

**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
Approval and Vesting Order and Other Relief
(returnable March 22, 2019)**

March 14, 2019

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TO: THE SERVICE LIST

INDEX

INDEX

Tab	Document	Page No.
1.	Notice of Motion returnable March 22, 2019	001
2.	Second Report of the Receiver, RSM Canada Limited, dated March 14, 2019	009
A	Appendix A - Appointment Order	034
B	Appendix B - Unofficial Transcript of the Endorsement dated September 12, 2018	052
C	Appendix C - Receiver's First Report dated October 15, 2018 (without appendices)	054
D	Appendix D - Sale Process Order	073
E	Appendix E - Receiver's Certificate No. 2	078
F	Appendix F - Email to Michael Olynyk, dated November 27, 2018	081
G	Appendix G - Receiver's Form of Agreement of Purchase and Sale	084
H	Appendix H – Cushman & Wakefield Information Brochure	137
I	Appendix I - Globe and Mail Advertisement	143
J	Appendix J - Certified Personal Property Security Act search, current as of March 7, 2019	145
K	Appendix K - Abstracts of Title, current as of March 8, 2019	156

Tab	Document	Page No.
L	Appendix L - Mortgage Opinion, dated February 8, 2019	169
M	Appendix M – First Source Payout Statement as of February 1, 2019	179
N	Appendix N - Statement of Receipts and Disbursements and Estimated Cash Required	181
3.	Draft Approval and Vesting Order	185
4.	Blackline of the Draft Approval and Vesting Order against the Model Order	199
5.	Draft Order (Other Relief)	218
6.	Service List	222

TAB 1

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

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

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APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, as amended
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**NOTICE OF MOTION
Approval and Vesting Order and Other Relief
(returnable March 22, 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 **Friday, March 22, 2018 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) if necessary, 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) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and [REDACTED] (the "**Purchaser**") dated as of February 13, 2019; and
 - ii) vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "**Purchased Assets**");
- (c) substantially in the form attached at Tab 5 of the Motion Record:
 - i) further amending the Order of the Honourable Justice Dunphy dated September 12, 2018 appointing the Receiver in this matter (the "**Appointment Order**") (as amended by the Order of the Honourable Justice Wilton-Siegel dated October 31, 2018) by striking out the reference to "\$425,000.00" in paragraph 21 of that Order and substituting therefor "\$500,000.00";
 - ii) authorizing the Receiver to make an interim distribution payment or payments to the first mortgagee, First Source Mortgage Corporation ("**First Source**"), out of the available net proceeds held by the Receiver, inclusive of 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) the Receiver being satisfied that the amounts to be paid to First Sources pursuant to its security is valid;
 - iii) approving the second report of the Receiver dated March 14, 2019 (the "**Second Report**") and the confidential supplement to the Second Report

dated March 14, 2019 (the “Confidential Supplement”), and the activities of the Receiver set out thereto; and

- iv) sealing the Confidential Supplement and the appendices therein; and
- (d) seeking the Court’s assistance to direct:
 - (i) Michael Olynyk, Italo Ferrari, or any other persons affiliated with Wilsondale Assets Management Inc. (“WAM”), to respond in writing to the requests for information and documentation made by the Receiver and in particular to the questions raised in the Receiver’s email of November 27, 2018; and
 - (ii) WAM and Fingal, its directors, officers and shareholders, to provide the Receiver with information as to Fingal’s T4 and T2 tax filings; and
- (e) such further and other relief as counsel may request and this Honourable Court deem just;

THE GROUNDS FOR THE MOTION ARE:

Background

- (f) on September 12, 2018 the Receiver was appointed over the assets, undertakings and properties of the Debtor, pursuant to the Appointment Order;
- (g) the Debtor was incorporated in 2014 to acquire, and is the registered owner of, the property municipally known as 39232 Fingal Line, St. Thomas, Ontario (the “Property”);
- (h) on the Property is a partially constructed seniors independent and assisted living project called Meadow Creek Retirement Residence (the “Project”);
- (i) there is currently no active construction or development work on the Project;

- (j) there is a registered construction lien against title to the Property and in addition to the amounts claimed by the construction lien claimant, there are three mortgages registered against title to the Property;

Sales Process, Marketing and Approval of Transaction

- (k) on October 31, 2018, this Honourable Court approved, in part, a sale process in respect of the sale of the Property (the “**Sale Process Order**”);
- (l) in accordance with the Sale Process Order, the Receiver entered into a Listing Agreement on November 22, 2018 with Cushman & Wakfield ULC (“**CW**”) and marketing efforts to sell the Property on an “as is” basis began shortly thereafter, as described in more detail in the Second Report and Confidential Supplement;
- (m) submission of offers were to be received by January 30, 2019 (the “**Bid Deadline**”), which was approximately eight weeks from the date the marketing brochures were first sent out;
- (n) none of the offers submitted by the Bid Deadline were accepted by the Receiver and at the request of the Receiver, CW invited some of the parties who submitted offers to submit improved offers by February 11, 2019 in a second round of bids;
- (o) after offers were received in the second round, the Receiver negotiated with the highest bidder on certain terms of the offer it submitted, culminating in the Receiver entering into the Sale Agreement with the Purchaser;
- (p) details of the first and second rounds of bids and the Sale Agreement entered into are contained in the Confidential Supplement, to which copies of the relevant documentation are attached as appendices;
- (q) it is the Receiver’s view that the proposed transaction is the best available option in the circumstances for the stakeholders of Fingal;
- (r) the marketing process undertaken was thorough and appropriate and the Property received sufficient market exposure;

Sealing

- (s) given the commercial sensitivity of the information contained in the Confidential Supplement, which would be prejudicial to a further sales process should one be required, the Receiver asks that the Confidential Supplement, and the appendices attached thereto, be sealed pending the closing of the Transaction;
- (t) also relevant to maintaining the confidentiality are: i) it is expected that the Receiver's motion for approval of the Transaction will be unopposed; and ii) the second mortgagee has requested that the Receiver seek a sealing order with respect to the Sale Agreement and any documentation arising therefrom, as well as all motion material filed in support of the motion;

Further Increase to the Receiver's Borrowing Charge

- (u) the Appointment Order originally authorized the Receiver to borrow up to \$100,000.00;
- (v) for reasons described in the First Report of the Receiver dated October 15, 2018 (the "First Report"), the Receiver sought, and was granted by an Order dated October 31, 2018, this Court's authorization to increase the Borrowing Charge from \$100,000.00 to \$425,000.00;
- (w) based on the cash on hand at February 28, 2019 and the estimated costs to April 30, 2019, the Receiver requires additional borrowing authorization of \$75,000 to cover the insurance and property taxes, in addition to monthly expenses;

Interim Distribution

- (x) in view of the positive legal opinion on the First Source charge that the Receiver has received from its counsel, the Receiver is seeking authorization to make an interim distribution payment or payments to First Source out of the available net proceeds held by the Receiver, inclusive of 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) the

Receiver being satisfied that the amounts to be paid to First Source pursuant to its security is valid;

- (y) upon the determination of all amounts payable to First Source, the Receiver will seek authority for any further distributions;

Approval of the Second Report and Receiver’s Activities

- (z) the Receiver has continued to report to the stakeholders and to this Court in the Second Report and Confidential Supplement on its activities since the filing of the First Report;
- (aa) the activities of the Receiver have been in accordance with the Appointment Order and Sale Process Order and have provided assistance to the Court and interested stakeholders;

General

- (bb) the provisions of the *Bankruptcy and Insolvency Act*; and
- (cc) 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 Second Report and the appendices thereto;
- (b) the Confidential Supplement and the appendices thereto; and
- (c) such further and other evidence as counsel may advise and this Honourable Court may permit.

March 14, 2019

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Lawyers for the Receiver, RSM Canada Limited

TO: The Attached Service List

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
Approval and Vesting Order
(returnable March 22, 2019)

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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

SECOND REPORT OF THE RECEIVER

March 14, 2019

Table of Contents

I.	INTRODUCTION.....	1
II.	PURPOSE OF SECOND REPORT.....	2
III.	BACKGROUND.....	4
IV.	RECEIVER'S ACTIVITIES TO DATE.....	6
	Funding of the Receivership.....	6
	Insurance.....	7
	Property Taxes.....	8
	Repairs and Maintenance.....	8
	Appraisal.....	9
	Consultation.....	10
	Sources and Uses Analysis.....	11
V.	SALES PROCESS, MARKET FEEDBACK AND OFFERS RECEIVED.....	12
	Sale Process.....	14
	Proposed Transaction.....	17
VI.	INFORMATION ON ENCUMBRANCES.....	17
VII.	SECURED AND PRIORITY CREDITORS.....	18
VIII.	STATEMENT OF RECEIPTS AND DISBURSEMENTS.....	20
IX.	INTERIM DISTRIBUTION.....	20
X.	RECOMMENDATION.....	20
XI.	CONCLUSION.....	22

Appendices

Appointment Order	A
Unofficial Transcript of the Endorsement dated September 12, 2018	B
Receiver's First Report, dated October 15, 2018 (without appendices)	C
Sale Process Order	D
Receiver's Certificate No. 2	E
Email to Michael Olynyk from Receiver, dated November 27, 2018	F
Receiver's Form of Agreement of Purchase and Sale	G
Cushman & Wakefield Information Brochure	H
Globe and Mail Advertisement	I
Certified Personal Property Security Act search, current as of March 7, 2019	J
Abstracts of Title, current as of March 8, 2019	K
Mortgage Opinion, dated February 8, 2019	L
First Source Payout Statement as of February 1, 2019	M
Statement of Receipts and Disbursements and Estimated Cash Required	N

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 Justice Wilton-Siegel dated October 31, 2018 approving, in part, a sale

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

II. PURPOSE OF SECOND REPORT

5. The purpose of this second report (the "**Second Report**") is to:
- (a) report to the Court on the activities of the Receiver from the date of its First Report to March 8, 2019;
 - (b) provide the Court with details of the sales process undertaken by the Receiver, as approved in the Sale Process Order;
 - (c) provide the Court with a summary of the Receipts and Disbursements for the period September 12, 2018 to February 28, 2019;
 - (d) seek orders:
 - i. approving the sale of the Property to the purchaser referred to below and issuing a Vesting Order;
 - ii. requesting authority for additional Receiver's borrowings in the amount of \$75,000;
 - iii. sealing the Confidential Supplement (defined below) and the appendices thereto until the closing of the sale of the Property;
 - iv. approving the Second Report and the Receiver's conduct and activities to March [], 2019; and
 - v. approving a distribution payment or payments to First Source Mortgage Corporation ("**First Source**") out of available net proceeds held by the Receiver upon A) First Source entering into a

reimbursement agreement with the Receiver on terms satisfactory to the Receiver, and B) the Receiver being satisfied that the amounts to be paid to First Source pursuant to its security is valid;

- (e) seek the assistance of the Court to direct that the Fingal officers referred to below or any other persons affiliated with Wilsondale Assets Management Inc. respond in writing to the requests for information and documentation made by the Receiver as discussed below.
6. As indicated in subsequent paragraphs of this report, the Receiver is seeking a sealing order in respect of the appraisal of the Property it has obtained and certain information and documentation relating to the sale process and the sale the Receiver is 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 a Confidential Supplement to this Second Report (the "**Confidential Supplement**") containing more detailed information than this Second Report on the topics in question, to which are attached a number of confidential appendices, relating to the appraisal, the sale process and the recommended sale.

Terms of Reference

7. In preparing this report and the Confidential Supplement 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.

8. Unless otherwise stated, all dollar amounts contained in this report are expressed in Canadian dollars.

III. BACKGROUND

9. Fingal is an Ontario corporation incorporated in 2014 to acquire the Property and is currently its registered owner. Mr. Italo Ferrari is the president, treasurer, secretary and sole director of Fingal.
10. 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.
11. Fingal is an affiliate or subsidiary of Wilsondale Assets Management Inc. ("**WAM**"), which is an asset management group specializing in commercial real estate services and is involved with oversight of the Development. Mr. 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.

12. Subsequent to the date of receivership, Mr. Ferrari advised the Receiver that it was still a possibility that an offer to purchase the Property would be submitted as a result of WAM's marketing efforts. The Receiver requested Mr. Ferrari to update it on any progress regarding this offer. The Receiver has not had any further such updates from Mr. Ferrari and, except as indicated below, the Receiver did not receive any offers prior to the bid deadline in the Court-approved sale process.
13. First Source holds a first-ranking mortgage in the principal amount of \$5,400,000 registered against the Property. The amount claimed by First Source as outstanding under its mortgage as of February 1, 2019 was \$5,671,203.04.
14. Moya Financial Credit Union Limited ("**Moya**"), on behalf of itself and other mortgagees in the syndicate, holds a second-ranking mortgage in the principal amount of \$6,500,000 registered against the Property. As of September 12, 2018, the amount claimed by Moya as outstanding under its mortgage was \$7,050,273.97.
15. 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 outstanding was \$7,311,970.04.
16. 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. RECEIVER'S ACTIVITIES TO DATE

- 17. The Receiver has undertaken the activities set out below since the date of its First Report dated October 15, 2018.

Funding of the Receivership

- 18. As detailed in paragraphs 25 and 26 of the First Report, the Receiver borrowed \$100,000 from First Source pursuant to Receiver's Certificate No. 1 to fund protective disbursements.
- 19. The Sale Process Order authorized the Receiver to increase its borrowing limit by \$325,000, from \$100,000 to \$425,000. This amount was based on the Receiver's borrowing budget with the majority of the increase related to the new insurance policy premiums, ongoing security and the payment of property tax arrears (to avoid ongoing interest and other charges).
- 20. Your Credit Union ("YCU"), a member of Moya's syndicate, agreed to provide funding to the Receiver at a lower interest rate than First Source and on November 7, 2018 the Receiver borrowed \$400,000 from YCU pursuant to Receiver's Certificate No. 2, a copy of which is attached as **Appendix "E"**. On

November 8, 2018 the Receiver repaid the \$100,000 it had borrowed from First Source pursuant to Receiver's Certificate No. 1.

21. As of the date of the Second Report, the Receiver has borrowed a total of \$400,000 leaving \$25,000 available in authorized borrowings.
22. Based on the cash on hand at February 28, 2019 and estimated costs to April 30, 2019, the Receiver requires additional funding (beyond the current authorized amount of \$425,000) of \$75,000. Further details are provided in paragraphs 67 and 68 below.

Insurance

23. As noted in the First Report, the Receiver obtained new insurance coverage (building and liability), from HUB Insurance ("**HUB**"), for six months at a cost of \$106,920 (\$99,000 plus PST). This coverage expires March 28, 2019. The amount of the insurance coverage relates to rebuild values and the insurers insist on insurance to value.
24. The Receiver contacted HUB to inquire about an extension of this coverage. HUB advised that (a) if, in early March, the Receiver indicated that it was virtually assured of closing a sale during April, 2019, the policy could be renewed for one month at a cost of \$17,820 (\$16,500 plus PST); however (b) if the Receiver was not confident of a sale closing during April, 2019, the policy would have to be renewed for a further three months at an estimated cost of \$53,460 (\$49,500 plus PST).

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25. Given the nature and length of the due diligence period in the offer being recommended for approval, discussed below, the Receiver requires the insurance to be renewed for a further three months at an estimated cost of \$53,460. The Receiver will, of course, request a refund of any unused premiums.

Property Taxes

26. The Receiver paid the property tax arrears owing to the Township of Southwold ("Southwold") for the period ending December 31, 2018 in the amount of \$216,260.91 in order to avoid ongoing interest and penalties. Southwold advises that the 2019 interim property tax bill will be issued during March, 2019 and the amount is estimated to be \$57,195.00 due in two instalments: March 29, 2019 and May 31, 2019.
27. Given the due diligence period in the proposed offer, the Receiver will pay the March 29, 2019 property tax payment of \$28,597.50 in order to avoid ongoing interest and penalties.

Repairs and Maintenance

28. The Property consists of an approximately 82,645 square foot one-storey partially constructed building situated on approximately 6.32 acres of land. The building is heated and cooled via a geothermal HVAC system that was installed prior to Fingal's acquisition of the property in 2014. During an initial inspection of the building on October 1, 2018 with the former construction manager, the Receiver noted that warning lights were flashing and not all of the geothermal

units appeared to be working. This was of particular concern given the time of year, as the system had to be switched-over to heating (from cooling) in the coming weeks.

29. The Receiver contacted three HVAC firms specializing in geothermal systems (including the company which installed the existing system) and asked each of them to submit quotes for a defined scope of work that included a report on the state of the system and any recommended repairs to ensure that there was adequate heat throughout the building.
30. The Receiver reviewed these quotes with the former construction manager and selected Smith and Long based on their expertise.
31. Testing indicated that in order to sufficiently heat the facility at acceptable levels over the winter, maintenance (changing batteries, filters, topping up glycol levels etc) as well as the addition of one heating unit were required. This work has been completed and subsequent testing indicates that the system is now functioning at acceptable levels.
32. The Receiver arranged for snow removal and for ongoing inspection reports to confirm that the premises were sufficiently heated and snow removal was being done in accordance with the requirements of the insurance company.

Appraisal

33. The Receiver obtained an appraisal from CBRE's Senior's Housing & Healthcare Valuation & Advisory Services group on an "as is" and "as completed"

basis on October 29, 2018 (the "**CBRE Appraisal**"). A copy of the CBRE Appraisal is attached as an appendix to the Confidential Supplement.

34. This appraisal was provided to First Source, Moya and MOS pursuant to signed Confidentiality Agreements.
35. Certain sensitive matters regarding the Appraisal are discussed in the Confidential Supplement.

Consultation

36. The Receiver thought it worthwhile to obtain the views of the principal stakeholders in the estate, the mortgagees, on the sale process. It therefore provided the mortgagees with weekly 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.
37. The Receiver convened a series of conference calls with the mortgagees to review the summaries of the offers received in the first and second bid rounds, discussed below and discussed in more detail in the Confidential Supplement, and to discuss the Receiver's proposed next steps in the process in order to have the input of the mortgagees in connection with the Receiver's determination of its course of action and recommendation to the Court.

Sources and Uses Analysis

38. In paragraph 2 (x) of the Application of MOS herein, originally returnable May 29, 2018, MOS alleged that "It appears the Debtor has used investor funds for other purposes than the completion of the construction of the Development". In paragraph 36 of the Affidavit of John Cornacchia, an investor in MOS's loan to Fingal (filed in support of the Application), it is stated that Mr. Ferrari informed Mr. Cornacchia that "the Debtor had made loans to related companies to allow them to purchase and maintain other properties".
39. The Receiver noted that the most recent financial statements and general ledger accounts provided to it by Fingal management (September 30, 2017 and August 31, 2018 respectively) reflected amounts owing from entities that appear to be not at arm's length with Fingal. As an example, the August 31, 2018 trial balance reflects a balance owing from WAM of \$4,517,249.73.
40. Given that Moya was Fingal's main operating lender, the Receiver obtained bank statements directly from Moya and prepared an analysis of all payments and receipts over \$25,000 from the inception of the bank account in 2014 to October 2, 2018. This analysis reflected substantial payments to WAM totaling \$5,403,607.29, including a series of cheques and transfers "to post manual transfer to Wilsondale re overdraft". This analysis also reflected receipts from WAM and Core Life Inc. that referred to specific projects such as 4500 Highway 7, Woodbridge, ON and 9100 Jane Street Concord, ON. However, these net

balances did not appear to be reflected on the recent financial information provided by Fingal above.

41. The Receiver emailed Michael Olynyk, the Controller of Fingal and also an employee of WAM, on November 27, 2018 setting out a summary of the discrepancies and requesting an explanation, a copy of which is attached as **Appendix "F"**. The Receiver followed up with Mr. Olynyk on numerous occasions and emailed Mr. Ferrari requesting an explanation. As of the date of this report, no explanation has been provided by either Mr. Olynyk or Mr. Ferrari.
42. The Receiver requires further information in order to complete this analysis and seeks the Court's assistance in obtaining a response from Mr. Ferrari, Mr. Olynyk or any other persons on behalf of WAM to the questions raised in the Receiver's email of November 27, 2018.
43. The Receiver also requires that WAM or Fingal provide it with information as to Fingal's T4 and T2 tax filings, for which CRA is making requests of the Receiver and which is causing CRA to withhold HST refunds that may otherwise be owing to the Receiver for post-appointment HST filings and seeks the Court's assistance in that regard.

V. SALES PROCESS, MARKET FEEDBACK AND OFFERS RECEIVED

44. In accordance with the Sale Process Order, the Receiver entered into a Listing Agreement on November 22, 2018 with Cushman & Wakefield ULC ("**CW**") consistent with the terms summarized in Confidential Appendix 1 to the First Report.

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45. As indicated in the First Report and approved in the Sale Process Order, the CW engagement contemplated the sale of the Property on an "as is where is" basis. As noted in paragraph 57 of the First Report, CW recommended that the listing be unpriced in order to obtain the highest price given the significant exposure the property had already had in the market place. CW was not privy to the CBRE Appraisal, discussed above and in the Confidential Supplement.
 46. An online data room was established and maintained by CW, to enable interested parties to remotely complete their due diligence. The Receiver prepared a Confidentiality Agreement ("**CA**") and requested that each individual requesting access to the data room (including any broker representing a prospective bidder) sign a CA in advance in order to control the dissemination of information.
 47. The Receiver also prepared its form of Agreement of Purchase and Sale ("**APS**") to be included in the data room (the "**Receiver's Form APS**"), which is attached hereto as **Appendix "G"**.
 48. CW provided the Receiver with a list of property information required for the online data room. The Receiver sourced this information from Fingal's Controller (Mr. Olynyk) and materials previously filed in the application for the appointment of the Receiver. The Receiver also requested that the mortgagees provide it with any additional information that they thought should be included. This information compiled included architectural plans, site servicing plan, environmental reports, geothermal report, estimated cost to complete report and property tax

information. No appraisal information, pre- or post-receivership, was included in the data room.

49. The data room went live as of December 6, 2018.
50. The Receiver also provided a list of its prospective purchasers to CW. This list included parties who had contacted the Receiver or the mortgagees directly expressing an interest in the property.

Sale Process

51. CW 's team was 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 canvas the market in order to obtain the highest possible price for the Property.
52. CW targeted the following groups: seniors' housing (builders, operators and investors), general construction, private investor, broker and the list of potential purchasers provided by the Receiver.
53. CW prepared an Information Brochure ("**Brochure**") attached hereto as **Appendix "H"**. This Brochure stipulated that bidders were advised 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.

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54. The Brochure was launched on December 7, 2018 and sent to approximately 2,000 targeted contacts, which included parties who had indicated an interest in the Property to the Receiver and whose details the Receiver provided to CW. Brochures were distributed weekly to new parties and as a follow-up to those parties who had expressed an interest in the property. Brochures were sent to a specific list of 162 groups involved with retirement home development or ownership in Ontario. In addition, CW agreed to cooperate on the listing with other brokers and sent the Brochure to 1,162 brokers.
 55. The Property was listed on MLS in Toronto and London, Ontario on December 17, 2018 and an ad was published in the Globe and Mail on December 18 and 20, 2018, a copy of which attached hereto as **Appendix "I"**. Signage marketing the sale was erected on the front lawn of the property.
 56. 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.
 57. CW provided the Receiver with weekly reports summarizing which individuals had signed CA's and tracked prospective buyers' interest levels by monitoring data room access. In total 54 CAs were signed, including 4 from the mortgagees/debtor representatives.
 58. Targeted phone calls were made by CW to all parties who executed a CA as well as approximately 75 potential purchasers from the CW's Seniors Housing group database who did not sign CAs.

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59. CW set a date for the submission of offers of January 30, 2019 at 3:00 pm (the "**Bid Deadline**"), which was approximately eight weeks from the date the marketing brochures were first sent out.
60. As the Bid Deadline approached, detailed bid submission instructions were drafted by the Receiver and emailed by CW to all parties who signed CA's as well as parties who had expressed serious interest to ensure that the process outlined in the Brochure was followed.
61. None of the offers submitted by the Bid Deadline were accepted by the Receiver and at the request of the Receiver, CW invited some of parties who submitted offers to submit improved offers in a second round of bids and set February 11, 2019 at 3:00 pm as the date for the submission of these offers. After offers were received in the second round, the Receiver negotiated with the highest bidder on certain terms of the offer it submitted, culminating in the Receiver entering into an agreement of purchase and sale with such bidder, [REDACTED] [REDACTED] on February 27, 2019, subject to the approval of this Court.
62. Details of the first and second round of bids and of the agreement of purchase and sale entered into are contained in the Confidential Supplement, to which copies of the relevant documentation, including the executed agreement of purchase and sale, are attached as appendices. The reasons for the Receiver's seeking a sealing order until closing with respect to the Confidential Supplement and its appendices are set out below.

Proposed Transaction

63. The salient terms of the proposed transaction are as follows:
- a) Purchaser: [REDACTED]
 - b) Purchased Assets: The Property and books and records of Fingal.
 - c) Material conditions in favour of the Purchaser: Due diligence, and the granting of an approval and vesting order.
 - d) Material conditions in favour of the Receiver: The granting of an approval and vesting order.
 - e) Due diligence period: 45 days from February 27, 2019.
 - f) Deposit: more than 7% of the purchase price.
 - g) Payment of purchase price: Balance on closing.
64. Pending the waiver of conditions by the proposed purchaser, CW has confirmed to the Receiver that the Property will continue to be listed on MLS as "Sold Conditionally" and the For Sale sign would remain on the property.

VI. INFORMATION ON ENCUMBRANCES

65. 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 March 7, 2019, attached as **Appendix "J"**; and
 - b) the abstracts of title to the two parcels comprising the Property, current as of March 8, 2019, attached as **Appendix "K"**.

VII. SECURED AND PRIORITY CREDITORS

66. 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 \$400,000 to Your Credit Union pursuant to Receiver's Certificate No. 2.

d) Professional Fees of the Receiver

As of March 8, 2019, the professional fees of the Receiver, including disbursements and HST, are approximately \$206,704.86. The Receiver includes this information to report to the Court and stakeholders only and will seek approval of its fees in a subsequent motion.

e) Professional Fees of GSNH

As of March 8, 2019, the professional fees of GSNH, as counsel to the Receiver, including disbursements and HST, are approximately \$121,420. The Receiver includes this information to report to the Court and stakeholders only and will seek approval of GSNH's fees in a subsequent motion.

f) Mortgagees – Legal Opinion and Balances

The Receiver obtained a legal opinion from its counsel, 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. A copy of GSNH's opinion in that regard is attached as **Appendix "L"**.

- g) The Receiver has, through GSNH, requested information from First Source in connection with a payout statement as of February 1, 2019 that First Source has provided, a copy of which is attached as **Appendix "M"**. First Source, through its counsel, has provided some of that information. The Receiver and GSNH will continue to have discussions with First Source and its counsel and review the appropriateness of the amounts claimed.

h) Property Taxes

The Receiver paid the tax arrears owing to the Township of Southwold ("Southwold") in the amount of \$216,260.91 in order to avoid ongoing interest and penalties. Southwold advises that the 2019 interim property tax bill will be issued in March, 2019 and the amount is estimated to be \$57,195.00 due in two instalments: March 29, 2019 and May 31, 2019. The Receiver intends to pay the March 29, 2019 instalment.

VIII. STATEMENT OF RECEIPTS AND DISBURSEMENTS

67. Attached as **Appendix "N"** is a Statement of Receipts and Disbursements from September 13 to February 28, 2019 and Estimated Cash Requirements to April 30, 2019.
68. Based on cash on hand at February 28, 2019 and cash requirements to April 30, 2019, the Receiver is requesting the court to authorize additional borrowings in the amount of \$75,000. In addition to monthly expenses, this amount is required to cover insurance and property taxes.

IX. INTERIM DISTRIBUTION

69. The Receiver seeks authority to make an interim distribution payment or payments to First Source out of available net proceeds held by the Receiver, inclusive of 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) the Receiver being satisfied that the amounts to be paid to First Source pursuant to its security is valid.
70. Upon the payment of all amounts validly owing to First Source, the Receiver will seek authority for any further distributions.

X. RECOMMENDATION

71. After extensive discussions with all mortgagees, the Receiver is of the view that the process was thorough and that the highest Offer received is the best option

in the circumstances for the stakeholders of Fingal. The Receiver has accepted that Offer, subject to Court approval.

72. 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 this offer by this Honourable Court. As indicated above, during the due diligence period, the Property will continue to be listed on MLS with the status updated to "Sold Conditionally" and the For Sale sign will remain on the Property.
73. The Receiver believes that details (and the documentation relating thereto) of the CBRE Appraisal, the results of the first and second round of bids, the offers received therein, the recommended transaction, the Receiver's recommendation and CW's recommendation should be kept confidential until the closing of the proposed transaction.
74. 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 transaction with [REDACTED] not be approved or completed. Also relevant to maintaining the confidentiality of the foregoing are the following factors: (a) prior to the Receiver's entering into the recommended transaction, the first mortgagee, First Source, through its counsel, informed the Receiver's counsel that First Source's view is that the [REDACTED] offer should be accepted, and (b) on March 11, 2019 counsel for the second mortgagee, Moya, wrote to the Receiver and advised, in part, that (i) Moya will not be opposing the Receiver's motion for approval of the recommended transaction at this time, reserving its rights to oppose any future

motion to approve any amendment to the recommended transaction, and (ii) Moya's counsel believes it to be imperative that the Receiver obtain a sealing order with respect to the agreement of purchase and sale entered into with [REDACTED] and any documentation arising therefrom, as well as all motion material filed in support of the approval order and the CBRE Appraisal. The Receiver respectfully requests that the Confidential Supplement and the appendices thereto be sealed by this Honourable Court until after the sale transaction closes.

XI. CONCLUSION

75. The Receiver respectfully requests that the Court grant the relief described in paragraph 5 (d) above.

All of which is respectfully submitted to this Court as of this 14th day of March, 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

APPENDIX "A"

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



THE HONOURABLE
JUSTICE DUNPHY

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WEDNESDAY, THE 12TH
DAY OF SEPTEMBER, 2018

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -

FINGAL PROPERTIES HOLDINGS INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing RSM Canada Limited as receiver and manager (in such capacities, the "Receiver") without security, 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, was heard this day at 361 University Avenue, Toronto, Ontario.

ON READING the Affidavit of John Cornacchia sworn May 15, 2018, the Affidavit of Antoinette DePinto sworn July 30, 2018, the Affidavit of David Mandel sworn June 13, 2018,

the Affidavit of Italo Ferrari sworn May 28, 2018 and the Affidavits of Paula-Jean Lyn sworn July 16, 2018 and July 27, 2018 in the Application of Moya Financial Credit Union Limited under Court File No. CV-18-601688-00CL and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, the Debtor, First Source Mortgage Corporation, Moya Financial Credit Union Limited, Alterna Savings and Credit Union Limited and Your Credit Union Limited and such other counsel listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavits of service of Neil Haigh sworn May 18, 2018, and Antoinette DePinto sworn May 18, 2018, and on reading the consent of RSM Canada Limited to act as the Receiver,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, RSM Canada Limited is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**"), which includes, without limitation, the real property municipally known as 39232 Fingal Line, St. Thomas, Ontario and legally described as set out in **Schedule "A"** hereto.

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate and including, without limiting the foregoing, listing the Fingal Property with any listing agent which the Receiver may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of this Court and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and

- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give

unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal

information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$100,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or

otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "B"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

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

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any

other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

29. **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.

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

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis

to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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



CM CHIBA, Registrar
Superior Court of Justice

330 UNIVERSITY AVE. 330 AVE. UNIVERSITY
7TH FLOOR 7E ÉTAGE
TORONTO, ONTARIO TORONTO, ONTARIO
M5G 1R7 M5G 1R7

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

SEP 18 2018

PER / PAR:



SCHEDULE "A"

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 "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver (the "Receiver") 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 (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 12th day of September, 2018 (the "Order") made in an action having Court file number CV-18-598008-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

SD

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

RSM CANADA LIMITED., solely in its capacity as Receiver of Fingal Properties Holdings Inc., and not in its personal capacity

Per: _____

Name:

Title:

M.O.S. MORTGAGEONE SOLUTIONS LTD.
Applicant

-and-

FINGAL PROPERTIES HOLDINGS INC.
Respondent
Court File No. CV-18-598008-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER
(appointing Receiver)

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

Harvey Chaiton (LSUC No. 21592F)
Tel: (416) 218-1129
Fax: (416) 218-1849
E-mail: harvey@chaitons.com

Lawyers for the Applicant

APPENDIX "B"

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

BETWEEN:

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

-and-

FINGAL PROPERTIES HOLDINGS INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. 43, AS AMENDED

ENDORSEMENT OF JUSTICE DUNPHY DATED SEPTEMBER 12, 2018

The sale agreement referred to by me on August 1 did not go firm. Yet another financing proposal has emerged for which I am asked to grant a further adjournment while due diligence is completed. The time for adjournment is over. A receiver shall be appointed and today.

MOS asks for its receiver nominee RSM to be appointed with power to prime the other secured lenders to complete the project. The affected lenders understandingly demur. This project has lain fallow – fully enclosed but with the interior requiring approximately \$6 million to complete – for one year. There is no going concern to protect or fast - wasting asset. This is not a case for a priming charge to complete – the risk would be all on one set of shoulders and the benefit on another. RSM are fully-qualified and will need two – three weeks to put a sales process in gear. Providing priming the second mortgage is not on the menu, other reasonable options may emerge. They will be appointed under a template order with agreed modifications to be signed by me today.

S.F Dunphy J.

APPENDIX "C"

SS

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

FIRST REPORT OF THE RECEIVER

October 15, 2018

86

Table of Contents

I.	INTRODUCTION	1
II.	PURPOSE OF FIRST REPORT	2
III.	BACKGROUND	4
IV.	RECEIVER'S ACTIVITIES TO DATE	5
	Bank Account	6
	Insurance	6
	Statutory Notices	7
	Funding of Receivership	7
	Site Visit	8
	Creditors.....	8
	Listing Proposals	9
	Appraisal	9
	Prospective Purchasers' List	10
	Books and Records	10
V.	CURRENT STATUS	11
	Construction and Financing	11
	Alternatives Available to Sell the Property – “as-is” or “as completed”	12
	Listing Proposals Received	13
VI.	RECOMMENDED SALES PROCESS	15
VII.	CONCLUSION	15

57

Appendices

Appointment Order A
Endorsement..... B
Corporation Profile Report..... C
Parcel Registers D
Receiver’s Notice E
Receiver’s Borrowing Certificate No. 1..... F

Confidential Appendices

Summary of Listing Proposals..... 1
Appraisal Proposal 2

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**") over the lands and premises municipally known as 39232 Fingal Line, St. Thomas, ON (the "**Property**"), and all of the assets and undertakings of Fingal Properties Holdings Inc. ("**Fingal**") acquired for or used in relation to the Property, including all proceeds therefrom. A copy of the Appointment Order is attached hereto as **Appendix "A"**. A copy of the accompanying endorsement dated September 12, 2018 (the "**Endorsement**") is attached hereto as **Appendix "B"**.
2. The Appointment Order authorized the Receiver to, among other things, take possession and control of the Property and any and all proceeds, receipts and disbursements arising out of or from the Property.
3. In addition, the Receiver was expressly empowered and authorized to:

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- a) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate and including, without limiting the foregoing, listing the Property with any listing agent which the Receiver may deem appropriate; and
 - b) sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business with the approval of the Court.
4. In addition, as set out in the Endorsement of Justice Dunphy, the Receiver is required to return to Court with a proposed sales process.
 5. 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>
 6. The Receiver has retained the firm of Goldman Sloan Nash & Haber LLP ("GSNH") to act as the Receiver's independent legal counsel.

II. PURPOSE OF FIRST REPORT

7. The purpose of this report (the "First Report") is to:

60

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- (a) report to the Court on the activities of the Receiver from the date of its appointment to October 10, 2018;
 - (b) provide the Court with details of marketing activities undertaken by Fingal prior to and subsequent to the appointment of the Receiver;
 - (c) provide the Court with details of the proposed sales process to be undertaken; and
 - (d) seek an order:
 - i. authorizing and directing the Receiver to enter into and carry out the proposed sales process;
 - ii. request additional Receiver's borrowings in the amount of \$325,000;
 - iii. sealing the confidential appendices to the First Report until the closing of the sale of the Property; and
 - iv. approving the First Report and the Receiver's conduct and activities to October 10, 2018; and

Terms of Reference

8. In preparing this report and making the comments herein, 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

61

pursuant to the CPA Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.

9. Unless otherwise stated, all dollar amounts contained in this report are expressed in Canadian dollars.

III. BACKGROUND

10. Fingal is an Ontario corporation that was incorporated in 2014 for the purpose of acquiring the Property. Fingal is currently the registered owner of the Property. According to a Corporation Profile Report issued by the Province of Ontario Ministry of Government Services (“CP Report”) dated April 24, 2018, a copy of which is attached hereto as Appendix “C”, Mr. Italo Ferrari is the president, treasurer, secretary and sole director of Fingal.
11. At the time it was acquired, the Property consisted of approximately 6.5 acres of land and a partially completed one-storey building. Copies of the two parcel registers that comprise the property are listed at Appendix “D”. Fingal had intended to complete the development of an independent living and assist living facility for seniors to be known as Meadow Creek Retirement Residence (“Meadow Creek” or “the Development”).
12. Wilsendale Assets Management Inc. (“WAM”) is an asset management group specializing in commercial real estate services and is involved with oversight of the Development. Mr. Ferrari is listed as the founder and general manager of WAM.

-
13. First Source Mortgage Corporation (“**First Source**”) holds a first-ranking mortgage in the principal amount of \$5,400,000 registered against the Property. As of September 12, 2018 the amount outstanding was \$5,264,269.51.
14. Moya Financial Credit Union Limited (“**MOYA**”) holds a second-ranking mortgage in the principal amount of \$6,500,000 registered against the Property. As of September 12, 2018 the amount outstanding was \$7,050,273.97.
15. 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 outstanding was approximately \$7,231,250.
16. MOS sought the appointment of the Receiver pursuant to a Notice of Application dated May 16, 2018 citing, *inter alia*, Fingal's default under their obligations to MOS.
17. On September 12, 2018, the Court issued the Appointment Order and the Receiver was appointed over the Property.

IV. RECEIVER'S ACTIVITIES TO DATE

18. The Receiver has undertaken the activities set out below since the date of its appointment.

Bank Account

19. Upon its appointment, the Receiver opened a trust bank account and requested that the balance, if any, from Fingal's operating bank accounts at MOYA be transferred to the Receiver.

Insurance

20. Shortly after the date of the receivership, the Receiver contacted RDA Inc. ("RDA"), Fingal's insurance broker to notify them of the receivership, seek continued coverage and to have the Receiver added as a named insured and loss payee. The existing builder's risk policy was to be in effect from May 24, 2018 to September 24, 2019.
21. RDA subsequently advised the Receiver that the insurer, Encon Group Inc. ("Encon"), was going to cancel the current policy with 30 days notice. RDA stated that the cancellation was due to the fact that the policy was underwritten on the basis that a sale of the property was to close in 30 days (from May 24, 2018) and construction would continue thereafter. Encon was not aware that the sale had not closed and the property has been vacant since the coverage was placed. On September 25, 2018, Encon issued its Notice of Cancellation to the Receiver and the loss payees to be effective November 8, 2018.
22. The Receiver obtained quotes for new insurance (building and liability) and was able to place new coverage. The new insurance is significantly more expensive due largely to the fact that the building is vacant, which amounts to \$106,920 for six months (with \$35,640 refundable if the Property is sold within four months).

64

In addition, the insurer has requested that the Receiver arrange for, among other things, daily security patrols.

23. The Receiver determined that it is not entitled to any refund of premiums from the Encon policy as the premiums were paid for by Canvas Technologies Inc. (“Canvas”).

Statutory Notices

24. On September 21, 2018, the Receiver sent a Notice and Statement of Receiver under Section 245(1) of the Bankruptcy and Insolvency Act (the “BIA”) to known creditors of the Property. A copy of the Notice is attached hereto as **Appendix “E”**.

Funding of Receivership

25. As provided for in paragraph 21 of the Appointment Order, the Receiver approached all of the secured lenders, in order of priority, to request funding in the amount of \$100,000, the maximum amount the Receiver is currently authorized to borrow. This amount is based on the Receiver’s borrowing budget with the majority related to the new insurance policy relating to premiums, ongoing security, inspections etc.
26. On September 28, 2018 the Receiver borrowed \$100,000 from First Source pursuant to Receiver's Certificate No. 1 attached as **Appendix “F”**.
27. As set out in paragraph 7 above, the Receiver is requesting the Court to authorize additional borrowings in the amount of \$325,000. This is because of

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the unexpected need to acquire insurance and the associated premiums being more than the initial borrowing charge and the property taxes owing as referred to in Paragraph 32 below. The Receiver will require access to additional funding to attend to receivership costs as described in this Report. First Source has agreed to provide funding up to \$200,000 and the Receiver will request First Source to provide this additional funding, as is required.

Site Visit

28. The Receiver toured the property with the former construction manager on October 2, 2018 and arranged for security patrols and the various inspections required by the new insurer.

Creditors

29. The Receiver requested the mortgagees referred to in paragraph 13, 14 and 15 above to provide updated statements of indebtedness as at September 12, 2018 together with copies of the related security documentation. Security opinions will be provided by GSNH.

30. A construction lien was registered against the Property by Domenic's Plumbing Service Inc. on July 20, 2017 in the amount of \$163,240. The Receiver will review the validity of this claim.

31. CRA has notified the Receiver that they have a total claim of \$23,269.27 of which \$16,615.03 is a trust claim for source deductions arrears.

66

32. The 2018 Final Tax Bill from the Township of Southwold, dated August 13, 2018 and obtained by the Receiver on September 17, 2018, indicates property tax arrears owing of \$210,092.54, an increase of \$100,101.90 from the amount stated as outstanding in paragraph 26 of the Notice of Application as at April 26, 2018.

Listing Proposals

33. On or around September 14, 2018, the Receiver invited five realtors to submit listing proposals for the marketing and sale of the Property.

34. The Receiver requested that the realtors include in their proposals: (a) what compensation the realtor would require; and (b) how long a marketing period was recommended from the date that marketing commenced to the deadline for bids to be submitted.

35. Two of the realtors, CBRE Limited (note: CBRE sold the property to Fingal in 2014) and Jensen Realty Inc. declined the invitation to submit a proposal. Proposals were received from Avison Young ("AY") on October 3, 2018, Colliers International ("**Colliers**") on October 2, 2018, and Cushman & Wakefield ("**CW**") on October 3, 2018. A summary of these proposals is attached hereto as Confidential **Appendix "1"**.

Appraisal

36. The Receiver commissioned an appraisal from CBRE's Senior's Housing & Healthcare Valuation & Advisory Services group on an "as is" and "as

67

completed" basis on October 1, 2018. The appraisal fee is \$17,500 and it is estimated it will take four weeks to complete.

Prospective Purchasers' List

37. The Receiver researched and leveraged its large professional network in order to compile a substantive list of relevant prospective purchasers. The Receiver's list includes real estate developers, operators, investors and brokers.

Books and Records

38. On September 13, 2018 the Receiver sent a preliminary list of information requirements to Mr. Ferrari and Mr. Olynyk (Controller at Fingal) and requested a meeting to review and obtain further background information. The Receiver met with Mr. Olynyk on September 20th to obtain background information and some preliminary documentation.

39. The Receiver has followed up with Mr. Olynyk and as of October 4, 2018, the Receiver is waiting to receive the balance of the information requested.

40. The outstanding information includes a request for disbursement journals and bank statements since inception in order to analyze the use of the funds obtained from the secured creditors.

68

V. CURRENT STATUS

Construction and Financing

41. As disclosed in the Application Record dated May 16, 2018, Fingal obtained appraisals from Ridley & Associates ("Ridley") in 2014 and 2015. The September 21, 2015 appraisal was commissioned to take into account improvements made to the Property in the prior 90 days. These improvements included adjustments to increase the bedroom capacity from 70 to 110, insulation, additional heating and plumbing etc. The September 21, 2015 appraisal estimated values were: "as is" value of \$14.3 million and "as completed" value of \$24 million.
42. As further disclosed in the Application Record dated May 16, 2018: i) construction ceased on or about March 15, 2017; and ii) Prime Design Building Corporation ("Prime") indicated that the Development was approximately 78% complete at that time.
43. Fingal failed to make required interest payments to MOS starting on August 2017 and has been in negotiations to re-finance or sell the Property since that time.
44. Prime's estimate of the cost to complete of approximately \$4.5 million plus HST on March 8, 2018 was subsequently revised to \$5,685,000 plus HST on July 19, 2018. The increase in the estimate was due to various items including additional works related to additional exterior work, certain equipment and costs revisions to certain items. These estimates were attached to the Affidavit of Antoinette Depinto of Chaitons filed with the Court and dated July 30, 2018.

45. An appraisal commissioned by Fingal and Berkshire Enterprises Inc. (“Berkshire”), a company owned by Mike Anobile, a prospective purchaser, dated April 17, 2018 indicates an increase in the “as completed” value from the 2015 estimate. The appraiser used is Ridley and is based on an increase in the estimated cost to complete prepared by LSTI Group and verified by Innovatus Engineering Inc. on April 18, 2018 with an estimated timeline to complete of eight months. This information has been sealed by the Court. The Receiver notes that the July 30, 2018 Affidavit of Antoinette Depinto does not refer to this updated cost to complete estimate.

46. An Agreement of Purchase and Sale was entered into by Canvas, a company related to Berkshire, on July 19, 2018, however it was initially not acceptable to MOS due to conditions including financing and a request for MOS to subordinate its security position. Following discussions between the parties, an agreement was eventually reached which was acceptable to MOS but subsequently failed due to Canvas’s inability to secure financing. The Receiver understands that this offer has lapsed by its terms.

Alternatives Available to Sell the Property – “as-is” or “as completed”

47. As indicated in paragraph 45, the estimated “as completed” value has increased in the intervening three year period from 2015 to 2018 with a related increase in the estimated cost to complete.

48. The Receiver would require funding in order to complete the project. In response to MOS’ request to give the Receiver the power to prime First Source and MOYA, Justice

Dunphy stated in the Endorsement that a priming charge to complete the build out was not appropriate due to the shifting of risk from one secured creditor to another.

49. As a result, the only funding alternative for the Receiver is to seek new funding that would be subordinated to the first and second mortgagees. The Receiver asked MOS if it was able to offer the new funding in priority to its mortgage for the proposed build-out. MOS responded that it was not able to do so, and has been unable to locate any alternative lenders who would be prepared to do so either.

50. Given the level of indebtedness of the mortgages secured against the Property, Justice Dunphy's Endorsement stating that there is to be no priming of the first and second secured creditors, the current estimated value of the Property and the possible increase in value if completed, the Receiver does not believe that it will be able to secure funding from a third party lender in order to build out the Property.

51. The Receiver accordingly recommends that the Property be marketed in an "as is" condition.

Listing Proposals Received

52. The Receiver reviewed the listing proposals referred to in paragraph 35 above with the secured creditors.

53. Based on their experience, marketing plan and pricing, CW's listing proposal appears to be the most attractive.

54. CW's Seniors Housing Group is in a unique position to advertise and market the Property given its specialized focus in the seniors' industry sector. CW advises that

they have a diverse database of potential buyers and have extensive experience in completing recent transactions for this type of Property.

55. In addition, they have become familiar with the Property, plan to bring the Property to market within two weeks, ensure transparent market exposure over a four week period and aim to finalize a transaction within 15-17 weeks.

56. CW's commission structure as set out in Confidential Appendix 1 is the most attractive particularly if the CW team closes the sale.

57. CW's "as-is" value range is higher than the \$14.3 million "as-is" value obtained by Fingal in 2015. CW recommends going to market on an unpriced basis in order to maximize value.

58. If the Receiver was building out the Property, the Receiver might be in a better position in terms of cost and exposure to market the Property itself without the use of a real estate broker. . However, given the recommendation to conduct a sales process on an "as is" basis, the benefits of using a broker appear to outweigh the cost. This is a unique asset with a lot of history, particularly because of its incomplete status and the number of years it has been under construction, the Property does not sell itself. As a result, the wider market exposure of a specialized broker-managed process may be able to better identify appropriate purchasers for the Property. The resultant additional cost, if any, of using a broker may be more than offset by the potential of a higher sales price.

72

VI. RECOMMENDED SALES PROCESS

59. In order to maximize the value of the Property for all creditors, the Receiver recommends that CW be retained to sell the Property on an "as is" basis. CW's extensive experience in this sector, combined with its recent track record in closing the sales of similar properties, will enable the Property to be exposed to a wide range of potential buyers both geographically and by type of stakeholder including current operators, developers, investors etc. which is expected to generate more interest leading to the highest possible sales price.

VII. CONCLUSION

60. The Receiver respectfully requests that the Court grant the relief described in paragraph 59 above.

All of which is respectfully submitted to this Court as of this 15th day of October, 2018.

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

APPENDIX "D"

H

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)

WEDNESDAY, THE 31ST

JUSTICE WILTON-SIEGEL)

DAY OF OCTOBER, 2018



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

**ORDER
(Approval of Sale Process)**

THIS MOTION made by RSM Canada Limited, in its capacity as receiver (the "Receiver") of Fingal Properties Holdings Inc. (the "Debtor"), for an Order substantially in the form enclosed in the Motion Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Receiver's Motion Record in respect of this motion, including the notice of motion and the first report of the Receiver dated October 15, 2018 (the "First Report").

AND UPON hearing the submissions of counsel for the Receiver, any other party as indicated on the counsel slip, and no one else appearing for any other person on the service list, although duly served as appears from the affidavit of service of Brendan Bissell, sworn October 22, 2018; filed;

25

NOTICE AND SERVICE

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

SALE PROCESS

2. THIS COURT ORDERS that the sale process as described in the First Report (the "Sale Process"), be and is hereby approved.

3. THIS COURT ORDERS that the Receiver is hereby authorized to carry out the Sale Process and to take such steps and execute such documentation as may be necessary or incidental to the Sale Process.

APPROVAL OF RECEIVER'S REPORT AND ACTIVITIES

4. THIS COURT ORDERS that the First Report and the activities described therein be and are hereby approved, provided that only the Receiver, in its personal capacity and only with respect to its personal capacity, shall be entitled to rely upon or utilize in any way such approval.

INCREASE TO THE RECEIVER'S BORROWING CHARGE

5. THIS COURT ORDERS the Order of Justice Dunphy Appointing Receiver dated September 12, 2018 in this matter be and hereby is amended by striking out the reference to "\$100,000.00" in paragraph 21 of that Order and substituting therefor "\$425,000.00".

SEALING

6. THIS COURT ORDERS that Confidential Appendices 1, and 2 to the First Report are hereby sealed pending the closing of a transaction to sell the Property (as defined in the First Report) and the filing of a Receiver's Certificate.

MISCELLANEOUS

7. 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.

W. Dan - hmt Jr.

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

OCT 3 1 2018

PER / PAR: *MM*

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 Sale Process)**

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
Toronto, Ontario M5G 1V2
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Michael B. Rotsztain (LSUC #: 17086M)
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Email: bissell@gsnh.com

Lawyers for the Receiver, RSM Canada Limited

ff

APPENDIX "E"

**IN THE MATTER OF THE RECEIVERSHIP OF
FINGAL PROPERTIES HOLDINGS INC.**

RECEIVER CERTIFICATE

CERTIFICATE NO. 2 - YOUR CREDIT UNION LIMITED ("YCU")

AMOUNT \$400,000

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver (the "Receiver") 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 (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 12th day of September, 2018 (the "Order") made in an action having Court file number CV-18-598008-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$400,000, being part of the total principal sum of \$425,000 which the Receiver is authorized to borrow under and pursuant to the Order at this time.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the ____ day of each month after the date hereof at a notional rate per annum equal to the rate of YCU's floating prime rate plus 3% per annum compounded monthly.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the 6th day of November, 2018 .

RSM CANADA LIMITED., solely in its capacity as Receiver of Fingal Properties Holdings Inc., and not in its personal capacity

Per:


Name: Bryan A. Tannenbaum

Title: President

APPENDIX "F"

Katie Parent

From: Delaney, Colleen <Colleen.Delaney@rsmcanada.com>
Sent: November-27-18 6:10 PM
To: Michael Olynyk
Cc: Tannenbaum, Bryan
Subject: Fingal - intercompany balances and payments

Michael,

Background

The Sept. 30/17 financial statements of Fingal reflect a loans receivable balance of \$2,472,583. The MOS court application documents indicate that this balance was comprised of loans that Fingal made to related companies to allow them to purchase and maintain other properties. These are the most recent financial statements that we have been provided with.

The Aug. 31/18 trial balance of Fingal reflects a series of Intercompany accounts receivable balances owing as follows:

Wilsondale Asset Management	\$4,517,249.73
Other Entities	15,441.35
Ferrus Holdings Inc.	10,940.38
Vodden Medical Art	1,446.40
Wilsondale Ventures	39,000.00
Sarwin Holdings	2,836.30
Drawbridge	3,750.00

Receivers' Analysis

We reviewed Fingal's operating bank statements (MOYA Financial) from inception through to the date of the receivership and analyzed the back-up ledgers, provided by Fingal, for disbursement and receipt transactions over \$25,000.

We note the following:

- A net balance owing from Wilsondale of \$4,278,931.79 at Sept. 12/18 as compared to the Aug. 30/18 trial balance amount of \$4,517,249.73. A significant portion of the payments made to Wilsondale refer to "manual transfer to Wilsondale re overdrafts" and 2219383 is referred to in many instances. There were \$363,457.03 in receipts that refer to "Highway 7 Woodbridge" that we were unable to identify the source of;
- \$740,042.08 was paid to MB Construction Group Inc.;
- \$313,914.00 was paid to Carbyne Environmental Group;
- \$146,257.00 wire transfer on Feb. 15/17 with no details;
- \$129,056.99 was paid to Domenic's Plumbing Service Inc.;
- \$120,032.47 was paid to Core One Mechanical Group;

- \$100,000 advanced re Bridge Loan on Nov. 20/15;
- \$60,503.70 was paid to Resident Nurse Alert;
- \$28,305.00 was paid to Dinetz Restaurant Equipment Limited;
- \$27,130.92 was paid to MS Electric; and
- \$26,861.10 was paid to Innovatus Engineering Inc.

Request

Can you please provide the detailed ledgers reflecting the current balance owing from the entities noted on Fingal's Aug. 31/18 trial balance (segregating any Wilsondale entities – ie. Wilsondale Asset Management and Wilsondale Ventures).

Can you please advise as to what the payments made to the various third parties above were for and which entity they were for the benefit of?

Can you please provide us with a copy of Fingal's general ledger for 2018?

Regards, Colleen

Colleen Delaney, CPA, CA, CIRP, LIT

RSM Canada Limited

11 King St. W., Suite 700, Box 27, Toronto, Ontario, Canada, M5H 4C7

D: 647.309.8735 F: 416.480.2646 E: colleen.delaney@rsmcanada.com | W: www.rsmcanada.com



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APPENDIX "G"

RSM CANADA LIMITED

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

- and -



AGREEMENT OF PURCHASE AND SALE

January ■, 2019

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND INTERPRETATION..... 2

 1.1 Definitions..... 2

 1.2 Schedules 5

 1.3 Headings 5

 1.4 Gender and Number 5

 1.5 Currency..... 5

 1.6 Invalidity of Provisions..... 5

 1.7 Governing Law 6

 1.8 “Including”..... 6

 1.9 Statutory References 6

 1.10 Date for Any Action..... 6

 1.11 Recognized Meanings 6

 1.12 Arm’s Length Negotiations..... 6

 1.13 Recitals..... 6

ARTICLE 2 PURCHASE AND SALE OF ASSETS..... 7

 2.1 Purchased Assets..... 7

ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS 7

 3.1 Purchase Price..... 7

 3.2 Deposit 7

 3.3 Satisfaction of Purchase Price..... 8

 3.4 Adjustments 9

 3.5 Taxes 9

 3.6 Realty Taxes..... 10

 3.7 Registration and Other Costs 10

 3.8 Electronic Registration..... 10

 3.9 Registration of Agreement..... 12

ARTICLE 4 REPRESENTATIONS, WARRANTIES AND COVENANTS..... 12

 4.1 By Receiver..... 12

 4.2 No Other Representations 13

 4.3 By Purchaser 13

 4.4 Representations and Warranties on Closing Date..... 14

 4.5 No Finder’s Fee..... 14

ARTICLE 5 ASSUMPTION OF LIABILITIES 14

 5.1 Assumed Obligations 14

ARTICLE 6 CONDITIONS	14
6.1 Conditions in Favour of the Purchaser.....	14
6.2 Purchaser's Right to Terminate	15
6.3 Conditions in Favour of the Receiver	15
6.4 Receiver's Right to Terminate	16
ARTICLE 7 PURCHASER'S ACKNOWLEDGEMENTS.....	16
7.1 Acknowledgments by Purchaser.....	16
7.2 Acknowledgment by Purchaser regarding Closing.....	18
7.3 Title.....	19
7.4 Documentation.....	20
7.5 Non-Merger.....	20
7.6 Post-Closing Obligations	20
ARTICLE 8 CLOSING.....	20
8.1 Closing Date.....	20
8.2 Deliveries at the Closing by the Receiver.....	20
8.3 Deliveries at the Closing by the Purchaser	21
8.4 HST.....	21
ARTICLE 9 ADDITIONAL AGREEMENTS OF THE PARTIES	23
9.1 Proceedings for the Approval and Vesting Order.....	23
9.2 Co-operation and Transition	24
9.3 Possession of Assets	24
9.4 Tax Indemnity.....	24
9.5 Books and Records	24
ARTICLE 10 GENERAL.....	24
10.1 Notices	24
10.2 Further Assurances.....	26
10.3 Successors and Assigns.....	26
10.4 No Waiver of Breach	27
10.5 Solicitors as Agents and Tender	27
10.6 Expenses and Legal Fees	27
10.7 Time of Essence	27
10.8 Risk	27
10.9 Acceptance	28
10.10 Limitation on Claims	28
10.11 Disclosure of Transaction and Announcements	29
10.12 Obligations as Covenants.....	29
10.13 Time of the Essence	29

10.14 Effect of Termination of Agreement..... 29

10.15 Amendment of Agreement..... 29

10.16 Entire Agreement..... 29

10.17 Merger..... 30

10.18 Counterparts; Electronic Transmission..... 30

10.19 Joint and Several..... 30

SCHEDULE "A" APPROVAL AND VESTING ORDER 32

SCHEDULE "B" LEGAL DESCRIPTION OF THE LANDS..... 47

SCHEDULE "C" ALLOCATION OF THE PURCHASE PRICE..... 48

SCHEDULE "D" PERMITTED ENCUMBRANCES 49

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE is made as of January ■, 2019

B E T W E E N:

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

(the “Receiver”)

- and -

■
(the “Purchaser”)

RECITALS:

A. M.O.S. MortgageOne Solutions Ltd.(the “**Applicant**”) made an application pursuant to the *Bankruptcy and Insolvency Act (Canada)* (the “**BIA**”) and the *Courts of Justice Act (Ontario)*, pursuant to which the Court issued an order on September 12, 2018 appointing the Receiver as receiver of all of the assets, undertakings and properties of Fingal acquired for, or used in relation to the business carried on by Fingal (the “**Business**”), including all proceeds thereof (the “**Property**”), which includes the Lands (such order, the “**Appointment Order**”);

B. Pursuant to the Appointment Order the Receiver has the power and authority to, *inter alia*, sell, convey and transfer the Property;

C. On October 31, 2018 the Court issued an order, among other things, approving a sale process in respect of the Property;

D. The Receiver has agreed to sell and the Purchaser has agreed to purchase the Purchased Assets, subject to and in accordance with the terms and conditions contained herein and the approval of the Court.

NOW THEREFORE in consideration of the premises, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Parties (as defined herein) hereto covenant, agree and declare as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following terms will have the following meanings:

“**Acceptance Date**” means the date upon which this agreement is executed and delivered by the Receiver and the Purchaser;

“**Affiliate**” has the meaning attributed to such term under the *Business Corporations Act* (Ontario);

“**Agreement**” means this agreement, and all schedules attached to this agreement, in each case as they may be amended or supplemented from time to time, and the expressions “**hereof**”, “**herein**”, “**hereto**”, “**hereunder**”, “**hereby**” and similar expressions refer to this Agreement. Unless otherwise indicated, references to “**Articles**”, “**Sections**” and “**Schedules**” are to articles and sections and schedules of this agreement;

“**Applicable Laws**” means collectively, (i) any applicable domestic or foreign law including any statute, subordinate legislation or treaty, and (ii) any applicable guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a Governmental Authority having the force of law;

“**Applicant**” has the meaning attributed to such term in Recital A;

“**Appointment Order**” has the meaning attributed to such term in Recital A;

“**Approval and Vesting Order**” means an order or orders to be made by the Court substantially in the form of the order attached as Schedule “A” hereto;

“**BIA**” has the meaning attributed to such term in Recital A;

“**Books and Records**” means all information in any form relating to, or used in connection with, the Business, including books of account, financial and accounting information and records, personnel records, sales and purchase records, customer and supplier lists, business reports, operating guides and manuals, plans and projections and all other documents and files, excluding however (a) all corporate records, minute books, tax records and returns, and other records having to do with the corporate organization and governance of, and payment of Taxes by, Fingal, and (b) information and materials in electronic and physical form of Fingal not specifically related to or used in connection with the Business.

“**Business**” has the meaning attributed to such term in Recital A;

“**Business Day**” means any day, other than Saturday, Sunday or any statutory holiday in the Province of Ontario;

“**Claims**” means all claims, suits, proceedings, Liabilities, obligations, losses, damages available at law or in equity (excluding indirect and consequential damages), penalties, interest,

judgments, costs, fines, reasonably and necessarily incurred expenses, disbursements, legal fees on a full indemnity basis and other reasonably and necessarily incurred professional fees and disbursements, interest, demands and actions of any nature or any kind whatsoever and **“Claim”** means any one of the foregoing;

“Closing” means the completion of the Transaction;

“Closing Date” means 10 days after the date of the Approval and Vesting Order, or such earlier date as the Parties may agree in writing, acting reasonably;

“Court” means the Ontario Superior Court of Justice (Commercial List);

“Deposit” has the meaning attributed to such term in Section 3.2(a);

“DRA” has the meaning attributed to such term in Section 3.8(a);

“Governmental Authority” or **“Governmental Authorities”** means governments, regulatory authorities, governmental departments, agencies, commissions, bureaux, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power;

“Hazardous Materials” means any contaminants, pollutants, substances or materials that, when released to the natural environment, could cause, at some immediate or future time, harm or degradation to the natural environment or risk to human health, whether or not such contaminants, pollutants, substances or materials are or shall become prohibited, controlled or regulated by any Governmental Authority and any “contaminants”, “dangerous substances”, “hazardous materials”, “hazardous substances”, “hazardous wastes”, “industrial wastes”, “liquid wastes”, “pollutants” and “toxic substances”, all as defined in federal, provincial and/or municipal legislation, regulations, orders and/or ordinances relating to environmental, health and/or safety matters;

“HST” means all harmonized sales taxes payable under the *Excise Tax Act* (Canada);

“Lands” means the real property described in Schedule “B” hereto and all improvements and fixtures forming part of such real property (which have not been fully completed), including the geothermal heating and cooling system affixed thereto;

“Liability” or **“Liabilities”** means any and all liabilities, obligations, charges, costs, debt and indebtedness, of any and every kind and nature whatsoever, absolute or contingent, liquidated or unliquidated;

“Nominee Purchase” has the meaning attributed to such term in Section 8.4(a);

“Notice of Loss” has the meaning attributed to such term in Section 10.8(a);

“Order” means a final judgment or order of an Ontario Court;

“Own Account Purchase” has the meaning attributed to such term in Section 8.4(a);

“Parties” means the Receiver and the Purchaser;

“Permitted Encumbrances” means the instruments, documents and encumbrances listed in Schedule “C” hereto;

“Person” means any individual, partnership, limited partnership, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority, however designated or constituted;

“Property” has the meaning attributed to such term in Recital A;

“Purchased Assets” has the meaning attributed to such term in Section 2.1;

“Purchase Price” means the amount specified in Section 3.1;

“Purchaser” has the meaning attributed to such term on page 1;

“Purchaser Beneficial Owners” has the meaning attributed to such term in Section 8.4(a);

“Purchaser’s HST Certificate” has the meaning attributed to such term in Section 8.4(f);

“Purchaser’s Solicitors” means _____ or such other firm as may be appointed from time to time by the Purchaser;

“Reassessments” has the meaning attributed to such term in Section 3.6(a);

“Receiver” has the meaning ascribed to it on page 1;

“Receiver’s Certificate” means a certificate evidencing an amount borrowed by the Receiver to fund the operations of the receivership contemplated herein as authorized any Order of the Court;

“Receiver’s Solicitors” means Goldman, Sloan, Nash and Haber LLP or such other firm as may be appointed from time to time by the Receiver;

“Receiving Party” has the meaning attributed to such term in Section 3.8(f);

“Requisition Date” has the meaning attributed to such term in Section 7.3;

“Tax” or “Taxes” means any federal, provincial, state, local, foreign or other income, gross receipts, profits, franchise, transfer, sales, use, customs, payroll, occupation, health, property, excise, valued added (including goods and services tax) or other taxes, fees, duties, assessments, withholdings or governmental charges of any nature (including interest, penalties and additions to such taxes or charges);

“Tendering Party” has the meaning attributed to such term in Section 3.8(f);

“**Teraview Electronic Registration System**” or “**TERS**” has the meaning attributed to such terms in Section 3.8;

“**Time of Closing**” means 11 a.m. on the Closing Date or such other time on the Closing Date as agreed to by the Parties;

“**Transaction**” means the transaction of purchase and sale contemplated by this Agreement;

“**Trust Beneficial Owners**” has the meaning attributed to such term in Section 8.4(a); and

“**Trust Purchase**” has the meaning attributed to such term in Section 8.4(a).

1.2 Schedules

The following schedules form part of this Agreement:

- (a) Schedule “A” - Approval and Vesting Order
- (b) Schedule “B” - Legal Description of Lands
- (c) Schedule “C” - Allocation of The Purchase Price
- (d) Schedule “D” - Permitted Encumbrances

1.3 Headings

The division of this Agreement into separate Articles, Sections and Schedules, the provision of a table of contents and the insertion of headings is for convenience of reference only and will not affect the construction or interpretation of this Agreement.

1.4 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated and will be paid in Canadian currency.

1.6 Invalidity of Provisions

Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision hereof. To the extent permitted by Applicable Law, the Parties waive any provision of law that renders any provision of this Agreement invalid or unenforceable in any respect. The Parties will engage in good faith negotiations to replace any provision that is declared invalid or unenforceable with a valid and enforceable provision, the economic effect of which comes as close as possible to that of the invalid or unenforceable provision that it replaces.

1.7 Governing Law

This Agreement will be governed by and construed exclusively in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein except for laws relating to conflict of laws and this agreement shall be treated for all purposes as an Ontario contract. The parties hereby submit and attorn to the exclusive jurisdiction of the Court with respect to any disputes, actions or proceedings related to or arising out of this Agreement or the interpretation or enforcement thereof.

1.8 “Including”

All usage of the word “including” in this Agreement will mean “including without limitation” or “including but not limited to” throughout this Agreement.

1.9 Statutory References

Any reference to a statute will mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided.

1.10 Date for Any Action

When calculating the period of time within which or following which any act is to be done or step taken, the date that is the reference day in calculating such period will be excluded. If the last day of such period is not a Business Day, the period will end on the next Business Day.

1.11 Recognized Meanings

Words or abbreviations that have well known or trade meanings are used herein in accordance with their recognized meanings.

1.12 Arm’s Length Negotiations

The Parties acknowledge that they are dealing with one another at arm’s length. This Agreement will not be construed in favour of or against either Party by reason of the extent to which either Party or its professional advisors participated in the preparation of this Agreement.

1.13 Recitals

The parties hereby confirm and agree that the recitals contained herein are true and correct in every respect and may be relied upon by the parties as statements of fact and form an integral part of this Agreement.

95

**ARTICLE 2
PURCHASE AND SALE OF ASSETS**

2.1 Purchased Assets

Subject to the provisions of this Agreement and pursuant to the Approval and Vesting Order if granted, the Receiver will sell, assign and transfer to the Purchaser and the Purchaser will purchase from the Receiver, effective as of the Time of Closing on the Closing Date, all of the right, title and interest of Fingal in and to (a) the Lands, and (b) the Books and Records (collectively, the "**Purchased Assets**") For greater certainty, the Purchased Assets shall exclude all other property and assets of Fingal.

**ARTICLE 3
PURCHASE PRICE AND RELATED MATTERS**

3.1 Purchase Price

The purchase price payable to the Receiver for the Purchased Assets shall be \$■ (the "**Purchase Price**").

3.2 Deposit

- (a) the Purchaser shall pay to the Receiver a deposit of \$■ [10% of the **Purchase Price**] (the "**Deposit**") by LVTS wire transfer to the account of the Receiver's Solicitor, in trust, which shall be paid at the time the Purchaser submits this Agreement to the Receiver;
- (b) the Deposit will be held by the Receiver's Solicitor in a trust account as a deposit pending completion or other termination of this Agreement, and subject to the provisions of this Agreement will be credited on account of the Purchase Price on Closing;
- (c) the Parties agree that the Receiver will pay no interest on the Deposit;
- (d) if the Transaction is not completed by reason of the Purchaser exercising its right of termination pursuant to Section 6.2 by reason of the non-satisfaction, non-performance, non-compliance or non-waiver by the Purchaser of the conditions in Sections 6.1(c), (d) or (e), the Deposit shall be returned by the Receiver to the Purchaser, without interest or deduction and the Receiver and the Purchaser will be released from all obligations hereunder and except as expressly stated herein no Party to this Agreement (nor any principal or beneficiary thereof) shall have any rights or recourse or obligations pursuant to, in respect of or arising from this Agreement except those expressly stated to survive termination of this Agreement;
- (e) if the Transaction is not completed by reason of the Receiver exercising its right of termination pursuant to Section 6.4 by reason of the non-satisfaction, non-performance, non-compliance or non-waiver by the Receiver of the conditions in

Sections 6.3(c), (d) or (e) or, the Deposit shall be returned by the Receiver to the Purchaser, without interest or deduction and the Receiver and the Purchaser will be released from all obligations hereunder and except as expressly stated herein no Party to this Agreement (nor any principal or beneficiary thereof) shall have any rights or recourse or obligations pursuant to, in respect of or arising from this Agreement except those expressly stated to survive termination of this Agreement;

- (f) if the Transaction is not completed for any reason whatsoever other than as set out in Section 3.2(d) or Section 3.2(e) or the failure by the Receiver to perform any of the material covenants or agreements on the Receiver's part to be performed hereunder, then the Deposit shall be forfeited to, and retained by, the Receiver on account of liquidated damages and not as a penalty and the Receiver shall be entitled to pursue all of its rights and remedies against the Purchaser, including the resale of the Purchased Assets. Upon any such resale, the Purchaser shall pay to the Receiver all damages, losses and expenses suffered or incurred by the Receiver, including: (i) an amount equal to the amount, if any, by which the Purchase Price under the Agreement exceeds the net purchase price received by the Receiver pursuant to such resale (net of any commissions and costs and expenses incurred to effect the completion of such resale), and (ii) an amount equal to all costs and expenses incurred by the Receiver in respect of the Transaction and occasioned by the Purchaser's failure to comply with this Agreement; and
- (g) provided that notwithstanding the foregoing or anything else to the contrary, if the Transaction contemplated under this Agreement is not completed on the Closing Date by reason of the material default of the Receiver in the performance of any of its obligations hereunder, the Purchaser's sole recourse in the event of such non-completion shall be limited to: (i) return of the Deposit, without interest or deduction; and if such amount is not returned to the Purchaser (ii) to an action against the Receiver only for an amount or amounts which, in the aggregate, shall not exceed the amount of the Deposit then actually paid to the Receiver, and all claims against the Receiver for an amount or amounts which, individually or in the aggregate, exceed the amount of the Deposits then actually paid to the Receiver are hereby irrevocably waived and released by the Purchaser. In no event or circumstance whatsoever will the Purchaser claim specific performance or other equitable relief with respect to this Agreement. The foregoing provisions shall survive and not merge with Closing on the termination of this Agreement and shall continue in full force and effect thereafter for the benefit of the Receiver.

3.3 Satisfaction of Purchase Price

On Closing, the Purchaser shall pay the balance of the Purchase Price, after deduction only of the Deposit, subject to adjustment in accordance with Section 3.4, to the Receiver by LVTS wire transfer to the account of the Receiver's Solicitor.

The Purchase Price shall be allocated against the Lands and the Books and Records as set out on Schedule "B", to be initially prepared by the Purchaser. The Parties agree that: (i) they shall follow and comply with such allocation in determining and reporting their respective Liabilities, if any, for any Taxes; (ii) they shall file their respective income tax returns in accordance therewith; and (iii) in the event that the Purchaser fails to comply with any of the foregoing, it shall indemnify and save harmless the Receiver from any and all claims resulting or arising therefrom.

3.4 Adjustments

Realty taxes, outstanding public or private utilities and rents and other usual adjustments applicable to a sale by a court-appointed receiver shall be apportioned and allowed to 12:01 a.m. on the Date of Closing, the Date of Closing itself to be apportioned to the Purchaser. The Receiver shall not be responsible for the payment of, and there shall be no adjustment for, any outstanding development charges or fees, lot levies, local improvement charges or sewer charges. The Purchaser acknowledges that the Vendor shall not be required to make actual payment of any arrears for realty taxes, utility charges and other amounts of a like nature, but instead the Receiver may, at its option, adjust and credit the Purchaser for same in the Statement of Adjustments. Notwithstanding anything otherwise contained herein, the Purchaser acknowledges and agrees that it shall not be entitled to credit in the Statement of Adjustments for any last month's rents, advance rent or security deposits paid by any tenant of the Lands or any portion thereof.

If the final cost or amount of an item that is to be adjusted cannot be determined at Closing, then an initial adjustment for such item shall be made at Closing, such amount to be estimated by the Receiver, acting reasonably, as of the Closing Date on the basis of the best evidence available at the Closing as to what the final cost or amount of such item will be. In each case, when such cost or amount is determined, the Receiver or the Purchaser, as the case may be, shall, within 30 days of determination, provide a complete statement thereof to the other and within 30 days thereafter the Receiver and the Purchaser shall make a final adjustment as of the Closing Date for the item in question. In the absence of agreement by the Parties, the final cost or amount of an item shall be determined by an accountant or such other financial professional appointed jointly by the Receiver and the Purchaser, with the cost of such accountant's or other financial professional's determination being shared equally between the Parties. All re-adjustments shall be requested in a detailed manner on or before the 60th day after the Closing Date, after which time neither party shall have any right to request re-adjustment.

3.5 Taxes

The Purchaser will be liable for and will pay at the Time of Closing all retail sales taxes (including any HST), land transfer tax and all other transfer taxes, duties or other like charges payable upon or in connection with the purchase of the Purchased Assets by the Purchaser, unless the Purchaser provides the Receiver with valid exemption certificates acceptable to the Receiver, acting reasonably. Regardless of whether or not the Purchaser provides the Receiver with any such exemption certificates, the Purchaser shall indemnify the

Receiver from and against all claims, Liabilities, costs and fees (including legal fees on a full indemnity basis) arising out of the Purchaser's failure to pay any such taxes.

3.6 Realty Taxes

- (a) Notwithstanding any other provision of this Agreement, the Purchaser acknowledges and agrees that there shall be no adjustment in favour of the Purchaser for any increase in realty taxes for the Lands resulting from changes in the assessed value of the Lands in respect of any period prior to the Closing Date. Without limiting the foregoing, the Purchaser acknowledges and agrees that, notwithstanding any other provision of this Agreement, the Receiver shall have no obligation or Liability of any kind whatsoever for payment of any additional or supplementary taxes that may become payable in respect of the year of Closing and/or prior taxation years as a result of reassessments of taxes done by any Governmental Authority ("Reassessments").
- (b) The Purchaser further acknowledges and agrees that the Approval and Vesting Order to be sought by the Receiver shall provide that title to the Purchased Assets shall vest in the Purchaser subject to any potential Liability for increased realty taxes (including, without limitation, any increases in taxes and/or supplementary taxes in respect of the current taxation year and taxation years *prior* to Closing) as a result of any Reassessments.

3.7 Registration and Other Costs

Except as otherwise provided herein, each of the Receiver and the Purchaser shall be responsible for its own costs (including without limitation costs of its solicitors) in respect of this Transaction. The Purchaser shall be responsible for the cost of registering notice of the Approval and Vesting Order, including all applicable land transfer taxes, and for any other sales and transfer taxes (including but not limited to HST) payable in connection with the transfer of the Purchased Assets to the Purchaser pursuant hereto.

3.8 Electronic Registration

The Transaction will be completed by electronic registration (through use of the "Teraview Electronic Registration System" or "TERS") and the following provisions shall govern:

- (a) The Purchaser shall retain a solicitor who is authorized to use the Teraview Electronic Registration System and who is in good standing with the Law Society of Upper Canada. The Receiver and the Purchaser shall cause their respective solicitors to enter into a document registration agreement ("DRA") in the most recent form adopted by the Joint LSUC-CBAO Committee on Electronic Registration of Title Documents to govern the electronic registration of any documents intended to be registered in connection with the completion of this Transaction.

- (b) The delivery and exchange of the closing documents and money provided for in this Agreement and the release of them to the Purchaser and the Receiver, as the case may be: (i) shall not occur at the same time as registration of the Approval and Vesting Order (and any other documents intended to be registered in connection with the completion of this Transaction); and (ii) shall be governed by the DRA, pursuant to which the solicitor receiving the closing documents and/or funds will be required to hold them in escrow and will not be entitled to release them except in accordance with the terms of the DRA.
- (c) The Purchaser expressly acknowledges and agrees that the Receiver will not release or deliver the Receiver's certificate contemplated by the Approval and Vesting Order until the balance of the funds due by the Purchaser on Closing are remitted to the Receiver by LVTS wire transfer to the account of the Receiver's Solicitor.
- (d) Any documents not intended for registration on title to the Lands may be delivered to the other party's solicitor by facsimile transmission (or by a similar system reproducing the original), provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto. The party transmitting any such documents shall also deliver the original documents to the recipient party's solicitor within two (2) Business Days after the Closing Date, if the delivery of the original documents has been requested by the recipient party or its solicitor.
- (e) If the Purchaser is unable to register the Approval and Vesting Order electronically on the Closing Date as the result of any malfunction, delay or temporary unavailability of the Teraview Electronic Registration System, then the Closing Date shall be automatically extended until the next day on which such system is operating so as to permit electronic registrations in the Land Titles Office.
- (f) Notwithstanding anything contained in this Agreement or in the DRA to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by either party (in this paragraph called the "**Tendering Party**") upon the other party (in this paragraph called the "**Receiving Party**") when the solicitor for the Tendering Party has:
 - (i) delivered all applicable closing documents and funds to the Receiving Party's solicitor in accordance with the provisions of the DRA;
 - (ii) advised the solicitor for the Receiving Party in writing that the Tendering Party is ready, willing and able to complete the Transaction in accordance with the provisions of this Agreement;
 - (iii) completed all steps required by TERS to complete the Transaction that can be performed or undertaken by the Tendering Party's solicitor without the cooperation or participation of the Receiving Party's solicitor, and specifically when the Tendering Party's solicitor has electronically

100

“signed” the Application to Register the Approval and Vesting Order (and any other registrable documents) for completeness and granted “access” to the Receiving Party’s solicitor (but without the Tendering Party’s solicitor releasing such documents for registration by the Receiving Party’s solicitor);

without the necessity of personally attending upon the Receiving Party or the Receiving Party’s solicitor with the documents and/or funds and without the requirement to have an independent witness evidencing the foregoing.

3.9 Registration of Agreement

The Purchaser agrees that it will not register this Agreement or any assignment thereof or any notice referring in any way to this Agreement, directly or indirectly, or any caution, notice of a purchaser’s lien or certificate of pending litigation or any other form of notice against the Lands, notwithstanding that the Purchaser may allege some interest in and against the Deposit or the Lands which might otherwise support such registration or notice. The Purchaser acknowledges that nothing in this Agreement shall create an interest in the Lands. This Agreement is personal to the Purchaser and neither it nor the Deposit or any other monies paid hereunder shall create any interest in the Lands or any part(s) thereof. In the event that the Purchaser breaches or defaults under this provision, in addition to the Receiver’s other rights under this Agreement, the Receiver shall and is hereby constituted as the attorney of the Purchaser with the right and power, coupled with an interest, to execute, deliver and register any documents or instruments, on behalf of the Purchaser, which the Receiver desires in order to remove or discharge any notice, instrument or other document which the Purchaser has registered or caused or suffered or permitted to be registered on title to the Lands. In addition, the Receiver shall be entitled to pursue all of its rights and remedies against the Purchaser, including the resale of the Purchased Assets.

ARTICLE 4 REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 By Receiver

The Receiver represents, warrants and covenants to the Purchaser as follows and acknowledges that the Purchaser is relying on such representations, warranties and covenants in connection with the terms and conditions of this Agreement:

- (a) the Receiver has been validly appointed as receiver of *inter alia*, the Purchased Assets with authority to sell the Purchased Assets to the Purchaser pursuant to this Agreement;
- (b) the Receiver has done no act to encumber the Purchased Assets except in accordance with the Appointment Order and has not disposed of the Purchased Assets; and
- (c) each of the Receiver and Fingal is not a non-resident of Canada within the meaning of that term as used in the *Income Tax Act* (Canada).

4.2 No Other Representations

Except as set forth in this Agreement, the Receiver makes no covenants, representations or warranties whatsoever, including with respect to the condition of the Purchased Assets and the sufficiency or condition of Fingal's title thereto or any of the other matters described in Section 7.1(d).

4.3 By Purchaser

The Purchaser represents, warrants and covenants to the Receiver that:

- (a) the Purchaser is duly incorporated, organized and a subsisting corporation under the laws of [the Province of Ontario] and the Purchaser has all necessary corporate power and authority to enter into this Agreement and carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder have been duly authorized by all necessary corporate action on the part of the Purchaser and this Agreement and the documents to be delivered pursuant hereto are valid and binding obligations of the Purchaser enforceable against the Purchaser in accordance with their respective terms;
- (b) no consent or approval of or registration, declaration or filing with any Governmental Authority is required for the execution or delivery of this Agreement by the Purchaser, the validity or enforceability of this Agreement against the Purchaser or the performance by the Purchaser of any of its obligations hereunder;
- (c) the Purchaser is not a non-Canadian for the purposes of the *Investment Canada Act* (Canada) and at the Time of Closing will be a registrant for the purposes of the *Excise Tax Act* (Canada); and
- (d) until the completion of the Transaction at Time of Closing, and in accordance with the non-disclosure agreement dated ■, 2019, all documents and information received by the Purchaser, its representatives, auditors or counsel, from the Receiver or its representatives, auditors or counsel, will be treated as strictly confidential and will not be disclosed to others by the Purchaser except to the Purchaser's agents, employees, professional advisors and bankers on a "need to know" basis for the purposes of the Transaction. The Purchaser further agrees that unless and until the terms of this Agreement become public knowledge in connection with the Approval and Vesting Order, the Purchaser shall keep such terms confidential and shall not disclose the same to anyone except the Purchaser's agents, employees, professional advisors or bankers on a "need to know" basis in connection herewith and then only on the basis that such persons also keep such terms confidential as aforesaid.

4.4 Representations and Warranties on Closing Date

All representations and warranties set forth in this Article 4 will be true and correct on and as of the Time of Closing with the same force and effect as if made on and as of such date.

4.5 No Finder's Fee

Each of the Parties represents and warrants to each other that such Party has not taken, and agrees that it will not take any action that would cause any other Party to become liable to any claim or demand for a brokerage, finder's fee or other similar payment, except any fees payable by the Receiver to Cushman & Wakefield ULC and to any cooperating broker.

**ARTICLE 5
ASSUMPTION OF LIABILITIES**

5.1 Assumed Obligations

- (a) The Purchaser agrees to assume any obligations owing by the Receiver or Fingal, or either of them, to the Township of Southwold and any other Governmental Authority or utility or cable company with regard to the Permitted Encumbrances registered against title to the Purchased Assets on the Closing Date.
- (b) Purchaser agrees to: (i) accept title to the Lands subject to the Permitted Encumbrances; and (ii) to carry out and perform all obligations, agreements, Liabilities imposed upon the owner of the Lands.
- (c) Except as provided in Sections 5.1(a) and (b), the Purchaser is not assuming any Liabilities of Fingal or relating to the Business.

**ARTICLE 6
CONDITIONS**

6.1 Conditions in Favour of the Purchaser

The Purchaser's obligations under this Agreement are conditional upon the satisfaction, performance of or compliance with the following terms and conditions (which are included in this Agreement for the benefit of the Purchaser and where applicable, may be waived in writing in whole or in part by the Purchaser at any time):

- (a) the representations and warranties of the Receiver set forth in Article 4.1 hereof shall be true and correct in all material respects as of the Time of Closing;
- (b) the Receiver shall have executed and delivered all necessary agreements, instruments and documentation and complied with all the terms, covenants and conditions of this Agreement to be performed or complied with by the Receiver to conclude the Transaction at or prior to the Time of Closing;

- (c) the Approval and Vesting Order will have been obtained by the Receiver on or before February 28, 2019, on notice to a service list satisfactory to the Purchaser, acting reasonably, and shall not be subject to a legally effective stay of proceedings;
- (d) at the Time of Closing, no order will have been issued by a court of competent jurisdiction which remains in effect, and no action or proceeding will have been instigated which remains pending before a court of competent jurisdiction, to prevent or otherwise adversely affect the purchase and sale of the Purchased Assets or any portion thereof pursuant to this Agreement; and
- (e) no legal or regulatory action or proceeding will be pending or threatened by any Person to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby.

6.2 Purchaser's Right to Terminate

If any of the conditions contained in Section 6.1 are not performed or fulfilled at or prior to the Time of Closing to the satisfaction of the Purchaser or where applicable, waived by the Purchaser, the Purchaser may terminate this Agreement by notice to the Receiver, and in such event the treatment of the Deposit and the Parties' respective rights against one another shall be governed by the applicable provisions of Section 3.2.

6.3 Conditions in Favour of the Receiver

The Receiver's obligations under this Agreement are conditional upon the satisfaction, performance of or compliance with the following terms and conditions (which are included in this Agreement for the benefit of the Receiver and where applicable, may be waived in writing in whole or in part by the Receiver at any time):

- (a) the representations and warranties of the Purchaser set forth in Article 4.3 hereof shall be true and correct as of the Time of Closing and have the same force and effect as if made at and as of such time;
- (b) the Purchaser shall have executed and delivered all necessary agreements, instruments and documentation and complied with all the terms, covenants and conditions of this Agreement to be performed or complied with by the Purchaser to conclude the Transaction at or prior to the Time of Closing;
- (c) the Approval and Vesting Order will have been obtained by the Receiver on or before February 28, 2019, on notice to a service list satisfactory to the Receiver, acting reasonably, and shall not be subject to a legally effective stay of proceedings;
- (d) at the Time of Closing, no order will have been issued by a court of competent jurisdiction which remains in effect, and no action or proceeding will have been instigated which remains pending before a court of competent jurisdiction, to prevent or otherwise adversely affect the purchase and sale of the Purchased Assets or any portion thereof pursuant to this Agreement; and

- (e) no legal or regulatory action or proceeding will be pending or threatened by any Person to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby.

6.4 Receiver's Right to Terminate

If any of the conditions contained in Section 6.3 are not satisfied, performed or fulfilled at or prior to the Time of Closing to the satisfaction of the Receiver or where applicable, waived by the Receiver, the Receiver may terminate this Agreement by notice to the Purchaser, and in such event the treatment of the Deposit and the Parties' respective rights against one another shall be governed by the applicable provisions of Section 3.2.

**ARTICLE 7
PURCHASER'S ACKNOWLEDGEMENTS**

7.1 Acknowledgments by Purchaser

The Purchaser acknowledges that:

- (a) the interest of Fingal in the Purchased Assets may be limited and the Receiver will be obliged to convey to the Purchaser only such interest as Fingal has therein and not the interest of any third party, provided that nothing in this Section 7.1(a) shall be applied or construed so as to derogate from the title or interest acquired by the Purchaser pursuant to and in accordance with the Approval and Vesting Order. To the extent that any obligation of the Receiver requires the co-operation or assistance of any third party, the Receiver will not be required to compel any such co-operation or assistance for the purposes of making any conveyance to the Purchaser. The provisions of this Section 7.1(a) shall not derogate from the Purchaser's right to rely upon the conditions to closing in favour of the Purchaser as set out herein;
- (b) the Purchaser shall be solely responsible for obtaining all consents required by the Purchaser in accordance with the terms hereof to the assignment and transfer to the Purchaser of the Purchased Assets. The Receiver agrees that it will do or cause to be done such things as are reasonably requested by the Purchaser in order to assist the Purchaser to obtain required consents provided that the Receiver shall have no obligation to obtain any consents or to provide or pay any consideration or incur any costs to obtain such consents;
- (c) the Purchaser has, or will have by the Closing, inspected, or chosen not to inspect, the Purchased Assets and has relied entirely upon its own inspection and investigation, and is purchasing Fingal's right, title and interest, if any, in and to the Purchased Assets on an "as is, where is" basis as they shall exist on the Closing Date without any representations or warranties of any nature or kind, express or implied (including pursuant to the *Sale of Goods Act* (Ontario), by the Receiver except those specifically set out in this Agreement;

- (d) without limiting the generality of paragraph (c) the Purchaser acknowledges and agrees that the parties have expressly agreed to exclude from this Agreement all representations and warranties, express or implied, with respect to the following matters:
- (i) the description (including legal description of the Lands), title, condition, state of repair and fitness for any purpose of the Purchased Assets, including the extent of completion of the unfinished improvements and fixtures forming part of the Lands and the amount of the costs of fully completing such improvements and fixtures, which the Purchaser acknowledges and agrees shall be the sole responsibility of the Purchaser;
 - (ii) the compliance of the Lands with applicable laws, by-laws or regulations including without limitation, municipal zoning by-laws and regulations; the fire codes or the building codes;
 - (iii) the condition or state of repair of the Purchased Assets, including the Lands, or to title, outstanding encumbrances, description, fitness for purpose, state, merchantability, quantity, condition, defect (patent or latent), value and/or quality thereof;
 - (iv) any work orders, stop work orders, deficiency notices, infractions, open permits, compliance requests, development fees, education levy imposts, lot levies, local improvements, sewer charges, zoning and building code violations and any outstanding requirements that have been or may be issued by any Governmental Authority, the structural integrity of any improvements, whether completed or uncompleted, on the Lands;
 - (v) any easements, rights of way, instruments, documents, agreements or other registered or unregistered interest in the Lands which impacts the use, enjoyment, income or development opportunities connected with the Lands;
 - (vi) that the present use or any future use (including completion of the unfinished improvements or any similar or other project) of the Lands intended by the Purchaser is or will be lawful or permitted;
 - (vii) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, the sufficiency of any drainage, whether or not the Lands are located wholly or partially in a flood plain or flood hazard boundary or similar area, the existence or non-existence of underground storage tanks, and/or the availability of public utilities and services for the Lands;
 - (viii) the revenue, rents or other income from the Purchased Assets, any projections, estimates, or budgets, future revenues, future results of operations (or any component thereof) from the Purchased Assets or any

other information or documents reviewed by the Purchaser from any source with respect to the purchased Assets;

- (ix) the execution, good standing, validity, binding effect or enforceability of the Permitted Encumbrances;
 - (x) that the Receiver or Fingal has any right, title or interest in any goodwill associated with the Purchased Assets, or the use of any name associated with the operation of the Purchased Assets;
 - (xi) [that the Receiver or Fingal has any right, title or interest in any of the Other Assets, including plans, specifications and similar material, and that the Purchaser will be entitled to use them for any purpose intended by the Purchaser, including completion of the unfinished improvements or any similar or other project]; and
 - (xii) the compliance of the Lands with environmental laws or the existence or non-existence of Hazardous Materials, environmental, soil or water contamination or pollution on or about the Lands, or otherwise with respect to the environmental condition of the Lands.
- (e) any asset lists, information packages, information memoranda and other material concerning the Purchased Assets or the sale thereof whether or not provided by or on behalf of the Receiver or by any other person or party have been prepared solely for the convenience of the Purchaser and are not warranted or represented to be complete or accurate and are not part of this Agreement (unless specifically provided in this Agreement) and the descriptions of the Purchased Assets provided to the Purchaser are for the purposes of identification only, and no condition, warranty or representation has been or will be given by the Receiver concerning the accuracy, completeness or any other matter concerning such descriptions or otherwise of any nature or kind whatsoever; and
- (f) the Receiver is entering into this Agreement solely in its capacity as receiver of the Property and not in its personal or other capacity and the Receiver and its agents (including the Receiver's Solicitors), officers, directors and employees will have no personal or corporate Liability under or as a result of this Agreement, or otherwise in connection herewith.

7.2 Acknowledgment by Purchaser regarding Closing

The Purchaser further acknowledges and agrees that:

- (a) there shall not be, surviving Closing, any express or implied representation or warranty by the Receiver, or any condition, as to title, merchantable quality, fitness for any purpose or otherwise or as to any other matter, except to the extent expressly provided for in this Agreement;
- (b) the Approval and Vesting Order shall provide that the Receiver, upon the conditions to Closing, as set forth in Sections 6.3 and 6.4 of this Agreement,

having been satisfied or (subject to Sections 6.1 and 6.3) waived by the Purchaser and the Receiver, respectively, in accordance with the terms of this Agreement, shall file a certificate with the Court substantially in the form attached to the Approval and Vesting Order (the “**Receiver’s Certificate**”) and that title to the Purchased Assets shall vest in the Purchaser (or a Permitted Assign and/or a nominee titleholder for the Purchaser or such Permitted Assign) subject to the Permitted Encumbrances and effective immediately upon the delivery of the Receiver’s Certificate to the Purchaser;

- (c) despite issuance of the Approval and Vesting Order, the Purchaser (or such Permitted Assign and/or nominee title holder for the Purchaser or such Permitted Assign) shall have no rights thereunder, nor any right, title or interest in the Purchased Assets until the Receiver’s Certificate is delivered by the Receiver to the Purchaser, as aforesaid;
- (d) at least ten (10) Business Days prior to the scheduled Closing Date, the Purchaser shall provide a written direction to the Receiver setting forth the name in which title to the Lands will be taken. The Purchaser shall cause any nominee title holder to execute and deliver any instruments to be registered on title under the terms of this Agreement;

All documentation referred to in this Section, except as otherwise provided herein, shall be in form and substance acceptable to the Purchaser and the Receiver each acting reasonably.

7.3 Title

The Purchaser agrees to accept title subject to and shall assume the Permitted Encumbrances by way of a written agreement in form and content satisfactory to the Receiver, if an assumption agreement is required by the Receiver. The Purchaser shall be allowed until fourteen (14) days after the Acceptance Date (the “**Requisition Date**”) to investigate Fingal’s title to the Lands, to satisfy itself that there are no outstanding work orders or deficiency notices affecting the Land. If within that time any valid objection to title is made in writing to the Receiver which the Receiver shall be unwilling to remove and which the Purchaser will not waive, then this Agreement shall, notwithstanding any intermediate acts or negotiations, be null and void and the Deposit shall be returned to the Purchaser by the Receiver forthwith without deduction. Except for any valid objection so made and except for any objection going to the root of title, the Purchaser shall be deemed to have accepted the Receiver’s title to the Land. The Purchaser agrees and covenants to enter into an assumption agreement with the holder of any Permitted Encumbrance pursuant to which it agrees with the holder of the Permitted Encumbrance and the Receiver to assume the obligations under the Permitted Encumbrance and to comply with, abide by, and perform all of the obligations under such Permitted Encumbrance if is such an assumption agreement is contemplated under a Permitted Encumbrance or if it is requested by the Receiver. In no event shall the Receiver be obligated to spend more than ten thousand dollars (\$10,000.00) in the cumulative aggregate to rectify valid title defects and/or work orders or deficiency notices and in the event that the cumulative aggregate cost of rectifying all title defects and/or work orders or deficiency notices exceeds ten thousand dollars (\$10,000.00), then unless, within three (3) Business Days of the request by the Receiver, the Purchaser notifies the Receiver, in writing, that it will accept title and/or work orders or

deficiency notices as is, but subject to the payment, by way of a credit against the cash balance on Closing of the sum of ten thousand dollars (\$10,000.00) or the Receiver, in its sole and subjective discretion, elects to incur the costs in excess of ten thousand dollars (\$10,000.00) to rectify any title defects and/or work orders or deficiency notices then this Agreement shall, notwithstanding any intermediate acts or negotiations, be null and void and the Deposits paid hereunder shall be returned to the Purchaser without interest or deduction and neither party shall have any rights or obligations under or in respect of this Agreement, save and except for any rights and obligations expressly stated to survive termination of this Agreement.

7.4 Documentation

All documentation referred to in this Article, except as otherwise provided herein, shall be in form and substance acceptable to the Purchaser and the Receiver each acting reasonably.

7.5 Non-Merger

The provisions of this Article 7 shall not merge on, but shall survive Closing or termination of this Agreement.

7.6 Post-Closing Obligations

Except as otherwise expressly provided for in this Agreement or in the Closing Documents, the Receiver shall have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Purchased Assets or the condition thereof.

**ARTICLE 8
CLOSING**

8.1 Closing Date

The Closing of the Transaction will take place at the Time of Closing on the Closing Date at the offices of the Receiver's Solicitors, Suite 1600, 480 University Avenue, Toronto, Ontario, M5G 1V2.

8.2 Deliveries at the Closing by the Receiver

At or prior to the Time of Closing, the Receiver shall execute and/or deliver to the Purchaser:

- (a) an issued and entered copy of the Approval and Vesting Order;
- (b) a statutory declaration or certificate of a senior officer of the Receiver (in either case without personal Liability on the part of the individual making such certificate or declaration) regarding Section 116 of the *Income Tax Act* (Canada) to the effect that the Receiver is not a "non-resident" of Canada within the meaning of the Act;

- (c) a certificate of a senior officer of the Receiver (without personal Liability on the part of the individual making such certificate) certifying that each of the representations and warranties of the Receiver set forth in Section 4.1 are true and accurate in all material respects on the Closing Date, except as disclosed therein;
- (d) the Receiver shall make arrangements for delivery immediately following Closing of the Books and Records;
- (e) The Purchaser agrees that the Receiver is not required to provide any covenant to the Purchaser (other than the Receiver has the right to convey the Lands and that it has done no act to encumber the Lands). Without limiting the generality of the foregoing, the Receiver shall not be required to provide the covenants deemed to be included pursuant to Sections 5(1)(1.)(i), (ii) and (iii) and 5(1)(3.)(ii) of the *Land Registration Reform Act* (Ontario), as amended, and the Receiver may make a statement in the Transfer expressly excluding such covenants;
- (f) Notwithstanding Section 4.1(c) of this Agreement, the Receiver shall not be required to provide *Planning Act* statements and shall not be required to provide a statutory declaration of possession, a statutory declaration, affidavit or other form of evidence that it is a non-resident of Canada as defined in the *Income Tax Act* (Canada) and shall not be required to deliver evidence that the Lands is an exempt supply under the *Excise Tax Act* (Canada); and
- (g) all other documents which are required to give effect to this Transaction in accordance with the express terms of this Agreement.

8.3 Deliveries at the Closing by the Purchaser

At or prior to the Time of Closing, the Purchaser shall execute and/or deliver to the Receiver:

- (a) payment of the balance of the Purchase Price required to be paid on Closing pursuant to Section 3.1, net of the Deposit;
- (b) evidence satisfactory to the Receiver of payment of all taxes required to be paid by the Purchaser pursuant to Section 3.5 or valid purchase exemption certificates pursuant to Section 3.5; and
- (c) all other documents which are required and which the Receiver has reasonably requested prior to Closing to give effect to this Transaction in accordance with the terms of this Agreement.

8.4 HST

The Purchaser shall be liable for and shall pay at the Closing Date, in addition to the Purchase Price, the HST exigible thereon. For greater certainty and without limiting the generality of the foregoing, at closing the Purchaser shall pay to the Receiver or, where permitted

by the *Excise Tax Act* (Canada), directly to the proper Governmental Authority, the HST payable by it in respect of the purchase and sale of the Purchased Assets under this Agreement, and on request by the Receiver, the Purchaser shall furnish to the Receiver proof of direct payment of the HST to the proper Governmental Authority. The Purchaser shall indemnify and save harmless the Receiver from and against all Claims and demands for payment of all HST including penalties and interest any Liability or costs incurred as a result of any failure to pay such tax when due in accordance with this Section 8.4. The Purchaser hereby represents, warrants and certifies to the Receiver that:

- (a) On the Closing Date, the Purchaser may either be purchasing the Purchased Assets including the Lands as principal for its own account and not as an agent, trustee or otherwise on behalf of another Person (the "Own Account Purchase") or the Purchaser may be purchasing the Purchased Assets as agent, nominee or trustee without discretionary authority and decision-making powers in relation to the trust property (the "Nominee Purchase") on behalf of other Persons as beneficial owners (the "Purchaser Beneficial Owners") or the Purchaser may be purchasing the Purchased Assets as trustee with discretionary authority and decision-making powers in relation to the trust property (the "Trust Purchase") on behalf of other Persons as beneficial owners (the "Trust Beneficial Owners"). In the case of an Own Account Purchase, the Purchaser's HST Certificate shall contain the HST registration number of the Purchaser and shall be signed by the Purchaser. In the case of a Nominee Purchase, the Purchaser's HST Certificate shall contain the HST registration number of the Purchaser Beneficial Owners and shall be signed by the Purchaser Beneficial Owners. In the case of a Trust Purchase, the Purchaser's HST Certificate shall contain the HST registration number of the Purchaser and shall be signed by the Purchaser and the Trust Beneficial Owners.
- (b) In the case of an Own Account Purchase, the Purchaser shall be registered under subdivision d of Division V of Part IX of *Excise Tax Act* (Canada) for the collection and remittance of HST. In the case of a Nominee Purchase, the Purchaser Beneficial Owners shall be registered under the *Excise Tax Act* (Canada) for the collection and remittance of HST. In the case of a Trust Purchase, the Purchaser shall be registered under the *Excise Tax Act* (Canada) for the collection and remittance of HST.
- (c) In the case of an Own Account Purchase, the Purchaser shall be liable, shall self-assess and remit to the appropriate governmental authority all HST which is payable under the *Excise Tax Act* (Canada) in connection with the transfer of the Land made pursuant to the Agreement, all in accordance with the *Excise Tax Act* (Canada). In the case of a Nominee Purchase, the Purchaser Beneficial Owners shall be liable, shall self-assess and remit to the appropriate governmental authority all HST which is payable under the *Excise Tax Act* (Canada) in connection with the transfer of the Land made pursuant to the Agreement, all in accordance with the *Excise Tax Act* (Canada). In the case of a Trust Purchase, the Purchaser shall be liable, shall self-assess and remit to the appropriate governmental authority all HST which is payable under the *Excise Tax Act*

(Canada) in connection with the transfer of the Land made pursuant to the Agreement, all in accordance with the ETA.

- (d) The Receiver shall not collect HST on Closing regarding the Lands and shall allow the Purchaser, in the case of an Own Account Purchase or a Trust Purchase, or the Purchaser Beneficial Owners, in the case of a Nominee Purchase, to self-assess and remit HST to the Receiver General in accordance with the *Excise Tax Act* (Canada).
- (e) The Purchaser and the Purchaser Beneficial Owners (if any) and the Trust Beneficial Owners (if any) shall jointly and severally indemnify and save harmless the Receiver from and against any and all HST, penalties, costs and/or interest which may become payable by or assessed against the Receiver as a result of its failure to remit to the appropriate governmental authority all HST which is payable under the *Excise Tax Act* (Canada) in connection with the transfer of the Purchased Assets, any inaccuracy, misstatement or misrepresentation made by the Purchaser and/or the Purchaser Beneficial Owners and/or the Trust Beneficial Owners on the Closing Date in connection with any matter raised in this Section 8.4 or contained in any declaration referred to herein.
- (f) On Closing, the Purchaser, the Purchaser Beneficial Owner (if any) and the Trust Beneficiaries (if any) shall tender a certificate and indemnity, in form and content satisfactory to the Receiver, acting reasonably, including verification of the relevant registration numbers issued by the Canada Revenue Agency under the *Excise Tax Act* (Canada) (the “**Purchaser’s HST Certificate**”).
- (g) The provisions of this Section 8.4 of this Agreement shall not merge on Closing, but shall survive and remain in full force and effect thereafter.

**ARTICLE 9
ADDITIONAL AGREEMENTS OF THE PARTIES**

9.1 Proceedings for the Approval and Vesting Order

- (a) The Receiver shall provide the Purchaser and its counsel with a reasonable opportunity to comment upon the form of the Approval and Vesting Order and supporting material to be filed in Court by the Receiver relating to the approval of the Transaction. The Receiver agrees that all such documents shall be consistent with the terms and conditions of this Agreement. The Receiver shall immediately provide the Purchaser with copies of all motion materials served upon it relating to this Agreement and the Purchased Assets.
- (b) The Purchaser shall, at its own expense, promptly provide to the Receiver all information, documents and assistance within the Purchaser’s possession or control as the Receiver may reasonably require to apply for the Approval and Vesting Order.

9.2 Co-operation and Transition

The Parties shall co-operate fully in good faith with each other and their respective legal advisors, accountants and other representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement.

9.3 Possession of Assets

On the Closing Date, the Purchaser shall take possession of the Purchased Assets at the Time of Closing. Notwithstanding anything to the contrary contained in this Agreement, possession of the Lands shall be given to the Purchaser (or Permitted Assign) in accordance with the terms of the Approval and Vesting Order.

9.4 Tax Indemnity

The Purchaser shall indemnify and save the Receiver harmless for and from all losses, costs and damages suffered by the Receiver as a result of any tax, interest and/or penalty levied against the Receiver by Canada Revenue Agency or any other Governmental Authority under the harmonized sales tax or goods and services tax legislation in connection with the Transaction, including any requirement of the Receiver to remit to the Receiver General of Canada any harmonized sales tax or goods and services tax, interest and/or penalties on the Purchase Price, including any adjustments thereto.

9.5 Books and Records

For a period of 6 years from the Closing Date or for such longer period as may be required by Law, the Purchaser will retain all the Books and Records, including the originals thereof. So long as any such Books and Records are retained by the Purchaser pursuant to this Agreement, the Receiver and any bankruptcy trustee appointed in respect of Fingal and their respective representatives shall have the right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for any proper purpose and without undue interference to the business operations of the Purchaser. The Purchaser has the right to have its representatives present during any such inspection.

**ARTICLE 10
GENERAL**

10.1 Notices

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by prepaid mail, by facsimile, email or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice or other communication, if mailed by prepaid mail at any time other than during a general discontinuance of postal service due to strike, lockout or otherwise, shall be deemed to have been received on the fourth Business Day after the post-marked date thereof, or if sent by facsimile, email or other

means of electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this Section. In the event of a general discontinuance of postal service due to strike, lock-out or otherwise, notices or other communications shall be delivered by hand or sent by facsimile, email or other means of electronic communication and shall be deemed to have been received in accordance with this Section. Notices and other communications shall be addressed as follows:

(a) if to the Receiver:

RSM Canada Limited
 11 King St. W., Suite 700, Box 27,
 Toronto, Ontario, Canada, M5H 4C7

Attention: Bryan Tannenbaum and Colleen Delaney
 Fax: (416) 480-2646
 Email: bryan.tannenbaum@rsmcanada.com /
colleen.delaney@rsmcanada.com>

with a copy to Receiver's Solicitors at:

Goldman, Sloan, Nash and Haber LLP
 480 University Avenue
 Toronto, Ontario M5G 1V2

Attention: Michael Rotsztain and Brendan Bissell
 Fax: (416) 597-3370
 Email: rotsztain@gsnh.com / bissell@gsnh.com

(b) if to the Purchaser at:

■
 Attention: ■
 Fax: ■
 Email: ■

with a copy to:

■
 Attention: ■
 Fax: ■
 Email: ■

10.2 Further Assurances

Each of the Parties hereto will, from time to time and at all times hereafter upon every reasonable written request to do so and at the expense of the requesting party, make, do, execute and deliver, or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be necessary in the opinion of any Party or counsel for any Party for more effectually implementing and carrying out the true intent and meaning of this Agreement.

10.3 Successors and Assigns

- (a) This Agreement will be binding upon the Parties hereto, their respective heirs, executors, administrators, successors or permitted assigns.
- (b) This Agreement will not be assigned by the Purchaser nor will title to the Purchased Assets be directed by the Purchaser to be conveyed to any person (including without limitation any nominee or trustee) without the prior written consent of the Receiver. Notwithstanding the foregoing but subject to compliance with the other provisions contained in this Section 10.3 of this Agreement, this Agreement may be assigned by the Purchaser without the prior written consent of the Receiver to an Affiliate of the Purchaser; provided that the assignee remains an Affiliate of the Purchaser at all times subsequent to such assignment. In the case of any assignment of this Agreement, including, without limitation, an assignment to an Affiliate of the Purchaser, the Purchaser may only assign this Agreement if: (i) the Purchaser is not in default under this Agreement; (ii) the Purchaser has paid the Deposit due under this Agreement; (iii) the assignment is completed at least ten (10) Business Days prior to the Closing Date; and (iv) concurrently with the assignment, the assignee delivers to the Receiver an agreement in form and content satisfactory to the Receiver pursuant to which the assignee agrees to assume, abide by, comply with and perform all of the agreements and obligations of the Purchaser under this Agreement. The Receiver will be entitled to any profit or gain resulting from an assignment of the Agreement by the Purchaser or any subsequent assignee which shall be received and held in trust by the Purchaser and promptly paid to the Receiver on Closing. Notwithstanding such assignment, the Purchaser shall not be released from its agreements, covenants and obligations of the Purchaser under the Agreement and will not be released from the performance hereof. The foregoing provisions shall survive and not merge with Closing on the termination of this Agreement and shall continue in full force and effect thereafter for the benefit of the Receiver.

Subject to the foregoing, at least ten (10) Business Days prior to the scheduled Closing Date, the Purchaser shall provide a written direction to the Receiver setting forth the name in which title to the Lands will be taken. The Purchaser shall cause any nominee title holder to execute and deliver any instruments to be registered on title under the terms of this Agreement;

10.4 No Waiver of Breach

No failure of any Party to this Agreement to pursue any remedy resulting from a breach of this Agreement by another Party will be construed as a waiver of that breach by that Party or any other Party or as a waiver of any subsequent or other breach.

10.5 Solicitors as Agents and Tender

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's Solicitors on behalf of the Purchaser and by the Receiver's Solicitors on behalf of the Receiver and any tender of Closing Documents (other than documents required to be registered electronically) may be made upon the Receiver's Solicitors and the Purchaser's Solicitors, as the case may be, at their respective offices or in the relevant Land Registry Office.

10.6 Expenses and Legal Fees

Each of the Parties hereto will assume the payment of and be responsible for all expenses, costs and legal fees incurred by reason hereof by such Party whether incurred prior to or subsequent to the date hereof and neither Party will be obligated in any way whatsoever to pay or contribute to any such expenses or costs incurred by the other Party hereto.

10.7 Time of Essence

Time will be of the essence of this Agreement.

10.8 Risk

- (a) General. The Purchased Assets shall be at the risk of the Receiver until completion of the transaction contemplated by this Agreement. Until completion of this Agreement, the Receiver shall maintain the existing insurance on the Purchased Assets. All such insurance shall be held for the benefit of the parties as their interests may appear. If any loss or damage to the Building occurs on or before the Closing Date, the Receiver shall promptly deliver a notice (the "Notice of Loss") to the Purchaser specifying the nature and extent of the loss or damage.
- (b) Damage Not Permitting Termination. If the extent of any single occurrence of loss or damage will not cost in excess of five hundred thousand dollars (\$500,000.00) to repair (as certified by a third party engineer acceptable to the Purchaser and selected by the Receiver), and provided that proceeds of insurance are available to pay for the full cost (less reasonable deductibles) of repairing such losses or damage, the Purchaser shall have no right to terminate this Agreement pursuant to this Section and the Purchaser shall complete this Agreement on the Closing Date, the Purchaser shall receive an assignment of the Receiver's claim(s) to the insurance proceeds in respect of such losses or damage (including the proceeds of rental interruption insurance, but only in respect of the period from and after the Closing Date) in full satisfaction of any and all Claims that the Purchaser may have against the Receiver as a result of or in connection with the

loss or damage and the Receiver shall release its interest in any such insurance proceeds (other than the proceeds of rental interruption insurance in respect of the period prior to the Closing Date). In addition, the Purchase Price shall be reduced by the amount of the deductible under the Receiver's insurance coverage, if the Receiver has not already paid the deductible.

- (c) Damage Permitting Termination. If the extent of any single occurrence of loss or damage will cost in excess of five hundred thousand dollars (\$500,000.00) to repair (as certified by a third party engineer acceptable to the Purchaser and selected by the Receiver), or if such cost is less than five hundred thousand dollars (\$500,000.00) but the insurance proceeds are insufficient to compensate for the loss or damage, the Purchaser may, on or before the sixth Business Day , following delivery of the Notice of Loss, at its option, by notice in writing to the Receiver elect to terminate this Agreement, in which event the Deposit paid hereunder shall be returned to the Purchaser without interest or deduction and the Receiver and the Purchaser will be released from all obligations hereunder and except as expressly stated herein no Party to this Agreement (nor any principal or beneficiary thereof) shall have any rights or recourse or obligations pursuant to, in respect of or arising from this Agreement. If the Receiver fails to deliver a Notice of Loss within sufficient time to enable the Purchaser to have six Business Days within which to respond prior to the Closing Date, the Closing Date shall be extended accordingly. If the Purchaser does not elect to terminate this Agreement, then the Purchaser shall complete this Agreement on the Closing Date, the Purchaser shall receive an assignment of the Receiver's claim(s) to the insurance proceeds in respect of such losses or damage, but only in respect of the period from and after the Closing Date)) in full satisfaction of any and all Claims that the Purchaser may have against the Receiver as a result of or in connection with the loss or damage and the Receiver shall release its interest in any such insurance proceeds (other than the proceeds of rental interruption insurance in respect of the period prior to the Closing Date). In addition, the Purchase Price shall be reduced by the amount of the deductible under the Receiver's insurance coverage, if the Receiver has not already paid the deductible.

10.9 Acceptance

The offer represented by this Agreement shall be open for acceptance by the Receiver until 5:00 p.m. on ■, 2019 subject to Court approval. Any such acceptance shall be effected by the Receiver delivering a fully executed copy or counterpart of this Agreement to the Purchaser. The Purchaser shall not be at liberty to retract, withdraw, vary or countermand an offer once this Agreement is delivered by the Purchaser to the Receiver.

10.10 Limitation on Claims

The amount claimed by a party pursuant to a Claim shall be calculated to be the cost or loss to such party after giving effect to any insurance proceeds paid in relation to the matter which is the subject of the Claim.

10.11 Disclosure of Transaction and Announcements

The Receiver and the Purchaser shall keep the existence of this Agreement, the terms of this Agreement, the names of the parties to the Agreement and the transaction contemplated by the Agreement confidential and shall not disclose same other than: (a) to their consultants, agents, advisors, partners, investors, solicitors, lenders and prospective lenders so long as the applicable Person is instructed to keep such information confidential; (b) to any applicable Governmental Authorities; and (c) as is required to be disclosed by law, including in connection with the Receiver's motion for the Approval and Vesting Order. No press release or public announcement with respect to this Agreement or the Transaction may be made except with the prior written consent and joint approval of the Receiver and the Purchaser, except and only to the extent or if required by Applicable Laws or any Governmental Authorities.

10.12 Obligations as Covenants

Each agreement and obligation of any of the parties hereto in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.

10.13 Time of the Essence

Time shall be of the essence of this Agreement.

10.14 Effect of Termination of Agreement

Notwithstanding the termination of this Agreement for any reason, the confidentiality provisions contained in Sections 4.3(d) and 10.11, and any terms of this Agreement stated to survive termination of this Agreement, shall survive and shall remain in full force and effect.

10.15 Amendment of Agreement

Except as expressly provided otherwise in this Agreement, no supplement, modification, waiver or termination of this Agreement shall be binding unless executed in writing by the parties hereto in the same manner as the execution of this Agreement, provided that an amendment to any time period or date provided in this Agreement may be validly effected by the Parties' solicitors pursuant to the provisions of Section 10.5.

10.16 Entire Agreement

This Agreement and any agreements, instruments and other documents herein contemplated to be entered into between, by or including the parties hereto constitute the entire agreement between the Parties hereto pertaining to the agreement of purchase and sale provided for herein and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, with respect thereto, and there are no other warranties or representations and no other agreements between the parties hereto in connection with the agreement of purchase and sale provided for herein or at law except as specifically set forth in this Agreement or the Schedules attached hereto.

10.17 Merger

Except as otherwise expressly set out herein, this Agreement shall merge with the Closing of the Transaction.

10.18 Counterparts; Electronic Transmission

This Agreement may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument. All parties agree that this Agreement may be transmitted by telecopier, email or other means of electronic communication and that the reproduction of signatures by way of telecopier, email or other means of electronic communication will be treated as though such reproduction were executed originals and each party undertakes to provide the other with a copy of this Agreement bearing original signatures within a reasonable time after the date of execution.

10.19 Joint and Several

Notwithstanding anything contained herein to the contrary, if there is more than one Purchaser, the Purchaser hereby acknowledges and agrees that the representations, warranties, covenants, obligations and Liabilities of the Purchaser hereunder shall be binding upon each of the Persons comprising the Purchaser on a joint and several basis.

IN WITNESS WHEREOF the Parties hereto have duly executed and delivered this Agreement as of the date first above written.

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, which includes the Lands, and not in its personal capacity

Per: _____
Name: Bryan A. Tannenbaum
Title: President

I have authority to bind the Receiver.



Per: _____

Name:

Title:

I have authority to bind the Purchaser.

SCHEDULE "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) DAY, THE
JUSTICE) DAY OF , 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 ■ (the "Purchaser") dated ■, 2019 and appended to the ■ Report of the Receiver dated ■, 2019 (the "■ 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 ■ Report 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 ■ sworn ■, 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 ■ 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 and restrictive covenants 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.

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 ■, 2019, the Court approved the agreement of purchase and sale made as of ■, 2019 (the "Sale Agreement") between the Receiver and ■ (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.

125

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.

126

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 – Specific Registered Permitted Encumbrance
related to the Real Property**

(unaffected by the Vesting Order)

1. 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

SCHEDULE "B"
LEGAL DESCRIPTION OF THE LANDS

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"
ALLOCATION OF THE PURCHASE PRICE

[NTD: To be completed]

Lands

Books and Records

SCHEDULE "D"
PERMITTED ENCUMBRANCES

General Encumbrances:

2. 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.
3. 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.
4. 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.
5. Any and all agreements with municipalities including, without limitation, subdivision agreements, development agreements, site plan agreements, servicing agreements and encroachment agreements.
6. Airport zoning regulations.
7. Any and all rail siding agreements, facility agreements, cost sharing agreements, servicing agreements, reciprocal operating agreements and other similar agreements.
8. 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.
9. 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.
10. Restrictive covenants, exclusivity provisions, and other similar land use control agreements.
11. 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.
12. 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.

- 13. 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.
- 14. 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.
- 15. 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.
- 16. 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.
- 17. Any reference plans or plans registered pursuant to the *Boundaries Act* (Ontario).
- 18. Any and all open and outstanding building permits.
- 19. 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.
- 20. 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

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

APPENDIX "H"

FOR SALE
39232 FINGAL LINE

ST. THOMAS, ONTARIO



MEADOWCREEK RETIREMENT RESIDENCE



Cushman & Wakefield is pleased to offer a 95 unit, 105 bed Seniors Retirement Home with 82,645 sq ft +/- of space. It sits on a beautiful 6.32 acre +/- property and is looking for a buyer to complete the balance of interior finishes.

Residential space includes semi-private, studio, 1 bedroom and 2 bedroom suites in 3 wings with multiple amenities space to accommodate the needs of future residents.

Trevor Henke*
Vice President, The Land Group
Direct Tel: 416 756 5412
trevor.henke@cushwake.com

Dan Rogers**
Vice President, Capital Markets
Direct Tel: 416 359 2352
dan.rogers@cushwake.com

Tyler Desjardine*
Sales Representative
Direct Tel: 519 438 5403
tyler.desjardine.cushwake@gmail.com

Cushman & Wakefield ULC, Brokerage
Cushman & Wakefield Southwestern Ontario, Real Estate Brokerage
Independently Owned and Operated / A Member of the Cushman & Wakefield Alliance

*Sales Representative **Broker

FOR SALE
39232 FINGAL LINE
 ST. THOMAS, ONTARIO

PROPERTY DETAILS



FRONT ENTRANCE



FRONT LOBBY / RECEPTION



SOUTHWEST VIEW



EAST VIEW FROM BUILDING

LOCATION:

On the north side of Fingal Line, west of Sunset Drive, the Property is approximately 6 kms west of central St. Thomas and 30 kms south of central London.

LEGAL DESCRIPTIONS:

PT LT 39 CON NTR SOUTHWOLD PT 2 11R8197; T4W E454421; SOUTHWOLD

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

PROPERTY IDENTIFICATION NUMBERS:

351560440
 351560458



NORTHEAST VIEW

TOTAL AREA:

6.32 acres +/- with approximately 452.2' frontage on Fingal Line

ZONING (BY-LAW NO. 1677):

OS1-50, Special Provision

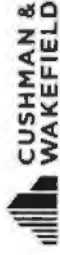
BUILDING DESCRIPTION (LARGELY COMPLETED):

- 82,645 sq ft +/- on a single level concrete slab
- 3 wings of residential living space including semi-private, studio, 1 bedroom and 2 bedroom suites
- Amenity spaces include a kitchen and dining hall, activities/theatre room, nurse work stations and administrative offices
- Geothermal HVAC and hot water supply
- Metal roof
- 132 parking spaces including 5 handicap spaces

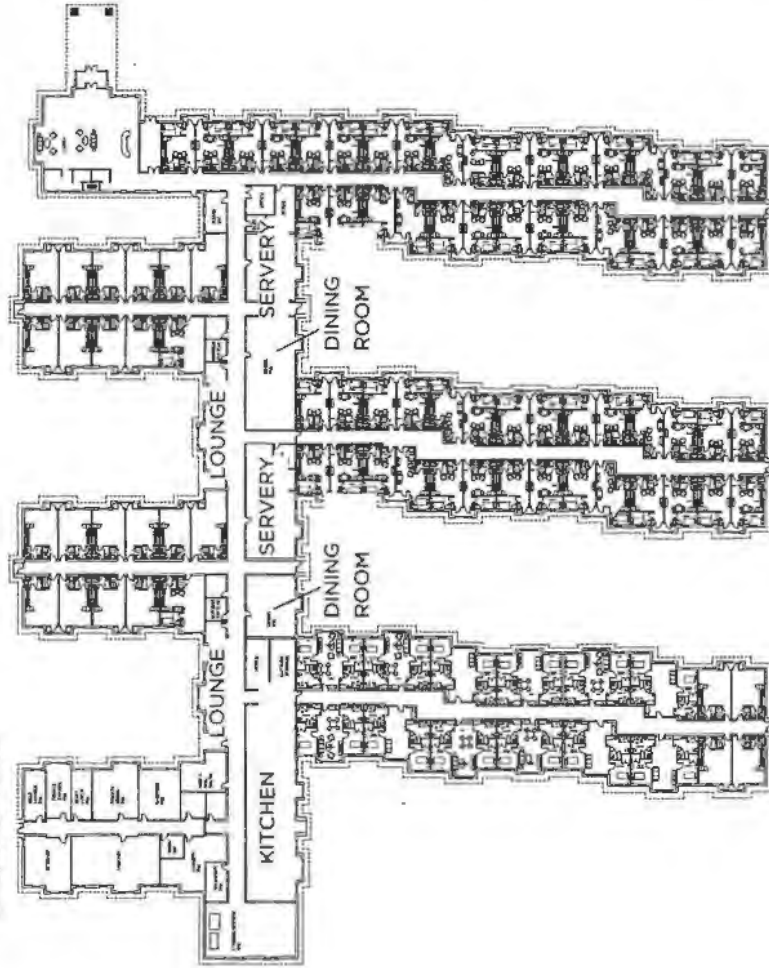
139

FOR SALE
39232 FINGAL LINE
 ST. THOMAS, ONTARIO

FLOOR PLANS



AMENITIES WING



CONSTRUCTION STATUS:

- Front reception and corridor are mostly complete including paint, flooring and a fireplace
- Roughed-in plumbing and electrical
- Wing 1 suites are fully drywalled and ready for fixturing
- Wings 2 and 3 have completed wall framing and ready for drywall
- Amenities space have been defined and ready for drywall

SUITE BREAKDOWN:

UNIT TYPE	UNITS	BEDS	AVG. SIZE (SF)
Semi-private	10	20	824
Studio	47	47	349
One bedroom	32	32	475
Two bedroom	6	6	824
Total	95	105	

Note: 16 units comprised of 824 SF each can be rented as two semi-private rooms (each containing a bathroom) or as one 2-bedroom suite

MARKET SNAPSHOT FOR SENIORS HOUSING

PROVINCIAL:

- The vacancy rate in 2018 dropped to a record low of 9.9% from 10.3% from 2017

SOUTHWESTERN ONTARIO:

- Overall vacancy rates for southwestern Ontario increased from 10% to 10.9% from 2017 to 2018
- The average rent for all Standard Spaces increased from \$3,132 to \$3,254 from 2017 to 2018

ELGIN COUNTY:

- Total vacancy rates in Elgin County dropped from 17.1% to 8.1% from 2017 to 2018
- CMHC's 2017 Seniors Housing Report showed Elgin County as having "Moderate/Growing Pent Up Demand"

140

FOR SALE
39232 FINGAL LINE

ST. THOMAS, ONTARIO

NEIGHBOURHOOD AMENITIES

DOWNTOWN LONDON
(27 KMS FROM SITE)

401

HIGHWAY 401
(ACCESS FROM SUNSET DRIVE (4) IS 13 KMS)

4

3

- AMENITIES WITHIN A 5 MINUTE DRIVE ALONG THE TALBOT STREET CORRIDOR:
- TIM HORTONS
 - SHOPPERS DRUG MART
 - SCOTIABANK
 - CIBC
 - RBC
 - PUBLIC LIBRARY
 - FOODLAND
 - YMCA
 - SUBWAY

TALBOT STREET

SUBJECT PROPERTY

FOR SALE 39232 FINGAL LINE

ST. THOMAS, ONTARIO

LOCATION MAP

 CUSHMAN & WAKEFIELD

112



OFFERING GUIDELINES

- Cushman & Wakefield (the "Advisor") has been retained by RSM Canada Limited in its capacity as court appointed Receiver (the "Vendor") to be the exclusive Advisor for the potential disposition of 39232 Fingal Line, St. Thomas, Ontario (the "Property").
- Following execution of a Confidentiality Agreement ("CA"), qualified buyers will be provided with additional property information via access to a secure online data room. Interested parties are advised to complete all of their due diligence prior to submitting an Offer.
- Offers on the Vendor's form are to be delivered to the Advisor (Attn: Trevor Henke, Dan Rogers and Tyler Desjardine) prior to 3:00 p.m. on Wednesday January 30th, 2019. Preference will be given to offers that substantially comply with the Vendor's form and in particular do not add any conditions.
- As set out more fully in the CA and offer form referred to above, the Advisor and the Vendor are making no representations or warranties with respect to the information set out above or in the data room, and interested parties shall rely entirely upon their own inspection and investigation regarding the Property.

Trevor Henke*

Vice President, Team Lead & Group Director
Tel. 416 756 5412
trevor.henke@cushwake.com

Dan Rogers**

Vice President, Team Lead & Group Director
Tel. 416 359 2352
dan.rogers@cushwake.com

Tyler Desjardine*

Sales Representative
Tel. 519 438 5403
tyler.desjardine@cushwake@gmail.com

Cushman & Wakefield ULC, Brokerage

Cushman & Wakefield Southwestern Ontario, Real Estate Brokerage
144 Waterloo Street, Suite 200, St. Thomas, Ontario N5R 1A1
© 2019 Cushman & Wakefield ULC

*Sales Representative **Broker

www.cushmanwakefield.com

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APPENDIX "I"

111

Dec 13, 2018

COMMERCIAL REAL ESTATE

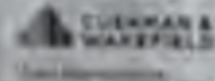
FOR SALE

Senior Retirement
Home Opportunity

39215 FRINGAL LANE ST. THOMAS, ON

- 39215 Fringal Lane, St. Thomas, ON
- 1.23 Acre
- 4 Bed, 3 Bath, 2000 sq ft
- 10' x 10' lot with 20' x 20' deck
- 2nd floor master suite
- Large kitchen, granite, 2 ovens
- 20' x 10' finished basement
- 25' long driveway

1 level master
 David Kabanovsky
 Tyler Deschamps
 416 882 1800



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APPENDIX "J"

RUN NUMBER : 067
RUN DATE : 2019/03/08
ID : 20190308104137.84

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR06D
PAGE : 1
(6683)

THIS IS TO CERTIFY THAT A SEARCH HAS BEEN MADE IN THE RECORDS OF THE CENTRAL OFFICE
OF THE PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM IN RESPECT OF THE FOLLOWING:

TYPE OF SEARCH : BUSINESS DEBTOR

SEARCH CONDUCTED ON : FINGAL PROPERTIES HOLDINGS INC.

FILE CURRENCY : 07MAR 2019

ENQUIRY NUMBER 20190308104137.84 CONTAINS 10 PAGE(S), 4 FAMILY(IES).

THE SEARCH RESULTS MAY INDICATE THAT THERE ARE SOME REGISTRATIONS WHICH SET OUT A BUSINESS DEBTOR NAME
WHICH IS SIMILAR TO THE NAME IN WHICH YOUR ENQUIRY WAS MADE. IF YOU DETERMINE THAT THERE ARE OTHER
SIMILAR BUSINESS DEBTOR NAMES, YOU MAY REQUEST THAT ADDITIONAL ENQUIRIES BE MADE AGAINST THOSE NAMES.

GOLDMAN SLOAN NASH & HABER LLP - ANNE PALABANAN
480 UNIVERSITY AVE, SUITE 1600
TORONTO ON M5G 1V2



CONTINUED... 2



RUN NUMBER : 057
RUN DATE : 2019/03/08
ID : 20190308104137.84

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PPSR060
PAGE : 2
(6684)

BUSINESS DESTOR
FINGAL PROPERTIES HOLDINGS INC.
07MAR 2019

FORMAL FINANCING STATEMENT / CHECK FOR LIEN

00 FILE NUMBER 741596697

01 CAUTION PAGE TOTAL MOTOR VEHICLE REGISTRATION RE-REGISTRATION REGISTRATION
SCHEDULE NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
001 001 20180713 1519 1862 7923 P PPSA 3

02 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME ONTARIO CORPORATION NO. L4L 728
03 CREDITOR BUSINESS NAME FINGAL PROPERTIES HOLDINGS INC. 71 SILTON ROAD, UNIT 10 VAUGHAN ONTARIO CORPORATION NO. L4L 728

05 DEBTOR DATE OF BIRTH FIRST GIVEN NAME INITIAL SURNAME ONTARIO CORPORATION NO. L4L 728
06 CREDITOR BUSINESS NAME FINGAL PROPERTIES HOLDINGS INC. 71 SILTON ROAD, UNIT 10 VAUGHAN ONTARIO CORPORATION NO. L4L 728

07 DEBTOR ADDRESS 1 VALLETBROOK DRIVE, SUITE 100 TORONTO ONTARIO CORPORATION NO. M3B 2S7
08 SECURED PARTY FIRST SOURCE MORTGAGE CORPORATION 1 VALLETBROOK DRIVE, SUITE 100 TORONTO ONTARIO CORPORATION NO. M3B 2S7
09 DEBTOR ADDRESS 1 VALLETBROOK DRIVE, SUITE 100 TORONTO ONTARIO CORPORATION NO. M3B 2S7

10 COLLATERAL CLASSIFICATION MOTOR VEHICLE AMOUNT DATE OF REGISTRATION NO. FILED
GOODS INVENTORY EQUIPMENT ACCIDENTS OTHER INCLUDED MATURITY OR SECURITY DATE

11 MOTOR YEAR MAKE SCHWEIDER RUGGIERO LLP TORONTO ONTARIO CORPORATION NO. M5H 3V1
12 VEHICLE 1000-120 ADELAIDE STREET W. TORONTO ONTARIO CORPORATION NO. M5H 3V1

13 GENERAL THIS IS A RE-REGISTRATION OF REGISTRATION NUMBER 20160128 1018 1862
14 COLLATERAL 8405, REFERENCE FILE NUMBER 713638629, MADE PURSUANT TO SECTION 30
15 DESCRIPTION (6) OF THE PERSONAL PROPERTY SECURITY ACT.

16 REGISTERING SCHWEIDER RUGGIERO LLP TORONTO ONTARIO CORPORATION NO. M5H 3V1
17 ADDRESS 1000-120 ADELAIDE STREET W. TORONTO ONTARIO CORPORATION NO. M5H 3V1

FOR FURTHER INFORMATION CONTACT THE SECURED PARTY

CONTINUED... 3



RUN NUMBER : 067
 RUN DATE : 2019/03/08
 ID : 20190308104137.84

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : PFSR06D
 PAGE : 3
 (6685)

BUSINESS DEBTOR
 FINGAL PROPERTIES HOLDINGS INC.
 07MAR 2019

00 FILE NUMBER 741528864

01 CATION PAGE NO. OF PAGES 001 001
 MOTOR VEHICLE REGISTRATION NUMBER 20160712 1054 1862 7733 P PPSA 3
 REGISTRATION PERIOD

02 DATE OF BIRTH INITIAL SURNAME
 03 BUSINESS NAME FINGAL PROPERTIES HOLDINGS INC. ONTARIO CORPORATION INC.
 04 ADDRESS 71 SILTON ROAD, SUITE 10 WOODBRIDGE ONTARIO L4L 7Z8

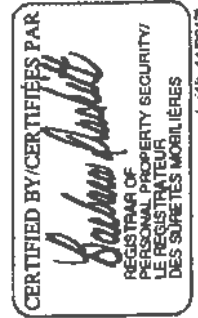
05 DEBTOR NAME FINGAL PROPERTIES HOLDINGS INC. ONTARIO CORPORATION INC.
 06 ADDRESS 71 SILTON ROAD, SUITE 10 WOODBRIDGE ONTARIO L4L 7Z8

07 DEBTOR NAME FINGAL PROPERTIES HOLDINGS INC. ONTARIO CORPORATION INC.
 08 ADDRESS 71 SILTON ROAD, SUITE 10 WOODBRIDGE ONTARIO L4L 7Z8

09 SECURED PARTY NAME FIRST SOURCE MORTGAGE CORPORATION
 10 ADDRESS 1 VALLEYBROOK DRIVE, SUITE 100 TORONTO ON M3B 2B7

11 MOTOR YEAR MAKE MODEL WEIGHT
 12 REGISTRATION NO. MOTOR VEHICLE AMOUNT DATE OF PURCHASE NO. FILED
 13 GENERAL DESCRIPTION OF THE PERSONAL PROPERTY SECURITY ACT. THIS IS A RE-REGISTRATION OF REGISTRATION NUMBER 20141208 1505 1862
 14 GENERAL DESCRIPTION OF THE PERSONAL PROPERTY SECURITY ACT. THIS IS A RE-REGISTRATION OF REGISTRATION NUMBER 20141208 1505 1862
 15 GENERAL DESCRIPTION OF THE PERSONAL PROPERTY SECURITY ACT. THIS IS A RE-REGISTRATION OF REGISTRATION NUMBER 20141208 1505 1862
 16 REGISTERING SCHWEIDER RUGGIERO LLP (40007-GW)
 17 ADDRESS 1000-120 ADELAIDE STREET W. TORONTO ON M5H 3V2

CONTINUED... 4



RUN NUMBER : 067
RUN DATE : 2019/03/08
ID : 20190308104137.84

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PPSR060
PAGE : 4
(6696)

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCHER CONFIDENCE ON : FINGAL PROPERTIES HOLDINGS INC.
FILING DATE : 07HAR 2019

FORM TO FILING STATEMENT : CLAIM FOR LITEN

00
FILE NUMBER : 697281858

01
CAUTION : PAGE TOTAL : MOTOR VEHICLE REGISTRATION NUMBER : REGISTRATION PERIOD :
FILING NO. OF PAGES : 001 : 20140619 1558 1862 4464 : P PPSA : 7

02
03
04
DATE OF BIRTH : [REDACTED] : SURNAME : [REDACTED] : ONTARIO CORPORATION NO. : [REDACTED]
BUSINESS NAME : FINGAL PROPERTIES HOLDINGS INC. : ADDRESS : 71 SILTON ROAD, SUITE 10 : VAUGHAN : ON : L4L 7Z8

05
06
07
DATE OF BIRTH : [REDACTED] : SURNAME : [REDACTED] : ONTARIO CORPORATION NO. : [REDACTED]
BUSINESS NAME : FINGAL PROPERTIES HOLDINGS INC. : ADDRESS : 39232 FINGAL LINE : ST. THOMAS : ON : N5P 3S5

08
09
REGISTERED PARTY / MOTOR VEHICLE AMOUNT : [REDACTED] : DATE OF REGISTRATION : [REDACTED]
ADDRESS : 747 BROWN'S LINE : TORONTO : ON : M8W 3V7

10
MOTOR VEHICLE : [REDACTED] : MAKE : [REDACTED] : MODEL : [REDACTED] : YEAR : [REDACTED] : VIN : [REDACTED] : LIC. NO. : [REDACTED] : REG. DATE : [REDACTED] : REG. FEE : [REDACTED] : TAX FEE : [REDACTED] : TOTAL : [REDACTED]

11
12
13
14
15
MOTOR VEHICLE : [REDACTED] : MAKE : [REDACTED] : MODEL : [REDACTED] : YEAR : [REDACTED] : VIN : [REDACTED] : LIC. NO. : [REDACTED] : REG. DATE : [REDACTED] : REG. FEE : [REDACTED] : TAX FEE : [REDACTED] : TOTAL : [REDACTED]
GENERAL COLLATERAL REGISTRATION : [REDACTED]
GENERAL ASSIGNMENT OF RENTS RESPECTING THE PROPERTY MUNICIPALLY KNOWN : 39232 FINGAL LINE, ST. THOMAS, ONTARIO N5P 3S5

16
17
REGISTERING AGENT : [REDACTED] : ADDRESS : 1 ADELAIDE ST. E., SUITE 801 : TORONTO : ON : M5C 2V9
GARFINKLE, BIDERMAN LLP (BP-7371-015)

FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY...



149

ROW NUMBER : 067
 RUN DATE : 2019/03/08
 ID : 20190308104137.B4

PROVINCE OF ONTARIO
 MINISTRY OF GOVERNMENT SERVICES
 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
 ENQUIRY RESPONSE
 CERTIFICATE

REPORT : P8SR060
 PAGE : 5
 (6687)

BUSINESS DEBTOR
 FINGAL PROPERTIES HOLDINGS INC.
 07MAR 2019

FOR THE REGISTERED PARTY, THE REGISTERED PARTY'S CHANGES TO THE REGISTERED PARTY'S INFORMATION

DATE OF CHANGE: 07/03/2019
 REGISTERED PARTY: FINGAL PROPERTIES HOLDINGS INC.
 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 20150922 1417 1862 8115
 REGISTERED PARTY: FINGAL PROPERTIES HOLDINGS INC.
 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 697281858
 REGISTERED PARTY: FINGAL PROPERTIES HOLDINGS INC.
 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 20150922 1417 1862 8115
 REGISTERED PARTY: FINGAL PROPERTIES HOLDINGS INC.
 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 697281858
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 ADDRESS: 111 ZENWAY BLVD. SUITE 37
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 ADDRESS: 111 ZENWAY BLVD. SUITE 37
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 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 697281858
 REGISTERED PARTY: FINGAL PROPERTIES HOLDINGS INC.
 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 20150922 1417 1862 8115
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 ADDRESS: 111 ZENWAY BLVD. SUITE 37
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REGISTRATION NUMBER: 697281858
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 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 20150922 1417 1862 8115
 REGISTERED PARTY: FINGAL PROPERTIES HOLDINGS INC.
 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 697281858
 REGISTERED PARTY: FINGAL PROPERTIES HOLDINGS INC.
 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 20150922 1417 1862 8115
 REGISTERED PARTY: FINGAL PROPERTIES HOLDINGS INC.
 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 697281858
 REGISTERED PARTY: FINGAL PROPERTIES HOLDINGS INC.
 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 20150922 1417 1862 8115
 REGISTERED PARTY: FINGAL PROPERTIES HOLDINGS INC.
 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 697281858
 REGISTERED PARTY: FINGAL PROPERTIES HOLDINGS INC.
 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9

REGISTRATION NUMBER: 20150922 1417 1862 8115
 REGISTERED PARTY: FINGAL PROPERTIES HOLDINGS INC.
 ADDRESS: 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE, ONTARIO L4R 3H9



CONTINUED...

*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY ***

GRAY & ASSOCIATES (VPERRICOME) P10933/15
 111 ZENWAY BLVD. SUITE 37
 WOODBRIDGE ON L4R 3H9

ONTARIO CORPORATION NO.

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

RUN NUMBER : 067
RUN DATE : 2019/03/08
ID : 20190308104137.84

BUSINESS DEBTOR
FINGAL PROPERTIES HOLDINGS INC.
07MAR 2019

REGISTRATION CHANGE NUMBER: 20150922 1417 1862 8115

21 REGISTRATION NUMBER: 697281858

22 REGISTRATION NUMBER: 20150922 1417 1862 8115

23 REGISTRATION NUMBER: 20150922 1417 1862 8115

24 REGISTRATION NUMBER: 20150922 1417 1862 8115

25 REGISTRATION NUMBER: 20150922 1417 1862 8115

26 REGISTRATION NUMBER: 20150922 1417 1862 8115

27 REGISTRATION NUMBER: 20150922 1417 1862 8115

28 REGISTRATION NUMBER: 20150922 1417 1862 8115

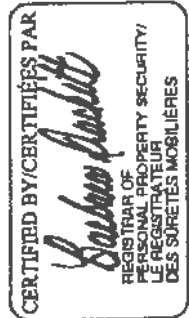
29 REGISTRATION NUMBER: 20150922 1417 1862 8115

30 REGISTRATION NUMBER: 20150922 1417 1862 8115

31 REGISTRATION NUMBER: 20150922 1417 1862 8115

32 REGISTRATION NUMBER: 20150922 1417 1862 8115

33 REGISTRATION NUMBER: 20150922 1417 1862 8115



*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY ***
CONTINUED...

RUN NUMBER : 067
RUN DATE : 2019/03/08
ID : 20190308104137.84

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSBR060
PAGE : 7
(6689)

BUSINESS DEBTOR
SEARCHED/INDEXED ON
PROPERTY
07MAR 2019

FORM TO FINANCIAL STATEMENT/ COLLATERAL

FILE NUMBER
537281867

CHECKED PAGE TOTAL MOTOR VEHICLE REGISTRATION FINGERPRINT REGISTRATION
FILING NO. OF PAGES SCHEDULE NUMBER UNDER PERIOD
001 001 20140619 1558 1862 4465 P PPSA 7

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DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	ADDRESS	CITY/TOWN/VILLAGE	PROVINCE	POSTAL CODE
FINGAL PROPERTIES HOLDINGS INC.					71 SILTON ROAD, SUITE 10	VAUGHAN	ON	L4L 7Z8
DEBTOR NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	ADDRESS	CITY/TOWN/VILLAGE	PROVINCE	POSTAL CODE
FINGAL PROPERTIES HOLDINGS INC.					39232 FINGAL LINE	ST. THOMAS	ON	N5P 3S5
SECURED PARTY NAME	DATE OF BIRTH	FIRST GIVEN NAME	INITIAL	SURNAME	ADDRESS	CITY/TOWN/VILLAGE	PROVINCE	POSTAL CODE
KREK SLOVENIAN CREDIT UNION LTD.					747 BROWNS LINE	TORONTO	ON	M8W 3V7

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COMPLAINTS/CLASSIFICATION	YEAR	MAKE	MODEL	REGISTRY	
GENERAL SECURITY AGREEMENT RESPECTING THE PROPERTY MUNICIPALLY KNOWN					
39232 FINGAL LINE, ST. THOMAS, ONTARIO N5P 3S5					
ADDRESS	1	ADELAIDE ST. E., SUITE 801	TORONTO	ON	MSC 2V9



152

CONTINUED... 8

RUN NUMBER : 067
RUN DATE : 2019/03/08
ID : 20190308104137.84

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 8
(6690)

BUSINESS DEBTOR
PINGAL PROPERTIES HOLDINGS INC.
07/MAR 2019

01 CHARGE NUMBER: 20150922 1417 1862 8116
02 REGISTRATION NUMBER: 697281867
03 RACE AMENDED: NO
04 SPECIFIC PAGE AMENDED: J
05 OTHER: OTHER

21 RECORD REVERSED
22 RACE AMENDED: NO
23 SPECIFIC PAGE AMENDED: J
24 OTHER: OTHER

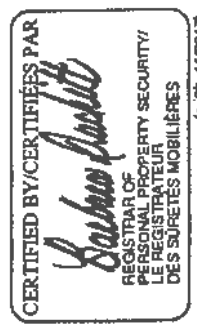
25 BUSINESS NAME: PINGAL PROPERTIES HOLDINGS INC.
26 SUBORDINATION/POSTPONEMENT
27 THE SECURED PARTY, KREK SLOVETIAN CREDIT UNION LTD. POSTPONES ALL IF
28 ITS RIGHTS UNDER PPSA REGISTRATION NO. 20140619 1558 1862 4465
(FILE REFERENCE #697281867) TO THE RIGHTS UNDER PPSA REGISTRATION
29 FIRST GIVEN NAME: INITIAL SURNAME

01/02 DATE OF BIRTH
03 BUSINESS NAME
04 ADDRESS

29 ASSIGNOR
30 SECURED PARTY / LIEN CLAIMANT / ASSIGNEE
31 ADDRESS

10 COLLATERAL CLASSIFICATION
11 YEAR MAKE MODEL
12 MOTOR VEHICLE
13 PUBLIC
14 COLLATERAL
15 DESCRIPTION
16 REGISTERING AGENT OR
17 SECURED PARTY ADDRESS

DATE OF Maturity OR EXPIRY DATE
AMOUNT
MOTOR VEHICLE
ACCOUNTS OTHER
YEAR MAKE MODEL
PUBLIC
COLLATERAL
DESCRIPTION
REGISTERING AGENT OR
SECURED PARTY ADDRESS



*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***
CONTINUED ... 9

ONTARIO CORPORATION NO.

RUN NUMBER : 067
RUN DATE : 2019/03/08
ID : 20190308104137.04

PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : P86R060
PAGE : 9
(6691)

BUSINESS DEBTOR
FINGAL PROPERTIES HOLDINGS INC.
07MAR 2019

CAUTION: THIS PAGE CONTAINS INFORMATION THAT IS UNCLASSIFIED UNDER THE ACCESS TO INFORMATION ACT / ATTENTION: CETTE PAGE CONTIEN DES RENSEIGNEMENTS NON CLASSIFIES EN VERTU DE LA LOI SUR L'ACCES A L'INFORMATION

01 REGISTRATION NUMBER: 20150922 1417 1862 7655
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*** FOR FURTHER INFORMATION, CONTACT THE SECURED PARTY. ***
CONTINUED ...



PROVINCE OF ONTARIO
MINISTRY OF GOVERNMENT SERVICES
PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM
ENQUIRY RESPONSE
CERTIFICATE

REPORT : PSSR060
PAGE : 10
(6692)

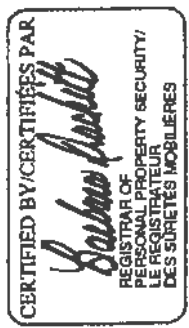
RUN NUMBER : 067
RUN DATE : 2019/03/08
ID : 20190308104137.84

TYPE OF SEARCH : BUSINESS DEBTOR
SEARCH CONDUCTED ON : FINGAL PROPERTIES HOLDINGS INC.
FILE CURRENCY : 07MAR 2019

INFORMATION RELATING TO THE REGISTRATIONS LISTED BELOW IS ATTACHED HERETO.

FILE NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER	REGISTRATION NUMBER
741596697	20180713 1519 1862 7923		
741528864	20180712 1054 1862 7733		
697281858	20140619 1558 1862 4464	20150922 1417 1862 8115	
697281867	20140619 1558 1862 4465	20150922 1417 1862 8116	

6 REGISTRATIONS(S) ARE REPORTED IN THIS ENQUIRY RESPONSE.



55

APPENDIX "K"



PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

LAND
REGISTRY
OFFICE #11

PAGE 1 OF 6
PREPARED FOR Hluwanhu
ON 2019/03/08 AT 10:32:26

35156-0440 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: FT LT 39 CON NTR SOUTHWOLD PT 2 11R8197; T/W E454421; SOUTHWOLD

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE

LT CONVERSION QUALIFIED

RECENTLY:
FIRST CONVERSION FROM BOOK

FIN CREATION DATE:
2007/02/19

OWNERS' NAMES

FINGAL PROPERTIES HOLDINGS INC.

CAPACITY SHARE

ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT		INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2007/02/16 **				
**SUBJECT,		ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:				
**		SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *				
**		AND ESCHEATS OR FORFEITURE TO THE CROWN.				
**		THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF				
**		IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY				
**		CONVENTION.				
**		ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.				
**DATE OF CONVERSION TO LAND TITLES: 2007/02/19 **						
11R1652	1978/10/30	PLAN REFERENCE				C
11R8197	2004/10/01	PLAN REFERENCE				C
E454422	2006/04/28	TRANSFER				
			*** COMPLETELY DELETED ***		INPARTNR INC.	
CT45773	2009/07/22	NOTICE	\$2	THE CORPORATION OF THE TOWNSHIP OF SOUTHWOLD	INPARTNR INC.	C
CT48961	2009/10/09	CHARGE		*** COMPLETELY DELETED *** INPARTNR INC.	LYONS, JAMES	
CT57678	2010/06/11	CHARGE		*** COMPLETELY DELETED *** INPARTNR INC.	KREK SLOVENIAN CREDIT UNION LIMITED	
CT57679	2010/06/11	NO ASSIGN RENT GEN		*** COMPLETELY DELETED *** INPARTNR INC.	KREK SLOVENIAN CREDIT UNION LIMITED	
		REMARKS: CT57678.				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

157



Ontario ServiceOntario

LAND
REGISTRY
OFFICE #11

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 6

PREPARED FOR Hluwanhu
ON 2019/03/08 AT 10:32:26

35156-0440 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CRKD
CT57659	2010/06/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** LYONS, JAMES		
		REMARKS: CT48961.				
CT72305	2011/08/17	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** ST. THOMAS CUSTOM DRYWALL INC		
CT72780	2011/08/31	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** 598013 ONTARIO LTD.		
CT72958	2011/09/02	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** PROUSE ELECTRIC LIMITED PROUSE MECHANICAL LTD.		
CT73687	2011/09/27	CERTIFICATE		*** COMPLETELY DELETED *** ST. THOMAS CUSTOM DRYWALL INC	INPARTNR INC ELGIN LIMITED PARTNERSHIP 1 R.G.P.M. INC	
		REMARKS: CT72365				
CT73821	2011/09/30	CERTIFICATE		*** COMPLETELY DELETED *** 598013 ONTARIO LTD.	ELGIN LIMITED PARTNERSHIP 1 INPARTNR INC. KREK SLOVENIAN CREDIT UNION LIMITED	
		REMARKS: CT72780				
CT74303	2011/10/14	CERTIFICATE		*** COMPLETELY DELETED *** PROUSE ELECTRIC LIMITED PROUSE MECHANICAL LTD.		
		REMARKS: CERTIFICATE OF ACTION CT72958				
CT75261	2011/11/07	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** JAKE ZACHARIAS EXCAVATING INC.		
CT76514	2011/12/12	CERTIFICATE		*** COMPLETELY DELETED *** JAKE ZACHARIAS EXCAVATING INC.		
		REMARKS: CERTIFICATE OF ACTION CT75261				
CT77646	2012/01/13	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** INTO ELECTRONICS INC.		
CT78295	2012/02/02	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** PROUSE ELECTRIC LIMITED		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

158

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
CT9178	2012/03/01	CERTIFICATE REMARKS: CERTIFICATE OF ACTION CT77646		PROUSE MECHANICAL LTD. *** COMPLETELY DELETED *** INTO ELECTRONICS INC.		
CT9367	2012/03/08	CERTIFICATE REMARKS: CT78295		*** COMPLETELY DELETED *** PROUSE ELECTRIC LIMITED PROUSE MECHANICAL LTD.		
CT87245	2012/10/23	NOTICE		*** COMPLETELY DELETED *** INPARTNR INC.	XRB ENERGY INC.	
CT91913	2013/04/08	APL COURT ORDER REMARKS: APPOINTING RECEIVER AND MANAGER AND CONSTRUCTION LIEN TRUSTEE		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE	SF PARTNERS INC.	
CT92132	2013/04/16	CHARGE		*** COMPLETELY DELETED *** INPARTNR INC.	C & K MORTGAGE SERVICES INC.	
CT104503	2014/06/20	APL VESTING ORDER	\$7,500,000	ONTARIO SUPREME COURT OF JUSTICE - COMMERCIAL LIST	FINGAL PROPERTIES HOLDINGS INC.	C
CT104506	2014/06/20	CHARGE		*** COMPLETELY DELETED *** FINGAL PROPERTIES HOLDINGS INC.	COSMAN, MARK LORNE	
CT104509	2014/06/20	NO ASSGN RENT GEN REMARKS: CT104506.		*** COMPLETELY DELETED *** FINGAL PROPERTIES HOLDINGS INC.	COSMAN, MARK LORNE	
CT104510	2014/06/20	CHARGE	\$6,500,000	FINGAL PROPERTIES HOLDINGS INC.	KREK SLOVENIAN CREDIT UNION LTD.	C
CT104511	2014/06/20	NO ASSGN RENT GEN REMARKS: CT104510		FINGAL PROPERTIES HOLDINGS INC.	KREK SLOVENIAN CREDIT UNION LTD.	C
CT113449	2015/04/21	CHARGE		*** COMPLETELY DELETED *** FINGAL PROPERTIES HOLDINGS INC.	GUERRA, SALVATORE	
CT117230	2015/08/05	CHARGE	\$6,500,000	FINGAL PROPERTIES HOLDINGS INC.	MOS MORTGAGEONE SOLUTIONS LTD.	C
CT117231	2015/08/05	POSTPONEMENT REMARKS: CT113449 TO CT117230		GUERRA, SALVATORE	MOS MORTGAGEONE SOLUTIONS LTD.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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35156-0440 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
CT118122	2015/09/01 REMARKS: CT117230	NOTICE	82,450,000	FINGAL PROPERTIES HOLDINGS INC.	MOS MORTGAGEONE SOLUTIONS LTD.	C
CT118758	2015/09/22	CHARGE		*** COMPLETELY DELETED *** FINGAL PROPERTIES HOLDINGS INC.	COSMAN, MARK LORNE	
CT118759	2015/09/22 REMARKS: CT118758	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** FINGAL PROPERTIES HOLDINGS INC.	COSMAN, MARK LORNE	
CT118764	2015/09/22 REMARKS: CT104510 TO CT118758	POSTPONEMENT		KREK SLOVENIAN CREDIT UNION LTD.	COSMAN, MARK LORNE	C
CT118765	2015/09/22 REMARKS: CT117230 TO CT118758	POSTPONEMENT		MOS MORTGAGEONE SOLUTIONS LTD.	COSMAN, MARK LORNE	C
CT118766	2015/09/22 REMARKS: CT113449 TO CT118758	POSTPONEMENT		GUERRA, SALVATORE	COSMAN, MARK LORNE	C
CT118767	2015/09/22	DISCH OF CHARGE		*** COMPLETELY DELETED *** COSMAN, MARK LORNE		
CT119717	2015/10/20 REMARKS: CT117230	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD.	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY	C
CT121755	2015/12/15 REMARKS: CT117230	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY	C
CT122930	2016/01/26 REMARKS: CT104510	APL CR NAME INST		KREK SLOVENIAN CREDIT UNION LTD.	MOYA FINANCIAL CREDIT UNION LIMITED	C
CT122970	2016/01/28	CHARGE	85,400,000	FINGAL PROPERTIES HOLDINGS INC.	FIRST SOURCE MORTGAGE CORPORATION	C
CT122971	2016/01/28 REMARKS: CT122970	NO ASSGN RENT GEN		FINGAL PROPERTIES HOLDINGS INC.	FIRST SOURCE MORTGAGE CORPORATION	C
CT122972	2016/01/28 REMARKS: CT104510 TO CT122970	POSTPONEMENT		MOYA FINANCIAL CREDIT UNION LIMITED	FIRST SOURCE MORTGAGE CORPORATION	C
CT122973	2016/01/28	POSTPONEMENT		MOS MORTGAGEONE SOLUTIONS LTD.	FIRST SOURCE MORTGAGE CORPORATION	C

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160

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER 35156-0440 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
CT122977	2016/01/28	DISCH OF CHARGE		COMMUNITY TRUST COMPANY		
CT123006	2016/01/28	DISCH OF CHARGE		*** COMPLETELY DELETED *** GUERRA, SALVATORE		
CT123516	2016/02/12	TRANSFER OF CHARGE		*** COMPLETELY DELETED *** COSMAN, MARK LORNE		
CT124693	2016/03/29	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY OLYMPIA TRUST COMPANY	C
CT125669	2016/04/27	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY OLYMPIA TRUST COMPANY	C
CT126510	2016/06/01	NOTICE	\$5,368,000	FINGAL PROPERTIES HOLDINGS INC.		
CT127500	2016/06/28	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY COMMUNITY TRUST COMPANY	C
CT128100	2016/06/30	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY COMMUNITY TRUST COMPANY	C
CT128995	2016/07/27	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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161

35156-0440 (LT)

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
CT130913	2016/09/12	TRANSFER OF CHARGE		COMMUNITY TRUST COMPANY	COMMUNITY TRUST COMPANY	C
		REMARKS: CT117230.				
CT134149	2016/12/06	CONSTRUCTION LIEN		MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY COMMUNITY TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY COMMUNITY TRUST COMPANY	C
		REMARKS: CT117230.				
CT134996	2016/12/28	APL DEL CONST LIEN		*** COMPLETELY DELETED *** DOMENIC'S PLUMBING SERVICE INC.		
		REMARKS: CT134149.				
CT135509	2017/01/13	NOTICE	\$6,500,000	*** COMPLETELY DELETED *** DOMENIC'S PLUMBING SERVICE INC.		
		REMARKS: CT117230.				
CT135604	2017/01/17	TRANSFER OF CHARGE		FINGAL PROPERTIES HOLDINGS INC.	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY OLYMPIA TRUST COMPANY	C
		REMARKS: CT117230.				
CT142603	2017/07/20	CONSTRUCTION LIEN	\$163,240	DOMENIC'S PLUMBING SERVICE INC.	MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY COMMUNITY TRUST COMPANY	C
CT156378	2018/07/30	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY OLYMPIA TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY OLYMPIA TRUST COMPANY	C
		REMARKS: CT117230. CT135604				
CT158562	2018/09/24	APL COURT ORDER		ONTARIO SUPERIOR COURT OF JUSTICE, COMMERCIAL LIST	RSM CANADA LIMITED	C

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162



LAND REGISTRY OFFICE #11

35156-0439 (LT)

PAGE 1 OF 6
PREPARED FOR Hiuwanhu
ON 2019/03/08 AT 10:34:01

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

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

PROPERTY REMARKS:
ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED
RECENTLY:
DIVISION FROM 35156-0439
PIN CREATION DATE:
2008/12/19

OWNERS' NAMES
FINGAL PROPERTIES HOLDINGS INC.
CAPACITY SHARE
ROWN

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT		INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2008/12/19 **				
**SUBJECT,		ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:				
**		SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *				
**		AND ESCHEATS OR FORFEITURE TO THE CROWN.				
**		THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF				
**		IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY				
**		CONVENTION.				
**		ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.				
**DATE OF CONVERSION TO LAND TITLES: 2007/02/19 **						
11R1652	1978/10/30	PLAN REFERENCE				C
11R7255	2000/02/25	PLAN REFERENCE				C
11R8197	2004/10/01	PLAN REFERENCE				C
11R8995	2008/10/24	PLAN REFERENCE				C
CT38491	2008/12/17	TRANSFER		*** DELETED AGAINST THIS PROPERTY *** THE CORPORATION OF THE COUNTY OF ELGIN	INPARTNR INC.	
		REMARKS: PLANNING ACT STATEMENTS				
CT45773	2009/07/22	NOTICE	\$2	THE CORPORATION OF THE TOWNSHIP OF SOUTHWOLD	INPARTNR INC.	C
CT48961	2009/10/09	CHARGE		*** COMPLETELY DELETED *** INPARTNR INC.	LYONS, JAMES	
CT57678	2010/06/11	CHARGE		*** COMPLETELY DELETED *** INPARTNR INC.	KREK SLOVENIAN CREDIT UNION LIMITED	

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163



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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 2 OF 6
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35156-0458 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CRKO
CT57679	2010/06/11	NO ASSGN RENT GEN		*** COMPLETELY DELETED *** INPARTNR INC.	KREK SLOVENIAN CREDIT UNION LIMITED	
		REMARKS: CT57679.				
CT57699	2010/06/11	DISCH OF CHARGE		*** COMPLETELY DELETED *** LYONS, JAMES		
		REMARKS: CT48961.				
CT72780	2011/08/31	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** 598013 ONTARIO LTD.		
CT72958	2011/09/02	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** PROUSE ELECTRIC LIMITED PROUSE MECHANICAL LTD.		
CT73821	2011/09/30	CERTIFICATE		*** COMPLETELY DELETED *** 598013 ONTARIO LTD.	ELGIN LIMITED PARTNERSHIP 1 INPARTNR INC. KREK SLOVENIAN CREDIT UNION LIMITED	
		REMARKS: CT72780				
CT74303	2011/10/14	CERTIFICATE		*** COMPLETELY DELETED *** PROUSE ELECTRIC LIMITED PROUSE MECHANICAL LTD.		
		REMARKS: CERTIFICATE OF ACTION CT72958				
CT75261	2011/11/07	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** JAKE ZACHARIAS EXCAVATING INC.		
CT76514	2011/12/12	CERTIFICATE		*** COMPLETELY DELETED *** JAKE ZACHARIAS EXCAVATING INC.		
		REMARKS: CERTIFICATE OF ACTION CT75261				
CT77646	2012/01/13	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** INTO ELECTRONICS INC.		
CT78295	2012/02/02	CONSTRUCTION LIEN		*** COMPLETELY DELETED *** PROUSE ELECTRIC LIMITED PROUSE MECHANICAL LTD.		
CT79178	2012/03/01	CERTIFICATE		*** COMPLETELY DELETED *** INTO ELECTRONICS INC.		

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164



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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 3 OF 6
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35156-0458 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD	
		REMARKS: CERTIFICATE OF ACTION CT77646					
CT79367	2012/03/08	CERTIFICATE		*** COMPLETELY DELETED *** PROUSE ELECTRIC LIMITED PROUSE MECHANICAL LTD.			
		REMARKS: CT78295					
CT87245	2012/10/23	NOTICE		*** COMPLETELY DELETED *** INPARTNR INC.	XRB ENERGY INC.		
CT91913	2013/04/08	APL COURT ORDER		*** COMPLETELY DELETED *** ONTARIO SUPERIOR COURT OF JUSTICE ONTARIO SUPERIOR COURT OF JUSTICE	SF PARTNERS INC.		
		REMARKS: APPOINTING RECEIVER AND MANAGER AND CONSTRUCTION LIEN TRUSTEE					
CT92132	2013/04/16	CHARGE		*** COMPLETELY DELETED *** INPARTNR INC.	C & K MORTGAGE SERVICES INC.		
CT104503	2014/06/20	APL VESTING ORDER	\$7,500,000	ONTARIO SUPREME COURT OF JUSTICE - COMMERCIAL LIST	FINGAL PROPERTIES HOLDINGS INC.	C	
CT104506	2014/06/20	CHARGE		*** COMPLETELY DELETED *** FINGAL PROPERTIES HOLDINGS INC.	COSMAN, MARK LORNE		
CT104509	2014/06/20	NO ASSIGN RENT GEN		*** COMPLETELY DELETED *** FINGAL PROPERTIES HOLDINGS INC.	COSMAN, MARK LORNE		
		REMARKS: CT104506.					
CT104510	2014/06/20	CHARGE	\$6,500,000	FINGAL PROPERTIES HOLDINGS INC.	KREK SLOVENIAN CREDIT UNION LTD.	C	
CT104511	2014/06/20	NO ASSIGN RENT GEN		FINGAL PROPERTIES HOLDINGS INC.	KREK SLOVENIAN CREDIT UNION LTD.	C	
		REMARKS: CT104510					
CT113449	2015/04/21	CHARGE		*** COMPLETELY DELETED *** FINGAL PROPERTIES HOLDINGS INC.	GUERRA, SALVATORE		
CT117230	2015/08/05	CHARGE	\$6,500,000	FINGAL PROPERTIES HOLDINGS INC.	MOS MORTGAGEONE SOLUTIONS LTD.	C	
CT117231	2015/08/05	POSTPONEMENT		GUERRA, SALVATORE	MOS MORTGAGEONE SOLUTIONS LTD.	C	
		REMARKS: CT113449 TO CT117230					
CT118122	2015/09/01	NOTICE	\$2,450,000	FINGAL PROPERTIES HOLDINGS INC.	MOS MORTGAGEONE SOLUTIONS LTD.	C	
		REMARKS: CT117230					
CT118758	2015/09/22	CHARGE		*** COMPLETELY DELETED ***	MOS MORTGAGEONE SOLUTIONS LTD.	C	

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165



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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 4 OF 6
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ON 2019/03/08 AT 10:34:01

38156-0458 (LT)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CRKD
CT118759	2015/09/22	NO ASSGN RENT GEN REMARKS: CT118758		FINGAL PROPERTIES HOLDINGS INC. *** COMPLETELY DELETED *** FINGAL PROPERTIES HOLDINGS INC.	COSMAN, MARK LORNE	C
CT118764	2015/09/22	POSTPONEMENT REMARKS: CT104510 TO CT118758		KREK SLOVENIAN CREDIT UNION LTD.	COSMAN, MARK LORNE	C
CT118765	2015/09/22	POSTPONEMENT REMARKS: CT117230 TO CT118758		MOS MORTGAGEONE SOLUTIONS LTD.	COSMAN, MARK LORNE	C
CT118766	2015/09/22	POSTPONEMENT REMARKS: CT113449 TO CT118758		GUERRA, SALVATORE	COSMAN, MARK LORNE	C
CT118767	2015/09/22	DISCH OF CHARGE REMARKS: CT104506.		*** COMPLETELY DELETED *** COSMAN, MARK LORNE		C
CT119717	2015/10/20	TRANSFER OF CHARGE REMARKS: CT117230.		MOS MORTGAGEONE SOLUTIONS LTD.	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY	C
CT121755	2015/12/15	TRANSFER OF CHARGE REMARKS: CT117230.		MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY	C
CT122530	2016/01/26	APL CH NAME INST REMARKS: CT104510.		KREK SLOVENIAN CREDIT UNION LTD.	MOYA FINANCIAL CREDIT UNION LIMITED	C
CT122570	2016/01/28	CHARGE	\$5,400,000	FINGAL PROPERTIES HOLDINGS INC.	FIRST SOURCE MORTGAGE CORPORATION	C
CT122571	2016/01/28	NO ASSGN RENT GEN REMARKS: CT122970		FINGAL PROPERTIES HOLDINGS INC.	FIRST SOURCE MORTGAGE CORPORATION	C
CT122972	2016/01/28	POSTPONEMENT REMARKS: CT104510 TO CT122970		MOYA FINANCIAL CREDIT UNION LIMITED	FIRST SOURCE MORTGAGE CORPORATION	C
CT122973	2016/01/28	POSTPONEMENT REMARKS: CT117230 TO CT122970		MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY	FIRST SOURCE MORTGAGE CORPORATION	C
CT122977	2016/01/28	DISCH OF CHARGE		*** COMPLETELY DELETED ***		C

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1666

35156-0458 (LT)

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
				GUERRA, SALVATORE		
	REMARKS: CT113449.					
CT123006	2016/01/28	DISCH OF CHARGE		*** COMPLETELY DELETED *** COSMAN, MARK LORNE		
	REMARKS: CT118758.					
CT123516	2016/02/12	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY OLYMPIA TRUST COMPANY	C
	REMARKS: CT117230.					
CT124693	2016/03/29	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY OLYMPIA TRUST COMPANY	C
	REMARKS: CT117230.					
CT125665	2016/04/27	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY OLYMPIA TRUST COMPANY	C
	REMARKS: CT117230.					
CT126910	2016/06/01	NOTICE	\$5,368,000	FINGAL PROPERTIES HOLDINGS INC.	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY OLYMPIA TRUST COMPANY	C
	REMARKS: CT117230					
CT127900	2016/06/28	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY COMMUNITY TRUST COMPANY	C
	REMARKS: CT117230.					
CT128100	2016/06/30	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY COMMUNITY TRUST COMPANY	C
	REMARKS: CT117230.					
CT128995	2016/07/27	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY COMMUNITY TRUST COMPANY	C
	REMARKS: CT117230.					
CT130913	2016/09/12	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD.	MOS MORTGAGEONE SOLUTIONS LTD.	C

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167

35156-0458 (L1)

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
				OLYMPIA TRUST COMPANY COMMUNITY TRUST COMPANY	OLYMPIA TRUST COMPANY COMMUNITY TRUST COMPANY	
CT135509	2017/01/13	NOTICE	\$6,500,000	FINGAL PROPERTIES HOLDINGS INC.	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY OLYMPIA TRUST COMPANY	C
				MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY COMMUNITY TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. OLYMPIA TRUST COMPANY COMMUNITY TRUST COMPANY	C
CT156378	2018/07/30	TRANSFER OF CHARGE		MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY OLYMPIA TRUST COMPANY	MOS MORTGAGEONE SOLUTIONS LTD. COMMUNITY TRUST COMPANY OLYMPIA TRUST COMPANY	C
				ONTARIO SUPERIOR COURT OF JUSTICE, COMMERCIAL LIST	RSM CANADA LIMITED	C

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168

APPENDIX "L"

dedicated to your success

February 8, 2019

RSM Canada Limited
11 King Street West
Suite 700
Box 27
Toronto ON M5H 4C7

Attention: Bryan A. Tannenbaum, President

Dear Sirs:

Re: Review of certain security granted by Fingal Properties Holdings Inc. (the "Debtor") in respect of Property known municipally as 39232 Fingal Line, St. Thomas, Ontario and more particularly described in Schedule "A" attached (the "Property")

In connection with your status as Receiver with respect to the Debtor in respect of an application to the Ontario Superior Court of Justice made by M.O.S. Mortgageone Solutions Ltd. (the "**Application**"), you have requested our opinion concerning certain security over the Property granted by the Debtor.

The Debtor is the registered owner of the Property located in the City of St. Thomas in Land Registry Office for the Land Titles Division of Elgin No. 11 (the "**Land Titles Office**"), all as described in Schedule "A".

The specific security documents on which you have asked us to opine are:

1. A Charge/Mortgage registered as Instrument No. CT122970 on January 1, 2016 in favour of First Source Mortgage Corporation ("**First Source**") in the principal amount of \$5,400,000.00 (the "**First Source Charge**"). The Charge is expressed to be collateral security for obligations referred to in a mortgage commitment dated December 2, 2015 among the Debtor, the First Source and certain guarantors.
2. A Charge/Mortgage registered as Instrument No. CT104510 on June 20, 2014 in favour of Krek Slovenian Credit Union Ltd. ("**Krek**") in the principal amount of \$6,500,000.00 (the "**Credit Union Charge**").
 - (a) The Credit Union Charge is expressed to be delivered pursuant to and is subject to the terms and conditions of a commitment letter dated January 20, 2014 among the Debtor, the chargee and Wilsondale Assets Management Inc. as guarantor.

- (b) Krek changed its name to Moya Financial Credit Union Limited ("Moya") by an Application to Change Name registered as Instrument No. CT122930 registered on January 26, 2016.
 - (c) A Postponement of Charge was registered as Instrument No. CT122972 on January 28, 2016 in which Moya postponed its rights under the Credit Union Charge to the rights under the First Source Charge.
3. A Charge/Mortgage registered as Instrument No. CT117230 on August 5, 2015 in favour of MOS Mortgageone Solutions Ltd. ("MOS") in the principal amount of \$6,500,000.00 (the "MOS Charge").
- (a) A Notice of Agreement Amending Charge was registered as Instrument No. CT 1188122 on September 1, 2015 reducing the principal sum secured to \$2,450,000.
 - (b) The MOS Charge was transferred from MOS to MOS and Community Trust Company ("Community") by a Transfer of Charge registered as Instrument No. CT1191717 on October 20, 2015. A Schedule to the Transfer of Charge sets forth the various parties and their respective shares for whom MOS and Community are holding the Charge in trust.
 - (c) The MOS Charge has been postponed to the First Source Charge by a Postponement of Charge registered as Instrument No. CT122973.
 - (d) The MOS Charge was transferred from MOS and Community to MOS and Community by a Transfer of Charge registered as Instrument No. CT121755 on December 15, 2015. A Schedule to the Transfer of Charge sets forth the various parties and their respective shares for whom MOS and Community are holding the Charge in trust.
 - (e) The MOS Charge was transferred from MOS and Community to MOS, Community and Olympia Trust Company ("Olympia") by a Transfer of Charge registered as Instrument No. CT123516 on February 12, 2016. A Schedule to the Transfer of Charge sets forth the various parties and their respective shares for whom MOS, Community and Olympia are holding the Charge in trust.
 - (f) The MOS Charge was transferred from MOS, Community and Olympia to MOS, Community and Olympia by a Transfer of Charge registered as Instrument No. CT124693 on March 29, 2016. A Schedule to the Transfer of Charge sets forth the various parties and their respective for whom MOS, Community and Olympia are holding the Charge in trust.
 - (g) The MOS Charge was transferred from MOS, Community and Olympia to MOS, Community and Olympia by a Transfer of Charge registered as Instrument No. CT125669 on April 27, 2016. A Schedule to the Transfer of Charge sets forth the various parties and their respective for whom MOS, Community and Olympia are holding the Charge in trust.

- (h) A Notice of Agreement Amending Charge was registered as Instrument No. CT 126910 on June 1, 2016 increasing the principal sum secured to \$5,368,000.
- (i) The MOS Charge was transferred from MOS, Community and Olympia to MOS as to a 58.24% share, Community as to a 11.28% share and Olympia 30.48% share by a Transfer of Charge registered as Instrument No. CT124693 on March 29, 2016. A Schedule to the Transfer of Charge sets forth the various parties and their respective shares for whom MOS, Community and Olympia are holding the Charge in trust.
- (j) The MOS Charge was transferred from MOS, Community and Olympia to MOS as to a 49.71% share, Community as to a 11.28% share and Olympia 39.01% share by a Transfer of Charge registered as Instrument No. CT128100 on June 30, 2016. A Schedule to the Transfer of Charge sets forth the various parties and their respective shares for whom MOS, Community and Olympia are holding the Charge in trust.
- (k) The MOS Charge was transferred from MOS, Community and Olympia to MOS as to a 40.40% share, Community as to a 11.28% share and Olympia 48.32% share by a Transfer of Charge registered as Instrument No. CT128995 on July 27, 2016. A Schedule to the Transfer of Charge sets forth the various parties and their respective shares for whom MOS, Community and Olympia are holding the Charge in trust.
- (l) The MOS Charge was transferred from MOS, Community and Olympia to MOS as to a 36.76% share, Community as to a 11.28% share and Olympia 51.96% share by a Transfer of Charge registered as Instrument No. CT130193 on September 12, 2016. A Schedule to the Transfer of Charge sets forth the various parties and their respective shares for whom MOS, Community and Olympia are holding the Charge in trust.
- (m) A Notice of Agreement Amending Charge was registered as Instrument No. CT 135509 on January 13, 2017 increasing the principal sum secured to \$6,500,000.

Our review of title disclosed a Construction Lien registered as Instrument No. CT142603 on July 20, 2017 by Domenic's Plumbing in the sum of \$163,240. The Construction Lien itself recites that the date of last supply of services or materials to the Property was November 11, 2016.

We have reviewed the First Source Charge, the Credit Union Charge and the MOS Charge to determine their respective validity and enforceability against the Debtor, and their priority to such liens, charges, mortgages and other security documents registered in the Land Titles Office against title to the Property, or regarding the validity and enforceability of any guarantees. We have not confirmed the legal descriptions or the boundaries for any of the lands comprising the Property and have assumed that the thumbnail legal descriptions are

accurate and complete as set forth in the parcel registers identified by their respective property identification numbers ("PINs").

This is not an opinion as to the title of the Debtors, and the Property may be subject to agreements, notices, easements, by-laws, spousal and other rights, and other instruments as may be but not necessarily disclosed by the parcel registers. In particular, we have assumed that the Debtor is the registered owner of the Property, with a good and marketable title in fee simple. We have further assumed that all past transfers and conveyances complied with the subdivision control provisions of the *Planning Act, R.S.O. 1990, chapter P.13*, and its predecessors in force at the time of transfer or conveyance.

We have assumed that all funds have been properly advanced in accordance with the respective Charges and letters of commitment, and that no advances were made in the face of a construction lien registered at the time of such advance. Regarding the First Source Charge, we have assumed that the loan has been fully advanced and no advances were made after the registration of the Postponement of Charge CT122972 and Postponement of Charge CT122973.

Other than the mortgage commitment between M.O.S. Mortgageone Solutions Ltd. and the Debtor dated May 27th, 2015, we have not reviewed any letter of commitment which sets out obligations in respect of which a Charge is expressed to be given as collateral security, and our opinion is qualified to the extent that such Charge may not be enforceable as a result of any deficiencies, errors or provisions set out in any other letter of commitment that we have not reviewed that governs the loan.

Opinion

Subject to the assumptions and qualifications noted in this letter and in Schedule "B" attached, we are of the opinion that, as at February 8, 2019:

1. The First Source Charge has been duly registered under the Land Titles Act and is a first charge and is valid and enforceable against the Receiver to the extent of all monies advanced by or indebtedness or liability incurred in favour of First Source.
 - (a) the First Source Charge ranks ahead of the Credit Union Charge and the MOS Charge.
2. The Credit Union Charge has been duly registered under the Land Titles Act and is a second charge and is valid and enforceable against the Receiver to the extent of all monies advanced by or indebtedness or liability incurred in favour of Krek, now known as Moya.
 - (a) the Credit Union Charge ranks behind the First Source Charge and ahead of the MOS Charge.
3. The MOS Charge as amended and transferred has been duly registered under the Land Titles Act and is a third charge and is valid and enforceable against the Receiver to

1741

the extent of all monies advanced by or indebtedness or liability incurred in favour of MOS, Community and Olympia.

- (a) the MOS Charge ranks behind the First Source Charge and the Credit Union Charge.
- 4. The Construction Lien registered as Instrument No. CT142603 is invalid and unenforceable on the basis that it was registered out of time and no Certificate of Action has been registered, as required by the **Construction Act**, R.S.O 1990, chapter C.30 as amended. An Application should be made to the Court to have the Construction Lien deleted from title.
- 5. There are no other charges registered on title to the Property.

We note that the Application is in the name of "M.O.S. Mortgageone Solutions Ltd.", but the MOS Charge and other registered Instruments describe the chargee as "MOS Mortgageone Solutions Ltd." We do not know which is the correct name of the chargee.

We trust that you find the foregoing satisfactory, and if you have any questions, we would be pleased to hear from you.

Yours truly,

Goldman Sloan Nash & Haber LLP

175

SCHEDULE "A"

**LEGAL DESCRIPTIONS OF THE PROPERTY,
REGISTERED OWNERS, AND
PRIORITY OF SECURITY DOCUMENTS**

AS AT November 27, 2017

**Re: Review of certain security granted by Fingal Properties Holdings Inc. (the "Debtor")
in respect of Property known municipally as 39232 Fingal Line, St. Thomas, Ontario**

PIN 35156-0440 (LT)

Registered Owner: Fingal Properties Holdings Inc.

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

PIN 35156-0458 (LT)

Registered Owner: Fingal Properties Holdings Inc.

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

SCHEDULE "B"

Assumptions and Qualifications

The following are the assumptions and qualifications in connection with this opinion with respect to each Charge:

1. We are qualified to render opinions only as to the laws of the Province of Ontario, including relevant Federal laws of Canada, and accordingly we express no opinion as to the laws of any other jurisdiction. Our opinions are not to be taken as relating to any property or assets while the same are located outside the Province of Ontario, or as to the validity of any of the security documents insofar as they relate to any such property.
2. In rendering our opinion, we assume the following:
 - (a) That the Debtor was a duly incorporated and validly subsisting corporation at the time that the Charge was authorized, executed and delivered, and that the Debtor has continued to be duly incorporated and validly existing since that time;
 - (b) The genuineness of all signatures on all documents examined by us, the authenticity of all documents submitted to us, the legal capacity of natural persons and the conformity to authentic original documents of all documents submitted to us as certified, conformed or photocopy versions and the truth of the factual statements contained in all documents submitted to us;
 - (c) The accuracy and currency of the indices and filing systems maintained in the public offices where we have searched or inquired;
 - (d) The due execution, authorization and delivery, pursuant to and under strict capacity and authorization, of the Charge referred to in this letter by all corporate parties pursuant to all necessary corporate actions and authorizations, and that as of the date of this opinion no steps or actions have been taken to revoke, rescind or modify any such authorizations;
 - (e) That the Debtor does not have a legal defence against any of its secured parties for, without limitation, absence of legal capacity, fraud, buyout to the knowledge of any secured parties, misrepresentation, undue influence or duress.
3. We express no opinion as to the enforceability of any provision that could be construed as a "penalty" as opposed to liquidated damages. If a contractual term requiring payment or specified performance in the event of breach or default is characterized as a "penalty" as opposed to liquidated damages, the same would not be enforceable upon public policy grounds. As the determination of this issue is subjective and factual in nature, we are unable to express an opinion as to same.
4. We express no opinion as to the enforceability of those provisions of the Charge that purport to allow the severance of invalid, illegal or unenforceable provisions or restrict their effect, however, the forgoing does not in any way limit our opinion with respect to enforceability of any other provision of the security documentation.

5. We express no opinion as to whether the Charge constitutes a fraudulent preference or other attackable or reviewable transaction pursuant to the provisions of the Bankruptcy and Insolvency Act (Canada) or any applicable provincial legislation.

6. All opinions with regard to the binding and enforceable nature of the obligations evidenced by any agreement or document, which are the subject of this letter, are subject to the following qualifications:

(a) Enforcement of an agreement may be restricted by any laws affecting or limiting the right of creditors to enforce any remedies available to them;

(b) Enforcement of an agreement may be affected or limited by any collateral agreements or arrangements relating to them and entered among the parties of which we may not be aware;

(c) No opinion is given with respect to the availability of any particular remedy, equitable or otherwise. Without limiting the generality of that statement, no opinion is given to any particular provision of any of the agreements or documents noted in this letter and the enforceability of a party's obligations under those documents will be subject to the general principles of equity regarding whether such enforceability is considered as a matter of common law or equity;

(d) Provisions providing for recovery of fees and expenses may be restricted by a court to a reasonable amount and counsel fees are subject to taxation;

(e) No opinion is expressed as to the enforceability of any provision that purports to provide for a higher rate of interest after default than before;

(f) No opinion is expressed as to the enforceability of a provision of any of the Charge that provides that the provisions of another document govern in the event of any conflict or inconsistency between the provisions of the other document and such Charge;

(g) No opinion is expressed as to the enforceability of any provision that contemplates or provides for agreement at a later date;

(h) No opinion is expressed as to the enforceability of any provision that purports to relieve any party thereto, or its agents, from liability for its own acts;

(i) No opinion is expressed as to the enforceability of any provision that purports to bind or affect, or confer a benefit upon, persons who are not parties to the Charge;

(j) Enforcement of an agreement may be limited by any applicable bankruptcy, reorganization, or insolvency, moratorium, or other law, including the Bankruptcy and Insolvency Act (Canada) thereby affecting the enforcement of creditors' rights generally from time to time; and

(k) Since specific performance and injunctive relief are equitable remedies and may be only granted in the discretion of a Court of competent jurisdiction, such remedies may not be available where damages are considered adequate.

8. The Charge is only enforceable to the extent that monies have been advanced properly by secured parties and/or other obligations or liabilities owed by the Debtor to the secured parties have been incurred.

9. In connection with this opinion, no review has been made of any of the transactions, agreements, indentures or other instruments of the Debtor for the purposes of identifying matters described in this opinion, other than a review of the parcel registers for the respective PINs in the applicable land registry office and the instruments as registered on such PINs. Furthermore, no review of the minute books of the Debtor has been undertaken by our firm.

10. The opinions expressed in this letter are provided to and are for the sole use of RSM Canada Limited in its capacity as a Receiver, upon its appointment, and may not be used for any other purpose, or relied upon by any other person, firm, corporation or other entity without the prior written consent of Goldman Sloan Nash & Haber LLP.

APPENDIX "M"

180

ACCOUNT CLOSING STATEMENT

**FIRST SOURCE
FINANCIAL MANAGEMENT INC.**

ACCOUNT NO.	1215.15.12
STATEMENT CLOSING DATE	2/13/2019

STATEMENT SUMMARY	
Payoff Amount	\$5,671,203.04
Payoff Due Date	2/14/2019
After 2/14/2019, please pay an additional \$1,206.11 per day. This notice expires on 2/24/2019, at which time you are instructed to contact this office for additional instructions.	
Interest Rate	10.000%
Daily Periodic Rate	0.027778%
Average Daily Balance	\$4,342,000.00
Property: 39232 Fingal Line St. Thomas ON	

BORROWER
(Fingal Line, St. Thomas) Fingal Properties Holdings Inc. 71 Silton Road, Suite 10 Vaughan ON L4L7Z8

PLEASE DETACH THE TOP PORTION OF THIS STATEMENT AND RETURN IT WITH YOUR PAYMENT

Funds may be tendered any time up to 1:00 pm February 1, 2019 based on the existing statement.
If funds are tendered after 1:00 pm, February 1, 2019 please add additional per diem to NEXT business day.
E. & O.E.

ACCOUNT ACTIVITY					
Date	Reference	Description	Charges	Credits	Balance
10/1/2017		Balance Forward			\$4,452,828.26
10/3/2017		Late Charge	\$395.50		\$4,453,223.76
12/22/2017		Extension Fee (1.5%) to FS	\$81,000.00		\$4,534,223.76
12/22/2017		Extension Fee (1.5%) to Investors	\$81,000.00		\$4,615,223.76
12/22/2017		Sched. A 2(c): Failure to provide proof of property taxes (x4)	\$1,582.00		\$4,616,805.76
12/22/2017	Legal Fees	Legal fees payable to SRLaw re: invoice #78840	\$1,711.39		\$4,618,517.15
12/22/2017		Sched. A 2(k): Discharge Statement fee	\$395.50		\$4,618,912.65
12/22/2017		Legal Fees payable to Palaire Roland LLP	\$1,379.32		\$4,620,291.97
1/15/2018		Sched. A 12: Default Management as per Commitment (5%)	\$217,100.00		\$4,837,391.97
2/1/2018		HST on interest from Feb. 1/17 - July 1/17	\$2,178.91		\$4,839,570.88
5/18/2018		Sched A 2(d): 2nd Request for Insurance Renewal	\$1,977.50		\$4,841,548.38
6/4/2018		ProIncCon Invoice #16673	\$423.75		\$4,841,972.13
6/12/2018		HST on Interest Bonus	\$1,094.44		\$4,843,066.57
6/12/2018		HST from Aug. 1/17 - Oct. 1/17	\$1,069.01		\$4,844,135.58
7/17/2018	Legal Fees	Charge Adjustment: Legal fees payable to SRLaw re: invoice #78840		\$1,711.39	\$4,842,424.19
7/17/2018		Charge Adjustment: Legal Fees payable to Palaire Roland LLP		\$1,379.32	\$4,841,044.87
7/19/2018	INT BONUS	Adjustment	\$112,249.99		\$4,953,294.86
7/19/2018		As per Sched A #2 i) Property Inspection x 1	\$395.50		\$4,953,690.36
7/19/2018		As per Sched A #2 l) Default under another charge x1	\$395.50		\$4,954,085.86
7/19/2018		As per Sched A #2 m) Meetings re: Facility of the Loan x 6	\$2,373.00		\$4,956,458.86
7/19/2018		As per Sched A #2 n) emails/phone calls re: facility of the loan incl. default	\$39,550.00		\$4,996,008.86
7/19/2018		As per Sched A #12 100 hrs @ \$350/hr to deal w/default only charging 50hrs	\$19,775.00		\$5,015,783.86
9/13/2018		Legal Fees: Palaire Roland LLP	\$47,856.00		\$5,063,639.86
1/23/2019		Legal Fees - Schneider Ruggiero LLP - Inv #81978	\$6,914.80		\$5,070,554.66
2/12/2019		HST on Interest from Apr 1/17 - Apr 1/18	\$238.13		\$5,070,792.79
2/13/2019		HST on Interest Charge - Oct 1/17 - Feb 14/19	\$5,797.47		\$5,076,590.26
2/13/2019		Interest Charge	\$594,612.78		\$5,671,203.04
			\$1,221,465.49	\$3,090.71	

INTEREST CHARGE SUMMARY					
Balance Date	Daily Balance	Days	Daily Periodic Rate	Interest Rate	Interest Charges
10/1/2017	\$4,342,000.00	493	0.027778%	10.000%	\$594,612.78
		493			\$594,612.78

Note: Daily balances exclude finance charges, reserve balances, impound balances, late charges.

APPENDIX "N"

RSM Canada Limited
 Court-Appointed Receiver of Fingal Properties Holdings Inc.
 Statement of Receipts and Disbursements
 for the period September 13, 2018 to February 28, 2019

Receipts			
1	Advances from secured creditor (Note 1)	\$	400,000
2	Interest received		367
3	Deposit received on sale		500,000
4	Total receipts	\$	<u>900,367</u>
Disbursements			
5	Municipal Taxes (Note 2)	\$	216,261
6	Insurance (Note 3)		99,000
7	PST Paid on insurance		7,920
8	Financing Fees (Note 4)		5,500
9	Outside Consulting re possession		1,832
10	Interest charges - First Source re Receiver's Certificate No. 1		1,233
11	Interest charges - MOYA re Receiver's Certificate No. 2		7,259
12	Security		4,444
13	Stock Taking and Possession (Note 5)		762
14	Ascend License Fees		275
15	Utilities		16,499
16	Repairs and Maintenance (Note 6)		5,102
17	HST Paid		2,208
18	Filing Fees Paid to Official Receiver		70
19	Receiver's Fees		-
20	Legal Fees		-
21	Bank Charges		25
22	Total disbursements	\$	<u>368,381</u>
23	Excess of receipts over disbursements before reserves and professional fees	\$	<u>531,976</u>
24	Represented by:		
25	Cash	\$	31,976
26	Term Deposit		500,000
27	Total	\$	<u>531,976</u>

Notes:

1 The Receiver's total borrowings to date are comprised of the following amounts:

Receiver's Certificate No. 1 dated September 28, 2018	\$	100,000
Receiver's Certificate No. 2 dated November 6, 2018		400,000
Repay Receiver's Certificate No. 1 on November 8, 2018		(100,000)
Amount Outstanding at November 19, 2018	\$	<u>400,000</u>

The Receiver is authorized to borrow a further \$25,000, for a total of \$425,000

2 Municipal taxes is comprised of the following payments:

2017 property tax arrears	\$	95,699
2018 property tax arrears		118,098
Other charges		2,453
Total	\$	<u>216,251</u>

3 Insurance coverage from Sept. 28, 2018 to Mar. 28, 2019 with a four month earned premium. Given that the Receiver is not assured of a sale closing before Apr. 30/19, the Receiver is required to obtain a further 3 month insurance premium of \$53,460 + PST.

4 Financing fees are comprised of the following Payments:

First Source	\$	2,500.00
Your Credit Union		3,000.00
Total	\$	<u>5,500.00</u>

5 Stock taking and possession costs are comprised of the following:

Electrical Inspection	\$	500.00
Change of locks		262.25
Total	\$	<u>\$762.25</u>

6 The maintenance costs represent required repairs to geothermal heating/cooling system, in accordance with an engineering review.

RSM Canada Limited
 Court-Appointed Receiver of Fingal Properties Holdings Inc.
 Estimated Cash Required
 as at April 30, 2019

Cash on hand as at Feb. 28, 2019, per R&D		\$	31,976
Estimated monthly expenses for Feb., Mar., Apr. (Note 1)	\$	31,200	
Estimated invoices due by Mar. 29, 2019 (Note 2)		<u>92,058</u>	
			<u>123,258</u>
Estimated cash at Apr. 30, 2019 (Note 5) before appraisal (Note 3), realtor and professional fees (Note 4)		\$	<u>(91,281)</u>

Notes:

1 Estimated monthly expenses are comprised of the following amounts, per month:			
	\$	mos	
Utilities	5,000	3	15,000
Interest	2,400	3	7,200
Security	1,000	3	3,000
Snow removal	1,500	4	6,000
Total		\$	<u>31,200</u>

2 Invoices to be paid by April 30, 2019 are as follows:

	\$	
Maintenance costs and reserves		10,000
Insurance due Mar. 29/19		53,480
Property taxes due Mar. 29/19		<u>26,588</u>
Total estimated costs to Apr. 30/19	\$	<u>92,058</u>

3 CBRE appraisal commissioned by the Receiver to be paid from closing proceeds \$ 16,725

4 Realtor commissions and Professional fees to be paid from closing proceeds

5 Based on estimated cash requirements to Apr. 30/19, the receiver will be required to borrow the remaining available funds of \$25,000 (totaling \$425,000) and to request the court to authorize additional borrowings in the amount of \$75,000

M.O.S. MORTGAGEONE SOLUTIONS LTD.

and

FINGAL PROPERTIES HOLDINGS INC.

Applicant

Respondent

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

**SECOND REPORT OF THE RECEIVER,
dated March 14, 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

184

TAB 3

185

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) DAY, THE
JUSTICE)
) DAY OF , 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, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and [REDACTED] (the "**Purchaser**") dated as of February 13, 2019 and appended to the Confidential Supplement dated March 14, 2019 (the "**Confidential Supplement**") to the Second Report of the Receiver dated March 14, 2019 (the "**Second 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 Second Report and the Confidential Supplement and on hearing the submissions of counsel for the Receiver, any other party as indicated on the counsel slip, and no

186

one appearing for any other person on the service list, although properly served as appears from the affidavit of ■ sworn March ■, 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 Second 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 and restrictive covenants listed on **Schedule E**) and, for greater certainty, this Court orders that

187

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.

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 ■, 2019, the Court approved the agreement of purchase and sale made as of February 13, 2019 (the "**Sale Agreement**") between the Receiver and ■ (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

190

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

195

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 – Specific Registered 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. 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.
15. Any reference plans or plans registered pursuant to the Boundaries Act (Ontario).
16. Any and all open and outstanding building permits.
17. 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.
18. 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

19. 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

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Lawyers for the Receiver, RSM Canada Limited

198

TAB 4

199

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE _____) WEEKDAYDAY, THE #
JUSTICE _____) DAY OF MONTH, 20YR2019

BETWEEN:-

PLAINTIFF

Plaintiff

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

- and -
DEFENDANT

Defendant

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 [~~RECEIVER'S NAME~~] RSM Canada Limited in its capacity as the ~~Court-appointed receiver~~ (the "**Receiver**") of all of the undertaking, property and assets of [DEBTOR] (the "Debtor") 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, for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of

purchase and sale (the "Sale Agreement") between the Receiver and ~~[NAME OF PURCHASER]~~ the "Purchaser") dated ~~[DATE]~~ as of February 13, 2019 and appended to the Confidential Supplement dated March 14, 2019 (the "Confidential Supplement") to the Second Report of the Receiver dated [DATE] March 14, 2019 (the "Second 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 Second Report and the Confidential Supplement and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~, 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 ~~[NAME]~~ sworn ~~[DATE] March 14, 2019~~, filed¹:

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

2. 1- THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ 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. 2- 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

¹ ~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

² ~~In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.~~

³ ~~In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.~~

"Receiver's Certificate"), the Purchased Assets described in the Sale Agreement, including (i) all of the Debtor's right, title and interest in and to 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 the Sale Agreement [and listed on Schedule BC hereto]⁴, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice [NAME] Dunphy dated [DATE] 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 CD hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule DE) 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. ~~3.~~ THIS COURT ORDERS that upon the registration in the Land Registry Office for the ~~{Registry Division of {LOCATION}}~~ of a ~~Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act~~ duly executed by the Receiver ~~}}{Land Titles Division of {LOCATION} Elgin (No. 11) of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act}~~⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the ~~subject real property identified in Schedule B hereto (the "Real Property")~~ in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule CD hereto.

⁴ To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

⁵ The "Claims" being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non-specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

5. ~~4-~~ THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ 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 sale⁸, 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. ~~5-~~ THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

~~6. — THIS COURT ORDERS that, pursuant to clause 7(3)(e) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "●" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

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;

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

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 ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

8. ~~9.~~ THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

Schedule A – Form of Receiver’s Certificate

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

**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**

BETWEEN:-

~~PLAINTIFF~~

Plaintiff

~~-and-~~

~~DEFENDANT~~

Defendant

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Dunphy of the Ontario Superior Court of Justice (the "Court") dated ~~[DATE OF ORDER]~~, ~~[NAME OF~~

205

~~RECEIVER~~ September 12, 2018. RSM Canada Limited was appointed as the receiver (the "Receiver") of all of the undertaking, property and assets of [DEBTOR] 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 ~~[DATE]~~, 2019, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ February 13, 2019 (the "Sale Agreement") between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ and ~~██████████~~ ~~██████████~~ (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
 Per: _____
 Name: _____
 Title: _____

~~Receiver of the undertaking, property and assets of [DEBTOR], and not in its personal capacity.~~

~~[NAME OF RECEIVER], in its capacity as Receiver of the undertaking, property and assets of [DEBTOR], and not in its personal capacity.~~

[NAME OF RECEIVER], in its capacity as Receiver of the undertaking, property and assets of [DEBTOR], and not in its personal capacity

Schedule B – ~~Purchased Assets~~ Real Property

Legal Description

PIN 35156-0440 (LT)

Property Description: PL 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 CD – 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 DE – Specific Registered Permitted Encumbrances, Easements and Restrictive Covenants 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. 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.

15. Any reference plans or plans registered pursuant to the Boundaries Act (Ontario).

16. Any and all open and outstanding building permits.

17. 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.

18. 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

19. 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.

Applicant

and

FINGAL PROPERTIES HOLDINGS INC.

Respondent

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

APPROVAL AND VESTING ORDER

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Lawyer for the Receiver, RSM Canada Limited

Document comparison by Workshare 9.5 on March-14-19 2:46:01 PM

Document 1 ID	file://U:\MRotsztain\RSM Canada Limited - Fingal Properties (Receivership of) 100398.0002\Pleadings\Approval and Vesting Order Motion\MODEL approval-and-vesting-order-EN (4).docx
Description	MODEL approval-and-vesting-order-EN (4)
Document 2 ID	file://U:\MRotsztain\RSM Canada Limited - Fingal Properties (Receivership of) 100398.0002\Pleadings\Approval and Vesting Order Motion\Approval and Vesting Order - [REDACTED] v. 2.docx
Description	Approval and Vesting Order - [REDACTED] v. 2
Rendering set	Standard

Legend	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics	
Count	

Total changes	303
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TAB 5

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) FRIDAY, THE 22ND
)
JUSTICE) DAY OF MARCH, 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

**ORDER
(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 Second Report of the Receiver dated March 14, 2019 (the “**Second Report**”) 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 • sworn March • , 2019, filed:

NOTICE AND SERVICE

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

ADVICE AND DIRECTION

2. **THIS COURT ORDERS AND DIRECTS:**

- (a) Michael Olynyk, Italo Ferrari, or any other person affiliated with Wilsondale Assets Management Inc. (“WAM”) to respond in writing to the requests for information and documentation made by the Receiver and, in particular to the questions raised in the Receiver’s email of November 27, 2018;
- (b) WAM and Fingal, its directors, officers and shareholders, to provide the Receiver with information as to Fingal’s T4 and T2 tax filings.

INCREASE TO THE RECEIVER’S BORROWING CHARGE

3. **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 Justice Wilton-Siegel dated October 31, 2018) be and hereby further amended by striking out the reference to “\$425,000.00” in paragraph 21 of that Order and substituting therefor “\$500,000.00”.

INTERIM DISTRIBUTION

4. **THIS COURT ORDERS** that, 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 Receiver is hereby authorized to make an interim distribution payment or payments to First Source Mortgage Corporation (“First Source”) out of available net proceeds held by the Receiver, upon:

- (a) First Source entering into a reimbursement agreement with the Receiver on terms satisfactory to the Receiver; and

(b) the Receiver being satisfied that the amounts to be paid to First Source Mortgage Corporation pursuant to its security is valid.

5. **THIS COURT ORDERS** that the Receiver not make any other distributions except pursuant to an Order made on notice to the Service List.

APPROVAL OF RECEIVER'S REPORT AND ACTIVITIES

6. **THIS COURT ORDERS** that the Second Report and the Confidential Supplement to the Second Report of the Receiver dated March 14, 2019 (the "**Confidential Supplement**") and the activities described therein be and are hereby approved, provided that only the Receiver, in its personal capacity and only with respect to its personal capacity, shall be entitled to rely upon or utilize in any way such approval.

SEALING

7. **THIS COURT ORDERS** that the Confidential Supplement and the appendices thereto are hereby sealed pending the closing of the transaction with [REDACTED] described in the Second Report, and the filing of a Receiver's Certificate.

MISCELLANEOUS

8. **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
(Other Relief)**

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TAB 6

222

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

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

BETWEEN:

M.O.S. MORTGAGEONE SOLUTIONS LTD.

Applicant

-and-

FINGAL PROPERTIES HOLDINGS INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. 43, AS AMENDED

SERVICE LIST

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M.O.S. MORTGAGEONE SOLUTIONS LTD.

FINGAL PROPERTIES HOLDINGS INC.

and

Applicant

Respondent

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

MOTION RECORD
Approval and Vesting Order and Other Relief
(returnable March 22, 2019)

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