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.

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(Returnable November 29, 2015)

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TO: THE SERVICE LIST

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Applicants

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Applicants

NOTICE OF MOTION
(Returnable November 29, 2016)

THE APPLICANTS will make a motion to a Judge of the Commercial List on Tuesday, November 29, 2016 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. vesting in Country Wide Homes at King South Inc. (the "**Purchaser**") the Applicants' rights, title and interests in and to Lot 18, Phase III of the Puccini Project (as defined below), municipally known as 18 Rossini Drive, Richmond Hill ("**18 Rossini**"), free and clear of any encumbrances, except those contemplated by the agreement of purchase and sale;

2. authorizing a distribution to the Lien Claimants (as defined below) of the proceeds from the sale of the Puccini Homes (as defined below) in accordance with the arbitration award;

3. authorizing a distribution in the amount of $456,125.72 to Agueci Calabretta in trust pursuant to the terms of the Order of Justice Wilton-Siegel dated November 7, 2016;

4. authorizing an interim distribution of the proceeds from the sale of the Puccini Homes to the Private Lenders (as defined below);

5. authorizing the Applicants to distribute the Con-Drain Funds (as defined below) in accordance with the priorities determined by the Court in the Con-Drain Action (as defined below) subject to the beneficiary of said distribution giving notice of the final resolution and pending distribution to the Applicants' service list in these proceedings 30 days prior to any proposed distribution;

6. approving an extension of the stay of proceedings in favour of the Applicants to and including January 30, 2017;

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

8. approving the fees and disbursements of the Monitor and its legal counsel as described in the Eleventh Report;

9. approving the Monitor's interim statement of the Applicants' receipts and disbursements;

10. granting such relief as the Applicants and the Monitor deem necessary and the Court deems just to assist in the resolution of the issues identified herein with respect to the Tarion LCs (as defined below); and

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

THE GROUNDS FOR THE MOTION ARE:

Background

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

2. The Applicants are affiliated Ontario corporations owned by Imran Jinnah ("**Jinnah**").

3. Silver Streams Homes Inc. ("**Silver Streams**") is a residential homebuilder in the Greater Toronto Area. As at the Filing Date, Silver Streams was in the process of completing a project located at Bathurst Street and King Road in Richmond Hill, Ontario (the "**Puccini Project**"). 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 these proceedings. Since the commencement of these proceedings, the Phase IV lands have been sold under power of sale.

5. The Initial Order appointed Grant Thornton Limited as Monitor of the Applicants in these proceedings and 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 November 30, 2016.

Puccini Homes

6. 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 these CCAA proceedings was 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.

7. Nine out of ten Puccini Homes have now been sold with the approval of the Court. The remaining unsold Puccini Home, 18 Rossini is vacant land. Since the Applicants' last appearance before the Court the Applicants have found a buyer for this lot and have entered into an agreement of purchase and sale with the Purchaser for the sale of 18 Rossini for the purchase price of $830,000.

8. The sale agreement for the sale of 18 Rossini is conditional upon Silver Streams obtaining an order vesting title to 18 Rossini in the Purchaser free and clear of all claims, encumbrances and liens. The Applicants seek an order vesting Silver Streams rights, interests and title in and to 18 Rossini in the purchaser free and clear of all claims, encumbrances and liens.

9. If the vesting order is granted by the Court, the Agreement contemplates a closing date of December 15, 2016.

10. The Private Lenders (as defined herein), who, as discussed below, are the only parties with an economic interest in the proceeds from the sale of 18 Rossini, support this transaction.

The Claims Process and Arbitration

11. 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 secured claims against the Applicants' Property (as defined in the Claims Process Order) (the "**Claims Process**").

12. The Applicants' secured creditors who filed proofs of their secured claims in the Claims Process can be categorized as follows:

    (a) senior mortgage holders, which were Bank of Montreal ("**BMO**"), Home Trust Company and Foremost Mortgage Holding Corporation;

    (b) Canada Revenue Agency ("**CRA**");

    (c) private lenders who provided financing to the Puccini Project and which financing is secured, *inter alia,* by mortgages registered against title to the Puccini Homes, subordinate to the senior mortgage holders (the "**Private Lenders**"). The total principal amount outstanding under these loans is approximately $11.96 million; and

(d) trades who provided services to the Puccini Project and registered claims for lien under the *Construction Lien Act* (Ontario) (the "**Lien Claimants**"). The total amount of the liens as at the Filing Date was approximately $3.5 million.

13. The Applicants' loans to their senior mortgage holders were paid in full from the proceeds of the Puccini Homes, subject to reimbursement agreements by February 2015.

14. In addition, the Applicants settled CRA's secured claims against them with the approval of the Court.

15. The net proceeds from the sale of the Puccini Homes, following payment of the senior secured mortgage holders' claims and certain other settled claims were subject to a priority dispute between the Private Lenders and the Lien Claimants.

16. On January 8, 2015, the Court granted, among other things, an order (the "**Reference Order**"), among other things, referring the determination of the priority dispute between the Private Lenders and the Lien Claimants to an arbitration (the "**Arbitration**"). The Arbitration was scheduled to commence in July 2016.

17. On the eve of the Arbitration, the Lien Claimants and the Private Lenders agreed to a settlement of the priority dispute on the following terms:

(a) $717,938.52 payable to the Lien Claimants in priority to all other secured creditors; and

(b) the balance payable to the Private Lenders.

18. The Arbitration is now complete subject to the resolution of an issue with BMO's costs of participating in the Arbitration, described in greater detail in the Affidavit of Imran Jinnah sworn November 11, 2016 in support of this motion. The Applicants seek to distribute the proceeds from the sale of the Puccini Homes, subject to a reserve by the Monitor for the satisfaction of the professional fees of the Applicants' counsel, the Monitor and the Monitor's counsel incurred to date and to be incurred to the completion

of these CCAA proceedings, pursuant to the final arbitrator award and an order of the Honourable Mr. Justice Wilton-Siegel dated November 7, 2016 confirming the arbitrator's final award.

Tarion LCs

19. The Applicants collectively carried on business as builders and vendors of the Puccini Project. As required under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 (the "***Warranties Act***"), registrations were filed with Tarion Warranty Corporation ("**Tarion**") in connection with the Puccini Project.

20. In connection with their registrations under the *Warranties Act*, Silver Streams and the numbered company Applicants provided security in favour of Tarion in the aggregate amount of $920,000 by way of the letters of credit issued by BMO (the "**Tarion LCs**"). The Tarion LCs were provided to Tarion to secure the Applicants' obligations to Tarion for deposit claims and warranty claims by purchasers of homes in Phases I, II and III of the Puccini Project.

21. In the summer of 2014, the Applicants learned for the first time that Puccini was not registered as a vendor under the *Warranties Act*. Puccini acted as vendor on the majority of the transactions for the sale of the homes in the Puccini Project. As a consequence of the fact that Puccini was not a Tarion registrant, Tarion could not access the cash collateral underlying the Tarion LCs in connection with Tarion's claims against Puccini.

22. Pursuant to an order of the Court dated September 25, 2015 (the "**Settlement Agreement Order**"), the Honourable Justice Wilton-Siegel dismissed the Applicants request for an order: (i) declaring that they have the requisite authority, without the approval of the Court, to enter into the settlement agreement with Tarion regarding, amongst other things, the consequences of Puccini not being registered with Tarion as a vendor (collectively, the "**Settlement Agreement**"); or, in the alternative (ii) approving the Settlement Agreement.

23. On October 19, 2015, the Applicants sought leave to appeal the decision of Justice Wilton-Siegel. On February 26, 2016, the Court of Appeal dismissed the motion for leave to appeal.

24. Tarion advised the Applicants that it has claims against the numbered company Applicants and Silver Streams in their capacity as registrants. Approximately $220,000 has been drawn down by Tarion from one of the Tarion LCs since December 2015.

25. Chaitons is working with Tarion's legal counsel to understand the basis for the draws made by Tarion and to establish what additional claims Tarion may have against the Applicants who are registrants under the *Warranties Act*. If the Applicants, Tarion and the Monitor are unable to resolve this issue before November 29, 2016, the Applicants will, among other things, ask the Court to set a timetable for the resolution of this issue, together with any other appropriate relief.

Con-Drain

26. In 2008, Silver Streams retained Con-Drain Company (1983) Limited ("**Con-Drain**") to provide services and materials to the Puccini Project. Silver Streams was unable to pay Con-Drain the full amount outstanding.

27. In February 2010, Con-Drain registered two construction liens against title to Phases I, II and III of the Puccini Project. In March 2010, Silver Streams and Con-Drain entered into a settlement agreement. Under the terms of the settlement agreement, Silver Streams immediately paid Con-Drain $550,000. Silver Streams agreed to pay Con-Drain a further $50,000 per lot plus interest from future closings in the Puccini Project in accordance with the terms of a written undertaking until Con-Drain was paid in full. As a condition of this settlement, Con-Drain subsequently discharged its claims for lien.

28. Litigation was commenced by Con-Drain against, among others, the Applicants arising from an allegation of default under the terms of the settlement agreement. In the litigation Con-Drain claims payment of $800,000. In August 2013, Con-Drain commenced an action in Newmarket (the "**Con-Drain Action**").

29. On August 15, 2013, Con-Drain obtained an order from the Honourable Madam Justice Lack requiring that net proceeds from the sale of homes in the Puccini Project be paid to the Applicants' lawyers, Chaitons LLP ("**Chaitons**"), in trust up to $800,000.

30. In addition to the Applicants, the Private Lenders are also named as defendants in the Con-Drain Action. The Con-Drain Action is at its core a priority dispute between Con-Drain and the Private Lenders for the net proceeds from the sale of Puccini Homes in an amount of $800,000.

31. As at the time of the CCAA filing, $491,985.33 (the "**Con-Drain Funds**") was deposited and held in trust by Chaitons.

32. Pursuant to the terms of the Initial Order, the Con-Drain Funds continue to be maintained in trust by Chaitons until further court order or consent of the parties to the Con-Drain Action and the determination of whether the Con-Drain Funds form part of the Applicants' property was to be determined at a later date.

33. Pursuant to the terms of the Reference Order, the Con-Drain Action was transferred to the Superior Court of Justice in Toronto separate from the CCAA proceedings and without the participation of the Monitor. Pursuant to the terms of the Reference Order, Chaitons continues to hold the Con-Drain Funds in its trust account.

34. The Con-Drain Action is currently in the discovery stage.

35. Concurrently with the Applicants' motion, Con-Drain will bring a motion on notice to the Service List for an order transferring $308,014.67 (the difference between $800,000 that Con-Drain seeks to recover and the current Con-Drain Funds) into Chaitons trust account pending the resolution of the Con-Drain Action.

36. The Applicants take no position on Con-Drain's motion.

37. The Applicants seek an order authorizing them to distribute the Con-Drain Funds in accordance with priorities determined by the Court in the Con-Drain Action.

38. The Applicants understand that certain lien claimants may assert an interest in the Con-Drain Funds in the event Con-Drain is successful in the Action. As a consequence, the Applicants also seek an order that notice of the final resolution and pending distribution in the Con-Drain action be given to the Applicants' service list in this proceeding 30 days prior to any proposed distribution.

Stay Extension

39. The stay of proceedings will expire on November 30, 2016.

40. The CCAA proceedings are substantially at an end, pending the resolution of the Tarion LCs issues identified above. The Applicants seek an extension of the stay of proceedings to January 30, 2017 to allow for the resolution of these outstanding issues, final distributions pursuant to orders of the Court and the discharge of the Monitor.

41. The Applicants are not seeking an extension of the stay of proceedings in favour of their officers and directors and consent to allow the breach of trust actions commenced by certain Lien Claimants to continue.

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

43. 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:

1. The Affidavit of Imran Jinnah, sworn November 11, 2016;

2. The Monitor's Eleventh Report to the Court, to be filed; and

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

November 14, 2016

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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

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TAB 2

Court File No. 13-10362-00-CL

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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 for the relief set out herein and as more particularly set out in each section of this affidavit and in the Applicants' notice of motion.

BACKGROUND AND CCAA PROCEEDINGS

3. The Applicants are affiliated companies owned by me. Silver Streams is a residential homebuilder in the Greater Toronto Area. As at the Filing Date (as defined below), Silver Streams was in the process of completing a project in Richmond Hill, Ontario referred to in these proceedings as the "**Puccini Project**". The Puccini Project was comprised of four phases. With the

exception of ten homes in various stages of completion, the construction of Phase I, II and III homes was substantially completed as at the Filing Date.

4. The construction of Phase IV was not commenced prior to the commencement of the CCAA proceedings. 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 III was registered in the names of the numbered company Applicants. Puccini was incorporated for the purpose of selling the homes in the Puccini Project.

6. On December 17, 2013 (the "**Filing Date**"), 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 Grant Thornton Limited 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. 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 November 30, 2016.

PUCCINI HOMES

9. 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**").

10. 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 the claims of the Applicants' creditors in the priority to be determined by the Court.

11. At the time of the Applicants' last stay extension motion, nine out of ten of the Puccini Homes had been sold by the Applicants and vested in the applicable purchasers by the Court. The remaining unsold Puccini Home was Lot 18, Phase III of the Puccini Project, municipally known as 18 Rossini Drive, Richmond Hill, Ontario ("**18 Rossini**"). 18 Rossini was a vacant lot and was marketed for sale as such.

18 Rossini

12. In my affidavit sworn March 8, 2016 (the "**March Affidavit**") and filed in support of the Applicants' last stay extension motion I advised the Court that 18 Rossini was not originally serviced by the Applicants and that the Applicants had difficulty selling an unserviced lot. The developer of properties adjacent to 18 Rossini has now serviced its lands and Lot 18 was the beneficiary of these services. A copy of the March Affidavit without exhibits is attached hereto as **Exhibit "B"**.

13. The Applicants listed 18 Rossini on MLS in June 2016 for a purchase price of $825,000. In addition, the Applicants marketed this property directly to real estate agents working in the area.

14. In the summer 2016, the Applicants received two offers for 18 Rossini, which included an offer from a representative of Country Wide Homes at King South Inc. (the "**Purchaser**") both of which were below asking price. In the fall of 2016, the Purchaser made a further offer in the amount of $830,000 which was accepted by the Applicants.

15. Pursuant to an agreement of purchase and sale dated November 7, 2016 (the "**Agreement**") between Silver Streams and the Purchaser, Silver Streams sold 18 Rossini for a purchase price of $830,000. A copy of the Agreement is attached hereto as **Exhibit "C"**. A deposit of $50,000 has been received and is being held in trust by the Monitor.

16. The Agreement is conditional upon Silver Streams obtaining an order vesting title to 18 Rossini in the Purchaser free and clear of all claims, encumbrances and liens. If the vesting order is granted by the Court, the Agreement contemplates a closing date of December 15, 2016.

17. The Private Lenders (as defined herein), who, as discussed below, are the only parties with an economic interest in the proceeds from the sale of 18 Rossini, support this transaction.

THE CLAIMS PROCESS AND ARBITRATION

18. 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 secured 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 "D"**.

19. Pursuant to the Claims Process Order, the Claims Process was 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.

20. An update on the Claims Process was provided by the Monitor in its Ninth Report to the Court dated July 9, 2015 (the "**Ninth Report**"). A copy of the Ninth Report without appendices is attached hereto as **Exhibit "E"**.

21. The Applicants' secured creditors who filed proofs of their secured claims in the Claims Process can be categorized as follows:

(a) senior mortgage holders, which were BMO, Home Trust Company and Foremost Mortgage Holding Corporation;

(b) Canada Revenue Agency ("**CRA**");

(c) private lenders who provided financing to the Puccini Project and which financing is secured, *inter alia,* by mortgages registered against title to the Puccini Homes, subordinate to the senior mortgage holders (the "**Private Lenders**"). The total principal amount outstanding under these loans is approximately $11.96 million; and

(d) trades who provided services to the Puccini Project and registered claims for lien under the *Construction Lien Act* (Ontario) (the "**Lien Claimants**"). The total amount of the liens as at the Filing Date was approximately $3.5 million.

22. As described in greater detail in my previous affidavits filed with this Court, subject to the issue of BMO's costs of participating in the Arbitration (described in detail below), the Applicants' loans to the senior mortgage holders were paid in full by February 2015, subject to reimbursement agreements. In addition, the Applicants settled CRA's secured claims against the Applicants with the approval of the Court.

23. The net proceeds from the sale of the Puccini Homes, following payment of the senior secured mortgage holders' claims and certain other settled claims were subject to a priority dispute between the Private Lenders and the Lien Claimants.

24. On January 8, 2015, the Court granted, among other things, an order (the "**Reference Order**"), among other things, referring the determination of the priority dispute between the Private Lenders and the Lien Claimants to an arbitration (the "**Arbitration**"). A copy of the Reference Order is attached hereto as **Exhibit "F"**.

25. Duncan Glaholt was appointed arbitrator by the Court with respect to the Arbitration.

26. As at the date of the Applicants' last appearance before this Court, a number of preliminary steps had taken place in the Arbitration, including examinations of the parties and the hearing of preliminary motions. The Arbitration was scheduled to commence in July 2016.

27. I am advised by Mr. Schwartz, lawyer for the Applicants, that on the eve of the Arbitration, the Lien Claimants and the Private Lenders agreed to a settlement of the priority dispute on the following terms:

(a) $717,938.52 payable to the Lien Claimants in priority to all other secured creditors; and

(b) the balance payable to the Private Lenders.

28. On August 11, 2016, the Arbitrator issued reasons for a Partial Award/Report reflecting the terms of the settlement. A copy of the Partial Award/Report is attached hereto as **Exhibit "G".**

29. I understand that prior to rendering the Partial Award/Report, the Arbitrator was advised that counsel for BMO would like to make cost submissions for costs incurred by BMO in participation in the Arbitration.

30. BMO submitted a Bill of Cost of $426,125.72 for its costs of the Arbitration. On September 28, 2016, the Arbitrator issued its Reasons wherein the Arbitrator awarded costs to BMO in the total amount of $50,000 with respect to the Arbitration, to be paid from the proceeds of the sale of the Puccini Homes held by the Monitor in its trust account. Copies of the Arbitrator Reasons dated September 28, 2016 and Final Award/Report dated October 4, 2016 (the "**Final Award**") are attached hereto as **Exhibits "H"** and **"I"**.

31. I am advised by Mr. Schwartz that BMO has brought a motion (the "**BMO Motion**") opposing the confirmation of the Final Award in these CCAA proceedings and a distribution to the Private Lenders pending the hearing of the BMO Motion and has also filed a Notice of Appeal to the Divisional Court from the Final Award. For reference, copies of BMO's Notice of Motion and Notice of Appeal are attached hereto as **Exhibits "J"** and **"K"**.

32. With respect to the BMO Motion, I am also advised by Mr. Schwartz that pursuant to an Order dated November 7, 2016 (the "**November 7 Order**"), this Court confirmed the Final Award subject to the following exceptions:

(a) the issue of the costs fixed by the Arbitrator will be argued by BMO and the Private Lenders on a date to be scheduled with the involvement of counsel (the "**Cost Motion**");

(b) $456,125.72 shall be paid by the Monitor into the trust account of Agueci, Calabretta, BMO's counsel ("**Agueci**"), to be held in escrow pending the outcome of the Cost Motion and/or any appeal of any order made at the Cost Motion;

(c) Agueci shall pay to BMO the costs as determined by the Court upon final order and shall remit the balance to Jack Greenberg, in trust;

(d) upon receipt of the $456,125.72 from the Monitor, BMO will discharge all of its security on 18 Rossini; and

(e) the issue regarding the priorities as between BMO and the Private Lenders referred to in paragraph 4(c) of the Final Award will be argued on a new motion date.

A copy of the November 7 Order is attached hereto as **Exhibit "L"**.

33. The Monitor currently holds approximately $2.2 million in its trust account.

34. The Applicants seek an order of this Court authorizing, among other things:

(a) a distribution of the proceeds from the sale of the Puccini Homes to the Lien Claimants in accordance with the Final Award;

(b) a distribution in the amount of $456,125.72 to Agueci pursuant to the terms of the November 7 Order; and

(c) an interim distribution of the proceeds from the sale of the Puccini Homes to the Private Lenders subject to a reserve by the Monitor for the satisfaction of the professional fees of the Applicants' counsel, the Monitor and the Monitor's counsel to incurred to date and to be incurred to the completion of these CCAA proceedings.

TARION LCs

35. The Applicants collectively carried on business as builders and vendors of the Puccini Project. As required under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 (the "***Warranties Act***"), registrations were filed with Tarion Warranty Corp. ("**Tarion**") in connection with the Puccini Project.

36. In connection with their registrations under the *Warranties Act*, Silver Streams and the

numbered company Applicants provided security in favour of Tarion in the aggregate amount of $920,000 by way of Letters of Credit issued by BMO (the "**Tarion LCs**"). The Tarion LCs were provided to Tarion to secure the Applicants' obligations to Tarion for deposit claims and warranty claims by purchasers of homes in Phases I, II and III of the Puccini Project.

37. As set out in detail in my previous affidavits filed with the Court, in the summer of 2014, contrary to my previous understanding, I learned for the first time that Puccini was not registered as a vendor under the *Warranties Act*. Puccini acted as vendor on the majority of the transactions for the sale of the homes in the Puccini Project. As a consequence of the fact that Puccini was not a Tarion registrant, Tarion could not access the cash collateral underlying the Tarion LCs in connection with Tarion's claims against Puccini.

38. To remedy the issues raised by Puccini not being a properly registered vendor, I, on behalf of myself and the Applicants, entered into a settlement agreement with Tarion pursuant to which, *inter alia*, all of Puccini's rights, interests and obligations under the sale agreements for the Puccini Homes were assigned to Silver Streams (the "**Settlement Agreement**").

39. A number of the Lien Claimants objected to the Settlement Agreement. On June 25, 2015, the Applicants brought a motion for an order: (a) declaring that the Applicants have the requisite authority to enter into the Settlement Agreement; or, in the alternative (b) approving the Settlement Agreement. By reasons dated September 25, 2015, the Honourable Mr. Justice Wilton-Siegel dismissed the Applicants' motion in its entirety.

40. On October 19, 2015, the Applicants sought leave to appeal the decision of Justice Wilton-Siegel. On February 26, 2016, the Court of Appeal dismissed the motion for leave to appeal.

41. I am advised by Mr. Schwartz that counsel for Tarion advised him that it has claims against the numbered company Applicants and Silver Streams in their capacity as registrants. Approximately $220,000 has been drawn down by Tarion from the Phase III Tarion LCs commencing on December 9, 2015 to date in satisfaction of these claims. Copies of the draws made by Tarion against the Tarion LCs are collectively attached hereto as **Exhibit "M"**.

42. I am advised by Mr. Schwartz that Chaitons is working with Tarion's legal counsel to understand the basis for the draws made by Tarion and to establish what additional claims Tarion may have against the Applicants who are registrants under the *Warranties Act*.

43. I am advised by Maya Poliak, a lawyer with Chaitons, that Tarion is reviewing the status of its claims and warranties. If the Applicants, Tarion and the Monitor are unable to resolve this issue before November 29, 2016, the Applicants will, among other things, ask the Court to set a time table for the resolution of this issue, together with any other appropriate relief.

CON-DRAIN

44. In 2008, Silver Streams retained Con-Drain Company (1983) Limited ("**Con-Drain**") to provide services and materials to the Puccini Project. Silver Streams was unable to pay Con-Drain the full amount outstanding.

45. In February 2010, Con-Drain registered two construction liens against title to Phases I, II and III of the Puccini Project. In March 2010, Silver Streams and Con-Drain entered into a settlement agreement. Under the terms of the settlement agreement, Silver Streams immediately paid Con-Drain $550,000. Silver Streams agreed to pay Con-Drain a further $50,000 per lot plus interest from future closings in the Puccini Project in accordance with the terms of a written undertaking until Con-Drain was paid in full. As a condition of this settlement, Con-Drain subsequently discharged its claims for lien.

46. Litigation was commenced by Con-Drain against, among others, the Applicants arising from an allegation of default under the terms of the settlement agreement. In the litigation Con-Drain claims payment of $800,000. In August 2013, Con-Drain commenced an action in Newmarket (the "**Con-Drain Action**"). A copy of the statement of claim is attached hereto as **Exhibit "N".**

47. On August 15, 2013, Con-Drain obtained an order from the Honourable Madam Justice Lack requiring that net proceeds from the sale of homes in the Puccini Project be paid to our lawyers', Chaitons, trust account up to $800,000. Attached hereto and marked as **Exhibit "O"** is a true copy of the August 15, 2013 Order.

48. On October 15, 2013, a motion by Con-Drain to continue the order granted by Justice Lack was heard by the Honourable Madam Justice Gilmore. On November 20, 2013, Justice Gilmore released her endorsement which ordered, among other things, that the Order of Justice Lack should be continued and that the net proceeds from the sale of homes up to the amount of $800,000 be paid into Court. Attached hereto and marked as **Exhibit "P"** is a true copy of the November 20, 2013 Endorsement.

49. In addition to the Applicants, the Private Lenders are also named as defendants in the Con-Drain Action. The Con-Drain Action is at its core a priority dispute between Con-Drain and the Private Lenders for the net proceeds from the sale of Puccini Homes in an amount of $800,000.

50. As at the time of the CCAA filing, $491,985.33 (the "**Con-Drain Funds**") was deposited and held in trust by Chaitons.

51. Pursuant to the terms of the Initial Order, the Con-Drain Funds continue to be maintained in trust by Chaitons until further court order or consent of the parties to the Con-Drain Action and the determination of whether the Con-Drain Funds form part of the Applicants' property was to be determined at a later date.

52. Pursuant to the terms of the Reference Order, the Con-Drain Action was transferred to the Superior Court of Justice in Toronto separate from the CCAA proceedings and without the participation of the Monitor. Pursuant to the terms of the Reference Order, Chaitons continues to hold the Con-Drain Funds in its trust account.

53. I am advised by Mr. Schwartz that the Con-Drain Action is currently in the discovery stage.

54. I am also advised by Mr. Schwartz that concurrently with the Applicants' motion, Con-Drain will bring a motion on notice to the Service List for an order transferring $308,014.67 (the difference between $800,000 that Con-Drain seeks to recover and the current Con-Drain Funds) into Chaitons trust account pending the resolution of the Con-Drain Action.

55. The Applicants take no position on Con-Drain's motion.

56. The Applicants seek an order authorizing them to distribute the Con-Drain Funds in accordance with priorities determined by the Court in the Con-Drain Action.

57. The Applicants understand that certain lien claimants may assert an interest in the Con-Drain Funds in the event Con-Drain is successful in the Action. As a consequence, the Applicants also seek an order that notice of the final resolution and pending distribution in the Con-Drain action be given to the Applicants' service list in this proceeding 30 days prior to any proposed distribution.

STAY EXTENSION

58. 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 March 29, 2016, the stay of proceedings was extended to November 30, 2016.

59. The CCAA proceedings are substantially at an end, pending the resolution of the Tarion LCs issues identified above. The Applicants seek an extension of the stay of proceedings to January 30, 2017 to allow for the resolution of these outstanding issues, final distributions pursuant to orders of the Court and the discharge of the Monitor.

60. The Applicants are not seeking an extension of the stay of proceedings in favour of their officers and directors and consent to allow the breach of trust actions commenced by certain Lien Claimants to continue.

61. 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 which will demonstrate that the Monitor holds sufficient cash on hand to fund these CCAA proceedings until the expiration of the proposed stay of proceedings. A copy of the cash flow will be attached to the Monitor's report to be filed with the Court.

62. I swear this affidavit in support of the Applicants' motion for the relief set out in the Applicants' notice of motion no improper purpose.

SWORN before me at the City of Toronto, Province of Ontario, this 11th day of November, 2016	))))	
A Commissioner, Etc. Maya Poliak	))	**Imran Jinnah**

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

Court File No. 12-10362-00-CL

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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

16046568.2

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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Lawyers for the Applicants

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

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 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 November 30, 2016.

BACKGROUND AND CCAA PROCEEDING

3. The Applicants are affiliated companies owned by me. Silver Streams is a residential homebuilder in the Greater Toronto Area. As at the Filing Date (as defined below), Silver Streams was in the process of completing a project in Richmond Hill, Ontario referred to in these proceedings as the "**Puccini Project**". The Puccini Project was comprised of four phases. With the

exception of ten homes in various stages of completion, the construction of Phase I, II and III homes was substantially completed as at the Filing Date.

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

5. Title to the lands in Phases I, II and III 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. Puccini was incorporated for the purpose of selling the homes in the Puccini Project.

6. On December 17, 2013 (the "**Filing Date**"), 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 Grant Thornton Limited 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. 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 March 31, 2016.

PUCCINI HOMES

9. 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**").

10. As was described in my affidavits previously filed in these proceedings, the objective of the Applicants' CCAA proceeding 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.

11. Attached hereto as **Exhibit "B"** and **Exhibit "C"**, respectively, are copies of my Affidavits (without exhibits) sworn December 17, 2014 (my "**December Affidavit**") and July 7, 2015 (my "**July Affidavit**"), in support of the Applicants' last two stay extension motions.

12. At the time of the Applicants' last stay extension motion, nine out of ten of the Puccini Homes had been sold by the Applicants with the approval of the Court.

13. As at the date of this affidavit only Lot 18, Phase III of the Puccini Project ("**Lot 18**") remains unsold. Lot 18 is a vacant lot and has been marketed for sale as a vacant lot.

14. As discussed in my previous affidavits filed in these proceedings, Lot 18 was supposed to be developed at the same time as Phase IV of the Puccini Project. As a result, Lot 18 was not serviced by the Applicants and the Applicants had difficulty selling an unserviced lot.

15. Since the last stay extension, the developer of properties adjacent to Lot 18 has serviced its lands and Lot 18 has been the beneficiary of these services. Lot 18 is now serviced. The Applicants believe that the servicing of Lot 18 has increased its marketability and value. The Applicants intend to list Lot 18 for sale in April 2016 when there is a greater likelihood of obtaining the best price for the lot.

TARION REGISTRATION

16. In the summer of 2014, contrary to my previous understanding, I learned for the first time that Puccini was not registered as a vendor under the *Ontario New Home Warranties Plan Act,* R.S.O. 1990, c. O.31 (the "**Warranties Act**").

17. To remedy the issues raised by Puccini not being a properly registered vendor, I, on behalf of myself and the Applicants, entered into a settlement agreement Tarion Warranty Corporation ("**Tarion**") pursuant to which, *inter alia,* all of Puccini's rights, interests and obligations under the sale agreements for the Puccini Homes were assigned to Silver Streams (the "**Settlement**

Agreement").

18. A number of the Lien Claimants objected to the Settlement Agreement. On June 25, 2015, the Applicants brought a motion for an order: (a) declaring that the Applicants have the requisite authority to enter into the Settlement Agreement; or, in the alternative (b) approving the Settlement Agreement. By reasons dated September 25, 2015, the Honourable Mr. Justice Wilton-Siegel dismissed the Applicants' motion in its entirety.

19. On October 19, 2015, the Applicants sought leave to appeal the decision of Justice Wilton-Siegel. On February 26, 2016, the Court of Appeal dismissed the motion for leave to appeal.

THE CLAIMS PROCESS

20. 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 secured 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 "D"**.

21. 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.

22. An update on the Claims Process was provided by the Monitor in its Ninth Report to the Court dated July 9, 2015 (the "**Ninth Report**"). A copy of the Ninth Report without appendices is attached hereto as **Exhibit "E"**.

23. As described in greater detail in my December Affidavit and in the Monitor's Seventh Report to the Court dated December 17, 2014 (the "**Seventh Report**"), the Applicants' loans to the senior mortgage holders have been paid in full, subject to reimbursement agreements. A copy of the Seventh Report, without appendices, is attached hereto and marked as **Exhibit "F"**.

24. The net proceeds from the sale of the Puccini Homes, following payment of the senior secured mortgage holders' claims and certain other settled claims described in my December

Affidavit, are subject to a priority dispute between a group of private mortgage holders (the "**Private Mortgagees**") and construction lien claimants (the "**Lien Claimants**").

THE ARBITRATION

25. On January 8, 2015, the Court granted, among other things:

(a) an order (the "**Construction Claims Order**"), among other things, referring the determination of the priority dispute between the Private Mortgagees and the Lien Claimants to an arbitration (the "**Arbitration**"); and

(b) an order extending the stay period to July 16, 2015.

26. I am advised by Stephen Schwartz, a partner of Chaitons LLP, counsel for the Applicants, that Duncan Glaholt was appointed arbitrator by the Court with respect to the Arbitration. I am further advised by Mr. Schwartz that a number of preliminary steps have taken place in the Arbitration including examinations of the parties. Further, the hearing in the Arbitration is now scheduled for the weeks of July 11 and July 18, 2016. Once the hearing is completed, a decision will be rendered by Mr. Glaholt.

27. I am further advised by Mr. Schwartz that all parties to the Arbitration agree that the Stay Period be extended from March 31, 2016 to permit the completion of the Arbitration.

STAY EXTENSION

28. 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 July 15, 2015, the stay of proceedings was extended to March 31, 2016.

29. To minimize the ongoing costs of the CCAA proceeding, the Applicants have wound down their operations and expenses in the CCAA proceeding. The Applicants closed their sale office and further reduced their staff to one full time employee, my wife Asma Jinnah and one part time employee. Mrs. Jinnah has agreed to waive her management fees until the completion of these

CCAA proceedings, although she is continuing to manage any of the Applicants' ongoing obligations to the purchasers of the Puccini Homes and market the vacant lot for sale.

30. A decision of the arbitrator in the Arbitration is not anticipated until the fall of 2016. Pursuant to the terms of the Construction Claims Order, all parties maintain their right to appeal the determination of the arbitrator to the Divisional Court in accordance with the CCAA. Accordingly, it is not likely that there will be a final resolution of the Arbitration until the fall of 2016.

31. Following the resolution of the Arbitration, the Applicants and/or the Monitor, as applicable, will bring a motion for an order authorizing them to make distributions in accordance with the arbitrator's decision and to terminate these CCAA proceedings and discharge the Monitor.

32. The Applicants seek an extension of the stay period to and including November 30, 2016 to: (i) allow the Arbitration to be carried out; and (ii) to sell Lot 18.

33. 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 March 2016 and ending on November 30, 2016 (the "**Cash Flow**"). A copy of the Cash Flow is attached hereto as **Exhibit "G"**. The Cash Flow demonstrates that the Monitor holds sufficient cash on hand to fund these CCAA proceedings until the expiration of the proposed stay of proceedings.

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

SWORN before me at the City of Toronto, Province of Ontario, this 8th day of March, 2016	))))))	**Imran Jinnah**
A Commissioner, Etc.		

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

49

OREA Ontario Real Estate Association

Agreement of Purchase and Sale

Toronto Real Estate Board

Form 100
for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 7TH day of NOVEMBER 20 16

BUYER, COUNTRY WIDE HOMES AT KING SOUTH INC. (Full legal names of all Buyers), agrees to purchase from

SELLER, 2148990 Ontario Inc. (Full legal names of all Sellers), the following

REAL PROPERTY:

Address 18 Rossini Drive

fronting on the South side of Rossini Drive

in the Town of Richmond Hill

and having a frontage of 40.25 Feet more or less by a depth of 117 Feet more or less

and legally described as Plan 65M4331 Lot 18 and Being Irregularly Shaped

(Legal description of land including easements not described elsewhere) (the "property")

PURCHASE PRICE: EIGHT HUNDRED THIRTY THOUSAND — Dollars (CDN$) 830,000 00

Dollars

DEPOSIT: Buyer submits as otherwise described in this Agreement (Herewith/Upon Acceptance/as otherwise described in this Agreement)

FIFTY THOUSAND Dollars (CDN$) 50,000.00

by negotiable cheque payable to Grant Thornton in Trust "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A, B and C **attached hereto form(s) part of this Agreement.**

1. **IRREVOCABILITY:** This offer shall be irrevocable by Buyer (Seller/Buyer) until 8:00 ~~a.m.~~/p.m. on the 15TH day of NOVEMBER 20 16, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. **COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 15TH day of DECEMBER 20 16. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): SB INITIALS OF SELLER(S):

3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: .... (For delivery of Documents to Seller) FAX No.: 905 907 1601 (For delivery of Documents to Buyer)

Email Address: .... (For delivery of Documents to Seller) Email Address: cfung@condorproperties.ca (For delivery of Documents to Buyer)

4. **CHATTELS INCLUDED:** N/A

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:** N/A

6. **RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable.

N/A

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST:** If the sale of the Property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to (included in/in addition to) the Purchase Price. If the sale of the Property is not subject to HST, Seller agrees to certify on or before closing, that the sale of the Property is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S): SB **INITIALS OF SELLER(S):**

5.

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 2ND day of ... December ...., 2016....... (Requisition Date) to examine the title to the Property at Buyer's own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy Buyer that there are no outstanding work orders or deficiency notices affecting the Property, and that its present use (.Vacant Residential Land................................) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the Property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller. **The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the Property.**

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S): SB **INITIALS OF SELLER(S):**

15. PLANNING ACT: This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at Seller's expense to obtain any necessary consent by completion.

16. DOCUMENT PREPARATION: The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.

17. RESIDENCY: (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada; (b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate

18. ADJUSTMENTS: Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.

19. PROPERTY ASSESSMENT: The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.

20. TIME LIMITS: Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.

21. TENDER: Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.

22. FAMILY LAW ACT: Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless Seller's spouse has executed the consent hereinafter provided.

23. UFFI: Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.

24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE: The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.

25. CONSUMER REPORTS: The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.

26. AGREEMENT IN WRITING: If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.

27. TIME AND DATE: Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S): SB **INITIALS OF SELLER(S):**

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28. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of: COUNTRY WOOD HOMES AT KING SOUTH INC. PER [signature] (Seal) DATE NOVEMBER 7, 2016

(Witness)

(Witness) (Seal) DATE ....

I, the Undersigned Seller, agree to the above offer ~~I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.~~

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) (Seller) (Seal) DATE ....

(Witness) (Seller) (Seal) DATE ....

SPOUSAL CONSENT: The Undersigned Spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees with the Buyer that he/she will execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness) (Spouse) (Seal) DATE ....

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at .... a.m./p.m. this .... day of ...., 20..........

(Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)

Listing Brokerage .... N/A .... Tel.No (.......)

(Salesperson / Broker Name)

Co-op/Buyer Brokerage .... Tel.No.(.......)

(Salesperson / Broker Name)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

(Seller) DATE ....

(Seller) DATE ....

Address for Service ....

.... Tel.No.(.......)

Seller's Lawyer ....

Address ....

Email ....

(.......) Tel.No (.......) FAX No.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

(Buyer) DATE ....

(Buyer) DATE ....

Address for Service ....

.... Tel.No.(.......)

Buyer's Lawyer MICHAEL DULISIN

Address ....

Email ....

(.......) Tel.No. (.......) FAX No

FOR OFFICE USE ONLY **COMMISSION TRUST AGREEMENT**

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale. Acknowledged by:

(Authorized to bind the Listing Brokerage) (Authorized to bind the Co-operating Brokerage)

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8.

OREA Ontario Real Estate Association

Form 100
for use in the Province of Ontario

Schedule A
Agreement of Purchase and Sale

Toronto Real Estate Board

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between

BUYER, COUNTRY WIDE HOMES AT KING SOUTH INC., and

SELLER, 2148990 Ontario Inc.

for the purchase and sale of 18 Rossini Drive in the Town of Richmond Hill

dated the 7TH day of NOVEMBER, 2016

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, to the Seller on completion of this transaction, with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.

The Buyer agrees to provide a certified cheque or bank draft as deposit, payable to Grant Thornton In Trust to be held in trust, within one business day from the date and time inserted in the Confirmation of Acceptance in this this Agreement of Purchase and Sale.

The parties to this Agreement hereby acknowledge that the Deposit Holder shall place the deposit in trust in the Deposit Holder's non interest bearing trust account, which earns no interest and the deposit shall be credited towards the purchase price upon completion of this transaction.

Continued on next page...

This form must be initialed by all parties to the Agreement of Purchase and Sale

INITIALS OF BUYER(S): SB   INITIALS OF SELLER(S):

RIC: DISTANCES SHOWN
IIS PLAN ARE IN METRES
CAN BE CONVERTED TO
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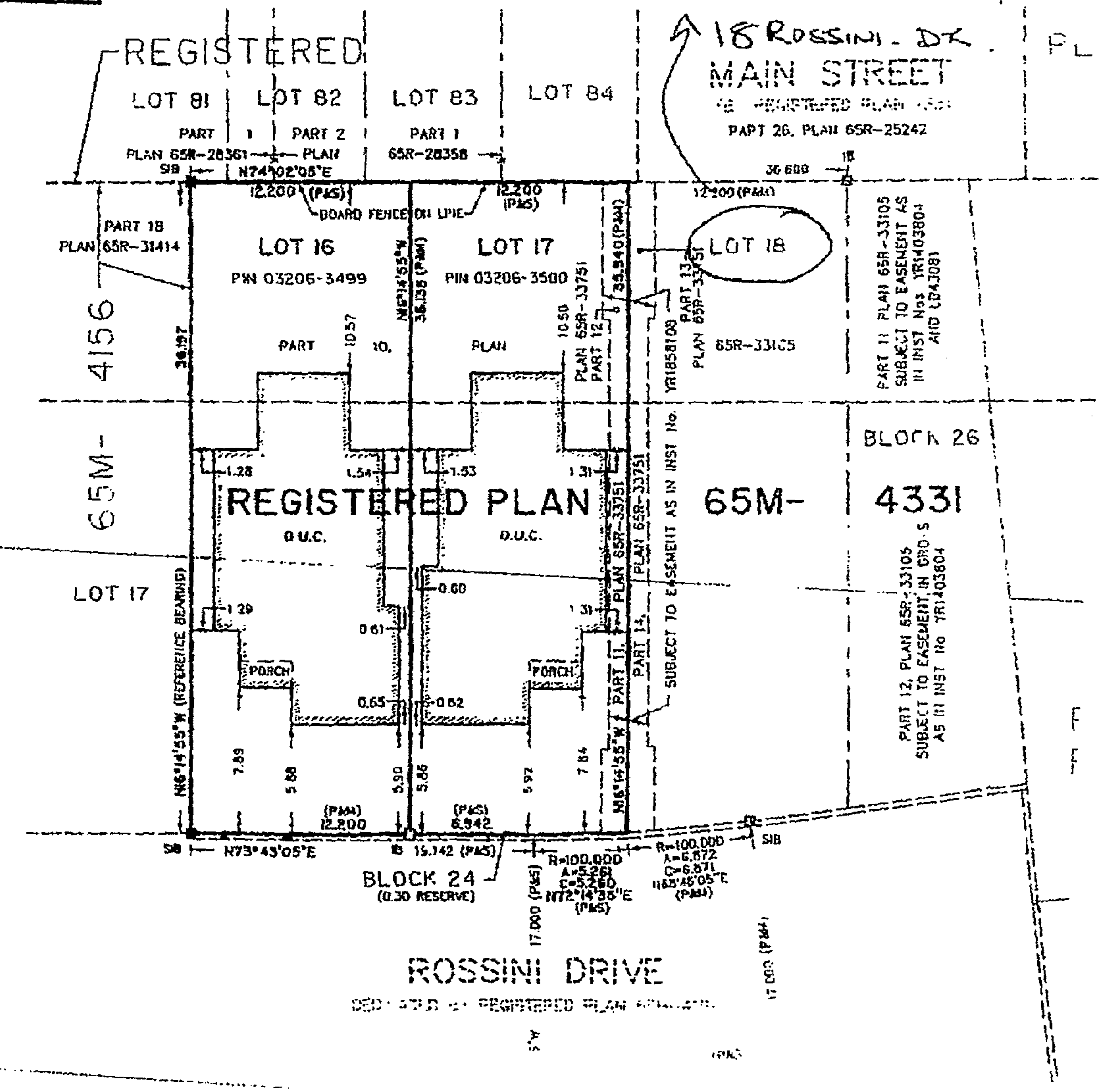
SCHEDULE B



SCHEDULE C

AMENDMENT

2148990 ONTARIO INC.
AMENDMENT TO THE
AGREEMENT OF PURCHASE AND SALE

BETWEEN:

2148990 ONTARIO INC. (the "Vendor") and
COUNTRY WIDE HOMES AT KING SOUTH INC. (the "Purchaser")

Re: Lot 18 PLAN 65M4331 Phase ______ (the "Real Property")

It is hereby understood and agreed between the Vendor and the Purchaser that the following additions shall be made to the Agreement of Purchase and Sale to which this Amendment is attached (the "Purchase Agreement") and except for such additions noted below, all of the terms and conditions of the Purchase Agreement shall remain as stated therein.

Notwithstanding the provisions of paragraph 52 or any other provision of the Purchase Agreement to the contrary, the Purchaser hereby acknowledges and agrees that title to the Real Property may be conveyed by way of order in form and substance acceptable to the Vendor and Purchaser, each acting reasonably, vesting the Real Property in the name of the Purchaser or as the Purchaser may direct in writing (the "Vesting Order"). In the event that title to the Real Property is to be conveyed by way of Vesting Order, the following provisions shall apply:

1. The completion of the transaction contemplated pursuant to the Purchase Agreement (the "Closing") shall be conditional for a period not exceeding sixty (60) days following execution of the Purchase Agreement by both parties hereto (the "Approval Condition Date") upon the Vendor receiving an order of the appropriate court having jurisdiction (the "Court") ordering that the interests of the Vendor in the Real Property be vested in the Purchaser after satisfaction by the Purchaser of the Purchaser's obligations under the Purchase Agreement. If such condition aforesaid is not satisfied prior to the Approval Condition Date, the Purchase Agreement shall, at the Vendor's discretion, either:

   (a) be terminated by notice in writing to the Purchaser, without any penalty or liability whatsoever to the Purchaser, subject to the return of the Deposit to the Purchaser, and otherwise without cost or other compensation and each of the Vendor and the Purchaser shall be released from all other obligations hereunder; or

   (b) be extended for an additional period not exceeding thirty (30) days, to allow the Vendor to continue to attempt to satisfy such condition, by notice to the Purchaser's solicitor in writing of the Vendor's election to extend prior to 5:00 p.m. on the Approval Condition Date.

2. In the event that the Vendor obtains the Vesting Order in accordance with the provisions of paragraph 1 hereof:

   (a) the contemplated transaction shall be subject to the Vesting Order provided that same shall not have been stayed and shall be in full force and effect and no order restraining or prohibiting Closing shall have been made by the Court; and

   (b) the Vendor covenants and agrees to deliver the Vesting Order to the Purchaser for registration at the Purchaser's sole cost and expense upon Closing.

3. All other provisions of the Purchase Agreement shall remain the same *mutatis mutandis*.

DATED this 7th day of November, 2016.

COUNTRY WIDE HOMES AT KING SOUTH INC.

WITNESS:

) Per
) Purchaser A.J.V.
)
)
) Purchaser

DATED this ____ day of ____________________, 2016.

2148990 ONTARIO INC.

Per:________________________________
Authorized Signing Officer

I have authority to bind the Corporation

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	THURSDAY, THE 16TH 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.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:
JAN 16 201[illegible]

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

CHAITONS LLP
Barristers and Solicitors
5000 Yonge Street, 10th Floor
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Lawyers for the Applicants

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

M. Polian

A Commissioner etc.

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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

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

JULY 9, 2015

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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APPENDICES

1. Initial Order dated December 17, 2013
2. Claims Process Order dated January 16, 2015
3. Referral Order dated January 8, 2015
4. Monitor's Eighth Report to Court dated April 8, 2015 (with appendices)
5. Email dated May 21, 2015, attaching letter from the Referee dated May 21, 2015 and the February Referee's Order
6. June Referee's Order
7. Email exchange with the Referee dated June 26, 2015 to June 30, 2015
8. Letter from the Honourable Regional Senior Justice Morawetz dated June 9, 2015
9. Cash Flow Projection and Management's Report on the Cash Flow Projection
10. Interim Statement of Receipts and Disbursements
11. Affidavit of Jonathan Krieger sworn July 8, 2015
12. Affidavit of Steven L. Graff sworn July 8, 2015

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 selling homes in a development located at Bathurst St. and King Rd. in Richmond Hill, Ontario (the "**Puccini Project**").

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

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, 2014, April 17, 2014, June 26, 2014, September 23, 2014 and January 8, 2015, the Court issued orders (collectively, the "**Extension Orders**"), *inter alia*, extending the stay of proceedings first from January 16,

2014 to April 18, 2014, then from April 18, 2014 to July 3, 2014, then from July 3, 2014 to September 26, 2014, then from September 26, 2014 to January 16, 2015, and most recently from January 16, 2015 to July 16, 2015.

6. Certain of the Extension Orders also approved interim distributions to Bank of Montreal ("**BMO**"), Home Trust Company ("**Home Trust**") and Foremost Financial Corporation ("**Foremost**" and, together with BMO and Home Trust, the "**Institutional Mortgagees**") from the proceeds of the sale of 9 lots that have occurred in the context of these CCAA Proceedings, which distributions remain subject to reimbursement agreements between these parties and the Monitor.

7. On January 16, 2015, the Court issued an order (the "**Claims Process Order**"), *inter alia*, establishing a claims procedure for secured claims against the Companies' property (the "**Claims Process**"). A copy of the Claims Process Order is attached as **Appendix "2"**

8. On January 8, 2015, the Court issued an order (the "**Referral Order**"), *inter alia*, referring the construction lien claims and other related issues in these CCAA Proceedings to a referee (the "**Referee**") and ordering the transfer of the action bearing Court File No. CV-13-115757-00 (the "**Con-Drain Action**") from the Newmarket Region of the Ontario Superior Court of Justice (the "**Newmarket SCJ**") to the Toronto Region of the Ontario Superior Court of Justice (the "**Toronto SCJ**") such that the Con-Drain

Action would be heard separately from the CCAA Proceedings. A copy of the Referral Order is attached as **Appendix "3"**.

9. On June 25, 2015, the Court heard a motion brought by the Companies (the "**Settlement Agreement Motion**") in connection with a settlement agreement dated February 17, 2015 amongst, *inter alios*, Tarion Warranty Corporation ("**Tarion**"), Imran Jinnah and the Companies (the "**Settlement Agreement**"). The motion was for an order: (i) declaring that the Companies have the requisite authority to enter into the Settlement Agreement; or, in the alternative (ii) approving the Settlement Agreement. A number of lien claimants opposed the Companies' motion. The Monitor's understanding of the factual matrix surrounding the Settlement Agreement is outlined in the Monitor's Eighth Report to Court dated April 8, 2015 (the "**Eighth Report**"), which Eighth Report is attached as **Appendix "4"**. The Court reserved on its decision with respect to the Companies' motion, and the determination of same remains pending as at the date hereof.

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

PURPOSE OF THE NINTH REPORT

11. The purpose of this Ninth 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 Seventh Report to Court dated December 19, 2014 (the "**Seventh Report**");

ii) the status of the Claims Process established pursuant to the Claims Process Order, which was conducted by the Monitor;

iii) the status of the referral established pursuant to the Referral Order, which is being conducted by the Referee (the "**Referee's Proceedings**");

iv) the status of the Con-Drain Action;

v) the Companies' revised cash flow projection to March 31, 2016, 2015 (the "**Cash Flow Projection**");

vi) the Companies' receipts and disbursements from December 17, 2013 to and including July 6, 2015 (the "**Interim R&D**"); and

vii) the Companies' request for an order, *inter alia*:

a. extending the stay of proceedings from July 16, 2015, being the date that the stay of proceedings currently expires, to and including March 31, 2016;

b. approving the Eighth Report and the Ninth Report and the Monitor's activities as described therein and herein;

c. approving the Interim R&D; and

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

12. Detailed background information concerning the Companies, their stakeholders and these CCAA Proceedings is provided in the affidavits of Imran Jinnah sworn December 11, 2013, January 10, 2014, April 9, 2014, June 19, 2014, August 5, 2014, September 16, 2014, November 18, 2014, December 17, 2014, February 26, 2015, March 25, 2015 and July 7, 2015 (collectively, the "**Jinnah Affidavits**"), all of which have been filed with the Court. Accordingly, the Monitor has not repeated information to this effect in this Ninth Report. Copies of all materials filed with the Court in these CCAA Proceedings are accessible on the Monitor's website at www.GrantThornton.ca/Silverstreams.

SCOPE AND TERMS OF REFERENCE

13. In preparing this Ninth 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.

14. Some of the information used in preparing this Ninth 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 Ninth Report did not constitute an audit of such information under GAAP or IFRS.

15. 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 Ninth Report is based solely on the information (financial or otherwise) made available to the Monitor by the Companies.

16. This Ninth 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 Companies. Accordingly, the reader is cautioned that this Ninth 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 Ninth Report contrary to the provisions of this paragraph.

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

18. Capitalized terms not defined in this Ninth Report have the meanings ascribed to them in the Jinnah Affidavits, as applicable.

ACTIVITIES OF THE COMPANIES AND STATUS OF THE CCAA PROCEEDINGS

19. The activities of the Companies and the status of each of the properties owned by the Companies are detailed in the Jinnah Affidavits. Since the date of the Seventh Report, the Companies have, among other things:

i) communicated and corresponded with the Monitor and the various stakeholders and creditors on a regular basis regarding the CCAA Proceedings, including, without limitation, Canada Revenue Agency ("**CRA**"), the secured lenders, Tarion, the lien claimants and their counsel;

ii) corresponded with legal counsel;

iii) planned and executed the marketing of the remaining lot;

iv) participated in the Referee's Proceedings;

v) prepared the Settlement Hearing Motion and participated in the hearing of same;

vi) revised the Cash Flow Projection; and

vii) made payments to post-filing vendors as contemplated by the Companies' cash flow projections.

ACTIVITIES OF THE MONITOR

20. Since the date of the Seventh 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) reviewing and controlling receipts and disbursements of the Companies, in accordance with the Initial Order;

iv) corresponding with certain of the Companies' secured lenders and their counsel, as well as counsel for Tarion and certain of the lien claimants;

v) assisting the Companies to revise the Cash Flow Projection;

vi) maintaining a public website for the CCAA Proceedings;

vii) attending to telephone calls and emails from the Companies' creditors and other stakeholders;

viii) preparing and filing the Eighth Report and the Ninth Report;

ix) corresponding periodically with the Referee and certain stakeholders in respect of the Claims Process, the Referee's Proceedings and the Con-Drain Action;

x) participating in the Settlement Hearing Motion; and

xi) reviewing all materials filed with the Court in respect of the CCAA Proceedings.

THE CLAIMS PROCESS

21. As set out in the materials previously filed by the Companies, as of the date of the Initial Order, the Companies had numerous secured creditors, including, but not limited to, mortgagees, lien claimants and CRA.

22. Pursuant to the Claims Process Order, the Court authorized and established the Claims Process. A Vetting Committee (as defined in the Claims Process Order) was established that includes the Monitor's counsel, the Companies' counsel and counsel to certain of the Companies' secured creditors.

23. In accordance with the Claims Process, and as set out in the Monitor's prior reports, the Monitor received 42 claims. Pursuant to an order granted by the Court on October 16, 2014, the claims deadline was subsequently extended for the sole purpose of permitting the claims of two additional lien claimants.

24. The Monitor and its counsel reviewed all of the claims that were submitted in the context of the Claims Process, and the Monitor, with the agreement of the Vetting Committee:

i) sent Notices of Allowance to CRA with respect to CRA's 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 Companies' 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 Process Order established a claims process that was limited to secured claims;

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 Ontario *Construction Lien Act* (the "**CLA**"), and any trust claim that has been or may be made;

iv) sent a Notice of Disallowance to Imran and Humera Hussain; and

v) sent a Notice of Disallowance to Horizons Holdings Inc., Africana Investments Inc. and Mr. Japanwala.

25. Subsequent to the issuance of the aforementioned notices by the Monitor, CRA's claim for unpaid source deductions became subject to a settlement agreement that was approved by the Court on November 25, 2014.

THE REFEREE'S PROCEEDINGS

26. Following the Monitor's review of the claims that were submitted pursuant to the Claims Process and the issuance of the notices referred to in paragraph 24 above, the Monitor and its counsel engaged in lengthy discussions with the Vetting Committee regarding the possible determination of construction liens and related issues in the context of binding arbitration by a claims adjudicator.

27. After months of negotiation among the Companies' counsel, the Monitor's counsel and the other members of the Vetting Committee, the parties agreed upon the form of the Referral Order, which was granted by the Court on January 8, 2015. Capitalized terms in the paragraph below that are not otherwise defined herein are as defined in the Referral Order.

28. Pursuant to the Referral Order, the following issues were referred to the Referee for determination in the Referee's Proceedings for the purpose of completing the Claims Process:

i) the validity and, if necessary, quantum, of the Construction Claims filed by the Claimants;

ii) whether the Private Mortgagees are Statutory Owners (as defined in the CLA), and, if so, the determination of their liability as Statutory Owners to the Lien Claimants;

iii) the liability of the Private Mortgagees and Mortgagees with respect to any deficiency in holdback to the claims of the Lien Claimants;

iv) the determination of priorities as amongst the Claimants regarding their claims as against the Claimants, the Private Mortgagees and Mortgagees; and

v) any ancillary or peripheral issues that need to be determined in order for the Referee to properly complete its mandate, including any and all issues regarding interest and costs.

29. As contemplated by the Referral Order, the Monitor has had, and will continue to have, a limited involvement in the Referee's Proceedings.

30. Shortly after the Referee's appointment, the Monitor's counsel, A&B, provided the Referee with, amongst other things: (i) copies of the Referral Order; (ii) all documents submitted to the Monitor and/or A&B by the various stakeholders pursuant to the Claims Process; and (iii) all notices that were issued by the Monitor pursuant to the Claims Process.

31. On May 19, 2015, A&B wrote to the Referee, requesting a general update with respect to the status of the Referee's Proceedings. In response, on May 21, 2015, the Referee provided A&B and counsel for certain stakeholders with the requested update by letter, and also provided a copy

of an order for directions that had been issued in the Referee's Proceedings dated February 9, 2015 (the "**February Referee's Order**"). The February Referee's Order contained, among other things, a timetable with respect to the Referee's Proceedings, which timetable culminated with an evidentiary hearing scheduled for the week of August 31, 2015 (the "**August Referee's Hearing**"). The email attaching the Referee's responding letter and the February Referee's Order, together with attachments, is attached as **Appendix "5"**.

32. Upon the Monitor's review of these materials, it became apparent that the Referee's Proceedings had been advancing without the participation of the Institutional Mortgagees. Accordingly, A&B advised the Referee and the various stakeholders of same, to ensure that all stakeholders were being given the opportunity to participate in the Referee's Proceedings.

33. On June 29, 2015, a procedural order was issued in the Referee's Proceedings (the "**June Referee's Order**"), which, *inter alia*:

i) acknowledged the participation of the Institutional Mortgagees in the Referee's Proceedings;

ii) bifurcated the issues to be determined by the Referee; and

iii) revised the timetable that had been originally provided in the February Referee's Order.

34. The revised timetable still scheduled the August Referee's Hearing for the week of August 31, 2015, but now provided that such hearing would only

address the first set of the bifurcated issues. The June Referee's Order is attached as **Appendix "6"**

35. In late June, 2015, A&B wrote to the Referee requesting both a general update and a best estimate as to the time required to complete the Referee's Proceedings. In response, the Referee advised, among other things, that:

i) the August Referee's Hearing would deal with general lien issues and had been scheduled for the week of August 31, 2015;

ii) the Referee expected that a further hearing (if necessary) on the balance of the issues would occur in November 2015; and

iii) the Referee's final Report (as defined in the Referral Order) was expected to be released by the end of 2015. This correspondence is attached as **Appendix "7"**.

36. Pursuant to the terms of the Referral Order, the final Report shall bind any and all affected parties without further confirmation by the Court, subject to the right of such parties to appeal the Report to the Divisional Court in accordance with the CLA.

37. The Referral Order provides that the Referee shall, among other things, serve the Report on the Service List in the CCAA Proceedings and file the Report with the Court.

THE CON-DRAIN ACTION

38. The Con-Drain Action was commenced in the Newmarket SCJ by one of the lien claimants, Con-Drain (1983) Limited ("**Con-Drain**"), by way of a Notice of Action issued on August 15, 2013 and a subsequent Statement of Claim on September 3, 2013. Further background and details with respect to the Con-Drain Action are discussed in the Jinnah Affidavits.

39. As outlined above, the Referral Order provided that the Con-Drain Action was to have been transferred from the Newmarket SCJ to the Toronto SCJ, such that the Con-Drain Action was to be heard separately from the CCAA Proceedings. The Referral Order further provided that the Con-Drain Action was to proceed without the participation of the Monitor, and that, notwithstanding the outcome of the Con-Drain Action, the funds in dispute therein were not to be released or distributed from the trust account of Chaitons LLP, counsel for the Companies, without further order of the Court sitting in the context of the CCAA Proceedings.

40. Subsequent to the issuance of the Referral Order, the Monitor understands that counsel for Con-Drain requested that the Newmarket SCJ transfer the Con-Drain Action to the Toronto SCJ in accordance with the terms of the Referral Order. Following a request by the Newmarket SCJ that such transfer be directed by the Regional Senior Judge of the Toronto SCJ, the Monitor was copied on a letter from the Honourable Regional Senior Justice Morawetz, dated June 9, 2015, wherein His Honour directed the registrar of

the Newmarket SCJ to transfer the Con-Drain Action to the Toronto SCJ. His Honour's letter is attached as **Appendix "8"**.

COMPANIES' REQUEST FOR AN EXTENSION OF THE STAY OF PROCEEDINGS

41. The stay of proceedings currently expires on July 16, 2015. The Companies have requested that the Court extend the stay to and including March 31, 2016.

42. The Companies' request for an eight and one-half month stay extension is commensurate with the anticipated timeline for the Referee to complete the Referee's Proceedings (and, in turn, the Claims Process) and serve and file its Report, as estimated by the Referee, and to attend, if necessary, to possible appeals arising from the Report, as permitted by the Referral Order.

43. Once the Referee's Proceedings have concluded, the Monitor anticipates that the Companies and/or the Monitor, as applicable, will be in a position to move for an order from this Court to make distributions to the Companies' stakeholders in accordance with the Report, terminate the CCAA Proceedings and discharge the Monitor.

44. The requested extension also allows for the attempted sale of the remaining vacant lot. According to the most recent Jinnah Affidavit, sworn July 7, 2015, the Companies have reduced their full-time staff to one employee, Asma Jinnah, the wife of Imran Jinnah, who has agreed to waive her management fees until the completion of the CCAA Proceedings, and who

will be assisted by the Companies' remaining part-time employee in marketing the vacant lot for sale and managing any of the Companies' ongoing obligations to past purchasers.

45. During the requested extension, it is not anticipated that there will be further material activity taking place in the CCAA Proceedings, other than with respect to the Referee's Proceedings, in which the Companies, the Monitor and their respective counsel have limited roles. During the requested stay extension period, it is anticipated that the Monitor's planned activities will be limited to:

i) controlling receipts and disbursements in accordance with the Initial Order;

ii) reviewing the outcome of the Settlement Agreement Motion and its impact on the CCAA Proceedings;

iii) monitoring the Referee's Proceedings and the sale process for the remaining lot;

iv) assisting with the preparation of motion materials regarding draft distribution, approval and vesting and discharge orders, as applicable;

v) corresponding with the relevant stakeholders and their counsel, as necessary; and

vi) reporting to this Court.

46. Subject to the sale of the remaining lot, the Companies have monetized substantially all of their assets and are now in the claims adjudication phase of the CCAA Proceedings. An extension of the stay of proceedings is necessary if it is deemed appropriate by this Court to allow for the completion of the Referee's Proceedings (and, in turn, the Claims Process) and the marketing of the final lot for sale.

CASH FLOW PROJECTION

47. The Companies have prepared the Cash Flow Projection, on a monthly basis, for the period ending March 31, 2016. The Cash Flow Projection together with management's report on the Cash Flow Projection is attached as **Appendix "9"** and also as Appendix E to the most recent Jinnah Affidavit sworn July 7, 2015. The Cash Flow Projection has been prepared by management using probable and hypothetical assumptions set out therein.

48. 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 reflects the sale of the Companies' remaining lot, although it is possible that it will not be sold during the Cash Flow Projection period;

iii) even if the remaining lot is not sold during the Cash Flow Projection period, the Companies would still have sufficient cash on hand during the Cash Flow Projection period; and

iv) the Cash Flow Projection does not contemplate making payments to the Companies' secured creditors nor servicing interest on such obligations during the CCAA Proceedings.

49. 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 Ninth 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.

50. The Cash Flow Projection prepared by the Companies projects that the Companies will have sufficient funds on hand throughout the Cash Flow Projection period.

INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

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

52. **Appendix "10"** provides a statement of the Companies' receipts and disbursements for the period from December 17, 2013 to July 6, 2015.

PROFESSIONAL FEES

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

54. Pursuant to paragraphs 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 Companies as security for their fees and disbursements, up to a maximum of $500,000.

55. The fees and disbursements of the Monitor through November 30, 2014 were previously approved by the Court.

56. The total fees of the Monitor for the period from December 1, 2014 to June 30, 2015 amount to $39,519.39, together with disbursements of $125.32 and HST of $5,153.82, totalling $44,798.53. 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 July 8, 2015, which is attached hereto as **Appendix "11"**.

57. The legal fees and disbursements incurred by the Monitor for services provided to the Monitor by the Monitor's independent legal counsel, A&B, through November 30, 2014 were previously approved by the Court.

58. 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 December 1, 2014 to June 30, 2015 amount to $49,159.54, inclusive of HST. The details of the time spent and services provided by A&B are more particularly described in the Affidavit of Steven L. Graff, sworn July 8, 2015, which is attached hereto as **Appendix "12"**.

59. The Monitor respectfully requests that the Court approve its fees and disbursements and those of its legal counsel, as set out in the Ninth Report.

RECOMMENDATION REGARDING REQUESTED RELIEF

60. 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.

61. Given the forgoing, the Monitor respectfully recommends that this Court grant the Companies' request for relief as set out in paragraph 11 of this Ninth Report and in the Companies' notice of motion.

All of which is respectfully submitted,

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

Per:

Jonathan Krieger, CPA, CA, CIRP
Senior Vice President

23307769.5

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	THURSDAY, THE 8TH
	)	
JUSTICE NEWBOULD	)	DAY OF JANUARY, 2015

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

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

Applicants

ORDER

THIS MOTION, made by Grant Thornton Limited, in its capacity as the Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**"), for an Order, among other things, referring the construction lien claims and other related issues in these proceedings (collectively, the "**Construction Claims**") to a referee (the "**Referee**"), and referring the action bearing Court File No. CV-13-115757-00 (the "**Con-Drain Action**") to a Judge of the Commercial List, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Seventh Report of the Monitor dated December 19, 2014, the consent of lien claimants (the "**Lien Claimants**") #s 1 through 11 (as more specifically listed and identified in **Schedule "A"** attached hereto), the consent of the Private Mortgagees and the Mortgagees (as listed in **Schedule "B"** attached hereto), and the consent of the proposed Referee, and on hearing the submissions of counsel for the Monitor, counsel for the Applicants, ~~counsel for certain of the Lien Claimants, counsel for certain of the Private Mortgagees, and counsel for certain of the Mortgagees,~~ no one appearing for the unsecured claimants (the "**Unsecured Claimants**") (as more specifically listed and identified in **Schedule "C"** attached hereto) (together with the Lien Claimants, the "**Claimants**") or any other person on the service list, although duly served as appears from the affidavit of Susy Moniz sworn December 22, 2014, filed,

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

2. **THIS COURT ORDERS** that the following issues with respect to the Construction Claims be and are referred to Duncan Glaholt, who shall act as the Referee:

(a) the validity and, if necessary, quantum, of the Construction Claims filed by the Claimants;

(b) the determination of whether the Private Mortgagees are Statutory Owners (as defined in the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (the "**Act**")), and, if so, the determination of their liability as Statutory Owners to the Lien Claimants;

(c) the liability of the Private Mortgagees and Mortgagees with respect to any deficiency in holdback to the claims of the Lien Claimants;

(d) the determination of priorities as amongst the Claimants regarding their claims as against the Claimants, the Private Mortgagees and Mortgagees; and

(e) any ancillary or peripheral issues that need to be determined in order for the Referee to properly complete its mandate, including any and all issues regarding interest and costs.

3. **THIS COURT ORDERS** that the Referee's determination in respect of the issues enumerated in paragraph 2 above shall be set out in a report (the "**Report/Award**"), which shall be served on the Service List in these proceedings and filed with the Court, and that the Report/Award shall bind any and all affected parties without further confirmation by this Court. For greater certainty, each and every party that filed a claim against one or more of the Applicants in the present proceedings shall be deemed to be an affected party of the

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Report/Award. Notwithstanding the foregoing, any and all affected parties shall maintain their right to appeal the Report/Award to the Divisional Court in accordance with the Act.

4. **THIS COURT ORDERS** that the anticipated costs of the Referee, up to the amount of $100,000.00, shall be funded equally, and in advance of the Referee commencing its mandate, by the Private Mortgagees (50%) and the Lien Claimants (50%, such that costs shall be borne by each Lien Claimant on a pro rata basis, as calculated in **Schedule "A"** hereto), and that any additional costs of the Referee shall be secured by the Administration Charge (as defined in the Initial Order issued on December 17, 2013 in these proceedings) and paid by the Monitor (collectively, the "**Referee's Costs**"). Notwithstanding the above, the Referee shall maintain the right to assess costs in the Report/Award against any party, including, without limitation, the right to reallocate the Referee's Costs, and any such assessment shall attract the same deference and appeal rights as provided in paragraph 3 of this Order.

5. **THIS COURT ORDERS** that should a Lien Claimant refuse or neglect to pay its pro rata share of costs (a "**Defaulting Lien Claimant**"), then any other Lien Claimant shall be at liberty to advance the costs payable by the Defaulting Lien Claimant and shall be entitled to twice the amount advanced, which repayment shall form a first charge against any sums found to be due and payable to the Defaulting Lien Claimant and which sum shall be repaid before the Defaulting Lien Claimant receives any proceeds under this process.

6. **THIS COURT ORDERS** that the Con-Drain Action shall be transferred from the Superior Court of Justice in Newmarket, Ontario and shall be heard by a Judge of the Superior Court ~~Commercial List~~ in Toronto, separate from the present proceedings and without the participation of the Monitor, but that the funds in dispute in the Con-Drain Action, which are currently held in the trust account of Chaitons LLP (the "**Chaitons Trust Account**"), shall not be released or distributed from the Chaitons Trust Account without a further Order of this Court sitting in the context of the present proceedings.

MNT.

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SCHEDULE "A"

Lien Claimant		Court File No.	Lien Amount ($)	Lien Registration No.	% of Total Lien Amount Claimed by all Lien Claimants
1.	Con-Drain Company (1983) Limited	CV-13-116355-00	94,837	YR2016863	2.6%
2.	Pilbro III Inc.	CV-13-116840-00	554,354	YR2056986	15.5%
3.	Medi Group Incorporated	CV-13-116838-00	521,675	YR2057173	14.6%
4.	Cardell Flooring Ltd.	CV-13-116835-00	94,922	YR2057568	2.6%
5.	Foremont Drywall Inc.; 1382479 Ontario Inc.; 1382503 Ontario Inc.; 2203579 Ontario Inc. c/o Foremont Drywall Contracting	CV-13-116837-00	434,578	YR2057675	12.1%
6.	Canadian Concrete Forming Limited	CV-13-116834-00	216,202	YR2057676	6.0%
7.	Pave Plumbing & Heating Inc.	CV-13-116839-00	227,303	YR2057677	6.3%
8.	E.D. Carpenters Ltd.	CV-13-116836-00	328,674	YR2058240	9.2%
9.	Solo Electric Ltd.	CV-13-116841-00	186,364	YR2058688	5.2%
10.	1865721 Ontario Inc.	CV-13-116833-00	91,519	YR2059379	2.6%
11.	GM Exterior Inc.	CV-13-117058-00	46,559	YR2062198	1.3%
12.	Giancola Aluminum Contractors Inc.	CV-13-117059-00	82,579	YR2062199	2.3%
13.	Renova Recycling (2000) Inc.	CV-14-117811-00	29,392	YR2060384	0.8%
14.	Trudel & Sons Roofing Ltd.	CV-14-117658-00	31,745	YR2073073	0.9%
15.	L.I.U.N.A. Local 183 et al. (Massimo Digiovani as agent)	CV-13-117071-00	22,568	YR2050961	0.6%

16.	Argo Lumber Inc.	**CV-13-116990-00**	**135,060**	**YR2048904**	**3.8%**
17.	Newmar Window Manufacturing Inc.	**CV-13-116991-00**	**67,793**	**YR2050277**	**1.9%**
18.	The King-Con Corporation	**CV-13-116857-00**	**104,574**	**YR2049079**	**2.9%**
19.	The Sanderson-Harold Company Ltd. (Paris Kitchens)	**Not available as at the date hereof**	**203,870**	**YR2058638**	**5.7%**
20.	669857 Ontario Inc. o/a Alma Mechanical	**CV-13-117214-00**	**108,287**	**YR2060246**	**3.0%**
		TOTAL	**3,582,855**		**100.00%**

SCHEDULE "B"

Private Mortgagees

1. Puccini Mortgage Corp.
2. DaPaul Management Limited
3. 388242 Ontario Limited
4. 53 Puccini Mortgage Corp.
5. Nastell Investments Limited
6. Castle Lane Design Group Inc.

Mortgagees

1. Bank of Montreal
2. Foremost Mortgage Holding Corporation
3. Home Trust Company

SCHEDULE "C"

Claimant		Amount ($)
1.	J.S. Construction	**18,750**
2.	Benzi General Contracting	**6,106**
3.	Krcmar Surveyors Ltd.	**9,287**
4.	Quality Door Systems Inc.	**20,724**
5.	ConelCo Utility Contractors	**3,073**
6.	MAS Engineering (part of Cole Engineering)	**4,379**
7.	J.J. Home Products	**28,670**
8.	TorOnCa Fence and Deck	**24,860**
9.	Dream Work Canada Inc. o/a Stone Factory	**91,435**
10.	General Home Built-In Systems Ltd.	**33,594**
11.	ConelCo Utility Contractors	**3,073**
12.	Argyle Flooring*	***129,516**
	TOTAL	**373,467**

*Denotes a late claim filed after the deadline of February 14, 2014.

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER

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Lawyers for Grant Thornton Limited, in its capacity as the Court-appointed Monitor of the Applicants

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

Court File No. 13-10362-00CL

ONTARIO SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

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

Duncan W. Glaholt, Referee	)	**Wednesday, the 11th day of August, 2016**
	)	
	)	

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated at Toronto, this 11th day of August 2016

Duncan W. Glaholt
Referee

Schedule A Lien Claimants

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

Column 1 Name of person entitled to Construction Lien	Column 2 Principal	Col. 3 Costs	Column 4 Lien amount	Column 5 Interest (non-lienable)	Column 6 Personal Judgment (claim and interest)	Column 7 Primary Debtor
CV-13-116835-00						Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Foremont Drywall Inc./1382479 Ontario Inc./1382503 Ontario Inc./2203579 Ontario Inc./c.o.b. Foremont Drywall Contracting Lien reg. as: YR2057675 Court File No. CV-13-116837-00	[Incl.]	[Incl.]	$61,261.57	$15,493.60	$450,071.53	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Canadian Concrete Forming Limited Lien reg. as: YR2057676 Court File No. CV-13-116834-00	[Incl.]	[Incl.]	$60,619.39	$7,708.03	$223,909.71	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Pave Plumbing & Heating Inc. Lien reg. as: YR2057677 Court File No. CV-13-116839-00	[Incl.]	[Incl.]	$26,198.70	$8,103.82	$235,406.77	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario

<u>Column 1</u> Name of person entitled to Construction Lien	<u>Column 2</u> Principal	<u>Col. 3</u> Costs	<u>Column 4</u> Lien amount	<u>Column 5</u> Interest (non-lienable)	<u>Column 6</u> Personal Judgment (claim and interest)	<u>Column 7</u> Primary Debtor
						Inc., and 2147650 Ontario Inc.
E. D. Carpenters Ltd. Lien reg. as: YR2058240 Court File No. CV-13-116836-00	[Incl.]	[Incl.]	$19,527.89	$11,717.90	$340,391.91	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Solo Electric Ltd. Lien reg. as: YR2058688 Court File No. CV-13-116841-00	[Incl.]	[Incl.]	$30,362.23	$6,644.27	$193,008.43	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
1865721 Ontario Inc. Lien reg. as: YR2059379 Court File No. CV-13-116833-00	[Incl.]	[Incl.]	$20,575.55	$3,262.82	$94,781.37	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
GM Exterior Inc. Lien reg. as: YR2062198	[Incl.]	[Incl.]	$9,451.58	$1,628.42	$48,187.62	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario

Column 1 Name of person entitled to Construction Lien	Column 2 Principal	Col. 3 Costs	Column 4 Lien amount	Column 5 Interest (non-lienable)	Column 6 Personal Judgment (claim and interest)	Column 7 Primary Debtor
Court File No. CV-13-117058-00						Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Giancola Aluminum Contractors Inc. Lien reg. as: YR2062199 Court File No. CV-13-117059-00	[Incl.]	[Incl.]	$16,265.36	$2,888.23	$85,467.23	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
L.I.U.N.A. Local 183 et al. Lien reg. as: YR2050961	[Incl.]	[Incl.]	$7,500.00	$787.70	$23,355.71	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
Argo Lumber Inc. and Liens reg. as: YR2048904 Court File No. CV-13-116990-00	[Incl.]	[Incl.]	$135,060	$4,752.63	$139,812.63	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.

Column 1 Name of person entitled to Construction Lien	Column 2 Principal	Col. 3 Costs	Column 4 Lien amount	Column 5 Interest (non-lienable)	Column 6 Personal Judgment (claim and interest)	Column 7 Primary Debtor
Newmar Window Manufacturing Inc. YR2050277 and Court File No. CV-13-116991-00	[Incl.]	[Incl.]	$67,793.32	$2,385.58	$70,178.90	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
King-Con Corporation Lien reg. as: YR2049079 Court File No. CV-116857-00	[Incl.]	[Incl.]	$15,000.00	$3,724.56	$108,298.79	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
The Sanderson-Harold Company Ltd., Paris Kitchens Lien reg. as: YR2058638 Court File No. CV-15-539365	[Incl.]	[Incl.]	$45,000.00	$7,282.91	$211,152.91	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., and 2147650 Ontario Inc.
669857 Ontario Inc. o/a Alma Mechanical Lien reg. as: YR2060246 Court File No.	[Incl.]	[Incl.]	$25,000.00	$3,733.38	$112,020.38	Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148893 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario

Column 1 Name of person entitled to Construction Lien	Column 2 Principal	Col. 3 Costs	Column 4 Lien amount	Column 5 Interest (non-lienable)	Column 6 Personal Judgment (claim and interest)	Column 7 Primary Debtor
CV-13-117214-00						Inc., and 2147650 Ontario Inc.
TOTALS			$780,791.84			

Schedule B Non-lien claims, personal judgment only

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

SCHEDULE C Legal Description

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

SCHEDULE D

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

CONSENT

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

Date: 09/13/2016

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

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

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

Date: July 13, 2016

Agueci & Calabretta per AF

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

PROCEDURAL ORDER # ____

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

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

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

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

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

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

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

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

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

____

DUNCAN W. GLAHOLT, REFEREE

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

Court File No. 13-10362-00CL

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

DUNCAN W. GLAHOLT, Referee

Date:	**28 September 2016**
File:	13-10362-00CL
Title:	**In the Matter of a Plan of Compromise or Arrangement of Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2147681 Ontario Inc. and 2147650 Ontario Inc.**

REASONS
28 September 2016

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

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

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

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

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

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

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

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

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

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

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

Facility costs

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

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

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

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

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

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

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

25 July 2016 costs

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

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

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

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

BMO costs claimed against the Private Mortgagees

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

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

a. As to liability:

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

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

b. As to scale and quantum:

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

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

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

   iv. Rates and time charged were also challenged.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. The bank renews its s. 86 arguments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Duncan W. Glaholt, Referee
28 September 2016

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

Court File No. 13-10362-00CL

ONTARIO SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated at Toronto, this 28th day of September 2016

Duncan W. Glaholt
Referee

SCHEDULE A

Court File No. 13-10362-00CL

ONTARIO SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

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

Duncan W. Glaholt, Referee)))	**Wednesday, the 11th day of August, 2016**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated at Toronto, this 11th day of August 2016

Duncan W. Glaholt
Referee

REVISED Schedule A Lien Claimants

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

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

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

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

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

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

Schedule B Non-lien claims, personal judgment only

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

SCHEDULE C Legal Description

1. Lot 1, Plan 65M4249, Town of Richmond Hill; PIN: 03206-3418 (LT)

2. Lot 23, Plan 65M4249, Town of Richmond Hill; PIN: 03206-3440 (LT)

3. Lot 24, Plan 65M4249, Town of Richmond Hill; PIN: 03206-3441 (LT)

4. Lot 18, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3502 (LT)

5. Lot 19, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3502 (LT)

6. Lot 20, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3503 (LT)

7. Lot 22, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3505 (LT)

8. Lot 23, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3506 (LT)

9. Lot 24, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3507 (LT)

10. Lot 25, Plan 65M4331, Town of Richmond Hill; PIN: 03206-3508 (LT)

SCHEDULE D

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

CONSENT

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

Date: 19/13/2014

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

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

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

Date: July 13, 2016

Agueci & Calabretta per AF

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

PROCEDURAL ORDER # ____

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

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

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

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

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

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

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

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

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

DUNCAN W. GLAHOLT, REFEREE

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

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

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

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

NOTICE OF MOTION

THE MOVING PARTY Bank of Montreal will make a motion to a Judge presiding over the Commercial List on Tuesday October 25, 2016 at 10:00 a.m., or as soon thereafter as the motion can be heard at 330 University Avenue, Toronto, Ontario

THE MOTION WILL BE HEARD: the motion is to be heard orally.

THE MOTION IS FOR:

1. If necessary, an order granting leave to bring this motion;

2. If necessary, an order extending the time for serving and filing this motion to oppose confirmation to the Final Award/Report of Duncan Glaholt dated September 28, 2016 (the "Final Report"), noted below;

3. An order abridging the time for service and filing of this notice of motion and any other materials used on the motion, and dispensing with service on any person other than those served;

4. An order opposing confirmation of the Final Report;

5. An order staying the payment of any funds held as security (the "Security") by the Monitor to the Private Mortgagees (as defined in the "Final Report") until after the hearing of this motion;

6. Costs of this motion; and,

7. Such further and other relief as counsel may suggest and this Honourable Court deems acceptable.

THE GROUNDS FOR THE MOTION ARE:

1. Rules 37, 54.09 and 63 of the *Rules of Civil Procedure*.

2. Pursuant to the Order of The Honourable Mr. Justice Newbould made January 8, 2015 (the "Judgment of Reference"), a reference was convened under the *Construction Lien Act* appointing Duncan Glaholt as Referee.

3. Bank of Montreal is the first mortgagee in relation to the residential housing development(s) that are the subject of this proceeding.

4. Bank of Montreal's mortgage security is in priority to the Private Mortgagees' mortgages, and the Private Mortgagees have postponed to Bank of Montreal.

5. Bank of Montreal had been paid in full on its mortgage security prior to the Reference being ordered, such that most of its legal counsel's work performed after the Judgment of Reference was made has been in relation to the Reference, and not generally with respect to other aspects of this *Companies' Creditors Arrangement Act* ("CCAA") proceeding.

6. Bank of Montreal submitted a Bill of Costs of $426,125.72 for its costs of the Reference, and Duncan Glaholt awarded costs to Bank of Montreal in the total amount of $50,000.00 with respect to the Reference, to be paid from the Security being held by the Monitor, in priority to the Private Mortgagees' mortgages. This $50,000.00 amounted to about 20%

of the said Bill of Costs of Bank of Montreal, on a partial indemnity scale, according to Duncan Glaholt.

7. Duncan Glaholt made a palpable and overriding error of fact and he made an error of law in the Final Report noted above as follows:

   a) calculating that only 20% of Bank of Montreal's dockets submitted for his review during cost submissions on the Reference related to the Reference was a palpable and overriding error of fact; and,

   b) in relation to the other 80% of Bank of Montreal's dockets submitted to Duncan Glaholt (the "Non-Reference Dockets"), and that Duncan Glaholt ruled do not relate to the Reference, ordering that the Private Mortgagees were entitled to the balance of the Security after Bank of Montreal receives $50,000.00 for its costs of this Reference, without making the Private Mortgagees' entitlement to the said Security subject to Bank of Montreal's right to move before the Court in this matter for an order for costs in relation to the Non-Reference Dockets and that these costs be paid from the Security in priority to the Private Mortgagees' entitlement is an error of law.

8. In addition to making an error of law, Duncan Glaholt also exceeded his jurisdiction in subparagraph 4(c) of the Final Report by granting the Private Mortgagees priority over Bank of Montreal to the Security prior to Bank of Montreal being able to seek compensation in full and be compensated in full for its Non-Reference Dockets from the

said Security in priority to the Private Mortgagees. Duncan Glaholt should have ruled that before the Private Mortgagees may receive any portion of the said Security pursuant to the Final Report, Bank of Montreal is entitled to move before this Court to seek that it be compensated for its Non-Reference Costs from the Security pursuant to its mortgage security.

9. The question as to who is entitled to priority over the Security is a legal question, and who may rule on this issue is a question of jurisdiction.

10. Neither the Judgment of Reference (at Tab J herein) nor the List of Issues for the Reference agreed to by the parties (as set out in the 9th Procedural Order of Duncan Glaholt at Tab H herein) granted jurisdiction to Duncan Glaholt to grant the Private Mortgagees any priority over Bank of Montreal.

11. Such further and other grounds as counsel may suggest and this Honourable Court may find acceptable.

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

1. The written cost submissions made by Bank of Montreal and the Private Mortgagees to Duncan Glaholt during the Reference, and other materials, described as follows;

A) Bill of Costs of Bank of Montreal and cover letter dated August 15, 2016 from Agueci & Calabretta and the accounts to Bank of Montreal attached thereto dated September 28, 2015; December 23, 2015; January 31, 2016; February 29, 2016; March 31, 2016; April 30, 2016; May 31, 2016 and June 20, 2016;

B) Revised Bill of Costs of Bank of Montreal and cover letter of Agueci & Calabretta dated August 26, 2016 and the account to Bank of Montreal attached thereto dated August 26, 2016;

C) Cost Submissions of the Private Mortgagees dated September 8, 2016 (but only including Tab C of same) submitted by Marco Drudi;

D) Reply Costs Submissions of Bank of Montreal dated September 16, 2016;

E) Email from Marco Drudi to Duncan Glaholt dated September 17, 2016;

F) Further Reply Costs Submissions of Bank of Montreal dated September 21, 2016;

G) The Final Report/Award of Duncan Glaholt dated September 28, 2016 (with revised Schedule A);

H) Reasons of Duncan Glaholt dated September 28, 2016 and August 11, 2016;

I) The 9th Procedural Order of Duncan Glaholt dated June 27, 2016; and,

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

2. Such further and other evidence as counsel my suggest and this Honourable Court finds acceptable.

Date: October 12, 2016

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

Att: Jeffrey Spiegelman
LSUC# 312990

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

Lawyers for Bank of Montreal

TO: SEE SERVICE LIST ATTACHED
AS SCHEDULE "A" HERETO

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

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

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

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

NOTICE OF APPEAL

THE APPELLANT, Bank of Montreal appeals to the Divisional Court from the Final Report/Award of Duncan Glaholt dated September 28, 2016 (the "Final Report") made at Toronto, Ontario.

THE APPELLANT ASKS that paragraph 2 of the Final Report be set aside and in its place Bank of Montreal be awarded the sum of $426,125.72 by this Honourable Court for costs of the Reference conducted by Duncan Glaholt pursuant to the Order of the Honourable Mr. Justice Newbould made January 8, 2015 (the "Newbould Order"), and that the ruling on priorities in subparagraph 4(c) of the Final Report be made subject to Bank of Montreal being entitled to seek and receive payment of any of its costs that are not related to the Reference (defined below as the "Non-Reference Dockets"), as may be assessed and ordered by the Court in this matter, from the security (the "Security") held by the Monitor before the Private Mortgagees identified in the Final Report receive any portion of the Security on account of their mortgages.

THE GROUNDS OF APPEAL ARE AS FOLLOWS:

1. Pursuant to the Order of The Honourable Mr. Justice Newbould made January 8, 2015 (the "Judgment of Reference"), a reference was convened under the *Construction Lien Act* appointing Duncan Glaholt as Referee.

2. Bank of Montreal is the first mortgagee in relation to the residential housing development(s) that are the subject of this proceeding.

3. Bank of Montreal's mortgage security is in priority to the Private Mortgagees' mortgages, and the Private Mortgagees have postponed to Bank of Montreal.

4. Bank of Montreal had been paid in full on its mortgage security prior to the Reference being ordered, such that most of its legal counsel's work performed after the Judgment of Reference was made has been in relation to the Reference, and not generally with respect to other aspects of this *Companies' Creditors Arrangement Act* ("CCAA") proceeding.

5. Bank of Montreal submitted a Bill of Costs of $426,125.72 for its costs of the Reference, and Duncan Glaholt awarded costs to Bank of Montreal in the total amount of $50,000.00

with respect to the Reference, to be paid from the Security being held by the Monitor, in priority to the Private Mortgagees' mortgages. This $50,000.00 amounted to about 20% of the said Bill of Costs of Bank of Montreal, on a partial indemnity scale, according to Duncan Glaholt.

6. Duncan Glaholt made a palpable and overriding error of fact and he made an error of law in the Final Report noted above as follows:

   a) calculating that only 20% of Bank of Montreal's dockets submitted for his review during cost submissions on the Reference related to the Reference was a palpable and overriding error of fact; and,

   b) in relation to the other 80% of Bank of Montreal's dockets submitted to Duncan Glaholt (the "Non-Reference Dockets"), and that Duncan Glaholt ruled do not relate to the Reference, ordering that the Private Mortgagees were entitled to the balance of the Security after Bank of Montreal receives $50,000.00 for its costs of this Reference, without making the Private Mortgagees' entitlement to the said Security subject to Bank of Montreal's right to move before the Court in this matter for an order for costs in relation to the Non-Reference Dockets and that these costs be paid from the Security in priority to the Private Mortgagees' entitlement is an error of law.

7. In addition to making an error of law, Duncan Glaholt also exceeded his jurisdiction in subparagraph 4(c) of the Final Report by granting the Private Mortgagees priority over

Bank of Montreal to the Security prior to Bank of Montreal being able to seek compensation in full and be compensated in full for its Non-Reference Dockets from the said Security in priority to the Private Mortgagees. Duncan Glaholt should have ruled that before the Private Mortgagees may receive any portion of the said Security pursuant to the Final Report, Bank of Montreal is entitled to move before this Court to seek that it be compensated for its Non-Reference Costs from the Security pursuant to its mortgage security.

8. The question as to who is entitled to priority over the Security is a legal question, and who may rule on this issue is a question of jurisdiction.

9. Neither the Judgment of Reference nor the List of Issues for the Reference agreed to by the parties (as set out in the 9th Procedural Order of Duncan Glaholt) granted jurisdiction to Duncan Glaholt to grant the Private Mortgagees any priority over Bank of Montreal.

10. Such further and other grounds as counsel may suggest and this Honourable Court may find acceptable.

THE BASIS OF THE APPELLATE COURT'S JURSIDICTION IS: Subsections 71(1) and 71(2) of the *Construction Lien Act*, and paragraph 3 of the Order of The Honourable Mr. Justice Newbould made January 8, 2015 setting out a right of appeal from any Final Report of Duncan Glaholt to the Divisional Court pursuant to the *Construction Lien Act*. Leave to appeal is not required as the Final Report is effective when completed without further confirmation required.

THE APPELLANT requires that this appeal be heard at Toronto, Ontario.

Date: October 12, 2016

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

Att: Jeffrey Spiegelman
LSUC# 312990

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

Lawyers for the Defendant,
Bank of Montreal

TO: SEE SERVICE LIST ATTACHED
AS SCHEDULE "A" HERETO

Schedule A

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.

SERVICE LIST

CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, ON M2N 7E9 Harvey Chaiton Tel: (416) 218-1129 Fax: (416) 218-1866 Email: Harvey@chaitons.com Stephen Schwartz Tel: (416) 218-1132 Fax: (416) 218-1832 Email: Stephen@chaitons.com Maya Poliak Tel: (416) 218-1161 Fax: (416) 218-1844 Email: maya@chaitons.com **Lawyers for the Applicants**	**GRANT THORNTON LIMITED** Royal Bank Plaza 200 Bay Street, 19th Floor Toronto, ON M5J 2P9 Jonathan Kreiger Tel: (416) 360-5055 Fax: (416) 360-4949 Email: jonathan.kreiger@ca.gt.com Daniel Sobel Tel: (416) 369-7033 Fax: (416) 360-4949 Email: daniel.sobel@ca.gt.com **Court appointed monitor**

AIRD & BERLIS LLP Brookfield Place, 181 Bay Street Suite #1800, Box 754 Toronto, ON M5J 2T9 Steven Graff Tel: (416) 865-7726 Fax: (416) 863-1515 Email: sgraff@airdberlis.com Ian Aversa Tel: (416) 865-3082 Fax: (416) 863-1515 Email: iaversa@airdberlis.com **Lawyers for the monitor**	**BERKOW, COHEN LLP** 141 Adelaide Street West Suite #400 Toronto, ON M5H 3L5 Alexandra Lev-Farrell Tel: (416) 364-4900 x. 205 Fax: (416) 364-3865 Email: alev-farrell@berkowcohen.com Scott Crocco Tel: (416) 364-4900 x. 209 Fax: (416) 364-3865 Email: scrocco@berkowcohen.com **Lawyers for the Corporation of the Town of Richmond Hill**
KLEIN & ASSOCIATES PROFESSIONAL CORPORATION 390 Bay Street, Suite #1101 Toronto, ON M5H 2Y2 James Klein Tel: (416) 366-9494 Fax: (416) 366-9442 Email: jklein@kalaw.ca **Lawyers for Pilbro III Inc., Medi Group Incorporated, Cardell Flooring Ltd., Foremont Drywall Inc., et al., Canadian Concrete Forming Limited, Pave Plumbing & Heating Inc., E.D. Carpenters Limited, Solo Electric Ltd., 1865721 Ontario Inc., GM Exteriors Inc., Giancola Aluminum Contractors Inc.**	**KOSKIE MINSKY LLP** #900 – 20 Queen Street West Toronto, ON M5H 3R3 Jeffrey Long Tel: (416) 595-2125 Fax: (416) 204-2892 Email: jlong@kmlaw.ca **Lawyers for Con-Drain Company (1983) Limited**
CAVALLUSSO SHILTON MCINTYRE CORNISH LLP 474 Bathurst Street, Suite #300 Toronto, ON M5T 2S6 Carrie Clynick Tel: (416) 964-5515 Fax: (416) 964-5895 Email: cclynick@cavallusso.com **Lawyers for Trustees of the Labourers' Union of North America Local 183 Members' Benefit Trust Fund**	**HARVEY MANDEL** #203 – 55 Queen Street East Toronto, ON M5C 1R6 Tel: (416) 364-7717 x. 302 Fax: (416) 364-4813 Email: Harvey@harvey-mandel.com **Lawyer for Foremost Mortgage Holding Corporation**

DRUDI ALEXIOU KUCHAR LLP 7050 Weston Road Suite #610 Vaughan, ON L4L 8G7 Marco Drudi Tel: (416) 850-6116 x. 225 Fax: (416) 850-9146 Email: mdrudi@dakllp.com **Lawyers for Castle Lane Design Group Inc., 53 Puccini Mortgage Corp., Puccini Mortgage Corp., Nastell Investments Limited, Dapaul Management Limited, 388242 Ontario Inc., Sandall Investments Limited, proposed DIP Lender**	**CANADA REVENUE AGENCY** c/o DEPARTMENT OF JUSTICE Ontario Regional Office The Exchange Tower, Box 36 130 King Street West, Suite #3400 Toronto, ON M5X 1K6 Diane Winters Tel: (416) 973-3172 Fax: (416) 973-0810 Email: diane.winters@justice.gc.ca Christopher Lee Tel: (416) 954-8247 Fax: (416) 973-0810 Email: christopher.lee@justice.gc.ca
GOODMAN, SOLOMON & GOLD 439 University Avenue, Suite #1500 Toronto, ON M5G 1Y8 David M. Goodman Tel: (416) 595-5555 Fax: (416) 595-7020 Email: dmg@goodmansolomon.com **Lawyers for King-Don Corporation**	**GOLDMAN SLOAN NASH & HABER LLP** 480 University Avenue, Suite #1600 Toronto, ON M5G 1V2 Leonard Finegold Tel: (416) 597-3376 Fax: (416) 597-3370 Email: finegold@gsnh.com **Lawyers for The Sanderson-Harold Company (Paris Kitchens)**
RICHARD J. MAZAR PROFESSIONAL CORPORATION 115 King Avenue West Newcastle, ON L1B 1L3 Richard J. Mazar Email: rmazar@mazarlaw.com **Lawyers for 669857 Ontario Inc. o/a Alma Mechanical**	**AGUECI & CALABRETTA** 5700 Yonge Street, Suite 1110 Toronto, ON M2M 4K2 Jeffrey Spiegelman Tel. (416) 250-5700 Fax: (416) 250-5797 Email: JSpiegelman@aclaw.ca **Lawyers for Bank of Montreal**

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

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE,
DIVISIONAL COURT

Proceeding commenced at TORONTO

NOTICE OF APPEAL

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

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

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

Lawyers for the Appellant, Bank of Montreal

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	
	)	
JUSTICE WILTON-SIEGEL	)	MONDAY, THE 7TH DAY OF NOVEMBER, 2016,

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

IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148893 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC., and 2146750 ONTARIO INC.

APPLICANTS

ORDER

THIS MOTION, made by the Bank of Montreal to oppose confirmation of the Final Report of Duncan Glaholt dated September 28th, 2016 (the "Report"),

ON READING the Motion Record of the Bank of Montreal ("BMO") and on reading the Consent of the Bank of Montreal and Puccini Mortgage Corp., Dapaul Management Limited, 388242 Ontario Limited, 53 Puccini Mortgage Corp., Nastell Investments Limited and Castle Lane Design Group Inc. (the "Private Mortgagees") on hearing the submissions of the lawyer(s) for the BMO and the Private Mortgagees,

1. **THIS COURT ORDERS** that the "Report" be confirmed "as-is" with the following exceptions:

a. The issue of the costs fixed by the Referee in paragraph 2 of the Report (the "Costs"), will be argued by BMO and the Private Mortgagees on a date to be scheduled by me with the involvement of counsel (the "New Motion Date");

b. Instead of BMO receiving the $50,000.00 from the Fund as set out in paragraph 4(b) of the Report, $456,125.72 shall be paid by the Monitor into the trust account of Agueci, Calabretta ("A&C"), to be held in escrow, pending the outcome of this Motion and/or any Appeal from any Order made on this Motion regarding the Costs.

c. Agueci, Calabretta shall pay to BMO the costs as determined by the Court upon final Order and shall remit the balance to Jack Greenberg, in trust;

d. Upon receipt of the $456,125.72 from the Monitor as per paragraph 1(b) herein, BMO will discharge all of its security on Lot 18 as agreed to in paragraph 1(e) of the Procedural Order which was attached to the Partial Report dated August 11th, 2016; and

e. The issue regarding the priorities as between BMO and the Private Mortgagees referred to in paragraph 4 (c) of the Report will be argued on the New Motion Date.

G. Hur LJ T.

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

NOV 07 2016

PER / PAR:

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. c.-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. and 2146750 ONTARIO INC.

Court File No. 13-10362-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at TORONTO

ORDER

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

Jeffrey Spiegelman - LSUC #312990
Tel: (416) 250-5700
Fax: (416) 250-5797
Lawyer for the Bank of Montreal

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

November-04-16
12:48 PM

III TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

Tarion Warranty Corporation
Corporate Office
5160 Yonge Street, 12th Floor
Toronto, Ontario M2N 6L9
Toll-Free: 1-877-982-7466
www.tarion.com

December 9, 2015

2015 DEC 11 A 10:35

By Courier & Fax 416-598-6076

Bank of Montreal
Trade Finance Operations
234 Simcoe Street, 3rd Floor
Toronto, ON M5T 1T4

Dear Sir/Madam:

RE: Letter of Credit No.: BMTO365621OS
Date of Issuance: April 12, 2012
Current Value: $250,000.00 CAD
Beneficiary: Tarion Warranty Corporation
Applicant: 2147650 Ontario Inc., 2148990 Ontario Inc. and 2148993 Ontario Inc.
Registrant: Silver Streams Homes Inc., Whitby Mews Developments Inc., D & I Developments Inc., 2147650 Ontario Inc., 2148990 Ontario Inc., 2148993 Ontario Inc., 2148991 Ontario Inc., and 2147681 Ontario Inc.
Vendor/Builder No.: 40568, 40569, 40570, and 42077

We hereby demand payment of **$188,800.18 CAD** being drawn pursuant to the above-referenced Irrevocable Standby Letter of Credit and confirm that the monies being drawn under this Letter of Credit are being drawn in respect of obligations owed by the Registrant to the Beneficiary.

"Drawn under Bank of Montreal, Trade Finance Operations, 234 Simcoe Street, 3rd Floor, Toronto, Ontario M5T 1T4, Letter of Credit No. BMTO365621OS dated April 12, 2012".

Please remit certified payment as soon as possible to the attention of the undersigned.

Yours truly,

Faria

Odette Faria
Senior Collections Analyst
Tarion Warranty Corporation
5160 Yonge St., 12th Floor
Toronto, ON
M2N 6L9
Tel: (416) 229-3866
Fax: (416) 229-3822
E-mail: odette.faria@tarion.com

//Purolator Purolator Express Pack 10:30AM

FROM / DE
Tarlon Warranty Corp
5160 YONGE ST
Finance SUITE 700
NORTH YORK, ON
M2N 6L9
416-229-3844 x 3127

TO / A
TRADE FINANCE OPERATIONS
BANK OF MONTREAL
234 SIMCOE ST
3RD FLOOR
TORONTO, ON
M5T 1T4

2015 DEC 11 A 10:35

BMTO 3656210S

DATE: 10 DEC 2015
PIECES: 1 of/de 1
WEIGHT/POIDS: 1 LB

51

EXP 10:30

PUROLATOR PIN: 330608812831

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Les Modalités et conditions de service publiées de Purolator s'appliquent - voir www.purolator.com.

Fold the Bill of Lading on the dotted line and insert into the adhesive pouch. Attach a Bill of Lading to each package.
Veuillez plier ce connaissement sur la ligne pointillée et l'insérer dans la pochette adhésive. Veuillez joindre un connaissement à chaque colis.

No Declared Value Entered By Sender / Aucune valeur déclarée entrée par

CONDITIONS OF CARRIAGE

IMPORTANT - PLEASE READ: The consignor agrees that the act of tendering the shipment to the carrier for transportation shall be sufficient to constitute signature of this bill of lading by the consignor and shall bind the consignor to the conditions of carriage stated below.

RECEIPT Carrier acknowledges receiving from the shipper, at the point of origin and on the date specified, the shipment described in this bill of lading in apparent good order, except as noted (contents and conditions of contents of shipment unknown), and agrees to carry and deliver the shipment to the receiver at the destination set out in this bill of lading, subject to payment of all lawful charges. "Carrier" refers to Purolator Inc. and any connecting and/or successive carriers involved in the transportation of the shipment herein described, including any of their respective subsidiaries, controlled entities, and their respective employees, agents and independent contractors.

LIMITATION ON LIABILITY Carrier's liability in respect of the shipment described in this bill of lading (including for any loss, damage, delay, misdelivery, non-delivery or failure to deliver) is limited to $2.00 per pound ($4.41 per kilogram) computed on the total weight of the shipment, unless a higher value is declared in the specially marked Purolator Online Shipping user entry field, "Declared Value for Insurance ($)". Notwithstanding any disclosure of the nature or value of the goods carried or any special agreement to the contrary, carrier is not liable under any circumstances for the consequences of delay, or for any indirect or consequential damages (including lost profits) howsoever caused.

NOTICE OF CLAIM Carrier is not liable for any loss, damage or delay to any goods carried under this bill of lading unless notice of the claim setting out particulars of the origin, destination and date of shipment of the goods and the estimated amount claimed in respect of such loss, damage or delay is given in writing to the carrier within sixty (60) days after the delivery of the goods, or, in the case of failure to make delivery, within nine (9) months from the date of shipment. Subject to any overriding statutory provisions, the final statement of the claim must be filed within nine (9) months from the date of shipment, together with a copy of the paid freight bill. If the Convention applies, other notice periods may govern. No claim will be entertained until all transportation charges due in connection with this bill of lading have been paid in full. All claims are subject to proof of amount of loss.

TERMS INCORPORATED BY REFERENCE Every service to be performed under this bill of lading is subject to the conditions of carriage contained in this bill of lading, including the terms and conditions contained in Purolator Inc.'s published terms and conditions of carriage and the terms and conditions prescribed by the law of the jurisdiction where the goods originate (including the uniform conditions of carriage thereunder, if any). If the carriage involves an ultimate destination or a stop in a country other than the country of departure, the Convention (as defined below) may apply and limit the liability of the carrier in respect of loss of, damage to or delay of cargo. "Convention" means the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw, Poland, 12 October, 1929, or the Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal, Canada, 28 May, 1999, or those Conventions as amended or supplemented as may be applicable to the carriage hereunder.

MISCELLANEOUS Unless otherwise indicated, the consignor's name and address is the sender's name and address indicated on this bill of lading, and the latter is the place of execution and the place of departure; the consignee's name and address is the receiver's name and address indicated on this bill of lading, and the latter is the place of destination; and the date indicated on this bill of lading is the date of execution. There are no specific stopping places which are agreed to, and the carrier reserves the right to select the route and the mode of transportation that the carrier deems appropriate. The consignor warrants that the shipment is properly described on this bill of lading and on any accompanying documentation, and that the shipment is properly marked, addressed and packed to ensure safe transportation in accordance with the carrier's ordinary care in handling. Unless otherwise indicated on this bill of lading, the consignor waives its right to determine the volume or dimensions of the shipment, and to indicate same on this bill of lading. The consignor appoints the carrier as its agent for the performance of customs clearance and selecting a customs broker.

ENTIRE AGREEMENT The terms and conditions contained in this bill of lading, including those incorporated herein by reference, constitute the entire agreement relating to the carriage of the shipment described in this bill of lading, and no agent, servant or representative of the carrier or consignor has the authority to alter, waive or otherwise modify any provision of this agreement. In tendering the shipment described herein for carriage, the consignor agrees to these terms and conditions on his own behalf and on behalf of the consignee and any other party claiming an interest in the shipment.

TARION

PROTECTING ONTARIO'S NEW HOME BUYERS

Corporate Office
5160 Yonge Street, 12th Floor
Toronto, Ontario M2N 6L9

BY COURIER

November-04-16
12:50 PM

TARION
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5511585

POL EXAM

Tarion Warranty Corporation
Corporate Office
5160 Yonge Street, 12th Floor
Toronto, Ontario M2N 6L9
Toll-Free: 1-877-982-7466
www.tarion.com

January 14, 2016

2016 JAN 19 P 12:45

By Mail & Fax 416-598-6076

Bank of Montreal
Trade Finance Operations
234 Simcoe Street, 3rd Floor
Toronto, ON M5T 1T4

Dear Sir/Madam:

RE: Letter of Credit No.: BMTO365621OS
Date of Issuance: April 12, 2012
Current Value: $61,199.82 CAD
Beneficiary: Tarion Warranty Corporation
Applicant: 2147650 Ontario Inc., 2148990 Ontario Inc. and 2148993 Ontario Inc.
Registrant: Silver Streams Homes Inc., Whitby Mews Developments Inc., D & I Developments Inc., 2147650 Ontario Inc., 2148990 Ontario Inc., 2148993 Ontario Inc., 2148991 Ontario Inc., and 2147681 Ontario Inc.
Vendor/Builder No.: 40568, 40569, 40570, and 42077

We hereby demand payment of $2,196.02 CAD being drawn pursuant to the above-referenced Irrevocable Standby Letter of Credit and confirm that the monies being drawn under this Letter of Credit are being drawn in respect of obligations owed by the Registrant to the Beneficiary.

"Drawn under Bank of Montreal, Trade Finance Operations, 234 Simcoe Street, 3rd Floor, Toronto, Ontario M5T 1T4, Letter of Credit No. BMTO365621OS dated April 12, 2012".

Please remit certified payment as soon as possible to the attention of the undersigned.

Yours truly,

Faria

Odette Faria
Senior Collections Analyst
Tarion Warranty Corporation
5160 Yonge St., 12th Floor
Toronto, ON
M2N 6L9
Tel: (416) 229-3866
Fax: (416) 229-3822
E-mail: odette.faria@tarion.com

November-04-16
12:51 PM

TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

W.I.# 5536623

Tarion Warranty Corporation
Corporate Office
5160 Yonge Street, 12th Floor
Toronto, Ontario M2N 6L9
Toll-Free: 1-877-982-7466
www.tarion.com

February 11, 2016

2016 FEB 12 A 9 52

By Courier & Fax 416-598-6076

Bank of Montreal
Trade Finance Operations
234 Simcoe Street, 3rd Floor
Toronto, ON M5T 1T4

Dear Sir/Madam:

RE: Letter of Credit No.: BMTO365621OS
Date of Issuance: April 12, 2012
Current Value: $59,003.80 CAD
Beneficiary: Tarion Warranty Corporation
Applicant: 2147650 Ontario Inc., 2148990 Ontario Inc. and 2148993 Ontario Inc.
Registrant: Silver Streams Homes Inc., Whitby Mews Developments Inc., D & I Developments Inc., 2147650 Ontario Inc., 2148990 Ontario Inc., 2148993 Ontario Inc., 2148991 Ontario Inc., and 2147681 Ontario Inc.
Vendor/Builder No.: 40568, 40569, 40570, and 42077

We hereby demand payment of **$11,759.39 CAD** being drawn pursuant to the above-referenced Irrevocable Standby Letter of Credit and confirm that the monies being drawn under this Letter of Credit are being drawn in respect of obligations owed by the Registrant to the Beneficiary.

"Drawn under Bank of Montreal, Trade Finance Operations, 234 Simcoe Street, 3rd Floor, Toronto, Ontario M5T 1T4, Letter of Credit No. BMTO365621OS dated April 12, 2012".

Please remit certified payment as soon as possible to the attention of the undersigned.

Yours truly,

O Faria

Odette Faria
Senior Collections Analyst
Tarion Warranty Corporation
5160 Yonge St., 12th Floor
Toronto, ON
M2N 6L9
Tel: (416) 229-3866
Fax: (416) 229-3822
E-mail: odette.faria@tarion.com

November-04-16
12:52 PM

TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

W/t: 560541)

Tarion Warranty Corporation
Corporate Office
5160 Yonge Street, 12th Floor
Toronto, Ontario M2N 6L9
Toll-Free: 1-877-982-7466
www.tarion.com

2016 APR 20 P 12:14

April 15, 2016

By Mail & Fax 416-598-6076

Bank of Montreal
Trade Finance Operations
234 Simcoe Street, 3rd Floor
Toronto, ON M5T 1T4

Dear Sir/Madam:

RE: Letter of Credit No.: BMTO365621OS
Date of Issuance: April 12, 2012
Current Value: $47,244.41 CAD
Beneficiary: Tarion Warranty Corporation
Applicant: 2147650 Ontario Inc., 2148990 Ontario Inc. and 2148993 Ontario Inc.
Registrant: Silver Streams Homes Inc., Whitby Mews Developments Inc., D & I Developments Inc., 2147650 Ontario Inc., 2148990 Ontario Inc., 2148993 Ontario Inc., 2148991 Ontario Inc., and 2147681 Ontario Inc.
Vendor/Builder No.: 40568, 40569, 40570, and 42077

We hereby demand payment of **$2,237.76 CAD** being drawn pursuant to the above-referenced Irrevocable Standby Letter of Credit and confirm that the monies being drawn under this Letter of Credit are being drawn in respect of obligations owed by the Registrant to the Beneficiary.

"Drawn under Bank of Montreal, Trade Finance Operations, 234 Simcoe Street, 3rd Floor, Toronto, Ontario M5T 1T4, Letter of Credit No. BMTO365621OS dated April 12, 2012".

Please remit certified payment as soon as possible to the attention of the undersigned.

Yours truly,

Faria

Odette Faria
Senior Collections Analyst
Tarion Warranty Corporation
5160 Yonge St., 12th Floor
Toronto, ON
M2N 6L9
Tel: (416) 229-3866
Fax: (416) 229-3822
E-mail: odette.faria@tarion.com

November-04-16
12:52 PM

TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

Tarion Warranty Corporation
Corporate Office
5160 Yonge Street, 12th Floor
Toronto, Ontario M2N 6L9
Toll-Free: 1-877-982-7466
www.tarion.com

May 17, 2016

By Mail & Fax 416-598-6076 2016 MAY 19 A 11:03 5637038

Bank of Montreal
Trade Finance Operations
234 Simcoe Street, 3rd Floor
Toronto, ON M5T 1T4

Dear Sir/Madam:

RE: **Letter of Credit No.: BMTO365621OS**
Date of Issuance: April 12, 2012
Current Value: $45,006.65 CAD
Beneficiary: Tarion Warranty Corporation
Applicant: 2147650 Ontario Inc., 2148990 Ontario Inc. and 2148993 Ontario Inc.
Registrant: Silver Streams Homes Inc., Whitby Mews Developments Inc., D & I Developments Inc., 2147650 Ontario Inc., 2148990 Ontario Inc., 2148993 Ontario Inc., 2148991 Ontario Inc., and 2147681 Ontario Inc.
Vendor/Builder No.: 40568, 40569, 40570, and 42077

We hereby demand payment of $6,292.82 CAD being drawn pursuant to the above-referenced Irrevocable Standby Letter of Credit and confirm that the monies being drawn under this Letter of Credit are being drawn in respect of obligations owed by the Registrant to the Beneficiary.

"Drawn under Bank of Montreal, Trade Finance Operations, 234 Simcoe Street, 3rd Floor, Toronto, Ontario M5T 1T4, Letter of Credit No. BMTO365621OS dated April 12, 2012".

Please remit certified payment as soon as possible to the attention of the undersigned.

Yours truly,

Faria

Odette Faria
Senior Collections Analyst
Tarion Warranty Corporation
5160 Yonge St., 12th Floor
Toronto, ON
M2N 6L9
Tel: (416) 229-3866
Fax: (416) 229-3822
E-mail: odette.faria@tarion.com

November-04-16
12:53 PM

5697326.

TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

Tarion Warranty Corporation
Corporate Office
5160 Yonge Street, 12th Floor
Toronto, Ontario M2N 6L9
Toll-Free: 1-877-982-7466
www.tarion.com

July 14, 2016

2016 JUL 18 P 1:13

By Mail & Fax 416-598-6076

Bank of Montreal
Trade Finance Operations
234 Simcoe Street, 3rd Floor
Toronto, ON M5T 1T4

Dear Sir/Madam:

RE: Letter of Credit No.: BMTO365621OS
Date of Issuance: April 12, 2012
Current Value: $38,713.83 CAD
Beneficiary: Tarion Warranty Corporation
Applicant: 2147650 Ontario Inc., 2148990 Ontario Inc. and 2148993 Ontario Inc.
Registrant: Silver Streams Homes Inc., Whitby Mews Developments Inc., D & I Developments Inc., 2147650 Ontario Inc., 2148990 Ontario Inc., 2148993 Ontario Inc., 2148991 Ontario Inc., and 2147681 Ontario Inc.
Vendor/Builder No.: 40568, 40569, 40570, and 42077

We hereby demand payment of $1,130.00 CAD being drawn pursuant to the above-referenced Irrevocable Standby Letter of Credit and confirm that the monies being drawn under this Letter of Credit are being drawn in respect of obligations owed by the Registrant to the Beneficiary.

"Drawn under Bank of Montreal, Trade Finance Operations, 234 Simcoe Street, 3rd Floor, Toronto, Ontario M5T 1T4, Letter of Credit No. BMTO365621OS dated April 12, 2012".

Please remit certified payment as soon as possible to the attention of the undersigned.

Yours truly,

OFaria

Odette Faria
Senior Collections Analyst
Tarion Warranty Corporation
5160 Yonge St., 12th Floor
Toronto, ON
M2N 6L9
Tel: (416) 229-3866
Fax: (416) 229-3822
E-mail: odette.faria@tarion.com

Doc Exam 1

E. VQ

November-04-16
12:54 PM

9/20/2016 3:13 PM FROM: 4162299200 TO: 4165986076 PAGE: 001 OF 001 5765784

DOC 60

TARION

PROTECTING ONTARIO'S NEW HOME BUYERS

Tarion Warranty Corporation

Corporate Office
5160 Yonge Street, 12th Floor
Toronto, Ontario M2N 6L9

Toll Free 1-877-982-7466
www.tarion.com

September 20, 2016

By Mail & Fax 416-598-6076

Bank of Montreal
Trade Finance Operations
234 Simcoe Street, 3rd Floor
Toronto, ON M5T 1T4

Dear Sir/Madam:

RE: **Letter of Credit No.:** **BMTO365621OS**
Date of Issuance: **April 12, 2012**
Current Value: **$37,583.83 CAD**
Beneficiary: **Tarion Warranty Corporation**
Applicant: 2147650 Ontario Inc., 2148990 Ontario Inc. and 2148993 Ontario Inc.
Registrant: Silver Streams Homes Inc., Whitby Mews Developments Inc., D & I Developments Inc., 2147650 Ontario Inc., 2148990 Ontario Inc., 2148993 Ontario Inc., 2148991 Ontario Inc., and 2147681 Ontario Inc.
Vendor/Builder No.: 40568, 40569, 40570, and 42077

We hereby demand payment of **$2,914.40 CAD** being drawn pursuant to the above-referenced Irrevocable Standby Letter of Credit and confirm that the monies being drawn under this Letter of Credit are being drawn in respect of obligations owed by the Registrant to the Beneficiary.

"Drawn under Bank of Montreal, Trade Finance Operations, 234 Simcoe Street, 3rd Floor, Toronto, Ontario M5T 1T4, Letter of Credit No. BMTO365621OS dated April 12, 2012".

Please remit certified payment as soon as possible to the attention of the undersigned.

Yours truly,

O. Faria

Odette Faria
Senior Collections Analyst
Tarion Warranty Corporation
5160 Yonge St., 12th Floor
Toronto, ON
M2N 6L9
Tel: (416) 229-3866
Fax: (416) 229-3822
E-mail: odette.faria@tarion.com

2016 SEP 20 P 3:24

November-04-16
12:55 PM

TARION
PROTECTING ONTARIO'S NEW HOME BUYERS

Tarion Warranty Corporation
Corporate Office
5160 Yonge Street, 12th Floor
Toronto, Ontario M2N 6L9
Toll-Free: 1-877-982-7466
www.tarion.com

October 18, 2016

By Mail & Fax 416-598-6076

Bank of Montreal
Trade Finance Operations
234 Simcoe Street. 3rd Floor
Toronto, ON M5T 1T4

Dear Sir/Madam:

RE: Letter of Credit No.: BMTO365621OS
Date of Issuance: April 12, 2012
Current Value: $34,669.43 CAD
Beneficiary: Tarion Warranty Corporation
Applicant: 2147650 Ontario Inc., 2148990 Ontario Inc. and 2148993 Ontario Inc.
Registrant: Silver Streams Homes Inc., Whitby Mews Developments Inc., D & I Developments Inc., 2147650 Ontario Inc., 2148990 Ontario Inc., 2148993 Ontario Inc., 2148991 Ontario Inc., and 2147681 Ontario Inc.
Vendor/Builder No.: 40568, 40569, 40570, and 42077

We hereby demand payment of $4,805.75 CAD being drawn pursuant to the above-referenced Irrevocable Standby Letter of Credit and confirm that the monies being drawn under this Letter of Credit are being drawn in respect of obligations owed by the Registrant to the Beneficiary.

"Drawn under Bank of Montreal, Trade Finance Operations, 234 Simcoe Street, 3rd Floor, Toronto, Ontario M5T 1T4, Letter of Credit No. BMTO365621OS dated April 12, 2012".

Please remit certified payment as soon as possible to the attention of the undersigned.

Yours truly,

Faria

Odette Faria
Senior Collections Analyst
Tarion Warranty Corporation
5160 Yonge St.. 12th Floor
Toronto, ON
M2N 6L9
Tel: (416) 229-3866
Fax: (416) 229-3822
E-mail: odette.faria@tarion.com

2016 OCT 19 A 9:31

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

Court File No.: CV-13-115757-00

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CON-DRAIN COMPANY (1983) LIMITED

Plaintiff

- and -

SILVER STREAMS HOMES INC.,
SILVER STREAMS HOMES (PUCCINI) INC., JACK GREENBERG,
2148990 ONTARIO INC., 2148993 ONTARIO INC., 2147650 ONTARIO INC.
2147681 ONTARIO INC., PUCCINI MORTGAGE CORP.,
53 PUCCINI MORTGAGE CORP., 388242 ONTARIO LIMITED,
DAPAUL MANAGEMENT LIMITED, NASTELL INVESTMENTS LIMITED
and CASTLE LANE DESIGN GROUP INC.

Defendants

STATEMENT OF CLAIM
(Notice of Action issued on August 15, 2013)

1. The Plaintiff claims:

   (a) damages in the amount of $800,000.00 for breach of contract, breach of the personal Undertaking of Jack Greenberg, breach of trust, breach of fiduciary duty, misappropriation of funds, conspiracy, fraud and negligent or fraudulent misrepresentations payable by the Defendants jointly and/or severally;

   (b) a Mandatory Order requiring the sum of up to $800,000.00 be paid into Court or into Trust from the net proceeds received on the remaining nineteen (19) lots located on the project in question, after payment of necessary legal fees, real estate commissions, mortgage payments to the Bank of Montreal and reasonable payments to other trades until further Order of this Honourable Court;

(c) an Order declaring that the Plaintiff has a full priority over all of the Defendants to the $800,000.00 amount referenced in paragraphs 1 (a) and (b) above;

(d) in the alternative, an Order that a Certificate of Pending Litigation be granted in respect of the remaining 19 Lots on the residential project in question located in Richmond Hill, the legal description for same is set forth in Schedule "A" attached hereto;

(e) punitive damages in the sum of $500,000.00;

(f) pre-judgment and post-judgment interest on the above noted sum from June 26, 2013 in accordance with the terms of the Settlement entered into between the parties, or in the alternative, in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(g) costs of the action payable on a full indemnity basis;

(h) any Harmonized Sales Tax which may be payable on any amount pursuant to the *Excise Tax Act*, R.S.C., 1995, c. E-15, as amended, or any other legislation enacted by the Government of Canada; and

(i) such further and other relief as counsel may advise and this Honourable Court may deem just.

THE PARTIES

2. The Plaintiff, Con-Drain Company (1983) Limited (**"Con-Drain"**) is a company incorporated pursuant to the laws of the Province of Ontario and operates as an earthworks and servicing contractor from its head offices in Concord, Ontario.

3. The Defendants, Silver Streams Homes Inc. and Silver Streams Homes (Puccini) Inc. (**"Silver Streams"**) are companies incorporated pursuant to the laws of the Province of Ontario operating as builders and/or developers from their head offices in Richmond Hill, Ontario. At all material times, Silver Streams was the builder and/or developer of the residential homes constructed on the lands in question (the **"Project")**.

4. The Defendants, 2148990 Ontario Inc., 2148993 Ontario Inc., 2147650 Ontario Inc. and 2147681 Ontario Inc. (hereinafter collectively referred to as the **"Registered Owners"**) are companies incorporated pursuant to the laws of the Province of Ontario. At all material times, said companies were and/or are the **"Registered Owners"** of the Project lands. The Registered Owners are companies related to the Silver Streams companies in that they all share the same controlling mind and director/officer, namely, Imran Jinnah (**"Jinnah"**).

5. The Defendant, Jack Greenberg (**"Greenberg"**) is a lawyer residing in the Province of Ontario. At all material times, Greenberg was the lawyer for Silver Streams and the related Registered Owner companies. In addition, Greenberg is an officer, director and a controlling mind of the remaining corporate defendants described in paragraph #6 below.

6. The remaining corporate Defendants, namely, Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, Dapaul Management Limited, Nastell Investments Limited and Castle Lane Design Group Inc. (hereinafter collectively referred to as the **"Greenberg Companies"**) are companies incorporated pursuant to the laws of the Province of Ontario and are lenders and/or investors operating from their head offices in Toronto, Ontario. Greenberg is the sole officer and director and/or the controlling mind of the Greenberg Companies and is authorized to bind them.

7. The Greenberg Companies have mortgages registered against the Project, which mortgages are subsequent to a 1st mortgage registered in favour of the Bank of Montreal.

THE FACTS

8. Pursuant to its Contract in the sum of approximately $4.5 million including GST (the "Contract"), Con-Drain provided earthworks, underground services, roads, curbs, asphalt and all related labour and materials to the entire Project, being a residential construction project located in Richmond Hill. Con-Drain's Contract was with Silver Streams Homes Inc. and/or Silver Streams Homes (Puccini) Inc., the builder and developer of the Project.

9. Pursuant to the Contract, Con-Drain carried out its work and completed a substantial portion of same by late 2009. Unfortunately, Silver Streams did not have the funds available to pay Con-Drain for its work and was indebted to Con-Drain in the sum of approximately $2.0 million.

10. In any event, section 4.1 of the Contract required Silver Streams to pay Con-Drain within 15 days of receiving the return of security that Silver Streams had posted with the Town of Richmond Hill in the sum of approximately $1.2 million.

11. Contrary to the Contract provision mentioned above, Silver Steams improperly retained and/or misappropriated the security it received from the Town of Richmond Hill and wilfully neglected to pay said funds to Con-Drain.

12. In light of the above improper actions by Silver Streams, Con-Drain was required to register Claims for Lien in order to protect the substantial amounts owing for work performed on the Project at that time. As such, on February 9, 2010, Con-Drain registered two Claims for Lien against the Project, claiming $998,098.46 and $930,120.27, respectively.

13. Shortly after registration of Con-Drain's Claims for Lien, settlement negotiations took place with Greenberg and Jinnah. In fact, on or about March 31, 2010, a Settlement was entered into between the parties. The Settlement entitled Con-Drain to receive an immediate payment of $550,000.00. In addition, an Irrevocable Direction was provided by Silver Streams and an Irrevocable Undertaking was executed by Greenberg directing

payment to Con-Drain in the sum of $50,000.00 plus interest from each future closing until Con-Drain was paid in full, including interest.

14. In exchange, and as part of the Settlement, Con-Drain agreed to immediately discharge its two Claims for Lien.

15. Con-Drain received the $550,000.00 payment required by the above noted Settlement and began to receive $50,000.00 plus interest on the various closings as they proceeded to take place. In turn, Con-Drain discharged its two Claims for Lien and did so in strict reliance upon the Irrevocable Direction and Greenberg's Undertaking to pay Con-Drain proceeds from each closing.

16. The Settlement was performed by the parties until Silver Streams got into further financial trouble at some point in early 2012. At that time, Jinnah and Greenberg contacted Con-Drain to discuss revising the Settlement terms.

17. In order to assist Silver Streams in continuing to close the homes without undue delay and to avoid litigation, Con-Drain agreed to revise some of the Settlement terms. Part of the revision provided that Con-Drain would be paid $50,000.00 plus interest from the first ten (10) closings of homes constructed on the "Third Plan" of the Project (Plan 3). While doing so would delay payment to Con-Drain, which otherwise would have been paid in full on Plans 1 and 2, Jinnah and Greenberg advised the delay was necessary due to various financing issues with the first mortgage registered in favour of Bank of Montreal.

18. Con-Drain at all material times relied on the representations made by the Defendants that Con-Drain would receive the balance of funds owing from the first ten (10) closings on Plan 3. But for these representations, Con-Drain would not have agreed to the deferral in payment from the Plan 1 and 2 sales.

MISAPPROPRIATION OF FUNDS BY GREENBERG/JINNAH ET AL

19. From the commencement of the original Settlement in late March, 2010 until mid-March, 2013, there were approximately thirty-four (34) lots that closed from which Con-Drain received the required $50,000.00 payment along with applicable interest. All of those payments were made from Greenberg's trust account as required by the Settlement, the Irrevocable Direction and Greenberg's personal Undertaking.

20. Con-Drain pleads and relies upon the Settlement, the Irrevocable Direction and Greenberg's Undertaking as well as representations from Jinnah and Greenberg to comply with the terms of the Settlement in order to ensure full payment to Con-Drain. To that end, Con-Drain states the Defendants specifically owe a fiduciary duty, duty of care and are constructive trustees in respect of that portion of the closing proceeds payable to Con-Drain under the Settlement.

SECRET CLOSINGS AND DEFENDANTS' BREACHES

21. In April, 2013, Con-Drain inquired as to when the next set of closings were taking place as it was expected there would be numerous closings in the summer of 2013. Neither Jinnah nor Greenberg ever advised Con-Drain about the future closing dates.

22. Totally by coincidence, in late July it came to Con-Drain's attention that one of the lots in the Project had closed earlier that month. However, Con-Drain never received the Settlement payment and/or interest from Greenberg's office in respect of that closing.

23. Con-Drain immediately contacted Silver Streams/Jinnah and was advised that nine (9) or ten (10) lots had closed in June and July but that Greenberg had unilaterally decided no amount would be paid to Con-Drain notwithstanding the Irrevocable Direction from Silver Streams/Jinnah and Irrevocable Undertaking from Greenberg.

24. Con-Drain states the failure and/or intentional decision not to pay Con-Drain from the June and July, 2013 closing was a direct breach of the Irrevocable Direction, Irrevocable Undertaking and the Settlement obligations to pay Con-Drain.

25. In light of the above breaches and non-payment, Con-Drain demanded a meeting with Jinnah and Greenberg, which meeting was held at Con-Drain's offices on or about August 6th.

26. At the meeting, Greenberg admitted that funds were paid to the "Secondary Lenders" i.e. the Greenberg Companies who have mortgages registered "after" the Bank of Montreal's first mortgage. In fact, the Greenberg Companies received approximately $1.2 million dollars from the nine (9) secret closings, and other trades received over $800,000.00. Con-Drain received nothing.

27. Con-Drain states the above noted distribution of closing proceeds by the Defendants was a breach of the Settlement, a breach of trust, a breach of Greenberg's Undertaking and a breach fiduciary duty owed by Silver Streams and Greenberg to Con-Drain.

28. In addition, Con-Drain states that in light of all the above, Con-Drain has full priority over all of the Defendants to the $800,000.00 amount and seeks payment of same from the Defendants, jointly and/or severally.

BALANCE OWING TO CON-DRAIN

29. The balance presently owing to Con-Drain as of July 31, 2013, was the sum of $678,176.88 plus interest of $116,704.80 for a total owing in the sum of **$794,881.68**.

30. Of the above noted amount the sum of $94,836.71 relates to work recently performed by Con-Drain and approved by Silver Streams' engineer. In order to further protect Con-Drain's rights, on August 9, 2013, Con-Drain registered a Claim for Lien against eighteen (18) of the remaining lots in the sum of $94,836.71 and also registered a Notice against title to those lots.

31. Con-Drain believes that in light of the Settlements entered into with the parties herein along with the Irrevocable Direction from Silver Streams/Jinnah and the personal Undertaking of Greenberg, Con-Drain has an interest in the remaining lots up to the amount owing to Con-Drain and/or a constructive trust claim for that amount. Con-Drain has sought an Order requiring the amount owing be paid into Court or into Trust from the remaining closings so it can be protected and so as to prevent any further breaches and/or misuse of the closing proceeds by the Defendants.

32. In the alternative, Con-Drain seeks an Order for a Certificate of Pending Litigation in regards to the remaining lots.

CONCLUSION

33. Con-Drain also states the improper distribution of closing proceeds by Greenberg, Silver Streams and/or Jinnah from the nine (9) secret closings of over $1.2 million to the Greenberg Companies and over $800,000.00 to "other trades" instead of paying Con-Drain was a flagrant and intentional breach of the Settlement, breach of trust, breach of fiduciary duty and breach of duty of care for which those Defendants are jointly and/or severally liable.

34. Furthermore, Con-Drain states it has priority and is entitled to be paid in priority to the mortgages registered by the Greenberg Companies as Con-Drain began performing its work and entered into to the terms of the Settlement "prior to" the advances made by the Greenberg Companies. As a result, it is Con-Drain's position that all amounts still owing to it have priority to the Greenberg Company mortgages.

35. In addition, Greenberg's Undertaking is binding on the Greenberg Companies, who are identified in law with Greenberg and who are impressed with his knowledge and are liable for his wrongful conduct.

36. In addition or in the alternative, Con-Drain states the aforementioned amounts up to $800,000.00 are Trust Funds pursuant to the Trust provisions of the Construction Lien Act, R.S.O. 1990, c.C.30 and therefore payable to Con-Drain in priority to all of the Defendants.

37. In the further alternative, Con-Drain states the Greenberg Companies, which received approximately $1.2 million from the 9 secret closings in June and July, 2013, are constructive trustees in regards to those amounts and are holding those funds in trust for Con-Drain. As a result, all such funds must be repaid to Con-Drain up to the sum of $800,000.00 on the basis that same were clearly distributed to the Greenberg Companies in breach of the constructive trust and fiduciary duty owed to the Plaintiff by Silver Streams, Greenberg and/or the Greenberg Companies.

38. The Plaintiff proposes that this action be tried in the City of Newmarket, Ontario.

September 3, 2013

Koskie Minsky LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Jeffrey Long LSUC #: 32602V
Tel: 416-595-2125
Fax: 416-204-2892

Lawyers for the Plaintiff

TO: SILVER STREAMS HOMES INC.
SILVER STREAMS HOMES (PUCCINI) INC.
2148990 ONTARIO INC.
2148993 ONTARIO INC.
2147650 ONTARIO INC.
2147681 ONTARIO INC.
c/o Stephen Schwartz
Chaitons LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

AND TO: JACK GREENBERG
PUCCINI MORTGAGE CORP.
53 PUCCINI MORTGAGE CORP.
388242 ONTARIO LIMITED
DAPAUL MANAGEMENT LIMITED
NASTELL INVESTMENTS LIMITED
181 Eglinton Ave. E., Suite 204
Toronto, ON M4P 1J4

SCHEDULE "A"

PIN	03206 - 3484 LT LOT 1, PLAN 65M4331; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 1 & 2 65R33105 AS IN LB43081; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3485 LT LOT 2, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3486 LT LOT 3, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3487 LT LOT 4, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3488 LT LOT 5, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3495 LT LOT 12, PLAN 65M4331; SUBJECT TO AN EASEMENT IN GROSS OVER PT 8 65R33105 AS IN YR1611262; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3497 LT LOT 14, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3499 LT LOT 16, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3501 LT LOT 18, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3502 LT LOT 19, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3503 LT LOT 20, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3504 LT LOT 21, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3505 LT LOT 22, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3506 LT LOT 23, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3507 LT LOT 24, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3508 LT LOT 25, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3418 LT LOT 1, PLAN 65M4249; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3440 LT LOT 23, PLAN 65M4249; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 65R32917 AS IN YR1620823; TOWN OF RICHMOND HILL
PIN	03206 – 3441LT LOT 24, PLAN 65M-4249, SUBJECT TO AN EASEMENT IN GROSS PT 3, 65R-32917 AS IN YR1620823, TOWN OF RICHMOND HILL RICHMOND HILL

CON-DRAIN COMPANY (1983) LIMITED
Plaintiff

and

SILVER STREAMS HOMES INC. et al.
Defendants

Court File No: CV-13-115757-00

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at NEWMARKET

STATEMENT OF CLAIM
(Notice of Action Issued August 15, 2013)

Koskie Minsky LLP
20 Queen Street West, Suite 900, Box 52
Toronto, ON M5H 3R3

Jeffrey Long LSUC #: 32602V
Tel: 416-595-2125
Fax: 416-204-2892

Lawyers for the Plaintiff

372

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

Court File No.
CV-13-115757-00

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	**THURSDAY, THE 15TH**
	)	
JUSTICE M. L. LACK	)	**DAY OF AUGUST, 2013**

BETWEEN:

CON-DRAIN COMPANY (1983) LIMITED

Plaintiff

- and -

**SILVER STREAMS HOMES INC.,
SILVER STREAMS HOMES (PUCCINI) INC., JACK GREENBERG,
2148990 ONTARIO INC., 2148993 ONTARIO INC., 2147650 ONTARIO INC.
2147681 ONTARIO INC., PUCCINI MORTGAGE CORP.,
53 PUCCINI MORTGAGE CORP., 388242 ONTARIO LIMITED,
DAPAUL MANAGEMENT LIMITED, NASTELL INVESTMENTS LIMITED
and CASTLE LANE DESIGN GROUP INC.**

Defendants

ORDER

THIS MOTION, made by the Plaintiff for a Mandatory Order and/or a Certificate of Pending Litigation, was heard this day at 50 Eagle Street, W., Newmarket, Ontario.

ON READING the Affidavit of Nunzio Bitondo, sworn August 13, 2013 and exhibits thereto, and the Affidavit of Cristina Neves, sworn August 24, 2013 and exhibits thereto, and upon reading the Consent of counsel for the Plaintiff and for Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148990 Ontario Inc., 2148993 Ontario Inc., 2147650 Ontario Inc. and 2147681 Ontario Inc., filed and upon hearing submissions from counsel for the Plaintiff,

1. **THIS COURT ORDERS** that the Plaintiff's Motion is adjourned pursuant to the Timetable attached hereto as Schedule "A", which Timetable may be varied on consent of all parties without further Order of the Court.

2. **THIS COURT ORDERS** that no closing of the nineteen (19) lots (more particularly described in Schedule "B" hereto and hereinafter defined as the "Lots") shall proceed other than in accordance with the terms as set out herein.

3. **THIS COURT ORDERS** that within seven (7) days from the date of this Order, Silver Streams shall provide the Plaintiff with a list of the scheduled closing dates for the Lots.

4. **THIS COURT ORDERS** that on any closing of the Lots the net proceeds received on closing shall be paid into Court, or into Trust if agreed to by all parties in writing, up to a maximum of $800,000.00. Such net proceeds shall be calculated as the balance of the purchase price after payment of necessary closing legal fees, real estate commissions, mortgage discharge payments to the Bank of Montreal, payment to the necessary trades in an amount to be agreed to by the Plaintiff acting reasonably, and applicable HST, which funds shall remain in Court or in Trust until further Order of this Honourable Court or Consent of the parties herein.

5. **THIS COURT ORDERS** that in conjunction with the terms set out in paragraph 4 above, the parties herein shall execute the necessary documents to allow any and/or all closings of the Lots to take place, including but not limited to, the partial Discharges of the Plaintiff's Notice and Claim for Lien registered on August 9, 2013, at the Plaintiff's own expense, to be provided immediately prior to any closing as contemplated herein.

202

6. **THIS COURT ORDERS** that once the sum of $800,000.00 has been paid into Court or into Trust, Con-Drain shall forthwith consent to the withdrawal of paragraphs 4 and 5 herein as it relates to payment of any further net proceeds into Court.

7. **THIS COURT ORDERS** that costs of all parties are reserved to the Judge hearing the Plaintiff's Motion on the merits.

ML

8. THIS COURT ORDERS THAT THIS MOTION IS OTHERWISE ADJOURNED TO SEPT. 26, 2013 AT 9:30 A.M.

Myers J

ENTERED AT / INSCRIT À
854
AUG 15 2013

SCHEDULE "A"

TIMETABLE FOR PLAINTIFF'S MOTION

1. The Defendants shall provide their Responding materials on or before August 30, 2013;
2. The Plaintiff shall provide its Reply materials, if any, on or before September 5, 2013;
3. Cross-examination of the Affiants shall take place during the week of September 9, 2013;
4. The Plaintiff's Motion shall be returnable on Thursday, September 26, 2013.

SCHEDULE "B"

PIN	03206 - 3484 LT LOT 1, PLAN 65M4331; SUBJECT TO AN EASEMENT IN GROSS OVER PTS 1 & 2 65R33105 AS IN LB43081; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3485 LT LOT 2, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3486 LT LOT 3, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3487 LT LOT 4, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3488 LT LOT 5, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3495 LT LOT 12, PLAN 65M4331; SUBJECT TO AN EASEMENT IN GROSS OVER PT 8 65R33105 AS IN YR1611262; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3497 LT LOT 14, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3499 LT LOT 16, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3501 LT LOT 18, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3502 LT LOT 19, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3503 LT LOT 20, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3504 LT LOT 21, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3505 LT LOT 22, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3506 LT LOT 23, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3507 LT LOT 24, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3508 LT LOT 25, PLAN 65M4331; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3418 LT LOT 1, PLAN 65M4249; TOWN OF RICHMOND HILL RICHMOND HILL
PIN	03206 - 3440 LT LOT 23, PLAN 65M4249; SUBJECT TO AN EASEMENT IN GROSS OVER PT 2, 65R32917 AS IN YR1620823; TOWN OF RICHMOND HILL
PIN	03206 – 3441LT LOT 24, PLAN 65M-4249, SUBJECT TO AN EASEMENT IN GROSS PT 3, 65R-32917 AS IN YR1620823, TOWN OF RICHMOND HILL RICHMOND HILL

CON-DRAIN COMPANY (1983) LIMITED
Plaintiff

and

SILVER STREAMS HOMES INC. et al.
Defendants

Court File No: CV-13-115757-00

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at NEWMARKET

ORDER

Koskie Minsky LLP
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Lawyers for the Plaintiff

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

AFFIDAVIT OF **IMRAN JINNAH**

SWORN BEFORE ME THIS 11th DAY OF NOVEMBER, 2016

A Commissioner etc.

CITATION: Con-Drain Company v. Silver Streams Homes, 2013 ONSC 7176
NEWMARKET COURT FILE NO.: CV-13-115757-00
DATE: 20131120

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Con-Drain Company (1983) Limited, Plaintiff /Moving Party

and

Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., Jack Greenberg, 2148990 Ontario Inc., 2148993 Ontario Inc., 2147650 Ontario Inc., 2147681 Ontario Inc., Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, Dapaul Management Limited and Nastell Investments Limited and Castle Lane Design Group Inc., Defendants/Responding Parties

BEFORE: The Honourable Madam Justice C.A. Gilmore

COUNSEL: Jeffrey J. Long, for the Plaintiff

Stephen Schwartz, for the Defendants, Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148990 Ontario Inc., 2148993 Ontario Inc., 2147650 Ontario Inc., and 2147681 Ontario Inc.
Marco Drudi, for the Defendants, Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, Dapaul Management Limited, Nastell Investments Limited and Castle Lane Design Group Inc.

HEARD: October 15, 2013

ENDORSEMENT

Overview

[1] The plaintiff/moving party seeks an order continuing the August 15, 2013 injunction order of Lack J., and requests the $800,000 paid into trust with Chaitons LLP be paid into court until trial, further order of the court or consent of the parties.

[2] In the alternative, the plaintiff requests an order that a certificate of pending litigation ("CPL") be granted in respect of any remaining lots/homes on the residential project in question, located in Richmond Hill ("the project"), which remaining properties are lots 18, 23, 24 and 25. In the further alternative, the plaintiff seeks an order pursuant to rule 45.02 of the *Rules of Civil Procedure* to preserve the $800,000 by way of funds paid into court or otherwise secured.

[3] The issue to ultimately be determined (although not in the context of this motion) is whether the plaintiff is entitled to immediate payment of the $800,000 in priority to the defendants' mortgages. The $800,000 represents the net proceeds received on recent closings of certain lots/homes, located in phase three of the project.

Background Facts

[4] On February 9, 2010, the plaintiff registered two construction liens against title to the lands owned, at that time, by the co-defendants, 2148990 Ontario Inc., 2148993 Ontario Inc., 2147650 Ontario Inc. and 2147681 Ontario Inc. (hereinafter "the owners"). The builder/developer of the lands is Silver Streams Homes Inc. and Silver Streams Home (Puccini) Inc. ("Silver Streams"). The sole officer, director/shareholder and operating mind of Silver Streams and the owners is Mr. Imran Jinnah. One of the liens was registered by the plaintiff against phase one of the subject lands in the principal amount of $998,098.46 ("the phase one lien"). The other lien was registered by the plaintiff as against phase two in the principal amount of $930,120.27 ("the phase two lien").

[5] The services and materials provided by the plaintiff that formed the basis of the liens were provided to the co-defendant Silver Streams. The plaintiff provided earthworks, underground services, roads, curbs, asphalt and related labour and materials to the project, and by the end of 2009 they were owed almost $2,000,000 for work performed but for which Silver Streams was unable to make payment.

[6] The co-defendants, Puccini Mortgage Corp., 53 Puccini Mortgage Corp., 388242 Ontario Limited, DaPaul Management Limited, Nastell Investments and Castle Lane Design Group Inc. ("the secondary lenders") were mortgagees under various mortgages registered against title to the subject lands (hereinafter the "secondary mortgages").

[7] The co-defendant, Mr. Jack Greenberg, is a solicitor who at all material times acted on behalf of Silver Streams during his dealings with the plaintiff and its solicitor, Mr. Jeffrey Long. Mr. Greenberg is also an officer/director and solicitor of the secondary lenders.

[8] After the registration of the liens, a settlement agreement was entered into between Silver Streams and the plaintiff on March 31, 2010. The secondary lenders were not parties to the settlement agreement, although they were aware of it.

[9] The settlement agreement entitled the plaintiff to an immediate payment of $550,000. As well, Silver Streams signed an irrevocable direction authorizing and directing its solicitor to "deduct from the closing proceeds, otherwise payable to the undersigned (Silver Streams)...the sum of $50,000...and to pay same to Con-Drain." An irrevocable direction was provided from Silver Streams and an irrevocable direction was signed by Mr. Greenberg, directing the $50,000 payments, plus interest, from each of the future closings on phase one and phase two of the project. In exchange, the plaintiff was required to discharge its two claims for lien. The plaintiff's claims in the within action arise from the terms of the settlement agreement as between the plaintiff and Silver Streams.

[10] The secondary lenders take the position that in the course of discussions between the plaintiff and Silver Streams, through Mr. Greenberg and Mr. Long, the plaintiff fully understood that the phase one and phase two liens were subject to mortgages including the mortgages of the secondary lenders. They rely on email correspondence from Mr. Greenberg to Mr. Long

advising that the plaintiff's liens were subject to $9,600,000 of prior financing. When the plaintiff requested registration of a first mortgage against ten lots in the subject lands to secure their payment, Mr. Greenberg, on behalf of Silver Streams, advised that Silver Streams could not comply, and as such, the secondary lenders take the position that the plaintiff was fully aware that its settlement agreement would not be given priority over the secondary mortgages of the secondary lenders.

[11] The plaintiff takes the position that Mr. Greenberg made a clear representation as to the plaintiff's priority over any secondary lenders and Silver Streams for the balance owing to the plaintiff, based on the terms of settlement of March 31, 2010 and an email from Mr. Greenberg, in which he acknowledged that the plaintiff would stand in second position and makes no mention that the plaintiff would not be paid the required $50,000 plus interest from future closings because of monies to be paid to secondary lenders or other trades, as now suggested by Mr. Greenberg in his affidavit.

[12] The secondary lenders take the position that the parties to the settlement agreement were the plaintiff and Silver Streams, and that the agreement was signed on behalf of Silver Streams by Mr. Greenberg, and on behalf of the plaintiff by Mr. Long. Therefore, the secondary lenders are not bound by the terms of the settlement agreement. Further, the settlement agreement directs the solicitor for Silver Stream to "deduct from the closing proceeds **otherwise payable** to the undersigned [Silver Streams] the sum of $50,000...and to pay same to Con-Drain."

[13] Further, as part of the settlement agreement, and in the event of a default of payment, the plaintiff obtained consents to judgments from the owners and Mr. Jinnah personally. The secondary lenders submit that there is nothing which precludes the plaintiff from taking out the judgments and enforcing them.

[14] At no time did the plaintiff attempt to make the secondary lenders a party to the settlement agreement or insist on seeking priority over them. The secondary lenders rely on email correspondence, dated January 17, 2011, to counsel for the plaintiff sent by Mr. Greenberg confirming that the plaintiff's phase two lien was subject to the secondary mortgages in favour of the secondary lenders. The plaintiff did not object to the confirmation of priority of the secondary mortgages as against title to the subject lands at the time. The phase two lien was subsequently discharged without security.

[15] Subsequently, the plaintiff received the initial $550,000 payment required by the settlement agreement and began to receive the $50,000 payments plus interest from the various closings as they took place. The plaintiff submits it would obviously never have discharged its lien if it was not going to receive the $50,000 plus interest from closings going forward.

[16] In early 2012, Silver Streams experienced financial difficulty and Mr. Jinnah and Mr. Greenberg contacted the plaintiffs to discuss a revision of the settlement terms. The plaintiff agreed to revise the settlement terms such that they would be paid $50,000 plus interest from each of the first ten closings on phase three of the subdivision instead of being paid from

closings on phase two. While this revision delayed payment to the plaintiff, they accepted that the revision was necessary due to financing issues.

[17] The terms of the revised settlement were confirmed in the April 16, 2012 email from Mr. Greenberg to Mr. Long. Specifically, that email sets out a proposal as follows,

> My client would like the option to be able to move your client's lien from 15 lots in phase 2 under the second plan to the aforesaid 15 lots on the BMO lands, which we suggest would be better security for your client, which liens would be subject only to a first mortgage for no more than $3,000,000 (whether BMO or a private mortgage). Currently your client's lien is subject to at least $9,600,000 of prior financing... On each closing, until your client is paid out, your client would receive $50,000 from the closing proceeds from each sale in return for a lifting of the lien from such lot. Pro-rated and proportionate interest would be added to the discharge amount. My client would provide an irrevocable direction to my firm to make the aforesaid payment from the closing proceeds, and my firm will undertake to make the payment as well, as long as my firm is acting on the closing and there are sufficient funds. If my client changes law firms for closing purposes, he will advise you and he will provide the same irrevocable direction to that law firm... My client will agree to replace the existing lien on phase two lands with a mortgage in the amount of the balance owed to your client to cover the shortfall between my client's indebtedness to your client and the amount of your client's liens.

[18] The secondary lenders take the position that the plaintiff cannot rely on the contents of the April 16, 2012 email as they were not a party to it and none of the representations made in it were made on their behalf. The mortgages registered by the secondary lenders went into default in February 2013. The plaintiff received its last $50,000 payment and applicable interest on March 11, 2013, which was after the default on the secondary mortgages. Up until March 11, 2013, thirty-four lots/homes closed and the plaintiff received the required $50,000 payments, along with applicable interest. These payments were made from Mr. Greenberg's trust account and flowed from the sale proceeds, as required by the settlement agreement.

[19] At the time the settlement agreement was entered into, the plaintiff was owed $3,334,002.07 by Silver Streams. Of the plaintiff's current claim of $800,000, the amount of $291,552.89 is interest, which it is claiming from Silver Streams.

[20] Subsequent to default on the secondary mortgages and the payment to the plaintiff on March 11, 2013, there were nine closings which took place on Phase 3 for which the plaintiff did not receive payment. The plaintiff only became aware of this because one of the homes which closed was sold to a family member of someone known to the plaintiff. Thereafter, Mr. Jinnah

confirmed that the closings had taken place in June and July of 2013 and that a decision had been made that no payment would be made to the plaintiff.

[21] At a meeting held at the plaintiff's offices on August 6, 2013, Mr. Greenberg admitted that the sum of approximately $1,200,000 was paid to Mr. Greenberg's secondary lender companies on account of their mortgages and that no amount was paid to the plaintiff from the nine closings. Mr. Greenberg is the president and sole shareholder of all of the secondary lender companies, save and except for Castle Lane. Mr. Greenberg's wife is the other officer and director of that company.

[22] Given the alleged "secret" closings, the plaintiff's position is that Mr. Greenberg and the other defendants breached the settlement agreement and their obligation to pay the plaintiff on the closings by unilaterally deciding to pay the secondary lenders in direct contravention of both Mr. Greenberg's personal undertaking and his client's irrevocable direction. A document provided by Mr. Greenberg confirms that $1,239,000 was paid by Mr. Greenberg to the secondary lenders from the June and July 2013 closings. The amount owing to the plaintiff as of July 31, 2013 and admitted by Mr. Jinnah on his cross-examination, was principal of $679,179.88 and interest of $116,704.80, for a total of $794,881.68. The additional $94,836.71 relates to work recently performed by the plaintiff and for which they have registered a claim for lien against the eighteen remaining lots.

[23] According to the secondary lenders, Mr. Greenberg honoured his personal undertaking by deducting from closing proceeds otherwise payable to Silver Streams, the sum of $50,000 and paying the same to the plaintiff. He was **not** obligated to pay the sum of $50,000 irrespective of the financial constraints faced by Silver Streams or before the first mortgagee or the secondary lenders. To interpret the undertakings as suggested by the plaintiff is to ignore the term "otherwise payable" and to provide the plaintiff priority when such priority was not agreed to by Mr. Greenberg. The secondary lenders, although not parties to this settlement agreement, were aware of this and took no issue with the contents of the agreement. In summary, the secondary lenders take the position that there is no factual basis for any of the plaintiff's claims against them, as they negotiated a settlement agreement, which entitled them to effectively an unsecured judgment against Silver Streams and Mr. Jinnah personally, but did not negotiate an agreement which entitled them to priority over the secondary lenders.

The Current Motion

[24] On August 15, 2013, an order was obtained from Lack J., which protects the $800,000 presently owing to the plaintiff and directed that the plaintiff's motion be returnable on September 26, 2013. The motion date was adjourned to October 15, 2013 on consent.

[25] The August 15, 2013 order of Lack J. required the $800,000 to be paid into trust with Chaitons LLP, solicitors for Silver Streams. The current motion is to determine whether or not the plaintiff is entitled to a continuation of Lack J.'s existing injunction and an order that the $800,000 be paid into court pending the determination of the action at trial. While Silver Streams does not claim entitlement to the $800,000 and admits owing money to the plaintiff and

the secondary lenders, they object to the order sought because interest continues to accrue under the mortgages and monies owed to the plaintiff, for which the Silver Streams may be responsible. The interest is significant.

[26] It should be noted that Mr. Shawn Tock attended this motion, but did not participate. Mr. Tock represents Re/Max Realtron Realty Inc. Brokerage (hereinafter "Re/Max"), who has commenced an action in Toronto against the owners. On September 24, 2013, the plaintiff in that case, Re/Max, moved to have funds paid into court based on its reasonable expectation that they would be paid commissions on closing. Re/Max argued that the owner had chosen to use funds from the closing of sales to pay unsecured creditors rather than Re/Max. Newbould J. ordered that "the vendor/owner is entitled to pay (1) all secured lenders and any lien claimant sufficient amount to permit each sale to close; (2) applicable HST; and (3) legal fees for the closing." All other proceeds of each sale were to be held in trust by Chaitons LLP to be paid out only on the consent of the parties or further court order.

The Positions of the Parties

The Plaintiff

[27] The plaintiff takes the position that it is entitled to a continuation of Lack J.'s order, until the priority issue between it and the secondary lenders is adjudicated at trial. With respect to the test for a Mareva injunction, the plaintiff argues that the threshold to establish a serious issue to be tried is low and so long as the court is satisfied that the claim is neither vexatious nor frivolous, a detailed review of the merits is not required.

[28] With respect to irreparable harm, this may be measured other than in monetary terms and an examination into the nature of the harm suffered, rather than its magnitude is required.

[29] Regarding the balance of convenience, the court must consider which party will suffer the greater harm from granting or refusing the injunction pending final determination at trial. The plaintiff submits that it has satisfied all three prongs of the test.

[30] The plaintiff alleges fraudulent misrepresentation. It submits that Mr. Greenberg's representation as counsel, president and sole agent for the secondary lenders that the plaintiff would have priority over the secondary lenders and owner, and the subsequent breach of that representation by allowing payouts from the phase three closings to be paid to parties other than the plaintiff is a violation of Mr. Greenberg's representation to maintain the plaintiff's priority of payment.

[31] Alternatively, the plaintiff seeks a CPL on the grounds that they have a claim in fraud allowing them the right to trace funds, or alternatively, to claim property on constructive trust principles.

[32] As a further alternative, the plaintiff seeks to have the $800,000 paid into court pursuant to rule 45.02 of the *Rules of Civil Procedure* on the basis that they have the right to a specific fund, that there is a serious issue to be tried regarding the plaintiff's claim to that fund, and that

the balance of convenience favours granting the relief sought in relation to that fund. The Court of Appeal in *Sadie Moranis Realty Corporation v. 1667038 Ontario Inc.*[1] said as follows, "Where the plaintiff has a serious prospect of ultimate success and there is something compelling the plaintiff's side of the scales, such as a real concern that the defendant will dissipate the specific fund, that is sufficient to outweigh the defendant's freedom to deal with his or her property."

The Secondary Lenders

[33] The secondary lenders take the view that the order of Lack J. is not a consent order as they did not participate. However, they also concede that they have not brought a motion to set aside that order. They support the endorsement of Newbould J., from September 24, 2013 in the Re/Max matter, and feel that is the appropriate way with which to deal with future closings. The secondary lenders strenuously object to the $800,000 being paid into court or for the plaintiffs to have any specific priority in future sales, as this is akin to giving an unsecured creditor priority over secured lenders.

[34] Further, the settlement agreement was negotiated by sophisticated parties with the assistance of their counsel. The agreement stipulated that the $50,000 plus interest to be paid to the plaintiff was to be paid from funds "otherwise payable." The secondary lenders interpret that to mean that secured creditors would receive those funds otherwise payable. Further, the plaintiff received security by way of a consent to judgment against the builders and Mr. Jinnah and there is no evidence that such a judgment cannot be enforced.

[35] There is no evidence that the secondary lenders are bound by the settlement agreement undertaking or direction. At the time of negotiating the agreements, the plaintiff could have sought more security, but it did not. The plaintiff has already received a substantial amount of what is owed to them. This is a monetary claim and not the type of claim that would be considered irreparable harm under the test for an injunction.

[36] The secondary lenders deny that a specific fund was created by the order of Lack J. If that were the case, then every interim order which ordered funds to be paid into court would be characterized in that manner.

[37] With respect to the balance of convenience, the affected parties are purchasers, subcontractors, preferred creditors, and Re/Max. Interest continues to accumulate on funds kept from the secured lenders. The secondary lenders' priority must be recognized.

Silver Streams

[38] Silver Streams does not claim entitlement to the money as it is not a stakeholder. However, as interest continues to accrue on the lenders and the plaintiff's money, Silver Streams agrees that the matter must be heard on an expedited basis. The project must continue and the

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[1] 2012 ONCA 475 at para 18.

endorsement of Newbould J. provides a reasonable mechanism for that to happen. The secondary lenders were not present with respect to Lack J.'s order, and a new order going forward is necessary in which allows the project to continue and recognizes the priority of secured lenders.

Analysis and Ruling

[39] It is this court's view that the threshold has been met to continue the injunctive relief ordered by Lack, J. In terms of the required test I find that there are serious issues to be tried. Clearly a trial is required to determine some of the many issues that have arisen as a result of Mr. Greenberg's actions in relation to the settlement agreement, the interpretation of the term "otherwise payable" in the settlement agreement and the alleged "breaches" of the irrevocable direction and personal undertaking. Transparency was intended by the settlement agreement and there is therefore some concern as to why payouts would be made without the plaintiff being advised.

[40] As for the issue of irreparable harm it is difficult at this stage to measure the magnitude of the harm. However, it is clear, that if the $800,000 were released, it would be immediately disbursed to the secondary lenders. This may cause irreparable harm if it is found to be in contravention of the settlement agreement and Mr. Greenberg's undertaking. While there is interest accruing, that is always going to be an issue where there is default and insufficient money to go around.

[41] As the $800,000 fund potentially contains amounts which could also be found to be owed to the secondary lenders, the plaintiff, Re/Max and other unsecured creditors, I do not see that the balance of convenience would be offended by paying it into court.

[42] Given all of the above and the serious allegation of fraudulent misrepresentation, this court takes a cautious view and I order that the $800,000 be paid into court pending trial.

[43] As the funds will be paid into court, there is no need for a CPL or an order under Rule 45.02 of the *Ruled of Civil Procedure*.

[44] Future closings to be dealt with in the method set out in Newbould J.'s endorsement of September 24, 2013, in which the vendor (Silver Streams) is to pay (1) all secured lenders and any lien claimant to date a sufficient amount to permit each sale to close, (2) applicable HST, and (3) legal fees for the closing. All other proceeds of each sale are to be held in trust by Chaitons LLP, to be paid out only on the consent of the parties or further court order.

[45] A pre-trial date to be arranged through the trial co-ordinator as soon as possible.

[46] If the parties cannot agree on costs, I will receive written submissions on a seven day turnaround, commencing with the plaintiff, followed by responding submissions from the defendants, then reply submissions, if any, commencing fourteen days from the date of release of this endorsement. Cost submissions shall be no more than two pages in length, exclusive of any costs outline or offers to settle. All costs submissions shall be delivered via email through my

assistant at jennifer.beattie@ontario.ca. If no costs submissions are received within 35 days of the date of release of this endorsement the costs issue shall be deemed to have been settled between the parties.

C. Gilmore J.

Justice C.A. Gilmore

Released: November 20, 2013

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

AFFIDAVIT OF IMRAN JINNAH

CHAITONS LLP
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5000 Yonge Street, 10th Floor
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Lawyers for the Applicants

TAB 3

Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	TUESDAY, THE 29TH DAY
	)	
JUSTICE	)	OF NOVEMBER, 2016

B E T W E E N:

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

VESTING ORDER
(LOT 18)

THIS MOTION, made by the Applicants for, *inter alia*, an order vesting in Country Wide Homes at King South Inc. (the "**Purchaser**") the right, title and interest of 2148990 Ontario Inc. ("**214**") in and to the assets (the "**Purchased Assets**") described in the Agreement of Purchase and Sale dated November 7, 2016 (the "**Sale Agreement**") between the Purchaser and 214, appended as Exhibit C to the Affidavit of Imran Jinnah sworn November 11, 2016 (the "**Affidavit**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit and the exhibits thereto and the Eleventh Report of Grant Thornton Limited in its capacity as the Court-appointed monitor of the Applicants (the "**Monitor**") and on hearing the submissions of counsel for the Applicants, counsel for the Monitor and such other counsel as listed on the counsel slip, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of ___________ ___________ sworn November •, 2016, filed:

1. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's Certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Monitor's Certificate**"), all of 214's right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Newbould dated December 17, 2013 (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

2. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of York Region (No. 65) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the

sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

5. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

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

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

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

6. **THIS COURT ORDERS AND DECLARES** that the transaction contemplated by the Sale Agreement is exempt from the application of the *Bulk Sales Act* (Ontario).

7. **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 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 the Monitor as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Applicants, the Monitor and their agents in carrying out the terms of this Order.

Schedule A – Form of Monitor's Certificate

Court File No. 13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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

MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated December 17, 2013, the restructuring proceedings of the Applicants were commenced under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and Grant Thornton Limited was appointed as the Monitor of the Applicants (the "**Monitor**").

B. Pursuant to an Order of the Court dated November 29, 2016, the Court granted an order vesting in Country Wide Homes at King South Inc. (collectively, the "**Purchaser**") the right, title and interest of 2148990 Ontario Inc. ("**214**") in the assets (the "**Purchased Assets**") described in the agreement of purchase and sale made as of November 7, 2016 between 214 and the Purchaser (the "**Sale Agreement**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by 214 and the Purchaser; and (iii) the transaction contemplated by the Sale Agreement has been completed to the satisfaction of the Monitor.

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

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and 214 has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by 214 and the Purchaser; and

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

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

GRANT THORNTON LIMITED, in its capacity as Court-appointed monitor of the Applicants, and not in its personal capacity

Per: ________________________________

Name:

Title:

Schedule B – Purchased Assets

Lot 18 on Plan 65M4331; Town of Richmond Hill; PIN 03206-3503 (LT)

Schedule C – Claims to be deleted and expunged from title to Real Property

1. Instrument No. YR1084937 registered on November 9, 2007 is a Transfer/Deed of Land registered in favour of 2148990 Ontario Inc.

2. Instrument No. YR1273792 registered on January 5, 2009 is a Charge/Mortgage of Land in the principal amount of $12,387,000 in favour of the Bank of Montreal.

3. Instrument No. YR1273793 registered on January 5, 2009 is a Notice of General Assignment of Rents in favour of the Bank of Montreal.

4. Instrument No. YR1315616 registered on May 12, 2009 is a Notice of Agreement Amending Mortgage relating to Instrument No. YR1273792.

5. Instrument No. YR1388186 registered on October 13, 2009 is a Postponement by Bank of Montreal in favour of The Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1273792 to YR1376244.

6. Instrument No. YR1493832 registered on June 10, 2010 is a Notice of Agreement Amending Mortgage relating to Instrument No. YR1273792.

7. Instrument No. YR1562903 registered on October 18, 2010 is a Charge/Mortgage of Land in the principal amount of $2,000,000 in favour of 53 Puccini Mortgage Corp.

8. Instrument No. YR1578126 registered on November 22, 2010 is a Postponement by 53 Puccini Mortgage Corp. in favour of Bank of Montreal relating to Instrument Nos. YR1562903 to YR1273792.

9. Instrument No. YR1657652 registered on June 2, 2011 is a Notice of Agreement Amending Mortgage relating to Instrument No. YR1562903.

10. Instrument No. YR1657656 registered on June 2, 2011 is a Charge/Mortgage of Land in the principal amount of $3,200,000 in favour of Nastell Investments Limited.

11. Instrument No. YR1783162 registered on February 13, 2012 is a Notice of Agreement Amending Mortgage relating to Instrument No. YR1657656.

12. Instrument No. YR1812191 registered on April 23, 2012 is a Postponement by Bank of Montreal in favour of The Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1273792, YR1273793, YR1315616 and YR1493832 to YR1811419.

13. Instrument No. YR1812192 registered on April 23, 2012 is a Postponement by 53 Puccini Mortgage Corp. in favour of The Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1562903 and YR1657652 to YR1811419.

14. Instrument No. YR1812193 registered on April 23, 2012 is a Postponement by Nastell Investments Limited in favour of The Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1657656 and YR1783162 to YR1811419.

15. Instrument No. YR1858108 registered on July 20, 2012 is a Postponement by Bank of Montreal in favour of The Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1273792, YR1273793, YR1315616 & YR1493832 TO YR 1858108.

16. Instrument No. YR1858124 registered on July 23, 2012 is a Postponement by 53 Puccini Mortgage Corp. in favour of The Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1562903 & YR1657652 TO YR1858108

17. Instrument No. YR1858125 registered on July 23, 2012 is a Postponement by Nastell Investments Limited in favour of The Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1657656 and YR1783162 to YR1811419. .

18. Instrument No. YR2016863 registered on August 9, 2013 is a Construction Lien in the amount of $94,837 in favour of Con-Drain Company (1983) Limited.

19. Instrument No. YR2016890 registered on August 9, 2013 is a Notice registered by Con-Drain Company (1983) Limited.

20. Instrument No. YR2043150 registered on October 3, 2013 is a Certificate registered by Con-Drain Company (1983) Ltd. relating to the Construction Lien registered as Instrument No. YR2016863.

21. Instrument No. YR2048904 registered on October 18, 2013 is a Construction Lien in the amount of $135,060 in favour of Argo Lumber Inc.

22. Instrument No. YR2049079 registered on October 18, 2013 is a Construction Lien in the amount of $104,574 in favour of The King-Con Corporation.

23. Instrument No. YR2050277 registered on October 22, 2013 is a Construction Lien in the amount of $67,793 in favour of Newmar Window Manufacturing Inc.

24. Instrument No. YR2056986 registered on November 6, 2013 is a Construction Lien in the amount of $554,354 in favour of Pilbro III Inc.

25. Instrument No. YR2057173 registered on November 6, 2013 is a Construction Lien in the amount of $521,675 in favour of Medi Group Incorporated.

26. Instrument No. YR2057568 registered on November 7, 2013 is a Construction Lien in the amount of $94,922 in favour of Cardell Flooring Ltd.

27. Instrument No. YR2057675 registered on November 7, 2013 is a Construction Lien in the amount of $434,578 in favour of Foremont Drywall Inc., 1382479 Ontario Inc., 1382503 Ontario Inc., and 2203579 Ontario Inc.

28. Instrument No. YR2057676 registered on November 7, 2013 is a Construction Lien in the amount of $216,202 in favour of Canadian Concrete Forming Limited.

29. Instrument No. YR2057677 registered on November 7, 2013 is a Construction Lien in the amount of $227,303 in favour of Pave Plumbing & Heating Inc.

30. Instrument No. YR2058240 registered on November 8, 2013 is a Construction Lien in the amount of $328,674 in favour of E. D. Carpenters Limited.

31. Instrument No. YR2058638 registered on November 12, 2013 is a Construction Lien in the amount of $203,870 in favour of The Sanderson-Harold Company Limited.

32. Instrument No. YR2058688 registered on November 12, 2013 is a Construction Lien in the amount of $186,364 in favour of Solo Electric Ltd.

33. Instrument No. YR2059379 registered on November 13, 2013 is a Construction Lien in the amount of $91,519 in favour of 1865721 Ontario Inc.

34. Instrument No. YR2060246 registered on November 14, 2013 is a Construction Lien in the amount of $108,287 in favour of 669857 Ontario Inc.

35. Instrument No. YR2060384 registered on November 14, 2013 is a Construction Lien in the amount of $29,392 in favour of Renova Recycling (2000) Inc.

36. Instrument No. YR2060546 registered on November 15, 2013 is a Certificate registered by 1865721 Ontario Inc. relating to the Construction Lien registered as Instrument No. YR2059379.

37. Instrument No. YR2060547 registered on November 15, 2013 is a Certificate registered by Medi Group Incorporated relating to the Construction Lien registered as Instrument No. YR2057173.

38. Instrument No. YR2060548 registered on November 15, 2013 is a Certificate registered by Cardell Flooring Ltd. relating to the Construction Lien registered as Instrument No. YR2057568.

39. Instrument No. YR2060549 registered on November 15, 2013 is a Certificate registered by Canadian Concrete Forming Limited relating to the Construction Lien registered as Instrument No. YR2057676.

40. Instrument No. YR2060550 registered on November 15, 2013 is a Certificate registered by Foremont Drywall Inc., 1382479 Ontario Inc., 1382503 Ontario Inc. and 2203579 Ontario Inc., c.o.b. Foremont Drywall Contracting relating to the Construction Lien registered as Instrument No. YR2057675.

41. Instrument No. YR2060551 registered on November 15, 2013 is a Certificate registered by E. D. Carpenters Limited relating to the Construction Lien registered as Instrument No. YR2058240.

42. Instrument No. YR2060571 registered on November 15, 2013 is a Certificate registered by Solo Electric Ltd. relating to the Construction Lien registered as Instrument No. YR2058688.

43. Instrument No. YR2060572 registered on November 15, 2013 is a Certificate registered by Pilbro III Inc. relating to the Construction Lien registered as Instrument No. YR2056986.

44. Instrument No. YR2060573 registered on November 15, 2013 is a Certificate registered by Pave Plumbing & Heating Inc. relating to the Construction Lien registered as Instrument No. YR2057677.

45. Instrument No. YR2061882 registered on November 18, 2013 is a Certificate of Action registered by The King-Con Corporation relating to the Construction Lien registered as YR2049079.

46. Instrument No. YR2062198 registered on November 19, 2013 is a Construction Lien in the amount of $46,559 in favour of GM Exteriors Inc.

47. Instrument No. YR2062199 registered on November 19, 2013 is a Construction Lien in the amount of $82,579 in favour of Giancola Aluminum Contractors Inc.

48. Instrument No. YR2067687 registered on November 29, 2013 is a Certificate of Action registered by Argo Lumber Inc. relating to the Construction Lien registered as Instrument No. YR2048904.

49. Instrument No. YR2067695 registered on November 29, 2013 is a Certificate of Action registered by Newmar Window Manufacturing Inc. relating to the Construction Lien registered as Instrument No. YR2050277.

50. Instrument No. YR2070295 registered on December 5, 2013 is a Certificate registered by GM Exteriors Inc. relating to the Construction Lien registered as Instrument No. YR2062198.

51. Instrument No. YR2070296 registered on December 5, 2013 is a Certificate registered by Giancola Aluminum Contractors Inc. relating to the Construction Lien registered as Instrument No. YR2062199.

52. Instrument No. YR2075688 registered on December 17, 2013 is a Certificate registered by 669857 Ontario Inc. relating to the Construction Lien registered as Instrument No. YR2060246.

53. Instrument No. YR2095047 registered on February 12, 2014 is a Certificate of Action registered by Renova Recycling (2000) Inc. relating to the Construction Lien registered as Instrument No. YR2060384.

Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

(unaffected by the Vesting Order)

1. Instrument No. YR1376244 registered on September 18, 2009 is a Notice of Subdivision Agreement in favour of The Corporation of the Town of Richmond Hill.
2. Instrument No. YR1811419 registered on April 20, 2012 is a Notice of Subdivision Agreement in favour of The Corporation of the Town of Richmond Hill.
3. Instrument No. 65M4331 registered on July 20, 2012 is a Plan of Subdivision.
4. Instrument No. 65R33751 registered on July 20, 2012 is a Plan Reference.
5. Instrument No. YR185108 registered on July 23, 2012 is a Transfer Easement from 2148990 Ontario Inc. to The Corporation of the Town of Richmond Hill.

TAB 4

Court File No. ~~_________~~13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE _____	)	~~______DAY~~ TUESDAY,
	)	THE ~~___~~ 29TH DAY
JUSTICE ______________	)	OF ____________, ~~20~~ NOVEMBER, 2016

B E T W E E N:

~~**PLAINTIFF**~~

~~Plaintiff~~

~~- and -~~

~~**DEFENDANT**~~

~~Defendant~~

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

~~APPROVAL AND~~ VESTING ORDER
(LOT 18)

THIS MOTION, made by ~~[RECEIVER'S NAME] in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor")~~the Applicants for, *inter alia*, an order ~~approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver~~

~~and [NAME OF PURCHASER] (the "Purchaser") dated [DATE] and appended to the Report of the Receiver dated [DATE] (the "Report"), and vesting in the~~ vesting in Country Wide Homes at King South Inc. (the "**Purchaser**") the ~~Debtor's~~ right, title and interest of 2148990 Ontario Inc. ("**214**") in and to the assets ~~described in the Sale Agreement~~ (the "**Purchased Assets**") described in the Agreement of Purchase and Sale dated November 7, 2016 (the "**Sale Agreement**") between the Purchaser and 214, appended as Exhibit C to the Affidavit of Imran Jinnah sworn November 11, 2016 (the "**Affidavit**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the ~~Report~~Affidavit and the exhibits thereto and the Eleventh Report of Grant Thornton Limited in its capacity as the Court-appointed monitor of the Applicants (the "**Monitor**") and on hearing the submissions of counsel for the ~~Receiver, [NAMES OF OTHER PARTIES APPEARING],~~Applicants, counsel for the Monitor and such other counsel as listed on the counsel slip, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~ ____________________ sworn ~~[DATE]~~November •, 2016, filed[1]:

~~1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,[2] and the execution of the Sale Agreement by the Receiver[3] is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.~~

1. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a ~~Receiver's certificate~~Monitor's Certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "~~Receiver~~**Monitor's Certificate**"), all of ~~the Debtor~~214's right, title and interest in

~~[1] This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

~~[2] In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

~~[3] In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

and to the Purchased Assets described in the Sale Agreement ~~[and listed on Schedule B hereto]~~[4] shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"[5]) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice ~~[NAME]~~Newbould dated ~~[DATE];~~December 17, 2013 (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule C hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule D) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

2. ~~3.~~ **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION} of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver]~~~~[~~Land Titles Division of ~~{LOCATION}~~York Region (No. 65) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* ~~and/or the *Land Registration Reform Act*]~~[6], the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule B hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

[4] ~~To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.~~

[5] ~~The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.~~

[6] ~~Elect the language appropriate to the land registry system (Registry vs. Land Titles).~~

3. ~~4.~~ **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds[7] from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the ~~Receiver~~Monitor's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale[8], as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. ~~5.~~ **THIS COURT ORDERS AND DIRECTS** the ~~Receiver~~Monitor to file with the Court a copy of the ~~Receiver~~Monitor's Certificate, forthwith after delivery thereof.

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

5. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

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

(c) any assignment in bankruptcy made in respect of the ~~Debtor~~Applicants;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the ~~Debtor~~Applicants and shall not

[7] ~~The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".~~

[8] ~~This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.~~

be void or voidable by creditors of the ~~Debtor~~Applicants, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

6. ~~8.~~ **THIS COURT ORDERS AND DECLARES** that the ~~Transaction~~transaction contemplated by the Sale Agreement is exempt from the application of the *Bulk Sales Act* (Ontario).

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

____

Schedule A – Form of ~~Receiver~~Monitor's Certificate

Court File No. ~~__________~~13-10362-00-CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

~~PLAINTIFF~~

~~Plaintiff~~

~~- and -~~

~~DEFENDANT~~

~~Defendant~~

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

~~RECEIVER~~MONITOR'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~Justice Newbould of the Ontario Superior Court of Justice (Commercial List) (the ~~"Court") dated [DATE OF ORDER], [NAME OF RECEIVER] was appointed as the receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor").~~ "**Court**") dated December 17, 2013, the restructuring proceedings of the Applicants were commenced under the *Companies' Creditors*

Arrangement Act, R.S.C. 1985, c. C-36, as amended, and Grant Thornton Limited was appointed as the Monitor of the Applicants (the "**Monitor**").

B. Pursuant to an Order of the Court dated ~~[DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME OF PURCHASER] (the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets~~November 29, 2016, the Court granted an order vesting in Country Wide Homes at King South Inc. (collectively, the "**Purchaser**") the right, title and interest of 2148990 Ontario Inc. ("**214**") in the assets (the "**Purchased Assets**") described in the agreement of purchase and sale made as of November 7, 2016 between 214 and the Purchaser (the "**Sale Agreement**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the ~~Receiver~~Monitor to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to ~~Closing~~closing as set out in ~~section • of~~ the Sale Agreement have been satisfied or waived by ~~the Receiver~~214 and the Purchaser; and (iii) the ~~Transaction~~transaction contemplated by the Sale Agreement has been completed to the satisfaction of the ~~Receiver~~Monitor.

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

THE ~~RECEIVER~~MONITOR CERTIFIES the following:

1. The Purchaser has paid and ~~the Receiver~~214 has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. The conditions to ~~Closing~~closing as set out in ~~section • of~~ the Sale Agreement have been satisfied or waived by ~~the Receiver~~214 and the Purchaser; and

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

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

~~[NAME OF RECEIVER]~~GRANT THORNTON LIMITED, in its capacity as ~~Receiver of the undertaking, property and assets of [DEBTOR]~~Court-appointed monitor of the Applicants, and not in its personal capacity

Per: ______________________________

Name:

Title:

Schedule B – Purchased Assets

Lot 18 on Plan 65M4331; Town of Richmond Hill; PIN 03206-3503 (LT)

Schedule C – Claims to be deleted and expunged from title to Real Property

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15. Instrument No. YR1858108 registered on July 20, 2012 is a Postponement by Bank of Montreal in favour of The Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1273792, YR1273793, YR1315616 & YR1493832 TO YR 1858108.

16. Instrument No. YR1858124 registered on July 23, 2012 is a Postponement by 53 Puccini Mortgage Corp. in favour of The Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1562903 & YR1657652 TO YR1858108

17. Instrument No. YR1858125 registered on July 23, 2012 is a Postponement by Nastell Investments Limited in favour of The Corporation of the Town of Richmond Hill relating to Instrument Nos. YR1657656 and YR1783162 to YR1811419. .

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19. Instrument No. YR2016890 registered on August 9, 2013 is a Notice registered by Con-Drain Company (1983) Limited.

20. Instrument No. YR2043150 registered on October 3, 2013 is a Certificate registered by Con-Drain Company (1983) Ltd. relating to the Construction Lien registered as Instrument No. YR2016863.

21. Instrument No. YR2048904 registered on October 18, 2013 is a Construction Lien in the amount of $135,060 in favour of Argo Lumber Inc.

22. Instrument No. YR2049079 registered on October 18, 2013 is a Construction Lien in the amount of $104,574 in favour of The King-Con Corporation.

23. Instrument No. YR2050277 registered on October 22, 2013 is a Construction Lien in the amount of $67,793 in favour of Newmar Window Manufacturing Inc.

24. Instrument No. YR2056986 registered on November 6, 2013 is a Construction Lien in the amount of $554,354 in favour of Pilbro III Inc.

25. Instrument No. YR2057173 registered on November 6, 2013 is a Construction Lien in the amount of $521,675 in favour of Medi Group Incorporated.

26. Instrument No. YR2057568 registered on November 7, 2013 is a Construction Lien in the amount of $94,922 in favour of Cardell Flooring Ltd.

27. Instrument No. YR2057675 registered on November 7, 2013 is a Construction Lien in the amount of $434,578 in favour of Foremont Drywall Inc., 1382479 Ontario Inc., 1382503 Ontario Inc., and 2203579 Ontario Inc.

28. Instrument No. YR2057676 registered on November 7, 2013 is a Construction Lien in the amount of $216,202 in favour of Canadian Concrete Forming Limited.

29. Instrument No. YR2057677 registered on November 7, 2013 is a Construction Lien in the amount of $227,303 in favour of Pave Plumbing & Heating Inc.

30. Instrument No. YR2058240 registered on November 8, 2013 is a Construction Lien in the amount of $328,674 in favour of E. D. Carpenters Limited.

31. Instrument No. YR2058638 registered on November 12, 2013 is a Construction Lien in the amount of $203,870 in favour of The Sanderson-Harold Company Limited.

32. Instrument No. YR2058688 registered on November 12, 2013 is a Construction Lien in the amount of $186,364 in favour of Solo Electric Ltd.

33. Instrument No. YR2059379 registered on November 13, 2013 is a Construction Lien in the amount of $91,519 in favour of 1865721 Ontario Inc.

34. Instrument No. YR2060246 registered on November 14, 2013 is a Construction Lien in the amount of $108,287 in favour of 669857 Ontario Inc.

35. Instrument No. YR2060384 registered on November 14, 2013 is a Construction Lien in the amount of $29,392 in favour of Renova Recycling (2000) Inc.

36. Instrument No. YR2060546 registered on November 15, 2013 is a Certificate registered by 1865721 Ontario Inc. relating to the Construction Lien registered as Instrument No. YR2059379.

37. Instrument No. YR2060547 registered on November 15, 2013 is a Certificate registered by Medi Group Incorporated relating to the Construction Lien registered as Instrument No. YR2057173.

38. Instrument No. YR2060548 registered on November 15, 2013 is a Certificate registered by Cardell Flooring Ltd. relating to the Construction Lien registered as Instrument No. YR2057568.

39. Instrument No. YR2060549 registered on November 15, 2013 is a Certificate registered by Canadian Concrete Forming Limited relating to the Construction Lien registered as Instrument No. YR2057676.

40. Instrument No. YR2060550 registered on November 15, 2013 is a Certificate registered by Foremont Drywall Inc., 1382479 Ontario Inc., 1382503 Ontario Inc. and 2203579 Ontario Inc., c.o.b. Foremont Drywall Contracting relating to the Construction Lien registered as Instrument No. YR2057675.

41. Instrument No. YR2060551 registered on November 15, 2013 is a Certificate registered by E. D. Carpenters Limited relating to the Construction Lien registered as Instrument No. YR2058240.

42. Instrument No. YR2060571 registered on November 15, 2013 is a Certificate registered by Solo Electric Ltd. relating to the Construction Lien registered as Instrument No. YR2058688.

43. Instrument No. YR2060572 registered on November 15, 2013 is a Certificate registered by Pilbro III Inc. relating to the Construction Lien registered as Instrument No. YR2056986.

44. Instrument No. YR2060573 registered on November 15, 2013 is a Certificate registered by Pave Plumbing & Heating Inc. relating to the Construction Lien registered as Instrument No. YR2057677.

45. Instrument No. YR2061882 registered on November 18, 2013 is a Certificate of Action registered by The King-Con Corporation relating to the Construction Lien registered as YR2049079.

46. Instrument No. YR2062198 registered on November 19, 2013 is a Construction Lien in the amount of $46,559 in favour of GM Exteriors Inc.

47. Instrument No. YR2062199 registered on November 19, 2013 is a Construction Lien in the amount of $82,579 in favour of Giancola Aluminum Contractors Inc.

48. Instrument No. YR2067687 registered on November 29, 2013 is a Certificate of Action registered by Argo Lumber Inc. relating to the Construction Lien registered as Instrument No. YR2048904.

49. Instrument No. YR2067695 registered on November 29, 2013 is a Certificate of Action registered by Newmar Window Manufacturing Inc. relating to the Construction Lien registered as Instrument No. YR2050277.

50. Instrument No. YR2070295 registered on December 5, 2013 is a Certificate registered by GM Exteriors Inc. relating to the Construction Lien registered as Instrument No. YR2062198.

51. Instrument No. YR2070296 registered on December 5, 2013 is a Certificate registered by Giancola Aluminum Contractors Inc. relating to the Construction Lien registered as Instrument No. YR2062199.

52. Instrument No. YR2075688 registered on December 17, 2013 is a Certificate registered by 669857 Ontario Inc. relating to the Construction Lien registered as Instrument No. YR2060246.

53. Instrument No. YR2095047 registered on February 12, 2014 is a Certificate of Action registered by Renova Recycling (2000) Inc. relating to the Construction Lien registered as Instrument No. YR2060384.

Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants related to the Real Property

(unaffected by the Vesting Order)

1. Instrument No. YR1376244 registered on September 18, 2009 is a Notice of Subdivision Agreement in favour of The Corporation of the Town of Richmond Hill.

2. Instrument No. YR1811419 registered on April 20, 2012 is a Notice of Subdivision Agreement in favour of The Corporation of the Town of Richmond Hill.

3. Instrument No. 65M4331 registered on July 20, 2012 is a Plan of Subdivision.

4. Instrument No. 65R33751 registered on July 20, 2012 is a Plan Reference.

5. Instrument No. YR185108 registered on July 23, 2012 is a Transfer Easement from 2148990 Ontario Inc. to The Corporation of the Town of Richmond Hill.

Document comparison by Workshare Compare on Monday, November 14, 2016 4:05:05 PM

Input:	
Document 1 ID	PowerDocs://DOCS/3043528/1
Description	DOCS-#3043528-v1-Silver_Streams.Vesting_Order_Lot_18
Document 2 ID	PowerDocs://DOCS/3043528/4
Description	DOCS-#3043528-v4-Silver_Streams.Vesting_Order_Lot_18
Rendering set	Standard

Legend:	
Insertion	
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Style change	
Format change	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	198
Deletions	116
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	322

TAB 5

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.	)	TUESDAY, THE 29TH DAY
	)	
JUSTICE	)	OF NOVEMBER, 2016

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

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

Applicants

ORDER

THIS MOTION, made by the Applicants for, *inter alia*, an order for the relief set out herein and in the Applicants' Notice of Motion, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Imran Jinnah sworn November 11, 2016 (the "**Jinnah Affidavit**") and the Eleventh Report of the Monitor dated November •, 2016 (the "**Eleventh Report**"), 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:

1. **THIS COURT ORDERS** and directs the Monitor to make distributions to the Lien Claimants, as such term is defined in the Final Report/Award of Duncan W. Glaholt dated September 28, 2016, as amended (the "**Final Award**"), in the amounts set out for the Lien Claimants in the Final Award.

2. **THIS COURT ORDERS** and directs the Monitor to make a distribution in an amount of $456,125.72 to Agueci Calabretta in trust pursuant to the terms of the Order of Justice Wilton-Siegel dated November 7, 2016.

3. **THIS COURT ORDERS** and directs the Monitor to make an interim distribution of the proceeds from the sale of the Puccini Homes (as defined in the Jinnah Affidavit) to Jack Greenberg, in Trust for Private Mortgagees, pursuant to the terms of the Final Award, and in such interim amount to be determined by the Monitor, subject to a reserve by the Monitor for the satisfaction of the professional fees of the Applicants' counsel, the Monitor and the Monitor's counsel incurred to date and to be incurred to the completion of these CCAA proceedings.

4. **THIS COURT ORDERS** and directs Chaitons LLP to distribute the money held in its trust account pursuant to an Order of Justice Lack dated August 15, 2013 and Endorsement of Justice Gilmore dated November 20, 2013 in Con-Drain Company (1983) Limited v. Silver Streams Homes Inc. et. al. bearing Court File No. CV-13-115757-00 (the "**Con-Drain Action**") in accordance with an order of the Court in the Con-Drain Action, provided, however, that no distribution shall take place unless the proposed beneficiary of such distribution provides notice of no less than thirty (30) days of the final resolution and pending distribution to the Applicants' Service List posted on the Monitor's website.

5. **THIS COURT ORDERS** that the stay period as defined in paragraph 11 of the Initial Order (the "**Stay Period**") of Mr. Justice Newbould dated December 17, 2013 (the "**Initial Order**") is hereby extended to and including January 30, 2017. This Court further orders that notwithstanding the relief set out herein, the extension of the Stay Period shall not apply to the claims against the Applicants' former, current or future directors and officers.

6. **THIS COURT ORDERS** that the Eleventh Report, and the activities described therein be and hereby are approved.

7. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its legal counsel, Aird & Berlis LLP, as described in the Eleventh Report, the affidavit of Jonathan Krieger sworn November •, 2016 and the affidavit of Steven L. Graff sworn November •, 2016, be and are hereby approved.

8. **THIS COURT ORDERS** that the Monitor's interim statement of the Applicants' receipts and disbursements from • to and including •, be and is hereby approved.

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 November 29, 2016)

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