

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

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended
and Section 101 of the *Courts of Justice Act*, as amended

**MOTION RECORD
Amended and Restated Approval and Vesting Order
and Other Relief
(returnable November 6, 2019)**

November 6, 2019

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto, Ontario M5G 1V2
Fax: 416-597-6477

Michael B. Rotsztain (LSUC #: 17086M)
Tel: 416-597-7870
Email: rotsztain@gsnh.com

R. Brendan Bissell (LSUC#: 40354V)
Tel: 416.597.6489
Fax: 416.597.3370
Email: bissell@gsnh.com

Lawyers for the Receiver, RSM Canada Limited

TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN**
155 Wellington St. W., 35th Floor
Toronto, ON M5V 3H1

Tel: 416.646.4330
Email: jeff.larry@paliareroland.com

Lawyers for First Source Mortgage Corporation

AND TO: **GARFINKLE BIDERMAN LLP**
Barristers & Solicitors
1 Adelaide Street East, Suite 801
Toronto, ON M5C 2V9

Wendy Greenspoon
Tel: 416.869.7615
Email: wgreenspoon@garfinkle.com

Lawyers for Moya Financial Credit Union Limited, Alterna Savings and Credit Union Ltd. & Your Credit Union Limited

INDEX

Tab	Document	Page No.
1.	Notice of Motion returnable November 6, 2019	001
2.	Third Confidential Supplement to the Fourth Report dated November 5, 2019	007
A	Appendix A – Original Approval and Vesting Order dated October 17, 2019	013
B	Appendix B – General Order dated October 17, 2019	028
3.	Draft Amended and Restated Approval and Vesting Order	033
4.	Draft Order (Other Relief)	047

TAB 1

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

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended and Section 101 of the *Courts of Justice Act*, as amended

**NOTICE OF MOTION
Amended and Restated Approval and Vesting Order and Other Relief
(returnable November 6, 2019)**

RSM Canada Limited, in its capacity as receiver (the “**Receiver**”) of all the assets, undertakings and properties of Fingal Properties Holdings Inc. (the “**Debtor**” or “**Fingal**”), will make a motion to a Judge presiding over the Commercial List at 330 University Ave., Toronto, Ontario, on **Wednesday, November 6, 2019 at 10:00 a.m.** or as soon as after that time as the motion can be heard.

THE PROPOSED METHOD OF HEARING: The motion is to be heard:

- in writing under subrule 37.12.1(1) because it is made without notice;
- in writing as an opposed motion under subrule 37.12.1(4); or
- orally.

THE MOTION IS FOR AN ORDER:

- (a) abridging the time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;
- (b) substantially in the form attached at Tab 3 of the Receiver's Motion Record:
 - (i) amending and restating the Approval and Vesting Order issued by this Court on October 17, 2019 approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Approved APS**") between the Receiver and Lape Holdings Corp. (the "**Purchaser**") dated as of September 3, 2019 and entered into on September 13, 2019 (the "**Original Approval and Vesting Order**") ; and
 - (ii) vesting in an Affiliate (as defined in the Approved APS) of the Purchaser, Diamond Residential Developments Corp. ("**Diamond**"), pursuant to a direction provided by the Purchaser to the Receiver (the "**Direction**"), the Debtor's right, title and interest in and to the assets described in the Approved APS (the "**Purchased Assets**");
- (c) substantially in the form attached at Tab 4 of the Receiver's Motion Record,
 - (i) sealing this Notice of Motion and Motion Record, the Amended and Restated Approval and Vesting Order and the Third Confidential Supplement to the Fourth Report dated November 6, 2019 and the appendices thereto (the "**Third Confidential Supplement**"); and
- (d) such further and other relief as counsel may request and this Honourable Court deem just;

THE GROUNDS FOR THE MOTION ARE:

- (a) The Original Approval and Vesting Order contains a typographical error in the legal description of the Lands included in the Purchased Assets and the Purchaser and Diamond have requested that such typographical error be amended;

- (b) Although the Purchaser provided the Direction to the Receiver after the permitted time set out in the Approved APS, the Receiver is prepared to include in the Amended and Restated Approval and Vesting Order provisions providing for the vesting the Purchased Assets in Diamond, as provided in the Direction;
- (c) The Approved APS provides that the Closing Date of the Transaction is November 8, 2019 and it is therefore urgent that the Amended and Restated Approval and Vesting Order be issued as soon as possible;
- (d) No parties on the Service List herein other than First Source Mortgage Corporation and Moya Financial Credit Union Limited appeared at the hearing on October 17, 2019 of the motion for the Original Approval and Vesting Order and in view of the minor nature of the order amendments sought and the sealing ordered by the Court in its Order issued on October 17, 2019, no useful purpose would be served in serving the Receiver's motion material on any other parties on the Service List and therefore such service is unnecessary;
- (e) The reasons for the sealing ordered by the Court in its Order issued on October 17, 2019 (principally the commercial sensitivity of certain information in the Approved APS) are equally applicable to the Receiver's motion material;
- (f) Rules 37.07(2), 37.14 and 59.06 of the Ontario *Rules of Civil Procedure*; and
- (g) such further and other grounds as counsel may advise and this Honourable Court permit.

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

- (a) the Fourth Report of the Receiver dated October 10, 2019 and the appendices thereto;
- (b) the First Confidential Supplement to the Second Report of the Receiver dated March 14, 2019 and the appendices thereto;

- (c) the Second Confidential Supplement to the Fourth Report dated October 10, 2019 and the appendices thereto;
- (d) the Third Confidential Supplement; and
- (e) such further and other evidence as counsel may advise and this Honourable Court may permit.

November 6, 2019

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto, Ontario M5G 1V2
Fax: 416-597-6477

Michael B. Rotsztain (LSO #: 17086M)
Tel: 416-597-7870
Email: rotsztain@gsnh.com

R. Brendan Bissell (LSO#: 40354V)
Tel: 416.597.6489
Fax: 416.597.3370
Email: bissell@gsnh.com

Lawyers for the Receiver, RSM Canada Limited

TO: **PALIARE ROLAND ROSENBERG ROTHSTEIN**
155 Wellington St. W., 35th Floor
Toronto, ON M5V 3H1

Jeff Larry
Tel: 416.646.4330
Email: jeff.larry@paliareroland.com

Lawyers for First Source Mortgage Corporation

AND TO: **GARFINKLE BIDERMAN LLP**
Barristers & Solicitors
1 Adelaide Street East, Suite 801
Toronto, ON M5C 2V9

Wendy Greenspoon
Tel: 416.869.7615
Email: wgreenspoon@garfinkle.com

Lawyers for Moya Financial Credit Union Limited, Alterna Savings and Credit
Union Ltd. & Your Credit Union Limited

M.O.S. MORTGAGEONE SOLUTIONS LTD.

and

FINGAL PROPERTIES HOLDINGS INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO**

**NOTICE OF MOTION
Amended and Restated
Approval and Vesting Order and Other Relief
(returnable November 6, 2019)**

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto, Ontario M5G 1V2
Fax: 416-597-6477

Michael B. Rotsztain (LSUC #: 17086M)
Tel: 416-597-7870
Email: rotsztain@gsnh.com

R. Brendan Bissell (LSUC#: 40354V)
Tel: 416.597.6489
Fax: 416.597.3370
Email: bissell@gsnh.com

Lawyers for the Receiver, RSM Canada Limited

TAB 2

Court File No. CV-18-598008-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

**CONFIDENTIAL SUPPLEMENT TO FOURTH REPORT
OF THE RECEIVER**

November 6, 2019

Confidential Appendices

Original Approval and Vesting Order dated October 17, 2019 A
General Order dated October 17, 2019..... B

1. This is an additional Confidential Supplement (the “**Third Confidential Supplement**”) to the Receiver’s Fourth Report. Capitalized terms used but not defined herein have the meanings ascribed thereto in the Fourth Report.
2. For the reasons set out herein, the Receiver is seeking:
 - (a) an Amended and Restated Approval and Vesting Order respecting the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Approved APS**”) between the Receiver and Lape Holdings Corp. (the “**Purchaser**”) dated as of September 3, 2019 and entered into on September 13, 2019, which this Court approved in the Approval and Vesting Order issued by the Honourable Mr. Justice Penny on October 17, 2019 (the “**Original Approval and Vesting Order**”), a copy of which is attached as **Appendix “A”**; and
 - (b) a sealing order in respect of Receiver’s Notice of Motion and Motion Record, the Amended and Restated Approval and Vesting Order and this Third Confidential Supplement and its appendices consistent with the sealing provisions in the other order issued by the Honourable Mr. Justice Penny on October 17, 2019 (the “**General Order**”), a copy of which is attached as **Appendix “B”**.
3. Under the terms of the Approved APS, the Closing Date of the Transaction is November 8, 2019.
4. On November 4, 2019, the Purchaser’s counsel, the law firm of Anthony Maniaci, brought to the attention of the Receiver’s counsel, Goldman Sloan Nash & Haber

LLP, a typographical error in the legal description of the Property attached as Schedule "B" to the Original Approval and Vesting Order. This error consists of one wrong digit in the second line of the property description of PIN 35156-0458 (LT): "11R-8195" should have been "11R-8995". The Purchaser and its Affiliate referred to below have requested that such typographical error be amended.

5. The Purchaser has provided a direction to the Receiver on terms satisfactory to the Receiver (the "**Direction**") after the permitted time set out in the Approved APS requesting that Fingal's right, title and interest in and to the Purchased Assets be vested in an Affiliate (as defined in the Approved APS) of the Purchaser, Diamond Residential Developments Corp. ("**Diamond**"). Although the Direction was provided after the prescribed time, the Receiver is prepared to include in the Amended and Restated Approval and Vesting Order terms providing for the vesting of the Purchased Assets in Diamond, pursuant to the terms of the Direction. One of these terms is that, as provided in the Approved APS, the Purchaser shall continue, together with Diamond, to be bound by all the terms and conditions of the Approved APS.
6. As set out in the Fourth Report, the Receiver is of the view that public disclosure of certain information relating to the Approved APS, including the name of the Purchaser, would have a negative impact on future marketing of the Property should the Approved APS not be completed. As a result, the General Order sealed the Original Approval and Vesting Order, the Second Confidential Supplement and the Appendices thereto pending the closing of the Transaction. The Receiver

submits that the same factors apply to the Receiver's motion material and the Amended and Restated Approval and Vesting Order.

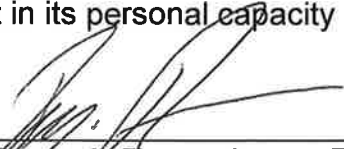
7. Regarding service of the Receiver's motion material, the Receiver has served such material only on counsel for First Source Mortgage Corporation and Moya Financial Credit Union Limited, the first and second mortgagees. No parties on the Service List herein other these two mortgagees, by their counsel, appeared at the hearing on October 17, 2019 of the motion for the Original Approval and Vesting Order and General Order. In view of the minor nature of the order amendments sought and the sealing ordered by the Court in the General Order, the Receiver submits that no useful purpose would be served in serving the Receiver's motion material on any other parties on the Service List and therefore that such service is unnecessary. Since the Closing Date of the Transaction is November 8, 2019 it is urgent that the Amended and Restated Approval and Vesting Order be issued as soon as possible and therefore the Receiver is also seeking an abridgment of service.
8. For the reasons set out herein, the Receiver recommends that the Court issue the orders referred to in paragraph 2 above.

All of which is respectfully submitted to this Court as of this 6th day of November, 2019.

[Signature page follows]

RSM CANADA LIMITED

In its capacity as Court-appointed Receiver
of the assets, undertakings and properties of
Fingal Properties Holdings Inc.
and not in its personal capacity



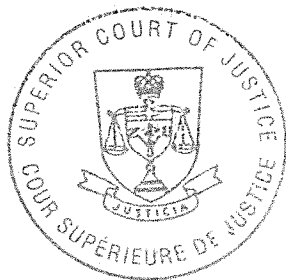
Per: Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT
President

APPENDIX “A”

Court File No.: CV-18-598008-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	The Honourable)	THURSDAY, THE 17 TH
	Mr. Justice)	
JUSTICE	Penny)	DAY OF OCTOBER, 2019



M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended
and Section 101 of the *Courts of Justice Act*, as amended

APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited in its capacity as receiver (the “**Receiver**”) of all of the assets, undertakings and properties of Fingal Properties Holdings Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Lape Holdings Corp. (the “**Purchaser**”) dated as of September 3, 2019 and entered into on September 13, 2019 and appended to the Confidential Supplement (the “**Second Confidential Supplement**”) to the Fourth Report of the Receiver dated October 10, 2019 (the “**Fourth Report**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report and the Second Confidential Supplement and on hearing the submissions of counsel for the Receiver, any other party as indicated on the counsel slip, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Katie Parent sworn October 10, 2019, filed:

1. **THIS COURT ORDERS** that to the extent necessary the time for service of the Motion Record in respect of this motion and the Fourth Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), the Purchased Assets described in the Sale Agreement, including (i) all of the Debtor's right, title and interest in the Lands described in **Schedule B** hereto (the "**Real Property**"), and (ii) all of the right, title and interest of the Debtor in the other Purchased Assets described in **Schedule C** hereto, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Dunphy dated September 12, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule D** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements, restrictive covenants, defects, regulations, plans, qualifications, interests and instruments listed on **Schedule E**) and, for greater

certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Elgin (No. 11) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* the Land Registrar is hereby directed to enter the Purchaser as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule D hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

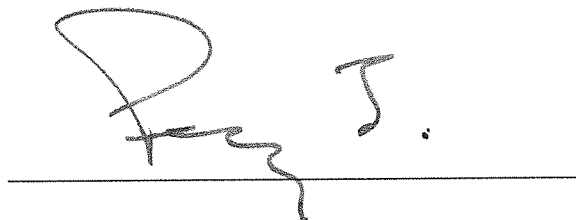
7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable

transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **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.



REGISTERED AT / INSCRIT À TORONTO
BOOK / BOOK NO:
LE / DANS LE REGISTRE NO:
OCT 18 2019

PER / PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-18-598008-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended
and Section 101 of the *Courts of Justice Act*, as amended

RECITALS

A. Pursuant to an Order of the Honourable Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated September 12, 2018, RSM Canada Limited was appointed as the receiver (the "**Receiver**") of all of the assets, undertakings and properties of Fingal Properties Holdings Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof.

B. Pursuant to an Order of the Court dated October ■, 2019, the Court approved the agreement of purchase and sale dated as of September 3, 2019 and entered into on September 13, 2019 (the "**Sale Agreement**") between the Receiver and Lape Holdings Corp. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

RSM CANADA LIMITED,
solely in its capacity as Receiver of all of the
assets, undertakings and properties of Fingal
Properties Holdings Inc. acquired for, or used in
relation to a business carried on by Fingal,
including all proceeds thereof, and not in its
personal capacity

Name: Bryan A. Tannenbaum
Title: President

I have authority to bind the Receiver.

SCHEDULE "B" – REAL PROPERTY**Legal Description**

PIN 35156-0440 (LT)

Property Description: PT. LT 39 CON NTR SOUTHWOLD PT 2 11R8197; T/W E454421;
SOUTHWOLD

LRO #11

PIN 35156-0458 (LT)

Property Description: PART OF LOT 39 CON NTR SOUTHWOLD DESIGNATED AS PART
1, 11R-8195; SOUTHWOLD

LRO #11

Schedule C – Other Purchased Assets

Books and Records of the Debtor, as defined in the Sale Agreement

Schedule D – Claims to be deleted and expunged from title to Real Property

1. Instrument No. CT104510 being a Charge registered registered on June 20, 2014 from Fingal Properties Holdings Inc. to Krek Slovenian Credit Union Ltd.
2. Instrument No. CT104511 being a Notice of Assignment of Rents General registered on June 20, 2014 from Fingal Properties Holdings Inc. to Krek Slovenian Credit Union Ltd.
3. Instrument No. CT117230 being a Charge registered on August 5, 2015 from Fingal Properties Holdings Inc. to MOS MortgageOne Solutions Inc.
4. Instrument No. CT117231 being a Postponement registered on August 5, 2015 from Salvatore Guerra to MOS MortgageOne Solutions Ltd.
5. Instrument No. CT118122 being a Notice registered on September 1, 2015 from Fingal Properties Holdings Inc. to MOS MortgageOne Solutions Inc.
6. Instrument No. CT118764 being a Postponement registered on September 22, 2015 from Krek Slovenian Credit Union Ltd. to Mark Lorne Cosman
7. Instrument No. CT118765 being a Postponement registered on September 22, 2015 from MOS MortgageOne Solutions Ltd. to Mark Lorne Cosman
8. Instrument No. CT118766 being a Postponement registered on September 22, 2015 from Salvatore Guerra to Mark Lorne Cosman
9. Instrument No. CT119717 being a Transfer of Charge registered on October 20, 2015 from MOS MortgageOne Solutions Ltd. to MOS MortgageOne Solutions Ltd. and Community Trust Company
10. Instrument No. CT121755 being a Transfer of Charge registered on December 15, 2015 from to MOS MortgageOne Solutions Ltd. and Community Trust Company to MOS MortgageOne Solutions Ltd. and Community Trust Company
11. Instrument No. CT122930 being an Application of Change of Name registered on January 26, 2016 from Krek Slovenian Credit Union Ltd. to Moya Financial Credit Union Limited
12. Instrument No. CT122970 being a Charge registered on January 28, 2016 from Fingal Properties Holdings Inc. to First Choice Mortgage Corporation
13. Instrument No. CT122971 being a Notice of Assignment of Rents registered on January 28, 2016 from Fingal Properties Holdings Inc. to First Source Mortgage Corporation

14. Instrument No. CT122972 being a Postponement of Instrument Nos. CT104510 to CT122970 registered on January 28, 2016 from Moya Financial Credit Union Limited to First Source Mortgage Corporation
15. Instrument No. CT122973 being a Postponement of Instrument Nos. CT117230 to CT122970 registered on January 28, 2016 from MOS MortgageOne Solutions Ltd. and Community Trust Company to First Source Management Corporation
16. Instrument No. CT123516 being a Transfer of Charge registered on February 12, 2016 from MOS MortgageOne Solutions Ltd. and Community Trust Company to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
17. Instrument No. CT124693 being a Transfer of Charge registered on March 29, 2016 from MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
18. Instrument No. CT125669 being a Transfer of Charge registered on April 27, 2016 from MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
19. Instrument No. CT126910 being a Notice registered on June 1, 2016 from Fingal Properties Holdings Inc. to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
20. Instrument No. CT127900 being a Transfer of Charge registered on June 28, 2016 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company
21. Instrument No. CT128100 being a Transfer of Charge registered on June 30, 2016 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company
22. Instrument No. CT128995 being a Transfer of Charge registered on July 27, 2016 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company
23. Instrument No. CT130913 being a Transfer of Charge registered on September 12, 2016 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community

Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company

24. Instrument No. CT135509 being a Notice registered on January 13, 2017 from Fingal Properties Holdings Inc. to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
25. Instrument No. CT135604 being a Transfer of Charge registered on January 17, 2017 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company
26. Instrument No. CT142603 being a Construction Lien registered on July 20, 2017 from Domenic's Plumbing Service Inc.
27. Instrument No. CT156378 being a Transfer of Charge registered on July 30, 2018 from MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
28. Instrument No. CT158562 being Application to Register Court Order registered on September 24, 2018 from Ontario Superior Court of Justice (Commercial List) to RSM Canada Limited

**Schedule E – Permitted Encumbrance
related to the Real Property**

(unaffected by the Vesting Order)

General Encumbrances:

1. Any and all reservations, limitations, provisos and conditions expressed in the original the patent from the Crown, as amended by statute, and unpatented mining claims and Native land claims.
2. Any and all applicable laws, including, without limitation, official plans, municipal by-laws, including building and zoning by-laws and decisions of the Committee of Adjustments or any other competent authority permitting variances therefrom, applicable to the Lands.
3. Any and all permits, licenses, easements, rights-of-way, rights in the nature of easements and agreements with respect thereto including, without limitation, registered and unregistered licenses, easements, rights-of-way, rights in the nature of easements for access, public ways, sewers, drains, utilities, gas, steam and water mains or electric light and power, or telephone and telegraphic conduits, poles, wires and cables.
4. Any and all agreements with municipalities including, without limitation, subdivision agreements, development agreements, site plan agreements, servicing agreements and encroachment agreements.
5. Airport zoning regulations.
6. Any and all rail siding agreements, facility agreements, cost sharing agreements, servicing agreements, reciprocal operating agreements and other similar agreements.
7. Any rights of expropriation, access or use or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.
8. Encumbrances for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Lands that have accrued but are not yet due and owing.
9. Restrictive covenants, exclusivity provisions, and other similar land use control agreements.

10. Any statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever which are not registered on the title to the Lands that are claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario or by any other governmental authority under or pursuant to any applicable laws.
11. Any title defects, irregularities or discrepancies in title or possession relating to the Lands that do not have a material adverse effect on the use or marketability of the Lands.
12. Minor encroachments of buildings or structures situate on the Lands onto adjoining lands and minor encroachments of buildings and structures situate on adjoining lands onto the Lands.
13. Security given to a public utility or any municipality or Governmental Authority when required by the operations of the Lands in the ordinary course of business, including without limitation, the right of the municipality to acquire portions of the Lands for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be providing to the Lands.
14. Undetermined or inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands.
15. Any and all unregistered existing offers to lease or sublease, agreements to lease or sublease, leases, subleases or similar agreements to lease, use, occupy or share in possession of the Lands or any part thereof or premises thereon.
16. Any reference plans or plans registered pursuant to the *Boundaries Act* (Ontario).
17. Any and all open and outstanding building permits.
18. Any and all deficiencies, violations, claims, interests, notices, orders or matters of non-compliance or violation in respect of the Lands that are or disclosed in responses received from governmental authorities or other parties having jurisdiction to off-title inquiry investigations or that would be disclosed had such off-title inquiry investigations been conducted.
19. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario) and the rights of any person who would, but for the *Land Titles Act* (Ontario), be entitled to the Lands or any part of it through length of adverse possession, prescription, mis-description or boundaries settled by convention and a lease to which Section 70(2) of the *Registry Act* (Ontario) applies.

Specific Encumbrance

20. Instrument No. CT45773 being a notice registered July 22, 2009 between the Corporation of the Township of Southwold and Inpartnr Inc.

M.O.S. MORTGAGEONE SOLUTIONS LTD.

and

FINGAL PROPERTIES HOLDINGS INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced TORONTO**

APPROVAL AND VESTING ORDER

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Michael B. Rotsztain (LSUC #: 17086M)
Tel: 416-597-7870
Email: rotsztain@gsnh.com

R. Brendan Bissell (LSUC No. 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Lawyers for the Receiver, RSM Canada Limited

APPENDIX ‘B’

Court File No.: CV-18-598008-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE The Honourable)
 Mr. Justice)
 JUSTICE Penny)

THURSDAY, THE 17TH
 DAY OF OCTOBER, 2019

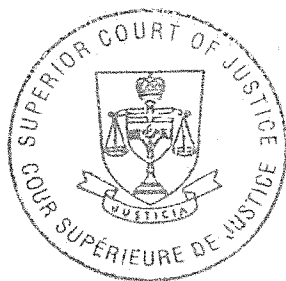
M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondent



APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended
 and Section 101 of the *Courts of Justice Act*, as amended

ORDER

Approval of Increased Borrowings, ~~Distribution~~ and the Activities and Fees of the Receiver

THIS MOTION, made by RSM Canada Limited in its capacity as receiver (the “**Receiver**”) of all of the assets, undertakings and properties of Fingal Properties Holdings Inc. (the “**Debtor**” or “**Fingal**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report of the Receiver dated October 10, 2019 (the “**Fourth Report**”) and the Second Confidential Supplement thereto dated October 10, 2019 (the “**Second Confidential Supplement**”), the affidavit of Bryan A. Tannenbaum, sworn October 10, 2019 (the “**Tannenbaum Affidavit**”), the affidavit of R. Brendan Bissell sworn October 10, 2019 (the “**Bissell Affidavit**”) and on hearing the submissions of counsel for the Receiver, and those other parties appearing on the counsel slip, no one appearing for any other person on the service list,

although properly served as appears from the affidavit of Katie Parent sworn October 10, 2019, filed:

NOTICE AND SERVICE

1. **THIS COURT ORDERS** that to the extent necessary the time for service of the Motion Record in respect of this motion and the Fourth Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

INCREASE TO THE RECEIVER'S BORROWING CHARGE

2. **THIS COURT ORDERS** that the Order of the Honourable Justice Dunphy dated September 12, 2018 appointing the receiver in this matter (as amended by the Order of the Honourable Justice Wilton-Siegel dated October 31, 2018, further amended by Order of the Honourable Justice Penny dated March 22, 2019 and further amended by the Order of the Honourable Justice Conway dated June 13, 2019) be and hereby further amended by striking out the reference to "\$650,000" in paragraph 21 of that Order and substituting therefor "\$670,000".

APPROVAL OF RECEIVER'S REPORT, ACTIVITIES AND FEES

3. **THIS COURT ORDERS** that the Fourth Report and the Second Confidential Supplement and the activities described therein be and 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, and provided further that the foregoing approvals are without prejudice to the Court's disposition of the Receiver's motion for approval of the professional fees and disbursements referred to in paragraph 4 hereof and to the rights of interested parties to oppose such approval.

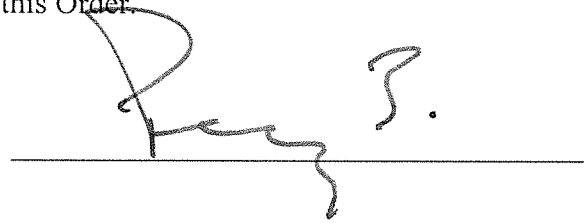
4. **THIS COURT ORDERS** that the Receiver's motion for approval of the Receiver's and its counsel's professional fees and disbursements (inclusive of HST) for the period June 1, 2019 to September 30, 2019 is hereby adjourned to the return date of the Receiver's motion for approval of the Receiver's and its counsel's professional fees and disbursements (inclusive of HST) for the period October 1, 2019 to the completion of the administration of the receivership.

SEALING

5. **THIS COURT ORDERS** the Approval and Vesting Order issued by this Court today in these proceedings and the Second Confidential Supplement and the appendices thereto are hereby sealed pending the closing of the transaction with the Recommended Purchaser described in the Fourth Report and the Second Confidential Supplement, and the filing of a Receiver's Certificate.


MISCELLANEOUS

6. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province to act in aid of and to be complementary to this Court 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 as may be necessary or desirable to give effect to the Order or to assist the Receiver and its agents in carrying out the terms of this Order.



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

OCT 18 2019

PER / PAR: 

M.O.S. MORTGAGEONE SOLUTIONS LTD.

and

FINGAL PROPERTIES HOLDINGS INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**
Proceeding commenced TORONTO

ORDER

Approval of Increased Borrowings, Distribution
and the Activities and Fees of the Receiver

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto, Ontario M5G 1V2
Fax: 416-597-6477

Michael B. Rotsztain (LSO #: 17086M)
Tel: 416-597-7870
Email: rotsztain@gsnh.com

R. Brendan Bissell (LSO #: 40354V)
Tel: 416.597.6489
Fax: 416.597.3370
Email: bissell@gsnh.com

Lawyers for the Receiver, RSM Canada Limited

TAB 3

Court File No.: CV-18-598008-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	THURSDAY, THE 17 TH
)	
JUSTICE PENNY)	DAY OF OCTOBER, 2019

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended
and Section 101 of the *Courts of Justice Act*, as amended

AMENDED AND RESTATED APPROVAL AND VESTING ORDER

THIS MOTION, made by RSM Canada Limited in its capacity as receiver (the “**Receiver**”) of all of the assets, undertakings and properties of Fingal Properties Holdings Inc. (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, for an order approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale (the “**Sale Agreement**”) between the Receiver and Lape Holdings Corp. (the “**Purchaser**”) dated as of September 3, 2019 and entered into on September 13, 2019 and appended to the Confidential Supplement (the “**Second Confidential Supplement**”) to the Fourth Report of the Receiver dated October 10, 2019 (the “**Fourth Report**”), and vesting in Diamond Residential Developments Corp. (“**Diamond**”) an Affiliate (as defined in the Sale Agreement) of the Purchaser, pursuant to a direction of the Purchaser to the Receiver, the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report, the Second Confidential Supplement and the Confidential Supplement to the Fourth Report dated November 6, 2019 (the “Third Confidential Supplement”) and on hearing the submissions of counsel for the Receiver and no one appearing for First Source Mortgage Corporation or Moya Financial Credit Union Limited, although properly served as appears from the affidavits of Katie Parent sworn October 10, 2019 and November • , 2019, filed:

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the Fourth Report, the Second Confidential Supplement and the Third Confidential Supplement is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof on any party other than those served, is hereby dispensed with.
2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to Diamond.
3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to Diamond substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), the Purchased Assets described in the Sale Agreement, including (i) all of the Debtor’s right, title and interest in the Lands described in **Schedule B** hereto (the “**Real Property**”), and (ii) all of the right, title and interest of the Debtor in the other Purchased Assets described in **Schedule C** hereto, shall vest absolutely in Diamond, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Dunphy dated September 12, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on

Schedule D hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements, restrictive covenants, defects, regulations, plans, qualifications, interests and instruments listed on **Schedule E**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Elgin (No. 11) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* the Land Registrar is hereby directed to enter Diamond as the owner of the Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule D hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in Diamond pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **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.

Schedule A – Form of Receiver’s Certificate

Court File No. CV-18-598008-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondents

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended and Section 101 of the *Courts of Justice Act*, as amended

RECITALS

A. Pursuant to an Order of the Honourable Justice Dunphy of the Ontario Superior Court of Justice (the "**Court**") dated September 12, 2018, RSM Canada Limited was appointed as the receiver (the "**Receiver**") of all of the assets, undertakings and properties of Fingal Properties Holdings Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof.

B. Pursuant to an Amended and Restated Order of the Court dated October 17, 2019, the Court approved the agreement of purchase and sale dated as of September 3, 2019 and entered into on September 13, 2019 (the "**Sale Agreement**") between the Receiver and Lape Holdings Corp. (the "**Purchaser**") and provided for the vesting in Diamond Residential Developments Corp. ("**Diamond**") an Affiliate (as defined in the Sale Agreement) of the Purchaser, pursuant to a direction of the Purchaser to the Receiver, of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser and Diamond of a certificate confirming (i) the payment by the Purchaser or Diamond of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 6 of the Sale Agreement have been satisfied or waived by the

Receiver, the Purchaser and Diamond; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser or Diamond has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 6 of the Sale Agreement have been satisfied or waived by the Receiver, the Purchaser and Diamond; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

RSM CANADA LIMITED,

solely in its capacity as Receiver of all of the assets, undertakings and properties of Fingal Properties Holdings Inc. acquired for, or used in relation to a business carried on by Fingal, including all proceeds thereof, and not in its personal capacity

Name: Bryan A. Tannenbaum

Title: President

I have authority to bind the Receiver.

SCHEDULE "B" – REAL PROPERTY**Legal Description**

PIN 35156-0440 (LT)

Property Description: PT LT 39 CON NTR SOUTHWOLD PT 2 11R8197; T/W E454421;
SOUTHWOLD

LRO #11

PIN 35156-0458 (LT)

Property Description: PART OF LOT 39 CON NTR SOUTHWOLD DESIGNATED AS PART
1, 11R-8995; SOUTHWOLD

LRO #11

Schedule C – Other Purchased Assets

Books and Records of the Debtor, as defined in the Sale Agreement

Schedule D – Claims to be deleted and expunged from title to Real Property

1. Instrument No. CT104510 being a Charge registered registered on June 20, 2014 from Fingal Properties Holdings Inc. to Krek Slovenian Credit Union Ltd.
2. Instrument No. CT104511 being a Notice of Assignment of Rents General registered on June 20, 2014 from Fingal Properties Holdings Inc. to Krek Slovenian Credit Union Ltd.
3. Instrument No. CT117230 being a Charge registered on August 5, 2015 from Fingal Properties Holdings Inc. to MOS MortgageOne Solutions Inc.
4. Instrument No. CT117231 being a Postponement registered on August 5, 2015 from Salvatore Guerra to MOS MortgageOne Solutions Ltd.
5. Instrument No. CT118122 being a Notice registered on September 1, 2015 from Fingal Properties Holdings Inc. to MOS MortgageOne Solutions Inc.
6. Instrument No. CT118764 being a Postponement registered on September 22, 2015 from Krek Slovenian Credit Union Ltd. to Mark Lorne Cosman
7. Instrument No. CT118765 being a Postponement registered on September 22, 2015 from MOS MortgageOne Solutions Ltd. to Mark Lorne Cosman
8. Instrument No. CT118766 being a Postponement registered on September 22, 2015 from Salvatore Guerra to Mark Lorne Cosman
9. Instrument No. CT119717 being a Transfer of Charge registered on October 20, 2015 from MOS MortgageOne Solutions Ltd. to MOS MortgageOne Solutions Ltd. and Community Trust Company
10. Instrument No. CT121755 being a Transfer of Charge registered on December 15, 2015 from to MOS MortgageOne Solutions Ltd. and Community Trust Company to MOS MortgageOne Solutions Ltd. and Community Trust Company
11. Instrument No. CT122930 being an Application of Change of Name registered on January 26, 2016 from Krek Slovenian Credit Union Ltd. to Moya Financial Credit Union Limited
12. Instrument No. CT122970 being a Charge registered on January 28, 2016 from Fingal Properties Holdings Inc. to First Choice Mortgage Corporation
13. Instrument No. CT122971 being a Notice of Assignment of Rents registered on January 28, 2016 from Fingal Properties Holdings Inc. to First Source Mortgage Corporation

14. Instrument No. CT122972 being a Postponement of Instrument Nos. CT104510 to CT122970 registered on January 28, 2016 from Moya Financial Credit Union Limited to First Source Mortgage Corporation
15. Instrument No. CT122973 being a Postponement of Instrument Nos. CT117230 to CT122970 registered on January 28, 2016 from MOS MortgageOne Solutions Ltd. and Community Trust Company to First Source Management Corporation
16. Instrument No. CT123516 being a Transfer of Charge registered on February 12, 2016 from MOS MortgageOne Solutions Ltd. and Community Trust Company to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
17. Instrument No. CT124693 being a Transfer of Charge registered on March 29, 2016 from MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
18. Instrument No. CT125669 being a Transfer of Charge registered on April 27, 2016 from MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
19. Instrument No. CT126910 being a Notice registered on June 1, 2016 from Fingal Properties Holdings Inc. to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
20. Instrument No. CT127900 being a Transfer of Charge registered on June 28, 2016 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company
21. Instrument No. CT128100 being a Transfer of Charge registered on June 30, 2016 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company
22. Instrument No. CT128995 being a Transfer of Charge registered on July 27, 2016 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company
23. Instrument No. CT130913 being a Transfer of Charge registered on September 12, 2016 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community

Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company

24. Instrument No. CT135509 being a Notice registered on January 13, 2017 from Fingal Properties Holdings Inc. to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
25. Instrument No. CT135604 being a Transfer of Charge registered on January 17, 2017 from MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company to MOS MortgageOne Solutions Ltd., Olympia Trust Company and Community Trust Company
26. Instrument No. CT142603 being a Construction Lien registered on July 20, 2017 from Domenic's Plumbing Service Inc.
27. Instrument No. CT156378 being a Transfer of Charge registered on July 30, 2018 from MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company to MOS MortgageOne Solutions Ltd., Community Trust Company and Olympia Trust Company
28. Instrument No. CT158562 being Application to Register Court Order registered on September 24, 2018 from Ontario Superior Court of Justice (Commercial List) to RSM Canada Limited

**Schedule E – Permitted Encumbrance
related to the Real Property**

(unaffected by the Vesting Order)

General Encumbrances:

1. Any and all reservations, limitations, provisos and conditions expressed in the original the patent from the Crown, as amended by statute, and unpatented mining claims and Native land claims.
2. Any and all applicable laws, including, without limitation, official plans, municipal by-laws, including building and zoning by-laws and decisions of the Committee of Adjustments or any other competent authority permitting variances therefrom, applicable to the Lands.
3. Any and all permits, licenses, easements, rights-of-way, rights in the nature of easements and agreements with respect thereto including, without limitation, registered and unregistered licenses, easements, rights-of-way, rights in the nature of easements for access, public ways, sewers, drains, utilities, gas, steam and water mains or electric light and power, or telephone and telegraphic conduits, poles, wires and cables.
4. Any and all agreements with municipalities including, without limitation, subdivision agreements, development agreements, site plan agreements, servicing agreements and encroachment agreements.
5. Airport zoning regulations.
6. Any and all rail siding agreements, facility agreements, cost sharing agreements, servicing agreements, reciprocal operating agreements and other similar agreements.
7. Any rights of expropriation, access or use or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.
8. Encumbrances for real property taxes (which term includes charges, rates and assessments) or charges for electricity, power, gas, water and other services and utilities in connection with the Lands that have accrued but are not yet due and owing.
9. Restrictive covenants, exclusivity provisions, and other similar land use control agreements.

10. Any statutory liens, charges, adverse claims, prior claims, security interests, deemed trusts or other encumbrances of any nature whatsoever which are not registered on the title to the Lands that are claimed or held by Her Majesty the Queen in Right of Canada, Her Majesty the Queen in Right of the Province of Ontario or by any other governmental authority under or pursuant to any applicable laws.
11. Any title defects, irregularities or discrepancies in title or possession relating to the Lands that do not have a material adverse effect on the use or marketability of the Lands.
12. Minor encroachments of buildings or structures situate on the Lands onto adjoining lands and minor encroachments of buildings and structures situate on adjoining lands onto the Lands.
13. Security given to a public utility or any municipality or Governmental Authority when required by the operations of the Lands in the ordinary course of business, including without limitation, the right of the municipality to acquire portions of the Lands for road widening or interchange construction and the right of the municipality to complete improvements, landscaping or remedy deficiencies in any pedestrian walkways or traffic control or monitoring to be providing to the Lands.
14. Undetermined or inchoate liens incidental to construction, renovations or current operations, a claim for which shall not at the time have been registered against the Lands.
15. Any and all unregistered existing offers to lease or sublease, agreements to lease or sublease, leases, subleases or similar agreements to lease, use, occupy or share in possession of the Lands or any part thereof or premises thereon.
16. Any reference plans or plans registered pursuant to the *Boundaries Act* (Ontario).
17. Any and all open and outstanding building permits.
18. Any and all deficiencies, violations, claims, interests, notices, orders or matters of non-compliance or violation in respect of the Lands that are or disclosed in responses received from governmental authorities or other parties having jurisdiction to off-title inquiry investigations or that would be disclosed had such off-title inquiry investigations been conducted.
19. The exceptions and qualifications contained in Section 44(1) of the *Land Titles Act* (Ontario) and the rights of any person who would, but for the *Land Titles Act* (Ontario), be entitled to the Lands or any part of it through length of adverse possession, prescription, mis-description or boundaries settled by convention and a lease to which Section 70(2) of the *Registry Act* (Ontario) applies.

Specific Encumbrance

20. Instrument No. CT45773 being a notice registered July 22, 2009 between the Corporation of the Township of Southwold and Inpartnr Inc.

M.O.S. MORTGAGEONE SOLUTIONS LTD.

and

FINGAL PROPERTIES HOLDINGS INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced TORONTO**

**AMENDED AND RESTATED
APPROVAL AND VESTING ORDER**

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto ON M5G 1V2
Fax: 416-597-3370

Michael B. Rotsztain (LSUC #: 17086M)
Tel: 416-597-7870
Email: rotsztain@gsnh.com

R. Brendan Bissell (LSUC No. 40354V)
Tel: 416-597-6489
Email: bissell@gsnh.com

Lawyers for the Receiver, RSM Canada Limited

TAB 4

Court File No.: CV-18-598008-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)	WEDNESDAY, THE 6 TH
)	
JUSTICE PENNY)	DAY OF NOVEMBER, 2019

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondent

APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended
and Section 101 of the *Courts of Justice Act*, as amended

ORDER

(Amended and Restated Approval and Vesting Order and Other Relief)

THIS MOTION, made by RSM Canada Limited in its capacity as receiver (the “**Receiver**”) of all of the assets, undertakings and properties of Fingal Properties Holdings Inc. (the “**Debtor**” or “**Fingal**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Fourth Report of the Receiver dated October 10, 2019 (the “**Fourth Report**”), the Confidential Supplement to the Fourth Report dated October 10, 2019 (the “**Second Confidential Supplement**”) and the Confidential Supplement to the Fourth Report of the Receiver dated November 6, 2019 (the “**Third Confidential Supplement**”) and on hearing the submissions of counsel for the Receiver and no one appearing for First Source Mortgage Corporation or Moya Financial Credit Union Limited, although properly served as appears from the affidavit of Katie Parent sworn November • , 2019, filed:

NOTICE AND SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the Fourth Report, the Second Confidential Supplement and the Third Confidential Supplement is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof on any party other than those served, is hereby dispensed with.

AMENDED AND RESTATED APPROVAL AND VESTING ORDER

2. **THIS COURT ORDERS** that the Amended and Restated Approval and Vesting Order shall be issued in accordance with the form of order found at Tab 3 of the Receiver's Motion Record.

SEALING

3. **THIS COURT ORDERS** that the Notice of Motion and Motion Record, the Amended and Restated Approval and Vesting Order issued by this Court today in these proceedings and the Third Confidential Supplement and the appendices thereto, are hereby sealed pending the closing of the transaction with the Approved Purchaser described in the Third Confidential Supplement, and the filing of a Receiver's Certificate.

MISCELLANEOUS

4. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province to act in aid of and to be complementary to this Court 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 as may be necessary or desirable to give effect to the Order or to assist the Receiver and its agents in carrying out the terms of this Order.

M.O.S. MORTGAGEONE SOLUTIONS LTD.

and

FINGAL PROPERTIES HOLDINGS INC.

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO**

**ORDER
(Amended and Restated Approval and Vesting
Order and Other Relief)**

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto, Ontario M5G 1V2
Fax: 416-597-6477

Michael B. Rotsztain (LSO #: 17086M)
Tel: 416-597-7870
Email: rotsztain@gsnh.com

R. Brendan Bissell (LSO #: 40354V)
Tel: 416.597.6489
Fax: 416.597.3370
Email: bissell@gsnh.com

Lawyers for the Receiver, RSM Canada Limited

M.O.S. MORTGAGEONE SOLUTIONS LTD.

and

FINGAL PROPERTIES HOLDINGS INC.

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced TORONTO

MOTION RECORD
Amended and Restated
Approval and Vesting Order and Other Relief
(returnable November 6, 2019)

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto, Ontario M5G 1V2
Fax: 416-597-6477

Michael B. Rotsztain (LSUC #: 17086M)
Tel: 416-597-7870
Email: rotsztain@gsnh.com

R. Brendan Bissell (LSUC#: 40354V)
Tel: 416.597.6489
Fax: 416.597.3370
Email: bissell@gsnh.com

Lawyers for the Receiver, RSM Canada Limited