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For Other, Self-Represented:

| Name of Person Appearing | Name of Party | Contact Info |
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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 (Fanseay) 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.