each of the persons named in Column 1 of Schedule A to this Partial Report/Award is entitled to personal judgment in the amount set opposite their names in Column 6 of Schedule A.

3. **I FIND AND DECLARE** that the deficiency in holdback required to be kept by the Defendant Owners, Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc., under the *Construction Lien Act* with respect to each Lien Claimant is the amount set out in Column 4 of

Schedule A, and that each said Lien Claimant has priority over each of the claims of each of the Private Mortgagees to the extent of such deficiency in holdback.

4. **I FIND AND DECLARE** pursuant to paragraph 2(c) of the Judgment of Reference, that Argyle Hardwood & Flooring Ltd. shall have personal judgment only as against the parties listed in Column 6 of Schedule B, for the amount set forth in Column 5 of Schedule B.

5. **I FIND AND DECLARE** that the amounts owed as of June 25th, 2016 by the parties listed in Column 7 of Schedule A to Puccini Mortgage Corp. is $1,612,338.61, to 53 Puccini Mortgage Corp. is $3,279,784.31, to 388242 Ontario Limited is $1,566,246.61, to Nastell Investments Limited $4,875,419.77, and to Castle Lane Design Group Inc. is $626,914.92 for an aggregate amount of $11,960,703.22.

6. **I ORDER** that all claims by all parties against the defendant Bank of Montreal be and the same are hereby dismissed, on consent, without costs.

7. **I ORDER** that the following payments be made forthwith by the Monitor in the following priority:

a) *First in priority*, the Monitor shall pay the Lien Claimants the amounts found due and owing to them for deficiency in holdback as set forth in Column 4 of Schedule A, and upon payment each Lien Claimant's corresponding lien shall be discharged, the certificate of action, if any, shall be vacated, and its lien action, if any, together with all crossclaims, if any, shall be dismissed without costs;

b) *Second in priority*, the Monitor shall pay the Bank of Montreal, or as it may in writing direct, the Bank of Montreal's costs of this reference fixed and assessed by me inclusive of all fees, disbursements and taxes according to the procedure set out in the consent of the Private Mortgagees and Bank of Montreal annexed as Schedule D hereto;

c) *Third in priority*, the Monitor shall pay to "Jack Greenburg, In Trust for Private Mortgagees", the balance of the funds held with respect to the subject lands and premises, up to but not exceeding the sum of $11,960,703.22.

d) *Fourth*, any surplus remaining in the Monitor's hands after payments as above, if any, shall be retained by the Monitor subject to further disposition by the Court.

8. **I FURTHER ORDER** that in view of the exceptional cooperation of counsel and parties in the resolution of this complex matter there shall be no further costs awarded to any party.

Dated at Toronto, this 11th day of August 2016

Duncan W. Glaholt
Referee

REVISED Schedule A Lien Claimants

Column 1 Name of person entitled to Construction Lien	Column 2 Principal	Col. 3 Costs	Column 4 Lien amount	Column 5 Interest (non-lienable)	Column 6 Personal Judgment (claim and interest)	Column 7 Primary Debtor
Con-Drain Company (1983) Limited Lien reg. as: YR2016863 Court File No. CV-13-116355-00	[Incl.]	[Incl.]	$25,000.00	$3,522.99	$98,359.70	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Pilbro III Inc. Lien reg. as: YR2056986 Court File No. CV-13-116840-00	[Incl.]	[Incl.]	$91,798.91	$19,763.85	$574,117.67	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Medi Group Incorporated Lien reg. as: YR2057173 Court File No. CV-13-116838-00	[Incl.]	[Incl.]	$99,714.00	$18,598.79	$540,273.79	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Cardell Flooring Ltd. Lien reg. as: YR2057568	[Incl.]	[Incl.]	$24,663.34	$3,384.17	$98,306.27	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc.,

Column 1 Name of person entitled to Construction Lien	Column 2 Principal	Col. 3 Costs	Column 4 Lien amount	Column 5 Interest (non-lienable)	Column 6 Personal Judgment (claim and interest)	Column 7 Primary Debtor
Court File No. CV-13-116835-00						2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Foremont Drywall Inc./1382479 Ontario Inc./1382503 Ontario Inc./2203579 Ontario Inc./c.o.b. Foremont Drywall Contracting Lien reg. as: YR2057675 Court File No. CV-13-116837-00	[Incl.]	[Incl.]	$61,261.57	$15,493.60	$450,071.53	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Canadian Concrete Forming Limited Lien reg. as: YR2057676 Court File No. CV-13-116834-00	[Incl.]	[Incl.]	$60,619.39	$7,708.03	$223,909.71	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Pave Plumbing & Heating Inc. Lien reg. as: YR2057677	[Incl.]	[Incl.]	$26,198.70	$8,103.82	$235,406.77	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990

Column 1 Name of person entitled to Construction Lien	Column 2 Principal	Col. 3 Costs	Column 4 Lien amount	Column 5 Interest (non-lienable)	Column 6 Personal Judgment (claim and interest)	Column 7 Primary Debtor
Court File No. CV-13-116839-00						Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
E. D. Carpenters Ltd. Lien reg. as: YR2058240 Court File No. CV-13-116836-00	[Incl.]	[Incl.]	$19,527.89	$11,717.90	$340,391.91	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Solo Electric Ltd. Lien reg. as: YR2058688 Court File No. CV-13-116841-00	[Incl.]	[Incl.]	$30,362.23	$6,644.27	$193,008.43	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
1865721 Ontario Inc. Lien reg. as: YR2059379 Court File No. CV-13-116833-00	[Incl.]	[Incl.]	$20,575.55	$3,262.82	$94,781.37	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.

Column 1 Name of person entitled to Construction Lien	Column 2 Principal	Col. 3 Costs	Column 4 Lien amount	Column 5 Interest (non-lienable)	Column 6 Personal Judgment (claim and interest)	Column 7 Primary Debtor
GM Exterior Inc. Lien reg. as: YR2062198 Court File No. CV-13-117058-00	[Incl.]	[Incl.]	$9,451.58	$1,628.42	$48,187.62	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Giancola Aluminum Contractors Inc. Lien reg. as: YR2062199 Court File No. CV-13-117059-00	[Incl.]	[Incl.]	$16,265.36	$2,888.23	$85,467.23	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
L.I.U.N.A. Local 183 et al. Lien reg. as: YR2050961	[Incl.]	[Incl.]	$7,500.00	$787.70	$23,355.71	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Argo Lumber Inc. Lien reg. as: YR2048904 Court File No. CV-13-116990-00 Newmar Window Manufacturing Inc.	[Incl.]	[Incl.]	$140,000.00 collectively	$0	$0	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario

Column 1 Name of person entitled to Construction Lien	Column 2 Principal	Col. 3 Costs	Column 4 Lien amount	Column 5 Interest (non-lienable)	Column 6 Personal Judgment (claim and interest)	Column 7 Primary Debtor
Lien reg. as: YR2050277 Court File No. CV-13-116991-00						Inc., and 2147650 Ontario Inc.
King-Con Corporation Lien reg. as: YR2049079 Court File No. CV-116857-00	[Incl.]	[Incl.]	$15,000.00	$3,724.56	$108,298.79	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
The Sanderson-Harold Company Ltd., Paris Kitchens Lien reg. as: YR2058638 Court File No. CV-15-539365	[Incl.]	[Incl.]	$45,000.00	$7,282.91	$211,152.91	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
669857 Ontario Inc. o/a Alma Mechanical Lien reg. as: YR2060246 Court File No. CV-13-117214-00	[Incl.]	[Incl.]	$25,000.00	$3,733.38	$112,020.38	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
TOTALS			$717,938.52			

Column 1 Name of person entitled to Construction Lien	Column 2 Principal	Col. 3 Costs	Column 4 Lien amount	Column 5 Interest (non-lienable)	Column 6 Personal Judgment (claim and interest)	Column 7 Primary Debtor

Schedule B Non-lien claims, personal judgment only

Column 1 Name of person entitled to personal judgment only	Column 2 Principal	Column 3 Costs	Column 4 Interest	Column 5 Personal judgment amount (claim and interest)	Column 6 Primary Debtor
Argyle Hardwood & Flooring Ltd.	$129,516.11	0	$4,226.95	$133,743.06	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
TOTAL:				$133,743.06	

SCHEDULE C Legal Description

1. Lot 1, Plan 65M4249, Town of Richmond Hill; PIN: 03206-3418 (LT)
2. Lot 23, Plan 65M4249, Town of Richmond Hill; PIN: 03206-3440 (LT)
3. Lot 24, Plan 65M4249, Town of Richmond Hill; PIN: 03206-3441 (LT)
4. Lot 18, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3502 (LT)
5. Lot 19, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3502 (LT)
6. Lot 20, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3503 (LT)
7. Lot 22, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3505 (LT)
8. Lot 23, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3506 (LT)
9. Lot 24, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3507 (LT)
10. Lot 25, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3508 (LT)

SCHEDULE D

Court File No.: CV-13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES CREDITORS ARRANGEMENT ET. AL
R.S.C. 1985, C.C-36, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE OF ARRANGEMENT OF
SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC.,
2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC.
AND 2147650 ONTARIO INC.

CONSENT

THE PARTIES HERETO, Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, Dapaul Management Limited, Nastell Investments Limited, Castle Lane Design Group Inc and Bank of Montreal, by their lawyers, consent to the Procedural Order attached hereto and certify that no party to this proceeding is under any legal disability.

Date: Jly 15/2014

Drudi Alexiou Kuchar LLP
7050 Weston Road, Suite 610
Vaughan, Ontario L4L 8G7

Marco Drudi
Tel: (905) 850-6116 / Fax: (905) 850-9146

Lawyers for Puccini Mortgage Corp.. 53 Puccini Mortgage Corp., 388242 Ontario Limited, Dapaul Management Limited, Nastell Investments Limited, Castle Lane Design Group Inc.

Date: July 13, 2016

Agueci & Calabretta per

Agueci & Calabretta
5700 Yonge Street
Suite 1100,
North York, Ontario,
Lawyers for Bank of Montreal

Court File No.: CV-13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENTS ACT, R.S.C. 1985, C.C-36, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE OF ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC.. 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

PROCEDURAL ORDER # _____

An issue has arisen between the Bank of Montreal and the Private Mortgagees regarding the costs claimed by the Bank of Montreal in relation to this Reference and the source of the funds to pay such costs.

On the Consent of the Defendants Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, Dapaul Management Limited, Nastell Investments Limited and Castle Lane Design Group Inc. and the Bank of Montreal,

1. I hereby direct that the Monitor pay, on a without prejudice basis, from the funds held by the Monitor, after payment of the amounts found to be payable to the Lien Claimants from said funds, but before payment of the amounts owed to the Defendants, Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, Dapaul Management Limited, Nastell Investments Limited and Castle Lane Design Group Inc.(the "Private Mortgagees), the legal costs incurred by Bank of Montreal ("BMO") arising in relation to this Reference which have not been otherwise reimbursed, on the following terms and conditions:

   (a) By no later than August 15, 2016, BMO shall deliver to the Monitor, and to the lawyers for the Private Mortgagees, copies of all Accounts received by BMO and to be paid by the Monitor (the "Accounts");

(b) By no later than August 15, 2016, BMO will provide to the Private Mortgagees, and file with me, a Bill of Costs, the dockets of the lawyers involved in the Accounts and, where requested, will provide to the Private Mortgagees copies of the invoices/receipts for disbursements;

(c) The payment of the funds to BMO will be without prejudice to the rights of the parties herein and BMO will execute a reimbursement agreement in favour of the Private Mortgagees wherein BMO agrees to reimburse the Private Mortgagees after costs are fixed by me should I reduce the Accounts/Bill of Costs;

(d) I will set a date for the half-day hearing on the costs to be heard not later than September 15th, 2016. Where the amount paid by the Monitor pursuant to this Order to BMO exceeds the amount of costs I order payable to BMO, BMO shall remit the excess payment to the Private Mortgagees within 15 days from my finding; however, if at the time of my finding the Monitor has not yet paid the costs of BMO, then the Monitor shall pay to BMO, from the fund, the amount I order payable to BMO as costs; and

(e) Within 10 days from receipt of the payment by the Monitor to BMO, BMO is to register a discharge of their Mortgage on Lot 18, M-Plan 65M4331.

ALL OF WHICH IS ORDERED AND DIRECTED THIS ________ DAY OF JULY, 2016

____
DUNCAN W. GLAHOLT, REFEREE

TAB H

Court File No. 13-10362-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

In the matter of a reference under the *Construction Lien Act*, R.S.O. 1990, c. C.30 as amended

And in the matter of R. 54, Ontario Rules of Civil Procedure

DUNCAN W. GLAHOLT, Referee

Date: **28 September 2016**

File: 13-10362-00CL

Title: **In the Matter of a Plan of Compromise or Arrangement of Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc.**

REASONS

28 September 2016

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[1] On 11 August 2016, I issued reasons for a Partial Award/Report of the same date. The original intent of issuing a Partial Award/Report was to allow monies to flow to the Lien Claimants while relatively small residual issues of costs as between the Private Mortgagees and the Bank of Montreal were resolved.

[2] Then matters became somewhat more complicated. Although I had reduced my own account up to and including 11 August 2016 by $13,783.95, such that there were no Referee costs beyond the initial deposits ordered by Justice Newbould on 8 January 2015, two additional costs-related disputes emerged:

a. Facility costs: Counsel for Argo and Newmar wrote on 15 August 2016 taking issue with costs of the reporter's facility in which we conducted our hearings. This position was supported by counsel for the Lien Claimants on 16 August 2015, and opposed by counsel for the Private Mortgagees on 15 August 2015. The bill from the reporter's facility amounts to $3,888.52 and covers the period 11 to 14 July 2016. I deal with this issue under the heading "Facility costs" below.

b. 25 July 2016 costs: Counsel for the Silver Streams defendants wrote on 12 August 2016 seeking leave to make submissions on the costs of an attendance arranged for 25 July 2016 to hear argument on the claim of Argo and Newmar for full indemnity costs in the amount of $8,500. I deal with this issue under the heading "25 July 2016 costs" below.

[3] Finally, there is the executed issue of costs as between the Private Mortgagees and the Bank of Montreal:

a. The Bank of Montreal's revised bill of costs filed 26 August 2016 claimed $375,855.00 for fees, $1,409.57 for disbursements and HST, for a total of $426,125.72.

b. The Private Mortgagees made "Cost Submissions" on 9 September 2016.

c. The Bank of Montreal made "Reply Costs Submissions" on 16 September 2016. These "Reply Costs Submissions" prompted an email to me and the bank's counsel from counsel for the Private Mortgagees on Saturday, 17 September 2016, providing reply submissions under 12 headings keyed to the paragraph numbers in the Bank of Montreal's "Reply Costs Submissions".

d. This was followed on Monday, 19 September 2016 by an unsolicited telephone call to me from the Bank of Montreal's lawyer, in the absence of counsel for the Private Mortgagees, wishing to make 'reply' submissions to the Private Mortgagees' Saturday, 17 September 2016 email. *Ex parte* contact like this strongly discouraged, even for simple scheduling matters like this, however I felt it best at this stage to bring closure to these proceedings in short order, without a further expensive round of submissions on the need for reply. I advised counsel for the Private Mortgagees and the Bank of Montreal that I would consider only <u>genuine</u> reply by the Bank of Montreal, to be received no later than close of day Wednesday 21 September 2016.

e. The Bank of Montreal's "Further Reply Costs Submissions" arrived on Wednesday 21 September 2016.

[4] I have carefully considered all submissions made and all arguments advanced. I have thoroughly read all briefs and all exhibits. Any failure on my part to specifically recite or describe any such argument, brief, exhibit or conclusion in these Reasons does not change the fact that they were all carefully read and considered by me in reaching my conclusions. I have specifically excluded any consideration whatsoever of anything said to me by counsel for the Bank of Montreal in their unsolicited call to my office on 19 September 2016.

Facility costs

[5] At paragraph 37 of my Reasons on the Partial Award/Report, I noted my understanding that "[a]*ll facility costs prior to the 25 July 2016 hearing of the Argo and Newmar*

interest hearing were to be borne, I understand, in some consensual fashion by the Lien Claimants and Private Mortgagees."

[6] Counsel for Argo and Newmar, supported by counsel for the "Medi Client" lien claimants, points to paragraph 4 of the Order of Justice Newbould dated 8 January 2015, directing this reference, and paragraph 26 of the Initial Order dated 17 December 2013, providing that any additional "costs of the Referee" were secured by an Administration Charge and are to be paid by the Monitor. This of course begs the question as to whether the facilities costs were "costs of the Referee", or costs to be borne in some consensual fashion by the parties.

[7] Counsel for the "Medi Client" lien claimants pointed out that as some lien claimants attended the hearing and some did not, but all benefited from the settlement, saddling any particular group of lien claimants with even this small amount would be unfair and "*quite frankly . . . difficult to collect at this point.*" In 26 July 2016 submissions, the point was made (among others) that the hire of a hearing room was a necessary incident and unavoidable cost of retaining a Referee, as "[i]*t is not as if the hearing could have been conducted in a phone booth*", and that the whole sense of the settlements reached was that the Lien Claimants have no further responsibility for costs.

[8] In response, counsel for the Private Mortgagees noted that the Administrative Charge was just that, security for payment, not a pre-determination of responsibility for costs, a jurisdiction which the Judgment of Reference granted to me as Referee.

[9] In order that the reporter's business not be inconvenienced by this debate, I paid their bill in full myself in the amount of $3,888.52 on 13 September 2016, merely as a courtesy to the reporter who had accommodated our on-again, off-again week of adjournments leading up to the settlement.

[10] On balance, I am persuaded by the arguments made by the Medi Client group of lien claimants that costs beyond the $100,000 deposit are to be borne by the Monitor, and that the settlements were intended to cut off any further exposure of the Lien Claimants for costs. Therefore I will record the $3,888.52 as a disbursement in my final bill to the Monitor to be issued following release of my Final Award.

25 July 2016 costs

[11] Counsel for the Silver Streams defendants wrote on 17 August 2016 claiming full indemnity costs of $8,500 inclusive of fees, taxes and disbursements, or partial indemnity costs of $5,300, for opposing the cost and interest claims of Argo and

Newmar. A 19 July 2016 "without prejudice" offer of judgment in the amount $1,500, all inclusive, against the Silver Streams defendants, in favour of Argo and Newmar, plus personal judgment for *Courts of Justice Act* interest of approximately $12,000 was included with these submissions.

[12] Counsel for Argo and Newmar responded by letter on 23 August 2016 citing *McDonald v. Anishinabek Police Service* [2007] O.J. No. 424 for the proposition that "costs of costs" are generally not awarded except in unusual circumstances, which in their view did not exist in this case. It was argued that there are no circumstances in this case to support a claim for substantial indemnity costs. In addition, the quantum of costs was challenged on various grounds.

[13] While the Silver Streams defendants prevailed on the issue of costs and interest, their offer of judgment involved credits that might have required clarification and it was not unreasonable therefore that the Argo and Newmar costs claim proceed. As provided at paragraph 8 of my Partial Report/Award, the exceptional cooperation of counsel and parties in the resolution of this complex matter argues strongly in favour of no further costs being awarded to any party especially on issues of costs. No costs are awarded to the Silver Streams defendants on the Argo and Newmar claims for costs and interest in this reference.

BMO costs claimed against the Private Mortgagees

[14] On 15 August 2016 I received copies of accounts and a Bill of Costs from lawyers for the Bank of Montreal current to 18 June 2016. A further account for the period 18 June 2016 to 22 August 2016 followed on 26 August 2016. The amount claimed on a full indemnity scale was $426,125.72 inclusive of fees, disbursements and taxes.

[15] On 8 September 2016, I received costs submissions from the Private Mortgagees, which I would summarize as follows:

a. As to liability:

   i. The settlement in which the Bank of Montreal participated was on a "without costs" basis, and the Bank of Montreal neither sought nor obtained costs against the Lien Claimants. This restricts any claim that the bank may have for costs to matters exclusively at issue between the Bank of Montreal and the Private Mortgagees.

   ii. There were no cross-claims or other matters directly in dispute between the bank and the Private Mortgagees. Any proceedings that increased costs, such as the November 2015 application to compel Bank of Montreal records and answer undertakings, were initiated by the Lien Claimants, not the Private Mortgagees.

b. As to scale and quantum:

   i. Scale cannot be determined by reference mortgage documents to which the Private Mortgagees were not parties.

   ii. Nothing in the Private Mortgagee's conduct on this reference displaces the presumption of partial indemnity costs. In fact the conduct of this matter as between the Private Mortgagees and the Bank of Montreal was one of marked cooperation throughout this matter.

   iii. The fees claimed in the amount of $375,855.00 are disproportionate to the stake the bank had in the matters at issue and the bank's peripheral role in the whole process. This claim is three times the fees of the lawyers for the Private Mortgagees who held the labouring oar. Moreover, the Bank of Montreal's claim includes significant non-reference related time entries (such as the collateral Tarion proceedings before Justice Wilton-Siegel), leaving about $130,000 of fees related to the reference, at most.

   iv. Rates and time charged were also challenged.

c. It is the Private Mortgagee's submission that no costs should be awarded to the Bank of Montreal, or, if awarded, on a partial indemnity basis only, in the amount of $40 – 45,000 plus disbursements of approximately $1,500 and associated taxes.

[16] The Bank of Montreal's "Reply Cost Submissions" advanced arguments I would summarize as follows:

a. The bank relies upon its standard charge terms with its borrower, Silver Streams, entitling it to indemnity. The bank also relies upon its acknowledged priority over the Private Mortgagees. The bank argues that it can simply tack any costs of recovery onto its mortgage debt, *"thereby in effect binding third parties who are subsequent in priority on title so as to lessen their security in the project."*

b. The bank argues that as long as there was *any* possibility that the Private Mortgagees might take priority over the Lien Claimants in a way that would leave the Bank of Montreal exposed for deficiency in holdback, there was sufficient adversity in interest between the bank and the Private Mortgagees to ground an award of costs. This argument is repeated a number of ways throughout the bank's submissions.

c. The bank argues that until the Private Mortgagees conceded some priority to the Lien Claimants on 8 July 2016 (the bank calls this a *"seismic shift"*) the bank had no choice but to participate. This argument, also made in a variety of ways in the Reply Cost Submissions, is that priority should have been conceded sooner, and that this conduct justifies an award of costs in favour of the bank as against the Private Mortgagees.

d. The bank states that "[a]*s a consequence of the tactics employed by the Private Mortgagees in causing BMO to be kept in this litigation, the Private Mortgagees were able to negotiate favourable settlements with all of the lien claimants . . ."* The bank views the Private Mortgagee's defence of the lien claims as a mere gambit to force down their settlement value at the hearing itself. The bank says that it had no involvement in the settlements made between the Private Mortgagees and the Lien Claimants, and alleges that it was "excluded" from those negotiations.

e. The bank relies upon s. 86 of the *Construction Lien Act* to claim substantial indemnity costs, and Rule 57.01(1) as to the factors I should consider in assessing quantum on that scale. As to quantum, the bank argues carefully each of the considerations enumerated in Rule 57.01. I have considered all of these most thoroughly. Each allegation by the Private Mortgagees as to quantum is discussed and counter-argued.

f. The bank is also of the view that my jurisdiction extends to costs incurred outside of this Reference, relating to the underlying CCAA process, since this Reference was *"ordered to ensure that nay security it is entitled to is preserved (be it PPSA security or otherwise)."*

[17] The Private Mortgagees' email of 17 September 2016 advanced arguments which I would summarize as follows:

a. The Private Mortgagees further develop their "lack of adversity in interest" argument: neither Silver Streams nor the Private Mortgagees challenged the Bank of Montreal mortgages, or cross-claimed in any respect against the Bank of Montreal; in fact it was the Lien Claimants that alleged deficiency in holdback priority and those claims were settled on consent without costs.

b. The Private Mortgagees deny any agreement of any kind that the Bank of Montreal be entitled to any costs, on any scale, at any time. There is no evidence to support any representations by the Private Mortgagees as to deficiency in holdback, or entitlement to the Fund held by the Monitor, for costs or otherwise. Similarly there is no evidence on the record to support an exercise of discretion under s. 86 of the *Construction Lien Act*.

c. The Private Mortgagees concede that they did not involve the Bank of Montreal in the settlements made with the Lien Claimants, but argue that this "*supports that the Private Mortgagees never looked to BMO to assist in financing the settlement of the Lien Claimants*". In response to the allegation that the bank was actively excluded from the settlement process, the Private Mortgagees point to docket entries that "*confirm the many hours spent by counsel discussing the file and the settlement.*"

d. As to quantum, the Private Mortgagees note that there were no CCAA issues in this Reference, that the bank in reality had no exposure, and that all they really had to do was to produce proper accounting of their advances.

e. As to proportionality, it is noted that there was no 'special deal' between counsel for the Private Mortgagees and client, or with Mr. Greenberg, that the client was billed and that the client paid these bills. A comparative analysis with the accounts rendered to the Private Mortgagees and to Argo and Newmar for example, is said to show the excessive nature of the claims being advanced by the Bank of Montreal.

[18] Finally, on 21 September 2016 I received unexpectedly comprehensive "Further Reply Costs Submissions" from the Bank of Montreal, in twelve enumerated paragraphs, which I would summarize as follows:

a. The bank emphasizes in several ways, in several places, that it is not seeking costs against the Private Mortgagees, as such, but rather against the "Security" (the amount now held by the Monitor).

b. While acknowledging that the Private Mortgagees did not claim to rank ahead of the bank, they did claim priority over the Lien Claimants, thereby arguably exposing the bank to reimbursement of the Lien Claimants under Reimbursement Agreements. The nub of the bank's argument here seems to be that while the Security was in the aggregate face amount of the liens themselves, the bank's risk was with respect to lienable costs awarded beyond that amount.

c. The timing of the settlement is put in issue once again, this time supported by four emails among counsel, some marked "without prejudice", from the 5 – 9 July 2016 period. This is again said to be a "seismic shift" in the Private Mortgagees' position on the eve of trial which was "*part and parcel of* [a] *strategy to keep pressure on the lien claimants*", as the bank "*would be arguing strenuously that the lien claimants had priority over the Private Mortgagees to the Security*".

d. The bank argues its consent, Schedule D to the Partial Report/Award, as an agreement to entitlement to costs. The form of procedural order attached , paragraph 1, contemplates that after payment of the amounts found due to the Lien Claimants, and before payment to the Private Mortgagees, payment be made of "*the legal costs incurred by the Bank of Montreal ("BMO") arising in relation to this Reference which have not been otherwise reimbursed*".

e. The bank renews its s. 86 arguments.

[19] My ruling on this final costs issue is as follows:

a. I reject any suggestion of improper conduct by any counsel or party in this reference. There is no evidence of any such conduct. It is not unusual for complex lien matters to end up settling "on the courthouse steps". As I noted in my initial reasons, the conduct of all counsel in advancing all issues in this matter was exemplary. Their ability to get together to consent to this reference illustrates a level of cooperation that was sustained throughout the entire proceeding. There is no basis for application of s. 86 sanctions against any party or counsel.

b. It is the Lien Claimants who brought the bank into this litigation and kept the bank in this litigation. There was no cross-claim by the Private Mortgagees against the bank. For the most part, the bank simply supported the priority position taken by the Lien Claimants, a point emphasized in the bank's own Further Reply Costs Submissions. All possible costs claimable by or against the Lien Claimants were settled and must be excluded from any costs as between the Private Mortgagees and the Bank of Montreal.

c. The bank was involved in some fashion in the settlements being reached, as appears from contemporary docket entries. By way of example only, on 5 and 6 July 2016, just days before the hearing:

i. July 5, 2016: "Correspondence from Sonja Turajlich enclosing Offer to Settle from Argo Lumber Inc, and Newmar Window Manufacturing Co."

ii. July 5, 2016: "Correspondence from Emilio Bisceglia to Marco Drudi regarding settling the Arbitration/Reference with Bank of Montreal."

iii. July 5, 2016: "Telephone discussion with James Klein regarding settlement with B.M.O."

iv. July 6, 2016: "Receipt and review of offer to settle by clients of Emilio Bisceglia and Jim Klein."

v. July 6, 2016: "Several discussions with client regarding proposed settlement of the Arbitration as between Bank of Montreal and those lien claimants represented by Jim Klein, Emilio Bisceglia and Jeff Long."

vi. July 6, 2016: "Four page correspondence to client attaching Offer to Settle as negotiated with counsel to lien claimants but not counsel to Private Mortgagees; . . ."

vii. July 6, 2016: "Telephone discussion with Greg Fedoryn regarding my correspondence, the Offer to Settle and our counter-offer."

d. I cannot see on the record before me in this case any occasion on which the Private Mortgagees caused the Bank of Montreal to incur costs unrelated to the claims advanced by the Lien Claimants. Costs incurred by the bank related in whole or in part to the conduct of the CCAA proceedings must also be excluded. They are not within my remit.

e. With respect to costs not related to the defence of the Lien Claims and not related in whole or in part to the conduct of the CCAA proceedings, I believe that over the course of this proceeding no more than 20% of the bank's claim related to achieving the overall settlement of this matter justifying an award of costs. This recovery should be on a partial and not substantial indemnity basis. As the full indemnity claimed was $426,125.72 inclusive of fees, disbursements and taxes, I fix and assess the bank's partial indemnity costs in this matter at

$50,000, inclusive of all fees, disbursements and taxes to date, to be paid out of the Security in priority to the Private Mortgagees.

[20] My jurisdiction is confined to this Reference, and I do not purport to limit what any party may claim in the CCAA or other proceedings for that matter.

[21] My Final Report/Award incorporating the above findings and the earlier Partial Report/Award will issue accordingly.

Duncan W. Glaholt, Referee
28 September 2016

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
In the matter of a reference under the *Construction Lien Act*, R.S.O. 1990, c. C.30 as amended
And in the matter of R. 54, Ontario Rules of Civil Procedure

DUNCAN W. GLAHOLT, Referee
Date: **11 August 2016**
File: 13-10362-00CL
Title: **In the Matter of a Plan of Compromise or Arrangement of Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc.**

REASONS
11 August 2016

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[1] Although the principal relief sought in this matter was resolved on consent, there were a number of procedural matters of note, and a ruling required on the claims advanced by Argo Lumber Inc. and Newmar Window Manufacturing Inc. for interest and costs. I propose to deal with these matters in these reasons.

Parties

[2] The following parties either settled during the period prior to hearing, or failed to attend at the hearing, as indicated below:

a. All claims against Home Trust Company were dismissed on consent without costs by Order dated 29 June 2015;

b. All claims by Trudel & Sons Roofing were dismissed on consent without costs by Order dated 29 June 2015;

c. All claims against Foremost Mortgage Holding Corporation were dismissed on consent without costs by Order dated 9 September 2015;

d. Counsel for Renova Recycling (2000) Inc. did not attend the first three procedural conference calls and advised on September 3, 2015 that they had obtained a consent order removing them as counsel of record for Renova Recycling (2000) Inc. The Order is that of Justice G.P. Di Tomaso issued at Newmarket on 19 August 2015. New counsel did not appear on the record for Renova Recycling

(2000) Inc. nor did it file a notice of intention to act in person, as required by Justice De Tomaso's the Order.

e. Argyle Hardwood & Flooring Ltd. had no claim for lien and brought a motion for personal judgment returnable at the hearing which went unopposed;

f. Books of Evidence required by Procedural Order No. 1 dated 9 February 2015 were not filed by King-Con Corporation, 669857 Ontario Inc. o/a Alma Mechanical or Paris Kitchens a division of the Sanderson-Harold Company Ltd.

g. No Book of Evidence was filed by the Bank of Montreal.

Issues resolved on consent

[3] The hearing commenced on 11 July 2016. We adjourned on consent that day, and day-by-day over the following three days, to permit the parties to negotiate a resolution of this matter.

[4] All issues eventually settled except for the claims of Argo Lumber and Newmar Window for personal judgment for interest and costs, and the claim of the Bank of Montreal for costs, both of which matters are referenced below.

[5] Lawyers for the following parties attending before me on 14 July 2016 filed the following consents, in the following order, each of which attached a form of procedural order providing for an agreement as to timeliness, lienability and quantum, priority over all mortgages, the value of holdback deficiency pertaining to that lien (or liens) and that except as included in the lien amount, there would be no further costs awarded:

a. Consent by the Labourers' Union of North America Local 183 Members' Benefit Trust Fund and Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited; Dapaul Management Limited and Nastell Investments Limited (hereafter "the Private Mortgagees"), and Bank of Montreal, dated 8 July 2016;

b. Consent by Paris Kitchens a division of The Sanderson-Harold Company Limited and the Private Mortgagees and Bank of Montreal, dated 8 July 2016;

c. Consent by Con-Drain Company (1983) Limited and the Private Mortgagees and the Bank of Montreal, dated 8 and 9 July 2016;

d. Consent by Argo Lumber Inc. and Newmar Window Manufacturing Inc., the Private Mortgagees, and Bank of Montreal, dated 11 July 2016;

e. Consent by King-Con Construction, 669857 Ontario Inc. o/a Alma Mechanical, Cardell Flooring Limited, Foremont Drywall Inc. et al., Solo Electric Limited, 1865721 Ontario Inc., GM Exterior Inc., the Private Mortgagees, Castle Lane Design Group (Jack Greenberg) and the Bank of Montreal, undated;

f. Consent by Pilbro III Inc., Medi Group Incorporated, Canadian Concrete Forming Limited, Pave Plumbing & Heating Inc., E.D. Carpenters Limited, Giancola Aluminum Contractors Inc., the Private Mortgagees, Castle Lane Design Group (Jack Greenberg) and the Bank of Montreal, dated 12 July 2016;

g. Consent by 669857 Ontario Inc. o/a Alma Mechanical and the Private Mortgagees and Bank of Montreal, undated, but referencing paragraph 5 of an attached draft Procedural Order which states that it is "the last Claim for Lien to be dealt with in this Reference."

h. Consent by the Private Mortgagees and the Bank of Montreal, dated 13 July 2016, including a procedural calendar for the determination of the costs of the Bank of Montreal on this Reference, such costs, once determined by me, to be paid to the Bank of Montreal prior to any monies being paid to the Private Mortgagees; this procedural calendar provides that by 15 August 2016 the Bank of Montreal is to provide to the lawyers for the Private Mortgagees copies of all accounts rendered to the bank, a Bill of Costs, the dockets for the lawyers involved, and invoices/receipts for disbursements claimed; the bank is to get paid the amount claimed in exchange for discharging its mortgage on Lot 18, M-Plan 65M4331, subject to reimbursing the Private Mortgagees any difference between that amount and the amount I award following a half day hearing no later than 15 September 2016;

[6] The idea appears to have been to have the first group of Lien Claimants referenced in paragraph 5, subparagraphs (a) through (f) above, consent to the value of their lien, inclusive of lienable costs and interest (non-lienable) and a corresponding amount as "Holdback Deficiency", all of which was to be paid in first priority from funds currently held by the Monitor, and then, with those liens disposed of, have the last Lien Claimant standing, 669857 Ontario Inc. o/a Alma Mechanical, (g) above consent to the following relief:

a. Finding that the individual Private Mortgagees were owed the aggregate sum of $11,960,703.22, broken down as per Schedule A to that consent;

b. Directing that the balance of the "Fund" held by the Monitor, after paying the Lien Claimants as per their consents pursuant to what were intended to be individual procedural orders, and after then having paid the Bank of Montreal a sum to be determined within this Reference pursuant to a form of Direction attached as Schedule B to that consent, be paid to "Jack Greenberg, in trust, on behalf of the Defendants Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, Nastell Investments Limited and Castle Lane Design Group (the direction in this regard is signed by Jack Greenberg on behalf of Castle Lane Design Group).

[7] I did not agree to issue individual procedural orders as requested. In my view the relief sought on consent was substantive and had to be dealt with by "Report/Award" (I adopt this term from the judgment of reference).

[8] Based on the consents filed, therefore, I prepared a draft Partial Report/Award which I circulated to counsel on 19 July 2016. I received responses on behalf of Newmar Window Manufacturing Inc. and Argo Lumber Inc. on 19 and 29 July 2016; on behalf the Medi Group of Lien Claimants on July 20; on behalf of the Private Mortgagees on 20, 21 and 25 July and 2 August 2016; and on 27 July 2016 again on behalf of the Medi Group of Lien Claimants. I also solicited information on 4 August 2016 and received replies from counsel on 5 August 2016.

[9] Apart from the purely administrative matters raised in these letters, all of which have been considered and many of which have been incorporated in the Partial Report/Award issued concurrently with these Reasons, a question was raised as to my jurisdiction to make the following order, even on consent:

> 4. I FIND AND DECLARE that the amounts owed by the parties listed in Column 7 of Schedule A to the Private Mortgagees, Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, DaPaul Management Limited, Nastell Investments Limited and Castle Lane Design Group Inc. is $11,960,703.22.
>
> ...
>
> 6. I ORDER that the following payments be made forthwith by the Monitor in the following order:
>
> ...
>
> c. Third, the Monitor shall pay to "Jack Greenberg, in Trust for Private Mortgagees", the balance of the funds held with respect to the subject lands and premises, up to but not exceeding the sum of $11,960,703.22.
>
> d. Fourth, the surplus remaining after payments as above, if any, shall be retained by the Monitor subject to further disposition by the Court.

[10] This jurisdictional question was raised again on 29 July 2016. Responding submissions on this jurisdictional were delivered on 21, 25 July 2016 and 2 August 2016. I have carefully considered all points raised.

Analysis and ruling on jurisdiction issue

[11] My jurisdiction derives solely from the consent Judgment of Reference of The Honourable Justice F. Newbould made 8 January 2015. In my capacity as Referee I have the jurisdiction conferred upon me by s. 58 (4) and (4.1) of the *Construction Lien Act*. I must therefore try and completely dispose of the action and all matters and questions arising in connection with the action, including the giving of leave to amend any pleading and the giving of directions to a receiver or trustee appointed by the court.

[12] I am also subject to the mandatory provisions of Section 51 of the *Construction Lien Act* (all emphasis added):

> 51. The court, whether the action is being tried by a judge or on a reference by a master, a case management master or <u>a person agreed on by the parties</u>,
>
> a. <u>shall try</u> the action, including any set-off, crossclaim, counterclaim and, subject to section 56, third party claim, and <u>all questions that arise therein or that are necessary to be tried in order to dispose completely of the action and to adjust the rights and liabilities of the persons appearing before it</u> or upon whom notice of trial has been served; and,
>
> b. <u>shall</u> take all accounts, make all inquiries, give all directions and do all things necessary to <u>dispose finally of the action and all matters, questions, and accounts arising therein or at the trial and to adjust the rights and liabilities of, and give all necessary relief to, all parties to the action</u>.

[13] Therefore, while I have no more jurisdiction than this I must at least exercise all this jurisdiction.

[14] Section 51 brings the issue down to this: is the issue of the amount owed to the individual Private Mortgagees (a) a question that arises from the pleadings <u>or</u> a question necessary to be tried to completely dispose of the action and to adjust the rights and liabilities of the persons appearing before it; <u>or</u>, (b) is it a matter, question, account arising in the Reference requiring "necessary" relief to the parties.

[15] In my view it is both. The Lien Claimants' pleadings claim priority over the Private Mortgagees. Resolving these claims for priority necessarily entails determination of the amount owed to the Private Mortgagees. Had the matter proceeded through the

hearing, instead of being resolved on consent, I would have had to make a finding as to the amount still owed to each Private Mortgagee to completely dispose of the issues framed by the pleadings.

[16] The amount still owed to the individual Private Mortgagees is also a matter, question, account "arising in the Reference", requiring necessary relief to the parties. In July 2015, a year before the hearing commenced all participating parties agreed on a List of Issues to be determined on this Reference, which I reproduce in full below (with emphasis added):

1. Whether the liens registered as general liens are valid, general liens, or not?
2. Do the contracts of the Lien Claimants include a valid lot-by-lot paragraph, or not?
3. Who are the builders/developers/owners that are liable to pay the provable liens and Statutory Holdback amounts?
4. What are the proven quantum of the lien claims and whether same need to be broken down based upon:
   (i) the individual lots;
   (ii) the separate owners/builders/developers; and
   (iii) the separate contracts entered into by the Lien Claimants with the various owners/builders/developers of the various parcels of land.
5. The timeliness of the liens considering the various contracts, the various lots and/or portions of land upon which the liens are registered, subject to issues 1 2, 3 and 4 above.
6. The quantum of the unsecured claims.
7. <u>How much is due and owing by the mortgagors to the private mortgagees on the individual mortgages</u>?
8. <u>Of the proceeds and payments received by the private mortgagees, how were those funds applied to repay the various private mortgages</u>?
9. <u>Are any of the mortgages building mortgages, and if so, what priority do some or all the lien claimants or the unsecured claimants have as against one or all of the mortgagees</u>?
10. If the liability of one or all of the mortgagees is restricted to a deficiency in the holdback, then what is or are the amounts of holdback in issue?
11. If one or more of the mortgagees failed to withhold portions of the mortgage advances to deal with their holdback exposure, what impact does such failure have on the priority issues involving subsequent mortgages?

[17] Items 7, 8 & 9 on the parties' agreed List of Issues are conclusive in favour of my jurisdiction over the issue of the amount owing to the Private Mortgagees on the individual mortgages, even if the pleadings left room for doubt, which in my view they do not.

[18] I therefore find that I have jurisdiction to make the consent Award/Report at paragraphs 4 and 6 (c) and (d).

Argo and Newmar claims for interest and costs

[19] On 15 July 2016 I was advised by lawyers for Argo Lumber Inc. and Newmar Window Manufacturing Inc. that those parties sought personal judgment for "principal" (by which I believe they meant interest) and costs, relying upon the original affidavits sworn in support of their respective lien claims. On Tuesday 19 July 2016, claims were advanced as follows:

Claimant	Costs claimed (incl. HST)	Interest claimed (incl. HST)	Total interest + costs claimed	Consent lien amount
Argo	$131,381.51	$85,785.64	$217,167.15	$135,060.11
Newmar	$78,546.36	$43,059.30	$121,605.66	$67,793.32
Total	$209,927.87			$202,853.43

[20] A hearing on these matters was held on 25 July 2016. Argo and Newmar relied upon the original Affidavits of Lou D'Ambrosio and Andreas Havenga sworn 24 March 2015 filed with their Books of Evidence in June 2015, as well as Supplementary Affidavits from each sworn on 15 July 2016.

[21] The D'Ambrosio and Havenga supplementary affidavits claim 24% interest on the basis of invoicing, and repeat statements made to them by their lawyers to the effect that the issue of personal judgment for costs is a live issue on this Reference, notwithstanding the resolution of lien issues on consent.

[22] The Lawyers for Silver Streams Inc., et al. filed a responding Brief of Documents on 22 July 2016, including authorities.

[23] The argument of Argo and Newmar is essentially as follows:

a. The invoices referencing 24% interest is *prima facie* evidence of entitlement and quantum, shifting the onus to the responding parties to prove that interest at this rate was *not* part of the agreement. As it was put in reply submissions, "this evidence [of the invoiced rate] is unchallenged". An adverse inference was requested based on the respondents failure to lead evidence to prove a negative, i.e. that there was no such agreement. It was argued that "implied agreement" cases are not applicable because in our case the invoices actually stipulate for interest at 24% and there is no need to imply an agreement.

b. A personal judgment for costs against the Silver Stream defendants was claimed in the aggregate amount of $209,927.87 on an agreed aggregate lien value of $202,853.43. It was argued that full indemnity costs should follow the event (except for $20,458.98 which is claimed in another proceeding before Justice Wilton-Siegel). It was argued that costs of this magnitude were proportionate to the Monitor's own costs of approximately $360,000. As to scale, counsel pointed out the risk of non-recovery and argued that the real question should be "why not full indemnity?" Two computer printouts of docket time for Argo and Newmar were filed at the hearing, unsupported by affidavit, but without objection. These docket entries commence on 15 and 18 October 2013, respectively.

[24] Silver Streams, supported by the Private Mortgagees, argued as follows:

a. Mr. D'Ambrosio verified the Newmar contract when cross-examined on his original affidavit and the Newmar contract, as verified, does not contain a provision for interest, let alone compounded interest at 24%. When cross-examined on his original affidavit, Andreas Havenga verified the Argo contract, and the Argo contract, as verified, does not contain a provision for interest, let alone compounded interest at 24%. The fact that these contracts do not provide for interest, distinguishes this case from the cases cited by Argo and Newmar. The factors identified by Justice Campbell in *Royal Group v. Core Precision* are applicable in this case: no interest rate in the contract; no discussion of interest rates between the parties; no historical acceptance of interest rate; no discussion of interest as part of disputed account, in demand letters for example; and no admission in the pleadings. The Newmar invoices actually do not mention interest at all, let alone mentioning interest at 24%; the mention of interest by Newmar occurs only in delivery information; and finally, there is no annualization of the compounded interest claimed to 26.82% as required by the federal *Interest Act* meaning that pre-judgment interest, if any, would be simple *Courts of Justice Act* interest at 1.3% p/a.

b. As to costs, it was argued that while I have jurisdiction to grant personal judgment for costs, no Bills of Costs were before me, notwithstanding requests for same. It was noted that the lien consent signed by Argo and Newmar provided clearly that there will be no costs. The Private Mortgagees and Bank of Montreal, were the only parties that took an adverse position to Argo and Newmar. Silver Stream took no adverse position. Thus, the cost of preservation and perfection and prosecution of the liens, which is substantially all Argo and

Newmar should have in costs relevant to this reference, are included in the existing consent order. As to the dockets sheets filed, counsel noted that costs recoverable on this Reference can date only from the inception of the Reference, i.e. from the order of Justice Newbould on 8 January 2015, not earlier. As to proportionality it was pointed out that the bulk of the Monitor's costs related to the CCAA proceedings and not to the referred lien proceedings, and therefore this is not a relevant metric for proportionality.

Analysis and ruling on Argo and Newmar claims for interest and costs

[25] As to interest, none of the factors identified by Justice Campbell in his endorsement in *Royal Group v. Core Precision* were established by Argo and Newmar. The admitted contract does not stipulate for interest. There is no evidence of discussion of interest rates between the parties. There is no evidence of historical acceptance of such an interest rate (or any interest rate).

[26] There is no evidence of haggling over interest in disputing the account. There is no basis for an award of prejudgment interest other than as contemplated by the *Courts of Justice Act* at the rate of 1.3% to the date of this Partial Report/Award, and I have so ordered.

[27] As to costs, all costs relevant to the lien itself (preservation, perfection, lienability, timeliness, and quantum) were included in the consent order signed on behalf of Argo and Newmar and filed. I have been given nothing else to establish to my satisfaction that any costs resulted from any adversarial position taken by the Silver Stream defendants.

[28] I therefore decline to grant Argo or Newmar further personal judgment for costs.

Personal judgments

[29] The consents that were filed disposed the lien issues, deficiency in holdback issues, priority issues and costs as a component of the liened amount.

[30] This left only the issue of personal judgments, as claimed in the various liens and lien actions, and as claimed by the non-lien claimant, Argyle Hardwood and Flooring Ltd., in its motion for summary judgment filed on 11 July 2016. Mr. Klein provided me with a summary of this information for his clients in chart form at the opening of the hearing under the heading "Claims Particulars". This was received without objection. I have in evidence copies of the relevant liens and/or statements of claim for the balance of the

lien claimants. On 4 August 2016 I sought clarification from all counsel attending the hearing regarding the issue of personal judgment.

[31] On 5 August 2016 I was referred to an email I received from counsel for the Private Mortgagees dated 25 July 2016 taking the following position:

> "With respect to the personal judgment amounts and PJI in accordance with the CJA as against Silver Streams, I take no issue. When the Private Mortgagees resolved the priority dispute, it was without prejudice to the right of the Medi Group Lien Claimants to request personal Judgment. I have copied Mr. Schwartz, the lawyer for Silver Streams so that he is aware of the request."

[32] I was also provided with a copy of the portions of transcript of the examination for discovery of Imran Jinnah on behalf of the Silver Stream defendants taken on 31 August 2015 containing the following statement by counsel for the Silver Streams defendants:

> MR. SCHWARTZ: No, no, no. Sorry, we've said consistently that we do not dispute --- the construction contracts we don't dispute, that they were entered into, right?
>
> We don't dispute that the work was done by the trades, right?
>
> We don't dispute that they're owed the monies that they claim they're owed.

[33] No contrary position to this statement was taken at the hearing and no contradictory evidence was tendered or received. I have therefore granted personal judgment as sought by each lien claimant using Mr. Klein's "Claims Particulars" chart for his clients and pleadings for the others, with interest at 1.3% from the date of claim to 11 August 2016.

[34] There was no opposition to the motion for summary judgment on the Argyle Hardwood and Flooring claim and I allow that claim, in the amount of $129,516.11 with interest at 1.3% in the amount of $4,226.95 for a total of $133,743.06.

Referee's costs

[35] Written submissions were received on behalf of the Private Mortgagees on 26 July 2016 on two further potential issues: a) the possibility that my costs as Referee might exceed the $100,000 provided for by paragraph 4 of the judgement of reference; and, b) the disbursement to the facility that hosted our reference proceeding. The Medi Group of lien claimants responded promptly on 27 July 2016.

[36] As it turns out, however, due to the abbreviation of the reserved hearing time, and because I have reduced my fees and disbursements as Referee including absorbing the $451.44 facility fee on 25 July 2016, the day that the Argo and Newmar interest and costs arguments were heard, my fees and disbursements in total do not to exceed $100,000, this issue does not arise.

[37] All facility costs prior to the 25 July 2016 hearing of the Argo and Newmar interest and cost hearing were to be borne, I understand, in some consensual fashion by the lien claimants and Private Mortgagees.

[38] Any Referee or facility costs associated with resolution of the Bank of Montreal's claim for costs will be dealt with in the Final Report/Award.

[39] The Partial Report/Award issued concurrently with these reasons reflects the above findings and rulings.

Duncan W. Glaholt, Referee
11 August 2016

TAB I

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
In the matter of a reference under the *Construction Lien Act*, R.S.O. 1990, c. C.30 as amended
And in the matter of R. 54, Ontario Rules of Civil Procedure

NINTH PROCEDURAL ORDER
17 June 2016

DUNCAN W. GLAHOLT, Referee
Date: **17 June 2016**
File: 13-10362-00CL
Title: **In the Matter of a Plan of Compromise or Arrangement of Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc.**

[1] An issue has arisen as to the order of evidence at the hearing commencing 11 July 2016.

[2] Counsel for the Private Mortgagees argue that:

a. The lien claimants are plaintiffs and must prove their case first.

b. It is necessary to clarify the extent of the priority actually claimed against the Private Mortgagees, and the Bank of Montreal, and the amount of holdback that the lien claimants seek access to.

c. This is necessary so that the Private Mortgagees and the Bank of Montreal can know what they must respond to.

d. The evidence of the Private Mortgagees and the Bank of Montreal forms a piece and should not be interrupted by evidence from the lien claimants.

[3] Counsel for Argo Lumber Inc. and Newmar Windows, supported by other lien claimants argue that:

a. This is a priority fight. The Claims Process Order of Justice Wilton-Siegel contemplates Mr. Greenberg and the Private Mortgagees as "Claimants" and it is "Claimants" that should proceed first, not lien claimants who are, in effect, nominal plaintiffs as a result of having to perfect their liens by action.

b. From a practical point of view, it is Bank of Montreal, Mr. Jinnah and the Private Mortgagees that know the whole story, so it makes practical sense for them to tell that story first, to contextualize the rest of the evidence.

c. The lien claimants take no issue amongst themselves as to timeliness or quantum. The challenge on those issues, and the quantum of holdback, comes from Mr. Greenberg and the Private Mortgagees.

[4] One matter upon which all parties are agreed is the List of Issues to be decided at the hearing. This List of Issues has been confirmed in procedural orders No. 3, 4, 5, 6 and 7, issued on consent. I quote that list of issues:

1. Whether the liens registered as general liens are valid, general liens, or not?

2. Do the contracts of the Lien Claimants include a valid lot-by-lot paragraph, or not?

3. Who are the builders/developers/owners that are liable to pay the provable liens and Statutory Holdback amounts?

4. What are the proven quantum of the lien claims and whether same need to be broken down based upon:
   (i) the individual lots;
   (ii) the separate owners/builders/developers; and
   (iii) the separate contracts entered into by the Lien Claimants with the various owners/builders/developers of the various parcels of land.

5. The timeliness of the liens considering the various contracts, the various lots and/or portions of land upon which the liens are registered, subject to issues 1 2, 3 and 4 above.

6. The quantum of the unsecured claims.

7. How much is due and owing by the mortgagors to the private mortgagees on the individual mortgages?

8. Of the proceeds and payments received by the private mortgagees, how were those funds applied to repay the various private mortgages?

9. Are any of the mortgages building mortgages, and if so, what priority do some or all the lien claimants or the unsecured claimants have as against one or all of the mortgagees?

10. If the liability of one or all of the mortgagees is restricted to a deficiency in the holdback, then what is or are the amounts of holdback in issue?

11. If one or more of the mortgagees failed to withhold portions of the mortgage advances to deal with their holdback exposure, what impact does such failure have on the priority issues involving subsequent mortgages?

[5] This was agreed. This helps understand the proper order evidence in this case. The order of evidence is merely procedural. It does not determine legal onus. If legal onus becomes an issue, it will be dealt with as part of the hearing.

[6] Issues 1 through 6 suggest that the lien claimants and unsecured claimants should put their cases in first. I ask counsel for the lien claimants and unsecured claimants to advise as to their order of witnesses.

[7] Issues 7 through 11 suggest that the mortgagees should put their cases in second. I ask counsel for the mortgagees to advise as to the order of their witnesses.

[8] With this resolved, I would ask all counsel to finalize our working list of expected witnesses, lien claimants and unsecured creditors first, mortgagees second, with approximate time allocations, so that we all know who to expect when, and are able to complete our hearing in the 10 reserved hearing days. I would like to have this working list by 30 June 2016.

[9] All of which is ordered and directed 17 June 2016.

Duncan W. Glaholt, Referee
17 June 2016

TAB J

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	THURSDAY, THE 8TH
	)	
JUSTICE NEWBOULD	)	DAY OF JANUARY, 2015

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. and 2147650 ONTARIO INC.

Applicants

ORDER

THIS MOTION, made by Grant Thornton Limited, in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**"), for an Order, among other things, referring the construction lien claims and other related issues in these proceedings (collectively, the "**Construction Claims**") to a referee (the "**Referee**"), and referring the action bearing Court File No. CV-13-115757-00 (the "**Con-Drain Action**") to a Judge of the Commercial List, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Seventh Report of the Monitor dated December 19, 2014, the consent of lien claimants (the "**Lien Claimants**") #s 1 through 11 (as more specifically listed and identified in **Schedule "A"** attached hereto), the consent of the Private Mortgagees and the Mortgagees (as listed in **Schedule "B"** attached hereto), and the consent of the proposed Referee, and on hearing the submissions of counsel for the Monitor, counsel for the Applicants, ~~counsel for certain of the Lien Claimants, counsel for certain of the Private Mortgagees, and counsel for certain of the Mortgagees,~~ no one appearing for the unsecured claimants (the "**Unsecured Claimants**") (as more specifically listed and identified in **Schedule "C"** attached hereto) (together with the Lien Claimants, the "**Claimants**") or any other person on the service list, although duly served as appears from the affidavit of Susy Moniz sworn December 22, 2014, filed,

1. **THIS COURT ORDERS** that the time for service and filing 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 following issues with respect to the Construction Claims be and are referred to Duncan Glaholt, who shall act as the Referee:

(a) the validity and, if necessary, quantum, of the Construction Claims filed by the Claimants;

(b) the determination of whether the Private Mortgagees are Statutory Owners (as defined in the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Act**")), and, if so, the determination of their liability as Statutory Owners to the Lien Claimants;

(c) the liability of the Private Mortgagees and Mortgagees with respect to any deficiency in holdback to the claims of the Lien Claimants;

(d) the determination of priorities as amongst the Claimants regarding their claims as against the Claimants, the Private Mortgagees and Mortgagees; and

(e) any ancillary or peripheral issues that need to be determined in order for the Referee to properly complete its mandate, including any and all issues regarding interest and costs.

3. **THIS COURT ORDERS** that the Referee's determination in respect of the issues enumerated in paragraph 2 above shall be set out in a report (the "**Report/Award**"), which shall be served on the Service List in these proceedings and filed with the Court, and that the Report/Award shall bind any and all affected parties without further confirmation by this Court. For greater certainty, each and every party that filed a claim against one or more of the Applicants in the present proceedings shall be deemed to be an affected party of the

Report/Award. Notwithstanding the foregoing, any and all affected parties shall maintain their right to appeal the Report/Award to the Divisional Court in accordance with the Act.

4. **THIS COURT ORDERS** that the anticipated costs of the Referee, up to the amount of $100,000.00, shall be funded equally, and in advance of the Referee commencing its mandate, by the Private Mortgagees (50%) and the Lien Claimants (50%, such that costs shall be borne by each Lien Claimant on a pro rata basis, as calculated in **Schedule "A"** hereto), and that any additional costs of the Referee shall be secured by the Administration Charge (as defined in the Initial Order issued on December 17, 2013 in these proceedings) and paid by the Monitor (collectively, the "**Referee's Costs**"). Notwithstanding the above, the Referee shall maintain the right to assess costs in the Report/Award against any party, including, without limitation, the right to reallocate the Referee's Costs, and any such assessment shall attract the same deference and appeal rights as provided in paragraph 3 of this Order.

5. **THIS COURT ORDERS** that should a Lien Claimant refuse or neglect to pay its pro rata share of costs (a "**Defaulting Lien Claimant**"), then any other Lien Claimant shall be at liberty to advance the costs payable by the Defaulting Lien Claimant and shall be entitled to twice the amount advanced, which repayment shall form a first charge against any sums found to be due and payable to the Defaulting Lien Claimant and which sum shall be repaid before the Defaulting Lien Claimant receives any proceeds under this process.

6. **THIS COURT ORDERS** that the Con-Drain Action shall be transferred from the Superior Court of Justice in Newmarket, Ontario and shall be heard by a Judge of the Superior Court ~~Commercial List~~ in Toronto, separate from the present proceedings and without the participation of the Monitor, but that the funds in dispute in the Con-Drain Action, which are currently held in the trust account of Chaitons LLP (the "**Chaitons Trust Account**"), shall not be released or distributed from the Chaitons Trust Account without a further Order of this Court sitting in the context of the present proceedings.

JAN 8 – [illegible]

SCHEDULE "A"

	Lien Claimant	Court File No.	Lien Amount ($)	Lien Registration No.	% of Total Lien Amount Claimed by all Lien Claimants
1.	Con-Drain Company (1983) Limited	CV-13-116355-00	94,837	YR2016863	2.6%
2.	Pilbro III Inc.	CV-13-116840-00	554,354	YR2056986	15.5%
3.	Medi Group Incorporated	CV-13-116838-00	521,675	YR2057173	14.6%
4.	Cardell Flooring Ltd.	CV-13-116835-00	94,922	YR2057568	2.6%
5.	Foremont Drywall Inc.; 1382479 Ontario Inc.; 1382503 Ontario Inc.; 2203579 Ontario Inc. c/o Foremont Drywall Contracting	CV-13-116837-00	434,578	YR2057675	12.1%
6.	Canadian Concrete Forming Limited	CV-13-116834-00	216,202	YR2057676	6.0%
7.	Pave Plumbing & Heating Inc.	CV-13-116839-00	227,303	YR2057677	6.3%
8.	E.D. Carpenters Ltd.	CV-13-116836-00	328,674	YR2058240	9.2%
9.	Solo Electric Ltd.	CV-13-116841-00	186,364	YR2058688	5.2%
10.	1865721 Ontario Inc.	CV-13-116833-00	91,519	YR2059379	2.6%
11.	GM Exterior Inc.	CV-13-117058-00	46,559	YR2062198	1.3%
12.	Giancola Aluminum Contractors Inc.	CV-13-117059-00	82,579	YR2062199	2.3%
13.	Renova Recycling (2000) Inc.	CV-14-117811-00	29,392	YR2060384	0.8%
14.	Trudel & Sons Roofing Ltd.	CV-14-117658-00	31,745	YR2073073	0.9%
15.	L.I.U.N.A. Local 183 et al. (Massimo Digiovani as agent)	CV-13-117071-00	22,568	YR2050961	0.6%

16.	Argo Lumber Inc.	CV-13-116990-00	135,060	YR2048904	3.8%
17.	Newmar Window Manufacturing Inc.	CV-13-116991-00	67,793	YR2050277	1.9%
18.	The King-Con Corporation	CV-13-116857-00	104,574	YR2049079	2.9%
19.	The Sanderson-Harold Company Ltd. (Paris Kitchens)	**Not available as at the date hereof**	203,870	YR2058638	5.7%
20.	669857 Ontario Inc. o/a Alma Mechanical	CV-13-117214-00	108,287	YR2060246	3.0%
		TOTAL	3,582,855		100.00%

SCHEDULE "B"

Private Mortgagees

1. Puccini Mortgage Corp.
2. DaPaul Management Limited
3. 388242 Ontario Limited
4. 53 Puccini Mortgage Corp.
5. Nastell Investments Limited
6. Castle Lane Design Group Inc.

Mortgagees

1. Bank of Montreal
2. Foremost Mortgage Holding Corporation
3. Home Trust Company

SCHEDULE "C"

Claimant		Amount ($)
1.	J.S. Construction	18,750
2.	Benzi General Contracting	6,106
3.	Krcmar Surveyors Ltd.	9,287
4.	Quality Door Systems Inc.	20,724
5.	ConelCo Utility Contractors	3,073
6.	MAS Engineering (part of Cole Engineering)	4,379
7.	J.J. Home Products	28,670
8.	TorOnCa Fence and Deck	24,860
9.	Dream Work Canada Inc. o/a Stone Factory	91,435
10.	General Home Built-In Systems Ltd.	33,594
11.	ConelCo Utility Contractors	3,073
12.	Argyle Flooring*	*129,516
	TOTAL	373,467

*Denotes a late claim filed after the deadline of February 14, 2014.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOME (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

Court File No. CV-13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

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IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGMENT ACT, R.S.C. 1985, c. c-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at TORONTO

MOTION RECORD
(Volume II of II)

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