

Court File No.: CV-23-00710795-00CL

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

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and -

**2011836 ONTARIO CORP., JEFFERSON PROPERTIES LIMITED PARTNERSHIP,
1000162801 ONTARIO CORP., AMERICAN CORPORATION
and 1000199992 ONTARIO CORP.**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO 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**

FIRST REPORT OF THE RECEIVER

(Dated January 18, 2024)

I. INTRODUCTION

1. This first report ("**First Report**") is filed by Albert Gelman Inc. ("**AGI**"), in its capacity as receiver and manager (in such capacity, the "**Receiver**") appointed, without security, of all present and future property assets, undertakings of 2011836 Ontario Corp. ("**201Co.**") and Jefferson Properties Limited Partnership ("**JPLP**" and, together with 201Co., the "**Debtors**") including the real properties known municipally as 39, 53 and 67 Jefferson Side Road, Richmond Hill, Ontario (the "**Jefferson Properties**") (collectively, the "**Property**") by Order of the Ontario Superior Court of Justice, Commercial List (the "**Court**"), dated December 21, 2023 (the "**Appointment Order**"), made pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* R.S.C. 1985, c. B-3, as amended ("**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O 1990, c. 43, as amended. The application which resulted in the Appointment Order was commenced by Cameron Stephen

Mortgage Capital Ltd. (“**Cameron Stephen**”). A copy of the Appointment Order along with the endorsement of Justice Cavanagh made December 21, 2023 is attached hereto as **Appendix “A”**.

II. PURPOSE OF THIS REPORT

2. This First Report is filed to request an Order:
 - a. to increase the Receiver’s borrowing limit, as stated in paragraph 20 of the Appointment Order, from \$7,000,000 to \$20,000,000 and confirming the Receiver’s Borrowings Charge (defined in the Appointment Order) applies and extends to any increased borrowings of the Receiver;
 - b. sealing the Glynn Report (defined below) until further order of the Court;
 - c. approving this First Report; and,
 - d. such further and other relief as this Honourable Court may deem just.
3. This First Report only addresses the Receiver’s request to increase the Receiver’s borrowing limit and the Receiver’s Borrowings Charge and does not include a comprehensive summary of the Receiver’s actions and activities since the date of the Appointment Order. The Receiver will report to the Court on the full extent of its actions and activities at a future date.

III. SCOPE AND TERMS OF REFERENCE

4. In preparing this First Report the Receiver has obtained and relied upon certain unaudited financial information and records of the Debtors, had discussions with representatives of the Glynn Group Incorporated (“**Glynn**”) and relied upon the Glynn Report (defined below).
5. While the Receiver has reviewed the various documents provided, such review does not constitute an audit or verification of such information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises (“**ASPE**”) or International Financial Reporting Standards (“**IFRS**”). Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to ASPE or IFRS or otherwise with respect to such information except as expressly stated herein.
6. This First Report has been prepared for the purposes described above. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose.
7. Unless otherwise noted, all monetary amounts referenced herein are expressed in Canadian dollars.
8. This First Report, and all other court materials and orders issued and filed in these receivership proceedings are available on the Receiver’s website at: <https://www.albertgelman.com/corporate-solutions/other-engagements/> (the “**Case Website**”) and will remain available on the website for a period of six (6) months following the Receiver’s discharge.

IV. BACKGROUND INFORMATION

9. 201Co. is the general partner of the limited partnership, JPLP. 201Co. was incorporated pursuant to laws of the province of Ontario. JPLP is registered under the laws of the province of Ontario.

10. Fanshey Wang is the sole director of 201Co. Fanshey Wang is also an officer of 201Co. along with James Xu.

11. The registered head office of 201Co. is 8000 Jane Street, Suite 300, Concord, Ontario.

Jefferson Properties

12. The Debtors are the registered owners of the Jefferson Properties.

13. The Jefferson Properties consist of approximately 2.6 acres, comprised of two adjoining parcels located along the south side of Jefferson Side Road, just west of Yonge Street in Richmond Hill, Ontario. The Jefferson Properties were intended for a development known as “Richmond Hill Grace”, which was to consist of 96 residential units in 9 blocks, being 60 units of stacked townhomes and 36 units of standard townhomes (the “**Project**”). As of the date of the Appointment Order the Project was actively being constructed and was approximately 60% to 70% complete. The construction of the Project is continuing under the receivership, as described below.

14. Further details about the Debtors, the Jefferson Properties and the events leading up to the appointment of the Receiver can be found in the affidavit, supplementary affidavit and further supplementary affidavit of John David sworn December 6, 2023, December 15, 2023 and December 20, 2023, respectively, which were filed in support of Cameron Stephens’ application.

V. FUNDING OF THE RECEIVERSHIP

15. In accordance with paragraph 20 of the Appointment Order, the Receiver is at liberty and empowered to borrow by way of revolving credit facilities or otherwise such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal does not exceed \$7 million (or such greater amount as this Court may further Order) (the “**Receiver’s Borrowings**”). All of the Receiver’s Borrowings are secured by way of the Receiver’s Borrowings Charge (as defined in the Appointment Order) as against the Property. The Receiver’s Borrowings Charge ranks ahead of all other interests in favour of any other Person (as defined in the Appointment Order) except the Receiver’s charge for its and its counsel’s fees.

16. To date the Receiver has borrowed \$5,703,947.77 from Cameron Stephens under Receiver’s Certificates (as defined in the Appointment Order) to fund the continued construction of the Project as well as certain other costs and expenses of the receivership administration. Attached hereto as **Appendix “B”** are copies of the two Receiver’s Certificates issued to Cameron Stephens dated December 22, 2023 and January 10, 2024.

17. The Receiver has consulted with Cameron Stephens and has received their support to finalize the completion of the Project based upon known information at this time. Additional funding will be required in order to continue and complete the construction of the Project including payment of the construction manager, trade contractors, suppliers, consultants, administrative costs and professional fees.

18. The estimate of these costs to complete the Project are included in a report prepared for the Receiver by Glynn dated January 11, 2024 (the "**Glynn Report**"). Glynn are Chartered Quantity Surveyors who were originally retained by Cameron Stephens and have been involved with the Project since August 2022. Glynn have provided Cameron Stephens with, among other things, project cost monitoring services and budget reports since their involvement with the Project began.

19. The Glynn Report includes, among other things, a detailed budget including an estimate of the costs to complete the Project. The Glynn Report indicates that the estimated costs to complete the Project are approximately \$23 million (the "**Glynn Budget**"), subject to the assumption and qualification included within its report. The Glynn Budget includes hard construction costs, certain administrative costs as well as an estimate of the professional fees for the Receiver, its legal counsel and other consultants engaged for the receivership. The Glynn Budget does not include the monthly re-payment of interest or other financing costs.

20. Due to the sensitive nature of certain of the information about the Project contained within the Glynn Report (which information could impact upon value at such time as the Receiver markets the units and/or sells the Properties), the Receiver is requesting an Order from this Honourable Court that the Glynn Report be sealed until further Order of the Court. The Receiver is of the opinion that sealing the Glynn Report is a minimally intrusive means to protect the details from the general public regarding the total cost of the Project and the specific sales details for units. Notwithstanding the request for a sealing order, the Receiver advises that certain parties have requested access to all or certain specific portions of the Glynn Report. The first request came from the owner of JPLP and members of a new potential lending group that expressed an interest to re-finance the Project. In addition, realtors/brokers that were approached by the Receiver to submit proposals also requested certain information that is contained within the Glynn Report. Out of an abundance of caution in order to limit circulation of the Glynn Report to the general public, the Receiver required that a form of Non-Disclosure Agreement be executed and returned to the Receiver before any portion of the Glynn Report was provided. The Glynn Report is attached hereto as **Confidential Appendix "A"**.

21. As set out above, in order for the Receiver to complete the Project it requires additional funding. Accordingly, it is necessary to increase the Receiver's Borrowings and the Receiver's Borrowings Charge. The Receiver is seeking to increase the Receiver's Borrowings and the Receiver's Borrowings Charge from \$7 million to \$20 million.

22. At this time the Receiver is not requesting to increase the Receiver's Borrowings and the Receiver's Borrowings Charge by the full amount of approximately \$23 million contemplated in the Glynn Budget. Rather, the requested increase coincides with the lending groups internal pre-approval to fund up to \$20 million to the Receiver for completion of the Project. As the Project construction continues, the Receiver will assess

the ongoing situation and review any subsequent reports prepared and provided by Glynn. If additional funding (beyond what is being requested at this time) is required to complete the Project, the Receiver will request a further increase to the Receiver's Borrowings and the Receiver's Borrowings Charge at a future date.

23. The interest rate for the amounts borrowed by the Receiver for the whole of the Receiver's borrowings, including the requested increase, will be at 3 per cent above the prime commercial lending rate of the Royal Bank of Canada plus a 2 per cent commitment fee on each funding request, which fee shall not accrue interest.


24. The Receiver understands that Cameron Stephens will be funding the increased Receiver's Borrowings and Cameron Stephens has consented to the increased borrowing limit.

VI. RECEIVER'S RECOMMENDATION

25. The Receiver respectfully requests an Order of this Honourable Court providing for the relief set out in paragraph 2 of this First Report.

All of which is respectfully submitted this 18th day of January 2024

**ALBERT GELMAN INC., solely in its
capacity as Court-Appointed Receiver
of each of the Debtors and the Jefferson Properties
and not in any other capacity**

Per:  Digitally signed
by Bryan
Gelman

Bryan Gelman, *CIRP, LIT*
Senior Managing Director

Per: 

Tom McElroy, *CPA, CA, CBV, CIRP, LIT*
Managing Director (Ontario)

Appendix A1



Court File No. CV-23-00710795-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE CAVANAGH

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THURSDAY, THE
21st DAY OF DECEMBER, 2023

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

2011836 ONTARIO CORP., JEFFERSON PROPERTIES LIMITED PARTNERSHIP,
1000162801 ONTARIO CORP., AMERICAN CORPORATION and 1000199992
ONTARIO CORP.

Respondents

**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 Albert Gelman Inc. as receiver and manager (in such capacities, the "Receiver") without security, of all present and future property, assets and undertakings of 2011836 Ontario Corp. and Jefferson Properties Limited Partnership (collectively the "Debtors") including the real property listed in Schedule "A" hereto (which assets and real property are hereinafter collectively referred to as the "Property"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Affidavit of John David sworn December 6, 2023, the Supplementary Affidavit of John David sworn December 15, 2023, and Further Supplementary Affidavit of John David sworn December 20, 2023, with all Exhibits thereto, and on reading the Affidavit of Fengxi Fansay Wang sworn December 14, 2023, with all Exhibits thereto and on hearing the submissions of counsel for the Applicant and the Respondents, and on the Respondents consenting to the amount of the Receiver's borrowing charge, and on reading the consent of Albert Gelman Inc. to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application 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, Albert Gelman Inc. is hereby appointed Receiver, without security, of the Property.

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 business of the Debtor and complete construction of the Property including the powers to enter into any agreements, incur any obligations in the ordinary course of business, or cease to perform any contracts of the Debtors in respect of the Property;

- 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 in respect of the Property or any part or parts thereof;
- f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors in respect of the Property and to exercise all remedies of the Debtors in respect of the Property in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- g) to settle, extend or compromise any indebtedness owing to the Debtors;
- 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 Debtors, 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 Debtors 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;
- k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00 provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

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, and in each case the Ontario *Bulk Sales Act* shall not apply.

- 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 Debtors;
- p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any Property owned or leased by the Debtors;
- q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

- s) 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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (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 Debtors, 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.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **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 DEBTORS

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors 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 Debtors are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtors, 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 Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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

10. **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 Debtors without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors 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 Debtors 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 Debtors' 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 Debtors 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

12. **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"). For certainty, all receipts shall be deposited into the Post Receivership Accounts and all Permitted Disbursements (defined below) shall be drawn from the Post Receivership Accounts. "Permitted Disbursements" shall include but shall not be limited to realty taxes, utilities, insurance, construction and related costs, maintenance expenses, other reasonable expenses, and business expenses. 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

13. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors. 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

14. **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 Debtors and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **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

16. **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

17. **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.

18. **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.

19. **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

20. **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 \$7,000,000.00 (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.

21. **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.

22. **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.

23. **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

24. **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://www.albertgelman.com/corporate-solutions/other-engagements/>.

25. **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 Debtors’ creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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

26. **THIS COURT ORDERS** that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver’s powers and duties, including without limitation, those conferred by this Order. The Receiver is specifically authorized and permitted to use the solicitors for the Applicant herein as its own counsel in respect of any matter where there is no conflict of interest. In respect of any legal advice or issue where a conflict may exist or arise in respect of the Applicant and the Receiver or a third party, the Receiver shall utilize independent counsel.

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 each of the Debtors.

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 motion, 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 Property 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.



Digitally signed by
Mr. Justice
Cavanagh

SCHEDULE "A"

THE DEBTOR'S REAL PROPERTY

PIN No. 03208 – 3229 (LT): Block 1, Plan 65M4637; Subject to an Easement as in YR2622073; Subject to an Easement as in YR2644669; Subject to an Easement in Gross as in YR2817498; City of Richmond Hill; and

PIN No. 03208 – 3230 (LT): PT LTS B&C, Plan 1916 Being Part 3; Plan 65R-37587; Subject to an Easement as in YR2622073; Subject to an Easement as in YR2644669; Subject to an Easement in Gross as in YR2817498; City of Richmond Hill;

Municipal address: 39, 53 and 67 Jefferson Side Road, Richmond Hill, Ontario

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

THIS IS TO CERTIFY that Albert Gelman Inc., the receiver (the "Receiver") of all present and future assets, properties and undertakings of 2011836 Ontario Corp. and Jefferson Properties Limited Partnership (collectively the "Debtors") including the real property listed in Schedule "A" hereto (collectively the "**Property**") as such terms are defined in the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 21st day of December 2023 appointing the Receiver (the "**Order**") made in an Application having Court file number CV-23-00710795-00CL, 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.

33. 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 Bank of _____ from time to time.

34. 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.

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

36. 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.

37. 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.

38. 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 _____, 2023.

Albert Gelman Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____
Name:
Title:

CAMERON STEPHENS MORTGAGE
CAPITAL LTD.
Applicant

2011836 ONTARIO CORP., et al.
and
Respondents

Court File No. CV-23-00710795-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
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

Proceeding commenced at Toronto

ORDER

GARFINKLE BIDERMAN LLP

Barristers & Solicitors
1 Adelaide Street East, Suite 801
Toronto, Ontario M5C 2V9

Wendy Greenspoon-Soer – LSO#: 34698L

Tel: 416-869-1234

Email: wgreenspoon@garfinkle.com

Lawyers for the Applicants,
Cameron Stephens Mortgage Capital Ltd.

File Number: 6243-679

Appendix A2

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For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info

ENDORSEMENT OF JUSTICE CAVANAGH:

(1) The Applicant, Cameron Stephens Mortgage Capital Ltd., commenced this application for an order under subsection 243 (1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* for the appointment of Albert Gelman Inc. (“AGI”) as the receiver and manager of all present and future property, assets and undertakings of the Respondents, including each of the real properties identified in Schedule “A” to the Notice of Application.

(2) This application was first brought on very short notice and as a matter of urgency at a hearing on December 11, 2023. On that day, I adjourned the application (over the opposition of the Applicant) to today in order to give the Respondents time to file responding evidence and conduct cross examinations. This has been done.

(3) The application heard today as a matter of urgency applies to the properties identified as the “Jefferson Properties” and to the corresponding owners of the Jefferson Properties, 2011836 Ontario Corp. and Jefferson Properties Limited Partnership (the “Jefferson Debtors”). The respondent 2011836 Ontario Corp. is the general partner of Jefferson Properties Limited Partnership.

(4) The application as it pertains to the remaining respondents and the remaining properties described in Schedule “A” to the Notice of Application is adjourned to another date to be scheduled at a scheduling appointment to be arranged through the Commercial List Office.

(5) The Jefferson Properties are approximately 2.6 acres comprised of two adjoining parcels located on the south side of Jefferson Side Road, just west of Yonge Street, in Richmond Hill, Ontario. The Jefferson Properties were intended for a development known as “Richmond Hill Grace” which was to consist of 96 residential units in nine blocks, being 60 units of stacked townhomes and 36 units of standard townhomes (the “Project”). The Project received zoning approval, draft plan of subdivision approval and site plan approval and is in mid construction. The Project is not completed. Approximately 79 of the 96 units have been pre-sold to purchasers.

(5) The Jefferson Debtors are indebted to the Applicant with respect to credit facilities made available under the terms of a Letter of Commitment dated February 3, 2022 and later amended (the “Letter of Commitment”). The Letter of Commitment provides for a loan facility comprised of a first mortgage construction loan in the amount of \$54,878,000 and a letter of credit facility in the amount of \$2,700,000 (together, the “Loan”) for the Project. As security for their obligations to the Applicant, the Jefferson Debtors provided security which, among other things, included:

- (a) a first ranking Charge/Mortgage registered on March 8, 2022 for the principal sum of \$69,093,600;
- (b) a general security agreement dated March 8, 2022; and

- (c) a general assignment of rents.

The obligations of the Jefferson Debtors to the Applicant were also guaranteed by Fangxi (Fansey) Wang, the principal of the Respondents, pursuant to a guarantee dated March 8, 2022.

(6) The Jefferson Properties and the Jefferson Debtors also have obligations under loans and security in favour of other creditors.

(7) As of September 2023, the Respondents had committed certain events of default in that they had, among other things, allowed several construction liens to be registered against the Jefferson Properties. As a result of the Jefferson Debtors' default, on September 5, 2023, the Applicant issued demands for payment upon the Jefferson Debtors and the guarantor as well as Notices of Intention to Enforce Security. The 10 day notice period under these notices expired.

(8) The Jefferson Debtors and the guarantor requested that the Applicant continue to fund the balance of advances available under the Loan and the Letter of Commitment and that they provide additional fresh financing in the amount of approximately \$21 million to fund the completion of construction and the anticipated cost overruns.

(9) The Applicant and each of the Respondents entered into a Forbearance Agreement dated September 28, 2023. In the recitals to the Forbearance Agreement, the Jefferson Debtors acknowledge that the indebtedness outstanding under the Loan was \$40,090,073.55 as of September 28, 2023 and that this amount does not include interest, legal costs, and other permitted expenses.

(10) Pursuant to the terms of the Forbearance Agreement, the Applicant advanced funds for the construction liens and made further advances to cover the accounts payable until the end of August 2023.

(11) The Forbearance Agreement also acknowledged that the Applicant required an independent review and report from a construction management consultant and from a financial consultant regarding the Project, the projected cost to complete the Project, and the financial viability of the Project. The Applicant engaged such consultants to, among other things, consider the request by the Jefferson Debtors for additional funding. The Forbearance Agreement also required that each of the Respondents consent to an Order for the appointment of a receiver over all property, assets and undertakings of the Respondents which the Applicant was entitled to use if, acting reasonably, it was unsatisfied with the results of the reports from its consultants and additional financing was not approved to deal with the increased costs to complete.

(12) The Applicant gave notice on December 1, 2023 that it will not approve any additional financing based on a number of factors: (a) ongoing financial information which indicates that the cost overruns are now projected to be \$5,750,000 in excess of what was previously suggested; (b) the construction manager (an incorrect term) appointed by the Jefferson Debtors had resigned and Mr. Wang had appointed his wife to manage the Project despite a lack of experience and qualifications; and (c) the Project is being mismanaged and the progress of the construction delayed, including failing to authorize encapsulation of the building envelope for Block H in order to winterize it. The encapsulation is now underway.

(13) The Applicant has provided additional evidence with respect to events after December 11, 2023. A Default Notice was delivered by the Construction Manager, Core Constructors Ltd. ("Core") dated December 12, 2023 which details a number of defaults by the Jefferson Debtors under the CCDC 5A construction contract including that timely payments to trades were not made on multiple occasions, trades had left the site and stopped performing, and the owner was responsible for delays to the Project. The notice given by Core indicated the need to increase staff as a result of the Project conditions and included a requirement to increase Core's compensation by over \$50,000 per month. The notice required a contract extension to at least June 2024 as a result of delays to complete the Project.

(14) The Applicant put into evidence an email from Frank Servello of Core dated December 14, 2023 stating that trades have not been paid and that the Project is operating with skeleton crews, and suppliers have cut off supply.

The security company that is required to be on-site indicated an intention to walk off the site. If there is no security, Core is required to shut off the gas heating to prevent fire risk. This could result in damage to the finishes.

(15) The Jefferson Debtors have not paid the October payables. The Applicant is unwilling to provide additional financing to the Jefferson Debtors to fund continuing construction for the Project. The Applicant is only able to obtain additional funding from investors if the advances are made to a receiver with an appropriate borrowing charge. The subsequent lender, Windsor Private Corporation, has advised that they support this application.

(16) The Respondents oppose the application for the appointment of a receiver. They rely on an offer of credit facilities from T&C Capital dated December 19, 2023 in the amount of \$16 million to be used to fund completion of construction of the Project. They have also obtained a letter of intent from another lender which, if completed, would allow the Respondents to satisfy the Applicant's loans.

(17) The offer of financing is conditional, and the required security would require the Applicant to give up or postpone security it obtained pursuant the Forbearance Agreement. I am not satisfied that the offer of financing can be completed or, if completed, that it would be sufficient to fund the cost to complete the Project (which the Applicant estimates to be approximately \$21 million). The delay during the period when efforts are made to complete this financing would leave the Project unfunded, with significant risk to the security of the Applicant.

(18) Under the Forbearance Agreement, the Respondents consented to the appointment of a receiver. The Applicant had no obligation under the Forbearance Agreement to commit to provide additional financing to complete construction of the Project. Although the Respondents submit that the Applicant failed to act in good faith in respect of the Forbearance Agreement, I am not satisfied that this is so. The Applicant was entitled to use the Respondents' consent if it, acting reasonably, is unsatisfied with the results of the reports from its consultants, and additional financing is not approved to deal with increased cost to complete. The Applicant was not satisfied with the results of the reports it obtained.

(19) In *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CarswellOnt 2328, Blair J. (as he then was) held, at para. 10, that in deciding whether or not to appoint a receiver, the Court must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto. The fact that the moving party has a right under its security to appoint a receiver is an important factor to be considered but so, in such circumstances, is the question of whether or not an appointment by the Court is necessary to enable the receiver to carry out its work and duties more efficiently. It is not essential that the moving party establish that it will suffer irreparable harm if a receiver is not appointed.

(20) In the circumstances, I am satisfied that it is just and convenient to appoint a receiver. The risk of trades leaving the Project, liens from unpaid contractors, damage to the Project from the winter elements, the loss of Core as Construction Manager if satisfactory arrangements are not made, and the delay in Project completion that will follow from construction delays (a multiple) show that a receiver is urgently needed to bring stability to the Project and ensure that financing is made available to complete it.

(21) Order to issue in form of Order signed by me today.

 Digitally signed
by Mr. Justice
Cavanagh

Appendix B1

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. 001AMOUNT \$ 1,000,000.00 (Net received of \$ 999,982.50)

THIS IS TO CERTIFY that Albert Gelman Inc., the receiver (the "Receiver") of all present and future assets, properties and undertakings of 2011836 Ontario Corp. and Jefferson Properties Limited Partnership (collectively the "Debtors") including the real property listed in Schedule "A" hereto (collectively the "**Property**") as such terms are defined in the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 21st day of December 2023 appointing the Receiver (the "**Order**") made in an Application having Court file number CV-23-00710795-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ 1,000,000, being part of the total principal sum of \$ 7,000,000 which the Receiver is authorized to borrow under and pursuant to the Order.

33. 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 3 per cent above the prime commercial lending rate of Bank of RBC from time to time. *Plus a 2% Commitment fee on each funding request to accrue with no interest.*

34. 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.

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

36. 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.

37. 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.

38. 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 22 day of December, 2023.

Albert Gelman Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: 

Name: DAN WOO

Title: Managing Director (Practicing)

Appendix B2

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. 2

AMOUNT \$ 4,703,947.77

THIS IS TO CERTIFY that Albert Gelman Inc., the receiver (the "Receiver") of all present and future assets, properties and undertakings of 2011836 Ontario Corp. and Jefferson Properties Limited Partnership (collectively the "Debtors") including the real property listed in Schedule "A" hereto (collectively the "**Property**") as such terms are defined in the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 21st day of December 2023 appointing the Receiver (the "**Order**") made in an Application having Court file number CV-23-00710795-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$4,703,947.77, being part of the total principal sum of \$ 7,000,000 which the Receiver is authorized to borrow under and pursuant to the Order.

33. 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 3 per cent above the prime commercial lending rate of Bank of RBC from time to time. Plus a 2% commitment fee on each funding request to accrue without interest.

34. 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.

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

36. 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.

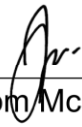
37. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

38. 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 10th day of January, ²⁰²⁴~~2023~~.

Albert Gelman Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per:


Name: Tom McElroy

Title: Managing Director (Ontario)