gibson&barnes LLP

VIA EMAIL

August 5, 2015

TO SERVICE LIST

Dear Sirs/Madams':

Re: Silver Streams- Argyle Flooring Claim
Court File No. 13-10362-00CL

As you are aware, we are legal counsel for Argyle Flooring regarding the above-noted matter.

Please be advised we are bringing a motion for an order lifting the stay of proceedings returnable August 18, 2015. The Applicants and Monitor have consented to same.

Please find enclosed our client's Motion Record which is being served upon you in accordance with the *Rules of Civil Procedure*.

Yours very truly,

GIBSON&BARNES LLP

Michael Mazzuca
Per/ MM/lv
Encls.
Cc Client

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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

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

MOTION RECORD OF

ARGYLE HARDWOOD & FLOORING SUPPLIES LTD.

(returnable August 18, 2015)

Dated: August 5, 2015

GIBSON&BARNES LLP
119 Spadina Avenue, Suite 801
Toronto, Ontario M5V 2L1

Michael C. Mazzuca (LSUC 56283V)
Tel: 416-597-1500
Fax: 416-597-3299
E-mail: mmazzuca@gibsonandbarnes.ca

Lawyers for Moving Party,
Argyle Hardwood & Flooring Ltd.

TO: SERVICE LIST ATTACHED

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

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

NOTICE OF MOTION

The Moving Party, Argyle Hardwood & Flooring Supplies Ltd., will make a motion to the Court of the Commercial List on August 18, 2015 at 9:30 am or as soon thereafter as the motion can be heard at 330 University Avenue, Toronto, Ontario.

THE MOTION WILL BE HEARD orally.

THE MOTION IS FOR:

1. An order substantially in the form attached at Tab 3 hereto (the "**Consent Order**");

2. If necessary an order abridging the time for service and filing of this notice of motion and the motion record and dispensing with service on any person other than those served; and

3. Such further and other relief as counsel may request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The Consent Order is to permit the lift of the stay of proceedings and allow the Moving Party to commence a breach of trust action against the Applicant companies and their officers and directors and avoid any limitation issues;

2. The Endorsement of the Honourable Mr. Justice Pattillo dated October 16, 2014;

3. The Applicants consent to the granting of the Consent Order.

4. The Monitor consents to the granting of the Consent Order.

5. Rules 1.05 and 37 of the *Rules of Civil Procedure*.

6. 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 this motion:

1. The Affidavit of Katherine Chau sworn on August 5, 2015 and the exhibits referred to therein;

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

August 5, 2015

GIBSON&BARNES LLP
119 Spadina Avenue
Suite 801
Toronto, Ontario
M5V 2L1

Tel: 416-597-1500
Fax: 416-597-3299

Michael Mazzuca (LSUC 56283V)
Lawyer for Moving Party, Argyle
Hardwood & Flooring Supplies Ltd.

TO:
SEE SERVICE LIST

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.

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

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

GIBSON&BARNES LLP
119 Spadina Avenue, Suite 801
Toronto, Ontario M5V 2L1

Michael Mazzuca (LSUC 56283V)
Tel: 416-597-1500
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Lawyer for Argyle Hardwood & Flooring Supplies Ltd.

TAB 2

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

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AFFIDAVIT OF KATHERINE CHAU

I, **KATHERINE CHAU** of the City of Toronto, in the Province of Ontario **MAKE OATH AND SAY:**

1. I am an associate lawyer at Gibson&Barnes LLP, the law firm representing the Moving Party, Argyle Hardwood & Flooring Supplies Ltd., a creditor, and as such have knowledge of the matters deposed to in this affidavit, except where stated to be based on information and belief, in which case I do verily believe the same to be true.

2. On or about December 17, 2013, an Order under the *Companies' Creditors Arrangement Act,* R.S.C. 1985, c. C.-36, as amended, was granted by the Honourable Mr. Justice Newbould. Under the said Order the Court granted a stay of all proceedings as against the Applicant companies Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2148990 Ontario Inc. 2147681 Ontario Inc. and 2147650 Ontario Inc. (paragraph 11) and its officers and directors (paragraph 16) (collectively "Applicants"). The Court ordered during the stay period no proceedings could be commenced or continued against or in respect of the Applicants except with the written consent of the Applicants and the Monitor or with leave of this Court. Attached hereto and marked as **Exhibit "A"** is a copy of Order of the Honourable Mr. Justice Newbould dated December 17, 2013.

3. The stay of proceedings has continued to be extended by the Court, most recently by the Order of the Honourable Mr. Justice Pattillo dated July 15, 2015, which extended the stay until March 31, 2016. Attached hereto and marked as **Exhibit "B"** is a copy of Order of the Honourable Mr. Justice Pattillo dated July 15, 2015.

4. On October 16, 2014, pursuant to the Endorsement of the Honourable Mr. Justice Pattillo (the "Pattillo Endorsement"), a lift of the stay was granted to permit various lien claimants to issue and serve a Statement of Claim as against the Applicants and permit the Applicants to serve and file a Statement of Defence. The stay was lifted in order for the said claimants to avoid any limitation issues. Thereafter the stay would resume until further order of the Court. Attached and marked as **Exhibit "C"** is a copy of the Endorsement of the Honourable Mr. Justice Pattillo dated October 16, 2014.

5. The Moving Party seeks to lift the stay of proceedings in order to commence a breach of trust action as against the Applicants and to allow them to serve and file a Statement of Defence as per the terms of the Pattillo Endorsement. The Moving Party also wishes to avoid issues with the limitation period;

6. The Applicants and Monitor have consented to the lift of the stay of proceedings for the Moving Party as per the terms of the Pattillo Order. Attached hereto and marked as **Exhibits "D" and "E"** is a copy of the executed Consents of the Applicants and Monitor to the Order substantially in the form attached at Tab 3 of this Motion Record.

7. This affidavit is sworn in support of a motion to lift the stay of proceedings against the Applicants and for no other or improper purpose.

SWORN BEFORE me at the City of Toronto, in the Province of Ontario, this 5 day of August, 2015.	)))))	
K O'Rourke		
A Commissioner, etc.		**KATHERINE CHAU**

Katy O'Rourke
66420K (LSUC #)

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.

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

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF KATHERINE CHAU

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E-mail: mmazzuca@gibsonandbarnes.ca

Lawyer for Argyle Hardwood & Flooring Supplies Ltd.

o

TAB A

This is Exhibit ..."A"... *referred to in the affidavit of* ...Katherine Chau... *sworn before me, this* ...5th... *day of* ...August... *20*..15..

K O'Rourke
....
A COMMISSIONER FOR TAKING AFFIDAVITS

Katy O'Rourke
LSUC # 66420K

/

Court File No. 12-10362-00-CL

3 25

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

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

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

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

the "Applicants"

INITIAL ORDER

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

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

SERVICE

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

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

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

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

APPLICATION

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

POSSESSION OF PROPERTY AND OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

RESTRUCTURING

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

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

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

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

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

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

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

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

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

NON-DEROGATION OF RIGHTS

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

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

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

DIRECTORS' AND OFFICERS' INDEMNIFICATION

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

APPOINTMENT OF MONITOR

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

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

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

(a) monitor the Applicants' receipts and disbursements;

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

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

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

(e) to assist the Applicants with the Restructuring;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DIP FINANCING

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

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

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

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

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

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

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

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

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

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

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

Second – DIP Lender's Charge.

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

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

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

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

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

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

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

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

SERVICE AND NOTICE

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

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

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

GENERAL

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

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

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

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

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

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

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

DEC 17 2013

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

CHAITONS LLP
Barristers and Solicitors
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Toronto, ON M2N 7E9

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Tel: 416-218-1161
Fax: 416-218-1844

Lawyers for the Applicants

25

Doc#2866374v1

TAB B

This is Exhibit ..."B"... referred to in the affidavit of ...Katherine Chau... sworn before me, this ...5th... day of ...August... 20.15...

K. O'Rourke

....
A COMMISSIONER FOR TAKING AFFIDAVITS

Katy O'Rourke

LSUC# 66420K

SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE JUSTITIA

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 15TH
	)	
JUSTICE Pattillo	)	DAY OF JULY 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 the Applicants for an order extending the stay period (the "**Stay Period**") as defined in paragraph 11 of the Initial Order of the Honourable Mr. Justice Newbould dated December 17, 2013 (the "**Initial Order**") to and including March 31, 2016 and granting such further and other relief as this Honourable Court may deem just, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of Imran Jinnah sworn July 7, 2015 and the Ninth Report of Grant Thornton Limited in its capacity as the Court-appointed Monitor of the Applicants (in such capacity, the "**Monitor**") dated July 9, 2015 (the "**Ninth 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** 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 Stay Period is hereby extended to and including March 31, 2016.

3. **THIS COURT ORDERS** that the Eighth Report of the Monitor dated April 8, 2015 and the Ninth Report of the Monitor, and the activities described therein, be and hereby are approved.

4. **THIS COURT ORDERS** that the Monitor's interim statement of the Applicants' receipts and disbursements from December 17, 2013 to and including July 6, 2015 be and is hereby approved.

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, as described in the Ninth Report, be and are hereby approved.

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

JUL 15 2015

NB

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

ORDER

CHAITONS LLP
Barristers and Solicitors
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Maya Poliak (LSUC #54100A)
Tel: 416-218-1161
Fax: 416-218-1844

Lawyers for the Applicants

21

TAB C

This is Exhibit "C" *referred to in the affidavit of* Katherine Chau *sworn before me, this* 5th *day of* August *20*15

K. O'Rourke.

A COMMISSIONER FOR TAKING AFFIDAVITS

Katy O'Rourke
LSUC# 66420K

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 2147650 ONTARIO INC.

Court File No: 13-10362-00-CL

Oct 16-14

ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCI[AL] LIST

Proceeding commenced at Toronto

MOTION RECORD
(RETURNABLE October 16, 2014)

KLEIN & ASSOCIATES PROFESSIONAL CORPORATION
390 Bay Street, Suite 1101
Toronto, ON M5H 2Y2
James Klein LS#: 25014B
Tel: 416.366-9494
Fax: 416-366-9442

Lawyers for the Moving Parties

Medi Group Incorporated; 1865721 Ontario In[c.]; Canadian Concrete Forming Limited; Cardell Floori[ng] Ltd.; E.D. Carpenters Limited; Foremont Drywall In[c.] et al carrying on business as Foremont Dryw[all] Contracting; Giancola Aluminum Contractors Inc[.]; GM Exteriors Inc.; Pave Plumbing & Heating Inc[.]; Pilbro III Inc.; and Solo Electric Ltd.

Oct 16/14

D. Preger
J. Klein) for M. Parties

F. Souza - for Moving Parties Argo Lumber and Newmar Window Manuf. - in companion motion

M. Poliak - for Silverstream Companies

A. Weinstock - for Jack Greenberg and the private lenders

I. Aversa - for the Monitor.

These are two motions to lift the stay granted as part of the order of Newbould J. dated December 17, 2013 to permit the moving parties to commence a breach of trust action against the Applicant companies, their officers and directors and the private mortgagees.

This CCAA proceeding was commenced to monetize the value of the Applicant's assets (10 residential lots) and to deal with claims. The lots have been almost all sold and a claims process has been commenced by the Monitor. The claims process includes resolution of the lien claims. The Moving Parties are lien claimants and are participating (over)

SUPERIOR COURT OF JUSTICE / COUR SUPÉRIEURE DE JUSTICE
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AT / À
LOCAL REGISTRAR / GREFFIER LOCAL
TORONTO

in the CCAA approved claims process. In light of the fact that there may be a short fall in their recovery of the lien claims, they wish to bring actions asserting a trust claim under the Lien Act. They submit the court should lift the stay to allow their claims (2 actions) to be issued and served; the defendants to file statements of defence and parties to engage in full production of documents.

The companies, their officers/directors and the private mortgagees submit it would be too expensive and time consuming to have to respond and gather documents for production. They are not opposed, however, to lifting the stay to allow the actions to be commenced and served but otherwise ~~to stay~~ to remain in place ~~on the basis~~ for the purpose of stopping the limitation period from running. They further submit that the trust action is premature and should await a determination of the lien claims in the claim process in the CCAA proceeding. It is possible the lien claims may be fully satisfied in that proceeding eliminating the need for the trust action.

In my view, the balance of convenience favours lifting the stay to permit both trust actions to be issued and served. I am also of the view that the defendants in the actions should file statements of defence. Thereafter the stay should resume until further order of the court. The Moving Parties should be permitted to commence their actions to avoid any limitation issues. Apart from costs to prepare defences, I see no prejudice to the defendants. I do not consider such costs to be prohibitive.

The Moving Parties have elected to proceed in the lien claim process in the CCAA proceedings. That process is underway. In my view, they should be required to conclude that process before embarking on the trust actions. To ensure that documents relevant to the trust claims are preserved, the Applicants, their officers and directors and the private mortgagees are directed to retain and preserve all such documents.

Given the mixed result, there will be no order as to costs. The actions may be brought on the commercial list.

Pattillo J.

TAB D

This is Exhibit ...."D"............... referred to in the affidavit of ...Katherine Chan.......... sworn before me, this ....5th.................................. day of .....August......................... 20..15..

K. O'Rourke
....
A COMMISSIONER FOR TAKING AFFIDAVITS

Katy O'Rourke
LSUC # 66420K

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	, THE
	)	
	)	DAY OF ,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 OF ARRANGEMENT OF SILVER STREMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

CONSENT

THIS PARTIES HERETO, by their lawyers, consent to the Order attached hereto as Schedule "A", and certify that no party to this proceeding is under any legal disability.

Date: ______________________

____
GIBSON&BARNES LLP
119 Spadina Avenue, Suite 801
Toronto, Ontario M5V 2L1

Michael Mazzuca
Tel: 416-597-1500
Fax: 416-594-3299

Lawyer for the Moving Party

Date: ______________________

____
CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Maya Poliak
Tel: (416) 218-1161

Fax: (416) 218-1844

Lawyer for the Applicants

Date: ____________________

AIRD & BERLIS LLP
Brookfield Place 181 Bay St, Suite 1800
Toronto, ON M5J 2T9

Ian Aversa
Tel: (416) 865-3082
Fax: (416) 863-1515

Lawyer for the Monitor

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

CONSENT

GIBSON&BARNES LLP
119 Spadina Avenue, Suite 801
Toronto, Ontario M5V 2L1

Michael Mazzuca (LSUC 56283V)
Tel: 416-597-1500
Fax: 416-597-3299
E-mail: mmazzuca@gibsonandbarnes.ca

Lawyers for Moving Party, Argyle Hardwood & Flooring Ltd.

TAB E

This is Exhibit ......"E"...... *referred to in the affidavit of* ......Katherine Chau......
sworn before me, this ......5th......
day of ......August...... 20.15....

K. O'Rourke
....
A COMMISSIONER FOR TAKING AFFIDAVITS

Katy O'Rourke
LSUC# 66420K

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	, THE
	)	
	)	DAY OF ,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 OF ARRANGEMENT OF SILVER STREMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

CONSENT

THIS PARTIES HERETO, by their lawyers, consent to the Order attached hereto as Schedule "A", and certify that no party to this proceeding is under any legal disability.

Date: ______________________

____
GIBSON&BARNES LLP
119 Spadina Avenue, Suite 801
Toronto, Ontario M5V 2L1

Michael Mazzuca
Tel: 416-597-1500
Fax: 416-594-3299

Lawyer for the Moving Party

Date: ______________________

____
CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, ON M2N 7E9

Maya Poliak
Tel: (416) 218-1161

Fax: (416) 218-1844

Lawyer for the Applicants

Date: July 30, 2015

AIRD & BERLIS LLP
Brookfield Place 181 Bay St, Suite 1800
Toronto, ON M5J 2T9

Per. **Ian Aversa**
Tel: (416) 865-3082
Fax: (416) 863-1515

Lawyer for the Monitor

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

CONSENT

GIBSON&BARNES LLP
119 Spadina Avenue, Suite 801
Toronto, Ontario M5V 2L1

Michael Mazzuca (LSUC 56283V)
Tel: 416-597-1500
Fax: 416-597-3299
E-mail: mmazzuca@gibsonandbarnes.ca

Lawyers for Moving Party, Argyle Hardwood & Flooring Ltd.

TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) , THE
)
) DAY OF ,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 OF ARRANGEMENT OF SILVER STREMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

CONSENT

THIS PARTIES HERETO, by their lawyers, consent to the Order attached hereto as Schedule "A", and certify that no party to this proceeding is under any legal disability.

Date: ____________________

GIBSON&BARNES LLP
119 Spadina Avenue, Suite 801
Toronto, Ontario M5V 2L1

for **Michael Mazzuca**
Tel: 416-597-1500
Fax: 416-594-3299

Lawyer for the Moving Party

Date: ____________________

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Date: July 30, 2015

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

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

ONTARIO

SUPERIOR COURT OF JUSTICE
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CONSENT

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Lawyers for Moving Party, Argyle Hardwood & Flooring Ltd.

SCHEDULE "A" TO THE CONSENT

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	, THE
	)	
	)	DAY OF ,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 OF ARRANGEMENT OF SILVER STREMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTARIO INC., 2147681 ONTARIO INC. AND 2147650 ONTARIO INC.

ORDER

THIS MOTION, made by the Moving Party, Argyle Hardwood & Flooring Supplies Ltd., for an Order lifting the stay of proceedings and granting leave to issue a Statement of Claim and to allow the Applicant Corporations and their directors and officers, Imran Jinnah and Asma Jinnah, to file a Statement of Defence was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING, the Affidavit of Katherine Chau sworn on August 5, 2015 and upon reading the Consent executed by the parties.

1. **THIS COURT ORDERS** that the stay of proceedings imposed in the within matter in favour of Silver Streams Homes Inc., Silver Streams Homes (Puccini) Inc., 2148993 Ontario Inc., 2148990 Ontario Inc., 2147681 Ontario Inc., 2147650 Ontario Inc., Imran Jinnah and Asma Jinnah under paragraphs 11, 12 and 16 of The Order of The Honourable Mr. Justice Newbould dated December 16, 2013 be and is hereby lifted for the limited purposes of enabling Argyle Hardwood & Flooring Supplies Ltd. to commence a breach of trust action in accordance with the

draft pleading attached as Schedule "A" hereto and to allow the Defendants in the action to file a Statement of Defence.

2. **THIS COURT ORDERS** that thereafter the stay shall resume until further order of the court.

3. **THIS COURT ORDERS** that Argyle Hardwood & Flooring Supplies Ltd. is hereby granted leave to issue their Statement of Claim.

IN THE MATTER OF A PLAN OF COMPROMISE OF ARRANGEMENT OF SILVER STREAMS HOMES INC., SILVER STREAMS HOMES (PUCCINI) INC., 2148993 ONTARIO INC., 2148990 ONTAIRO 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 Moving Party, Argyle Hardwood & Flooring Ltd.

SCHEDULE "A" TO THE ORDER

Court file No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ARGYLE HARDWOOD & FLOORING SUPPLIES LTD.

Plaintiff

- and -

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

Defendants

STATEMENT OF CLAIM

TO ALL DEFENDANT(S)

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

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

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

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

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and $3000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $100 for costs and have the costs assessed by the court.

Date: ....

Issued by: ....
Local registrar

Address of court office:

330 University Avenue
Toronto, Ontario
M5G 1E6

TO: 2147681 ONTARIO INC.
103 NAUGHTON DRIVE
RICHMOND HILL, ONTARIO
L4C 8B3

AND TO: 2148990 ONTARIO INC.
103 NAUGHTON DRIVE

RICHMOND HILL, ONTARIO
L4C 8B3

AND TO: 2148991 ONTARIO INC.
103 NAUGHTON DRIVE
RICHMOND HILL, ONTARIO
L4C 8B3

AND TO: 2147650 ONTARIO INC.
103 NAUGHTON DRIVE
RICHMOND HILL, ONTARIO
L4C 8B3

AND TO: 2148993 ONTARIO INC.
103 NAUGHTON DRIVE
RICHMOND HILL, ONTARIO
L4C 8B3

AND TO: SILVER STREAMS HOMES (PUCCINI) INC.
103 NAUGHTON DRIVE
RICHMOND HILL, ONTARIO
L4C 8B3

AND TO: SILVER STREAMS HOMES INC.
103 NAUGHTON DRIVE
RICHMOND HILL, ONTARIO
L4C 8B3

AND TO: IMRAN JINNAH
103 NAUGHTON DRIVE
RICHMOND HILL, ONTARIO
L4C 8B3

AND TO: ASMA JINNAH
103 NAUGHTON DRIVE
RICHMOND HILL, ONTARIO
L4C 8B3

AND TO: PUCCINI MORTGAGE CORPORATION
c/o SUITE 204, 181 EGLINGTON AVENUE EAST
TORONTO, ONTARIO
M4P 1J4

AND TO: DAPAUL MANAGEMENT LIMITED
c/o SUITE 204, 181 EGLINGTON AVENUE EAST
TORONTO, ONTARIO

M4P 1J4

AND TO: 388242 ONTARIO LIMITED
c/o SUITE 204, 181 EGLINGTON AVENUE EAST
TORONTO, ONTARIO
M4P 1J4

AND TO: 53 PUCCINI MORTGAGE CORPORATION
c/o SUITE 204, 181 EGLINGTON AVENUE EAST
TORONTO, ONTARIO
M4P 1J4

AND TO: NASTELL INVESTMENTS LIMITED
c/o SUITE 204, 181 EGLINGTON AVENUE EAST
TORONTO, ONTARIO
M4P 1J4

AND TO: JACK GREENBERG
c/o SUITE 204, 181 EGLINGTON AVENUE EAST
TORONTO, ONTARIO
M4P 1J4

CLAIM

1. The Plaintiff, Argyle Hardwood & Flooring Supplies Ltd. ("Argyle") claims as against the Defendants, jointly and severally:

(a) payment of the sum of $129,516.11;

(b) in the alternative, damages in the sum of $129,516.11 plus interest for breach of trust, conversion and misappropriation of trust funds;

(c) a declaration that the Defendants are in breach of trust under sections 8 and 13 of the *Construction Lien Act* R.S.O. 1990, c. C. 30, as amended (*"Construction Lien Act")* with respect to the sums owing at the Project, as defined, and improvements;

(d) a declaration that funds held by Chaitons LLP which are the subject matter of the claim in the Ontario Superior Court of Justice with Court File No. CV-13-115767-00 commenced in the Newmarket Court constitutes trust funds for the benefit of the Plaintiff pursuant to the provisions of the *Construction Lien Act*.

(e) aggravated, punitive and exemplary damages in the sum of $100,000;

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

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

(h) a declaration that the Plaintiff has priority over the charges of the Defendants, Puccini Mortgage Corp., Dapaul Management Limited and 388242 Ontario Limited with respect to the Property and in relation to the Project;

(i) a declaration that the equitable mortgage of the Plaintiff is in priority over the charges of the Defendants, 53 Puccini Mortgage Corp. and Nastell Investments Limited with respect to the Property and in relation to the Project;

(j) an Order requiring 53 Puccini Mortgage Corp. and Nastell Investments Limited to marshal their debt from other security they hold and not from the Property and in relation to the Project;

(k) an Order that Jack Greenberg provide an accounting of the monies flowing through his trust account with respect to the Project;

(l) an accounting of all funds received by the Defendants on account of the improvements and Project, as set forth below;

(m) a declaration that all funds received by the Defendants were on account of the improvement and Project, set forth below and are impressed with a trust pursuant to Part II of the *Construction Lien Act*;

(n) an interim and interlocutory mandatory order requiring the Defendants to deliver up all records of the accounts with respect to the improvements and Project, as set forth below;

(o) a tracing order allowing the Plaintiff to follow all funds found to be trust funds;

(p) a declaratory order that the funds found to be trust funds be applied in and towards payment of the Plaintiff's claim, interest and costs;

(q) a declaration that the Plaintiff is a complainant within the meaning of the *Ontario Business Corporations Act* ("*OBCA*");

(r) a declaration that the actions of the Defendants, or any of them, are oppressive, unfairly prejudicial to or unfairly disregards the interests of the Plaintiff such that the Court may make interim, interlocutory or final orders it thinks fit under section 248(3) of the *OBCA*;

(s) an order that the Defendants, or any of them, compensate the Plaintiff for its losses as a result of the various breaches of the *OBCA*;

(t) a declaration that the Defendants were constructive trustees of funds received from the Projects, as defined, and are liable to the Plaintiff as beneficiaries;

(u) in the alternative, an order under the *OBCA*, *Assignment and Preferences Act*, *Fraudulent Conveyances Act* and *Bulk Sales Act* setting aside any transfers, assignments and transactions of the Defendants and/or any one of the Defendants or combination thereof;

(v) a declaration that any debt or liability of the Defendants, or any of them, shall survive bankruptcy pursuant to Section 178(1)(d), (e) and (h) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;

(w) pre-judgement and post-judgement at the rate of ten (10) percent;

(x) pre-judgment and post-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, C.c. 43 and amendments thereto;

(y) their costs of this action plus applicable taxes; and

(z) such further and other relief as the nature of this action requires and this Honourable Court may deem just.

THE PARTIES

2. The Plaintiff, Argyle, is a corporation incorporated pursuant to the laws of the Province of Ontario. At all material times, Argyle carried on business as a supplier and installer of hardwood flooring and carpeting.

3. The Defendant, Silver Streams Homes (Puccini) Inc. ("Silver Streams Puccini"), is a company incorporated pursuant to the laws of the Province of Ontario.

4. The Defendant, Silver Streams Homes Inc., ("Silver Streams"), is a company incorporated pursuant to the laws of the Province of Ontario.

5. The Defendant, 2148991 Ontario Inc. ("2148991"), is a corporation incorporated pursuant to the laws of the Province of Ontario.

6. The Defendant, 2148990 Ontario Inc. ("2148990"), is a corporation incorporated pursuant to the laws of the Province of Ontario.

7. The Defendant, 2147650 Ontario Inc. ("2147650"), is a corporation incorporated pursuant to the laws of the Province of Ontario.

8. The Defendant, 2148993 Ontario Inc. ("2148993"), is a corporation incorporated pursuant to the laws of the Province of Ontario.

9. The Defendant, 2147681 Ontario Inc. ("2147681"), is a corporation incorporated pursuant to the laws of the Province of Ontario.

10. The companies, Silver Streams, Silver Streams Puccini, 2148991, 2148990, 2157650, 2148990 and 2147681 are related and associated companies (collectively "Silver Streams").

11. The Defendants, Imran Jinnah ("Imran") and Asma Jinnah ("Asma"), are individuals residing in the Province of Ontario. At all material times, they were the officers, directors and controlling minds of Silver Streams.

12. The Defendant, Puccini Mortgage Corp. ("Puccini Mortgage"), is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business as a lender and investor. Jack Greenberg ("Greenberg") is the sole officer and director and/or the controlling mind of Puccini Mortgage and is authorized to bind it.

13. The Defendant, Dapaul Management Limited ("Dapaul Management") is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of Dapaul Management and is authorized to bind it.

14. The Defendant, 388242 Ontario Limited ("388242") is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of 388242 and is authorized to bind it.

15. The Defendant, 53 Puccini Mortgage Corp. ("53 Puccini Mortgage") is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of 53 Puccini Mortgage and is authorized to bind it

16. The Defendant, Nastell Investments Limited ("Nastell") is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business as a lender and investor. Greenberg is the sole officer and director and/or the controlling mind of Nastell and is authorized to bind it.

17. Puccini Mortgage, Dapaul Management, 388242, 53 Puccini Mortgage and Nastell are related and associated companies (collectively "the Greenberg Companies").

18. Greenberg is licensed to practice law in the Province of Ontario. Greenberg is also the sole officer and director and/or the directing mind of the Greenberg Companies. Greenberg was also acting as lawyer for, or the agent of, or controlling mind of Silver Streams and actively making decisions regarding the construction, development, payment of accounts including those of the trades in the Project, as defined, and was an Owner as defined in the *Construction Lien Act*.

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

20. Greenberg directed the flow of funds and making decisions regarding the construction of the Project. He also made decisions as to whether trades would get paid, paying trades and preferring payments to the Greenberg Companies over the trades, both in his personal capacity and as an investor and also on behalf of the various lender corporations or Greenberg Companies. By virtue of Greenberg's actions, more particularly described below, the Plaintiff seeks a declaration that Greenberg, in his personal capacity, and the Greenberg Companies are all statutory owners under the provisions of the *Construction Lien Act*.

21. In addition, the mortgages in favour of the Greenberg Companies were not at arms-length. These mortgages did not act in a commercially reasonable manner in particular by failing to have regular re-payment terms and failing to exercise default remedies under the mortgages in a commercially reasonable manner.

22. The Plaintiff seeks a declaration that the various Greenberg Companies with respect to Puccini Mortgage, Dapaul Mortgage, 388242, 53 Puccini Mortgage and Nastell, are all statutory owners under the provisions of the *Construction Lien Act*.

THE PROJECT

23. Silver Streams constructed a residential project with respect to 118 residential dwellings that included detached homes, semi-detached homes and townhouses located at Bathurst Street and King Road in Richmond Hill ("Project") which include properties as described in Schedule "A", Schedule "B" and Schedule "C".

24. The Plaintiff pleads that the Defendants were all beneficial owners with respect to the purchase and development of the lands more particularly set out in Schedule "D" hereto and were at all material times owners of them by virtue of the definition of an owner under Section (1) item (15) of the *Construction Lien Act*.

25. The Plaintiff agreed to provide and did provide to the corporate Defendants various hardwood flooring, carpeting and related installation services. In relation to what had been supplied, the Plaintiff delivered the invoices in Schedule "F" which remain unpaid.

REGISTERED MORTAGES

26. The Defendants, Dapaul Management, Puccini Mortgage and 388242 registered mortgages against the Property more particularly set out in Schedule "E". Dapaul Management is registered as a second mortgage for the principal amount of $5,500,000. Puccini Mortgage is registered as a third mortgage for the principle amount of $2,600,000. 388242 is registered as a fourth mortgage in the principal amount of $1,500,000 ("Property A Lenders").

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

28. The Plaintiff has priority over the charges of Puccini Mortgage, Dapaul Management and 388242 on Property A and 53 Puccini Mortgage and Nastell on Property B as a result of the following:

a. The mortgages are not arms' length mortgages;

b. No monies were advanced;

c. If monies were advanced they were advanced in excess of the value of the lands before the Plaintiff provided their labour, materials and services;

d. If monies were advanced, some were advanced in the face of knowledge of the breaches of trusts;

e. Such further and other grounds as counsel may advise prior to trial.

CON-DRAIN

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

30. As part of the settlement, Con-Drain appears to have been promised payment from closings of homes with respect to the Project. These payments of $50,000 plus interest were to be paid out of the sale of homes which improvements were provided by the Plaintiff. The payments were for a past debt as opposed to any improvement being made by Con-Drain at the time the Plaintiff was improving the lands. Alternatively, if Con-Drain provided any improvement to the Phase III lands, these improvements were for as far less then the payments being promised which were for a Past Debt not lienable work.

31. Con-Drain claimed to be owed the total sum of $794,882.68 as at July 31, 2013. As a result of an action and application for an injunction, monies from certain closings were by court order paid to the law firm Chaitons LLP to be held pending determination of entitlement of those funds ("Funds").

32. The Plaintiff states that the Funds are trust funds pursuant to the trust provisions of the *Construction Lien Act* for the benefit of the Plaintiff who provided services and improvements to these very lands and premises and must be shared rateably by all Trust beneficiaries under the *Construction Lien Act*.

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

BREACH OF TRUST

34. The Plaintiff states that the Project was directed and controlled by Greenberg for the benefit of himself and the Greenberg Companies using the Jinnahs and the Silver Stream companies as tools. There was never any intention to ensure that the Project proceeded in a commercially reasonable fashion and that the construction trades, such as the Plaintiff, would be paid in the ordinary course or full paid at all.

35. Greenberg and the Greenberg Companies allegedly advanced funds into the Project charging high rates of interest and exorbitant fees. Some of the mortgages advanced by the Greenberg Companies were to repay such interest accruing and fees. The Jinnahs and the Silver Streams companies were receiving a fee per home losing, the particulars of which are not known to the Plaintiff at the time of this pleading. The net result of the actions of Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams companies was that all the equity was appropriate out of the Project, the Project became insolvent and the Plaintiff, who was a trade improving the lands on the Project was left unpaid. The actions by Greenberg, the Greenberg Companies, the Jinnahs and Silver Streams give rise to a legal and equitable justification by the Court to pierce the corporate veil of the various Greenberg and Silver Streams companies as they were operating as one and the same in partnership, entity, joint venture or joint enterprise with the same underlying ownership of Greenberg and the Jinnahs.

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

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

38. Greenberg and the Jinnahs are persons liable in an action for breach of trust pursuant to Part II of the *Construction Lien Act*.

39. The Plaintiff pleads that the monies received by the Greenberg, the Greenberg Companies, the Jinnahs and the Silver Streams companies from the sale of the homes in the Project constitute trust funds for the benefit of the Plaintiff pursuant to the provisions of the *Construction Lien Act* including s.7, s.8 and s. 13.

40. The Plaintiff does not have particulars of the monies received by the various Defendants from the financing and sale of homes in the Project as that information is within the exclusive control of the corporate and individual Defendants.

41. The Plaintiff states that the revenue and payments received by the Defendants that used the Plaintiff's materials and services are impressed with a trust in favour of the Plaintiff. Full particulars of these trust payments and the Projects within the knowledge of the Defendants, Imran and Asma.

42. The Plaintiff alleges that monies received by the Defendants were misappropriated and converted for their own use inconsistent with the trust imposed under the *Construction Lien Act* and pleads such actions constitute a breach of trust.

43. Greenberg and the Jinnahs are officers, directors or persons with effective controls of the affairs of the Greenberg Companies and the Silver Streams Companies, respectively, and are liable personally to the Plaintiff for breach of trust as they assented to, or acquiesced in, conduct

that they knew or reasonable ought to have known amounted to a breach of trust pursuant to section 13 of the *Construction Lien Act*.

44. The Plaintiff pleads that the Defendants participated in a breach of trust by participating in a conversion and/or defalcation of the trust funds described above.

45. The Plaintiff submits that they have suffered damages by virtue of the breach of trust by the Defendants. The Plaintiff claims the sum of $129,516.11 plus interest as damages.

46. By reason of the high-handed and callous conduct and complete disregard by the Defendants of the Plaintiff's rights, the Plaintiff claims aggravated, punitive and exemplary damages against the Defendants in the amount of $100,000.00.

47. The Plaintiff further requests a tracing order allowing the Plaintiff to follow all funds found to be trust funds.

48. The Plaintiff pleads and relies upon the *Construction Lien Act* in particular Part II.

OTHER CLAIMS

49. At all material times, the Defendants were, and each of them was, acting in concert and/or as mutual agents each for the other and/or under the control and direction of each other and with the knowledge of each was the knowledge of all and communications to one was communications to all. They are and, each of them is jointly and severally liable in respect of all matters complained of in the within proceeding.

50. Further, and in the alternative, Imran and Asma unlawfully interfered with the economic relations of the Plaintiff by authorizing, condoning or acquiescing in the breach of the contracts and duties owed to the Plaintiff with respect to each of the Projects. They had an intent to injure the Plaintiff by their actions. They caused the breach of the contract and deprived the Plaintiff of their rights. As set out above, the Defendants interfered with the Plaintiff's business expectancy in relation to the Projects. The Defendant interfered by way of unlawful means, namely, inducing the breach of the contracts, improper interference, misappropriation, defalcation, conversion and/or breach of trust, as detailed above.

51. Further, and in the alternative, Imran and Asma induced the breach of the contract with respect to each of the Projects and is liable on the following basis:

a. they had knowledge of the contract for the Projects

b. their conduct was intended to cause a breach of the contract for each of the Projects

c. their conduct caused a breach of the contract for each of the Projects; and

d. the Plaintiff suffered damages.

52. The Plaintiff further states that it has suffered damages by virtue of the actions of the Defendants.

OPPRESSION CLAIMS

53. The Plaintiff further states that it is a complainant within the meaning of the *OBCA*.

54. The Defendants, or any of them, acted in a oppressive or unfairly prejudicial manner in their dealings with the Plaintiff within the meaning of the *OBCA*, including contrary to section 248. In particular, the Defendants used the funds received from the Projects for purposes inconsistent with the trust and unfairly disregarded the interests of the Plaintiff, transferred assets and made payments so as to defeat, delay or hinder the rights of the Plaintiff, as creditor. Full particulars of these breaches and actions are within the knowledge of the Defendants.

55. The Plaintiff is entitled to be compensated for the oppressive and unfair conduct of the Defendants, or any of them.

56. The Defendants have engaged in conduct which is high-handed and with an intention to evade their financial responsibilities and, in doing so, flagrantly disregarded the Plaintiff's rights such as to entitle and justify an award of punitive, exemplary and aggravated damages.

57. The Plaintiff pleads and relies on the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, in particular sections 178(1)(d), (e) and (h). The Defendants debt should also not be released by any order of discharge.

58. The transfers and payments by the Defendants, or any of them, that are inconsistent with the trust are also in contravention of section 2 of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F. 29, as amended, section 4 of the *Assignment and Preferences Act,* R.S.O. 1990, c. A-33, as amended and sections 91, 95 and 96 of the *Bankruptcy and Insolvency Act*, R.S.O. 1985, c. 31, as amended.

59. The Plaintiff proposes the trial of this action be in the City of Toronto, in the Province of Ontario.

Date of Issue:

GIBSON&BARNES LLP
119 Spadina Avenue
Suite 801
Toronto, Ontario
M5V 2L1

Tel: 416-597-1500
Fax: 416-594-3299

Michael Mazzuca (LSUC 56283V)
Lawyer for the Plaintiff, Argyle
Hardwood & Flooring Supplies Ltd.

SCHEDULE "A"

Phase I, Plan 65M-4156, Town of Richmond Hill:

Lot No./PIN:	Lot No./PIN:	Lot No./PIN:
1 / 03206-3200	8 / 03206-3207	15 / 03206-3214
2 / 03206-3201	9 / 03206-3208	16 / 03206-3215
3 / 03206-3202	10 / 03206-3209	17 / 03206-3216
4 / 03206-3203	11 / 03206-3210	18 / 03206-3217
5 / 03206-3204	12 / 03206-3211	19 / 03206-3218
6 / 03206-3205	13 / 03206-3212	20 / 03206-3219
7 / 03206-3206	14 / 03206-3213	

Phase II, Plan 65M-4249, Town of Richmond Hill:

Lot No./PIN:	Lot No./PIN:	Lot No./PIN:
1 / 03206-3418	10 / 03206-3427	18 / 03206-3435
2 / 03206-3419	11 / 03206-3428	19 / 03206-3436
3 / 03206-3420	12 / 03206-3429	20 / 03206-3437
4 / 03206-3421	13 / 03206-3430	21 / 03206-3438
5 / 03206-3422	14 / 03206-3431	22 / 03206-3439
6 / 03206-3423	15 / 03206-3432	23 / 03206-3440
7 / 03206-3424	16 / 03206-3433	24 / 03206-3441
8 / 03206-3425	17 / 03206-3434	25 / 03206-3442
9 / 03206-3426		

Phase III, Plan 65M-4331, Town of Richmond Hill:

Lot No./PIN:	**Lot No./PIN:**	**Lot No./PIN:**
1 / 03206-3484	10 / 03206-3493	18 / 03206-3501
2 / 03206-3485	11 / 03206-3494	19 / 03206-3502
3 / 03206-3486	12 / 03206-3495	20 / 03206-3503
4 / 03206-3487	13 / 03206-3496	21 / 03206-3504
5 / 03206-3488	14 / 03206-3497	22 / 03206-3505
6 / 03206-3489	15 / 03206-3498	23 / 03206-3506
7 / 03206-3490	16 / 03206-3499	24 / 03206-3507
8 / 03206-3491	17 / 03206-3500	25 / 03206-3508
9 / 03206-3492		

SCHEDULE 'B'

Phase IV, Plan M-807, Town of Richmond Hill:

Lot No. /PIN:	Lot No. / PIN:
Part Lot 1, Plan M-807, Part 1, 65R-32855/03206-3469	Part Lot 2, Plan M-807, Part 2, 65R-32855/03206-3467

SCHEDULE "C"

Phase II, Plan 65M-4249, Town of Richmond Hill:

Lot No./PIN:	Lot No./PIN:	Lot No./PIN:
1 / 03206-3418	10 / 03206-3427	18 / 03206-3435
2 / 03206-3419	11 / 03206-3428	19 / 03206-3436
3 / 03206-3420	12 / 03206-3429	20 / 03206-3437
4 / 03206-3421	13 / 03206-3430	21 / 03206-3438
5 / 03206-3422	14 / 03206-3431	22 / 03206-3439
6 / 03206-3423	15 / 03206-3432	23 / 03206-3440
7 / 03206-3424	16 / 03206-3433	24 / 03206-3441
8 / 03206-3425	17 / 03206-3434	25 / 03206-3442
9 / 03206-3426		

Phase III, Plan 65M-4331, Town of Richmond Hill:

Lot No./PIN:	Lot No./PIN:	Lot No./PIN:
1 / 03206-3484	10 / 03206-3493	18 / 03206-3501
2 / 03206-3485	11 / 03206-3494	19 / 03206-3502
3 / 03206-3486	12 / 03206-3495	20 / 03206-3503
4 / 03206-3487	13 / 03206-3496	21 / 03206-3504
5 / 03206-3488	14 / 03206-3497	22 / 03206-3505
6 / 03206-3489	15 / 03206-3498	23 / 03206-3506
7 / 03206-3490	16 / 03206-3499	24 / 03206-3507
8 / 03206-3491	17 / 03206-3500	25 / 03206-3508
9 / 03206-3492		

SCHEDULE "D"

Phase I, Plan 65M-4156, Town of Richmond Hill:

Lot No./PIN:	Lot No./PIN:	Lot No./PIN:
1 / 03206-3200	8 / 03206-3207	15 / 03206-3214
2 / 03206-3201	9 / 03206-3208	16 / 03206-3215
3 / 03206-3202	10 / 03206-3209	17 / 03206-3216
4 / 03206-3203	11 / 03206-3210	18 / 03206-3217
5 / 03206-3204	12 / 03206-3211	19 / 03206-3218
6 / 03206-3205	13 / 03206-3212	20 / 03206-3219
7 / 03206-3206	14 / 03206-3213	

Phase II, Plan 65M-4249, Town of Richmond Hill:

Lot No./PIN:	Lot No./PIN:	Lot No./PIN:
1 / 03206-3418	10 / 03206-3427	18 / 03206-3435
2 / 03206-3419	11 / 03206-3428	19 / 03206-3436
3 / 03206-3420	12 / 03206-3429	20 / 03206-3437
4 / 03206-3421	13 / 03206-3430	21 / 03206-3438
5 / 03206-3422	14 / 03206-3431	22 / 03206-3439
6 / 03206-3423	15 / 03206-3432	23 / 03206-3440
7 / 03206-3424	16 / 03206-3433	24 / 03206-3441
8 / 03206-3425	17 / 03206-3434	25 / 03206-3442
9 / 03206-3426		

Phase III, Plan 65M-4331, Town of Richmond Hill:

Lot No./PIN:	Lot No./PIN:	Lot No./PIN:
1 / 03206-3484	10 / 03206-3493	18 / 03206-3501
2 / 03206-3485	11 / 03206-3494	19 / 03206-3502
3 / 03206-3486	12 / 03206-3495	20 / 03206-3503
4 / 03206-3487	13 / 03206-3496	21 / 03206-3504
5 / 03206-3488	14 / 03206-3497	22 / 03206-3505
6 / 03206-3489	15 / 03206-3498	23 / 03206-3506
7 / 03206-3490	16 / 03206-3499	24 / 03206-3507
8 / 03206-3491	17 / 03206-3500	25 / 03206-3508
9 / 03206-3492		

Phase IV, Plan M-807, Town of Richmond Hill:

Lot No. /PIN:	Lot No. / PIN:
Part Lot 1, Plan M-807, Part 1, 65R-32855/03206-3469	Part Lot 2, Plan M-807, Part 2, 65R-32855/03206-3467

SCHEDULE "E"

PROPERTY A

Phase IV, Plan M-807, Town of Richmond Hill:

Lot No. /PIN:	Lot No. / PIN:
Part Lot 1, Plan M-807, Part 1, 65R-32855/03206-3469	Part Lot 2, Plan M-807, Part 2, 65R-32855/03206-3467

PROPERTY B

Phase III, Plan 65M-4331, Town of Richmond Hill:

Lot No./PIN:	Lot No./PIN:	Lot No./PIN:
1 / 03206-3484	10 / 03206-3493	18 / 03206-3501
2 / 03206-3485	11 / 03206-3494	19 / 03206-3502
3 / 03206-3486	12 / 03206-3495	20 / 03206-3503
4 / 03206-3487	13 / 03206-3496	21 / 03206-3504
5 / 03206-3488	14 / 03206-3497	22 / 03206-3505
6 / 03206-3489	15 / 03206-3498	23 / 03206-3506
7 / 03206-3490	16 / 03206-3499	24 / 03206-3507
8 / 03206-3491	17 / 03206-3500	25 / 03206-3508
9 / 03206-3492		

<u>**SCHEDULE "F"**</u>

Invoice No.	Date	Original Amount	Paid	Balance
2318	November 3, 2012	$10,993.04	-$6,615.94 -$1,954.77	$2,422.33
2338	November 13, 2012	$2,259.37	-	$2,259.37
2627	July 22, 2013	$4,505.88	-$4,055.29	$450.59
2617	July 23, 2013	$22,995.50	-$8,924.77 -$12,663.66	$1,407.07
2625	July 26, 2013	$2,485.58	-$2,144.92 -$238.32	$102.34
2626	July 26, 2013	$6,681.13	-$6,013.01 -$668.11	$0.01
2628	July 26, 2013	$1,548.99	-$1,394.09	$154.90
2631	July 30, 2013	$13,828.38	-$7,624.47	$6,203.91
2650	August 26, 2013	$9,955.00	-	$9,944.00
2651	August 26, 2013	$6,681.13	-	$6,681.13
2675	August 30, 2013	$2,048.71	-	$2,048.71
2684	August 30, 2013	$2,138.46	-	$2,138.46
2662	August 31, 2013	$5,282.75	-	$5,282.75
2663	August 31, 2013	$20,820.25	-	$20,820.25
2664	August 31, 2013	$20,354.13	-	$20,354.13
2677	September 10, 2013	$5,282.75	-	$5,282.75
2679	September 10, 2013	$7,147.25	-	$7,147.25
2687	September 12, 2013	$1,081.41	-	$1,081.41
2689	September 12, 2013	$2,006.95	-	$2,006.95
2701	September 23, 2013	$2,113.99	-	$2,113.99
2702	September 23, 2013	$8,545.63	-	$8,545.63
2712	October 05, 2013	$1,243.00	-	$1,243.00
2716	October 14, 2013	$2,092.55	-	$2,092.55
2721	October 17, 2013	$19,732.63	-	$19,732.63
			TOTAL:	**$129,516.11**

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

STATEMENT OF CLAIM

GIBSON&BARNES LLP
119 Spadina Avenue, Suite 801
Toronto, Ontario M5V 2L1

Michael Mazzuca (LSUC 56283V)
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Fax: 416-597-3299
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Lawyers for Plaintiff

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

MOTION RECORD OF

ARGYLE HARDWOOD & FLOORING SUPPLIES LTD.

GIBSON&BARNES LLP
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Toronto, Ontario M5V 2L1

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Lawyers for Moving Party, Argyle Hardwood & Flooring Ltd.