

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 8TH DAY
)
JUSTICE *CONWAY*) OF JANUARY, 2015

BETWEEN:

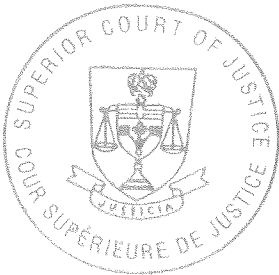
HANDS-ON CAPITAL INVESTMENTS INC.

Applicant

- and -

PEMBROKE RESIDENCE LTD..

Respondent



APPLICATION UNDER Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C 1985, c. B-3, and Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

ORDER

THIS MOTION, made by A. Farber & Partners Inc. ("**Farber**"), in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**"), without security, of all the assets, undertakings and properties (collectively, the "**Property**") of Pembroke Residence Ltd. (the "**Debtor**"), for an order, amongst other things, approving the report of the Receiver dated December 19, 2014 (the "**Second Report**") and the stalking horse bid process outlined therein, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Second Report and the appendices thereto, and on hearing the submissions of counsel for the Receiver and Kevin Sit Investments Inc. ("**KSI**"), no one appearing for any other person on the service list, although duly served as appears from the affidavit of service of Paula Hoosain sworn December 23, 2014, filed,

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the Second Report and the activities of the Receiver described therein be and are hereby approved.

3. **THIS COURT ORDERS** that **Appendix "H"** to the Second Report be and is hereby sealed until further Order of this Court.

4. **THIS COURT ORDERS** that the Receiver be and is hereby authorized and directed to enter into an agreement to sell the Debtor's Property to KSI, substantially in accordance with the Agreement of Purchase and Sale attached as **Appendix "F"** to the Second Report (the "**Stalking Horse Bid**"), subject to the terms of this Order.

5. **THIS COURT ORDERS** that the completion of the sale contemplated in paragraph 4 of this Order shall be conditional upon the Receiver not receiving a bid from a purchaser other than KSI on or before 5:00 p.m. (Toronto time) on February 10, 2015 (the "**Bid Deadline**") that the Receiver considers, in its sole discretion, to be superior to the Stalking Horse Bid, and which must:

- (a) be accompanied by a duly executed agreement of purchase and sale, blacklined against the Stalking Horse Bid, showing any and all variations from the Stalking Horse Bid, and a deposit in the amount equal to at least 10% of the aggregate purchase price under the subject competing bid by way of bank draft or certified cheque payable pursuant to the terms of the subject competing bid and which is not subject to any encumbrances;
- (b) remain open for acceptance and completion until 3:00 p.m. (Toronto time) on February 19, 2015;
- (c) be on terms no less favourable and no more burdensome or conditional than the terms of the Stalking Horse Bid;

- (d) not contain any contingency relating to due diligence or financing or any other material conditions precedent to the subject bidder's obligation to close that are not otherwise contained in the Stalking Horse Bid;
- (e) specify the assets that are subject to the subject competing bid, including, without limitation, any executory contracts and unexpired leases;
- (f) be made by one or more bidders who can demonstrate the financial ability to consummate the transaction contemplated by the competing bid on the terms specified therein; and
- (g) contain, among other things, an aggregate purchase price at least equal to the Stalking Horse Bid, plus the Break-Up Fee (as such term is defined in the Stalking Horse Bid) and an additional sum of \$50,000.00.

Every bid which meets the requirements above will be a "**Competing Bid**" and each person who submits a Competing Bid will be a "**Competing Bidder**".

6. **THIS COURT ORDERS** that the marketing and sale process (the "**Sale Process**") with respect to any or all of the Property be and is hereby approved as follows:

- (a) the Receiver shall solicit potential purchasers by:
 - (i) sending out a teaser letter to parties in the same industry as the Debtor, and to other potential purchasers as identified by the Receiver, or as soon as reasonably practicable after the issuance of this Order;
 - (ii) placing an advertisement in the Globe & Mail (National Edition) within five (5) business days of the issuance of this Order; and
 - (iii) providing to any potential purchasers who execute a confidentiality agreement on terms satisfactory to the Receiver: (1) access to an electronic data room containing information reasonably required by prospective purchasers of the Debtor's Property to consider submitting a Competing

Bid and facilitate the conduct of due diligence by prospective purchasers;
and (2) an electronic copy of the Stalking Horse Bid;

- (b) any interested purchaser shall submit a formal offer to purchase the Property in the form of an asset purchase agreement (with a copy blacklined against the Stalking Horse Bid), which includes the Terms and Conditions attached hereto as **Schedule "A"**, and an aggregate purchase price at least equal to the Stalking Horse Bid, plus the Break-Up Fee (as such term is defined in the Stalking Horse Bid) and an additional sum of \$50,000.00, and a deposit equal to at least 10% of the aggregate purchase price under the subject bid by way of bank draft or certified cheque payable to the Receiver on or before the Bid Deadline;
- (c) the Receiver shall review any formal bids received by the Bid Deadline and determine if there are one or more Competing Bids;
- (d) if there is no Competing Bid, the Receiver shall bring a motion as soon as reasonably possible thereafter for approval of the Stalking Horse Bid and an order to vest the Debtor's Property in KSI and proceed with closing the transaction forthwith;
- (e) if there is only one Competing Bid, the Receiver shall bring a motion as soon as reasonably possible thereafter for approval of the Competing Bid and an order to vest the Debtor's Property in the Competing Bidder, proceed with closing the transaction forthwith and distribute the Break-Up Fee (as such term is defined in the Stalking Horse Bid) from the proceeds of the transaction to KSI;
- (f) if there is more than one Competing Bid, the Receiver shall send out invitations on or before 10:00 a.m. (Toronto time) on February 13, 2015, or as reasonably practicable, to all Competing Bidders who have submitted a Competing Bid, but not to KSI, inviting the Competing Bidders to attend an auction (the "**Auction**") to be conducted by the Receiver at 10:00 a.m. (Toronto time) on February 18, 2015, at the offices of the Receiver, or otherwise as may be determined by the

Receiver, in its sole discretion, together with a set of rules for the conduct of the Auction, and a copy of the most favourable Competing Bid (the “**Lead Bid**”); and

- (i) the Receiver shall conduct the Auction by soliciting bids, starting at a minimum of \$50,000.00 increments above the amount of the Lead Bid, for which each bid must exceed the aggregate purchase price payable pursuant to the preceding bid by no less than \$50,000.00 and for which all consideration in excess of the amount set forth in the Lead Bid must be comprised only of cash consideration;
- (ii) the Receiver may establish such timelines and protocols for the Auction as it considers appropriate, in its discretion, which will not be inconsistent with the terms of this Order;
- (iii) the “**Winning Bidder**” shall be: (1) if there are no bids at the auction, the person with the Lead Bid; or (2) the bidder with the highest qualified bid at the Auction;
- (iv) upon acceptance of the bid of the Winning Bidder, there shall be a binding agreement of purchase and sale between the Winning Bidder and the Receiver; and
- (v) the Receiver shall make a motion to this Court, forthwith, to obtain an order to approve the agreement with the Winning Bidder and to vest the Debtor’s property in the Winning Bidder, proceed with closing the transaction forthwith and distribute the Break-Up Fee (as such term is defined in the Stalking Horse Bid) from the proceeds of the transaction to KSI.

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SCHEDULE "A"

TERMS AND CONDITIONS OF SALE

1. THE VENDOR

1.1 A. Farber & Partners Inc. solely in its capacity as the Court-appointed receiver (the "**Receiver**" and/or the "**Vendor**"), without security, of all the assets, undertakings and properties (collectively, the "**Assets**") of Pembroke Residence Ltd. (the "**Company**"), is offering for sale by bid and auction all of the Assets. A list of the Assets for sale is outlined on **Schedule "A"** attached hereto.

1.2 The Receiver has obtained an Order of the Ontario Superior Court of Justice (Commercial List) dated January 8, 2015 (collectively, the "**Stalking Horse Order**") which sets out, *inter alia*, the terms, conditions of sale and a timetable for bidding and an auction with respect to the purchase and sale of the Assets (the "**Sale Process**"), as further outlined below (a copy of the Stalking Horse Order is attached hereto as **Schedule "B"**).

2. THE SALE PROCESS

2.1 The Stalking Horse Order recognizes the initial bid from Kevin Sit Investments Inc. ("**KSI**"). The initial bid by KSI is contained in an Agreement of Purchase and Sale dated as of December 3, 2014, executed by the Receiver and KSI (the "**Agreement of Purchase and Sale**") (a copy of the Agreement of Purchase and Sale is attached hereto as **Schedule "C"**) as a baseline or "stalking horse bid" (the "**Stalking Horse Bid**"), in the amount of \$4,500,000.00, subject to adjustment, as further provided in the Agreement of Purchase and Sale, plus any and all retail sales taxes (including any goods and services taxes) and all other transfer taxes, duties or other like charges payable upon or in connection with the subject transaction (collectively, the "**Taxes**").

2.2 The Stalking Horse Order provides for, *inter alia*, the marketing and sale of the Assets by the Receiver and a competitive bidding and auction procedure, to be administered by the Receiver, in order to determine if a materially higher price (compared to the Stalking Horse Bid) can be obtained for the sale of the Assets.

2.3 In consideration for KSI's expenditure of time and money in acting as the initial bidder in the Stalking Horse Bid and the preparation of the Agreement of Purchase and Sale, and in performing due diligence pursuant to the Agreement of Purchase and Sale, the Stalking Horse Order provides for liquidated damages in the amount of \$250,000.00 (the "**Break-Up Fee**"), payable by the Vendor to KSI in the event that a materially higher offer than the offer advanced by KSI pursuant to the Stalking Horse Bid is obtained for the Assets through the Sale Process and, as a consequence, the Vendor sells all, or substantially all of the Assets to a person or entity other than KSI.

2.4 In addition, the Stalking Horse Order provides that in order to be accepted by the Receiver, any competing bid ("**Competing Bid(s)**") for the Assets must be on substantially the same terms and conditions as those terms and conditions contained in the Agreement of Purchase

and Sale, except with respect to price (any Competing Bid(s) that are accepted by the Vendor as superior bid(s) to the Stalking Horse Bid are referred to herein as the “**Superior Bid(s)**”).

2.5 In order for any Competing Bid to be accepted by the Receiver as a Superior Bid to the Stalking Horse Bid, the Competing Bid must meet all of the following minimum criteria:

- (a) the Competing Bid must be accompanied by a duly executed agreement of purchase and sale, blacklined against the Stalking Horse Bid, showing any and all variations from the Stalking Horse Bid, and a deposit in the amount equal to at least 10% of the aggregate purchase price under the subject competing bid by way of bank draft or certified cheque payable pursuant to the terms of the subject competing bid and which is not subject to any encumbrances;
- (b) the Competing Bid must remain open for acceptance and completion until 3:00 p.m. (Toronto time) on February 19, 2015;
- (c) the Competing Bid must be on terms no less favourable and no more burdensome or conditional than the terms of the Stalking Horse Bid;
- (d) the Competing Bid must not contain any contingency relating to due diligence or financing or any other material conditions precedent to the subject bidder’s obligation to close that are not otherwise contained in the Stalking Horse Bid;
- (e) the Competing Bid must specify the assets that are subject to the subject competing bid, including, without limitation, any executory contracts and unexpired leases;
- (f) the Competing Bid must be made by one or more bidders who can demonstrate the financial ability to consummate the transaction contemplated by the competing bid on the terms specified therein; and
- (g) the Competing Bid must contain, among other things, an aggregate purchase price at least equal to the Stalking Horse Bid, plus the Break-Up Fee and an additional sum of \$50,000.00.

3. COMPETING BID OFFERS

3.1 Sealed bids marked “DO NOT OPEN - BID – PEMBROKE RESIDENCE LTD” shall be delivered or mailed postage prepaid to A. Farber & Partners Inc., Receiver of Pembroke Residence Ltd., Attention: Hylton Levy, so as to be received by the Receiver on or before 5:00 p.m. (Toronto time) on February 10, 2015.

3.2 Every Competing Bid must be in writing and submitted in the form of an amended Agreement of Purchase and Sale, as provided herein. Any Competing Bids received by the Receiver that are not in the correct form may be rejected immediately by the Receiver, acting in its sole and unfettered discretion.

3.3 The opening of any Competing Bid(s) received by the Receiver will be conducted between February 10, 2015 and February 13, 2015, in private and in the presence of representatives of the Receiver and its solicitors.

3.4 In consideration of the Receiver receiving any Competing Bid and upon receipt by the Receiver of any such Competing Bid, the competing bidder shall not be entitled to retract, withdraw, revoke, vary or countermand its Competing Bid.

3.5 In the event that any Competing Bids received by the Receiver are on substantially the same terms, conditions and/or amounts of one another, the Receiver may, subject to the approval of the Court, call upon such competing bidders to submit further bids.

3.6 No Competing Bid may contain proposals to vary, amend or supplement these Terms and Conditions of Sale.

3.7 Any documentation or other materials provided to prospective bidders relating to the Assets have been prepared solely for the convenience of prospective bidders and is not warranted to be complete or accurate, and do not form part of these Terms and Conditions of Sale. Every bidder shall be deemed to have relied entirely on its own inspection and investigation of the Assets and the title thereto.

3.8 By submitting an offer to purchase the Assets, the bidder acknowledges that it has inspected the Assets and that the Assets are being sold on an "*as is, where is*" basis at the time of closing and that there is no representation, warranty or condition, expressed or implied, statutory or otherwise, as to title, encumbrances, description, fitness for any purpose, merchantability, quality, quantity, state, condition (environmental or otherwise), defect (patent or latent), existence, location, value, the validity or enforceability of any rights (including intellectual property rights, any requirement for licenses, permits, approvals, consents for ownership, occupation or use or compliance with any government laws, regulations, bylaws and orders or in respect of any other matter or thing whatsoever. The Assets are specifically offered, as they now exist with no adjustments to be allowed for changes in conditions, qualities or quantities of such parcels from the date hereof to the Closing Date (as the term is defined below) of the contemplated transaction. The bidder acknowledges that the Receiver is not required to inspect or count, or provide any inspection or counting, of the Assets or any part thereof and the bidder shall be deemed, at its own expense, to have relied entirely on its own inspection and investigation. It shall be the bidder's sole responsibility to obtain, at its own expense, any consents to such transfer of the Assets and any further documents or assurances which are necessary or desirable in the circumstances.

3.9 The Receiver, at its sole and unfettered discretion, may waive or vary any or all of the terms and conditions contained hereof.

4. DEPOSIT

4.1 Competing Bids shall be stated in Canadian currency and must be accompanied by a deposit in the form of a draft of or a cheque certified by a Canadian bank payable to "A. Farber & Partners Inc., Receiver of Pembroke Residence Ltd., in trust." The deposit for any Competing Bid shall be ten percent (10%) of the aggregate purchase price payable under the

subject Competing Bid. If a Competing Bid is accepted to be the Winning Bid (as the term is defined below), the subject deposit shall be deemed to be a cash deposit and will be applied by the Vendor towards the purchase price of the Assets on closing of the contemplated transaction.

4.2 Cheques accompanying Competing Bids that are not accepted by the Receiver to be Superior Bids will be returned to the respective bidder(s) by prepaid ordinary mail addressed to the respective competing bidders at the address set out in their offers.

5. THE AUCTION PROCESS AND THE WINNING BID

5.1 If there are two or more Superior Bids that meet the above conditions, the Receiver will distribute to the makers of these Superior Bids, on or before 10:00 a.m. (Toronto time) on February 13, 2015, the following:

- (a) an invitation to an auction of the Assets to be held at 10:00 a.m. (Toronto time) on February 18, 2015 at the offices of the Receiver, or otherwise as may be determined by the Receiver, in its sole discretion (the “**Auction**”);
- (b) a copy of the bid that the Receiver, acting in its sole and unfettered discretion, having regard to all of the features of the bids, believes to be the most favourable bid as between the Stalking Horse Bid and all of the Superior Bids (the “**Lead Bid**”); and
- (c) a copy of a set of rules for the conduct of the Auction, established by the Receiver, acting in its sole and unfettered discretion, with a view of maximizing the price for the Assets (the “**Auction Rules**”), provided that the Auction Rules shall in all events provide that: (i) all bids made at the Auction shall be in accordance with the terms and conditions of the Lead Bid, except for the aggregate purchase price which will be subject to improvement through bidding in the Auction; (ii) each bid made in the course of the Auction shall exceed the aggregate purchase price payable pursuant to the preceding bid (or, in the case of the first bid made at the Auction, the Lead Bid) by no less than \$50,000.00 increments, solely for the purpose of determining the successful bid at the Auction, and all amounts in excess of the amount of the Lead Bid shall be entirely comprised of cash consideration; and (iii) the highest bid received at the Auction shall be the “winning bid” (the “**Winning Bid**”).

5.2 Upon acceptance of the Winning Bid at the Auction, there shall be a binding agreement of purchase and sale between the successful winning bidder (the “**Purchaser**”) and the Vendor of the Assets (the “**Winning Bid Agreement**”), with respect to which the Winning Bid was accepted by the Vendor. The Winning Bid Agreement shall be constituted by:

- (a) the Stalking Horse Bid or one of the Superior Bids, as the case may be, as amended pursuant to the Auction;
- (b) these Terms and Conditions of Sale;

- (c) the amended Agreement of Purchase and Sale submitted by the Purchaser, as amended pursuant to the Auction; and
- (d) the acceptance of the Winning Bid.

5.3 The Receiver will make a motion to the Court, forthwith, to obtain an order to approve the agreement with the Purchaser and to vest the Company's property in the Purchaser. Thereafter, the Receiver will advise the Purchaser of the outcome of the said motion and proceed with closing the transaction forthwith.

5.4 Title to the Assets shall not pass to the Purchaser nor shall the Purchaser be entitled to possession of same until the purchase price and all other payments to be made by the Purchaser pursuant to the Winning Bid Agreement have been paid in full, and the Purchaser has complied with all of its covenants contained herein and in the Winning Bid Agreement, which shall have been duly executed and delivered to the Vendor.

5.5 The Vendor shall not be required to pay any commission with respect to a sale made pursuant to these Terms and Conditions of Sale.

6. CLOSING DATE

6.1 The closing of the contemplated transaction shall take place at the office of the Vendor's solicitors, Aird & Berlis LLP, at the later of February 25, 2015 or the third business day following the effective date of an Order of the Court approving the acceptance and completion of the Winning Bid (the "**Closing Date**").

6.2 The Vendor shall not be required to produce any abstract of title, title deed or documents or copies thereof or any evidence as to title pertaining to the Assets, other than those in its possession.

7. EVENT OF FORFEITURE

7.1 If the Purchaser fails to comply with the terms and conditions of the Winning Bid Agreement, or any of them, all deposits shall be forfeited to the Vendor on account of agreed liquidated damages, the Assets being conveyed to the Purchaser may be resold by the Vendor, and the Purchaser shall pay to the Vendor on demand: (i) an amount equal to the amount, if any, by which the purchase price under the Winning Bid Agreement exceeds the net purchase price received by the Vendor pursuant to such resale, and (ii) an amount equal to all costs and expenses incurred by the Vendor in respect of or occasioned by the Purchaser's failure to comply with the Winning Bid Agreement.

8. GENERAL

8.1 A. Farber & Partners Inc. is acting solely in its capacity as the Receiver, without security, of the assets, undertakings and properties of the Company and shall have no personal or corporate liability hereunder or from any agreement contemplated hereby or as a result of any contemplated sale.

8.2 The terms and conditions contained herein shall not merge on the closing of the transaction contemplated herein but shall survive such closing and remain in full force and effect and be binding on the Purchaser thereafter.

8.3 The terms and conditions hereunder shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

8.4 The terms and conditions contained herein shall enure to the benefit of and be binding upon the parties thereto and their permitted heirs, executors, administrators, successors or assigns, as the case may be.

8.5 Unless otherwise provided herein, any tender of documents or money hereunder may be made upon the Vendor or the Purchaser, or their respective solicitors. Money may be tendered by cheque certified by a Canadian chartered bank, Canadian trust company or by bank draft.

8.6 The obligations of the Vendor to complete any agreement contemplated herein or hereby shall be relieved if, on or before the closing of such sale, the Assets or any part thereof which are the subject of the sale have been removed from the control of the Vendor by any means or process, enjoined, or the Assets, or any part thereof, are redeemed, whereupon the only obligation of the Vendor shall be to return the applicable deposit, without interest, deduction costs or compensation.

8.7 The Purchaser shall not assign the Winning Bid Agreement without the Receiver's prior written approval, which approval may be granted or withheld in the Receiver's sole and unfettered discretion.

8.8 Time is of the essence of any agreement entered into pursuant to these Terms and Conditions of Sale, any rule of law or equity to the contrary notwithstanding.

8.9 The Vendor reserves its rights, subject to Court approval, to withdraw the Assets or any part thereof on or before the Closing Date if there is any actual or threatened litigation with respect to any of the Assets or if any Asset has been redeemed or is subject to any lien or encumbrance which the Vendor cannot remove and the Purchaser will not assume. The Vendor shall be under no obligation to compensate any third party in order to complete any applicable agreement and shall return the deposit to the Purchaser without interest, costs or compensation.

8.10 Unless the context otherwise requires, words importing the singular include the plural and vice versa.

8.11 The submission of a bid by a resident of the Province of Quebec will be deemed to constitute the declaration and acknowledgement by such resident that it has requested these Terms and Conditions of Sale, the form of bid referred to herein and all other documentation relating to its bid and the acceptance thereof to be drawn up in the English language.

8.12 La présentation d'une soumission par une personne résident au Québec constituera la déclaration et la reconnaissance expresse par la soumissionnaire qu'il a consenti

que ces Termes et Conditions de Vente, la formule de soumission mentionnes en ceci et tous autres documents relatifs à la soumission et a son acceptation soient rédiges en langue anglaise.

DATED at Toronto, this _____ day of _____, 2015.

A. FARBER & PARTNERS INC., in its capacity as the Court-appointed receiver , without security, of the assets, undertakings and properties of Pembroke Residence Ltd., and not in its personal capacity

Per:

Name:

Title:

Schedule "A" to the Terms and Conditions of Sale
The Assets

The Assets include all of the Company's assets, undertakings and properties of every nature and kind whatsoever used in connection with the Company's business, and wherever situate, including without limitation, the following:

- (a) the real property legally owned by the Company and municipally known as 117 Pembroke Street, Toronto, Ontario, as well as all buildings and fixtures located thereon;
- (b) all furniture, fixtures and computer equipment not subject to specific financing agreements or leases;
- (c) all goods that are held by the Company for sale (whether such goods are saleable, obsolete or damaged) in relation to Company's business, including raw materials, work in progress or materials used or consumed in such business;
- (d) all of the Company's right, title and interest in and to equipment leases with the Company which may be assumed by the Purchaser;
- (e) all trade accounts receivable and other accounts receivable;
- (f) all customer lists and lists of prospective customers and marketing and sales databases;
- (g) the benefit of all unfulfilled orders received by and in favour of the Company;
- (h) any and all goodwill and trademarks of the Company, in whatever format, and including without limitation, all registered and unregistered trademarks, trade names, brand names, service marks, logos, copyrights, certification marks, drawings, permits, internet and electronic email addresses, URLs, telephone, telex and facsimile numbers, content of websites and domain names related to or connected with the Company's business, all related software and electronic code to the extent assignable and other similar intellectual property or intangibles of the Company;
- (i) all books and records relating to the Company's business, subject to any personal or confidential information protected by the *Canada Personal Information Protection and Electronic Documents Act*;
- (j) at the sole option of the purchaser, the full benefit of all contracts and leases, etc., to which the Company is entitled in connection with its business; and
- (k) all other tangible and intangible assets and property used in connection with the Company's business.

HANDS-ON CAPITAL INVESTMENTS INC.

- and -

PEMBROKE RESIDENCE LTD.

Applicant

Respondent

Court File No. CV-14-10614-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

ORDER

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*Solicitors for the A. Farber & Partners Inc., in its capacity as the
Court-appointed receiver of Pembroke Residence Ltd., and not in its
personal capacity*