

**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

**SECOND REPORT OF BDO CANADA LIMITED**

**IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF**

**EMMANUEL VILLAGE RESIDENCE INC.**

**August 18, 2016**

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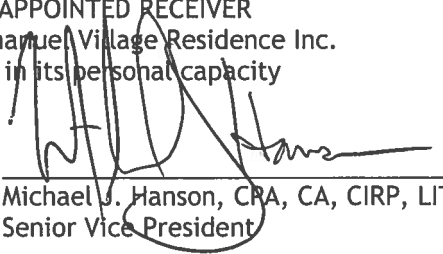
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- 1.1 BDO Canada Limited was appointed as Receiver (in such capacity, the “**Receiver**”) of all of the assets, undertaking and property of Emmanuel Village Residence Inc. (“**EVR**”) under section 101 of the *Courts of Justice Act* (the “**CJA**”) pursuant to the Order of Justice Penny dated June 24, 2016 (the “**Appointment Order**”) of the Ontario Superior Court of Justice - Commercial List.
- 1.2 Under the terms of the Appointment Order, the Receiver did not take possession and control of the Property. The Receiver was appointed to review EVR’s out-of-court sales process from which EVR received a letter of intent from a potential purchaser (the “**Purchaser**”) for substantially all of EVR’s assets.
- 1.3 On August 12, 2016, EVR executed an agreement with the Purchaser for the sale of substantially all of EVR’s assets (the “**Transaction**”). A motion (the “**Sale Approval Motion**”) approving the Transaction is scheduled for August 31, 2016.
- 1.4 EVR owns and operates a retirement community known as the Emmanuel Village Retirement Residence in Kitchener, ON. On the adjoining land, Emmanuel Village Homes (Kitchener) Inc. owns and operates 42 life lease townhomes for retired and elderly individuals (the “**EVH Residents**”).
- 1.5 As described in the Affidavit of Judith Hunking sworn August 17, 2016, EVH Residents have (i) a contractual option to pay EVR an amenity fee in exchange for some or all of EVR’s services (the “**Amenity Option**”), and (ii) informal access to EVR’s in-house physiotherapy program. Pursuant to the terms of the APS, EVR is required to terminate the Amenity Option and the in house physiotherapy program will no longer be available to EVH Residents.
- 1.6 As a result of the potential impact on the EVH Resident’s rights and privileges, it was determined that representative counsel for the EVH Residents is appropriate.
- 1.7 The purpose of this report is to provide this Court with the Receiver’s recommendations in respect of EVR’s motion for an order (the “**Representative Counsel Order**”), among other things:
  - (a) appointing Nancy Lugere as the Representative for EVH Residents (the “**Representative**”) to advise the EVH Residents in respect of the sale of the assets of EVR;
  - (b) appointing Oldfield, Greaves, D’Agostino as Representative Counsel for the EVH Residents ( “**Representative Counsel**”);
  - (c) amending the Appointment Order to include the fees and disbursements of Representative Counsel in the Administration Charge pursuant to paragraph 27-29 of the Appointment Order; and

- 2.1 In addition to appointing the Representative and Representative Counsel, the terms of the proposed Representative Counsel Order provide that:
- (a) EVR must provide Representative Counsel with information and documentation that would be relevant to its mandate;
  - (b) service on Representative Counsel shall constitute service on the EVR Residents;
  - (c) all EVH Residents are to receive a copy of the Representative Counsel Order, if granted; and
  - (d) Each EVH Resident may opt-out of being represented by the Representative and Representative Counsel by providing the Receiver and EVR written notice within 5 business days from receiving a copy of the issued Representative Counsel Order.

- 3.1 The Receiver supports the appointment of the Representative and Representative Counsel for the following reasons:
- (a) Representative Counsel will be able to provide legal advice to the EVH Residents who are elderly individuals and would otherwise be required to retain counsel individually, which may not be affordable; and
  - (b) the issues affecting the EVH Residents are common to all such residents and thus it is appropriate for representation to be provided as a group.
- 3.2 It is proposed that the fees and disbursements of Representative Counsel be paid by EVR or the Receiver and secured by the Administration Charge. As set out in the affidavit of Tim McGowan sworn August 17, 2016, EVR is not in a position to pay the ongoing fees of Representative Counsel and thus, the only security for payment would be as part of the Administration Charge.
- 3.3 Representative Counsel's representation of the EVH Residents will be a benefit for all stakeholders. In the Receiver's view, it is appropriate for Representative Counsel's fees and disbursements to be secured by the Administration Charge and to be afforded all of the benefits and security of that Charge.
- 3.4 For the foregoing reasons, the Receiver recommends this Court grant the proposed Representative Counsel Order.

BDO Canada Limited. in its capacity as  
COURT-APPOINTED RECEIVER  
OF Emmanuel Village Residence Inc.  
and not in its personal capacity

  
Per: Michael J. Hanson, CRA, CA, CIRP, LIT  
Senior Vice President