

**ONTARIO**

**SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**EMMANUEL VILLAGE RESIDENCE INC.**

Applicant

**- and -**

**ATTORNEY GENERAL OF ONTARIO**

Applicant

**- and -**

**1250 WEBER STREET EAST, KITCHENER, ONTARIO OR THE PROCEEDS OF THE  
SALE THEREOF (IN REM)**

Respondent

**FIFTH REPORT TO THE COURT  
SUBMITTED BY BDO CANADA LIMITED,  
IN ITS CAPACITY AS RECEIVER OF**

**EMMANUEL VILLAGE RESIDENCE INC.**

**September 20, 2016**

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## ***1.0 BACKGROUND AND PURPOSE***

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### **1.1 Background**

- 1.1.1** Mr. Bryan Hunking (“**Mr. Hunking**”) and certain third party partners (the “**Partners**”) acquired ownership of Emmanuel Village Homes (Kitchener) Inc. (“**EVH**”) in October 2001, through the purchase of shares from its then owners. Emmanuel Village Residence Inc. (“**EVR**” or the “**Company**”) was incorporated on October 25, 2001 to acquire lands from EVH on which a retirement residence apartment building (the “**Residence**”) was being constructed. In December 2002, the portion of land on which the Residence was being built was severed and transferred to EVR. In March 2003, Mr. Hunking, through a numbered corporation, purchased the 75% interest of the Partners in EVR and became the sole shareholder (through a numbered corporation) and director of EVR.
- 1.1.2** Construction of the Residence began in the fall of 2001 and was completed in March, 2003. The Residence is located in Kitchener, Ontario, houses between 110 and 130 residents and has approximately 50 employees. The Residence has enjoyed an occupancy rate in excess of 90% since 2005. This rate is well above the average in the Waterloo Region and throughout Ontario.
- 1.1.3** Mr. Hunking was also involved with and a director of other companies, including but not limited to, Netbusmodel Inc., Alcorp Financial Services Inc. (“**Alcorp**”), Help for Humanity Charity and Commonwealth Capital Corporation (“**CCC**”). Netbusmodel Inc. was incorporated in March 28, 2000 for the purpose of soliciting funds from third party investors. In 2004 and 2005, complaints were filed with the Waterloo Regional Police and the Peel Regional Police with respect to the investments in Netbusmodel Inc.
- 1.1.4** The Peel Regional Police retained Grant Thornton LLP (“**GT LLP**”) to conduct a forensic audit of the accounts of Netbusmodel Inc. and Alcorp. GT LLP issued a report on January 25, 2010 (the “**GT Report**”) which found that the money received from investors was moved between various corporate accounts and a portion of those funds were eventually funnelled into EVR and EVH. A copy of the GT Report is attached as **Appendix “A”**.
- 1.1.5** In 2005, a civil action was started against several defendants, including Mr. Hunking, the Partners, EVH and EVR, among others (the “**Investor Action**”). The plaintiffs in the Investor Action (the “**Investor Plaintiffs**”) alleged wrongdoing related to various financial transactions in Netbusmodel Inc. and CCC between 2000 and 2003.
- 1.1.6** In 2010, criminal charges were laid against Mr. Hunking and the Partners. On or about the end of April, 2015, Mr. Hunking pled guilty to one count of fraud over \$5,000. On June 10, 2016, Mr. Hunking was sentenced to five years imprisonment and is currently serving that sentence.
- 1.1.7** On November 30, 2012, a settlement was reached in the Investor Action between the Investor Plaintiffs and some of the defendants (the “**Settlement**”), including Mr. Hunking and EVR (the “**Hunking Defendants**”). Under the terms of the Settlement, the Hunking Defendants agreed to pay the Investor Plaintiffs \$1,300,000 immediately, with a further payment of \$1,200,000 to be paid on the sale or refinancing of EVR (the “**Second Payment**”). The Settlement also provides for a further payment in the event that the sale price of EVR exceeds \$21,000,000.00 after deduction of realtor and legal fees (the “**Third Payment**”). The Second Payment and the Third Payment, if any, have not been paid.

- 1.1.8 We understand that historically, Mr. Hunking had significant day-to-day involvement in the operations of EVR and that Mr. Hunking's spouse ("**Mrs. Hunking**") has been employed by EVR since 2009. Further, we understand that Mr. Hunking ceased his management of EVR in and around March, 2014 due to health issues. At that time, Mrs. Hunking took over management of the day-to-day operations of EVR. Mrs. Hunking informs the Receiver that Mr. Hunking is not directly involved with managing EVR, aside from maintaining his ownership of EVR and holding the position as an officer and director, but is consulted on a regular basis.
- 1.1.9 EVR is regulated under the *Retirement Homes Act, 2010* (the "**Act**") and through the Retirement Homes Regulatory Authority (the "**RHRA**"). Businesses that meet the legal definition of a retirement home under the Act must apply to the RHRA for a licence. This licensing process began in August, 2012.
- 1.1.10 On the basis of the charges laid against Mr. Hunking, Mr. Hunking's guilty plea, and the agreed statement of facts in the criminal proceedings, the RHRA decided to revoke EVR's license to operate as a retirement home (the "**License**"). Accordingly, the RHRA sent a letter to EVR on March 1, 2016 enclosing an Order to Revoke a License (the "**License Order**"). The License Order set out, among other things, that EVR's License would be revoked, effective July 4, 2016, or a later date at the discretion of the RHRA.
- 1.1.11 As a result of the License Order, EVR executed an engagement letter dated March 3, 2016 (the "**Sure Engagement**") with Sure Mortgage, a division of Durham Capital Management Inc. ("**Sure Mortgage**"), to act as sole external advisor/broker to advise the Company on the potential sale, refinancing or recapitalization of EVR's business and assets. Sure Mortgage engaged the services of Raymond James Bank to assist with the marketing and sales efforts.
- 1.1.12 On March 30, 2016, EVR's primary mortgage lender, HMT Holdings Inc. ("**HMT**"), issued a demand for payment to EVR and a notice of intention to enforce its security pursuant to section 244(1) of the *Bankruptcy and Insolvency Act*. In HMT's letter to EVR, HMT cited the License Order issued by the RHRA as the default under the mortgage. HMT did not commence any enforcement proceedings and the Company has kept HMT abreast of its ongoing sales process and the results thereof.
- 1.1.13 Based on management's discussions with the RHRA since the date of the License Order, on or about May 30, 2016, the RHRA extended the effective date of the License Order to September 2, 2016 to provide EVR sufficient time to complete a sale of the assets and business of EVR to a reputable service provider who had entered into a letter of intent with EVR.
- 1.1.14 On June 16, 2016, the Attorney General of Ontario (the "**AGO**") made a motion to the Ontario Superior Court of Justice in Kitchener, Ontario (the "**Kitchener Court**") for a 30 day Preservation Order pursuant to the *Civil Remedies Act, 2001*, on an *ex parte* basis. The order (the "**Preservation Order**") was granted by Mr. Justice Sloan on June 16, 2016. Among other things, the Preservation Order enjoined any party from dealing with the Property, as defined in the Preservation Order, including, but not limited to, the sale or encumbrance of the Property, for a period of 30 days from the date of the Preservation Order. The Property encompasses the real property owned by both EVR and EVH. The Preservation Order required that the matter be returned to the Court on July 14, 2016 at which time a further motion to extend the Preservation Order would be heard. The Preservation Order has been registered on title to the Property.
- 1.1.15 On June 24, 2016, EVR made an application to the Ontario Superior Court of Justice, Commercial List (the "**Commercial List**") for the appointment of BDO Canada Limited as receiver (the "**Receiver**") over EVR's assets, undertakings and properties pursuant to section 101 of the *Courts*

*of Justice Act*, R.S.O. 1990, c. C43, as amended. The order was granted on June 24, 2016 (the “**Receivership Order**”). The Receiver’s primary role pursuant to the Receivership Order was to review the sales process carried out by EVR and its consultants to determine if the process and its results were fair and reasonable in the circumstances. The Receivership Order specifically excluded any requirement for the Receiver to take possession of the assets and operations of EVR. EVR’s management remains in control of the assets and operations of EVR. The Receivership Order also granted a priority charge over the assets of EVR in favour of the Receiver, its counsel and the counsels of EVR to a maximum of \$350,000 (the “**Administration Charge**”) for their collective fees and expenses incurred in respect of the receivership.

- 1.1.16 At the July 14, 2016 hearing before the Kitchener Court, it was agreed by all parties that the motion for the extension of the Preservation Order would be heard by the Commercial List on July 15, 2016. The Commercial List extended the Preservation Order on July 15, 2016 to August 8, 2016.
- 1.1.17 With the consent of the parties, on July 22, 2016, the Commercial List issued an Order transferring the Kitchener action to the Commercial List and two consolidation orders enjoining the proceedings.
- 1.1.18 On July 27, 2016 the Commercial List issued a revised preservation order with the consent of all of the parties (the “**Revised Preservation Order**”). The Revised Preservation Order permits EVR’s property to be sold with Court approval. It also requires that the proceeds of the sale be paid to the Receiver to be held pending further order of the Commercial List.
- 1.1.19 On August 12, 2016, EVR and Revera Inc. (the “**Purchaser**”) entered into a purchase and sale agreement (the “**APA**”) in respect of substantially all of the assets of EVR which is set to close on October 3, 2016 (the “**Transaction**”). On August 30, 2016, the RHRA issued a letter varying the License Order to provide for an extension of the effective revocation date of the License from September 2, 2016 to October 3, 2016.
- 1.1.20 Pursuant to the Order of Mr. Justice Newbould dated August 19, 2016, representative counsel was appointed for the residents of EVH and their fees were added to the Administration Charge. The residents of EVH have certain rights to access programs and facilities at EVR and the APA requires that their access to be terminated after the closing of the Transaction. The APA also requires that the EVH residents be represented in the sale approval motion as they would be affected by the Transaction.
- 1.1.21 On August 22, 2016 the Receiver issued its third report (the “**Third Report**”) to the Court along with the supplement to the Third Report dealing principally with the Transaction and the marketing process conducted by EVR in respect of its business. EVR also requested an increase in the Administration Charge and the creation of a priority charge in favour of Sure Mortgage for the commissions to be earned upon the successful completion of the Transaction (the “**Broker Charge**”).
- 1.1.22 On August 26, 2016 the Court issued an approval and vest order approving the Transaction and, upon delivery to the Purchaser of a Receiver’s Certificate, vesting title to the purchased assets in the Purchaser free and clear of all encumbrances (the “**Approval and Vesting Order**”). The Approval and Vesting Order was subsequently amended by Order dated September 6, 2016 to replace Schedule D appended thereto which was inadvertently incorrect. The Court also issued an ancillary order on August 26, 2016 (the “**Ancillary Order**”) approving, among other things, the Receiver’s and its counsel’s fees as set out in the Third Report. The requests for the increase in the Administration Charge and the creation of the Broker Charge were adjourned to September 6, 2016.

- 1.1.23 The Investor Plaintiffs also brought a motion returnable on September 6, 2016 (the “**Investor Motion**”) seeking, among other things, a direction that, in accordance with the Order of Justice Campbell dated May 17, 2013 (the “**Settlement Order**”), the Receiver pay \$1.2 million to their counsel in trust for the Plaintiffs immediately upon the completion of the Transaction. On September 1, 2016, the Receiver issued its fourth report to the Court (the “**Fourth Report**”) commenting on the relief sought by the Investor Plaintiffs. Pursuant to the Endorsement of Mr. Justice Newbould, the Investor Motion was adjourned to September 26, 2016.
- 1.1.24 Pursuant to the Order of Justice Newbould dated September 6, 2016, the Receiver was directed to pay the amount owing to Sure Mortgage in respect of the Sure Engagement (less \$10,000) upon the successful closing of the Transaction.
- 1.1.25 Pursuant to the Endorsement of Justice Newbould on September 12, 2016, EVR’s request to increase the Administration Charge to \$700,000 and seal certain financial information of EVR was granted.

## 1.2 Purpose of Receiver’s Fifth Report

- 1.2.1 The purpose of this report to the Court (the “**Fifth Report**”) is to support the Receiver’s motion for:
- an Order directing a distribution from the sale proceeds of the Transaction to permanently and fully repay the indebtedness of EVR to each of HMT, Sure Mortgage and Bank of Nova Scotia (“**BNS**”)(collectively, the “**Secured Creditors**”);
  - an Order authorizing and directing the Receiver to pay the Professional Group (as defined in the Receivership Order) on behalf of EVR in accordance with the Receivership Order;
  - this Court’s advice and directions with respect to the formulation and implementation of a claims process regarding the remaining sale proceeds, after payment to the Secured Creditors; and
  - an Order approving the Receiver’s activities as set out in the Fourth Report and Fifth Report and the fees and disbursements of the Receiver and its counsel, Thornton Grout Finnigan LLP (“**TGF**”).

## **2.0 UPDATE**

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- 2.1.1** The closing of the Transaction is set for October 3, 2016. EVR and the Purchaser have been working diligently and in good faith towards concluding the Transaction by the closing date. The Receiver has been involved in the discussions and steps taken by EVR and the Purchaser in respect of the closing of the Transaction and is not aware of any impediments to a successful closing on October 3, 2016.
- 2.1.2** During the hearing on September 6, 2016, the Court was advised that EVR is continuing to make certain monthly payments to Mr. Hunking, through his management company, Aldis Management Inc. (“Aldis”). At the chambers appointment on September 12, 2016, the Court was advised that monthly management fees of approximately \$5,000 per month were being paid to Aldis in respect of the ongoing management services provided by Mr. Hunking to EVR. The Receiver has been advised by counsel to EVR that those payments have ceased and that the payment that was processed for September has been reversed.



### **3.0 PROPOSED DISTRIBUTION**

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- 3.1 The Receiver has reviewed a copy of the parcel register in respect of the real property of EVR dated September 19, 2016 (the “**Subsearch**”), a copy of which is attached as **Appendix “B”** and the Enquiry Response Certificate dated July 12, 2016 (the “**PPSA Search**”) in respect of the *Personal Property Security Act* (Ontario) (the “**PPSA**”), a copy of which is attached as **Appendix “C”**.
- 3.2 Owens Wright LLP has provided a security opinion to the Receiver in respect of the real property security granted by EVR in favour of HMT and Sure Mortgage. TGF has provided its opinion as to the validity and enforceability of the personal property security granted by EVR in favour of each of the Secured Creditors.
- 3.3 Subject to the qualifications contained therein, the Receiver’s counsel has confirmed that (i) HMT holds a valid first charge against EVR’s real property; (ii) Sure Mortgage holds a valid second charge against EVR’s real property; and (iii) each of the Secured Creditors has a valid and enforceable security interest against the personal property of EVR which has been properly registered under the PPSA. The only other secured creditor of EVR is RCAP Leasing Inc. (“**RCAP**”). Pursuant to the terms of the APA, the Purchaser is assuming the obligations of EVR under the security agreement with RCAP. The Receiver is unaware of any other creditors who are claiming a priority interest in the assets of EVR.
- 3.4 The Receiver has been provided with a payout statement by HMT dated September 19, 2016 (the “**HMT Payout**”), indicating a balance owing to HMT of \$13,586,376.85 as of amounts anticipated to be owing as at October 3, 2016. The HMT Payout includes estimated professional fees totalling \$150,000. A copy of the HMT Payout is attached as **Appendix “D”**.
- 3.5 The Receiver has also been provided with a payout statement by Sure Mortgage (the “**Sure Mortgage Payout**”) indicating that EVR is indebted to Sure Mortgage in the amount of \$127,169.85 as of August 31, 2016 together with ongoing interest and costs to closing on October 3, 2016. A copy of the Sure Mortgage Payout is attached as **Appendix “E”**.
- 3.6 The Receiver has also been provided with a payout statement by BNS (the “**BNS Payout**”) indicating that EVR is indebted to BNS in the amount of \$19,277.75 as of September 20, 2016. A copy of the BNS Payout is attached as **Appendix “F”**.
- 3.7 It is the Receiver’s intention to obtain final payout figures from each of the Secured Creditors immediately upon closing of the Transaction. If the amounts are significantly different from the amounts noted above in respect of interest and costs, the Receiver will, if it deems appropriate, return to Court for further approval of the distribution to the Secured Creditors.
- 3.8 The Receiver is not aware of any unregistered creditors ranking in priority to those creditors listed on the Subsearch and the PPSA Search but is not in possession of the books and records of EVR. The Receiver is of the opinion that the remaining sale proceeds from the Transaction will be sufficient to satisfy any priority claimants in respect of the assets of EVR.
- 3.9 The Receiver is seeking an Order directing it to permanently and finally repay the amounts owing by EVR to each of the Secured Creditors immediately following the closing of the Transaction.

**3.10** Pursuant to the terms of the Receivership Order, EVR is authorized to pay the Professional Group on a monthly basis. EVR has not had sufficient funds to make such payments and the Professional Group remains unpaid. The Receiver seeks an Order authorizing it to make payments to the Professional Group from the proceeds of the Transaction on behalf of EVR in accordance with the Receivership Order.

## 4.0 CLAIMS PROCESS

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- 4.1 It is the position of the Receiver that a claims process is necessary and desirable in the circumstances of this proceeding to determine the totality of the creditors of EVR and the entities related to EVR that were involved in the perpetration of the fraud for which Mr. Hunking was convicted (collectively, the “**Hunking Entities**”). The Receiver is of the opinion that it is in the best position to conduct a Court-supervised claims process to identify and adjudicate the claims against the Hunking Entities in order to determine the pool of creditors on a timely and effective basis.
- 4.2 It is anticipated by the Receiver that there will be insufficient funds from the Transaction to satisfy all of EVR’s unsecured creditors, particularly when the position of the AGO is considered who has taken the position that all of the remaining proceeds, after payment of the Secured Creditors, should be paid to them in accordance with the Revised Preservation Order.
- 4.3 As described in the Fourth Report, the Investor Plaintiffs are seeking an Order directing the Receiver to pay their unsecured claim of \$1.2 million from the sale proceeds of the Transaction to satisfy the Settlement Order in priority to all other unsecured creditors of EVR and without the benefit of a claims process to determine the totality of claims against the Hunking Entities. It is the Receiver’s understanding that the basis of the Investor Plaintiffs’ claims arose as a result of funds advanced to CCC which made its way to EVH and EVR without their knowledge or consent.
- 4.4 The Receiver has been advised that there are additional claimants who have claims in the nature of the Investor Plaintiffs who are outside of that group. The AGO has advised this Court that they are aware of at least fifteen (15) such individuals and that they are being contacted on a continuous basis in respect of additional such claimants.
- 4.5 As outlined in the GT Report and the Reasons for Judgment on the *Gardiner Hearing* of Justice Bloom dated March 14, 2016, it has been found that Mr. Hunking involved numerous corporate entities in the fraud for which he was convicted. It is the Receiver’s understanding that none of the victims of the fraud actually lent money directly to EVR. All of the funds advanced as part of the fraud were advanced to numerous corporate entities, particularly Alcorp, Netbusmodel Inc. and CCC, controlled by Mr. Hunking. Certain of those funds were then funnelled into EVR and EVH.
- 4.6 At the request of the Receiver, Madorin, Snyder LLP, corporate counsel to EVR, delivered a letter to the Receiver outlining information relating to the indebtedness of EVR and certain of the Hunking Entities (the “**Madorin Snyder Letter**”). A copy of the Madorin Snyder Letter is attached as **Appendix “G”**.
- 4.7 As outlined in the Madorin Snyder Letter, there is substantial intercompany indebtedness among the Hunking Entities. Based on information received from the Emmanuel Companies’ external accountant, as of February 28, 2016:
- (A) EVR owed to EVH the amount of \$5,032,737;
  - (B) EVH owed to CCC the amount of \$3,913,660.53;
  - (C) EVH owed \$717,785.42 collectively to a number of individuals; and

- (D) CCC owed to various individuals and entities the amount of \$4,567,594.38, relating to the Investor Plaintiffs.
- 4.8 The Madorin Snyder Letter also states that the various creditors of CCC, some of whom are also part of the Investor Plaintiffs, have obtained default judgments against CCC in respect of payments owed to them. The Receiver understands that such judgments are incorporated into CCC's indebtedness described above, which also includes amounts owing to the Investor Plaintiffs in respect of which the Investor Plaintiffs obtained the Settlement Order requiring EVR to pay amounts to the Investor Plaintiffs.
- 4.9 As outlined in the affidavit of Martin Crawford sworn August 23, 2016 (the "**Crawford Affidavit**") in support of the AGO's position on the Transaction, the various creditors of the Hunking Entities take the position that the funds advanced by them were to be invested in offshore start-up projects. Certain of these funds were actually used in the construction of the Residence and the townhomes owned by EVH. This is the basis for the Revised Preservation Order. Attached as **Appendix "H"** is a copy of the Crawford Affidavit, without exhibits.
- 4.10 It is the Receiver's understanding that, with the exception of EVR and EVH, none of the Hunking Entities has any assets of substance. It is apparent that the financial affairs and the flow of funds between and among the Hunking Entities are inextricably intertwined such that a fulsome claims process is required to accurately determine the totality of claims against EVR (taking into account the intercompany claims and the claimants of each of the Hunking Entities).
- 4.11 For the foregoing reasons, the Receiver believes that it is appropriate to formulate a claims process in respect of the Hunking Entities in consultation with the Investor Plaintiffs, the AGO, EVR and such other parties as the Receiver may deem appropriate. The Receiver seeks this Court's advice and directions in this regard.

## ***5.0 RECEIVER'S AND ITS COUNSEL'S ACCOUNTS***

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- 5.1** Pursuant to paragraph 26 of the Receivership Order, the Receiver and its counsel are required to pass their accounts before a judge of the Commercial List. The fees and disbursements of the Receiver and its counsel for the period from August 13, 2016 through to September 9, 2016 are detailed in the attached affidavits of Michael Hanson and Asim Iqbal for the Receiver and its counsel respectively. The affidavit of Michael Hanson is attached as **Appendix "I"** and the affidavit of Asim Iqbal is attached as **Appendix "J"**.
- 5.2** The Receiver's fees for the period from August 13 through to September 9, 2016 encompass 68.2 hours at an average hourly rate of \$410.81 and disbursements of \$117.88, for a total of \$28,134.88, prior to applicable taxes. The Receiver is therefore requesting that this Court approve its total fees and disbursements inclusive of applicable taxes in the amount of \$31,792.41.
- 5.3** The fees of TGF for the period from August 13 to September 9, 2016 encompass 107 hours at an average hourly rate of \$586.40 and disbursements of \$1,622.60 for a total of \$64,367.60, plus \$8,367.79 in HST. The Receiver is therefore requesting that this Honourable Court approve its counsel's total fees and disbursements inclusive of taxes in the amount of \$72,735.39.
- 5.4** The Receiver has reviewed the fees of TGF and is of the opinion that they are reasonable in the circumstances.

## ***6.0 RECOMMENDATIONS***

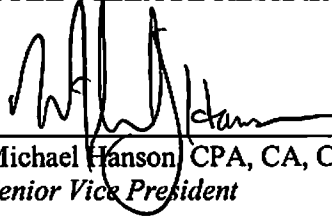
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**6.1** We respectfully submit this Fifth Report to this Court in support of:

- an Order directing a distribution from the sale proceeds of the Transaction to permanently and fully repay the indebtedness of the Secured Creditors;
- an Order authorizing and directing the Receiver to pay the Professional Group on behalf of EVR in accordance with the Receivership Order;
- this Court's advice and directions with respect to the formulation and implementation of a claims process regarding of the remaining sale proceeds, after payment to the Secured Creditors; and
- an Order approving the Receiver's activities as set out in the Fourth Report and Fifth Report and the fees and disbursements of the Receiver and its counsel, TGF.

All of which is respectfully submitted this 20<sup>th</sup> day of September, 2016.

**BDO CANADA LIMITED  
COURT-APPOINTED RECEIVER OF  
EMMANUEL VILLAGE RESIDENCE INC.**



Per: Michael Hanson CPA, CA, CIRP, LIT  
*Senior Vice President*