Court File No. 13-10362-00-CL

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., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

Applicants

MOTION RECORD
(Returnable September 23, 2014)

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TO: SERVICE LIST

Court File No. 13-10362-00-CL

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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

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Applicants

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TAB 1

Court File No. 13-10362-00CL

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

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Applicants

NOTICE OF MOTION

(Returnable September 23, 2014)

THE APPLICANTS will make a motion to a Judge of the Commercial List on Tuesday, September 23, 2014 at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR: an order:

1. if necessary, abridging the time for service of this notice of motion so that the motion is properly returnable on September 23, 2014;

2. extending the Stay Period, as defined in paragraph 11 of the Initial Order of Justice Newbould dated December 17, 2013 (the "**Initial Order**"), to and including January 16, 2015;

3. approving the Fourth Report of Grant Thornton Limited ("**GTL**") in its capacity as Court-appointed Monitor of the Applicants (the "**Monitor**") and the activities described therein;

4. approving the Fifth Report of the Monitor and the activities described therein;

5. approving the fees and disbursements of the Monitor and its legal counsel as described in the Fourth and the Fifth Report; and

6. granting such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. The Applicants are affiliated Ontario corporations owned by Imran Jinnah.

2. Silver Streams Homes Inc. ("**Silver Streams**") is a residential homebuilder in the Greater Toronto Area. Silver Streams is in the process of completing a project located at Bathurst Street and King Road in Richmond Hill, Ontario (the "**Puccini Project**").

3. Silver Streams Homes (Puccini) Inc. ("**Puccini**") was incorporated for the purpose of selling the homes in the Puccini Project.

4. The Puccini Project was being built in four phases. Title to the lands in Phases I, II and III are in the names of the Applicants which are numbered companies. Title to the Phase IV lands is in the name of 2148991 Ontario Inc., a non-debtor in these proceedings. Construction of Phase IV did not commence prior to the commencement of this proceeding. Since the commencement of this proceeding, the Phase IV lands have been sold under power of sale.

5. On December 17, 2013, the Applicants obtained protection from their creditors under the *Companies' Creditors Arrangement Act* ("**CCAA**") pursuant to the Initial Order.

6. The Initial Order appointed GTL as Monitor of the Applicants in these proceedings and directed and empowered the Monitor to exercise control over the receipts, disbursements and bank accounts of the Applicants and to receive and collect all monies and accounts of the Applicants in respect of the Applicants' property.

7. The Initial Order also approved a stay of proceedings as against the Applicants until January 16, 2014 or such later date as the Court may order. The stay of proceedings has been extended by previous orders of this Court to September 26, 2014.

8. At the time of the CCAA filing, there were 10 remaining homes in Phases II and III of the Puccini Project that were in various stages of completion (the "**Puccini Homes**"). The purpose of the CCAA proceeding is to complete and/or sell the Puccini Homes and to pay the net sale proceeds, after payment of operating costs and the costs of these proceedings, to satisfy their creditors' claims in the priority to be determined by the Court.

Puccini Homes

9. As at the Applicants' last stay extension motion on June 26, 2014, five out of the ten Puccini Homes had been sold by the Applicants. Since the last stay extension motion on June 26, 2014, the Applicants, entered into three agreements of purchase and sale for the Puccini Homes. On August 12, 2014, the Court granted vesting orders in respect of these three homes.

10. The transactions for two of the three homes referenced in paragraph 9 above have closed as scheduled on August 15, 2014 and September 8, 2014. The transaction for the remaining home, Lot 23, Phase III of the Puccini Project is scheduled to close on September 30, 2014.

11. Of the ten Puccini Homes only two remain on the market: (i) Lot 24, Phase II; and (ii) Lot 18, Phase III.

12. Construction of Lot 24, Phase II is complete. Construction of Lot 18, Phase III has not yet commenced. It was initially anticipated that the construction of this home would commence at the same time as the construction of Phase IV. In light of the sale of Phase IV lands, it is the Applicants' intention to market Lot 18 for sale as vacant land.

13. The Applicants continue to market the Puccini Homes for sale directly and by working with agents.

Claims Process

14. On January 16, 2014, this Court granted, among other things, an order (the "**Claims Process Order**") approving a claims process for the purpose of determining the validity, quantum and priority of claims against the Applicants' Property (as defined in the Claims Process Order) (the "**Claims Process**").

15. Pursuant to the Claims Process Order, the Claims Process is being administered by the Monitor with the assistance of the Vetting Committee (as defined in the Claims Process Order). The Claims Process Order established a claims filing deadline of 5:00 pm on February 14, 2014. An update on the Claims Process will be provided by the Monitor in the Fifth Report to the Court.

16. The Monitor, with the assistance of the Vetting Committee sent Notices of Allowance to the Applicants senior mortgage holders, Bank of Montreal, Home Trust Company and Foremost Financial Corporation.

17. In addition, the Monitor sent Notices of Allowance to Canada Revenue Agency with respect to its claims for source deductions with the caveat that: (a) the claims are against Silver Streams and Puccini; (b) neither Silver Streams nor Puccini holds any title in the ten lots that existed at the time of the Applicants' application under the CCAA; and (c) accordingly, the proceeds arising from the sale of said homes are not those to which CRA's deemed trust claims against Silver Streams or Puccini attach.

18. CRA has challenged the Monitor's determination with respect to its entitlement to assert source deduction claims against the proceeds from the sale of the Puccini Homes. The motion for the resolution of this dispute is scheduled to be heard on December 3, 2014.

19. Counsel for the Applicants engaged in discussions with counsel for the majority of the lien claimants to have a number of issues, including the validity of the construction lien claims registered against title to the Pucinni Project and the priority of those lien claims

over certain mortgages determined by arbitration. The terms of the draft order referring the matter to arbitration have not yet been finalized.

Stay Extension

20. The Initial Order included a stay of proceedings as against the Applicants until and including January 16, 2014 or such later date as the Court may order. On June 26, 2014, the stay of proceedings was extended to September 26, 2014.

21. The Applicants have acted in good faith and with due diligence since their last appearance before the Court. The Applicants, among other things: (i) negotiated and entered into three additional agreements of purchase and sale; (ii) closed the sale of 4 homes since the Applicants' last stay extension motion; and (iii) continued the marketing process for the sale of the remaining two homes.

22. To minimize the ongoing costs of the CCAA proceeding, the Applicants have began to wind down their operations and expenses in the CCAA proceeding. In June, 2014, the Applicants let go of two out of their five full time employees. Furthermore, by the end of September, 2014, the Applicants will close their sale office and will further reduce their staff to two full-time and one part-time employee. Any necessary office work will be carried out by the Applicants' remaining employees from their home offices.

23. The Applicants seek an extension of the stay period to and including January 16, 2015 to allow them to: (i) close the sale of Lot 23, Phase III of the Puccini Project; (ii) complete the Claims Process; and (iii) continue the marketing process for the remaining two Puccini Homes.

24. Such further and other grounds as counsel may advise and this Honourable Court may permit.

25. The Applicants also rely upon the following:

(a) Section 11.02 and other provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

(b) Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194, as amended; and

(c) Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

26. The Affidavit of Imran Jinnah, sworn September 16, 2014;

27. The Monitor's Fifth Report to the Court; and

28. Such other material as counsel may advise and this Honourable Court may permit.

September 16, 2014

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the Applicants

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

ONTARIO
SUPERIOR COURT OF ONTARIO
IN BANKRUPTCY

Proceedings commenced at TORONTO

NOTICE OF MOTION

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TAB 2

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ONTARIO
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Applicants

AFFIDAVIT OF IMRAN JINNAH

I, Imran Jinnah, of the Town of Richmond Hill, in the Province of Ontario **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the sole officer, director and shareholder of the Applicants, Silver Streams Homes Inc. ("**Silver Streams**"), Silver Streams Homes (Puccini) Inc. ("**Puccini**"), 2148993 Ontario Inc. ("**2148993**"), 2148990 Ontario Inc. ("**2148990**"), 2147681 Ontario Inc. ("**2147681**") and 2147650 Ontario Inc. ("**2147650**"). As such, I have personal knowledge of the matters to which I dispose in this affidavit, save and except for such facts or matters which are stated to be based on information and belief and where so stated, I believe same to be true.

2. I swear this affidavit in support of the Applicants' motion for an order:

(a) extending the Stay Period, as defined in paragraph 11 of the Initial Order of Justice Newbould dated December 17, 2013 (the "**Initial Order**") to and including January 16, 2015.

(b) approving the Fifth Report of Grant Thornton Limited ("**GTL**") in its capacity as the Court-appointed monitor of the Applicants (the "**Monitor**") and the activities of the Monitor described therein;

(c) Approving the Fourth Report of the Monitor and the activities of the Monitor described therein; and

(d) approving the fees and disbursements of the Monitor and its counsel.

BACKGROUND AND CCAA PROCEEDING

3. The Applicants are affiliated companies owned by me. Silver Streams is a residential homebuilder in the Greater Toronto Area and is currently in the process of completing a project in Richmond Hill, Ontario referred to in these proceedings as the "**Puccini Project**". The Puccini Project is comprised of four phases. Subject to certain properties described below, the construction of the majority of Phase I, II and III homes is substantially completed. Puccini was incorporated for the purpose of selling the homes in the Puccini Project.

4. The construction of Phase IV was not commenced prior to the CCAA proceeding. Since the commencement of these CCAA proceedings, the Phase IV lands have been sold under power of sale.

5. Title to the lands in Phases I, II and II are registered in the names of the numbered company Applicants. Title to the lands in Phase IV is registered in the name of a corporation affiliated with the Applicants which is not a party to these CCAA proceedings.

6. On December 17, 2013, the Applicants obtained protection from their creditors under the *Companies' Creditors Arrangement Act* ("**CCAA**") pursuant to the Initial Order. A copy of the Initial Order is attached hereto as **Exhibit "A"**.

7. The Initial Order appointed GTL as Monitor of the Applicants in these proceedings. Pursuant to paragraph 17(k) of the Initial Order, the Monitor was directed and empowered to exercise control over the receipts, disbursements and bank accounts of the Applicants and to receive and collect all monies and accounts of the Applicants in respect of the Applicants' property.

8. Pursuant to the Initial Order, this Court also approved a debtor-in-possession loan (the "**DIP Loan**") in an amount of $1 million and issued a priority charge against all property, assets and undertakings of the Applicants to secure all advances under the DIP Loan. An initial advance in the

amount of $425,000 was advanced by the DIP lender under the DIP Loan, $200,000 of which has now been repaid to the DIP lender. No further advances have been made under the DIP Loan.

9. The Initial Order also granted a stay of proceedings as against the Applicants until and including January 16, 2014 or such later date as the Court may order. The stay of proceedings has been extended by previous orders of this Court to September 26, 2014.

10. At the time of the CCAA filing, there were 10 remaining homes in Phases II and III of the Puccini Project that were in various stages of completion (the "**Puccini Homes**").

11. As was described in my affidavits previously filed in these proceedings, the objective of the Applicants' CCAA proceedings is to complete and sell the Puccini Homes and to pay the net sale proceeds, after payment of operating costs and the costs of these proceedings, to satisfy their creditors' claims in the priority to be determined by the Court.

12. By orders dated December 17, 2013, April 17, 2014 and August 12, 2014, the Court approved agreements of purchase and sale for the sale of eight out of ten of the Puccini Homes. Seven out of the eight transactions for the sale of the Puccini Homes have now closed, with the last home scheduled to close on September 30, 2014.

THE PUCCINI HOMES

13. Attached hereto as **Exhibit "B"** is a copy of my Affidavit (without exhibits) sworn June 19, 2014, in support of the Applicants' last stay extension motion (the "**June Affidavit**"). As described in the June Affidavit, at the time of the last stay extension motion, five out of ten Puccini Homes remained unsold.

14. Following the Applicants' last stay extension motion, the Applicants entered into agreements of purchase and sale for three additional homes: Lot 24, Phase II of the Puccini Project, Lot 1, Phase II of the Puccini Project and Lot 23, Phase III of the Puccini Project. The Applicants completed the

sale transactions for Lot 24 and Lot 1 on August 15, 2014 and September 8, 2014, respectively, in accordance with the terms of the relevant sale agreements. The transaction for the sale of Lot 23, Phase III of the Puccini Project, is not scheduled to close until September 30, 2014.

15. The following chart is a summary of the status of the Puccini Homes as at the date of this affidavit and includes updates from the Applicants' last court appearance.

	Phase	**Lot Number**	**Summary**
1	II	Lot 1	On August 12, 2014, the Court granted a vesting order in respect of this home. The sale transaction closed on September 8, 2014.
2	II	Lots 23	On August 12, 2014, the Court granted a vesting order in respect of this home. The sale transaction closed on August 15, 2014.
3	II	Lot 24	Construction is completed and the home is continued to be marketed for sale.
4	III	Lot 18	Construction has not yet commenced. It was initially anticipated that the construction of this home would commence at the same time as the construction of Phase IV. In light of the sale of Phase IV lands, it is the Applicants' intention to market Lot 18 for sale as vacant land.
5	III	Lot 19	On April 17, 2014 the Court granted a vesting order in respect of this home. The sale transaction closed on May 30, 2014.
6	III	Lot 20	On June 26, 2014, the Court granted a vesting order in respect of this home. The closing date of July 22, 2014 was extended upon the agreement of the parties to the agreement. The sale transaction closed on September 3, 2014.
7	III	Lot 22	On December 17, 2013, the Court granted a vesting order in respect of this home. The sale transaction closed on December 31, 2014
8	III	Lot 23	On August 12, 2014, the Court granted a vesting order in respect of this home. The sale transaction is scheduled to close on September 30, 2014.

9	III	Lot 24	On June 26, 2014, the Court granted a vesting order in respect of this home. The sale transaction closed on July 18, 2014.
10	III	Lot 25	On December 17, 2013, the Court granted a vesting order in respect of this home. The sale transaction closed on January 17, 2014

16. The Applicants continue to market the remaining two Puccini Homes for sale directly and by working with agents.

THE CLAIMS PROCESS

17. On January 16, 2014, this Court granted, among other things, an order (the "**Claims Process Order**") approving a claims process for the purpose of determining the validity, quantum and priority of claims against the Applicants' Property (as defined in the Claims Process Order) (the "**Claims Process**"). A copy of the Claims Process Order is attached hereto as **Exhibit "C"**.

18. Pursuant to the Claims Process Order, the Claims Process is being administered by the Monitor with the assistance of the Vetting Committee (as defined in the Claims Process Order). The Claims Process Order established a claims filing deadline of 5:00 pm on February 14, 2014. An update on the Claims Process was provided by the Monitor in its Third Report to the Court. A copy of the Third Report without appendices is attached hereto as **Exhibit "D"**. I am advised by the Monitor, that a further update on the Claims Process will be set out in the Monitor's Fifth Report.

19. The Monitor, with the assistance of the Vetting Committee sent Notices of Allowance to the Applicants senior mortgage holders, Bank of Montreal, Home Trust Company and Foremost Financial Corporation.

20. In addition, the Monitor sent Notices of Allowance to Canada Revenue Agency with respect to its claims for source deductions with the caveat that: (a) the claims are against Silver Streams and Puccini; (b) neither Silver Streams nor Puccini holds any title in the ten lots that existed at the time of the Applicants' application under the CCAA; and (c) accordingly, the proceeds arising from the

sale of said homes are not those to which CRA's deemed trust claims against Silver Streams or Puccini attach.

21. CRA has challenged the Monitor's determination with respect to its entitlement to assert source deduction claims against the proceeds from the sale of the Puccini Homes. The motion for the resolution of this dispute is scheduled to be heard on December 3, 2014.

22. I am advised by Stephen Schwartz, a lawyer with Chaitons, that he has engaged in discussions with counsel for a number of the lien claimants to have a number of issues, including the validity of the construction lien claims registered against title to the Pucinni Project and the priority of those lien claims over certain mortgages determined by arbitration. I am further advised by Mr. Schwartz that the terms of the draft order referring the matter to arbitration have not yet been finalized.

23. On or around July 16, 2014, Foremont Drywall Inc., together with its related entities (collectively, "**Foremont**"), a drywall supplier to the Applicants, served motion materials on the Applicants in connection with a motion for an order granting leave to continue to prosecute their claims against Puccini, myself and my wife. The motion was originally scheduled for August 25, 2014. I am advised by Maya Poliak, a lawyer with Chaitons, that responding materials were served on Foremont on August 12, 2014. Following the receipt of the responding materials, Foremont requested an adjournment of the motion to permit them time to consider the responding materials. I am advised by Chaitons that Foremont's motion has been adjourned to October 16, 2014.

24. I am also advised by Mr. Schwartz that certain lien claimants have also scheduled a motion returnable on October 16, 2014, seeking leave to allow them to commence an action against the Applicants, myself personally and other parties. The claims are set out in the draft statement of claim, a true copy of which is marked as **Exhibit "E"** hereto. As at the date of this Affidavit, neither myself nor the Applicants have been served with the motion materials of the moving parties in connection with this motion for leave.

STAY EXTENSION

25. The Initial Order included a stay of proceedings as against the Applicants until and including January 16, 2014 or such later date as the Court may order. On June 26, 2014, the stay of proceedings was extended to September 26, 2014.

26. The Applicants have acted in good faith and with due diligence since their last appearance before the Court. The Applicants, among other things: (i) negotiated and entered into three additional agreements of purchase and sale; (ii) closed the sale of 4 homes since the Applicants' last stay extension motion; and (iii) continued the marketing process for the sale of the remaining two homes.

27. To minimize the ongoing costs of the CCAA proceeding, the Applicants have began to wind down their operations and expenses in the CCAA proceeding. In June, 2014, the Applicants let go of two out of their five full time employees. Furthermore, by the end of September, 2014, the Applicants will close their sale office and will further reduce their staff to two full-time and one part-time employee. Any necessary office work will be carried out by the Applicants' remaining employees from their home offices.

28. The Applicants seek an extension of the stay period to and including January 16, 2015 to allow them to: (i) close the sale of Lot 23, Phase III of the Puccini Project; (ii) complete the Claims Process; and (iii) continue the marketing process for the remaining two Puccini Homes.

29. In connection with the Applicants' request for the stay extension, the Applicants, with the assistance of the Monitor, have been working to prepare cash flow projections for the time period commencing June 17, 2014 and ending January 16, 2015. (the "**Cash Flow**"). The Cash Flow, along with the Management's Report on Cash Flow, will be appended to the Monitor's Fifth Report.

30. I swear this affidavit in support of the Applicants' motion for the relief set out herein and for no improper purpose.

SWORN before me at the City of Toronto, Province of Ontario, this 16th day of September, 2014	))))	
	)	Imran Jinnah
A Commissioner, Etc. Maya Poliak	))	**Imran Jinnah**

THIS IS **EXHIBIT "A"** REFERRED TO IN THE

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 16th DAY OF SEPTEMBER, 2014

Court File No. 12-10362-00-CL

3 25

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	TUESDAY, THE 17TH
	)	
JUSTICE NEWBOULD	)	DAY OF DECEMBER, 2013

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.

the "Applicants"

INITIAL ORDER

THIS APPLICATION, made by Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc. (collectively, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Imran Jinnah sworn December 11, 2013 and the Exhibits thereto (the "**Jinnah Affidavit**"), the Proposed Monitor's Report to the Court and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicants, Grant Thornton Limited (as the proposed Monitor), counsel for Bank of Montreal, counsel for Foremost Mortgage Corporation, counsel for the private secured lenders, counsel for certain lien claimants, counsel for the Corporation of the Town of Richmond Hill, and such other counsel as are present, no one else appearing although duly served as appears from the affidavit of service of Lynn Lee sworn December 12, 2013 and on reading the consent Grant Thornton Limited to act as the Monitor,

SERVICE

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

2. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practicedirections/toronto/#Commercial_List) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <[www.grantthornton.ca/silverstreams]>.

3. **THIS COURT ORDERS** that the E-Service List Keeper and the WebHost (as such terms are defined in the Protocol) for the purpose of this proceeding shall be the Monitor.

3A. **THIS COURT ORDERS** that the sum of $491,985.33, plus interest accrued thereon, being held in trust by Chaitons LLP pursuant to the orders of the Honourable Madam Justice Lack dated August 15, 2013 and the Endorsement of the Honourable Madam Justice Gilmore dated November 20, 2013 in the Con-Drain Company (1983) Limited action bearing Newmarket court file no. CV-12-115757-00 (the "Con-Drain Action") shall be maintained in trust by Chaitons LLP until further court order or consent of the parties to the Con-Drain Action, and the determination of whether the above noted funds form Property, as defined in paragraph 5 of the Initial Order, shall be determined at a late date.

APPLICATION

4. **THIS COURT ORDERS AND DECLARES** that the Applicants are affiliated debtor companies to which the CCAA applies.

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that, subject to paragraph 17 the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

(a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and

(b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course on and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

(a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the completion of Phases II and III of the Puccini Project (as defined in the Jinnah Affidavit) including, without limitation, payments on account of insurance, maintenance and security services; and

(b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

(a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;

(b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and

(c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

10. **THIS COURT ORDERS** that the Applicants shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

(a) permanently or temporarily cease, downsize or shut down any of their business or operations,

(b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deems appropriate;

(c) pursue all avenues of refinancing of their Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing; and

(d) complete the construction and sale of the remaining 10 homes in Phases II and III of the Puccini Project with the approval of the Monitor in respect of all sales made in the ordinary course of the Applicants' business and otherwise with prior Court approval,

all of the foregoing to permit the Applicants to proceed with the completion of Phases II and III of the Puccini Project (the "**Restructuring**").

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

11. **THIS COURT ORDERS** that until and including January 16, 2014, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court, including the action commenced in Newmarket, Ontario by Con-Drain Company (1983) Limited against certain Applicants and others bearing Court File Number CV-13-115757-00.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be

agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

15. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

16. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION

17. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicants after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

APPOINTMENT OF MONITOR

18. **THIS COURT ORDERS** that Grant Thornton Limited is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs

of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

19. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

(a) monitor the Applicants' receipts and disbursements;

(b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

(c) assist the Applicants, to the extent required by the Applicants, in their dissemination, to the DIP Lender (as defined below) and its counsel on a periodic basis of financial and other information as agreed to between the Applicants and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;

(d) advise the Applicants in the preparation of the Applicants' cash flow statements and reporting, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis or provided to the Court as required;

(e) to assist the Applicants with the Restructuring;

(f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs. or to perform its duties arising under this Order;

(g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;

(h) perform the tasks requested to be performed by the Monitor under the DIP Term Sheet;

(i) to advise and assist the Applicants in their negotiations with their stakeholders;

(j) perform such other duties as are required by this Order or by this Court from time to time; and

(k) in the name and/or for the benefit of the Applicants, to exercise control over the receipts, disbursements and bank accounts of the Applicants and receive and collect all monies and accounts of the Applicants in respect of the Property.

20. **THIS COURT ORDERS** that, subject to paragraph 17(k) of this Order, the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

21. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of

any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

22. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Applicants and the DIP Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

23. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

24. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, incurred both before and after the making of this Order, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants on a monthly basis upon receipt of an invoice.

25. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of $500,000 as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of

these proceedings. The Administration Charge shall have the priority set out in paragraphs 31 and 33 hereof.

DIP FINANCING

27. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under a credit facility from Sandall Investments Limited (the "**DIP Lender**") in order to finance the Applicants' working capital requirements, including the cost of completing Phases II and III of the Puccini Project and the costs of these proceedings, provided that borrowings under such credit facility shall not exceed the principal amount of $1,000,000 unless permitted by further Order of this Court.

28. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet among the Applicants and the DIP Lender dated as of December 11, 2013 (the "**Term Sheet**"), filed.

29. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the Term Sheet and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

30. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "**DIP Lender's Charge**") on the Property, which DIP Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 31 and 33 hereof.

31. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;

(b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender may immediately terminate the facility and, upon seeking an Order of the Court on 5 days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property under or pursuant to the Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to apply to this Court for the appointment of a receiver over the Property; and

(c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver, receiver and manager or lien trustee of the Applicants or the Property.

32. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

33. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of $500,000); and

Second – DIP Lender's Charge.

34. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP Lender's Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

35. **THIS COURT ORDERS** that each of the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges, construction

liens (whether or not perfected or preserved) and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

36. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Administration Charge or the DIP Lender's Charge, unless the Applicants also obtain the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Administration Charge, or further Order of this Court.

37. **THIS COURT ORDERS** that the Administration Charge, the Term Sheet, the Definitive Documents and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

(a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;

(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicants entering into the Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and

(c) the payments made by the Applicants pursuant to this Order, the Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

SERVICE AND NOTICE

38. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Toronto Star or the Globe and Mail a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than $1000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

39. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

40. **THIS COURT ORDERS** that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor may post a copy of any or all such materials on its website at www.grantthornton.ca/silverstreams.

GENERAL

41. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their powers and duties hereunder.

42. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, a trustee in bankruptcy or a lien trustee of the Applicants, the Business or the Property.

43. **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 Applicants, the Monitor and 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 Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

44. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

45. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

46. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

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

DEC 17 2013

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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.

Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

INITIAL ORDER

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Barristers and Solicitors
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Toronto, ON M2N 7E9

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Lawyers for the Applicants

THIS IS **EXHIBIT "B"** REFERRED TO IN THE

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 16th DAY OF SEPTEMBER, 2014

Court File No. 13-10362-00-CL

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., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

Applicants

AFFIDAVIT OF IMRAN JINNAH

I, Imran Jinnah, of the Town of Richmond Hill, in the Province of Ontario **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the sole officer, director and shareholder of the Applicants, Silver Streams Homes Inc. ("**Silver Streams**"), Silver Streams Homes (Puccini) Inc. ("**Puccini**"), 2148993 Ontario Inc. ("**2148993**"), 2148990 Ontario Inc. ("**2148990**"), 2147681 Ontario Inc. ("**2147681**") and 2147650 Ontario Inc. ("**2147650**"). As such, I have personal knowledge of the matters to which I dispose in this affidavit, save and except for such facts or matters which are stated to be based on information and belief and where so stated, I believe same to be true.

2. I swear this affidavit in support of the Applicants' motion for an order:

(a) extending the Stay Period, as defined in paragraph 11 of the Initial Order of Justice Newbould dated December 17, 2013 (the "**Initial Order**") to and including January 16, 2015;

(b) vesting in the purchasers the Applicants' rights, title and interest in and to:

i. lot 20 of Phase III of the Puccini Project (as defined below) municipally known as 21 Rossini Drive, Richmond Hill, Ontario ("**Lot 20**"); and

ii. lot 24 of Phase III of the Puccini Project, municipally known as 66 Puccini Drive, Richmond Hill, Ontario ("**Lot 24**"), free and clear of any encumbrances, except those contemplated by the respective agreements of purchase and sale;

(c) authorizing a distribution to Bank of Montreal ("**BMO**") subject to BMO entering into a reimbursement agreement with the Monitor in a form satisfactory to the Monitor;

(d) approving the Third Report of Grant Thornton Limited ("**GTL**") in its capacity as the Court-appointed monitor of the Applicants (the "**Monitor**"), the Monitor's interim statement of the Applicants' receipts and disbursements from April 1, 2014 to and including June 18, 2014 and the activities of the Monitor described therein; and

(e) approving the fees and disbursements of the Monitor and its counsel.

BACKGROUND AND CCAA PROCEEDING

3. The Applicants are affiliated companies owned by me. Silver Streams is a residential homebuilder in the Greater Toronto Area and is currently in the process of completing a project in Richmond Hill, Ontario referred to in these proceedings as the "**Puccini Project**". The Puccini Project is comprised of four phases. Subject to certain properties described below, the construction of the majority of Phase I, II and III homes is substantially completed. Puccini was incorporated for the purpose of selling the homes in the Puccini Project.

4. The construction of Phase IV was not commenced prior to the CCAA proceeding. Since the commencement of these CCAA proceedings, the Phase IV lands have been sold under power of sale.

5. Title to the lands in Phases I, II and II are registered in the names of the numbered company Applicants. Title to the lands in Phase IV is registered in the name of a corporation affiliated with the Applicants which is not a party to these CCAA proceedings.

6. On December 17, 2013, the Applicants obtained protection from their creditors under the *Companies' Creditors Arrangement Act* ("**CCAA**") pursuant to the Initial Order. A copy of the Initial Order is attached hereto as **Exhibit "A"**.

7. The Initial Order appointed GTL as Monitor of the Applicants in these proceedings. Pursuant to paragraph 17(k) of the Initial Order, the Monitor was directed and empowered to exercise control over the receipts, disbursements and bank accounts of the Applicants and to receive and collect all monies and accounts of the Applicants in respect of the Applicants' property.

8. Pursuant to the Initial Order, this Court also approved a debtor-in-possession loan (the "**DIP Loan**") in an amount of $1 million and issued a priority charge against all property, assets and undertakings of the Applicants to secure all advances under the DIP Loan. An initial advance in the amount of $425,000 was advanced by the DIP lender under the DIP Loan, $200,000 of which has now been repaid to the DIP lender. No further advances have been made under the DIP Loan.

9. The Initial Order also granted a stay of proceedings as against the Applicants until and including January 16, 2014 or such later date as the Court may order. The stay of proceedings has been extended by previous orders of this Court to July 3, 2014.

10. At the time of the CCAA filing, there were 10 remaining homes in Phases II and III of the Puccini Project that were in various stages of completion (the "**Puccini Homes**").

11. As was described in my affidavits previously filed in these proceedings, the objective of the Applicants' CCAA proceedings is to complete and sell the Puccini Homes and to pay the net sale proceeds, after payment of operating costs and the costs of these proceedings, to satisfy their creditors' claims in the priority to be determined by the Court.

12. By orders dated December 17, 2013 and April 17, 2014, the Court approved agreements of purchase and sale for the sale of three of the Puccini Homes: Lots 22, 25 and 19 of Phase III of the Puccini Project. The sale transactions for these three homes closed in December 2013, January 2014 and May 2014, respectively.

13. On January 16, 2014, this Court granted, among other things, an order (the "**Claims Process Order**") approving a claims process for the purpose of determining the validity, quantum and

priority of claims against the Applicants' Property (as defined in the Claims Process Order) (the "**Claims Process**"). A copy of the Claims Process Order is attached hereto as **Exhibit "B"**.

THE PUCCINI HOMES

14. As described above, as at the date of the Applicants' last appearance before this Court on April 17, 2014, 7 out of 10 of the Puccini Homes remained unsold. Since the Applicants' last appearance before this Court, Puccini has entered into agreements of purchase and sale for Lots 20 and 24.

15. Pursuant to an agreement of purchase and sale dated June 6, 2014 (the "**Lot 24 Agreement**") between Puccini and Huran Amin (the "**Lot 24 Purchaser**"), Puccini sold the property municipally known as 66 Puccini Drive, Richmond Hill, Ontario, MPlan lot 24 for a purchase price of $1,030,000. A copy of the Lot 24 Agreement is attached hereto as **Exhibit "C"**. A deposit of $40,000 has been received and is being held in trust by the Monitor.

16. The Lot 24 Agreement is conditional, among other things, upon Puccini obtaining an order vesting title to Lot 24 in the Lot 24 Purchaser free and clear of all claims, encumbrances and liens within 20 days of the execution of the agreement by both parties. If the vesting order is granted by the Court, the transaction for the sale of Lot 24 is scheduled to close on July 31, 2014.

17. Pursuant to an agreement of purchase and sale dated May 25, 2014 (the "**Lot 20 Agreement**") between Puccini and Maisom Shirazi and Farzaneh Shirazi (collectively, the "**Lot 20 Purchaser**"), Puccini sold the property municipally known as 21 Rossini Drive, Richmond Hill, Ontario, MPlan lot 20 for a purchase price of $880,000. A copy of the Lot 20 Agreement is attached hereto as **Exhibit "D"**. A deposit of $40,000 has been received and is being held in trust by the Monitor.

18. The Lot 20 Agreement is conditional upon Puccini obtaining an order vesting title to Lot 20 in the Lot 20 Purchaser free and clear of all claims, encumbrances and liens. If the vesting order is granted by the Court, the transaction for the sale of Lot 20 is scheduled to close on July 22, 2014.

19. The following chart is a summary of the status of the 5 remaining Puccini Homes and includes updates from the Applicants' last court appearance. For reference purpose attached hereto as **Exhibit "E"** is my affidavit sworn April 9, 2014, filed in support of the Applicants' last appearance, which provides a summary of the status of the Puccini Homes as at April 9. 2014.

	Phase	Lot Number	Summary
1	II	Lot 1	Construction is 85% completed subject to the ultimate purchaser's finishing selection.
2	II	Lots 23	Construction is completed.
3	II	Lot 24	Construction is completed.
4	III	Lot 18	Construction has not yet commenced. It was initially anticipated that the construction of this home would commence at the same time as the construction of Phase IV. In light of the sale of Phase IV lands, it is the Applicants' intention to market Lot 18 for sale as vacant land. The lot was pre-sold prior to the commencement of these proceedings and a deposit in the amount of $60,000 was received by Puccini. There was no requirement for the deposit to be held in trust and as such the deposit was utilized by Puccini prior to the commencement of the CCAA proceedings. In or around March 2014, Puccini was contacted by the purchaser of the Lot 18 Home, through his counsel, who advised that the purchaser wishes to terminate the agreement for the sale of the Lot 18 Home and requested the return of the deposit. I am advised by the Applicants' legal counsel, Chaitons LLP ("**Chaitons**") that the purchaser intends to make a claim for recovery of the deposit to Tarion up to the maximum recoverable amount. To the extent there is any monies left owing to the purchaser in connection with this

			deposit, after receipt of payment from Tarion, the purchaser will have an unsecured claim against Puccini for that amount.
5	III	Lot 23	Construction is 75% completed.

20. The real estate market, which was slow during the winter, started to pick up in April and May of this year once the weather improved. As evidenced by the sale of Lot 20 and Lot 24, there has been a substantial increase in interest in the remaining Puccini Homes since May of this year. The Applicants continue to engage in discussions with potential purchasers for the remaining Puccini Homes and continue to market the Puccini Homes for sale directly and by working with agents.

DISTRIBUTIONS TO BMO

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

22. On December 17, 2014, this Court also granted an order authorizing an interim distribution in an amount not exceeding $570,000 (the "**Interim Distribution**") from the proceeds of the sale of Lots 22 and 25 to BMO, subject to a reimbursement agreement to be negotiated and entered into between BMO and the Monitor.

23. Attached hereto as **Exhibit "F"** is a copy of the executed reimbursement agreement dated January 21, 2014 (the "**January Reimbursement Agreement**"). On January 21, 2014, the Monitor made the Interim Distribution to BMO in an amount of $536,105.52.

24. Following the Interim Distribution, the Applicants remain indebted to BMO in an amount of approximately $512,000 (inclusive of interests and fees).

25. BMO holds a first ranking mortgage against lots 19 and 20. The Applicants seek an order of this Court authorizing them to make a further distribution to BMO from the proceeds from the sale of Lots 19 and 20 to the full amount of the Applicants' indebtedness to BMO, subject to BMO and the Monitor entering into a reimbursement agreement substantially on the same terms as the January Reimbursement Agreement . BMO holds a first ranking mortgage against title to these lots.

26. The Applicants originally sought an order approving a further distribution to BMO from the proceeds of the sale of Lot 19 during its April appearance before the Court. This relief was adjourned on consent on request from the Canada Revenue Agency (the "**CRA**"). I am advised by Chaitons that the CRA filed the following claims with the Monitor in the Claims Process:

(a) A deemed trust claim against Silver Streams for recovery of payroll source deductions in the amount of $84,596.39;

(b) A deemed trust claim against Puccini for recovery of payroll source deductions in the amount of $40,831.53; and

(c) A secured claim against Silver Streams in respect of GST/HST in an amount of $119,349.57.

27. I am advised by Chaitons that on June 16, 2014, the Monitor sent a Notice of Disallowance to CRA with respect to its GST/HST claim on the basis that CRA's GST/HST claim is an unsecured claim against the Applicants' estate. A copy of the Notice of Disallowance is attached hereto as **Exhibit "G"**.

28. I am also advised by Chaitons that on June 16, 2014, the Monitor sent Notices of Allowance to CRA with respect to CRA's two deemed trust claims. Copies of the Notices of Acceptance are attached hereto as **Exhibit "H"**. I have reviewed the Notices of Allowance and understand that the Monitor advised CRA that Puccini and Silver Streams do not hold title to the Puccini Homes. Accordingly, the proceeds arising from the sale of the Puccini Homes (including Lots 19, 22 and 25, a portion of which the Applicants seek to distribute to BMO) do not constitute proceeds to which CRA's deemed trust claims attach.

THE CLAIMS PROCESS

29. On January 16, 2014, this Court granted the Claims Process Order. Pursuant to the Claims Process Order, the Claims Process is being administered by the Monitor with the assistance of the Vetting Committee (as defined in the Claims Process Order). The status of the Claims Process will be set out in the Monitor's Third Report.

STAY EXTENSION

30. The Initial Order included a stay of proceedings as against the Applicants until and including January 16, 2014 or such later date as the Court may order. On April 17, 2014, the stay of proceedings was extended to July 3, 2014.

31. The Applicants have acted in good faith and with due diligence since their last appearance before the Court. The Applicants, among other things:

(a) closed the sale of Lot 19;

(b) negotiated and entered into an agreements of purchase and sale for Lot 20 and Lot 24; and;

(c) continued the marketing process for the sale of the remaining homes.

32. The Applicants seek an extension of the stay period to and including January 16, 2015 to allow them to:

(a) close the sale of Lots 20 and 24;

(b) complete the Claims Process; and

(c) continue the marketing process for the remaining Puccini Homes.

33. In connection with the Applicant's request for the stay extension, the applicants, with the assistance of the Monitor, have been working to prepare cash flow projections for the time period

commencing June 17, 2014 and ending January 16, 2015. (the "Cash Flow"). The Cash Flow, along with the Magagement's Report on Cash Flow, will be appended to the Monitor's Third Report.

34. I swear this affidavit in support of the Applicants' motion for the relief set out herein and for no improper purpose.

SWORN before me at the City of Toronto, Province of Ontario, this 19th day of June, 2014	))))))	Imran Jinnah
A Commissioner, Etc. Stephen Schwartz		

THIS IS **EXHIBIT "C"** REFERRED TO IN THE

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 16th DAY OF SEPTEMBER, 2014

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	THURSDAY, THE 16[TH] DAY
	)	
JUSTICE WILTON-SIEGEL	)	OF JANUARY, 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 HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

Applicants

CLAIMS PROCESS ORDER

THIS MOTION, made by the Applicants for an order establishing a claims procedure was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Imran Jinnah sworn January 10, 2014 and the Monitor's First Report to the Court dated January 14, 2013, and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and such other counsel as were present, and on being advised that the Service List was served with the Notice of Motion and Motion Record of the Applicants:

DEFINITIONS

1. **THIS COURT ORDERS** that, for the purposes of this Order, the following terms shall have the following meanings:

(a) "**9:30 Appointment**" means an appearance before a Justice of this Court in chambers which may be made at 9:30 a.m. on any juridical day;

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

(c) "**CCAA**" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C - 36, as amended;

(d) "**CCAA Proceeding**" means the CCAA proceeding of the Applicants initiated pursuant to the terms of the Initial Order;

(e) "**Claims Deadline**" means 5:00 p.m. (Eastern Standard Time) on February 14, 2014;

(f) "**Court**" means the Ontario Superior Court of Justice (Commercial List);

(g) "**Claimant**" means any Person having a Secured Claim;

(h) "**Filing Date**" means December 17, 2013;

(i) "**Initial Order**" means the Order of the Honourable Mr. Justice Newbould dated December 17, 2013 issued in the CCAA Proceeding;

(j) "**Known Creditors**" means any Person which the books and records of the Applicants disclose were owed money by one or more of the Applicants as of the Filing Date which obligations remains unpaid in whole or in part;

(k) "**Monitor**" means Grant Thornton Limited in its capacity as Court-appointed Monitor of the Applicants pursuant to the Initial Order;

(l) "**Notice of Disallowance**" means the notice that may be delivered to a Claimant disallowing such Claimant's Secured Claim in whole or in part, which notice shall include the grounds for the disallowance;

(m) "**Notice of Dispute**" means the notice that may be delivered by a Claimant who has received a Notice of Disallowance disputing such Notice of Disallowance, which notice shall include the grounds for the dispute;

(n) "**Notice to Creditors**" means the notice substantially in the form attached hereto as **Schedule "B"**;

(o) "**Person**" means any individual, partnership, firm, joint venture, trust, entity, corporation, unincorporated organization, trade union, employee or other association and any federal, provincial or municipal government or similar entity, howsoever designated or constituted;

(p) "**Property**" means the property of the Applicants described in **Schedule "A"** hereto and the proceeds thereof;

(q) "**Secured Claim**" means all claims against the Property whether as a mortgagee, construction lien claimant or otherwise, including the claim of Con-Drain Company (1983) Limited ("**Con-Drain**"), and subject to paragraph 3A of the Initial Order against the Property in an action commenced in Newmarket, Ontario by Con-Drain against certain Applicants and others bearing Newmarket Court File Number CV-13-115757-00, but excludes the claims of unsecured creditors and the beneficiaries of the Court ordered charges created pursuant to the Initial Order; and

(r) "**Vetting Committee**" means a committee established pursuant to the terms of this Order for the purpose of assisting the Monitor with the review and determination of the validity, quantum and priority of all Secured Claims and which shall have a maximum of six (6) members.

PURPOSE OF CLAIMS PROCESS

2. The claims process contemplated herein applies solely to those persons having Secured Claims against the Property, whether as a mortgagee, a construction lien claimant or otherwise and is not intended as a general claims process for all of the Applicants' creditors.

MONITOR'S ROLE

3. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations under the CCAA and under the Initial Order, shall implement and oversee the claims process provided for herein, and is hereby authorized and directed to take such steps as may be necessary to implement and carry out this Order.

CLAIMS PROCESS

4. **THIS COURT ORDERS** that the Monitor shall cause a Notice to Creditors to be sent to each Known Creditor by facsimile transmission, electronic communication or regular prepaid mail on or before January 21, 2014.

5. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Creditors to be placed once in each of the Toronto Star and the Daily Commercial News as soon as reasonably practicable after the date of this Order.

6. **THIS COURT ORDERS** that the Monitor shall cause the Notice to Creditors and a copy of this Order to be posted and maintained on the Monitor's website at www.grantthornton.ca/silverstreams as soon as reasonably practicable after the date of this Order.

7. **THIS COURT ORDERS** that the Monitor shall cause a copy of this Order and the Notice to Creditors to be sent to any Person requesting such material as soon as practicable.

FILING OF SECURED CLAIMS

8. **THIS COURT ORDERS** that all Claimants shall deliver to the Monitor their written submissions together with all supporting documentation respecting the validity, quantum and priority of their Secured Claims by the Claims Deadline or such later date as the Monitor may agree or the Court may order prior to the Claim Deadline failing which, the Secured Claim of such Claimant against the Property shall be extinguished and forever barred.

9. **THIS COURT ORDERS** that the information and documentation to be provided by a Claimant to the Monitor pursuant to paragraph 8 above, shall include, without limitation:

(a) in the case of lien claimants, a complete copy of the contract or subcontract, change orders, evidence of the date of last supply of work or services, a copy of all invoices, time sheets and a detailed statement of account including all payments received;

(b) in the case of mortgagees, a copy of the commitment letter, offer of finance or similar document, the dates and amounts of all advances, a detailed statement of account, and the amount of any holdback maintained by the mortgagee.

VETTING COMMITTEE

10. **THIS COURT ORDERS AND AUTHORIZES** the establishment of the Vetting Committee. The Vetting Committee shall initially have the following 6 members:

(a) James Klein - lawyer for various lien claimants

(b) Jeffrey Long – lawyer for Con Drain

(c) Jeffrey Spiegleman – lawyer for Bank of Montreal

(d) Marco Drudi – lawyer for private lenders

(e) Stephen Schwartz – lawyer for the Applicants

(f) Steven Graff or Ian Aversa – lawyers for the Monitor

A member of the Vetting Committee may only be replaced with the unanimous consent of the remaining members or an order of this Court.

CLAIMS REVIEW

11. **THIS COURT ORDERS** that the Monitor shall review each Secured Claim received by the Claims Deadline.

12. **THIS COURT ORDERS** that in response to a written request made by the Monitor, a Claimant shall forthwith, and in any event within seven (7) days of the date of the request, provide such further documentation and information as the Monitor may reasonably require with respect to the Claimant's Secured Claim.

13. **THIS COURT ORDERS** that the Monitor, in its sole discretion, upon consultation with the Vetting Committee, may accept or disallow a Secured Claim in part or in whole.

14. **THIS COURT ORDERS** that if the Monitor determines to disallow a Secured Claim, in part or in whole, the Monitor shall deliver to the Claimant a Notice of Disallowance.

15. **THIS COURT ORDERS** that any Claimant who disputes the disallowance of its Secured Claim as set forth in a Notice of Disallowance shall deliver a Notice of Dispute to the Monitor on or before 5:00 p.m. (Eastern Standard Time) on the day which is fourteen (14) days after the date of the Notice of Disallowance (the "**Dispute Deadline**"), or such later date as the Monitor may agree or the Court may order prior to the expiration of the Dispute Deadline.

16. **THIS COURT ORDERS** that any Claimant who fails to deliver a Notice of Dispute by the Dispute Deadline shall be deemed to accept the Monitor's determination as set out in the Notice of Disallowance.

RESOLUTION OF CLAIMS

17. **THIS COURT ORDERS** that the Monitor, with the assistance of the Vetting Committee, may attempt to consensually resolve any disputed Secured Claim.

18. **THIS COURT ORDERS** that upon the expiration of all of the Dispute Deadlines, the Monitor shall prepare, serve and file a report on the results of the claims process.

19. **THIS COURT ORDERS** that the Monitor shall schedule a 9:30 Appointment with the Court returnable within fourteen (14) days after service of its report pursuant to paragraph 18 herein for the purpose of setting a timetable for resolution of any unresolved disputed claims.

20. **THIS COURT ORDERS** that the Monitor may apply to this Court, at any time, for advice and directions regarding the claims process provided for herein.

GENERAL PROVISIONS

21. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by a Claimant to the Monitor shall be in writing and will be sufficiently given only if delivered by facsimile transmission, personal delivery, electronic communication or prepaid mail addressed to:

The Monitor
c/o Grant Thornton Limited
Royal Bank Plaza, South Tower, 19th Floor,
Toronto, ON, M5J 2P9

Attention: Daniel Sobel
Telephone: (416) 369-7033
Fax: (416) 360-4949
Email: daniel.sobel@ca.gt.com

with a copy to

Aird & Berlis LLP
Brookfield Place. 181 Bay Street, Suite 1800
Toronto, ON, M5J 2T9

Attention: Ian Aversa
Telephone: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Any such notice or other communication delivered by a Claimant shall be deemed to be received upon actual receipt by the Monitor thereof during normal business hours on a Business Day or, if delivered outside of normal business hours, on the next Business Day.

22. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by the Monitor to a Claimant shall be addressed to the last recorded address appearing in the books and records of the Applicants, the address indicated on any security registration or in the submissions filed by the Claimant with the Monitor and will be sufficiently given only if delivered by facsimile transmission, personal delivery, electronic communication or prepaid mail. Any such notice or other communication delivered by the Monitor shall be deemed to be received upon actual receipt by the Claimant thereof during normal business hours on a Business Day or, if delivered outside of normal business hours, on the next Business Day.

JAN 16 2014

SCHEDULE "A"

PROPERTY

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: 03206-3501 (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)

11. Net sale proceeds from the sale of certain homes in the Puccini Project in the amount of $491,985.33 held in trust by Chaitons LLP pursuant to the Orders of Madam Justice Lack dated August 15, 2013 and Madam Justice Gilmore dated November 20, 2013 issued in the action commenced by Con-Drain Company (1983) Limited against certain applicants and other parties bearing Court File Number CV-13-115757-00

SCHEDULE "B"

NOTICE TO CREDITORS

NOTICE TO CREDITORS OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. and 2147650 ONTARIO INC. (COLLECTIVELY, "SILVER STREAMS")

RE: NOTICE OF CLAIMS PROCEDURE FOR SILVER STREAMS PURSUANT TO THE COMPANIES' CREDITORS ARRANGEMENT ACT (THE "CCAA")

TAKE NOTICE that this notice is being published pursuant to an order of the Honourable Mr. Justice Wilton-Siegel of the *Ontario* Superior Court of Justice (Commercial List) dated January 16, 2014 (the "**Claims Process Order**"). Any person who believes that it has a claim against the Property (as defined in the Claims Process Order) whether as a mortgagee, construction lien claimant or otherwise, shall send the documents and information prescribed by the Claims Process Order to Grant Thornton Limited in its capacity as Court-appointed Monitor of Silver Streams (the "**Monitor**") to be received **by 5:00 p.m. (Eastern Standard Time)** on **February 14, 2014 (the "Claims Deadline")** or such later date as the Monitor may agree or the Court may order prior to the Claim Deadline, **failing which, the claim of such Claimant against the Property shall be extinguished and forever barred.**

A copy of the Claims Process Order is available on the Monitor's website at www.grantthornton.ca/silverstreams.

Dated at ________________ this _____ day of ______________________, 2014

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.

Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

CLAIMS PROCESS ORDER

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Lawyers for the Applicants

Doc#2886374v1

THIS IS **EXHIBIT "D"** REFERRED TO IN THE

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 16th DAY OF SEPTEMBER, 2014

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 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

THIRD REPORT TO COURT OF GRANT THORNTON LIMITED, MONITOR OF THE APPLICANTS UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

JUNE 24, 2014

Grant Thornton

Grant Thornton Limited,
Monitor of the Applicants under the
Companies' Creditors Arrangement Act

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

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7. Affidavit of Ian Aversa sworn June 17, 2014

BACKGROUND INFORMATION

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

2. 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**"). Puccini is registered with Tarion and is the vendor under agreements of purchase and sale for homes in the Puccini Project.

3. Title to the 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**") and 2147650 Ontario Inc. ("**2147650**" and, collectively, the "**Title Holders**"). Silver Streams, Puccini and the Title Holders are collectively referred to as the "**Companies**" or the "**Applicants**".

4. 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 (the "**Initial Order**"), *inter alia*, granting the Companies' the protection of a stay of proceedings until January 16, 2014 and appointing Grant Thornton Limited ("**GTL**") as the Companies' monitor under the CCAA (the "**Monitor**"). A copy of the Initial Order is attached as **Appendix "1"**.

5. On January 16 and April 17, 2014, the Court issued orders (the "**Extension Orders**"), *inter alia*, extending the stay of proceedings first from January 16 to April 18, 2014, and then from April 18, 2014 to July 3, 2014. The Extension Orders also approved an interim distribution to Bank of Montreal ("**BMO**"), subject to a reimbursement agreement between BMO and the Monitor, and authorized the Monitor to conduct the Claims Process (defined below). Copies of the January and April 2014 Orders are attached as **Appendix "2" and Appendix "3"**, respectively.

6. This report (the "**Third Report**") has been prepared by Grant Thornton Limited in its capacity as Monitor.

PURPOSE OF THE THIRD REPORT

7. The purpose of this Third Report is to advise the Court with respect to:

   i) the status of the CCAA Proceedings, including the details of the activities of the Monitor and the Companies since the issuance of the Monitor's second report to Court dated April 11, 2014 (the "**Second Report**"), a copy of which is attached (without appendices) as **Appendix "4"**;

   ii) the status of the secured claims process currently being conducted by the Monitor, as authorized by the Court (the "**Claims Process**");

   iii) the Companies' revised cash flow projection to January 16, 2015 (the "**Cash Flow Projection**");

iv) the Companies' receipts and disbursements since December 17, 2013 up to and including June 18, 2014 (the "**Interim R&D**");

v) the Companies' request for an Order:

a. extending the stay of proceedings from July 3, 2014, the date that the stay of proceedings currently expires, to and including January 16, 2015;

b. vesting in the purchasers the Applicants' rights, title and interest in and to:

   i. lot 20 of Phase III of the Puccini Project, municipally known as 21 Rossini Drive, Richmond Hill, Ontario ("**Lot 20**"); and

   ii. lot 24 of Phase III of the Puccini Project, municipally known as 66 Puccini Drive, Richmond Hill, Ontario ("**Lot 24**"),

   free and clear of any encumbrances, except those contemplated by the respective agreements of purchase and sale;

c. authorizing a distribution to BMO, subject to BMO entering into a reimbursement agreement with the Monitor in a form satisfactory to the Monitor;

d. approving the Third Report, the Interim R&D and the Monitor's activities as described herein; and

e. approving the fees and disbursements of the Monitor and its independent counsel, Aird & Berlis LLP ("**A&B**"), as described herein.

8. Detailed background information concerning the Companies and their stakeholders is provided in the affidavit of Imran Jinnah sworn December 11, 2013 (the "**Initial Jinnah Affidavit**"), the affidavit of Imran Jinnah sworn January 10, 2014 (the "**January Jinnah Affidavit**"), the affidavit of Imran Jinnah sworn April 9, 2014 (the "**April Jinnah Affidavit**") and the affidavit of Imran Jinnah sworn June 19, 2014 (the "**June Jinnah Affidavit**"), which have been filed with the Court. Accordingly, the Monitor has not repeated information to this effect in this Third Report. Copies of all materials filed with the Court in these proceedings are accessible at: www.GrantThornton.ca/Silverstreams.

SCOPE AND TERMS OF REFERENCE

9. In preparing this Third Report, the Monitor has relied upon unaudited financial information, the Companies' records, financial information and projections and discussions with the Companies' management and employees. While the Monitor reviewed various documents provided by the Companies and believes that the information therein provides a fair summary of the transactions as reflected in the documents, such work does not constitute an audit or verification of such information for accuracy, completeness or compliance with Generally Accepted Accounting Principles ("**GAAP**") or International Financial Reporting Standards

("IFRS"). Accordingly, the Monitor expresses no opinion or other form of assurance pursuant to GAAP or IFRS with respect to such information.

10. Some of the information used in preparing this Third Report consists of financial projections, including the Cash Flow Projection. The Monitor cautions that these projections are based upon assumptions about future events and conditions that are not ascertainable. The Companies' actual results may vary from the Cash Flow Projection, even if the hypothetical and probable assumptions contained therein materialize, and the variations could be significant. The Monitor's review of the future oriented information used to prepare this Third Report did not constitute an audit of such information under GAAP or IFRS.

11. In the course of its mandate, the Monitor has assumed the integrity and truthfulness of the information and explanations presented to it by the Companies and their management, within the context in which such information was presented. To date, nothing has come to the Monitor's attention that would cause it to question the reasonableness of these assumptions. The Monitor has requested that management bring to its attention any significant matters which were not addressed in the course of the Monitor's specific inquiries. Accordingly, this Third Report is based solely on the information (financial or otherwise) made available to the Monitor by the Companies.

12. This Third Report has been prepared for the use of this Court and the Companies' stakeholders as general information relating to the Companies

and to assist the Court in deciding whether to grant the relief sought by the Applicants. Accordingly, the reader is cautioned that this Third Report may not be appropriate for any other purpose. The Monitor will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Third Report contrary to the provisions of this paragraph.

13. All references to dollars are in Canadian currency unless otherwise noted.

14. Capitalized terms not defined in this Third Report have the meanings ascribed to them in the Initial Jinnah Affidavit and the June Jinnah Affidavit.

ACTIVITIES OF THE COMPANIES AND STATUS OF THE CCAA PROCEEDINGS

15. The activities of the Companies and the status of each of the properties owned by the Applicants are detailed in the June Jinnah Affidavit. Since the issuance of the Second Report, the Companies have, among other things:

    (i) communicated with various stakeholders and creditors regarding the CCAA Proceedings;

    (ii) corresponded with the DIP Lender on a regular basis;

    (iii) corresponded with legal counsel;

    (iv) planned and executed the marketing of the remaining homes;

    (v) carried out construction activities for certain of the remaining homes;

(vi) closed the sale of Lots 19, 22 and 25, as authorized by the Court;

(vii) executed Agreements of Purchase and Sale for Lots 20 and 24 (as described in the June Jinnah Affidavit), which transactions are scheduled to close on July 22, 2014 and July 31, 2014, respectively;

(viii) made payments to vendors as contemplated by the Applicants' cash flow projections;

(ix) prepared the Cash Flow Projections to January 16, 2014; and

(x) serviced homes that were sold prior to the issuance of the Initial Order, in accordance with the Tarion home warranty program.

ACTIVITIES OF THE MONITOR

16. Since the date of the Second Report, the Monitor's activities have included, among other things:

(i) corresponding and meeting with the Companies, their management and their legal counsel;

(ii) corresponding and meeting with the Monitor's legal counsel;

(iii) touring certain of the Companies' properties to monitor the work being done and the work remaining to be completed;

(iv) reviewing and controlling receipts and disbursement of the Companies, in accordance with the Initial Order;

(v) corresponding with certain of the Companies' secured lenders and their counsel;

(vi) corresponding with the DIP Lender;

(vii) assisting the Companies to revise the Cash Flow Projection;

(viii) maintaining a public website for the CCAA Proceedings;

(ix) attending to phone calls and emails from the Companies' creditors and other stakeholders;

(x) administering the Court authorized Claims Process and reviewing and commenting on the claims received; and

(xi) reviewing all materials filed with the Court in respect of these proceedings.

UPDATE ON CLAIMS PROCESS

17. As set out in the materials previously filed by the Applicants, the Applicants have numerous secured creditors, including, but not limited to, mortgagees, lien claimants and Canada Revenue Agency ("**CRA**") (i.e. the Secured Claims).

18. By way of the January 2014 Orders, the Court authorized the Claims Process. The Vetting Committee was established and includes the Monitor's counsel, the Companies' counsel and counsel to certain of the secured creditors.

19. As set out in the Second Report, in accordance with the Claims Process, the Monitor received 42 claims (the "**Claims**").

20. All but one of the Claims was received by the Monitor prior to the Claims Deadline (as such term is defined in the January 2014 Orders), being 5:00 p.m. (Eastern Standard Time) on February 14, 2014.

21. Since the Claims Deadline, the Monitor's counsel has corresponded with claimants and the Vetting Committee. The Monitor's counsel also convened a meeting with the Vetting Committee on June 10, 2014 for the purpose of reviewing the Claims and the Monitor's intended course of action in respect of same. Following that meeting and with the agreement of the Vetting Committee, the Monitor's counsel:

   (i) sent Notices of Allowance to CRA with respect to its two claims for source deductions with the caveat that: (a) the claims are against Silver Streams and Puccini; (b) neither Silver Streams nor Puccini holds any title in the ten lots that existed at the time of the Applicants' application under the CCAA; and (c) accordingly, the proceeds arising from the sale of said homes are not those to which CRA's deemed trust claims against Silver Streams or Puccini attach;

(ii) sent a Notice of Disallowance to CRA with respect to CRA's GST/HST claim on the basis that the claim is an unsecured claim in the CCAA proceedings and the Claims Procedure Order dated January 16, 2014 established a claims process that was limited to secured claims; and

(iii) sent Notices of Allowance to each of BMO, Home Trust and Foremost with respect to their mortgage claims with the caveat that each of their claims remains subject to the extent of any deficiency in any holdback, if any, that was required to be maintained under the *Construction Lien Act* (Ontario), and any trust claim that has been or may be made.

22. The Monitor's counsel continues to correspond with the Vetting Committee regarding the Monitor's proposed plan to:

(i) have the 'Con-Drain action' heard by a Commercial List Judge on an expedited basis outside of the context of the CCAA Proceedings. The Monitor and its counsel would not participate in these proceedings. If the approximate amount of $500,000 in dispute is determined to form part of the CCAA estate, it would be delivered to the Monitor for distribution in the context of the CCAA Proceedings.

In that regard, the Monitor's counsel has asked the relevant parties to deliver to the Monitor's counsel a draft timetable for this litigation; and

(ii) have the construction lien and related issues determined in the context of binding arbitration by a claims adjudicator. In that regard, the Monitor's counsel has asked the relevant parties to advise as to their preferred choice of arbitrator and deliver a draft timetable to have this matter addressed.

23. In respect of the one late-filed claim of Argyle Flooring, after discussions with the Vetting Committee, the Monitor has decided to reserve its decision of the admission of such claim until the Monitor and the Vetting Committee have more clarity on the amount of funds available for distribution in these proceedings.

DISTRIBUTIONS TO BMO

24. As set out in the June Jinnah Affidavit, BMO made available to the Applicants three credit facilities for the purpose of, among other things, financing the servicing and construction of homes in Phases I, II and III of the Puccini Project.

25. On December 17, 2014, this Court granted an Order authorizing an interim distribution in an amount not exceeding $570,000 (the "**Interim Distribution**") from the proceeds of the sale of Lots 22 and 25 to BMO,

subject to a reimbursement agreement that was negotiated and entered into between BMO and the Monitor, a copy of which was attached to the June Jinnah Affidavit.

26. On January 21, 2014, the Monitor made the Interim Distribution to BMO in an amount of $536,105.52.

27. The Monitor understands that following the Interim Distribution, the Applicants remain indebted to BMO in an amount of approximately $512,000 (inclusive of interests and fees).

28. BMO holds a first ranking mortgage against Lot 19 (which has been sold) and Lot 20 (the proposed sale of which is discussed below). The Applicants have sought an Order of this Court authorizing them to make a further distribution to BMO from the proceeds from the sale of Lots 19 and 20, up to the full amount of the Applicants' indebtedness to BMO, subject to BMO and the Monitor entering into a reimbursement agreement substantially on the same terms as the first reimbursement agreement, which is attached to the June Jinnah Affidavit.

29. The Applicants originally sought an Order approving a further distribution to BMO from the proceeds of the sale of Lot 19 during its April, 2014 appearance before the Court. This relief was adjourned on consent on request from CRA. CRA filed the following claims in the Claims Process:

(i) A deemed trust claim against Silver Streams for recovery of payroll source deductions in the amount of $84,596.39;

(ii) A deemed trust claim against Puccini for recovery of payroll source deductions in the amount of $40,831.53; and

(iii) A secured claim against Silver Streams in respect of GST/HST in an amount of $119,349.57.

30. As described above, on June 16, 2014, the Monitor sent a Notice of Disallowance to CRA with respect to its GST/HST claim on the basis that CRA's GST/HST claim is an unsecured claim against the Applicants' estate.

31. On June 16, 2014, the Monitor sent Notices of Allowance to CRA with respect to CRA's two deemed trust claims. The Monitor has advised CRA that the proceeds of sale (including from Lots 19, 22 and 25, a portion of which the Applicants seek to distribute to BMO) do not constitute proceeds to which CRA's deemed trust claims attach.

32. Since the service of the Applicants' notice of motion, CRA has advised the Applicants that it opposes any form of distribution to BMO.

33. The Applicants have proposed to proceed on the following basis:

(i) The Monitor will set aside in trust an amount of approximately $127,000 for the value of CRA's source deduction claims pending a final resolution of CRA's priority dispute;

(ii) The Applicants will consent to an endorsement providing that nothing in the distribution order shall prejudice CRA's rights to the proceeds subject to the distribution;

(iii) A motion to determine the priority of CRA's claims against the Applicants shall be heard no later than July 31, 2014; and

(iv) Distribution to BMO will proceed subject to the terms of a reimbursement agreement.

34. The Applicants and CRA continue to have without prejudice discussions in respect of this matter.

CASH FLOW PROJECTION

35. The Companies have prepared the Cash Flow Projection, on a weekly basis, for the period ending January 16, 2015. The Cash Flow Projection is attached hereto as **Appendix "5"**. The Cash Flow Projection has been prepared by management using probable and hypothetical assumptions set out therein.

36. The Monitor makes the following comments on the Cash Flow Projection:

i) Expenses appear to be consistent with the level of operations contemplated by management for the Companies during the projection period;

ii) The Cash Flow Projection assumes the closing of the sale transactions for Lots 20 and 24;

iii) The Cash Flow Projection does not contemplate making payments to the Companies' secured creditors (other than to BMO) nor servicing interest on such obligations during the CCAA Proceedings (other than in respect of the interim financing facility, which is being projected to be repaid); and

iv) The Cash Flow Projection does not contemplate paying pre-CCAA filing HST/GST arrears of approximately $630,000.

37. The Monitor's review of the Cash Flow Projection consisted of inquiries, analytical procedures and discussions related to information supplied to the Monitor by the management and employees of the Companies. Since hypothetical assumptions need not be supported, the Monitor's procedures with respect to such assumptions were limited to evaluating whether they were consistent with the purpose of the Cash Flow Projection. The Monitor has also reviewed the support provided by management for the probable assumptions and the preparation and presentation of the Cash Flow Projection. Based on the Monitor's review, nothing has come to its attention that causes it to believe that, in all material respects:

i) the hypothetical assumptions are not consistent with the purpose of the Cash Flow Projection;

ii) as at the date of this Third Report, the probable assumptions developed by management are not suitably supported and consistent with the Companies' plans or do not provide a reasonable basis for the Cash Flow Projection, given the hypothetical assumptions; or

iii) the Cash Flow Projection does not reflect the probable and hypothetical assumptions.

38. The Cash Flow Projection prepared by the Companies projects that the Applicants will have sufficient funds on hand to maintain their operations throughout the Cash Flow Projection period, provided that the sales of homes occurs as projected. Should these transactions be delayed, the Companies may be required to further utilize their interim financing facility to meet their ongoing obligations.

PROFESSIONAL FEES

39. The Monitor and its independent legal counsel have maintained detailed records of their professional time and costs since the Initial Order was granted.

40. Pursuant to paragraph 24 and 25 of the Initial Order, the Monitor and its counsel shall be paid their reasonable fees and disbursements and shall pass their accounts before the Court. In addition, pursuant to paragraph 26 of the Initial Order, the Monitor and its counsel, among other parties, were granted an Administration Charge on the property of the Applicants as security for their fees and disbursements, up to a maximum of $500,000.

41. The fees and disbursements of the Monitor during the period from December 17, 2013 to March 31, 2014 were previously approved by the Court.

42. The total fees of the Monitor for the period from April 1, 2014 to May 31, 2014 amount to $26,262.60, together with expenses and disbursements in the sum of $204.32, and HST in the amount of $3,440.70, totaling $29,907.62. The details of the time spent and services provided by the Monitor are more particularly described in the Affidavit of Jonathan Krieger, the Senior Vice-President of GTL having carriage of GTL's mandate as the Monitor, sworn June 18, 2014 in support hereof, a copy of which is attached hereto as **Appendix "6"**.

43. The legal fees and disbursements incurred by the Monitor for services provided to the Monitor by the Monitor's independent legal counsel, A&B, during the period from November 13, 2013 to March 10, 2014 were previously approved by the Court.

44. The total legal fees and disbursements incurred by the Monitor for services provided to the Monitor by the Monitor's independent legal counsel, A&B, during the period from March 11, 2014 to June 13, 2014 amount to $58,995.38, inclusive of applicable HST. The details of the time spent and services provided by A&B is more particularly described in the Affidavit of Ian Aversa, sworn June 17, 2014 in support hereof, a copy of which is attached hereto as **Appendix "7"**.

45. The Monitor respectfully requests that the Court approve its fees and disbursements and those of its legal counsel.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

46. In accordance with the Initial Order, the Monitor has controlled the Companies' receipts and disbursements since the date of the Initial Order.

47. Appendix "5" provides a summary of the Companies' receipts and disbursements for the period from December 17, 2013 to June 19, 2014.

COMPANIES' REQUEST FOR AN EXTENSION OF THE STAY OF PROCEEDINGS

48. The stay of proceedings currently expires on July 3, 2014. The Companies have requested that the Court extend the stay to and including January 16, 2015. The Monitor is of the view that the Applicants have acted in good faith and with due diligence since the granting of the Initial Order. The Applicants, among other things:

    (i) closed the sale of Lots 19, 22 and 25;

    (ii) executed agreements of Purchase and Sale for Lots 20 and 24;

    (iii) finished construction of Lot 23 of Phase III; and

    (iv) planned and commenced a marketing process for the sale of the remaining properties.

49. As set out in the June Jinnah Affidavit, the Applicants seek an extension of the stay period to January 16, 2015 to allow them to: (i) finish construction of the remaining properties in the Puccini Project; (ii) continue with the marketing process for the sale of the remaining properties; and (iii) assist the Monitor with the administration of the Claims Process.

50. A stay of proceedings is necessary if it is deemed appropriate by this Court to allow the Companies to maintain their business and to allow the Applicants the opportunity to implement the above noted plans in a stabilized environment.

RECOMMENDATION REGARDING REQUESTED RELIEF

51. In the Monitor's view, the Companies have acted in accordance with the Initial Order. The Companies have also been working cooperatively with the Monitor to facilitate the carrying out of their respective mandates. Accordingly, the Monitor is satisfied that the Companies are acting in good faith and with due diligence.

52. The Companies have requested that the Court extend the stay of proceedings to January 16, 2015. Among other things, an extension of the stay will permit the Companies to:

    (i) continue to communicate with stakeholders;

    (ii) complete construction and realize on the remaining homes;

    (iii) finalize the Claims Process; and

(iv) distribute proceeds from such realizations to the Companies' stakeholders.

53. Given the forgoing, the Monitor respectfully recommends that this Court grant the Companies' request for relief as set out in paragraph 7 of this Third Report and in the Applicants' notice of motion.

All of which is respectfully submitted,

GRANT THORNTON LIMITED,
In its capacity as Monitor of the Applicants
under the *Companies' Creditors Arrangements Act*
and not in any other capacity

Per:

Jonathan Krieger, CPA, CA, CIRP
Senior Vice President

THIS IS **EXHIBIT "E"** REFERRED TO IN THE

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 16th DAY OF SEPTEMBER, 2014

Court File No.:

Ontario

SUPERIOR COURT OF JUSTICE

B E T W E E N:

MEDI GROUP INCORPORATED, PILBRO III INC., SOLO ELECTRIC LTD., PAVE PLUMBING & HEATING INC., FOREMONT DRYWALL INC. 1382479 ONTARIO INC. 2203579 ONTARIO INC. cob FOREMONT DRYWALL CONTRACTING, E.D. CARPENTERS LTD., CARDELL FLOORING LTD., CANADIAN CONCRETE FORMING LIMITED, 1865721 ONTARIO INC.

Plaintiffs

- and -

SILVER STREAMS HOMES (PUCCINI) INC., SILVER STREAMS HOMES INC., 2148991 ONTARIO INC., 2148990 ONTARIO INC., 2147650 ONTARIO INC., 2148993 ONTARIO INC., 2147681 ONTARIO INC., IMRAN JINNAH, ASMA JINNAH, PUCCINI MORTGAGE CORPORATION, DAPAUL MANAGEMENT LIMITED, 388242 ONTARIO LIMITED, 53 PUCCINI MORTGAGE CORPORATION, NASTELL INVESTMENTS LIMITED, and JACK GREENBERG

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and $900.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $100.00 for costs and have the costs assessed by the court.

Date July , 2014

Issued by ______________________
Local registrar

Address of court office
393 University Avenue
10th Floor
Toronto, OntarioM5G 1E6

TO: SILVER STREAMS HOMES (PUCCINI) INC.
103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: SILVER STREAMS HOMES INC.
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TO: 2148991 ONTARIO INC.
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TO: 2147681 ONTARIO INC.
103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: IMRAN JINNAH
c/o 103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: ASMA JINNAH
c/o 103 Naughton Drive
Richmond Hill, Ontario L4C 8B3

TO: PUCCINI MORTGAGE CORP.
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: DAPAUL MANAGEMENT LIMITED
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: 388242 0NTARIO LIMITED
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: 53 PUCCINI MORTGAGE CORP.
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: NASTELL INVESTMENTS LIMITED
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

TO: JACK GREENBERG
c/o Suite 204, 181 Eglinton Avenue East
Toronto, Ontario M4P 1J4

CLAIM

1. The Plaintiffs, claim:

   (a) Payment of the amount of $2,784,728.40;

   (b) a declaration that all monies owing to or received by the Defendants from owners of the properties to whom the Plaintiff's materials had been supplied, constitute trust funds for the benefit of the Plaintiff to the extent of $2,784,728.40 pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c. 30 as amended;

   (c) a declaration that the Defendants hold the misappropriated funds in a constructive or resulting trust for the benefit of the Plaintiffs;

   (d) a declaration that the Defendants hold the misappropriated funds as constructive trustees for the benefit of the Plaintiffs;

   (e) a declaration that funds held by Chaitons LLP which are the subject matter of the claim in the Ontario Superior Court of Justice Court File No. CV-13-115767-00 commenced in Newmarket court constitute trust funds for the benefit of the Plaintiffs pursuant to the provisions of the *Construction Lien Act*, R.S.O. 1990, c. 30 as amended;

   (f) an accounting of all funds converted by the Defendants and judgment in accordance with the accounting;

   (g) damages in the amount of $2,784,728.40 for breach of contract, breach of trust, breach of the *Construction Lien Act* Trust provisions, breach of fiduciary duty, misappropriation of funds, unjust enrichment, conspiracy, fraud, negligent and fraudulent misrepresentations by the Defendants jointly and severally;

   (h) damages in the amount of $2,784,728.40 for conversion of the said funds misappropriated by the Defendants;

(i) punitive and exemplary damages in the sum of $2,000,000.00

(j) a declaration that the Defendants have been unjustly enriched at the expense of the Plaintiffs by virtue of the misappropriation of funds and must disgorge all funds misappropriated;

(k) A declaration that the Defendants are all statutory owners under the provisions of the *Construction Lien Act*;

(l) a declaration there exists an equitable mortgage in favour of the Plaintiffs over Property A in the amount of $2,784,728.40;

(m) A declaration that the equitable mortgage of the Plaintiffs is in priority over the charges of the Defendants, Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited on Property A;

(n) An order requiring Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited to marshal their debt from other security they hold and not from Property A.

(o) A declaration that the equitable mortgage of the Plaintiffs is in priority over the charges of the Defendants, 53 Puccini Mortgage Corp. and Nastell Investments Limited on Property B;

(p) An order requiring 53 Puccini Mortgage Corp. and Nastell Investments Limited to marshal their debt from other security they hold and not from Property B;

(q) an order that Jack Greenberg provide an accounting of the monies flowing through his account as escrow agent under the Forbearance Agreement;

(r) Pre-judgment interest on all amounts owing at Bank of Montreal Prime plus 3% per annum incurred from December 17, 2012 until payment of the Judgment or alternatively pursuant to Section 128 of the *Courts of Justice Act*, S.O. 1990, Chapter 43, as amended;

(s) Interest on all overdue accounts at the rate indicated in the invoices of the plaintiffs' delivered from time to time;

(t) Post-judgment interest from the date of Judgment at Bank of Montreal Prime plus 3% per annum or alternatively pursuant to Section 127 of the *Courts of Justice Act*, S.O. 1990, Chapter 43, as amended;

(u) Their costs of this action on a substantial indemnity basis;

(v) Such further and other relief as this Honourable Court may allow:

THE PARTIES

2. The Plaintiffs are construction trades who have provided services and materials creating an improvement on a residential subdivision project consisting of several phases ("Puccini Project") including on the lands set out in Schedule "A" of this claim.

3. The Defendant, Silver Streams Homes Puccini Inc. (hereinafter referred to as "Silver Streams Puccini"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a builder and/or developer of residential homes

4. The Defendant, Silver Streams Homes Inc. (hereinafter referred to as "Silver Streams Homes"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a builder and or developer of residential homes.

5. The Defendant, 2148991 Ontario Inc. (hereinafter referred to as "2148991"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and was at all material times the registered owner of the lands set out in Schedule "B" to this claim. 2148991 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

6. The Defendant 2148990 Ontario Inc. (hereinafter referred to as "2148990"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in

the City of Toronto, in the Province of Ontario and was at all material times the registered owner of the lands set out in Schedule "C" to this claim. 2148990 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

7. The Defendant, 2147650 Ontario Inc. (hereinafter referred to as "2147650"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario. 2147650 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

8. The Defendant, 2148993 Ontario Inc. (hereinafter referred to as "2148993"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario. 2148993 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

9. The Defendant, 2147681 Ontario Inc. (hereinafter referred to as "2147681"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario. 2147681 is a related company to Silver Streams Homes and Silver Streams Puccini ("Silver Streams").

10. The Defendant, Puccini Mortgage Corp. (hereinafter referred to as "Puccini Mortgage"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor. Jack Greenberg ("Greenberg") is the sole officer and director and/or the controlling mind of Puccini Mortgage and is authorized to bind it.

11. The Defendant, Dapaul Management Limited (hereinafter referred to as "Dapaul Management"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of Dapaul Management and is authorized to bind it.

12. The Defendant, 388242 Ontario Limited (hereinafter referred to as "388242"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor.

Greenberg is the sole officer and director and/or the controlling mind of 388242 and is authorized to bind it.

13. The Defendant, 53 Puccini Mortgage Corp. (hereinafter referred to as " 53 Puccini Mortgage"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of 53 Puccini Mortgage and is authorized to bind it.

14. The Defendant, Nastell Investments Limited (hereinafter referred to as "Nastell"), is a corporation incorporated pursuant to the laws of the Province of Ontario having its head office in the City of Toronto, in the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of Nastell and is authorized to bind it.

15. Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell are collectively referred to as (the "Greenberg Companies").

16. Imran Jinnah resides in the Town of Richmond Hill in the Province of Ontario and is an officer, director and shareholder and the controlling mind of Silver Streams Puccini, Silver Streams Homes, 2148990, 2148991, 2148993, 2147681 and 2147650.

17. Asma Jinnah resides in the Town of Richmond Hill in the Province of Ontario and is an officer and shareholder and the controlling mind of Silver Streams Puccini.

18. Jack Greenberg is a lawyer licenced to practice law in the Province of Ontario and was at all material times acting as an escrow agent pursuant to an Escrow Agreement referred to below ("the Escrow Agent"). Jack Greenberg as described above was also the sole officer and director and/or the controlling mind of the Greenberg Companies. Greenberg was also acting as solicitor for or the agent of or controlling Silver Streams and actively making decisions regarding the construction, development, payment of accounts including those of the trades in the Puccini Project and was an Owner as defined in the *Construction Lien Act.*

19. Jack Greenberg at all material times also represented the various Greenberg Companies described above as lenders and investors both in his capacity as legal counsel as well as their directing mind and was authorized to bind them in his sole discretion. Jack Greenberg was himself a significant investor in the various lender corporations;

20. The Plaintiffs state that the mortgages in favour of the Greenberg Companies were not at arms-length and not commercially reasonable. Furthermore these mortgagees did not act in a commercially reasonable manner in particular by failing to have regular re-payment terms and failing to exercise default remedies under the mortgagees in a commercially reasonable manner. The Plaintiffs seek a declaration that the various Greenberg Companies (Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell) are all statutory owners under the provisions of the *Construction Lien Act*.

21. Jack Greenberg at times also acted as counsel for Silver Streams (Silver Streams Homes, Silver Streams Puccini, 2148990, 2148991, 2148993, 2147681 and 2147650). He was directing the flow of funds and making decisions regarding the construction of the Puccini Project, whether trades would get paid, paying trades and preferring payment to the Greenberg Companies over the Trades, both in his personal capacity as an investor and also on behalf of the various lender corporations (Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell). By virtue of Jack Greenberg's actions more particularly described below the Plaintiffs seek a declaration that Jack Greenberg in his personal capacity and the Private Lenders (Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell) are all statutory owners under the provisions of the *Construction Lien Act*.

BACKGROUND

THE PUCCINI PROJECT

22. Silver Streams Homes and Silver Streams Puccini in or about 2008 began a residential project consisting of 118 units including detached homes, semi-detached homes and townhouses located at Bathurst Street and King Road in Richmond Hill, Ontario (the "Puccini Project").

23. The Puccini Project was being built in 4 phases. Title to the lands in Phases I, II, and III are in the names of 2148990, 2148993, 2147650 and 2147681. Phase I comprising 20 detached

homes was completed in or around 2010, Phase II comprising 25 detached homes was completed in late 2012 and Phase III comprising 25 detached homes. Phase IV comprises 40 townhouse units and 8 semi-detached units and title is in the name of 2148991.

24. The Plaintiffs entered into one contract with Silver Streams Puccini who was acting as the agent for the different titled owner corporations of each phase within the Puccini Project. Imran Jinnah and Asma Jinnah (collectively referred to as the "Jinnahs") were the officers, directors and shareholders of Silver Streams Puccini. Imran Jinnah was the sole officer, director and shareholder of Silver Streams Homes, 2148990, 2148991, 2148993, 2147681 and 2147650.

25. The Plaintiffs plead that the Defendants were all beneficial owners with respect to the purchase and development of the lands more particularly set out in Schedule "D" hereto and were at all material times owners of them by virtues of the definition of an owner under Section (1) item 15 of the *Construction Lien Act*, 1990, as amended.

REGISTERED MORTGAGES

26. The defendants, Dapaul Management Limited, Puccini Mortgage Corp., 388242 Ontario Limited have registered mortgages against Property A, more particularly set out in Schedule "E". Dapaul Management Limited is registered as a second mortgage for the principal amount of $5,500,000.00. Puccini Mortgage Corp. is registered as a third mortgage for the principal amount of $2,600,000.00. 388242 Ontario Limited is registered as a fourth mortgage in the principal amount of $1,500,000.00 ("Property A Lenders");

27. The defendants 53 Puccini Mortgage Corp. have a registered and Nastell Investments Limited have registered mortgages against Property B, more particularly set out in Schedule "E". 53 Puccini Mortgage Corp. is registered as a second mortgage in the principal amount of $2,000,000.00. Nastell Investments Limited is registered as a third mortgage in the principal amount of $3,200,000 ("Property B Lenders");

FORBEARANCE AGREEMENT

28. The Plaintiffs had provided services and materials and improved the lands on Phase 1 and 2 of the Puccini Project and as at December 12, 2012 were owed cumulatively the amount of

\$1,667,538.10 for services and materials supplied to the Project ("Past Debt"). The particulars owed to each Plaintiff as at December 12, 2012 is set out in Schedule "F".

29. In or about the fall of 2012, The Puccini Project was in serious financial difficulty which was not known to the Trades, and at risk of collapsing under the mounting debt including the amounts owed to the Trades. Greenberg and the Jinnahs knew or ought to have known that the Puccini Project was insolvent by this time. Greenberg was concerned about the repayment of monies owing to the Greenberg Companies.

30. Greenberg began meeting with the Trades with the ostensible purpose of;

1. convincing the Trades to not register liens which would have stopped construction financing from being advanced by Bank of Montreal, the construction lender to Phases I,II and III of the Puccini Project; and

2. Actively encouraging the Trades to continue improving the Phase III lands which would increase the equity available to pay back monies owing to the Greenberg Companies.

Greenberg and the Jinnahs fraudulently and /or negligently misrepresented the true financial situation of the Puccini Project which was insolvent. To the contrary, Greenberg and the Jinnahs represented to the Trades they would be paid for any improvements to the Phase III lands and would also be paid their old debt. Greenberg knew these representations were false and that the Trades would not be paid for any of their old debt and likely not even paid in full for the improvements to the Phase III lands.

31. On December 17th, 2012, the Defendants Silver Streams Puccini, 2147650, 2148993 and 2148990 entered into an agreement with the Plaintiffs to induce them to forbear seeking their remedies for the amounts owing in Schedule "F" and also to induce them to return to the Project to provide labour and materials to the Puccini Project ("the Forbearance Agreement").

32. By the terms of the Forbearance Agreement, Jack Greenberg, acted as escrow agent to disburse monies to the Plaintiffs for new work to be performed and also towards the Past Debt owing to the Plaintiffs. Jack Greenberg was also binding the parties other than the Trades to the

Forbearance Agreement and to the knowledge of the Trades was also representing the interests of the Greenberg Companies.

33. It was an essential term of the Forbearance Agreement that the Past Debt would be paid from the closing proceeds in Phase III and Phase IV being the Property as described in Schedule "E. The Plaintiffs provided services and materials to the Puccini Project and proceeded to improve the lands by providing labour, services and materials to Phase III in accordance with the Forbearance Agreement.

34. The Forbearance Agreement (a) implicitly provided for the mortgage lenders be kept in good standing to allow the Puccini Project to be completed, with closings of Agreements of Purchase and sales for the homes generating funds (b) to pay for the work performed by the Plaintiffs on Phase III and (c) to pay the Past Debts of the Plaintiffs. The Plaintiffs plead and rely on the terms of the Escrow Agreement as if recited in full herein.

35. Under the terms of the Forbearance Agreement, (a) Silver Streams Puccini was (a) to irrevocably direct the construction lender for Property A and B that the Net Proceeds (as that term is defined in the Forbearance Agreement) of any draw be paid to the Escrow Agent. (b) to irrevocably direct the Escrow Agent that these Net Proceeds be paid to the Plaintiffs (c) to request draws from the construction lender expeditiously (d) to irrevocably designate the Escrow Agent as its solicitor to complete the legal work for each closing. (e) to irrevocably direct the Escrow Agent that from the Net Sale Proceeds (as that term is defined in the Forbearance Agreement) to pay the Past Debt of the Plaintiffs.

All of these payments were to be made by the Escrow Agent no later than the 46th day after the closing of any residential unit.

36. At the time Greenberg negotiated the Forbearance Agreement he was wearing several hats. Greenberg was negotiating and agreeing to the Forbearance Agreement in his personal capacity, on behalf of the Greenberg Companies (Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell) as counsel for the Jinnahs and Silver Streams.

37. The Plaintiffs Trades relied on these representations and good faith of Greenberg as a Lawyer, and forbeared their legal rights. At no time did Greenberg indicate he was not acting for

all the stakeholders being the Silver Streams and Greenberg Companies. More to the point at no time did Greenberg indicate to the Trades that the Greenberg Companies would be seeking priority over the rights of the Trades. But for the representations of Greenberg which the Trades were relying upon, they would not have forbeared liening for monies owing from Phase I and II and would never have returned to do work on Phase III. In effect after providing labour, material and services to Phase III under the Forbearance Agreement the Trades were owed cumulatively more than the Past debt owing from Phase I and II prior to the Forbearance Agreement. While the Trades were in a worse financial position working on Phase III, at the same time the Greenberg Companies were in a better position as the equity in the remaining lands (Phase III) had been increased and they were now claiming a priority over the Trades. The Plaintiffs therefore state any priority given to the Greenberg Companies over the Trades amounts to an unjust enrichment.

38. The defendant Silver Streams Puccini breached the Escrow Agreement;

(i) by allowing the Property A and B lenders to go into default;

(ii) by not completing Agreements of Purchase and sales;

(iii) by failing to direct the construction lenders for Property A and B to advance the Net Proceeds of construction draws;

(iv) by defaulting on conditions within the construction lenders mortgage terms necessary to permit construction advances to flow;

(v) by failing to pay servicing contractors thereby causing constructions liens to be registered against Property A and B paralyzing the flow of construction advances;

(vi) By diverting funds to servicing contractors thereby causing defaults under the mortgages with the Property A and B lenders;

(vii) it sold properties as below market values;

(viii) it received monies it for management fees and other soft costs;

(ix) such further and other breaches as counsel may advise;

The impact of these breaches was to stop payments being made to the Plaintiffs as called for in the Forbearance Agreement.

39. The Plaintiffs state that the charges of Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited on Property A and 53 Puccini Mortgage Corp. and Nastell Investments Limited on Property B as a result of the following;

(i) The mortgages are not arms' length mortgages;

(ii) No monies were advanced under the mortgages;

(iii) If monies were advanced they were advanced in excess of the value of the lands before the Plaintiffs provided their labour, material and services;

(iv) If monies were advanced, same were advanced in the in the face of knowledge of the Forbearance Agreement;

(v) such further and other grounds as counsel may advise;

40. In the Alternative the intent of the Forbearance Agreement was to grant security over Property A and B until the debt to the Plaintiffs was paid with interest at Bank of Montreal Prime plus 3%. The Plaintiffs claim they are entitled to an order that they have an equitable mortgage over Property A and B;

41. The Plaintiffs state that the equitable mortgage is in priority to the charges of Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited on Property A and 53 Puccini Mortgage Corp. and Nastell Investments Limited on Property B as a result of the following;

(i) The mortgages are not arms' length mortgages;

(ii) No monies were advanced under the mortgages;

(iii) If monies were advanced they were advanced in excess of the value of the lands before the Plaintiffs provided their labour, material and services;

(iv) If monies were advanced, same were advanced in the in the face of knowledge of the Forbearance Agreement;

(v) such further and other grounds as counsel may advise;

42. In the further alternative if the various mortgages are valid, then they are secured by additional lands besides Property A and B and these mortgagees should be required to marshal their debt from other security held and not from Property A so as to permit the Plaintiffs to obtain recovery from Property A which is their only security.

43. Greenberg as Escrow Agent under the Agreement was under a fiduciary duty to ensure that all charges against the Project were in kept in good standing and further that he accounted to the Plaintiffs for all monies flowing through him. Greenberg has failed to provide such an accounting or to ensure that the charges were kept in good standing, thereby leading to a default under the charges;

CON DRAIN

44. In or about March 31, 2010, Con-Drain Company (1983) Limited ("Con-Drain") was a trade that reached an agreement with Greenberg and the Jinnahs in respect of amounts owing to it for work performed on the Puccini Project.

45. As part of the settlement Con-Drain appears to have been promised payment from Phase III closings of homes. These payments of $50,000 plus interest were to be paid out of the sale of homes in Phase III which improvements were provided by the Plaintiffs. The payments were for a past debt as opposed to any improvement being made by Con-Drain at the time the Plaintiffs were improving the lands being December 2012 until September 2013. Alternatively if Con-Drain provided any improvement to the Phase III lands these improvements were for as far less than the payments being promised which were for a Past Debt not lienable work on Phase III.

46. Con-Drain claimed to be owed the total sum of $794,881.68 as at July 31, 2013. As a result of an action and application for an injunction monies from certain closings in Phase III

were by court order paid to the law firm of Chaitons LLP to be held pending a determination of entitlement to these funds ("the Funds").

47. The Plaintiffs state the Funds are Trust Funds pursuant to the Trust provisions of the *Construction Lien Act* R.S.O. 1990, c.30 as amended for the benefit of Plaintiffs who provided services and improvements to these very lands and premises and are payable to them in priority to the mortgages registered by the Greenberg Companies and Con-Drain. Alternatively these Funds are Trust and must be shared rateably by all Trust beneficiaries under the *Construction Lien Act*.

48. In addition to the extent that the Greenberg Companies received monies totalling approximately $1.2 million from closings on Phase III, lands in June and July 2013, they are constructive trustees of these funds and hold these funds in trust for the Plaintiffs. As a result all such funds must be repaid to the Plaintiffs on the basis that same were clearly distributed to the Greenberg Companies in breach of the constructive trust and fiduciary obligations owed to the Plaintiffs by Silver Streams, Greenberg and/or the Greenberg Companies.

BREACH OF TRUST

49. The Plaintiffs state that Puccini Project was directed and controlled by Greenberg for the benefit of himself and the Greenberg Companies using the Jinnahs and the Silver Streams companies as a tool. There was never any intention to ensure that the project proceeded in a commercially reasonable fashion and that the construction trades such as the Plaintiffs would be paid in the ordinary course or fully paid at all.

50. Greenberg and the Greenberg Companies allegedly advanced funds into the Puccini Project charging high rates of interest and exorbitant fees. Some of the mortgages advanced by the Greenberg companies were to repay such interest accruing and fees. The Jinnahs and the Silver Streams companies were receiving a fee per home closing, the particulars of which are not known to the Plaintiffs at the time of this pleading. The net result of the actions of Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams companies was that all the equity was sucked out of the Puccini Project, the Puccini Project became insolvent and the Plaintiffs who were the trades improving the lands in the Puccini Project were left unpaid. The actions by

Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams Companies give rise to a legal and equitable justification by the court to pierce the corporate veil of the various Greenberg and Silver Streams companies as they were all operating as one and the same in partnership, joint venture or joint enterprise with the same underlying ownership of Greenberg and the Jinnahs.

51. By virtue of the actions of Greenberg, the Greenberg Companies, the Jinnahs and Silver Streams companies they are owners either by legal title or beneficially as that term is defined in the *Construction Lien Act* and have Trust obligations imposed upon them pursuant to the relevant Trust provisions of the *Construction Lien Act*.

52. The actual contract for the supply of labour, materials and services was with Silver Streams Puccini acting as agent for Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams companies. The acts of Silver Streams Puccini bind Greenberg, the Greenberg Companies the Silver Streams Companies and the Jinnahs.

53. Greenberg and the Jinnahs are persons liable in an action for breach of trust pursuant to Part II of the *Construction Lien Act* R.S.O. 1990, c.30 as amended.

54. The Plaintiffs did at the request of the Defendants deliver labour, material and services in the sum of $2,784,728.40 for the Puccini Project. The particulars of the Plaintiffs claims are particularized in Schedule "G" to this claim.

55. The Plaintiffs state despite demands for payment, the Defendants have refused and neglected to pay the said sum of $2,784,728.40. The Plaintiffs therefore claim entitlement to the sum of $2,784,728.40.

56. By the terms of the invoices delivered by the Plaintiffs for their supply of labour material and services to the improvements they were entitled to interest on all overdue accounts according to the terms as stated in the invoices. The Plaintiffs therefore claim interest at such rate on overdue amounts. In the alternative the Plaintiffs claim interest under the *Courts of Justice Act*.

57. The Plaintiffs plead that the monies received by Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams companies from the sale of the homes in the Puccini project

constitute trust funds for the benefit of the Plaintiffs pursuant to the provisions of *Construction Lien Act* R.S.O. 1990, c.30 as amended s.7, s.8. and s.13.

58. The Plaintiffs do not have particulars of the monies received by the various defendants from the financing and sale of the homes in the Puccini Project as that information is within the exclusive control of the corporate and individual Defendants.

59. The Plaintiffs allege that monies received by the Defendants were appropriated and converted for their own use inconsistent with the trust imposed under the *Construction Lien Act* R.S.O. 1990, c.30 as amended, and pleads such actions constitute a breach of trust.

60. Greenberg and the Jinnahs as officers and directors of the Greenberg Companies and Silver Streams companies respectively are liable personally to the Plaintiffs for breach of trust as they assented to, or acquiesced in conduct that they knew or ought to have known or reasonably ought to have known amounted to a breach of trust pursuant to s.13 of the *Construction Lien Act* R.S.O. 1990, c.30 as amended.

61. The Plaintiffs submit they have suffered damages by virtue of the breach of trust by the Defendants. The Plaintiffs claim the sum of $2,784,728.40 plus interest as damages.

62. By reason of the high handed callous conduct and complete disregard by the Defendants of the Plaintiffs rights, the Plaintiffs claim punitive damages against the Defendants of $2,000,000.00.

63. The Plaintiffs plead and rely upon the *Courts of Justice Act*, R.S.O. 1990, Chapter 43 as amended and the *Construction Lien Act* R.S.O. 1990, c.30 as amended;

64. The Plaintiffs propose the trial of this action be in the City of Toronto, in the Province of Ontario.

July , 2014

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and

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Court File No.:

Ontario
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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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.

Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

MOTION RECORD
(RETURNABLE SEPTEMBER 23, 2014)

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Doc#2886374v1