

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.)
)
JUSTICE McEWEN) MONDAY THE 3RD
) DAY OF FEBRUARY, 2014

BETWEEN:

CAREVEST CAPITAL INC.

Applicant

- and -

SILJON INVESTMENTS INC. and
SILJON FAR HILLS LTD.

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed receiver (the "Receiver") of all of the assets, undertakings and properties of Siljon Investments Inc. and Siljon Far Hills Ltd. (together the "Debtors") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and 6826548 Canada Limited (the "Purchaser") and appended to the Third Report of the Receiver dated January 23, 2014 (the "Third Report"), and vesting in the Purchaser the Debtors' right, title and interest, if any, in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.

*and the affidavit of James MacLellan
SW in February 3, 2014.*

ON READING the Third Report and the affidavits of the Receiver and its counsel as to fees (the "Third Fee Affidavits") and on hearing the submissions of counsel for the Receiver, CareVest Capital Inc. ("CareVest Capital") and the Guarantee Company of North America, no

one appearing for any other person on the service list, although properly served as appears from the affidavit of Ingrid Rowe sworn January 23, 2014, filed:

1. **THE COURT ORDERS AND DECLARES** that the Third Report and the activities of the Receiver described therein be and is hereby approved.
2. **THE COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
3. **THIS COURT ORDERS AND DECLARES** that the Receiver's Statement of Receipts and Disbursements as at January 15, 2014 be and is hereby approved.
4. **THIS COURT ORDERS AND DECLARES** that the agreement effective December 1, 2013 extending the listing arrangements between the Receiver and Chestnut Park Real Estate Limited to November 30, 2014 be and is hereby approved.
5. **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.
6. **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**"), all of the Debtors' right, title and interest in and to the Purchased Assets described in the Sale Agreement and listed on Schedule B 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 Morawetz dated November 30, 2010 (the "**Appointment Order**"); (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 C 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 D) 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.

7. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of the County of Grey 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 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 C hereto.

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

9. **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 Debtors and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtors;



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 Debtors and shall not be void or voidable by creditors of the Debtors, 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.

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

11. **THIS COURT ORDERS AND DIRECTS** the Receiver to assign to CareVest Capital, immediately upon the issuance of the Receiver's Certificate, the promissory note issued by the Purchaser to the Receiver in full and final satisfaction of the purchase price under the Sale Agreement, to CareVest Capital as an immediate distribution in kind, to be applied by CareVest Capital against the debt owed to it by the Debtors (the "**Secured Indebtedness**") as a dollar for dollar partial reduction (not a full repayment or extinguishment) of the Secured Indebtedness.

12. **THIS COURT ORDERS** that the fees and disbursements of the Receiver and its legal counsel, as set out in the Third Report and in the Third Fee Affidavits, be and are hereby approved.

13. **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.


FEB 3 - 2014


Schedule A – Form of Receiver’s Certificate

Court File No. CV-10-9004-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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B E T W E E N:

CAREVEST CAPITAL INC.

Applicant

- and -

**SILJON INVESTMENTS INC. and
SILJON FAR HILLS LTD.**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Morawetz of the Ontario Superior Court of Justice (the “**Court**”) dated November 20, 2010, BDO Canada Limited was appointed as the receiver (the “**Receiver**”) of the assets, undertakings and properties of Siljon Investments Inc. and Siljon Far Hills Ltd. (together the “**Debtors**”).

B. Pursuant to an Order of the Court dated February 3, 2014, the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the “**Sale Agreement**”) between the Receiver, and 6826458 Canada Limited (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtors’ 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 ● 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 ● 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.

This Certificate was delivered by the Receiver at [TIME] on _____ [DATE].

BDO Canada Limited, in its capacity as the Receiver of the assets, undertakings and properties of Siljon Investments Inc. and Siljon Far Hills Ltd., and not in its personal or corporate capacity

Per: _____

Name:

Title:

Schedule B – Purchased Assets

Suite 105

UNIT 5, LEVEL 1, GREY STANDARD CONDOMINIUM PLAN NO. 83 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT PARK LT 11 N/E ALFRED ST PL THORNBURY, PTS 15,16,17 16R9321; S/T LT200; S/T LT221; S/T LT222; S/T LT256; S/T EASEMENT IN GROSS AS IN GY12719; S/T AS SET OUT IN SCHEDULE 'A' OF DECLARATION GY13774; THE BLUE MOUNTAINS

Being PIN 37883-0005 (LT)

Suite 201

UNIT 1, LEVEL 2, GREY STANDARD CONDOMINIUM PLAN NO. 83 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT PARK LT 11 N/E ALFRED ST PL THORNBURY, PTS 15,16,17 16R9321; S/T LT200; S/T LT221; S/T LT222; S/T LT256; S/T EASEMENT IN GROSS AS IN GY12719; S/T AS SET OUT IN SCHEDULE 'A' OF DECLARATION GY13774; THE BLUE MOUNTAINS

Being PIN 37883-0009 (LT)

Suite 202

UNIT 2, LEVEL 2, GREY STANDARD CONDOMINIUM PLAN NO. 83 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT PARK LT 11 N/E ALFRED ST PL THORNBURY, PTS 15,16,17 16R9321; S/T LT200; S/T LT221; S/T LT222; S/T LT256; S/T EASEMENT IN GROSS AS IN GY12719; S/T AS SET OUT IN SCHEDULE 'A' OF DECLARATION GY13774; THE BLUE MOUNTAINS

Being PIN 37883-0010 (LT)

Suite 203

UNIT 3, LEVEL 2, GREY STANDARD CONDOMINIUM PLAN NO. 83 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT PARK LT 11 N/E ALFRED ST PL THORNBURY, PTS 15,16,17 16R9321; S/T LT200; S/T LT221; S/T LT222; S/T LT256; S/T EASEMENT IN GROSS AS IN GY12719; S/T AS SET OUT IN SCHEDULE 'A' OF DECLARATION GY13774; THE BLUE MOUNTAINS

Being PIN 37883-0011 (LT)

Suite 204

UNIT 4, LEVEL 2, GREY STANDARD CONDOMINIUM PLAN NO. 83 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY

IS : PT PARK LT 11 N/E ALFRED ST PL THORNBURY, PTS 15,16,17 16R9321; S/T LT200; S/T LT221; S/T LT222; S/T LT256; S/T EASEMENT IN GROSS AS IN GY12719; S/T AS SET OUT IN SCHEDULE 'A' OF DECLARATION GY13774; THE BLUE MOUNTAINS

Being PIN 37883-0012 (LT)

Suite 206

UNIT 6, LEVEL 2, GREY STANDARD CONDOMINIUM PLAN NO. 83 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT PARK LT 11 N/E ALFRED ST PL THORNBURY, PTS 15,16,17 16R9321; S/T LT200; S/T LT221; S/T LT222; S/T LT256; S/T EASEMENT IN GROSS AS IN GY12719; S/T AS SET OUT IN SCHEDULE 'A' OF DECLARATION GY13774; THE BLUE MOUNTAINS

Being PIN 37883-0014 (LT)

Suite 208

UNIT 8, LEVEL 2, GREY STANDARD CONDOMINIUM PLAN NO. 83 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT PARK LT 11 N/E ALFRED ST PL THORNBURY, PTS 15,16,17 16R9321; S/T LT200; S/T LT221; S/T LT222; S/T LT256; S/T EASEMENT IN GROSS AS IN GY12719; S/T AS SET OUT IN SCHEDULE 'A' OF DECLARATION GY13774; THE BLUE MOUNTAINS

Being PIN 37883-0016 (LT)

Suite 302

UNIT 2, LEVEL 3, GREY STANDARD CONDOMINIUM PLAN NO. 83 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT PARK LT 11 N/E ALFRED ST PL THORNBURY, PTS 15,16,17 16R9321; S/T LT200; S/T LT221; S/T LT222; S/T LT256; S/T EASEMENT IN GROSS AS IN GY12719; S/T AS SET OUT IN SCHEDULE 'A' OF DECLARATION GY13774; THE BLUE MOUNTAINS

Being PIN 37883-0018 (LT)

Suite 303

UNIT 3, LEVEL 3, GREY STANDARD CONDOMINIUM PLAN NO. 83 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT PARK LT 11 N/E ALFRED ST PL THORNBURY, PTS 15,16,17 16R9321; S/T LT200; S/T LT221; S/T LT222; S/T LT256; S/T EASEMENT IN GROSS AS IN GY12719; S/T AS SET OUT IN SCHEDULE 'A' OF DECLARATION GY13774; THE BLUE MOUNTAINS

Being PIN 37883-0019 (LT)

Suite 304

UNIT 4, LEVEL 3, GREY STANDARD CONDOMINIUM PLAN NO. 83 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT PARK LT 11 N/E ALFRED ST PL THORNBURY, PTS 15,16,17 16R9321; S/T LT200; S/T LT221; S/T LT222; S/T LT256; S/T EASEMENT IN GROSS AS IN GY12719; S/T AS SET OUT IN SCHEDULE 'A' OF DECLARATION GY13774; THE BLUE MOUNTAINS

Being PIN 37883-0020 (LT)

Suite 306

UNIT 6, LEVEL 3, GREY STANDARD CONDOMINIUM PLAN NO. 83 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT PARK LT 11 N/E ALFRED ST PL THORNBURY, PTS 15,16,17 16R9321; S/T LT200; S/T LT221; S/T LT222; S/T LT256; S/T EASEMENT IN GROSS AS IN GY12719; S/T AS SET OUT IN SCHEDULE 'A' OF DECLARATION GY13774; THE BLUE MOUNTAINS

Being PIN 37883-0022 (LT)

Suite 308

UNIT 8, LEVEL 3, GREY STANDARD CONDOMINIUM PLAN NO. 83 AND ITS APPURTENANT INTEREST. THE DESCRIPTION OF THE CONDOMINIUM PROPERTY IS : PT PARK LT 11 N/E ALFRED ST PL THORNBURY, PTS 15,16,17 16R9321; S/T LT200; S/T LT221; S/T LT222; S/T LT256; S/T EASEMENT IN GROSS AS IN GY12719; S/T AS SET OUT IN SCHEDULE 'A' OF DECLARATION GY13774; THE BLUE MOUNTAINS

Being PIN 37883-0024 (LT)

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

1. Instrument No. LT1084 and registered on June 12, 2006 is a Charge/Mortgage of Land in the principal amount of \$24,000,000 (“Original Principal Amount”) provided by Siljon Investment Inc., as Charger, Rockpoint Developments (1999) Inc. (“Rockpoint”) and John D’Angelo (D’Angelo”), as Guarantors, in favour of CareVest Capital Inc. (“CareVest”) as Chargee.
2. Instrument No. LT1085 registered on June 12, 2006 is a General Assignment of Rents dated June 5, 2006 between Siljon and CareVest.
3. Instrument No. LT1091 dated June 2, 2006 and registered June 14, 2006 is a Charge/Mortgage of Land in the principal amount of \$2,361,000 provided by Siljon, as Chargor, in favour of The Guarantee Company of North America, as Chargee.
4. Instrument No. GY6015 registered on December 11, 2007 is a Charge Amending Agreement dated December 5, 2007 between Siljon, as Chargor, Rockpoint and D’Angelo, as Guarantors, and CareVest, as Chargee, increasing the Original Principal Amount from \$24,000,000 to \$27,500,000 (the “Amended Principal Amount”).
5. Instrument No. GY6016 registered on December 11, 2007 is a Postponement of Interest postponing Instrument No. LT1091 to Instrument No. GY6015.
6. Instrument No. GY12513 registered on December 23, 2008 is a Second Charge Amending Agreement dated December 11, 2008 between Siljon, as Chargor, CareVest, as Chargee, Rockpoint, D’Angelo, Colesena Construction Ltd., Cranberry Mews Inc., Loramountain Holdings Inc. and Lorablue Holdings Inc., as Guarantors, increasing the Amended Principal Amount from \$27,500,000 to \$34,178,349.
7. Instrument No. GY12515 registered on December 23, 2008 is a Postponement of Interest postponing Instrument No. LT1091 to Instrument No. GY12513.
8. Instrument No. GY12755 registered on January 14, 2009 is a Postponement of Interest postponing Instrument No. LT1091 to Instrument No. GY12723.
9. Instrument No. GY12756 registered on January 14, 2009 is a Postponement of Interest postponing Instrument No. LT1084 to Instrument No. GY12723.
10. Instrument No. GY12757 registered on January 14, 2009 is a Postponement of Interest postponing Instrument No. LT1091 to Instrument No. GY12719.
11. Instrument No. GY12758 registered on January 14, 2009 is a Postponement of Interest postponing Instrument No. LT1084 to Instrument No. GY12719.

12. Instrument No. GY50260 registered on July 21, 2011 as an order of the Ontario Superior Court of Justice to appoint BDO CANADA LIMITED as the court-appointed receiver of all of the assets, undertakings and properties of Siljon Investments Inc. and Siljon Far Hills Ltd. registered against PINs 37132-0007 (LT) and 37136-0009 (LT) only and registered against the remaining units in GSCP No. 82 and GSCP No. 83.

13. Instrument No. GY55243 registered on November 2, 2011 is a Postponement of Interest postponing Instrument No. LT1084 to GY55242.

14. Instrument No. GY55244 registered on November 2, 2011 is a Postponement of Interest postponing Instrument No. LT1091 to GY55242.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

1. Instrument No. R83428 registered on June 18, 1964 is Bylaw No. 20-1964 of The Corporation of The Town of Thornbury regarding Subdivision Control.
2. Instrument No. R509478 is a Certificate of First Registration in Land Titles in favour of Siljon Investments Inc.
3. Instrument No. R509479 is a Certificate of First Registration in Land Titles in favour of Siljon Investments Inc.
4. Instrument No. LT199 registered on October 24, 2005 is a Notice of a Site Plan Agreement between Siljon Investments Inc. and The Corporation of the Town of the Blue Mountains.
5. Instrument No. LT200 registered on October 24, 2005 is a Transfer of Easement from Siljon Investments Inc. to Bell Canada.
6. Instrument No. LT201 registered on October 24, 2005 is a Transfer of Easement from Siljon Investments Inc. to Bell Canada.
7. Instrument No. LT219 registered on October 28, 2005 is a Transfer of Easement from Siljon Investments Inc. to Rogers Cable Communications Inc.
8. Instrument No. LT220 registered on October 28, 2005 is a Transfer of Easement from Siljon Investments Inc. to Union Gas Limited.
9. Instrument No. LT221, registered on October 28, 2005 is a Transfer of Easement from Siljon Investments Inc. to Rogers Cable Communications Inc.
10. Instrument No. LT222, registered on October 28, 2005, is a Transfer of Easement from Siljon Investments Inc. to Union Gas Limited.
11. Instrument No. LT256 registered on November 14, 2005 is a Transfer of Easement from Siljon Investments Inc. to Collus Power Corp.
12. Instrument No. LT257, registered on November 14, 2005, is a Transfer of Easement from Siljon Investments Inc. to Collus Power Corp.
13. Instrument No. GY12719 registered on January 13, 2009 is Transfer of Easement from Siljon Investments Inc. in favour of The Corporation of the Town of The Blue Mountains.

14. Instrument No. GY12723 registered on January 13, 2009 is a Notice with respect to an amendment to the Site Plan Agreement notice of which was registered as Instrument No. LT199, between Siljon Investments Inc. and The Corporation of the Town of The Blue Mountains.

15. Instrument No. GY13767 registered on March 12, 2009 is a Condominium Declaration.

16. Instrument No. GY14217 registered on April 1, 2009 is By-Law No. 1 of Grey Standard Condominium Corporation No. 82.

17. Instrument No. GY14218 registered on April 1, 2009 is By-Law No. 2 of Grey Standard Condominium Corporation No. 82.

18. Instrument No. GY14219 registered on April 1, 2009 is By-Law No. 3 of Grey Standard Condominium Corporation No. 82.

19. Instrument No. GY13774 registered on March 12, 2009 is a Condominium Declaration.

20. Instrument No. GCP83 registered on March 12, 2009 is the Plan of Condominium.

21. Instrument No. GY14220 registered on April 1, 2009 is By-Law No. 1 of Grey Standard Condominium Corporation No. 83.

22. Instrument No. GY14221 registered on April 1, 2009 is By-Law No. 2 of Grey Standard Condominium Corporation No. 83.

23. Instrument No. GY14222 registered on April 1, 2009 is By-Law No. 3 of Grey Standard Condominium Corporation No. 83.

24. Instrument No. GY45465 registered on April 8, 2011 by Grey Standard Condominium Corporation No. 82 is a Notice of Change of Address of the condominium corporation.

25. Instrument No. GY55242 registered on November 2, 2011 is a Notice of Amendment to the Site Plan Agreement registered on October 24, 2005 as Instrument No. LT199.

26. Instrument No. GY74175 registered on January 11, 2013 is an Amendment to Condominium Declaration Instrument No. GY13774 with respect to GSCP83, for the purposes of creating a phase.

CAREVEST CAPITAL INC.

and

SILJON INVESTMENTS INC. and SILJON FAR HILLS LTD.

Applicants

Respondents

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced in Toronto

APPROVAL AND VESTING ORDER

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