

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**BUSINESS DEVELOPMENT BANK OF CANADA**

**Applicant**

**and**

**VERTAMIN REAL ESTATE INC.**

**Respondent**

**SECOND REPORT OF MNP LTD., IN ITS  
CAPACITY AS COURT APPOINTED RECEIVER OF  
VERTAMIN REAL ESTATE INC.**

**FEBRUARY 1, 2018**

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1	Receivership Order dated November 8, 2016;
2	First Report of the Receiver dated November 9, 2017;
3	Order dated November 17, 2017
4	895 Property Order dated November 17, 2017
5	Certificate of 895 Property
6	Redacted November 14, 2017 agreement and December 21, 2017 amendment
7	Robert A. Lewis Professional Corporation legal opinion
8	January 19, 2018 BDC payout letter
9	City of Ottawa January 31, 2018 statement of account
10	Statement of receipts and disbursements;
11	Affidavit of John Haralovich, MNP LTD.; and
12	Affidavit of Receiver's counsel.

**CONFIDENTIAL  
APPENDICES**

- A Appraisal McLean, Simon & Associates (Ottawa) Real Estate Advisory Services, 1687 Montreal Road
- B Appraisal Shore, Tanner & Associates, 1687 Montreal Road
- C Un-redacted November 14, 2017 agreement and December 21, 2017 amendment

## INTRODUCTION

1. MNP LTD. (“MNP” or the “Receiver”) makes this second report to the Court (the “Second Report”) in its capacity as Court-appointed Receiver/Manager of Vertamin Real Estate Inc. (“Vertamin” or the “Company”).
2. The Company is indebted to Business Development Bank of Canada (“BDC” or the “Bank”), its senior secured creditor, with respect to certain credit facilities granted by the Lender pursuant to and under the terms of various credit agreements contained as Exhibits to the Receivership Motion Record dated October 14, 2016 (the “Credit Agreements”).
3. Vertamin’s obligations to the lender arise pursuant to: (a) an offer of credit dated October 2, 2012 in the amount of \$1,200,000.00 (the “First Agreement”) encumbering title to the municipally known as 1687 Montreal Road, Ottawa, Ontario (the “1687 Property”); and (b) a second offer of credit dated August 29, 2013 in the amount of \$2,140,000.00 (the “Second Agreement”) encumbering title to the municipally known as 895 Montreal Road, Ottawa, Ontario (the “895 Property”).
4. The First Agreement and the Second Agreement (hereinafter collectively referred to as the “Loan Agreements”), by their standard credit terms, provide that, in event of default, the Bank is entitled to accelerate payment of the outstanding amounts of the loans and enforce its security should the Company fail to make any of the payments required by the Loan Agreements.
5. The Company has had a lengthy history of default under the terms and conditions of the Loan Agreements and the security granted by the Company to the Bank. Amongst other things, the Company has breached the Loan Agreements and other breaches as follows:
  - a) The Company has not made any of the required monthly payments on account of the Loan Agreements since March 11, 2014;
  - b) The Company refused to provide any financial information or disclosure to the Bank such that the Bank cannot assess its risk;
  - c) The municipal taxes have not been paid; and

- d) There has been a significant and material deterioration of the financial condition and circumstances of the Company.
6. In January 2015, the Company was involved in various insolvency proceedings and requested postponements under the Loan Agreements for a period of 12-months.
  7. On February 22, 2016, BDC made written demand for payment on the Debtor to satisfy the BDC Indebtedness.
  8. The Bank attempted to enter into a forbearance agreement with the Company on June 29, 2016 however, the Company refused to execute the said agreement.
  9. As of July 7, 2016, the Companies total indebtedness to the Bank pursuant to the Loan Agreements was \$3,316,701.90 and the last loan payment was made on March 11, 2014.
  10. On October 14, 2016, the BDC brought an application for the appointment of MNP as the receiver of Vertamin for the protection of the interests of BDC and other stakeholders.
  11. By order of this Honourable Court dated November 8, 2016 (the “**Receivership Order**”), MNP was appointed Receiver (the “**Receiver**”), without security, of all the assets, undertakings and properties of Vertamin used in relation to its business, including all proceeds thereof (the “**Property**”). A copy of the Receivership Order is attached as **Appendix “1”**.
  12. The Receivership Order provided for the Company to make specific payments and to repay the Bank in full by May 28, 2017 failing which the Receivership Order would be released 15 days thereafter. The Company did not repay the Bank in full and the Receiver Order was released on June 13, 2017. The Company did not pay \$10,000.00 of the funds it was directed to pay.
  13. The First Report of the Receiver dated November 9, 2017 (the “**First Report**”) provided this Honorable Court with information on the:
    - (a) Receiver’s activities since the date of its appointment;
    - (b) Collection of accounts receivable and sale of inventory;
    - (c) Sales and marketing process and the results of the sales process;

- (d) Sale of 895 Montreal Road;
- (e) Potential priority and secured claims against the Company; and
- (f) The Receiver's statement of receipts and disbursements and estimated funds available for distribution.

14. The First Report (without Appendices) is attached as "Appendix 2".

15. The First Report and the actions and activities described in the First Report were approved pursuant to an Order dated November 17, 2017 (the "Nov 17 Order"). A copy of that Nov 17 Order is attached as "Appendix 3".

#### **PURPOSE OF THIS REPORT**

16. The purpose of this Second Report is to update this Honourable Court on the activities of the Receiver since our First Report and to seek an Order for the following:

- (a) approval of the activities of the Receiver and its legal representatives as outlined in the Second Report;
- (b) approval of the sale of the 1687 Property and payment of all closing costs;
- (c) To obtain the Court's approval of the sealing of Confidential Appendices A, B and C of the Second Report pending the closing of a transaction pursuant to which the Receiver sells the 1687 Property, or further Order of the Court. The Receiver is requesting an Order sealing these appendices because these documents contain confidential and/or financial and other information that could taint the market if the pending transaction in respect of the 1687 Property does not close;
- (d) To approve the payment to the City of Ottawa in the amount of \$58,990.61 as of January 31, 2018, approximately \$2,112.00 for the 2018 portion of property taxes plus interest and penalties;
- (e) Repayment of the Receivers Certificate dated June 16, 2017 in the amount of \$50,000;
- (f) To approve the payment to BDC to the maximum amount of up to \$1,217,651.24 (\$1,267,651.24 less \$50,000 for the Receivers Certificate) plus daily per diem interest of \$11.50 from January 19, 2018;

- (g) approving the professional fees and disbursements of the Receiver and its legal representatives;
  - (h) approving the professional fees and disbursements of the Receiver and its legal representatives; and
  - (i) Order Discharging the Receiver after the funds held in trust are fully distributed.
17. All amounts referred to in the Second Report are in Canadian dollars unless otherwise noted.

#### NOTICE TO READER

18. This report is prepared solely for the use of the Court, for the purpose of assisting the Court in making a determination of whether to approve the relief being sought. It is based on the Receiver's analysis of information provided to it by the management and directors of the Company, which included unaudited financial statements and internal financial reporting.

#### RECEIVERSHIP ACTIVITIES

19. Pursuant to an Order made on November 17, 2017 (the "**895 Property Order**"), the sale of the 895 Property was approved. A copy of the 895 Property Order is attached as "**Appendix 4**". The sale of the 895 Property closed on December 11, 2017 and a copy of the Certificate delivered by the Receiver is attached as "**Appendix 5**".
20. Since our last report to the Court the activities of the Receiver included:
- (a) on November 14, 2017 the Receiver entered into a purchase and sale agreement with Dr. Anatolij Koniouchine In trust for a Corporation to be formed ("**1687 Buyer**") for the sale of the 1687 Property;
  - (b) on December 21, 2017, the Receiver accepted the amendment to the purchase and sale agreement dated November 14, 2017 waiving all conditions; and
  - (c) the Receiver completed remedial work on the 1687 Property which resulted from vandalism.

## APPRAISALS OF 1687 PROPERTY

21. The Receiver retained McLean, Simon & Associates (Ottawa) Real Estate Advisory Services (“MSA”) and Shore, Tanner & Associates (“STA”) to appraise the 1687 Property. On July 5, 2017 MSA provided the Receiver with their appraisal on 1687 Property, which is contained in the “Confidential Appendix A”. On July 10, 2017 STA provided the Receiver with their appraisal for 1687 Property, which is contained in the “Confidential Appendix B”

## LISTING PROPOSALS

22. As described in the First Report, the Receiver engaged Gentry Commercial (“Gentry”) to list the 895 and the 1687 Properties for sale. The listing agreement between the receiver and Gentry was approved by the November 17, 2017 Order.

## 1687 PROPERTY

23. The 1687 Property has been listed for sale since July 13, 2017.
24. On November 14, 2017 the 1687 Buyer submitted an offer to purchase the property. The initial offer from 1687 Buyer was determined to be low and the Receiver submitted a counter offer. On November 30, 2017, the Receiver and 1687 Buyer ultimately negotiated an agreement to sell the 1687 Property at a price that was acceptable to the Receiver and BDC.
25. On December 21, 2017, the Receiver and 1687 Buyer amended the November 14, 2017 offer to waive all conditions except for court approval of the offer and to provide a vesting order. A redacted copy of the November 14, 2017 agreement and December 21, 2017 amendment is contained in the “Appendix 6”. An un-redacted copy of the November 14, 2017 agreement and December 21, 2017 amendment are contained in the “Confidential Appendix C”.

## POTENTIAL PRIORITY AND SECURED CLAIMS

### Potential Priority Claims

26. The Receiver is not aware of any statutory trust claims.



### Secured Claims

27. The Receiver retained Robert A. Lewis Professional Corporation to provide an independent legal opinion on the validity of the Bank's security. The legal opinion is attached in "Appendix 7".
28. The legal opinion confirms BDC has a valid first charge on the Properties. BDC has provided advanced the Receiver \$50,000.00 and the Receiver has issued Receiver's Certificate date June 16, 2017 pursuant to the November 8, 2016 Receivership Order.
29. BDC has provided the Receiver with an update statement of account as of January 19, 2018. The outstanding mortgage balance for the 1687 Property is \$1,267,651.24 (including the Receivers Certificate) plus a daily per diem of \$11.50. The BDC payout letter is contained in "Appendix 8".
30. As of August 4, 2017, there are outstanding property taxes in the amount of \$58,990.61 plus interest for the 1687 Property. Copies of the January 31, 2018 statement is contained in "Appendix 9".

### **FUNDS AVAILABLE FOR DISTRIBUTION**

31. Should the Court approve the sale of the 1687 Property the Receiver would seek the Courts approval to pay all the selling costs related to the sale, the costs of the Receiver to date and its legal representative, remit amounts due to the City of Ottawa for property taxes outstanding for 1687 Property, repay the Receivers Certificate and remit the balance of the funds to BDC to satisfy its indebtedness related to 1687 Property.
32. A copy of the Statement of Receipts and Disbursements is attached hereto as "Appendix 10".

### **SEALING ORDER**

33. The Receiver is requesting an Order sealing the Confidential Appendices because these documents contain confidential financial and other information that could undermine the sales process and the Receiver's efforts to market and sell the 1687 Property in the event that the proposed transaction does not close.

## **PROFESSIONAL FEES**

34. Pursuant to paragraph 16 of the Receivership Order, the fees and disbursements of the Receiver and its legal counsel 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.
35. Pursuant to paragraph 18 of the Appointment Order, the Receiver is entitled to apply reasonable amounts out of the monies in its hands to satisfy its professional fees and disbursements and those of its counsel, and such amounts are to constitute advances against its remuneration and disbursements when and as approved by the Court.
36. Attached as “**Appendix 11**” hereto is the Affidavit of John Haralovich, in support of the fees and disbursements of the Receiver for the period from November 9, 2017 to February 1, 2018 totaling \$13,350.00, plus HST. The Receiver estimates its fees to complete the remainder of the Receivership will not exceed \$5,000 plus HST.
37. Attached as “**Appendix 12**” hereto is the Affidavit of Frank Lamie in support of the fees and disbursements of the Receiver’s counsel for the period from August 18, 2017 to February 1, 2018 totaling \$35,329.12, inclusive of HST.

## **COMPLETION OF THE RECEIVERSHIP**

38. Upon approval of the sale of 1687 Property, the Receiver will have disposed of all the assets of Company subject to the November 8, 2016 Appointment Order and as a result, the Receivership should be Order complete upon the final distribution of the sale of 1687 Property.

## **SUMMARY AND RECOMMENDATIONS**

39. For the reasons outlined above, the Receiver respectfully recommends that this Court grant the Receiver’s request for an Order, amongst other things:
  - (a) Approving the Receiver’s Second Report, and the activities of the Receiver as set forth in the Second Report;
  - (b) Approving the sale of 1687 Property;

- (c) Approving the payments to City of Ottawa and the Business Development Bank of Canada and costs related to the sale of 1687 Property;
- (d) Approving the payment of the fees and disbursements of the Receiver and Receiver's counsel;
- (e) Sealing the Confidential Appendices of the Second Report pending the Receiver's realization of 1687 Property or until further Order of the Court; and
- (f) Discharging the Receiver upon the filing of a Certificate by the Receiver.

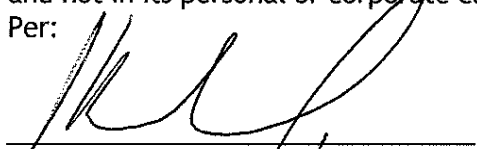
This Report is respectfully submitted to this Honourable Court as of this 1<sup>st</sup> day of February 2018.

**MNP LTD.,**

In Its capacity as Court-Appointed Receiver of  
Vertamin Real Estate Inc.

and not in its personal or corporate capacity

Per:



John P. Haralovich, CPA, CA, CIRP, CMA  
Senior Vice President

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