

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

FOURTH REPORT OF THE RECEIVER

October 10, 2019

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I. INTRODUCTION

1. Pursuant to an application made by M.O.S. MORTGAGEONE SOLUTIONS LTD. (“**MOS**”), by Order of the Ontario Superior Court of Justice (“the **Court**”) dated September 12, 2018, entered and issued on September 18, 2018 (the “**Appointment Order**”), RSM Canada Limited was appointed as receiver (the “**Receiver**”) of the assets and undertakings and properties of Fingal Properties Holdings Inc. (“**Fingal**”) acquired for or used in relation to a business carried on by Fingal, including the lands and premises municipally known as 39232 Fingal Line, St. Thomas, ON (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A**”. A copy of the accompanying endorsement dated September 12, 2018 is attached as **Appendix “B**”.
2. The Appointment Order authorized the Receiver to, among other things, take possession and control of the Property, market any or all of the Property and negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate and sell, convey, transfer, lease or assign the Property or any part or parts thereof with the approval of the Court.
3. The Appointment Order and other court documents have been posted on the Receiver’s website, which can be found at <https://rsmcanada.com/fingal-properties-holdings-inc.html>.
4. The Receiver prepared its first report to the court (the “**First Report**”) on October 15, 2018, attached hereto without Appendices as **Appendix “C**”. The Order of the Honourable Mr. Justice Wilton-Siegel dated October 31, 2018 approving, in part, a

sale process (discussed below) is attached as **Appendix “D”** (the “**Sale Process Order**”).

5. The Receiver prepared its Second Report to the Court (the “**Second Report**”) on March 14, 2019, a copy of which (without Appendices and with the purchaser’s name redacted) is attached hereto as **Appendix “E”**. The Honourable Mr. Justice Penny made an Order dated March 22, 2019 (the “**Initial Approval and Vesting Order**”) approving the sale of the Property to the purchaser (the “**Initial Purchaser**”) that submitted the best offer as at that time, dated as of February 13, 2019 (the “**Initial Approved APS**”), in the sale process discussed in the Second Report and below. The Confidential Supplement to this Fourth Report dated October 10, 2019 (the “**Second Confidential Supplement**”) contains more detailed information than in this Fourth Report on the continuation of the sale process and the sale agreement now recommended by the Receiver, and to which are attached a number of confidential appendices relating to such matters. Attached as **Appendix “F”** is a copy of the endorsement made by Justice Penny in connection with the Initial Approval and Vesting Order (including an unofficial transcription thereof prepared by the Receiver’s counsel). In such endorsement, in order to protect future marketing efforts if the Initial Approved APS did not close, Justice Penny ordered that the Initial Approval and Vesting Order be sealed pending closing. In addition, Justice Penny directed that the name of the Initial Purchaser be redacted in the Receiver’s publicly filed Motion Record.

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6. Justice Penny made an additional order on March 22, 2019 (the “**General Order**”), a copy of which is attached as **Appendix “G”**, *inter alia* (a) directing Michael Olynyk (“**Olynyk**”), Italo Ferrari (“**Ferrari**”), Wilsondale Assets Management Inc. (“**WAM**”), Fingal and others to provide certain information and documentation to the Receiver, as further discussed below, (b) increasing the amount of permitted borrowings by the Receiver from \$425,000 to \$500,000, (c) authorizing the Receiver to make interim distribution payments to the first mortgagee, First Source Mortgage Corporation (“**First Source**”), out of available net proceeds, on the terms set out therein, (d) approving the Second Report and the Confidential Supplement thereto (the “**First Confidential Supplement**”) and the activities described therein and (e) sealing the First Confidential Supplement and the appendices thereto pending the closing of the Initial Approved APS.
7. The Receiver prepared its Third Report to the Court (the “**Third Report**”) on June 5, 2019, a copy of which (without Appendices) is attached hereto as **Appendix “H”**. The purpose of the Third Report was to provide the Court with an update on the Initial Approved APS, which had by then been terminated by the Initial Purchaser, and on the re-launch of the sale process, and to provide support for the relief sought by the Receiver in its notice of motion returnable on June 13, 2019. On that day the Honourable Madam Justice Conway granted an order (the “**June 13 Order**”), a copy of which is attached as **Appendix “I”**, *inter alia*, (a) increasing the amount of permitted borrowings by the Receiver from \$500,000 to \$650,000, (b) approving the Third Report and the activities described therein, and (c) approving the professional fees and disbursements of the Receiver and of its legal counsel,

Goldman Sloan Nash & Haber LLP ("**GSNH**"), for the period ending May 31, 2019, and authorizing the Receiver to pay all such fees and disbursements from available funds.

II. PURPOSE OF FOURTH REPORT

8. The purpose of this fourth report (the "**Fourth Report**") and the Second Confidential Supplement is to:
- (a) provide the Court with a further update on the sale process undertaken by the Receiver, as approved in the Sale Process Order;
 - (b) provide the Court with an update on the other activities of the Receiver subsequent to the date of the Third Report;
 - (c) provide the Court with a summary of the Receipts and Disbursements for the period September 12, 2018 to September 23, 2019 and an estimate of the net proceeds to be available for distribution;
 - (d) provide the Court with the accounts for the professional fees of the Receiver and GSNH for the period June 1, 2019 to September 30, 2019 and estimated cash requirements to November 7, 2019; and
 - (e) seek orders:
 - i. approving the sale of the Property to the purchaser referred to below and issuing a Vesting Order;
 - ii. sealing the Second Confidential Supplement and the appendices thereto until the closing of the sale of the Property and the filing of a Receiver's Closing Certificate in respect thereof;

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- iii. if required as a result of both First Source and the second mortgagee, Moya Financial Credit Union Limited (“**Moya**”), not consenting in writing to the amount of a distribution payment or payments to First Source out of available net proceeds held by the Receiver, net of a reserve to remain in the Receiver's possession for existing and future costs and expenses of the Receiver, authorizing a distribution payment or payments to First Source in an amount authorized by the Court out of available net proceeds held by the Receiver, provided that after such payment or payments there will remain in the Receiver's possession a reserve for existing and future costs and expenses of the Receiver, upon (A) First Source entering into a reimbursement agreement with the Receiver on terms satisfactory to the Receiver, and (B) expiry of the applicable appeal period from such authorization order without a notice of appeal or notice of motion for leave to appeal being delivered;
 - iv. requesting authority for additional Receiver's borrowings in the amount of \$20,000.
 - v. approving the Fourth Report and the Receiver's conduct and activities described therein; and
 - vi. approving the professional fees of the Receiver and GSNH for the period June 1, 2019 to September 30, 2019;
9. As further discussed in subsequent paragraphs of this report, the Receiver is seeking a sealing order in respect of certain matters relating to the sale process

and the sale the Receiver is now recommending be approved, public disclosure of which would have a negative impact on any future marketing of the Property should the sale of the Property to the purchaser referred to below not be approved or completed. Accordingly, the Receiver is filing the Second Confidential Supplement relating to the sale process and the recommended sale.

Terms of Reference

10. In preparing this report and making the comments therein, the Receiver has relied upon certain unaudited financial information provided by Fingal and information received from third-party sources (collectively, the “**Information**”). The Receiver has, to the extent possible, reviewed the Information for reasonableness. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
11. Unless otherwise stated, all dollar amounts contained in this report are expressed in Canadian dollars.

III. BACKGROUND

12. Fingal is an Ontario corporation incorporated in 2014 to acquire the Property and is currently its registered owner. Ferrari is the president, treasurer, secretary and sole director of Fingal.

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13. Fingal intended to complete the development of a partially constructed independent living and assist living facility for seniors to be known as Meadow Creek Retirement Residence (“**Meadow Creek**” or “the **Development**”), which had previously been in receivership under a different owner.
 14. Fingal is an affiliate or subsidiary of WAM, which is an asset management group specializing in commercial real estate services and is involved with oversight of the Development. Ferrari is also the general manager of WAM. The Receiver is advised that WAM had extensively marketed the Property prior to the receivership and had an offer in play at the date of the receivership.
 15. As noted in paragraph 38 of the Third Report, and in paragraph 2(x) of the Application of MOS, originally returnable May 29, 2018, MOS alleged that “It appears that the Debtor has used investor funds for other purposes than completion of the construction of the Development”. In an affidavit filed by MOS, the deponent swore that Ferrari responded to this allegation by informing the deponent that “the Debtor had made loans to related companies to allow them to purchase and maintain other properties”. This is discussed in more detail in paragraphs 73 to 80 below.
 16. First Source holds a first-ranking mortgage in the principal amount of \$5,400,000 registered against the Property. As shown on First Source’s mortgage statement, a copy of which is attached as **Appendix “J”**, the amount claimed by First Source as outstanding under its mortgage as of November 8, 2019, the earliest possible closing date under the recommended sale agreement, is \$6,380,679.70.

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17. Moya, on behalf of itself and other mortgagees in its syndicate, holds a second-ranking mortgage in the principal amount of \$6,500,000 registered against the Property. As shown on Moya's mortgage statement, a copy of which is attached as **Appendix "K"**, the amount claimed by Moya as outstanding under its mortgage as of September 30, 2019 was \$7,274,162.93.
 18. MOS is an Ontario corporation in the business of providing mortgage financing. MOS holds a mortgage in the principal amount of \$6,500,000 with third-ranking priority registered against the Property on August 5, 2015. As of September 12, 2018, the amount claimed by MOS to be outstanding was \$7,311,970.04.
 19. The Moya mortgage was first in time among the three mortgagees, having been registered at the time that Fingal bought the Property out of the previous receivership on June 20, 2014. The MOS mortgage was second in time because it was registered on August 5, 2015. The First Source mortgage is third in time, because it was registered on January 28, 2016, but is first in priority due to postponements by Moya and MOS.

IV. SALE PROCESS, EXTENSION OF LISTING AND OFFERS RECEIVED

Initial Phase of Sale Process and Initial Approved APS

20. In accordance with the Sale Process Order, the Property was marketed by the broker engaged by the Receiver, Cushman & Wakefield ULC, Brokerage ("**CW**"), under a listing agreement entered into on November 22, 2018. The First Report explains why the Property has been marketed in an "as is" condition. The primary reason is a lack of available funding to complete the improvements on the Property.

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21. The Second Report and the First Confidential Supplement reported extensively on the activities of CW and the Receiver in the initial phase of the sale process, the offers submitted under the two rounds of bidding, the Initial Approved APS the Receiver entered into with the Initial Purchaser on February 27, 2019 and the appraisal obtained by the Receiver from CBRE's Senior's Housing & Healthcare Valuation & Advisory Services group on an "as is" and on "as completed" basis on October 29, 2018 (the "**CBRE Appraisal**"). This appraisal was provided to First Source, Moya and MOS pursuant to signed confidentiality agreements and was attached as an appendix to the First Confidential Supplement. GSNH will be requesting that the Commercial List Office provide the First Confidential Supplement previously filed with the Court to the Justice who will be presiding on the Receiver's notice of motion.
 22. As indicated above, on March 22, 2019 the Initial Approval and Vesting Order was made in respect of the Initial Approved APS, which contained a purchaser's condition providing the Initial Purchaser with, initially, 45 days within which to conduct due diligence on a broad range of matters.
 23. As set out in the Third Report, after a series of extensions to the due diligence condition period in the Initial Approved APS, the Initial Purchaser sent the Receiver's counsel a letter on May 6, 2019 terminating the Initial Approved APS after a further extension of the due diligence period was denied by the Receiver. As required under the Initial Approved APS, the Receiver subsequently returned the deposit monies to the Initial Purchaser.

Continuation of the Listing of the Property in the Relaunch of the Sale Process

24. After the Initial Purchaser first requested an extension of the due diligence period under the Initial Approved APS and continuing until and after the termination of the Initial Approved APS, the Receiver considered, in consultation with CW and the mortgagees, the appropriate steps to take to actively continue the sale process. The initial steps in the sale process to market the Property, as described in detail in the Second Report and First Confidential Supplement, had been taken in late 2018 and early 2019 and needed to be refreshed.
25. Based on the results of the sale process to that time and market feedback, CW updated the marketing plan and recommended that there now be a specific listing price, set at \$8,800,000, and no formal bid submission date. Under the initial phase of the sale process, there had been no listing price and an initial bid submission date of January 30, 2019. CW's view was that the specific listing price would uncover new prospective purchasers and likely incentivize previously interested parties. The Receiver, after consulting with the mortgagees, accepted CW's recommendations. The updated marketing plan set the listing price of the Property at \$8,800,000 and was open-ended, where bids were considered as received, in contrast with the bid process used in the initial phase of the sale process.
26. As a result of these adjustments and since the term of the original listing agreement with CW had expired on March 22, 2019, the Receiver entered into an amending agreement to the original listing agreement with CW dated as of May 17, 2019. This

amending agreement incorporated the sale process adjustments described in the previous paragraph and extended the term of the listing till August 30, 2019.

27. As reported in the Third Report, the sale process data room was refreshed with additional documentation as deemed appropriate. An updated version of the Receiver's preferred form of agreement of purchase and sale (the "**Receiver's Form APS**") was added to the data room.
28. CW 's team continued to be comprised of five senior executives selected from its Seniors' Retirement Home and Land Development groups. This team covered three CW Canadian geographic locations, one of which was located near the Property in London, Ontario and involved CW's Seniors' Housing group in the US. The team was created to provide the maximum breadth of experience to canvass the market in order to obtain the highest possible price for the Property.
29. CW continued to target the following groups: seniors' housing (builders, operators and investors), general construction, private investor, broker and the list of potential purchasers provided by the Receiver.
30. The Property was re-listed with the \$8,800,000 listing price on MLS in Toronto and London, Ontario on May 27, 2019 and an ad, a copy of which is attached as **Appendix "L"**, with that listing price was published in the *Globe and Mail* National Edition on May 30 and June 4, 2019. Signage marketing the sale continued to be placed on the front lawn of the Property.
31. CW prepared an updated Information Brochure (the "**Brochure**"), a copy of which is attached as **Appendix "M"**, specifying a listing price of \$8,800,000. The Brochure advised bidders to do their due diligence prior to submitting an offer and

that preference would be given to offers that substantially complied with the Receiver's Form APS and, in particular, did not add any conditions.

32. The Brochure was launched on May 30, 2019 and weekly emails blasts were sent by CW to approximately 2,500 contacts in the investor and broker communities. CW contacted all parties who signed confidentiality agreements ("CA's") and all parties who expressed an interest in the Property. CW also contacted potential purchasers from the CW's Seniors Housing group database who did not sign CA's. CW agreed to cooperate with other brokers on the listing.
33. The Receiver continued to provide the names of prospective purchasers to CW, which included parties who had contacted the Receiver or the mortgagees directly expressing an interest in the Property.
34. CW conducted site tours of the Property for interested parties who requested tours and provided feedback to the Receiver. To protect the integrity of the sale process, the tours of the Property were conducted separately in order that the identity of the potential bidders would be kept confidential.
35. CW provided the Receiver with regular reports summarizing which individuals had signed CA's and tracked prospective buyers' interest levels by monitoring data room access. In total approximately 21 CAs were signed in the second phase of the sale process, including 4 from the mortgagees/debtor representatives.

Offers Received in Second Phase of Sale Process

36. Several parties submitted offers to the Receiver in the second phase of the sale process. More detailed information on the offers received is contained in the Second Confidential Supplement.
37. On May 17, 2019 two corporations (collectively, the “**Offeror**”) jointly submitted their offer on behalf of a company to be incorporated.
38. The initial and subsequent offers submitted by the Offeror were substantially in the form of the Receiver’s Form APS, but with purchaser’s conditions added relating to certain matters.
39. The purchase prices specified in the Offeror’s offers were high enough to warrant the Receiver’s entering into negotiations with the Offeror.
40. After negotiations between the Receiver and the Offeror on the terms of the offer, including the purchase price and the conditions, on June 13, 2019 the Receiver and the Offeror entered into an agreement of purchase and sale (the “**Offeror APS**”) for a higher purchase price (the “**Offeror Price**”) than in the Offeror’s initial offer, subject to conditions in favour of the Offeror relating to certain matters, amended with a shorter the time period for one of the conditions. A deposit required under the Offeror APS was paid a few days later.
41. One of the conditions was satisfied on June 24, 2019.
42. On a number of occasions, the Offeror requested extensions of the time for satisfying the other conditions. After consulting with the mortgagees and CW, the Receiver granted the extensions, documented in a series of Offeror APS amending

agreements, since not doing so would have exposed the estate to the risk of the Offeror terminating the Offeror APS, and thus the loss of the favourable Offeror Price, and to the uncertainties of having to continue to market the Property, while professional fees and expenses and interest and costs on the indebtedness owed to the mortgagees would continue to mount.

43. On September 3, 2019, the Offeror waived one of the conditions in the Offeror APS.
44. On September 5, 2019, the Receiver granted the final extension to September 11, 2019 of the time for satisfying the remaining condition, in consideration of the Offeror agreeing to pay a significant increase in the deposit, which the Offeror did pay.
45. On September 11, 2019, the Receiver received further communications from the Offeror in connection with the outstanding condition, and based on these communications and its recent receipt of the offer that ultimately resulted in the agreement of purchase and sale it is now recommending be approved, the Receiver concluded that it was in the best interests of the estate that the Offeror APS be permitted to automatically terminate in accordance with its terms unless the Offeror waived the condition. As required under the Offeror APS, the Receiver subsequently returned the deposit monies to the Offeror.

Recommended APS

46. On July 17, 2019, when the Property was still subject to the Offeror APS, as amended, an Ontario corporation (the "**Recommended Purchaser**") submitted an offer to the Receiver in substantially the form of the Receiver's Form APS, and

without any additional purchaser's conditions such as being satisfied after due diligence. Under the terms of the Offeror APS, as amended, the Receiver was not then able to unconditionally accept an offer from another party.

47. On September 3, 2019, when the Property was still subject to the Offeror APS, as amended, the Recommended Purchaser submitted another offer to the Receiver also in substantially the form of the Receiver's Form APS and without any additional purchaser's conditions such as being satisfied after due diligence, for a higher purchase price than in its offer submitted on July 17, 2019. Under the terms of the Offeror APS, as amended, the Receiver was still not then able to unconditionally accept an offer from another party.
48. On September 11, 2019, when the Property was still subject to the Offeror APS, as amended, until 6:00 p.m. that day, the Recommended Purchaser submitted another offer to the Receiver also in substantially the form of the Receiver's Form APS and without any additional purchaser's conditions such as being satisfied after due diligence, for the same purchase price as in its offer submitted on September 3, 2019 but providing for a substantially higher deposit.
49. After consulting with the mortgagees and CW, on September 12, 2019 (the day after the Offeror APS had lapsed) the Receiver signed back the Recommended Purchaser's September 11th offer with a few relatively minor changes. The Recommended Purchaser's acceptance of the Receiver's sign-back (the "**Recommended APS**") was provided to the Receiver on September 13, 2019. The Recommended Purchaser has paid the required deposit to the Receiver.

50. The salient terms of the Recommended APS, except the amounts of the purchase price and deposit, are as follows:

(a) Recommended Purchaser: In view of Justice Penny's March 22, 2019 direction, discussed above, that the name of the Initial Purchaser be redacted in the Receiver's publicly filed Motion Record in connection with the Second Report, the name of the Recommended Purchaser will be disclosed only in the Second Confidential Supplement.

(b) Purchased Assets: The Property and books and records of Fingal, on an "as is, where is" basis and with limited representations and warranties by the Receiver.

(c) Material conditions in favour of the Purchaser: Only standard conditions; e.g., obtaining by the Receiver of Approval and Vesting Order on or before October 20, 2019.

(d) Material conditions in favour of the Receiver: Only standard conditions; e.g., obtaining by the Receiver of Approval and Vesting Order on or before October 20, 2019.

(e) Closing Date: The later of 10 days after the date of obtaining the Approval and Vesting Order or November 8, 2019.

(f) Deposit: More than 13% of the purchase price.

(g) Payment of purchase price: Balance due on closing.

51. More detailed information on the Recommended Offer is contained in the Second Supplement.

Receiver's Recommendation

52. After consulting with the mortgagees and CW, the Receiver concluded that based on:

- (a) the steps taken in the first and second phases of the sale process;
- (b) the length of the sale process to date;
- (c) the thorough exposure of the Property in the sale process;
- (d) the various amounts offered in the offers received;
- (e) the fact that two conditional agreements of purchase and sale terminated as a result of conditions not being satisfied; and
- (f) the amount of the "as is" CRBE Appraisal,

the Recommended Offer is the best option in the circumstances for the stakeholders of Fingal. The Receiver has therefore entered into the Recommended APS, which is subject to Court approval.

53. The Receiver believes that the marketing process undertaken was thorough and appropriate and that the Property received sufficient market exposure. The Receiver recommends the approval of the Recommended Offer by this Honourable Court.

54. The Receiver believes that details (and the documentation relating thereto) of the offers received in the second phase of the sale process, the Recommended APS, the Receiver's recommendation and CW's recommendation and a proposed distribution payment (discussed below) should be kept confidential until the closing of the Recommended APS.

55. The Receiver is of the view that public disclosure of this information would have a negative impact on future marketing of the Property should the Recommended APS not be approved or completed. Also relevant to maintaining the confidentiality of the foregoing is the fact that in connection with the motion for Court approval of the Initial Approved APS, Moya's counsel expressed the view that it was imperative that the Receiver obtain a sealing order with respect to, *inter alia*, the Initial Approved APS and any documentation arising therefrom, as well as the name of the Initial Purchaser and the CBRE Appraisal. The Receiver respectfully requests that the Second Confidential Supplement and the appendices thereto be sealed by this Honourable Court until after the Recommended APS closes.

V. INFORMATION ON ENCUMBRANCES

56. In connection with its motion for an approval and vesting order, attached are copies of the following, obtained by the Receiver's counsel, GSNH:

- (a) a certified *Personal Property Security Act* search as against Fingal, current as of October 2, 2019, attached as **Appendix "N"**; and
- (b) the abstracts of title to the two parcels comprising the Property, current as of October 7, 2019, attached as **Appendix "O"**.

VI. SECURED AND PRIORITY CREDITORS

57. A summary of the secured creditors follows:

- (a) Canada Revenue Agency's Trust Claim

CRA has notified the Receiver that they have a deemed trust claim for source deduction arrears of \$16,615.03.

(b) Construction Lien Claim

A construction lien was registered against the Property by Domenic's Plumbing Service Inc. on July 20, 2017 in the amount of \$163,240. GSNH provided a legal opinion that this claim is invalid and unenforceable.

(c) Receiver's Charge

As of the date of this report, the Receiver owes \$650,000 to Your Credit Union ("YCU"), a member of Moya' syndicate, pursuant to Receiver's Certificates No. 2, 3 and 4.

(d) Professional Fees and Disbursements of the Receiver and GSNH

These fees and disbursements are discussed below.

(e) Mortgagees – Legal Opinion and Balances

As reported in the Second Report, the Receiver has obtained a legal opinion from GSNH that, subject to the assumptions and qualifications contained therein, the security over the Property granted in favour of: First Source as a first charge; Moya as a second charge; and MOS as a third charge, constitute valid and enforceable charges to the extent of monies advanced or liabilities incurred.

(f) Property Taxes

The Receiver paid the tax arrears owing to the Township of Southwold in the amount of \$216,260.91 in order to avoid ongoing interest and penalties. The Receiver has also paid the first and second instalments of the interim

2019 property tax bill, totaling \$57,194. Since the Receiver does not have sufficient funds to pay the final 2019 instalments of \$29,770.16 due on August 31, 2019 and October 31, 2019, the Receiver proposes that these amounts be adjusted in the closing statement of adjustments, should the Recommended APS be approved by the Court.

VII. ADDITIONAL RECEIVER'S ACTIVITIES TO DATE

58. The Receiver has undertaken the additional activities set out below since the date of its Third Report dated June 5, 2019.

Funding of the Receivership - update

59. As detailed in paragraphs 29-32 of the Third Report, the Receiver had borrowed a total of \$500,000 with Court authorization from YCU, to fund protective disbursements, leaving no available authorized borrowings as at the date of the Third Report.
60. The June 13 Order increased the Receiver's borrowing limited by \$150,000, from \$500,000 to \$650,000. This amount was based on the Receiver's Estimated Cash Statement as at August 31, 2019 appended to the Third Report, with the majority of the increase related to the new insurance policy premiums, the payment of property taxes (to avoid ongoing interest and other charges) and a general reserve.
61. As of the date of the Fourth Report, the Receiver has borrowed a total of \$650,000 leaving no available authorized borrowings.

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62. Based on the cash on hand at September 23, 2019 and estimated costs to November 7, 2019, the Receiver requires additional funding (beyond the current authorized amount of \$650,000) of \$20,000. Further details are provided in paragraph 82 below.

Insurance

63. As noted in the Third Report, the Receiver proceeded to obtain an extension of its insurance coverage (building and liability), from HUB Insurance (“**HUB**”), for three months at an estimated cost of \$64,800 (\$60,000 plus PST). This coverage expired September 28, 2019. The amount of the insurance coverage relates to rebuild values and the insurers insist on insurance to value.
64. The Receiver required an additional extension of the insurance coverage for a period until at least the earliest anticipated closing date of the Recommended APS, November 8, 2019. HUB was prepared to grant an extension only for a full two-month period until November 28, 2019 at a total cost of \$41,407.20 (inclusive of PST), due in two equal instalments on October 13, 2019 and November 7, 2019.
65. The Receiver intends, if possible, to obtain an adjustment in the closing statement of adjustments for any unused premiums, should the Recommended APS be approved by the Court or, if the amount cannot be adjusted for, to request a refund of any unused premiums.

Property Taxes

66. The status of property taxes is discussed in paragraph 57(f) above.

Repairs and Maintenance

67. As discussed in the Second Report, after problems with the geothermal heating and cooling system (“HVAC”) for the Property were discovered on an inspection in October, 2018, the Receiver contacted three HVAC firms specializing in geothermal systems for quotes on assessing the state of the system and any recommended repairs. The Receiver reviewed the quotes from these firms with the former construction manager, and selected Smith and Long based on their expertise. Based on Smith and Long’s report, maintenance and system augmentation work were performed and subsequent testing indicated that the system was functioning at acceptable levels.
68. The Receiver arranged for Smith and Long to reinspect the HVAC system in July, 2019, after which Smith and Long performed the required maintenance.
69. The Receiver has also arranged for the cutting of the grass on the front lawn of the Property as is required to comply with Township of Southwold by-laws.

Consultation

70. The Receiver continued to consult with the mortgagees by way of email and telephone calls on significant matters in the estate, in particular on the sale process, offers received and amendments to agreements of purchase and sale.
71. The Receiver continued to provide the mortgagees with regular email updates on the status of the marketing based on reports and market feedback received from CW. The Receiver responded to ongoing inquiries from the mortgagees in a timely manner.

Site Visits

72. Both the Offeror and the Recommended Purchaser requested access to the Property for their consultants during the currency of their respective agreements of purchase and sale. The Receiver coordinated these site visits and arranged for the security firm engaged by the Receiver to accompany the consultants on the visits.

Related Party Receivables

73. As noted in paragraph 38 of the Third Report and paragraph 15 above, in paragraph 2 (x) of the application of MOS, MOS alleged that “It appears that the Debtor has used investor funds for other purposes than completion of the construction of the Development”. Ferrari responded that “the Debtor had made loans to related companies to allow them to purchase and maintain other properties”.
74. As detailed in paragraph 41 of the Second Report, the Receiver emailed Olynyk of WAM on November 27, 2018 requesting details to confirm balances owing from related companies as at the date of the receivership and setting out a summary of discrepancies. Despite numerous follow-ups to Olynyk and Ferrari, as of the date of the Second Report no explanation had been provided to the Receiver by either Olynyk or Ferrari, leading to the Receiver seeking the Court’s assistance. The General Order directed Olynyk and Ferrari or any other person affiliated with WAM to respond in writing to the Receiver’s request for information and documentation, and WAM and Fingal, its directors, officers and shareholders, to provide information as to Fingal’s T4 and T2 tax filings, within 30 days of March 22, 2019.

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75. Based on correspondence with Olynyk prior to the date of the Third Report, Fingal's records and a conference call on May 29, 2019 with Olynyk and Howard Manis (counsel to Fingal and WAM), the Receiver confirmed that Fingal advanced funds to cover overdrafts and fund operations of certain related companies. Further, Olynyk has confirmed that these balances represent outstanding indebtedness owed to Fingal by related companies as at the date of the receivership. Details of amounts owing by the following companies (collectively, the "**Related Companies**") are as follows:
- (a) WAM - \$4,517,249.73;
 - (b) Wilsondale Ventures Inc. - \$39,000;
 - (c) Ferrus Holdings Inc. - \$10,940.38;
 - (d) Sarwin Holdings Inc. - \$2,836.30; and
 - (e) Drawbridge - \$3,750.00 (correct legal name not yet determined).
76. On the May 29th conference call, Olynyk advised the Receiver that the Related Companies have no assets and that they are inactive since they have either gone into receivership or sold under power of sale prior to the date of the Debtor's receivership. The Receiver has not attempted to verify this or conducted any other investigations regarding the financial positions of the Related Companies. The Receiver has limited funds to do so and does not have sufficient funds to commence proceedings against any of the Related Companies.
77. As indicated in the Third Report, the Receiver was then in the process of sending demand letters to the Related Companies for the amounts in question, which were sent by courier by GSNH on behalf of the Receiver on June 11, 2019. By way of

example, attached as **Appendix “P”** is a copy of the demand letter to WAM. The demand letters sent to the other Related Companies were identical except as to amounts claimed.

78. The Receiver received no responses to any of the demand letters.
79. On June 27, 2019, GSNH provided a report by email to counsel for the mortgagees on the demand letters sent to the Related Companies, and requested that counsel canvass their clients on whether they had any interest in providing the necessary funding for any collection steps or had any other input that they wished to provide to the Receiver. Neither the Receiver nor GSNH received any response to the GSNH email and therefore the Receiver does not intend to take any further steps to attempt to collect the receivables from the Related Companies.
80. The Receiver has now received the 2016 T2 return as previously requested by the Receiver.

VIII. STATEMENT OF RECEIPTS AND DISBURSEMENTS

81. Attached as **Appendix “Q”** is a Statement of Receipts and Disbursements for the estate for the period from September 13, 2019 to September 23, 2019 and a Statement of Estimated Cash Requirements as at November 7, 2019.
82. As indicated above, based on cash on hand as at September 23, 2019 and cash requirements to November 7, 2019, the Receiver is requesting that the Court authorize additional borrowings of \$20,000, thus increasing the Receiver's authorized borrowings limit from \$650,000 to \$670,000. The additional \$20,000 is required to pay all estimated operating expenses and insurance premiums.

IX. PROFESSIONAL FEES

83. Pursuant to paragraph 18 of the Appointment Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Appointment Order. Pursuant to paragraph 19 of the Appointment Order, the Receiver and its counsel shall pass their accounts from time to time, and for this purpose such accounts have been referred to a judge of the Commercial List of the Court.
84. In the June 13 Order, the following professional fees were approved by the Court:
- (a) the Receiver - for the period from April 9, 2018 to May 31, 2019: fees of \$232,413.50, disbursements of \$418.65 and HST of \$30,268.18 for a total of \$263,100.33; and
 - (b) GSNH - for the period from September 13, 2018 to May 31, 2019: fees of \$200,906.00, disbursements of \$2,612.94 and HST of \$26,390.43, for a total of \$229,909.40.
85. None of these fees, disbursements and HST have as yet been paid since there have thus far been insufficient receipts to do so.
86. The total fees and disbursements for the Receiver for the period from June 1, 2019 to September 30, 2019 were \$ \$68,102.00 HST of \$8,853.26 for a total of \$76,955.26. The time spent by the Receiver is more particularly described in the Affidavit of Bryan A. Tannenbaum sworn October 10, 2019, which is attached hereto and marked as **Appendix "R"**. This affidavit contains a summary of the invoices that set out the services provided during this time period.

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87. The total fees of GSNH, as counsel to the Receiver, for the period from June 1, 2019 to September 30, 2019 were fees of \$85,135.00 plus disbursements of \$1,022.88 and HST of \$11,152.69, for a total of \$97,310.57. The time spent is more particularly described in the affidavit of R. Brendan Bissell sworn October 10, 2019, which is attached hereto as **Appendix "S"**. This affidavit contains a summary of the invoices that set out the services provided during this time period.
88. The Receiver requests that the professional fees detailed in paragraphs 86 and 87 be approved by the Court. As no professional fees have been paid to date, the fees as approved, plus the amounts approved in the June 13 Order, will be paid at a future date from the closing proceeds, should the Recommended APS be approved by the Court.

X. DISTRIBUTION

89. As indicated above, the March 22, 2019 General Order granted by Justice Penny authorized the Receiver to make interim distribution payments to the first mortgagee, First Source, out of available net proceeds, provided that after such distributions there will remain in the Receiver's possession a reserve for existing and future costs and expenses of the Receiver. The General Order permits such distribution payments to be made upon:
- (a) First Source entering into a reimbursement agreement with the Receiver on terms satisfactory to the Receiver; and
 - (a) both First Source and Moya, or their respective counsel on their behalf, consenting in writing to the amounts of the distribution payments to First

Source, or the Court issuing an order made on notice to the Service List authorizing the amounts to be paid to First Source.

90. As indicated above, First Source's total secured claim as at November 8, 2019, the earliest closing date under the Recommended APS, is \$6,380,679.70.
91. On October 2, 2019, GSNH provided to counsel for First Source and Moya the Receiver's draft Statement of Estimated Net Realizations for Mortgagees as at November 8, 2019. The Receiver has prepared an updated Statement of Estimated Net Realizations for Mortgagees as at November 8, 2019, a copy of which is attached to the Second Confidential Supplement. The Statement and other details of the estimated net realizations and amounts available for distribution will be in the Second Confidential Supplement, not the Fourth Report, since this information includes the purchase price under the Recommended APS, with respect to which the Receiver is seeking a sealing order because of its commercial sensitivity.
92. As of the date of this Fourth Report, the Receiver has not been advised that both First Source and Moya have consented in writing to the amounts of the distribution payment or payments to First Source, net of a reserve to remain in the Receiver's possession for existing and future costs and expenses of the Receiver. Therefore, pursuant to the General Order the Receiver seeks authority to make a distribution payment or payments to First Source in the amount authorized by the Court out of available net proceeds held by the Receiver, net of a reserve for additional existing and estimated future costs and expenses of the Receiver, upon (a) First Source entering into a reimbursement agreement with the Receiver on terms satisfactory to the Receiver, and (b) the expiry of the applicable appeal period from such

authorization order without a notice of appeal or notice of motion for leave to appeal being delivered. The Receiver's view on the appropriate amount of a distribution payment in the circumstances is provided in the Second Confidential Supplement.

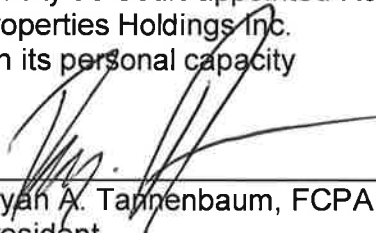
XI. CONCLUSION

93. The Receiver respectfully requests that the Court grant the relief described in paragraph 8(e) above.

All of which is respectfully submitted to this Court as of this 10th day of October, 2019.

RSM CANADA LIMITED

In its capacity as Court-appointed Receiver of
Fingal Properties Holdings Inc.
and not in its personal capacity

Per: 
Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President