

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

*IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43,
as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act,
R.S.C. 1985, c. B-3, as amended*

THE HONOURABLE) FRIDAY, THE 18TH
)
JUSTICE CONWAY) DAY OF AUGUST, 2023

B E T W E E N:

FIRM CAPITAL MORTGAGE FUND INC.

Applicant

- and -

STATEVIEW HOMES (HAMPTON HEIGHTS) INC.

Respondent

**Order
(Ancillary Relief)**

THIS MOTION, made by RSM Canada Limited in its capacity as Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Stateview Homes (Hampton Heights) Inc. (the “**Debtor**”) for an order among other things: (i) approving the First Report of the Receiver dated August 8, 2023 and the Supplemental Report dated August 17, 2023 (collectively, the “**First Report**”) and the Receiver’s activities set out therein; (ii) authorizing the Receiver to terminate the Existing Purchase Agreements; (iii) approving the Receiver’s cash receipts and disbursements for the period June 15, 2023 to July 31, 2023; (iv) approving the fees and disbursements of the Receiver and the Receiver’s independent legal counsel through July 31, 2023; and (v) approving the proposed distribution of the sale proceeds (the “**Proceeds**”) of the sale transaction contemplated by an agreement of purchase and sale between the Receiver and Brookshore Homes (Barrie) Limited, dated July 27, 2023 (the “**Transaction**”) and appended to the First Report, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the First Report and the Appendices thereto, and on hearing the submissions of counsel for the Receiver and such other parties listed on the counsel slip, no one appearing for any other person on the service list, although properly served as it appears from the Affidavit of Service of Puya Fesharaki sworn August 17, 2023, filed:

DEFINITIONS

1. **THIS COURT ORDERS** that capitalized terms not defined herein shall have the meanings ascribed thereto in the First Report.

SERVICE

2. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and Motion Record herein is hereby validated so that this motion is properly returnable today, and hereby dispenses with further service thereof.

ACTIVITIES AND FEE APPROVALS

3. **THIS COURT ORDERS** that the First Report and the Receiver's activities set out therein are hereby approved, provided, however, that only the Receiver in its personal capacity and only with respect to its own personal liability shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS** that the Receiver's statement of cash receipts and disbursements for the period June 15, 2023 to July 31, 2023 attached as Appendix "K" to the First Report, is hereby approved.

5. **THIS COURT ORDERS** that the professional fees and disbursements of the Receiver for the period June 15, 2023 to July 31, 2023 in the amount of \$93,296.63 plus HST of \$12,128.56, for a total of \$105,425.20, as set out in the Affidavit of Bryan A. Tannenbaum sworn August 8, 2023 and attached as Appendix "L" to the First Report, are hereby approved.

6. **THIS COURT ORDERS** that the professional fees and disbursements of the Receiver's independent counsel, Loopstra Nixon LLP, for the period June 15, 2023 to July 31, 2023 in the amount of \$4,294 plus HST of \$558.22, for a total of \$4,852.22, as set out in the Affidavit of

Matthew Himmel affirmed August 8, 2023 and attached as Appendix “M” to the First Report, are hereby approved.

TERMINATION OF EXISTING PURCHASE AGREEMENTS

7. **THIS COURT ORDERS** that the Receiver be, and is hereby authorized, to terminate each of the Existing Purchase Agreements on closing of the Transaction, and declares that the Existing Purchase Agreements and any rights of the purchasers under the Existing Purchase Agreements do not constitute continuing obligations against the Property or the Purchaser.

DISTRIBUTIONS

8. **THIS COURT ORDERS** that Receiver is hereby authorized and directed to distribute the Proceeds as follows:

- (a) first – to repay to the Applicant all amounts owing pursuant to the First Mortgage including the advance made by the Applicant to the Receiver in the principal amount of \$60,000 plus interest secured by the First Mortgage in accordance with the Appointment Order of this Court dated June 15, 2023;
- (b) second – to pay all outstanding amounts secured by the Receiver’s Charge (as defined in the Appointment Order);
- (c) third – to hold \$200,000 in trust in the Receiver’s Post-Receivership Account pending resolution or determination of the entitlement of any lien claimants, or further Order of the Court (the “**Funds in Trust**”); and
- (d) fourth – as it relates to any Balance, to the second mortgagee, subject to reserving for the future fees and disbursements of the Receiver and its counsel pending the completion of all Remaining Duties and obtaining its discharge. If the aggregate funds held by the Receiver (not including the Funds in Trust) is at any time less than \$25,000, the Receiver may make a motion to the Court to seek its immediate discharge and any funds will be dealt with in accordance with such further Order of this Court.

GENERAL

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 and its 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, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.



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FIRM CAPITAL MORTGAGE FUND INC.

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Court File No. CV-23-00700356-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto, Ontario

**ORDER
(Ancillary Relief)**

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