

Appendix “J”

Ontario
**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

STANBARR SERVICES LIMITED, JANODEE INVESTMENTS LTD., MEADOWSHIRE INVESTMENTS LTD., REGARD INVESTMENTS LTD., 1563503 ONTARIO LIMITED, BEAVER POND INVESTMENTS LTD., THE CANADA TRUST COMPANY, RITA ROSENBERG AND 527540 ONTARIO LIMITED

Applicants

- and -

METROPOLIS PROPERTIES INC.

Respondent

THIRD REPORT OF THE RECEIVER

INTRODUCTION AND BACKGROUND

1) On June 16, 2014 MNP Ltd. (“**MNP**”) was appointed Receiver, without security, of the properties municipally known as 91-93 Scollard Street, Toronto (the “**Property**”) then owned by Metropolis Properties Inc. (the “**Debtor**”), pursuant to the Order (the “**Appointment Order**”) issued by the Honourable Justice Brown of the Ontario Superior Court of Justice (the “**Court**”). Attached hereto and marked as **Appendix “A”** is a copy of the Appointment Order.

2) Unbeknownst to the Applicants, shortly before the receivership application was heard, the 1st mortgagee, Canada Investment Corporation (“**CIC**”), sold the Property under power of sale to 2413913 Ontario Limited (“**241**”).

3) The Receiver filed its first report (the “**First Report**”) with this Court in support of a motion heard on July 10, 2014. A copy of the First Report (without appendices) is attached hereto as **Appendix “B”**.

4) In response to the July 10, 2014 motion, the Honourable Justice Brown issued an Endorsement (the “**July 10th Endorsement**”) providing for, among other things, the following orders:

- a) Restraining the parties named (the “**Named Parties**”) in the July 10th, Endorsement from interfering with the Receiver;
- b) Directing CIC to deliver to the Receiver the following:
 - i. its complete file in respect of the sale of the Property;
 - ii. a full accounting of the sale; and
 - iii. all proceeds realized from the sale of the Property.
- c) That on July 18, 2014 the Named Parties shall appear for a continuation hearing of the hearing held on July 10, 2014.

A copy of the July 10th, 2014 Endorsement and an unofficial transcript of same is attached hereto as **Appendix “C”**.

5) The Receiver filed its second report (the “**Second Report**”) dated July 14, 2014 to provide this Court with an update on its activities since the First Report. A copy of the Second Report (without appendices) is attached hereto as **Appendix “D”**.

6) On July 18, 2014, the Honourable Justice Brown issued an Order (the “**Suspension Order**”) which, among other things, suspended the receivership and returned day to day management and control over the Property to 241 pending the determination of ownership interests in the Property. A copy of the Suspension Order is attached hereto as **Appendix “E”**

7) On August 21, 2015 the Honourable Justice Matheson determined that the impugned sale under power of sale by CIC was invalid and was to be set aside. Her Honour’s Reasons for Decision are attached as **Appendix “F”**.

8) On February 1, 2016, the Honourable Justice Newbould issued an Order (the “**Reinstatement Order**”) providing for, among other things, the following;

- a) That MNP be reinstated as Receiver for the Property;
- b) That the suspension of MNP as Receiver is lifted and the Appointment Order is in full force and effect; and,
- c) That all rental amounts collected from the tenants at the Property and currently held in trust by 241 and/or its agents, lawyers, and representatives, including all funds held by David Marcovitch pursuant to the Order of Justice Hainey dated January 6, 2016, are to be transferred to the Receiver immediately.

Copies of the January 6, 2016 Order of Justice Hainey and the Reinstatement Order are attached hereto as **Appendix “G”** and **Appendix “H”**, respectively.

PURPOSE OF THE THIRD REPORT

9) The purpose of this report (the “**Third Report**”) is as follows:

- a) Provide an update to the Court on the activities of the Receiver and the events that have transpired since the Second Report and, more particularly, since the Reinstatement Order.
- b) Request that this Court issue an Order as follows:
 - i. Approving the Third Report;
 - ii. Approving the conduct and activities of the Receiver as described in the Third Report;
 - iii. Approving the Sales Process as set out in paragraph 49 herein; and,
 - iv. Such other relief as the Court deems just.

DISCLAIMER

10) In preparing the Third Report and in making the comments herein, the Receiver has received and relied upon books and records, financial information and email and verbal correspondence (the “**Information**”) from, *inter alia*:

- a) Representatives of 241;
- b) Discussions with the current and former tenants or occupants of the Property; and,
- c) The affidavit sworn by Sai Mohammed, dated January 3, 2016.

11) Except as described in this Report, the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy and completeness of the Information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountant’s Handbook.

RECEIVER’S ACTIVITIES SINCE THE SECOND REPORT

12) As noted above the receivership resumed on February 1, 2016 pursuant to the Reinstatement Order.

13) In the late afternoon of February 1, 2016, the Receiver’s staff attended at the Property to advise the remaining four (4) tenants of the Reinstatement Order, to complete a preliminary assessment of the condition of the Property, to change the locks to the unoccupied areas and post door notices on these areas. A copy of the door notice is attached hereto as **Appendix “I”**.

David Marcovitch and 241

14) As noted above, the Reinstatement Order required 241’s counsel, David Marcovitch (“**Mr. Marcovitch**”), to immediately transfer all rental amounts collected from tenants at the Property and currently held in trust to the Receiver (the “**Pre-Receivership Rents**”).

15) Accordingly, the Receiver contacted Mr. Marcovitch on February 1, 2016 to obtain the Pre-Receivership Rents.

16) Mr. Marcovitch turned over the Pre-Receivership Rents to the Receiver by way of two (2) bank drafts in the amounts of \$35,802.60 on February 2, 2016 and \$5,216.00 on February 12, 2016.

17) Starting on February 12, 2016, Mr. Marcovitch sent the Receiver several emails that requested that the Receiver reimburse 241 the amount of \$63,180.77 pursuant to paragraph 2 b) of the Suspension Order.

18) As the Suspension Order does not require the Receiver to reimburse 241, the Receiver requested clarification from Mr. Marcovitch including the legal basis for this request. To the date of writing this report, Mr. Marcovitch has not provided a legal basis requiring the Receiver to reimburse amounts to 241 and accordingly, no funds have been reimbursed by the Receiver to 241.

Rent Collections and Status of Tenants

19) As noted above, as of the date of the Reinstatement Order there were four (4) tenants in the Property paying rent. Details on the status of leases and rents are as follows:

Level	Occupant	Type	Monthly Rent	Lease Exp. Date/Status
Sub-basement	vacant	commercial storage	-	n/a
Basement	Studio 91	commercial - retail	4,500	Feb.28.2018
Basement	Mad-daSH Atelier	commercial - retail	2,300	May.30.2015
Basement	Royal Custom Tailor	commercial - retail	2,300	Jan.31.2016
Main	Hair 91	commercial - retail	2,700	no lease
Main	vacant	commercial - retail	-	n/a
Second Floor	vacant	under construction	-	n/a
Third Floor	vacant	under construction	-	n/a
Fourth Floor	vacant	under construction	-	n/a
Total Monthly Rents			11,800	

20) Rents from the above noted four (4) remaining tenants are current except for Royal Custom Tailor who is seeking a credit for one (1) month of rent or \$2,300 in respect of the temporary closure of this shop due to flood damage as described in greater detail below.

Former Tenants

21) During the period between the date of the Suspension Order and the Reinstatement Order two (2) tenants moved out of the Property (the “**Former Tenants**”) resulting in a loss of monthly rents in the amount of \$16,500. Details on these former tenants are as follows:

Unit	Level	Occupant	Type	Monthly Rent	Lease Exp. Date/Status
6	Main	BFF Wellness	commercial - retail	\$ 12,000	moved out
7	Second Floor	ELT English School	commercial - retail	\$ 4,500	moved out
		Total Monthly Rents		\$ 16,500	

March 14, 2016 Meeting with 241

22) On March 1, 2016 the Receiver’s staff received an email from Mr. Shervin Kermani, a director of 241, in which he advised as follows: *“I’m writing because there are a lot of items in the sub-basement as well as the upper floors that belong to the former management as well as the contractor who worked on the property. Can we arrange a convenient time to collect these?”*

23) The Receiver’s staff replied to this email requesting that Mr. Kermani provide a listing of items and proof of ownership.

24) On March 8, 2016, the Receiver’s staff received an email from Mr. Matthew Ramnauth, with Mr. Kermani in copy. In this email Mr. Ramnauth indicated that he had managed the Property (for 241) prior to the Reinstatement Order and included a listing of items he wished to collect, but no proof of ownership for this property and also requested a meeting with the Receiver. A copy of this email is attached hereto as **Appendix “J”**.

25) As requested, the Receiver met with Mr. Ramnauth and Mr. Kermani at the Receiver’s offices on Monday March 14, 2016.

- 26) Discussions at this meeting included the following:
- a) Mr. Kermani confirmed that he is a director of 241;
 - b) Mr. Ramnauth confirmed that he managed the Property for 241 during the Suspension Period and that he is not a director of 241;
 - c) As requested the Receiver's staff explained the receivership process generally including details of the Reinstatement Order which had been provided to Mr. Kermani and Mr. Ramnuath prior to the meeting;
 - d) Mr. Ramnauth and Mr. Kermani advised they wished to arrange for the collection of items remaining at the Property belonging to 241's contractor including construction tools and/or equipment; and,
 - e) Mr. Kermani provided a verbal summary of the incomplete construction and plans 241 had initiated during the Suspension Period.

27) On March 16, 2016 Mr. Ramnauth sent the Receiver's staff an email to which he attached copies of invoices for building materials and hardware (the "**Building Materials Invoices**"), but no information on the above noted construction tools and/or equipment belonging to 241's contractor. Copies of this email and the Building Materials Invoices are attached hereto as **Appendix "K"**.

28) Prior to the Reinstatement Order, the items in the Building Materials Invoices were either installed or ready to be installed at the Property. As such, these items were not released by the Receiver.

29) On April 18, 2016, the Receiver's staff permitted representatives of 241's contractor to collect a small quantity of miscellaneous construction tools and equipment from the Property.

Building Condition Issues

30) As noted above, the Receiver's staff attended at the Property on February 1, 2016 and found the following issues with the Property:

- a) The second and third floor which was previously divided between the language school and residential space is now vacant and is under a state of significant disrepair and/or renovation;
- b) The fourth floor which was a residential space is now vacant and in a state of significant disrepair and/or renovation;
- c) The Property was not maintained properly and requires significant repairs including roof repair or replacement and replacement of damaged windows and doors; and,
- d) A significant quantity of construction debris and/or garbage (the “**Garbage**”) was left scattered throughout the above noted vacant areas under construction.

31) Parking restrictions and other logistical issues at the Property complicate the task of removing the Garbage. For example, access to the 2nd, 3rd and 4th floors is by stairs only and there is no place on the Property to place a garbage bin. Accordingly, removal of the Garbage required bagging and removal by hand. The Receiver made arrangements for the removal of the Garbage on April 18th and 19th, 2016.

Flood and Plumbing Repairs

32) On February 15, 2016, the Receiver was notified by the owner of Hair 91 that there was a water leak at the Property.

33) The Receiver immediately arranged for plumber to attend at the Property to investigate and repair the leak. The plumber determined that the source of the leak was a water pipe on the third floor had ruptured.

34) The flooding caused damage to the shops of two tenants which damage was repaired at a cost of \$6,105 plus HST. In addition, Royal Custom Tailor is withholding March, 2016 rent of \$2,300 due to the closure of its store while repairs were undertaken. We understand that the store was closed from February 17 to March 6, 2016.

Building Permits

35) As noted above, 241 initiated renovations at the Property that were largely left incomplete at the time of the Reinstatement Order.

36) On February 3, 2016, the Receiver obtained a report from the City of Toronto confirming seven (7) primary building permits numbers in respect of the Property and the status and description of each which include, but are not limited to the following:

	<u>PERMIT</u>	<u>ISSUE DATE</u>	<u>DESCRIPTION</u>	<u>ESTIMATED COST</u>	<u>STATUS</u>
1	14 196313 BLD	31/07/2014	Install storage cubicles in sub basement	\$ 120,000	Inspection
	14 196313 HVA	13/08/2014	HVAC (for above)		Permit Issued
	14 196313 PLB	13/08/2014	Plumbing (for above)		Inspection
2	14 203128 BLD	10/09/2014	Proposal to repair damaged roof flashing and roof tiles, new exterior wall insulation and new stucco finishing.	\$ 10,000	Inspection
3	14 224390 BLD	21/10/2014	Repairs to the lower deck.	\$ 19,000	Inspection
4	14 239248 FSU	18/11/2014	Install new sprinklers for fire protection retrofit.	\$ 10,000	Permit Issued
5	14 258663 BLD	11/12/2014	Proposal for interior alterations to reconstruct existing stairwells and construct 1 new stairwell. nce address is 91-93 Scollard St.	\$ 28,000	Inspection
6	15 107997 FSU	27/01/2015	Permit to repalce existing Fire Alarm Panel & Annunciator.	\$ 8,000	Inspection
7	15 176545 BLD		Proposal for interior alterations to the 2nd and 3rd floors. Scope of work includes removing residential unit on the 3rd floor and replacing with office use on the 2nd and 3rd floors.	\$ 28,000	Examiner's Notice Sent
	15 176545 HVA				Refusal Notice
	15 176545 PLB				Pending
			Total	\$ 223,000	

37) The Receiver has not taken any action with respect to the above noted building permits.

Property Taxes

38) Upon its reappointment, the Receiver's staff contacted the City of Toronto provide notification of the receivership and to obtain a property tax account statement. A copy of this statement of account is attached hereto as **Appendix "L"** and confirms the following property tax arrears as of March 1, 2016.

Overdue Property Taxes - Tax Year	Amount Owed
Tax Year - 2014	\$ 46,816
Tax Year - 2015	123,224
Tax Year - 2016 (March installment)	17,435
Total arrears as at March 1, 2016	\$ 187,475

Monthly Operating Budget

39) The Receiver has prepared the following monthly operating budget for the Property based on the information currently available to the Receiver:

Receipts	
Studio 91	\$ 4,500
Mad Dash	2,300
Royal Custom Tailor	2,300
Hair 91	2,700
Total Receipts	11,800
Disbursements	
Insurance	1,101
Monthly Property Tax	8,718
Utilities (estimated)	2,000
General Maintenance (estimated)	2,000
Total Disbursements	13,819
Deficiency Prior To Mortgage Servicing and Professional Fees	-\$ 2,019

40) As noted above, the estimated monthly deficiency of receipts less disbursements is in excess of \$2,000 before mortgage servicing and professional fees. In addition, there are outstanding property taxes in excess of \$187,000 and the Receiver understands that the Ginko first mortgage and the Applicants (as defined below) mortgages were in default as at the date of the Reinstatement Order.

Other Activities

- 41) The Receiver's other actions since re-taking possession include:
- a) Notifying the respective utility providers to determine the status of accounts and arrange for ongoing services;
 - b) Arranging insurance coverage for the Property; and,
 - c) Preparing and filing a second Notice and Statement of Receiver pursuant to s.245 and s.246 of the *Bankruptcy and Insolvency Act* (the "**Receiver's Notice**"). Attached as **Appendix "M"** is a copy of the Receiver's Notice.

Creditors

- 42) As provided in the application materials for the appointment of the Receiver:
- a) The Debtor is a corporation incorporated pursuant to the *Canada Business Corporations Act* that has its registered head office in Concord, Ontario;
 - b) The Property is currently encumbered by the three mortgages granted by 241 subsequent to its purchase of the Property from CIC in the impugned power of sale proceeding.
 - c) Justice Matheson ordered that the sale to 241 is invalid and to be set aside.
 - d) The applicants in this proceeding comprise the 2nd through 12th mortgagees (the "**Applicants**") that were registered on title immediately prior to the invalid sale under power of sale.
 - e) All of the 2nd through 12th mortgages are in default, and have been since early 2013.
 - f) In total, the 2nd through 12th mortgages secure indebtedness totaling \$5,724,210.70 as at June 4, 2014; and,
 - g) Gingko Mortgage Investment Corporation ("**Gingko**") was granted a first ranking charge by 241 securing the principal sum of \$3,685,000. The Gingko mortgage is in default.

SALES PROCESS

- 43) The Receiver has consulted with the architectural and engineering firms responsible for the renovation plans that were commenced during the Suspension Period who advised that a very rough estimate of the cost to complete the construction work is in excess of \$200,000.
- 44) The Receiver has also reviewed this matter with the first mortgagee, Gingko, who are of the view that the Property should be sold immediately without completing further renovation or repairs because the preferred use of the Property by potential purchasers is unknown.
- 45) The Receiver does not have funding to complete renovations or repairs to the Property.
- 46) In light of the above and the monthly operating deficiency, it is the Receiver's view that the Property should be listed for sale as soon as possible.

Previous Sale of Property

- 47) According to paragraph 7 of the January 3, 2016 sworn affidavit of Sai Mohammed, who is a principal of 241 (the "**Mohammed Affidavit**"), 241 purchased the Property for \$5,875,000 on June 6, 2015. A copy of the Mohammed Affidavit (without appendices) is attached hereto as **Appendix "N"**.
- 48) The Receiver has engaged Janterra Rajesky Real Estate Appraisers to complete an independent appraisal of the Property. A copy of the appraisal is attached as **Confidential Appendix "A"**.

Proposed Sales Process

- 49) The Receiver proposes to commence a sales process (the "**Sales Process**") as follows:
- a) Obtain three (3) listing proposals for the sale of the Property;
 - b) At the sole discretion of the Receiver, engage the services of a realtor (the "**Selected Realtor**");

- c) Enter into a listing agreement for the sale of the Property with the Selected Realtor including, at the sole discretion of the Receiver, establishing in consultation with the Selected Realtor, terms for the listing price, marketing strategy and deadline for offers; and,
- d) Report to this Court on the results of the Sales Process for the purpose of obtaining an approval and vesting order in respect of the sale of the property.

RECEIVER’S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS

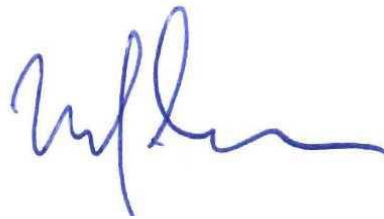
50) Attached hereto as **Appendix “O”** is the Interim Statement of Receipts and Disbursements for the period from the date of the Receiver’s appointment on January 16, 2014 to May 18, 2016. Total receipts are \$126,968.42 and total disbursements are \$59,619.39 including receiver’s fees to October 21, 2014. The balance of receipts less disbursements is \$67,349.03.

CONCLUSION

51) The Receiver respectfully requests that this Court issue an Order approving the relief set out in paragraph 9 b).

All of which is respectfully submitted this 18th day of May, 2016.

MNP Ltd.
Court-appointed Receiver of
91-93 Scollard Street, Toronto



Per: _____
Mark Thomson, CPA, CMA, CIRP, LIT