Court File No. CV-17-580840-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE REGIONAL	)	MONDAY, THE 11TH
	)	
SENIOR JUSTICE MORAWETZ	)	DAY OF DECEMBER, 2017

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDEX ENERGY MILLS ROAD CORPORATION

(the "**Applicant**")

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant for an order approving the sale transaction (the "Transaction") contemplated by the asset purchase agreement (the "Sale Agreement") between the Applicant, as vendor, and Index Residence AB (publ), as purchaser, dated September 1, 2017, and appended to the Affidavit of Derek Blais sworn November 29, 2017 (the "Blais Affidavit"), and vesting in: (i) Mills Road Corporation, an assignee of Index Residence AB (publ), the Applicant's right, title and interest in and to the engineering, procurement and construction contract between the Applicant and HMI Construction Inc., dated December 21, 2012, and all claims, refunds, entitlements, rights of recovery, rights of set-off, rights of recoupment, remedies and causes of action arising thereunder or in respect thereof, including, without limitation, the Purchased Assets (as such term is defined in the Sale Agreement) described in: (A) section 2.1(s) of the Sale Agreement to the extent relating to Oshawa Court Files Nos. 92193/15 and 91189/15 and the Applicant's statement of claim issued against Daniel Joseph Leduc on April 26, 2017 ~~(~~; and (B) section 2.1(t) of the Sale Agreement (collectively, the “HMI Litigation Assets”); and (ii) Index Energy Ajax Corporation, an assignee of Index Residence AB (publ), the Applicant’s right, title and interest in and to the Purchased Assets other than the HMI Litigation Assets (Mills Road Corporation and Index Energy Ajax Corporation, together, the “Purchasers”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Blais Affidavit and the Second Report (the “Second Report”) of Grant Thornton Limited in its capacity as the monitor of the Applicant (the “Monitor”), filed, and on hearing the submissions of counsel for the Applicant, the Monitor, and Index Residence AB (publ) and the Purchasers, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Benjamin Goodis sworn November 29, 2017, filed:

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

2. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved, and the execution of the Sale Agreement by the Applicant is hereby authorized and approved, with such minor amendments as the Monitor, the Applicant and the Purchasers may agree upon pursuant to the terms of the Sale Agreement. The Applicant is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchasers.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Monitor’s certificate to the Purchasers substantially in the form attached as Schedule “A” hereto (the “Monitor’s Certificate”), (i) all of the Applicant's right, title and interest in and to the ~~Purchased~~HMI Litigation Assets ~~described in section 2.1(s) of the Sale Agreement~~ shall vest absolutely in Mills Road Corporation; and (ii) all of the Applicant's right, title and interest in and to the Purchased Assets other than the ~~Purchased Assets described in section 2.1(s) of the Sale Agreement~~HMI Litigation Assets shall vest absolutely in Index

Energy Ajax Corporation, in each case free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “Claims”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Regional Senior Justice Morawetz dated August 16, ~~2017,~~2017 (the “Initial Order”), and any other encumbrances or charges created in these CCAA proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule “C” hereto (all of which are collectively referred to as the “Encumbrances”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule “D” or the Assumed Liabilities (as defined in the Sale Agreement)) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of Durham No. 40 of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter Index Energy Ajax Corporation as the owner of the subject real property identified in Schedule “B” hereto (the “Real Property”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule “C” hereto.

5. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor’s Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not

been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

7. THIS COURT ORDERS that any amounts remaining in reserve with respect to the Administration Charge Amount (as defined in the Sale Agreement) after payment of all amounts secured by the Administration Charge (as defined in the Sale Agreement), if any, shall forthwith be remitted by the Monitor to the Purchasers without set-off or deduction.

8. THIS COURT ORDERS that any amounts paid by the Purchasers on account of the Directors' Charge (as defined in the Sale Agreement), shall forthwith be remitted by the Monitor to the Purchasers without set-off or deduction upon the determination by the Monitor that such amounts are in excess of amounts required to make payments secured by the Directors' Charge.

9. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Monitor is authorized and permitted to disclose and transfer to the Purchasers all human resources and payroll information in the Applicant's records pertaining to the Applicant's past and current employees, including personal information of those employees, pursuant to the Sale Agreement. The Purchasers shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Applicant.

10. THIS COURT ORDERS that, notwithstanding:

(a) the pendency of these proceedings;

(b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Applicant and any bankruptcy order issued pursuant to any such applications; and

(c) any assignment in bankruptcy made in respect of the Applicant;

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

11. THIS COURT ORDERS that the articles of the Applicant be amended in accordance with the Articles of Reorganization attached as Schedule “E” hereto with effect from and after the Closing Date (as defined in the Sale Agreement).

12. THIS COURT ORDERS that the Applicant and/or the Monitor are authorized and directed to send the Articles of Reorganization attached hereto as Schedule “E” to the Director appointed under section 278 of the *Business Corporations Act* (Ontario), R.S.O., c.B.16, as amended, promptly after the Closing Date.

13. THIS COURT ORDERS the Monitor to send a copy of this Order, together with a copy of the Articles of Reorganization of the Applicant, when filed, to all parties that have filed a registration under the *Personal Property Security Act* (Ontario), or similar provincial legislation, against the Applicant.

14. THE COURT ORDERS that, upon the filing of the Monitor’s Certificate the title of these proceedings be and is hereby changed to

"IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended

AND IN THE MATTER of a Plan of Compromise or Arrangement of 1715439 Ontario Inc. (formerly known as Index Energy Mills Road Corporation)"

15. THIS COURT ORDERS that, upon Closing (as such term is defined in the Sale Agreement), the Applicant shall be authorized and directed to make a distribution (the "Distribution") to National Bank of Canada, in its capacity as administrative agent for the Syndicate (as such term is defined in the Sale Agreement), in the amount of $20,000,000.

16. THIS COURT ORDERS that Confidential Appendix 1 to the Second Report be and it is hereby sealed and shall be treated as confidential pending the filing of the Monitor's Certificate, at which time it shall be unsealed and shall no longer be treated as confidential.

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

Schedule "A"

Form of Monitor's Certificate

Court File No. CV-17-580840-00CL

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF INDEX ENERGY MILLS ROAD CORPORATION

(the "**Applicant**")

MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Regional Senior Justice Morawetz of the Ontario Superior Court of Justice (the "Court") dated August 16, 2017, Grant Thornton Limited was appointed as the monitor (the "Monitor") of the Applicant.

B. Pursuant to an Order of the Court dated December 11, 2017, the Court approved the asset purchase agreement (the "Sale Agreement") between the Applicant, as vendor, and Index Residence AB (publ), as purchaser, dated September 1, 2017, and provided for the vesting in: (i) Mills Road Corporation, an assignee of Index Residence AB (publ), the Applicant's right, title and interest in and to the engineering, procurement and construction contract between the Applicant and HMI Construction Inc., dated December 21, 2012, and all claims, refunds, entitlements, rights of recovery, rights of set-off, rights of recoupment, remedies and causes of action arising thereunder or in respect thereof, including, without limitation, the Purchased Assets (as such term is defined in the Sale Agreement) described in: (A) section 2.1(s) of the Sale Agreement to the extent relating to Oshawa Court Files Nos. 92193/15 and 91189/15 and the Applicant's statement of claim issued against Daniel Joseph Leduc on April 26, 2017 ~~(~~; and (B) section 2.1(t) of the Sale Agreement (collectively, the "HMI Litigation Assets"); and (ii) Index Energy Ajax Corporation, an assignee of Index Residence AB (publ), the Applicant's right, title and interest in and to the Purchased Assets other than the HMI Litigation Assets (Mills Road Corporation and Index Energy Ajax Corporation, together, the "Purchasers"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchasers of a certificate confirming: (i) the payment by the Purchasers of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Monitor and the Purchasers; and (iii) the Transaction has been completed to the satisfaction of the Monitor.

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

THE MONITOR CERTIFIES the following:

1. The Purchasers have paid, and the Applicant has received, the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to Closing as set out in Article 6 of the Sale Agreement have been satisfied or waived by the Applicant and the Purchasers; and

3. The Transaction has been completed to the satisfaction of the Monitor.

4. This Certificate was delivered by the Monitor at ________ [TIME] on _______ [DATE].

GRANT THORNTON LIMITED, in its capacity as Monitor of the Applicant, and not in its personal capacity

Per: ______________________________

Name:

Title:

Schedule “B”

Real Property

PIN 26459-0125(LT)

Legal Description:

PT LOT 3 PL M30 PTS 1 & 2, PLAN 40R4882 AND PT 1, PLAN 40R4883; T/W ALL APPURTENANCES AND ALL EQUIPMENT THERETO, INCLUDING THE DISTRIBUTION SYSTEM OF THE BUILDING ERECTED ON THE SAID LANDS, KNOWN AS THE STEAM GENERATING PLANT AS PRESENTLY IN OPERATION. THE BURDEN AND BENEFIT OF THE RIGHTS GRANTED IN TRANSFER OF EASEMENT LTC14083, OVER THE ABOVE PCL. THE BURDEN AND BENEFIT OF THE RIGHTS HEREBY GRANTED IN TRANSFER OF EASEMENT LTC24967, REGISTERED 22/12/69, SHALL RUN WITH THE LAND AND SHALL EXTEND TO AND BE BINDING UPON AND ENURE TO THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, S/T LT114518; TOWN OF AJAX

PIN 26459-0017(LT)

Legal Description:

PT LT 3 PL 512 AJAX PT 1, 40R8366; AJAX

Schedule "C"

Claims to be deleted and expunged from title to Real Property

PIN 26459-0125(LT) & PIN 26459-0017(LT):

1. DR1193360 registered July 15, 2013 being a Charge in favour of National Bank of Canada securing the principal amount of $210,000,000;

2. DR1255216 registered April 3, 2014 being a Notice between Index Energy Mills Road Corporation and National Bank of Canada relating to DR1193360;

3. DR1255248 registered April 3, 2014 being a Postponement from National Bank of Canada to The Regional Municipality of Durham;

4. DR1357015 registered April 28, 2014 being a Construction Lien from HMI Construction Inc. in the amount of $31,347,390;

5. DR1376552 registered June 30, 2015 being a Certificate of Action from HMI Construction Inc.;

6. DR1397223 registered August 31, 2015 being a Construction Lien from HMI Construction Inc. in the amount of $1,460,078.00;

7. DR1407722 registered October 1, 2015 being a Certificate of Action from HMI Construction Inc.;

8. DR1587534 registered April 25, 2017 being a Court Order with respect to Construction Lien registered as DR1357015.

PIN 26459-0017(LT) only:

N/A

Schedule "D"

Permitted Encumbrances, Easements and Restrictive Covenants

(unaffected by the Vesting Order)

1. Encroachments disclosed by and any errors or omissions in existing surveys of the Real Property made available to Index Energy Ajax Corporation;

2. Inchoate or statutory liens for unpaid taxes, local improvement rates or water rates;

3. Any municipal by-laws or regulations affecting the Real Property or its use and any other municipal land use instruments including, without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes, in each case which do not materially impair the present use of the Purchased Assets;

4. All development, subdivision and site plan agreements, provided that the same are complied with insofar as they affect or relate to the Purchased Assets;

5. Registered restrictive covenants, private deed restrictions and other similar land use control agreements;

6. Easements for the supply of utilities or telephone services to the Real Property and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services;

7. Registered easements or rights-of-way for the passage, ingress and egress of persons and vehicles over parts of the Real Property.

8. Any minor title defects, irregularities, easements, encroachments, rights-of-way or other discrepancies in title or possession relating to the Real Property;

9. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute;

10. The DIP Lender's Charge (as such term is defined in the Initial Order) and all security with respect to the Index Secured Debt (as such term is defined in the Sale Agreement);

11. ~~10.~~ In respect of the Real Property further described in Schedule "B" hereto:

PIN 26459-0125(LT) only:

(a) Exceptions, reservations and easements contained in Transfer of Easement LTC14083 and LTC24967, to the extent applicable to such parcel;

(b) LT209440Z registered July 12, 1984 being certain Restrictive Covenants;

(c) LTC3716 registered September 29, 1961 being a By-law;

(d) LT660998 registered November 19, 1993 being a By-law.

PIN 26459-0125(LT) & PIN 26459-0017(LT):

(e) DR431409 registered September 26, 2005 being a Notice from Her Majesty the Queen in Right of Canada as Represented by The Minister of Transport regarding airport zoning regulations;

(f) DR723542 registered June 26, 2008 being a Transfer from 2047330 Ontario Limited to Index Energy Mills Road Corporation;

(g) DR968003 registered February 2, 2011 being a Notice by The Corporation of the Town of Ajax;

(h) DR982099 registered April 7, 2011 being a By-law which amends By-law 165-91;

(i) DR984650 registered April 18, 2011 being a Transfer from The Corporation of the Town of Ajax to Index Energy Mills Road Corporation;

(j) DR984651 registered April 18, 2011 being an Application to Consolidate by Index Energy Mills Road Corporation;

(k) DR984678 registered April 18, 2011 being a Notice from The Corporation of the Town of Ajax to Index Energy Mills Road Corporation;

(l) DR1193361 registered July 15, 2013 being a Charge in favour of Index International AB (PUBL) securing the principal amount of $35,000,000;

(m) DR1194663 registered July 19, 2013 being a Notice from The Corporation of the Town of Ajax;

(n) DR1196379 registered July 26, 2013 being a Notice from The Regional Municipality of Durham;

(o) DR1255249 registered April 3, 2014 being a Postponement from Index International AB (PUBL) to The Regional Municipality of Durham;

(p) DR1573357 registered March 6, 2017 being an Application to Change Name with respect to the Charge in favour of Index International AB (PUBL) who changed its name to Index Residence AB (PUBL).

PIN 26459-0017(LT) only:

(q) CO97966 registered September 29, 1961 being a By-law;

(r) DR723543 registered June 26, 2008 being a Transfer from 2047330 Ontario Limited to Index Energy Mills Road Corporation.

Schedule “E”

Articles of Amendment

See attached.

Document comparison by Workshare Compare on Friday, December 08, 2017 3:39:17 PM

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