

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CENTRAL 1 CREDIT UNION

Applicant

and

2139770 ONTARIO INC.

Respondent

**MOTION RECORD  
(RETURNABLE APRIL 17, 2025)**

**SimpsonWigle LAW LLP**  
1006 Skyview Drive, Suite 103  
Burlington, ON L7P 0V1

**Rosemary A. Fisher (LSO No. 32238T)**  
Email: [fisherr@simpsonwigle.com](mailto:fisherr@simpsonwigle.com)  
Tel: (905) 639-1052

Lawyers for the Receiver, BDO Canada  
Limited

TO: THE SERVICE LIST

## SERVICE LIST

<p><b>CENTRAL 1</b> 2810 Matheson Blvd. East 6th Floor Mississauga, ON L4W 4X7</p>	<p><b>Suzanne Fisher</b> Tel: 905-282-8540 Email: SFisher@central1.com</p> <p><b>Vik Gujarati</b> Email: vgujarati@central1.com</p>
<p><b>GOWLING WLG (CANADA) LLP</b> 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5</p> <p>Lawyers for Central 1 Credit Union</p>	<p><b>Susan Rosen</b> Tel: 416-862-3519 Email: <a href="mailto:susan.rosen@gowlingwlg.com">susan.rosen@gowlingwlg.com</a></p> <p><b>Heather Fisher</b> Tel: 416-369-7202 Email: heather.fisher@gowlingwlg.com</p>
<p><b>MANN LAWYERS LLP</b> 300-11 Holland Avenue Ottawa, ON K1Y 4S1</p> <p>Lawyers for the Respondent, 2139770 Ontario Inc.</p>	<p><b>K. Scott McLean</b> Email: <a href="mailto:scott.mclean@mannlawyers.com">scott.mclean@mannlawyers.com</a></p> <p><b>Alexander Bissonnette</b> Tel: 613 369 0358 Email: <a href="mailto:alexander.bissonnette@mannlawyers.com">alexander.bissonnette@mannlawyers.com</a></p>
<p><b>DAVID CHOO</b> 203 Clemov Avenue Ottawa, ON K1S 2B3</p> <p>Guarantor</p>	<p><b>David Choo</b> Email: dchoo@ashcrofthomes.ca</p>

<p><b>KSV RESTRUCTURING INC.</b>  220 Bay Street  Toronto, ON M5H 1J9</p> <p>Interim Receiver of 2265132 Ontario Inc.</p>	<p><b>Bobby Kofman</b>  Tel: 416.932.6228  Email: <a href="mailto:bkofman@ksvadvisory.com">bkofman@ksvadvisory.com</a></p> <p><b>Mitch Vininsky</b>  Tel: 416.932.6013  Email: <a href="mailto:mvininsky@ksvadvisory.com">mvininsky@ksvadvisory.com</a></p> <p><b>David Sieradzki</b>  Tel: 416.932.6030  Email: <a href="mailto:dsieradzki@ksvadvisory.com">dsieradzki@ksvadvisory.com</a></p> <p><b>Ross Graham</b>  Tel: 587.287.2750  Email: <a href="mailto:rgraham@ksvadvisory.com">rgraham@ksvadvisory.com</a></p>
<p><b>NORTON ROSE FULBRIGHT CANADA LLP</b>  222 Bay Street, Suite 3000  P.O. Box 53  Toronto, ON M5K 1E7</p> <p>Lawyers for KSV Restructuring Inc.</p>	<p><b>Jennifer Stam</b>  Tel: 416.202.6707  Email: <a href="mailto:jennifer.stam@nortonrosefulbright.com">jennifer.stam@nortonrosefulbright.com</a></p> <p><b>Lauren Archibald</b>  Tel: 416.278.3787  Email: <a href="mailto:lauren.archibald@nortonrosefulbright.com">lauren.archibald@nortonrosefulbright.com</a></p>
<p><b>BLANEY MCMURTRY LLP</b>  2 Queen Street East, Suite 1500  Toronto, ON M5C 3G5</p> <p>Lawyers for KSV Restructuring Inc.</p>	<p><b>Eric Golden</b>  Tel: 416.593.3927  Email: <a href="mailto:egolden@blaney.com">egolden@blaney.com</a></p> <p><b>Chad Kopach</b>  Tel: 416.593.2985  Email: <a href="mailto:ckopach@blaney.com">ckopach@blaney.com</a></p>
<p><b>BLUE ROCK LAW LLP</b>  700, 215 - 9th Avenue SW,  Calgary, AB T2P 1K3</p> <p>Lawyers for Ashcroft Urban Developments Inc., 2067166 Ontario Inc., 2139770 Ontario Inc., 2265132 Ontario Inc., Ashcroft Homes – LA Promenade Inc., 2195186 Ontario Inc., Ashcroft Homes – Capital Hall Inc., and 1019883 Ontario Inc.</p>	<p><b>David Mann, K.C.</b>  Tel: 1-403-605-3992  Email: <a href="mailto:david.mann@bluerocklaw.com">david.mann@bluerocklaw.com</a></p>

<p><b>GOWLING WLG (CANADA) LLP</b>  1 First Canadian Place  100 King Street West, Suite 1600  Toronto, ON M5X 1G5</p> <p>Lawyers for CIBC</p>	<p><b>Clifton Prophet</b>  Tel: 1-416-862-3509  Email: <a href="mailto:clifton.prophet@gowlingwlg.com">clifton.prophet@gowlingwlg.com</a></p>
<p><b>Retirement Homes Regulatory Authority</b></p>	<p><b>Michael McClurg</b>  Email: <a href="mailto:Michael.McClurg@rhra.ca">Michael.McClurg@rhra.ca</a></p>
<p><b>FOGLER, RUBINOFF LLP</b>  Scotia Plaza  40 King Street West, Suite 2400  P.O. Box 215  Toronto, ON M5H 3Y2</p> <p>Lawyers for the Retirement Homes  Regulatory Authority</p>	<p><b>Tim Duncan</b>  Tel: 416-941-8817  Email: <a href="mailto:tduncan@foglers.com">tduncan@foglers.com</a></p>
<b>GOVERNMENT</b>	
<p><b>OFFICE OF THE SUPERINTENDENT OF  BANKRUPTCY CANADA</b>  151 Yonge St., Fourth Floor  Toronto, ON M5C 2W7</p>	<p>Email:  osbservice-bsfservice@ised-isde.gc.ca</p>
<p><b>CANADA REVENUE AGENCY</b>  1 Front Street West  Toronto, ON M5J 2X6</p>	<p>Kelly Smith Wayland  Email: <a href="mailto:kelly.smithwayland@justice.gc.ca">kelly.smithwayland@justice.gc.ca</a></p> <p>Fozia Chaudary  Email: <a href="mailto:fozia.chaudary@justice.gc.ca">fozia.chaudary@justice.gc.ca</a></p>
<p><b>MINISTRY OF FINANCE</b>  Ministry of the Attorney General (Ontario)  Civil Law Division - Legal Services Branch  6-33 King St West  Oshawa, ON L1H 8H5</p>	<p>Email: <a href="mailto:steven.groeneveld@ontario.ca">steven.groeneveld@ontario.ca</a></p>

<p><b>MINISTRY OF FINANCE</b>  Ministry of the Attorney General (Ontario)  Collections Branch – Bankruptcy and  Insolvency Unit  6-33 King St West  Oshawa, ON L1H 8H5</p>	<p>Email: <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a></p>
<p><b>ATTORNEY GENERAL OF CANADA ON  BEHALF OF HIS MAJESTY THE KING IN  RIGHT OF CANADA, AS REPRESENTED  BY THE MINISTER OF NATIONAL  REVENUE</b>  Department of Justice  Ontario Regional Office - Tax Law Section  120 Adelaide Street West, Suite 400  Toronto, ON M5H 1T1</p>	<p>Email: <a href="mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca">AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</a></p> <p><b>Saagar Uppal</b>  Counsel, Tax Litigation Section, Department of  Justice  Tel.: (343) 598-3344  Email: <a href="mailto:Saagar.Uppal@justice.gc.ca">Saagar.Uppal@justice.gc.ca</a></p>

### E-Service List

[SFisher@central1.com](mailto:SFisher@central1.com); [vgujarati@central1.com](mailto:vgujarati@central1.com); [susan.rosen@gowlingwlq.com](mailto:susan.rosen@gowlingwlq.com);  
[heather.fisher@gowlingwlq.com](mailto:heather.fisher@gowlingwlq.com); [dchoo@ashcrofthomes.ca](mailto:dchoo@ashcrofthomes.ca);  
[scott.mclean@mannlawyers.com](mailto:scott.mclean@mannlawyers.com); [alexander.bissonnette@mannlawyers.com](mailto:alexander.bissonnette@mannlawyers.com);  
[osbservice-bsfservice@ised-isde.gc.ca](mailto:osbservice-bsfservice@ised-isde.gc.ca); [AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca);  
[steven.groeneveld@ontario.ca](mailto:steven.groeneveld@ontario.ca); [insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca);  
[bkofman@ksvadvisory.com](mailto:bkofman@ksvadvisory.com); [mvininsky@ksvadvisory.com](mailto:mvininsky@ksvadvisory.com);  
[dsieradzki@ksvadvisory.com](mailto:dsieradzki@ksvadvisory.com); [rgraham@ksvadvisory.com](mailto:rgraham@ksvadvisory.com);  
[jennifer.stam@nortonrosefulbright.com](mailto:jennifer.stam@nortonrosefulbright.com); [lauren.archibald@nortonrosefulbright.com](mailto:lauren.archibald@nortonrosefulbright.com);  
[egolden@blaney.com](mailto:egolden@blaney.com); [ckopach@blaney.com](mailto:ckopach@blaney.com); [david.mann@bluerocklaw.com](mailto:david.mann@bluerocklaw.com);  
[clifton.prophet@gowlingwlq.com](mailto:clifton.prophet@gowlingwlq.com); [kelly.smithwayland@justice.gc.ca](mailto:kelly.smithwayland@justice.gc.ca);  
[fozia.chaudary@justice.gc.ca](mailto:fozia.chaudary@justice.gc.ca); [Michael.McClurg@rhra.ca](mailto:Michael.McClurg@rhra.ca); [tduncan@foglers.com](mailto:tduncan@foglers.com);  
[Saagar.Uppal@justice.gc.ca](mailto:Saagar.Uppal@justice.gc.ca)

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CENTRAL 1 CREDIT UNION

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and

2139770 ONTARIO INC.

Respondent

**I N D E X**

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<a href="#">First Report of the Receiver, dated April 7, 2025</a>	2
<b>Appendix A:</b> <a href="#">Appointment Order</a>	A
<b>Appendix B:</b> <a href="#">Reasons for Decision</a>	B
<b>Appendix C:</b> <a href="#">Receiver's Interim Statement of Receipts and Disbursements</a>	C
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TAB 1

Court File No. CV-24-00097134-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

CENTRAL 1 CREDIT UNION

Applicant

- and -

2139770 ONTARIO INC.

Respondent

**NOTICE OF MOTION  
(Returnable: April 17<sup>th</sup>, 2025)**

BDO Canada Limited (“**BDO**” or the “**Receiver**”) in its capacity as receiver, without security, of the property, assets and undertakings of 2139770 Ontario Inc. (the “**Company**” or the “**Debtor**”), will make a Motion before a Judge on Thursday, the 17<sup>th</sup> day of April, 2025, at 10:00 a.m., or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard by video conference,

at the following location:

161 Elgin Street, Ottawa, Ontario.

**THE MOTION IS FOR:**

1. An Order approving the Receiver’s proposed sale process and such further Order as this Honourable Court deems just.

## THE GROUNDS FOR THIS MOTION ARE:

### Background

1. Pursuant to the Order of the Honourable Justice Mew dated December 20, 2024 (the “**Appointment Order**”), BDO was appointed as Receiver of the assets, undertakings and properties of the Debtor.

### Sale Process

2. The Appointment Order empowers the Receiver to:

a) sell, convey, transfer, lease or assign the Real Property or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$100,000.00 provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and,

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required; and,

b) to apply for any vesting order or other orders necessary to convey the Real Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Real Property.

3. The Debtor is one of several related companies which are part of a broader group of more than 55 affiliated entities known as the Ashcroft Homes Group. The business of the Group is the purchase, development and operation of residential communities in the Ottawa area for seniors, students and general residential markets and the lease or sale of accommodations in those communities. The Company operates Ravines Retirement at 626 Prado Private in Ottawa. There is, directly adjacent to this particular care home, a retirement residence which is physically connected to 626 Prado Private, although owned and operated by a separate corporation (2265132 Ontario Inc.). The connection between the care homes allows residents to use facilities in the adjacent building.

4. On December 5, 2024, Ashcroft Urban Developments, 2067166 Ontario Inc., 2139770 Ontario Inc. (the Company/Debtor), 2265132 Ontario Inc. (adjacent building at 636 Prado Private), Ashcroft Homes – La Promenade Inc., 2195186 Ontario Inc., Ashcroft Homes – Hall Inc. and 101988 Ontario Inc. (collectively, the “**CCAA Applicants**”) made an application to this court for an initial order for the appointment of Grant Thornton Limited as monitor of the CCAA Applicants. Said CCAA application was granted by Justice Mew; however, it has recently been terminated in respect of this particular property at 626 Prado Private and, as well, at the adjacent property at 636 Prado Private.

5. The adjacent property is subject to a court-appointed receiver at the application of ACM Advisors Ltd. KSV Restructuring Inc. (“**KSV**”) is the appointed receiver in respect of that property.

6. A formalized sale process is necessary primarily given the two adjacent properties. It is the view of the Receiver that there should be a plan relative to potentially selling the properties together or what occurs in the event they are sold to different purchasers at different times.

7. Given the circumstances of the two adjacent properties which are connected by both a covered walkway and underground tunnel, it is necessary to consider a number of potential outcomes. Additionally, for the piece of mind of the residents, their families, staff and persons and their families who are interested in residing at Ravines, it is important to restore peace of mind and a sense of stability as soon as is possible.

8. It is in the interest of all parties that a sale process be approved as soon as is possible.

9. Such grounds as described in the First Report of the Receiver, filed.

10. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of this motion:

1. The First Report of the Receiver and the appendices annexed thereto; and,

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2. Such further and other evidence as counsel may adduce and this Honourable

Court may permit.

January 23, 2025

**SimpsonWigle LAW LLP**  
1006 Skyview Drive, Suite 103  
Burlington, ON L7P 0V1

**Rosemary A. Fisher** (LSO #32238T)  
E-mail: [fisherr@simpsonwigle.com](mailto:fisherr@simpsonwigle.com)  
Tel: (905) 639-1052  
Fax: (905) 528-9008

Lawyers for BDO Canada Limited., in its capacity  
as Receiver of the assets, undertakings and  
property of 2139770 Ontario Inc.

TO: THE SERVICE LIST APPENDED AS SCHEDULE "A"

## SCHEDULE "A" SERVICE LIST

SERVICE LIST	
<b>CENTRAL 1</b> 2810 Matheson Blvd. East 6th Floor Mississauga, ON L4W 4X7	<b>Suzanne Fisher</b> Tel: 905-282-8540 Email: SFisher@central1.com  <b>Vik Gujarati</b> Email: vgujarati@central1.com
<b>GOWLING WLG (CANADA) LLP</b> 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5  Lawyers for Central 1 Credit Union	<b>Susan Rosen</b> Tel: 416-862-3519 Email: <a href="mailto:susan.rosen@gowlingwlg.com">susan.rosen@gowlingwlg.com</a>  <b>Heather Fisher</b> Tel: 416-369-7202 Email: heather.fisher@gowlingwlg.com
<b>MANN LAWYERS LLP</b> 300-11 Holland Avenue Ottawa, ON K1Y 4S1  Lawyers for the Respondent, 2139770 Ontario Inc.	<b>K. Scott McLean</b> Email: <a href="mailto:scott.mclean@mannlawyers.com">scott.mclean@mannlawyers.com</a>  <b>Alexander Bissonnette</b> Tel: 613 369 0358 Email: <a href="mailto:alexander.bissonnette@mannlawyers.com">alexander.bissonnette@mannlawyers.com</a>
<b>DAVID CHOO</b> 203 Clemov Avenue Ottawa, ON K1S 2B3  Guarantor	<b>David Choo</b> Email: dchoo@ashcrofthomes.ca

<p><b>KSV RESTRUCTURING INC.</b> 220 Bay Street Toronto, ON M5H 1J9</p> <p>Interim Receiver of 2265132 Ontario Inc.</p>	<p><b>Bobby Kofman</b> Tel: 416.932.6228 Email: <a href="mailto:bkofman@ksvadvisory.com">bkofman@ksvadvisory.com</a></p> <p><b>Mitch Vininsky</b> Tel: 416.932.6013 Email: <a href="mailto:mvininsky@ksvadvisory.com">mvininsky@ksvadvisory.com</a></p> <p><b>David Sieradzki</b> Tel: 416.932.6030 Email: <a href="mailto:dsieradzki@ksvadvisory.com">dsieradzki@ksvadvisory.com</a></p> <p><b>Ross Graham</b> Tel: 587.287.2750 Email: <a href="mailto:rgraham@ksvadvisory.com">rgraham@ksvadvisory.com</a></p>
<p><b>NORTON ROSE FULBRIGHT CANADA LLP</b> 222 Bay Street, Suite 3000 P.O. Box 53 Toronto, ON M5K 1E7</p> <p>Lawyers for KSV Restructuring Inc.</p>	<p><b>Jennifer Stam</b> Tel: 416.202.6707 Email: <a href="mailto:jennifer.stam@nortonrosefulbright.com">jennifer.stam@nortonrosefulbright.com</a></p> <p><b>Lauren Archibald</b> Tel: 416.278.3787 Email: <a href="mailto:lauren.archibald@nortonrosefulbright.com">lauren.archibald@nortonrosefulbright.com</a></p>
<p><b>BLANEY MCMURTRY LLP</b> 2 Queen Street East, Suite 1500 Toronto, ON M5C 3G5</p> <p>Lawyers for KSV Restructuring Inc.</p>	<p><b>Eric Golden</b> Tel: 416.593.3927 Email: <a href="mailto:egolden@blaney.com">egolden@blaney.com</a></p> <p><b>Chad Kopach</b> Tel: 416.593.2985 Email: <a href="mailto:ckopach@blaney.com">ckopach@blaney.com</a></p>
<p><b>BLUE ROCK LAW LLP</b> 700, 215 - 9th Avenue SW, Calgary, AB T2P 1K3</p> <p>Lawyers for Ashcroft Urban Developments Inc., 2067166 Ontario Inc., 2139770 Ontario Inc., 2265132 Ontario Inc., Ashcroft Homes – LA Promenade Inc., 2195186 Ontario Inc., Ashcroft Homes – Capital Hall Inc., and 1019883 Ontario Inc.</p>	<p><b>David Mann, K.C.</b> Tel: 1-403-605-3992 Email: <a href="mailto:david.mann@bluerocklaw.com">david.mann@bluerocklaw.com</a></p>

~

<p><b>GOWLING WLG (CANADA) LLP</b> 1 First Canadian Place 100 King Street West, Suite 1600 Toronto, ON M5X 1G5</p> <p>Lawyers for CIBC</p>	<p><b>Clifton Prophet</b> Tel: 1-416-862-3509 Email: <a href="mailto:clifton.prophet@gowlingwlg.com">clifton.prophet@gowlingwlg.com</a></p>
<b>GOVERNMENT</b>	
<p><b>OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY CANADA</b> 151 Yonge St., Fourth Floor Toronto, ON M5C 2W7</p>	<p>Email: <a href="mailto:osbservice-bsfservice@ised-isde.gc.ca">osbservice-bsfservice@ised-isde.gc.ca</a></p>
<p><b>CANADA REVENUE AGENCY</b> 1 Front Street West Toronto, ON M5J 2X6</p>	<p>Kelly Smith Wayland Email: <a href="mailto:kelly.smithwayland@justice.gc.ca">kelly.smithwayland@justice.gc.ca</a></p> <p>Fozia Chaudary Email: <a href="mailto:fozia.chaudary@justice.gc.ca">fozia.chaudary@justice.gc.ca</a></p>
<p><b>MINISTRY OF FINANCE</b> Ministry of the Attorney General (Ontario) Civil Law Division - Legal Services Branch 6-33 King St West Oshawa, ON L1H 8H5</p>	<p>Email: <a href="mailto:steven.groeneveld@ontario.ca">steven.groeneveld@ontario.ca</a></p>
<p><b>MINISTRY OF FINANCE</b> Ministry of the Attorney General (Ontario) Collections Branch – Bankruptcy and Insolvency Unit 6-33 King St West Oshawa, ON L1H 8H5</p>	<p>Email: <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a></p>
<p><b>ATTORNEY GENERAL OF CANADA ON BEHALF OF HIS MAJESTY THE KING IN RIGHT OF CANADA, AS REPRESENTED BY THE MINISTER OF NATIONAL REVENUE</b> Department of Justice Ontario Regional Office - Tax Law Section 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1</p>	<p>Email: <a href="mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca">AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</a></p>

~

**E-Service List**

[SFisher@central1.com](mailto:SFisher@central1.com); [vgujarati@central1.com](mailto:vgujarati@central1.com); [susan.rosen@gowlingwlq.com](mailto:susan.rosen@gowlingwlq.com);  
[heather.fisher@gowlingwlq.com](mailto:heather.fisher@gowlingwlq.com); [dchoo@ashcrofthomes.ca](mailto:dchoo@ashcrofthomes.ca); [scott.mclean@mannlawyers.com](mailto:scott.mclean@mannlawyers.com);  
[alexander.bissonnette@mannlawyers.com](mailto:alexander.bissonnette@mannlawyers.com); [osbservice-bsfbservice@ised-isde.gc.ca](mailto:osbservice-bsfbservice@ised-isde.gc.ca); [AGC-  
PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-<br/>PGC.Toronto-Tax-Fiscal@justice.gc.ca); [steven.groeneveld@ontario.ca](mailto:steven.groeneveld@ontario.ca);  
[insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca); [bkofman@ksvadvisory.com](mailto:bkofman@ksvadvisory.com); [mvininsky@ksvadvisory.com](mailto:mvininsky@ksvadvisory.com);  
[dsieradzki@ksvadvisory.com](mailto:dsieradzki@ksvadvisory.com); [rgraham@ksvadvisory.com](mailto:rgraham@ksvadvisory.com);  
[jennifer.stam@nortonrosefulbright.com](mailto:jennifer.stam@nortonrosefulbright.com); [lauren.archibald@nortonrosefulbright.com](mailto:lauren.archibald@nortonrosefulbright.com);  
[egolden@blaney.com](mailto:egolden@blaney.com); [ckopach@blaney.com](mailto:ckopach@blaney.com); [david.mann@bluerocklaw.com](mailto:david.mann@bluerocklaw.com);  
[clifton.prophet@gowlingwlq.com](mailto:clifton.prophet@gowlingwlq.com); [kelly.smithwayland@justice.gc.ca](mailto:kelly.smithwayland@justice.gc.ca);  
[fozia.chaudary@justice.gc.ca](mailto:fozia.chaudary@justice.gc.ca)

**CENTRAL 1 CREDIT UNION**  
Applicant

-and- 2139770 ONTARIO INC.  
Respondent

Court File No. CV-24-00097134-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT  
OTTAWA

**NOTICE OF MOTION**

**SimpsonWigle LAW LLP**  
1006 Skyview Drive  
Suite 103  
Burlington, Ontario L7P 0V1

**Rosemary A. Fisher (LSO #32238T)**  
Email: fisherr@simpsonwigle.com  
Tel: (905) 639-1052

Lawyers for BDO Canada Limited, the court-appointed  
receiver of 2139770 Ontario Inc.

TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**CENTRAL 1 CREDIT UNION**

Applicant

- and -

**2139770 ONTARIO INC.**

Respondents

**IN THE MATTER OF AN APPLICATION PURSUANT TO SUBSECTION 243(1) OF THE  
*BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED; AND  
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43 AS AMENDED**

**FIRST REPORT TO THE COURT  
SUBMITTED BY BDO CANADA LIMITED  
IN ITS CAPACITY AS RECEIVER OF  
2139770 ONTARIO INC.**

**APRIL 7, 2025**

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# 1.0 INTRODUCTION AND PURPOSE OF REPORT

## 1.1 Introduction

- 1.1.1 By way of an order of the Honourable Justice Mew of the Ontario Superior Court of Justice (the “**Court**”) dated December 20, 2024 (the “**Appointment Order**”), BDO Canada Limited was appointed as the receiver (“**BDO**” or the “**Receiver**”), without security, of all the Property (as defined in the Appointment Order) of 2139770 Ontario Inc. (“**213 Ontario**”, “**Ravines Retirement**” or the “**Company**”). A copy of the Appointment Order is attached hereto as [Appendix A](#).
- 1.1.2 The Company, together with various related entities including, but not limited to, 2265132 Ontario Inc. (“**Ravines Senior**”), sought and obtained an order granting protection under the *Companies’ Creditors Arrangement Act* on December 5, 2024 (the “**CCAA Proceedings**”). At the comeback motion held on December 12, 2024, several lenders opposed the continuation of the CCAA Proceedings and pursuant to the decision of the Honourable Justice Mew dated December 20, 2024 (the “**Decision**”), a copy of which is attached hereto as [Appendix B](#), the Court dismissed the motion to extend the CCAA proceedings and issued the Appointment Order, among other orders appointing KSV Restructuring Inc. (“**KSV**”) as interim receiver and subsequently receiver of Ravines Senior and 1384274 Ontario Inc. (“**138 Ontario**”).

## 1.2 Background

- 1.2.1 Ravines Retirement owns and operates a 125-room retirement home from owned land municipally known as 626 Prado Private, Nepean Ontario (the “**Ravines Retirement Property**”). The Ravines Retirement Property, while a distinctly separate legal entity and municipal address, is intertwined with the neighbouring Ravines Senior. As outlined further herein, there are a number of shared staff and services between the two facilities, including the on-site management team, insurance coverage, phone system, and shared facilities (pool, nursing station, cinema, etc.) as well connecting above ground (1<sup>st</sup> floor) and underground corridors. Additionally, 138 Ontario owns the underground parking garage and above ground paved parking spaces (collectively the “**Parking Areas**”) which are used by Ravines Retirement and Ravines Senior.
- 1.2.2 Overall, the Ravines Retirement Property is part of a parcel of land which comprises 5 separate PIN’s associated with the site, each owned by a separate legal entity with shared roadways and parking (collectively the “**Ravines Campus**”), the shared use of which is subject to a Joint Use Management Agreement (the “**JUMA**”).
- 1.2.3 The JUMA governs this arrangement, including maintenance, and access rights across multiple parcels. While the arrangement benefits residents (e.g., connected amenities), it adds complexity to any sale, as prospective buyers must also consider cross-easements and consistent management of shared components.

1.2.4 As outlined further herein, the Appraisers and Realtors from whom the Receiver sought listing proposals anticipate that any likely purchaser, would seek to acquire Ravines Retirement, Ravines Senior and 138 Ontario on a combined basis.

1.2.5 In addition to Ravines Retirement, Ravines Senior and the Parking Areas, all of which are subject to receivership proceedings (the “**Ravines Receivership Properties**”), there are two parcels of excess land, owned by companies that are not subject to receivership proceedings, and are ultimately owned by Mr. David Choo.

1.2.6 Below is a chart which lists the legal ownership of each PIN together with the applicable Receiver of the first 3 entities:

Description	Legal Owner	Receiver
Ravines Retirement	2139770 Ontario Inc.	BDO
Ravines Senior	2265132 Ontario Inc.	KSV
Driveway, Parking and Garage	13847274 Ontario Inc.	KSV
Excess Land #1	2252514 Ontario Inc.	N/A
Excess Land #2	Ashcroft Homes - CITI Place Inc.	N/A

1.2.7 The illustration below provides a sketch of the Ravines Campus:



1.2.8 Ravines Retirement consists of 125 rooms (with 126 Units available for lease). Room 201 (i.e. 201A & 201B) is a companion suite on the memory care floor and in

some instances is occupied as a 2 bedroom by one tenant and other times it's occupied by two tenants both charged rent & services. As of January 1, 2025 Ravines Retirement had 93 Units occupied (74.4%) and as at February 1, 2025 there were 97 Units occupied (77.6%), 11 of which include a secondary resident.

1.2.9 As outlined herein, the Receiver proposes to market the Ravines Retirement operations for sale, and subject to an agreed upon arrangement with KSV and the respective primary stakeholders of the Ravines Receivership Properties, seeks the Court's flexibility to market the Ravines Receivership Properties on a combined basis.

### 1.3 Purpose of this Report

1.3.1 This report is the Receiver's first report to the Court (the "**First Report**") in this proceeding and it is filed to:

- Report to the Court on the Receiver's activities since its appointment;
- Provide the Court with details relating to proposed marketing and sale process (the "**Sale Process**") for the sale of Ravines Retirement; and to
- Provide support for the Receiver's motion to obtain an Order:
  - Approving this First Report and the activities of the Receiver;
  - approving the Receiver's interim statement of receipts and disbursements for the period December 20, 2024 to April 2, 2025 (the "**Interim R&D**");
  - Approving the Sale Process and authorizing the Receiver to proceed with entering into the Newmark Listing Agreement (**as defined herein**);
  - Sealing Confidential Appendices 1, 2, 3 and 4 until the earlier of the completion of a transaction for the sale of the Ravines Retirement or further order of the Court; and
  - Providing such further relief as the Court deems appropriate.

### 1.4 Terms of Reference

1.4.1 In preparing this First Report, the Receiver has relied upon the Company's books and records, unaudited and draft financial information available, certain financial information obtained from third parties, and discussions with various individuals (collectively, the "**Information**"). The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of the Information.

1.4.2 This First Report has been prepared for the use of this Court in respect of the above-noted relief. This First Report should not be relied upon for any other purpose. The Receiver will not assume responsibility or liability for losses incurred as a result of

the circulation, publication, reproduction or use of this First Report contrary to the provisions of this paragraph.

**1.4.3** All references to dollars are in Canadian currency unless otherwise noted.

**1.4.4** In accordance with the Appointment Order, copies of unsealed materials and prescribed notices delivered and/or filed in the receivership proceedings are available on the Receiver's case website at:

<https://www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/2139770-ontario-inc-0a-ravines-retirement-home>

## **2.0 RECEIVER'S ACTIVITIES & OPERATIONS**

### **2.1 Introduction**

2.1.1 The purpose of this Section is to provide the Court with a summary of the Receiver's activities and status of operations since the issuance of the Appointment Order.

### **2.2 Possession**

2.2.1 Subsequent to the issuance of the Appointment Order, the Receiver attended Ravines Retirement to meet with the General Manager, tour and discuss ongoing operations of Ravines Retirement and the integration of the neighbouring Ravines Senior. Additionally, the Receiver attended the offices of Alavida Lifestyles Group of Companies ("**Alavida**"), located at 18 Antares Drive, Ottawa, Ontario ("**Head Office**"), to meet in person with the Director of Finance and Director of Operations and virtually with the CFO and CEO. Therein, the Receiver discussed ensuring ongoing, uninterrupted operations, possession matters, insurance and operations and payroll.

### **2.3 Employees**

2.3.1 Ravines operates with 7 salaried management staff, including the General Manager who is responsible for the day-to-day operations, as well as 99 unionized hourly employees. With the exception of the Director of Care (who is fully dedicated to Ravines Retirement), the remaining six positions split their time 50/50 as amongst Ravines Retirement and Ravines Senior. These employees are paid by Ravines Retirement and the Receiver has made arrangements with KSV to split the payroll cost on the shared 50/50 basis.

2.3.2 Ravines Retirement's hourly employees are members of LIUNA Local 3000 (the "**Union**") and operate pursuant to a Collective Bargaining Agreement ("**CBA**") which expires on April 19, 2025. The Union was asked to confirm dates to meet in March 2025 to discuss and negotiate an extension to the CBA. The Union advised it is available on May 29, 2025.

2.3.3 Subsequent to the Receiver's appointment, it was determined that the Union Dues and pension plan contributions for the Union members were outstanding for the periods September 2024 through December 2024 and totaled \$13,487.72 and \$29,197.81, respectively (the "**Union Remittance Arrears**"). With the consent of Central 1, the Union Remittance Arrears were funded as (i): Union Dues are deducted from payroll and accordingly represent wages subject to Section 81.4 of the BIA; and (ii) the outstanding pension remittances have priority pursuant to Section 81.6 of the BIA.

### **2.4 Insurance Policy**

2.4.1 The Company's insurance coverage is provided by Intact Insurance Company and the insurance broker is Willis Canada Inc. (the "**Broker**"). The insurance policy is effective from November 1, 2024 to November 1, 2025 and is in the name of Alavida

Lifestyles and provides coverage for 7 legal entities including 6 retirement homes as well as 138 Ontario (the “Policy”).

2.4.2 The Receiver notified the Broker of our appointment and has been added as a named insured to the Policy in relation 213 Ontario.

2.4.3 The Policy outlines the specific insurance coverage and premiums for each legal entity/site (“Site Specific Premiums”) as well as various general and umbrella coverages for the group of companies covered by the Policy. Overall, the Insurance Policy premiums, taxes and finance charges total \$330,214.80. Based on the premiums for each property insured, the pro-rata share of the 213 Ontario premiums represents 17% of the total Site Specific Premiums. The Receiver has funded its pro-rata share of the premium payments through March 2025. The balance of the policy will be funded in April 2025, as CAFO Inc., the finance company was not bound to the Stay of Proceedings as the Policy was in the name of Alavida, a non-receivership entity.

## 2.5 Property Taxes

2.5.1 The Receiver sought and obtained a tax certificate from the City of Ottawa to confirm the outstanding property taxes, which totaled \$355,044 as at January 31, 2025 (the “Property Tax Arrears”). With the concurrence of Central 1 Credit Union (“Central 1”), and pursuant to a Receiver’s Certificate, Central 1 advanced \$360,000 to the Receiver to fund the Property Tax Arrears in order to avoid future ongoing penalties and interest.

## 2.6 Banking

2.6.1 The Company operated with a current bank account held at CIBC (the “CIBC Account”). Upon its appointment, the Receiver notified CIBC of its appointment and made arrangements to maintain the CIBC Account for a limited period while the Receiver set up its own account and made arrangements to coordinate tenant PAD’s as well as payment processes for key disbursements/vendors, for example, payroll processing and the food vendor. The Receiver monitored the CIBC Account daily to ensure only authorized payments cleared the CIBC Account. Once the Receiver’s account was set up, the CIBC Account was closed and the funds on hand at that time (~ \$5,900) were transferred.

## 2.7 Receipts & Disbursements

2.7.1 Attached hereto as [Appendix C](#) is the Receiver’s Interim R&D for the period December 20, 2024 to April 2, 2025, which illustrates the account activity in the CIBC Account and the Receiver’s trust account.

2.7.2 As illustrated, Receipts to date total approximately \$3.2 million, relating primarily to Rental Income, cash on hand and the advance pursuant to the Receiver’s Certificate issued to Central 1. Disbursements total approximately \$2.1 million relating primarily to payroll, Property Tax Arrears and the first 2025 installment and other operating expenditures. As at April 2, 2025, the Receiver has approximately \$1,112,000 in its estate trust account and has since reimbursed the advance pursuant to the Receiver’s Certificate and applicable interest.

## **2.8 Vendors**

**2.8.1** The Receiver notified the Company's vendors of our appointment and requested new accounts in the name of the Receiver for approved services provided subsequent to our appointment.

## **2.9 Receiver's Notice:**

**2.9.1** Based on the Company's records, the Receiver prepared its Notice and Statement of Receiver which was issued to the Office of the Superintendent of Bankruptcy and the known creditors pursuant to Section 245(1) / 246(1) of the BIA, a copy of which is attached hereto as [Appendix D](#).

## **2.10 Retirement Homes Regulatory Authority ("RHRA")**

**2.10.1** The Receiver and the RHRA have agreed upon an outline of a plan in our capacity as Receiver of Ravines Retirement. Critical to RHRA was the Receiver's commitments on various operating matters, including to maintain the current General Manager in place and to immediately advise RHRA if there are any changes to the employment status of the GM, if there are any significant operational changes the Receiver intends to make or if there are any risks associated with the provision of any care services at the facility, all of which are acceptable to the Receiver.

## **2.11 Cost Sharing**

**2.11.1** Given the extensive network of legal entities in the Ashcroft Homes enterprise and the intertwined operations of the Ravines Retirement and Ravines Senior, there are a number of shared services and costs, however, Head Office advises there is no formal policy (written or otherwise) to document when/how costs are funded/shared. The Director of Finance confirmed that journal entries are processed to reflect adjustments for shared services, but generally funds were not being transferred as amongst Ravines Retirement and Ravines Senior.

**2.11.2** The Receiver agreed to terms with KSV and Head Office on a determination of the Cost Allocation for Head Office expenses (associated with the finance, HR and payroll processing function) as well as with KSV on the cost allocations with respect to the direct facility costs for Ravines Retirement and Ravines Senior (e.g. site management payroll, telephones).

**2.11.3** Based on BDO's and KSV's pro-rata share and assuming the full cooperation of the remaining operating functions conducted at Head Office, Ravines Retirement pro-rata share of Head Office costs is approximately \$15,000 per month.

## 3.0 SALE PROCESS

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### 3.1 Introduction

- 3.1.1 Pursuant to the Appointment Order, the Receiver is authorized to market any or all of the Property including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate.
- 3.1.2 Given (i) the nature of the Companies' assets and operations, being an operating Retirement home and owning real property, and (ii) the unique nature of the Ravines Campus and how it is integrated with two other legal entities in receivership and two additional related entities, controlled by Mr. Choo, which are not in receivership, in order to maximize realizations for the stakeholders, the Receiver believes it is imperative to maximize exposure to the market. The Receiver is of the view that the market should be tested as fully as possible.
- 3.1.3 Accordingly, the Receiver is of the view that the best means of exposing Ravines Retirement for sale is to enter into a listing agreement with a licensed listing brokerage and have the Ravines Retirement Property exposed on the Multiple Listing Service ("MLS"), and if possible, and subject to an agreement as between the lenders associated with Ravines Retirement, Ravines Senior and the Parking Areas, to market the Ravines Campus as one operating entity.
- 3.1.4 While Ravines Retirement is a separate legal entity, it is expected that a sale will likely not be completed in isolation and that most prospective purchasers would be seeking to mitigate the risks associated with other entities having any form of ownership interest/control/influence at the Ravines Campus. Therefore, we expect purchasers will be looking to acquire the Ravines Retirement, Ravines Senior and the Parking Areas in its entirety, which transaction would require the cooperation of a number of parties. However, at this time, KSV and the respective lenders of Ravines Senior and 138 Ontario are not yet at the point of such a discussion.

### 3.2 Appraisals

- 3.2.1 The Receiver commissioned appraisals from the Seniors Housing & Healthcare Groups of Cushman & Wakefield ("**Cushman**") and CBRE Limited Valuation & Advisory Services ("**CBRE VAS**") (collectively the "**Appraisers**").
- 3.2.2 The Appraisals outline the assumptions and analysis undertaken by each of the Appraisers, together with their assessment of the Market Area, Market Overview and the basis of their respective valuations. The Appraisers utilized the Direct Capitalization, Discounted Cashflow and Direct Comparison approaches to value the Ravines Retirement Property. **Confidential Appendix 1** provides a summary of the 'As is' and 'Stabilized' Appraisal Valuations of Ravines Retirement.
- 3.2.3 Copies of the Cushman and CBRE VAS Appraisals are being submitted to the Court as Confidential Appendix 2 and Confidential Appendix 3, respectively.

3.2.4 Ravines Retirement is well-positioned in a robust Ottawa market, offering desirable senior care services. Although occupancy has lagged recently, rising demand from aging demographics and strong household income levels in the area are driving factors for future performance. However, the Realtors agreed their would be synergies in marketing Ravines Retirement, Ravines Senior and 138 Ontario on a combined basis.

### 3.3 Listing Proposals

3.3.1 The Receiver obtained listing proposals from three real estate brokerages (the “Realtors”) with extensive experience in the senior housing market.

3.3.2 Similar to the Appraisers, the Realtors agreed that key industry players would most likely seek to purchase the Ravines properties on a combined basis and that each expects a higher sale value in marketing/selling Ravines Retirement in conjunction with the adjacent Ravines Senior and Parking Areas. The sentiment is, however, if Ravines Retirement and Ravines Senior are marketed/listed for one combined price, there should be an agreed upon purchase price allocation at the outset of the arrangement to avoid any disputes in the purchase price allocation at a later date when one or more final sales are being negotiated.

3.3.3 A summary of the listing proposals (the “Listing Proposals”), is being submitted to the Court as **Confidential Appendix 4**. The Summary of Listing Proposals contain commercially sensitive information that would negatively affect realizations if disclosed. The Receiver recommends that Confidential Appendix 4 be sealed until a sale of the Ravines Retirement Property is completed or until further order of the Court.

3.3.4 In their analyses, the Realtors utilized various assumptions in determining the valuation of the Ravines Retirement and provided various strategies and proposed commission rates.

3.3.5 In the Listing Proposals received, two (2) of the three (3) Realtors suggested listing the Ravines Retirement without a specific list price and seek offers from interested parties, while Newmark has proposed a listing price in order to provide the market with direction on pricing. In the circumstances, the Receiver agrees with this view in order to set directional pricing for interested parties.

3.3.6 Based on the Realtors’ analyses/valuations, their proposed marketing strategies and their proposed commission structures, the Receiver recommends listing Ravines Retirement with Newmark based on their experience, ability to attract national exposure and lower commission rate structure, with the list price outlined in Confidential Appendix 4.

3.3.7 Subject to the Court’s approval sought herein, the Receiver is negotiating a listing agreement with Newmark (the “Newmark Listing Agreement”).

3.3.8 The Receiver has discussed the terms of the Listing Proposals with Central 1 and has been advised that Central 1 is supportive of the Receiver’s recommendation with respect to entering into the Newmark Listing Agreement.

**3.3.9** Accordingly, the Receiver recommends that this Honourable Court authorize the Receiver to proceed with entering into the Newmark Listing Agreement for the sale of the Ravines Retirement, and subject to a future agreement as between the receiver's and respective lenders, to market certain or all of the Ravines Receivership Properties together.

**3.3.10** The Receiver is seeking the Courts approval for Confidential Appendices 1, 2, 3 and 4 to this First Report (which are filed separately with the Court) be subject to a Sealing Order of the Court pending the completion of the proposed Transaction or until further Order of this Court. The Receiver is proceeding in this manner because, while the Court should have the information, the Receiver wishes to prevent any potential negative impact on the market for the Ravines Retirement Property arising from this information becoming public, until such time that a sale transaction is approved by the Court and is completed.

**3.4 Proposed Sale Process**

**3.4.1** The proposed Sale Process, which is subject to this Court's approval, contemplates the following general timeline:

Stage	Timeline	Description
Pre-Marketing	2-3 Weeks	Financial analysis, valuation, data rooms, proforma, NDAs, marketing, walkthroughs, PSA forms, data hub.
Market Launch	4-6 Weeks	Calls, teaser, CIM, investor talks, video presentations, marketing, submission, data access, interest reports, LOI.
Offer Review Process	1-3 Weeks	Offer Review Process (1-3 weeks) - Bid window, summarize bids, shortlist, negotiate, interviews, select, finalize contract.
Due Diligence Period	30-60 Days	Deposit, deliver materials, contact bidders, coordinate info, manage transaction, waiver date.
Deal Completion	30-45 Days	Court Approval, RHRA approvals, Competition Bureau, transition meetings, closing support, summary & document.

**3.4.2** The Sale Process may be extended by the Receiver, acting reasonably, with a view to completing a transparent and equitable sales process to generate interest in and offers for Ravines Retirement.

- 3.4.3** The Sale Process may be amended to enjoin the sale process of KSV for Ravines Senior and 138 Ontario, if the respective parties reach an agreement for such sale/marketing process.
- 3.4.4** Ravines Retirement shall be transferred free and clear of all liens and claims, subject to any permitted encumbrances, pursuant to an approval and vesting order to be issued by the Court approving the transaction.
- 3.4.5** The sale of Ravines Retirement will be on an “as is, where is” basis, without representations or warranties from the Receiver or any of its respective directors, officers, partners, employees, agents, advisors or estates, except those specified in the asset purchase agreement.
- 3.4.6** Each offer received will be reviewed and evaluated by the Receiver, considering factors such as the proposed purchase price, net value provided by such bid, deposit amount, the counterparties to such transactions, transaction speed and certainty, transaction costs, and the feasibility and timing of transaction completion, and such other matters as the Receiver may consider.
- 3.4.7** The Receiver recommends that the Court issue an Order approving the Sale Process for the following reasons:
- (a) the Sale Process is reasonable and appropriate at this time based on the reasons identified above;
  - (b) the Sale Process is fair, open and transparent and is intended to canvass the market broadly on an efficient basis to obtain the highest and best price; and,
  - (c) the Sale Process and the timelines set out herein are flexible and provide sufficient time to obtain bids that maximize value for Ravines Retirement.

## **4.0 RECOMMENDATIONS**

For the reasons set out above, the Receiver respectfully requests that the Court issue an order:

- a) approving this First Report and the actions of the Receiver described herein;
- b) approving the Receiver's Interim R&D.
- c) approving the Sale Process;
- d) authorizing the Receiver to enter into the Newmark Listing Agreement on a stand-alone basis or if deemed advisable, cooperatively with KSV in respect of a potential marketing of Ravines Retirement, Ravines Senior and 138 Ontario;
- e) sealing Confidential Appendices 1, 2, 3 and 4 until the earlier of the closing of the transaction or transactions for the sale of Ravines Retirement or further order of the Court; and,
- f) Providing such further relief as the Court deems appropriate.

All of which is respectfully submitted this 7<sup>th</sup> day of April, 2025.

**BDO CANADA LIMITED**, solely in its capacity as  
Court-appointed Receiver of  
2139770 Ontario Inc. and not in its corporate or personal capacity.



Per: \_\_\_\_\_  
Christopher J. Mazur, CIRP, LIT  
Senior Vice President

# APPENDIX A



**ON READING** the Application Record of the Applicant dated October 7, 2024, including the affidavit of Suzanne Fisher affirmed September 13, 2024 and the Exhibits thereto; the Responding Application Record of the Respondent dated September 20, 2024 including the Affidavit of Manny Difilippo sworn September 20, 2024 and the exhibits thereto; the Reply Affidavit of Suzanne Fisher affirmed September 22, 2024 and the exhibits thereto; the Supplementary Affidavit of Suzanne Fisher affirmed October 7, 2024 and the exhibits thereto; the Second Supplementary Affidavit of Suzanne Fisher affirmed December 11, 2024 and the exhibits thereto, the Affidavit of Ishbel Buchan sworn December 11, 2024 and the Exhibits thereto, the affidavit of Robert Gartner sworn December 10, 2024 and the Exhibits thereto, the affidavit of Curtis Jackson sworn December 11, 2024 and the Exhibits thereto, the affidavit of Aleksandar Nakevski sworn December 11, 2024 and the Exhibits thereto, the affidavit of David Choo sworn December 4, 2024 and the Exhibits thereto, the affidavit of David Choo sworn December 11, 2024 and the Exhibits thereto, the first report as of December 11, 2024 of Grant Thornton as monitor, the pre-filing report dated as of December 11 (the **“Monitor’s First Report”**), 2024 of KSV as proposed Interim Receiver (the **“Pre-Filing Report”**), and on hearing the submissions of counsel for the Applicant and all other parties listed on the Counsel Slip, no one else appearing for any other party although duly served as appears from the Certificates of Service of Heather Fisher dated September 17, 2024; September 22, 2024; October 7, 2024; and December 11, 2024 and on reading the consent of BDO to act as the Receiver, filed,

## **SERVICE**

1. **THIS COURT ORDERS** that, if necessary, the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, BDO is hereby appointed Receiver, without security, of all of the assets,

undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

### **RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,

- (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of

the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

4. **THIS COURT ORDERS** that nothing in this Order in any way derogates from the obligations of the Receiver to comply with all requirements under the *Retirement Homes Act, 2010*, S.O. 2010 c.11 (the "**Retirement Homes Act**") and O. Reg. 166/11 or limits the exercise of the regulatory authority of the Retirement Homes Regulatory Authority (the "RHRA").

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and

accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** the Receiver shall ensure that it treats all documents and Records in accordance with the obligations contained in the *Retirement Homes Act* and other applicable legislation, including the *Personal Health Information Protection Act, 2004*, c.3 Sched. A.

9. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

10. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except any Proceeding commenced by the RHRA pursuant to the provisions of the *Retirement Homes Act*, with the exception of sections 94, 98 and 99 of the *Retirement Homes Act*, or with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

11. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except, any Proceeding commenced by the RHRA pursuant to the provisions of the *Retirement Homes Act*, with the exception of sections 94, 98 and 99 of the *Retirement Homes Act*, or with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

12. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the

written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, including any regulatory requirements pursuant to the *Retirement Homes Act*, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

13. **THIS COURT ORDERS** that, with the exception of the RHRA acting pursuant to its regulatory authority, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

### **PROPERTY MANAGEMENT**

14. **THIS COURT ORDERS** that if the Receiver elects to retain the services of 1019883 Ontario Inc., Ashcroft Homes – Central Park Inc., Alavida Lifestyles Inc., or any other entity affiliated with the corporate group known as Ashcroft Homes Group that provides management or support services to any one or more of the Debtors (collectively, the "**Ashcroft Managers**"), it shall have the discretion to pay out of rents received on January 1, 2025, the Ashcroft Managers in respect of those services in accordance with past practice and as set out in the cash flow forecast appended as Appendix "3" in the Monitor's First Report filed December 11, 2024.

15. **THIS COURT ORDERS** that the Ashcroft Managers and the Debtors shall cooperate fully with the Receiver and shall continue to provide property management and other services to the Receiver in accordance with arrangements with the Debtors until such time as the Receiver no longer requires their services. Neither the Ashcroft Managers nor the Debtors shall have any power or authority to make any discretionary

decisions in respect of property management nor shall they have any power or authority to alter any contractual obligations and neither the Ashcroft Managers nor the Debtors shall have any powers in respect of banking arrangements and credit authorization in respect of the Property.

### **CONTINUATION OF SERVICES**

16. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court. Should any such service provider attempt to discontinue its services, the Receiver shall forthwith notify the RHRA of such attempt.

### **RECEIVER TO HOLD FUNDS**

17. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein,

shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

18. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

19. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

20. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally

contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

21. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

22. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall 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, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

24. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

25. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

26. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

27. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

28. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

29. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<<https://www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/2139770-ontario-inc-oa-ravines-retirement-home>>'.

30. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail,

courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

31. **THIS COURT ORDERS** that during the pendency of the Canada Post strike, any obligation of the Receiver to provide notice by ordinary mail shall be suspended provided that the Receiver shall post all such notices on its website and shall, to the extent possible, send such notices by email.

#### **GENERAL**

32. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

33. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

34. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

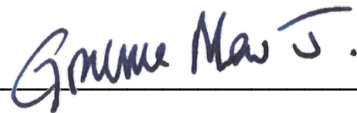
35. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a

representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

36. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

37. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

38. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court.



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Issued on: December 24th, 2024

Mew J.

## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that BDO Canada Limited, the receiver and manager (the "**Receiver**") of the assets, undertakings and properties 2139770 Ontario Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 2024 (the "**Order**") made in an action having Court file number CV-24-00097134-0000, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BDO Canada Limited, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

# APPENDIX B

**CITATION:** Ashcroft Urban Developments Inc. (Re), 2024 ONSC 7192  
**COURT FILE NO.:** CV-24-98508  
(Ottawa)  
**DATE:** 20241220

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
)  
IN THE MATTER OF THE COMPANIES' ) *David Mann K.C., Alexander Bissonette and*  
CREDITORS ARRANGEMENT ACT, ) *Sarah DelVillano, for the Applicants*  
R.S.C. 1985, c. C-36, AS AMENDED )  
)  
) *Randal Van de Mosselaer and Stephen*  
AND IN THE MATTER OF ASHCROFT ) *Kroeger for Grant Thornton Limited (the*  
URBAN DEVELOPMENTS INC., ) *court-appointed monitor)*  
2067166 ONTARIO INC., 2139770 )  
ONTARIO INC., 2265132 ONTARIO ) *Alan Merskey, Jeremy Bornstein and Jamie*  
INC., ASHCROFT HOMES – LA ) *Arabi for ACM Advisors Ltd.*  
PROMENADE INC., 2195186 ONTARIO )  
INC., ASHCROFT HOMES – CAPITAL ) *Sanjeev Mitra and Calvin Horsten for CMLS*  
HALL INC. and 1019883 ONTARIO INC. ) *Financial Ltd. and Equitable Bank*  
Applicants )  
) *Monique J. Jilesen and Adam Davis for*  
) *Institutional Mortgage Capital Inc. in its*  
) *capacity as general partner of IMC Limited*  
) *Partnership*  
)  
) *Haddon Murray and Heather Fisher for*  
) *Central 1 Credit Union*  
)  
) *Patrick Corney for Canadian Western Bank*  
)  
) *Raj Sahni for Peoples Trust Company*  
)  
) *Fraser Mackinnon Blair for MNP Ltd. in its*  
) *capacity as court-appointed receiver of*  
) *Ashcroft Homes – Eastboro Inc. and Ashcroft*  
) *Homes – 108 Richmond Road Inc.*  
)  
) *Sara-Ann Wilson, for BDO Canada Limited*  
) *in its capacity as the court-appointed receiver*  
) *of Ashcroft Homes – 101 Richmond Road*  
) *Inc., Ashcroft Homes - 108 Richmond Road*

) Inc. and Ashcroft Homes – 111 Richmond  
) Road Inc.  
)  
) *Fozia Chaudary*, for Canada Revenue  
) Agency  
)  
) *Jennifer Stam*, for KSV Restructuring Inc. in  
) its capacity as proposed interim receiver  
  
)  
)  
) **HEARD at Ottawa:** 12 December 2024 (by  
) videoconference)

## REASONS FOR DECISION

### MEW J.

[1] On 5 December 2024, the applicants sought and obtained from me an initial order under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36 ("CCAA"). The stay of proceedings secured by that initial order was sought by the applicants primarily to stay and prevent enforcement actions that had been, or were anticipated to be, taken by certain secured lenders of the applicants, and potentially other creditors, thereby enabling the applicants to advance their restructuring efforts, and continue to operate their businesses as going concerns.

[2] The initial order was obtained without advance notice to all but one of the secured creditors affected by the order. The exception, Central 1 Credit Union ("Central 1"), a secured creditor of 2139770 Ontario Inc., received less than an hour's notice of the hearing, as a result of which, although counsel attended the hearing at which the initial order was obtained, Central 1 took no position on the appropriateness of the initial order and fully reserved its rights. Central 1 also advised the court that there was already in existence an order by MacLeod RSJ that if there were further breaches by 2139770 Ontario of its forbearance agreement with Central 1, an order would be made for the appointment of a receiver and manager over the property, assets and undertakings of 2139770 Ontario Inc.

[3] A comeback hearing date was set for 12 December 2024, seven days after the date of the initial order.

[4] Because the initial order was obtained without notice, the onus rests "solely and squarely" with the applicants to prove that the initial order was appropriate and that the protection afforded by the initial order should be continued through an amended and restated initial order (the "ARIO": *General Chemical Canada Ltd. (Re)*, 2005 CanLII 1079 (ON SC), at para. 2).

[5] At the comeback hearing, secured creditors representing 84% of the secured debt opposed the continuation of the CCAA proceeding, and sought instead orders for the appointment of interim receivers to protect their interests.

[6] At the conclusion of the comeback hearing, I advised the parties that, pending the release of these reasons for decision, the initial order made by me on 5 December 2024 would remain in effect on an interim basis.

### **Background**

[7] The eight applicant companies are part of a broader group of more than 55 affiliated entities known as the Ashcroft Homes Group. The founder and controlling mind of the Ashcroft Homes Group is David Choo. The business of the Group is the purchase, development and operation of residential communities in the Ottawa area for seniors, students, and general residential markets, and the lease or sale of accommodations in those communities.

[8] The companies and communities which comprise the Ashcroft Homes Group operate through four key brands as follows:

- a. “Ashcroft Homes” – general residential, comprising master planned communities with single dwelling house areas, infill townhome neighbourhoods and condominium communities;
- b. “Alavida Lifestyles” – retirement apartment and seniors’ suites communities that allow for transition from independent to assisted living, with on-site health care and personal care services, amenities and other offerings and events;
- c. “Envie” – student residential communities comprised of condominium platforms for lease, sale or investment; and
- d. “REstays” – luxury short term rentals and hotel-like accommodation.

[9] Seven of the applicants own and operate separate residential properties, each within its own segregated operations, bank accounts, books and records, and assets. The applicants engage in inter-company transactions within the Ashcroft Homes Group, resulting in inter-company receivables and payables. Certain administrative services are provided on a centralised basis, but each entity pays for its respective share of those services. The eighth applicant is Ashcroft’s head office.

[10] Four of the single purpose applicants are owned by David Choo, while three are owned by Mr. Choo and Envie Enterprises Inc., which is owned by Mr. Choo and the David and Chanti Choo Family Trust 2016.

[11] According to Mr. Choo, despite a history of generating significant revenues and having significant net equity holdings, in recent years various members of the Ashcroft Homes Group have encountered liquidity issues related to rising interest rates and a decline in occupancy rates.

This has left the applicants finding themselves in a position of insufficient liquidity to meet their current debt obligations.

[12] The applicants' current dilemma is summed up in paragraph 14 of Mr. Choo's affidavit sworn in support of the initial order:

From late 2023 the Applicants began working with their respective lenders to address these shortfalls. That has resulted in a series of forbearance agreements and cross-guarantees being established that were designed to buy time to restore occupancy rates, including in some cases by the finalisation of construction, refinance existing lenders, and sell assets in order to pay down debt. One company in the Group recently entered in a sale for a project property for \$183,000,000, resolving not only the financial position of that company, but also assisting with other debts across the Group. In recent months, however, we have received increasing numbers of demands from our lenders that make private, individual arrangements increasingly difficult to achieve.

[13] The applicants assert that the combined value of the applicants' real estate property is approximately \$460,490,030, encumbered by approximately \$284,511,617 in secured debt, leaving an estimated net equity of \$175,978,413. As will be discussed below, the secured lenders challenge the reliability of the applicants' estimates which, they say, are based on dated appraisals that do not reflect current market values.

[14] The following table summarises the applicants, their related projects and locations, and the secured lenders for each:

<b>Applicant</b>	<b>Project</b>	<b>Location</b>	<b>Secured Lender(s)</b>	<b>Secured Debt</b>
Ashcroft Urban Developments	<b>REStays</b>	101 Queen Street & 110 Sparks Street, Ottawa	CMLS (EQ Bank is a "major participant" in the mortgage)	\$50,600,000
2067166 Ontario	<b>Park Place Senior</b>	120 Central Park Drive, Ottawa	(1) ACM (2) IMC	\$26,396,895
2139770 Ontario	<b>Ravines Retirement</b>	626 Prado Private, Ottawa	Central 1	\$38,173,696
2265132 Ontario	<b>Ravines Senior</b>	636 Prado Private, Ottawa	(1) ACM (2) IMC	\$45,234,932

AH – La Promenade	<b>Promenade Seniors Suites</b>	130 & 150 Rossignol Drive, Ottawa (plus vacant land at 100 Rossignol Drive)	IMC	\$37,000,000
2195186 Ontario	<b>Envie I</b>	101 Champagne Rd, Ottawa	Peoples Trust Company ACM	\$57,853,430
AH – Capital Hall	<b>Envie II</b>	105 Champagne Avenue, Ottawa	Equitable Bank	\$24,000,000
1019883 Ontario	<b>Head Office</b>	18 Antares Drive, Nepean	Canadian Western Bank	\$4,134,370
			CRA	\$1,118,294
<b>TOTAL</b>				<b>\$284,511,617</b>

### **Lender Recovery Actions**

[15] Lender recovery actions associated with the applicants are as follows:

#### *Ashcroft Urban Developments (REStays)*

[16] The financing term with CMLS Financial Ltd. (“CMLS”) matured on 1 September 2023. CMLS made a demand and notice to enforce security on 15 November 2023, for failure to pay out the loan on maturity, and a further demand on 18 December 2023.

[17] A forbearance agreement was entered into on 23 February 2023, and an amended forbearance agreement on 3 July 2024, extending the time for compliance with the loan agreement to 30 September 2024, with a further extension granted on 19 November 2024 extending the time for compliance to 31 March 2025, and obliging the borrower to procure a mortgage in the amount of \$20,000,000 charging the property of 2195186 Ontario Inc. (Envie I Project) and a guarantee from 219586 Ontario Inc. up to that amount, limited in recourse to its property. This further mortgage was a condition precedent to the second forbearance extension. As the mortgage was never received, CMLS takes the position that the second forbearance extension has not taken effect.

[18] When the original forbearance agreement was entered into, the borrower also provided a consent to a receivership in respect of the REStays property in the event that the borrower failed to refinance by the specified deadline. But for the stay of proceedings pursuant to the initial order, CMLS takes the position that the receiver consent that it obtained could have been activated.

[19] As at August 2024, Ashcroft Urban Developments indirectly paid the salaries of 53 employees through a related company, Ashcroft Homes – Central Park Inc.

*2067166 Ontario Inc. (Park Place Senior)*

[20] A first ranking mortgage was provided in November 2022 by ACM Advisors Ltd. (“ACM”), with a principal amount of \$21,000,000. Security for this loan was agreed to be cross-defaulted and cross-collateralised with security under a parallel loan being provided to 2265132 Ontario Inc. (Ravines Senior). Institutional Mortgage Capital Canada Inc. (“IMC”) holds a second ranking mortgage, originally for the principal amount of \$11,500,000 with 2265132 Ontario Inc. (Ravines Senior) as co-borrower and jointly and severally liable under the loan agreement. As of the end of October 2024, the balance of the combined debts secured by these mortgages stood at \$26,396,895. As at 16 October 2024, this borrower had other outstanding obligations of \$551,590, including \$391,590 in property tax arrears.

[21] On 19 July 2024, a demand letter and notice of intention to enforce security under s. 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, was sent to 2067166 Ontario and to related guarantors in respect of the Park Place mortgage.

[22] On 5 November 2024, the parties entered into a forbearance agreement. Conditions precedent to ACM’s forbearance obligations included the execution of forbearance agreements between ACM and 2265132 Ontario Inc. (for Ravines Senior) and 2195186 Ontario Inc. (for Envie I). At the time of the initial order in this proceeding, negotiations with respect to the finalisation and execution of those other forbearance agreements were ongoing.

[23] As at August 2024, 2067166 Ontario Inc. paid the salaries of 38 employees directly, and paid 50% of the salaries of five management staff through 1230172 Ontario Inc. for Park Place Retirement.

*2139770 Ontario Inc. (Ravines Retirement)*

[24] Central 1 Credit Union provided mortgage financing on 16 March 2015 for the principal amount of \$27,500,000, which was extended to \$43,500,000 on 15 October 2019. The balance of the loan debt at the end of October 2024 was \$38,173,696. The loan was scheduled to mature on 24 November 2024.

[25] The borrower has other outstanding obligations totalling \$1,292,300, of which \$406,300 is in property tax arrears, \$394,000 in debts to various vendors, and \$492,000 for income tax.

[26] On 9 August 2024, Central 1 issued a final demand to 2139770 Ontario Inc. as borrower, and to Mr. Choo as guarantor, demanding payment of \$38,373,232.02 by 19 August 2024. Central 1 issued a notice of application to appoint a receiver with the demand correspondence.

[27] On 25 September 2024, a forbearance agreement was signed in relation to the Central 1 loan. On 7 October 2024, Central 1 issued an amended notice of application to appoint a receiver over the property, assets and undertakings of 213977 Ontario Inc. That application was heard by Regional Senior Justice MacLeod on 17 October 2024 and resulted in the issuance of a decision

on 29 October 2024, granting a postponement of the receivership application upon compliance by 2139770 Ontario Inc. with court imposed terms, together with the other terms of the forbearance agreement: *Central 1 Credit Union v. 2139770 Ontario Inc.*, 2024 ONSC 5988.

[28] As at August 2024, 2139770 Ontario Inc. paid the salaries of 100 employees directly, including salaries of management staff for the Ravines community, which are shared equally between 2139770 Ontario Inc. for Ravines Senior, and 2265132 Ontario Inc. for Ravines Retirement.

*2265132 Ontario Inc. (Ravines Senior)*

[29] This is another of the properties financed by ACM and IMC. As of the end of October, the net debt on the Ravines Senior loans was \$45,234,932. Other outstanding obligations of the borrower totalled \$473,000 as of 16 October 2024, including \$330,000 in property tax arrears.

[30] On 19 July 2024, a demand letter and notice of intention to enforce security under s. 244 of the *Bankruptcy and Insolvency Act* was sent to 2265132 Ontario Inc. and its related guarantors in respect of the Ravines Senior mortgage.

[31] On 5 November 2024, the parties entered into a forbearance agreement, one of the conditions precedent to ACM's forbearance obligations being the execution of forbearance agreements between ACM and, *inter alia*, 2195186 Ontario Inc. (Envie I). That forbearance agreement had not yet been finalised and executed at the time of the initial order.

[32] As at August 2024, 2265132 Ontario Inc. paid the salaries of 41 employees directly, plus 50% of the costs of the management staff whose salaries are paid directly by 2139770 Ontario Inc. (Ravines Retirement).

*Ashcroft Homes – La Promenade Inc. (Residences Promenade Seniors Suites)*

[33] The borrower obtained mortgage finance from IMC on 24 September 2024 for an initial advance of \$37,000,000 and a maximum loan amount of \$42,000,000. An extension of the loan agreed on 22 December 2022 provided for maturity on 1 February 2024. The loan has not been repaid and the balance, as at the end of October 2024, is said to be \$37,000,000.

[34] On 29 October 2024, Ashcroft Homes – La Promenade became guarantor on a \$17,800,000 credit facility from Pillar Capital Corp. to another company in the Ashcroft Homes Group, 2181291 Ontario Inc. IMC was asked for its consent to the credit arrangement made with Pillar, but had not provided that consent at the time that credit facility was entered into.

[35] As at August 2024, Ashcroft Homes – La Promenade paid the salaries of 41 employees directly and paid for 50% of the salaries of five management staff with 1971446 Ontario Inc. for Promenade Retirement.

*2195186 Ontario Inc. (Envie I)*

[36] The first mortgage on this property was provided by Peoples Trust Company for the principal sum of \$55,634,035, maturing 1 March 2028. A second priority loan was obtained from ACM Commercial Mortgage Fund in the principal amount of \$11,200,000. As of the end of October 2024, the current balance of those loans was \$57,853,430.

[37] The property is currently listed for sale. According to Mr. Choo, based on the broker's underwriting value, the net equity after all closing costs and repayment for secure debts is expected to be in excess of \$50,000,000. There are, however, other outstanding obligations, totalling \$7,480,470, of which \$7,210,000 is said to be owing to the Canada Revenue Agency (although this debt is contested and listed for hearing in the Tax Court of Canada in 2025).

[38] As of August 2024, 2195186 Ontario Inc. paid the salaries of 47 employees through Ashcroft Homes – Central Park Inc.

*Ashcroft Homes – Capital Hall Inc. (Envie II)*

[39] This borrower obtained first mortgage financing from Equitable Bank on 1 September 2022 in the amount of \$23,200,000. The current balance of the loan as at October 2024 is \$23,200,000 plus outstanding interest of approximately \$800,000.

[40] Equitable Bank issued a letter of demand on 9 October 2024 demanding payment of \$24,296,447 forthwith and serving a notice of intention to enforce security. The loan is set to mature in January 2025.

*1019883 Ontario Inc. – Head Office*

[41] On 21 April 2022, 1019883 Ontario obtained mortgage financing from Canadian Western Bank ("CWB") in the amount of \$4,500,000. The current debt owing on the loan is \$4,134,370. There is also a lien registered on the title of the property for \$1,029,987 in favour of the Canada Revenue Agency.

[42] On 16 August 2024, Canada Western Bank wrote to the borrower advising of defaults under the loan, including in respect of reporting requirements and payments of principal and interest. On 19 November 2024, Canada Western Bank offered to amend the loan terms with payment required in full by February 2025, approximately two years before the loan was set to mature.

[43] CWB sent a letter to 1019883 Ontario on 19 November 2024 advising that it wished to exit its banking relationship and proposing to amend its commitment letter. That proposed amending agreement was signed back by Mr. Choo (on behalf of 1019883 Ontario Inc. and as personal guarantor and, on behalf of Ashcroft Homes Inc., as corporate guarantor) on 29 November 2024, four business days before the applicants applied for CCAA protection. On 11 December 2024, CWB made a written demand for repayment of the indebtedness and provided 1019883 Ontario with notice of its intention to enforce CWB's security pursuant to s. 244 of the *Bankruptcy and Insolvency Act*.

[44] As of October 2024, there were 50 employees providing support and administrative services to the Ashcroft Homes Group, including administration, finance and accounting, marketing and sales, human resources, payroll and construction management services.

### **CCAA Application**

[45] The notice of application in this matter was filed with the court on 3 December 2024.

[46] The affidavit of Mr. Choo, filed in support of the application, explained how, beginning in early 2023, the applicants had begun working with their lenders in an effort to address developing liquidity shortfalls. While some of those discussions had been successful, others had not. Ongoing cross-collateralisation requirements and pressure from existing lenders for more security, were stressing the projects. Further, what were described as significantly enhanced reporting requirements to lenders under forbearance terms had added a further burden on the applicants' infrastructure.

[47] The applicants proposed the appointment of Grant Thornton Limited as Monitor and Hawco Peters and Associates Inc. ("Hawco Peters") as Financial Advisor. In addition to a stay of proceedings against the applicants, stays were also sought in respect of certain "Additional Stay Parties" (all either affiliates, or directors and officers of one or all of the applicants).

[48] The applicants also sought approval of an initial Administration Charge up to a maximum amount of \$200,000 over the applicants' properties to secure the fees and disbursements of the Monitor, the Financial Advisor, and their – and the applicants' – respective lawyers, to rank in priority after the existing secured lenders of any applicants in respect, and to the extent, of such lender's registered mortgage; and any taxing authority in respect, and to the extent, of such authority's statutory charge.

[49] Under the proposal, Mr. Choo would provide a debtor-in-possession credit facility (the "DIP Facility") of \$1,500,000 without fees or interest, and with the proviso that the DIP lender's charge would rank in priority behind the securities of the secured lenders, any taxation authority to the extent of their statutory charge, and the Administration Charge, and would not secure obligations prior to these proceedings.

### *Initial Order Hearing*

[50] Counsel for the applicants, for the proposed monitor, and for Central 1, appeared by video conference at 2:00 p.m. on 5 December 2024 (although in the case of counsel for Central 1, she advised that she had received less than an hour's notice of the hearing).

[51] At the 5 December hearing, counsel for the applicants advised the court that it had been his intention to get application materials out to the affected parties earlier in the week. However, this had been thwarted by the need for the proposed monitor to clear a potential conflict of interest, which had only been achieved shortly before the hearing began. As a result, for all intents and purposes, the initial order hearing proceeded *ex parte*.

[52] The applicants submitted that the CCAA proceedings and the stays of proceedings sought were the only viable means by which the applicants' businesses could be preserved and maximised for the benefit of all of the applicants' stakeholders, including not only secured lenders and other creditors, but also over 1,000 residents in the communities, over 500 employees, and the equity holders. Counsel described the relief sought as "surgical", only doing what was necessary, in order to preserve the *status quo* and continue the businesses in the ordinary course and to enable the applicants' retained financial advisors, Hawco Peters, to continue their work assisting the applicants with the financing and restructuring efforts. The court was advised that none of the secured creditors would be primed by the proposed arrangements. Nor, it was submitted, were the applicants seeking to "get a jump" on any of the secured lenders.

[53] The applicants had retained Hawco Peters on 26 July 2024 to assist in the sourcing and securing of additional capital for refinancing and restructuring within the Ashcroft Homes Group (including the applicants), and to provide advisory services, and sought a continuation of that retainer during the CCAA creditor protection process.

[54] After hearing the submissions of counsel, reviewing the materials filed, and considering the jurisdiction provided to the court by s. 11.02 of the CCAA to impose a stay of proceedings for a period of not more than ten days if satisfied that circumstances exist to make that order appropriate, I made the initial order as requested, setting a comeback date of 12 December 2024. I was satisfied that the applicants were insolvent and had liabilities in excess of \$5 million and therefore eligible for the protection afforded by the CCAA. My order included, for the reasons articulated by this court in *Timminco Limited (Re)*, 2012 ONSC 506, at para. 66, provision for a charge over the applicants' property in the amount of up to \$200,000, to secure the professional fees and disbursements of the proposed monitor, along with the lawyers of the Monitor, the lawyers of the applicants, and the Financial Advisors.

#### *Comeback Hearing*

[55] At the comeback hearing, the applicants sought an extension and expansion of the relief provided under the initial order to facilitate and advance the CCAA proceedings, through an ARIO providing, among other things, for:

- a. Extension of the initial stay period up to and including 21 February 2025;
- b. Authorising, but not requiring, the applicants to pay, with the consent of the Monitor, certain amounts owing for goods and services supplied to the applicants prior to the date of the initial order;
- c. Expanding the applicants' restructuring authority, and the respective ability of the Financial Advisor and the Monitor, to assist with the applicants' restructuring efforts, beyond the limited required relief included in the initial order to ensure the applicants' ability to make payments and enter into contracts necessary to continue the normal course of operations and complete, or otherwise deal with, the applicants' projects;

- d. Granting the applicants the right to:
  - i. Dispose of redundant or non-material assets not exceeding \$20,000 in any one transaction, or \$100,000 in the aggregate;
  - ii. Close the sale of any residential and commercial units to arm's length third parties for fair market value in the ordinary course of business, subject to the approval of the Monitor;
  - iii. Continue or establish such listings for sale of subject properties for fair market value in the ordinary course of business, subject to the approval of the Monitor;
  - iv. Enter into any new contractual arrangements for sale and thereafter close the sale of, parts of any property to arm's length third parties for fair market value in the ordinary course of business, which the applicable secured lender(s) and the Monitor, each acting reasonably, deem necessary or appropriate;
  - v. List the whole of the Envie II property for sale on such terms and conditions as may be agreed by the secured lender, Equitable Bank, and the Monitor;
  - vi. List the whole of the Promenade Seniors' Suites property for sale, separately or in conjunction with the property owned by affiliated corporation 1971446 Ontario Inc., at 110 Rossignol Drive, Ottawa (the Promenade Retirement Residence property) on such terms and conditions as may be agreed to by Ashcroft Homes-La Promenade Inc. (a secured lender to the Promenade Seniors' Suites property) and the Monitor;
- e. Continuing the appointment of Hawco Peters and Associates Inc. as financial advisor to the applicants until further order of the court and securing the financial advisor's fees and costs under the Administration charge;
- f. Approving the applicants' ability to borrow under a DIP Facility to be provided by Mr. Choo to finance their work and capital requirements and other general corporate purposes, post-filing expenses and costs, including granting a charge over the property to secure all amounts advanced under the DIP Facility;
- g. Increasing the maximum amount of the Administration Charge from \$200,000 to \$700,000;
- h. Approving milestones to advance the refinancing of the Ravines retirement residence to allow all indebtedness to be paid out to Central 1 by 30 June 2025; and
- i. To seek such advice and direction as the applicants may advise to address issues concerning specific projects.

### **Applicants' Position**

[56] The applicants are clear about their purpose in seeking CCAA protection:

Here, the Stay of Proceedings is intended primarily to stay and prevent enforcement action that has and will be taken by the Secured Lenders and potentially other creditors. The Stay of Proceedings will preserve the *status quo* and afford the Applicants the breathing space and stability required to advance their restructuring efforts, in consultation with the Financial Advisors, including seeking approval of a DIP, further developing strategies to increase occupancy levels and/or sales of properties, exploring other restructuring alternatives and/or developing a plan of compromise or arrangement.

[57] The applicants further submit that the continuation of the creditor protection provided for under the initial order is essential, having regard to the current financial circumstances of the applicants; the “devastating effects” that bankruptcy, liquidation or uncoordinated enforcement actions would have on the projects and their residents, employees and other stakeholders; and, the value and potential value of each project and for the head office company to the applicants and the Ashcroft Homes Group as a whole.

[58] The applicants claim that, with the assistance of Hawco Peters, they have sourced replacement funding for two of the group’s projects (non-applicant affiliates) and “anticipate” receipt of multiple term sheets by mid-December with a cumulative value in the range of \$100,000,000 to \$230,000,000 to replace multiple lenders. The stated goal and structure of this financing is to provide the applicants with sufficient time to complete started projects, improve occupancy numbers and “settle the waters currently muddied with demands and forbearances”. The applicants continue:

It is envisaged that this strategy will allow sufficient time to allow for the continued sell down of assets which will further deleverage the Ashcroft Homes Group, including the Applicants, and with the continuation of reducing interest rates will lead to traditional long term financing for the remaining real estate portfolio.

[59] According to the applicants, since the initial order was made, they have engaged in communication with various parties, including the secured lenders, either directly or through lawyers and the Financial Advisor related to:

- a. Continuing commitment to a timeline for refinancing to allow Central 1 to be paid out and exit as secured lender to 2139770 Ontario Inc. (Ravines Retirement);
- b. The proposed sale of the Promenade properties together and as a going concern with the secured lender to AH Ashcroft Homes – La Promenade, IMC, and the secured lender to 197446 Ontario Inc. (RBC); and
- c. With CMLS on the REStays loan and in relation to the sale of the whole of the Envie II property.

[60] The applicants argue that the extension of the stay of proceedings will preserve the *status quo* and allow them to, among other things:

- a. Operate the business in the ordinary course without disruption;
- b. Avoid uncoordinated and stress sales or forced liquidations of the subject properties and projects, which would be value deteriorative and contrary to the best interests of the applicants' stakeholders, employees, tenants and other residents;
- c. Preserve their existing tenant relationships and protect such tenants from "forced entries and other improper and disruptive conduct which might be taken by or on behalf of aggressive lenders";
- d. Continue to pursue compensatory financing, sale and restructuring transactions capable of underpinning a consensual plan of compromise or arrangement and advance ongoing discussions related thereto, free of interruption caused by enforcement actions against the applicants and/or the properties; and
- e. Continue to liaise with the secured lenders and other stakeholders in relation to the foregoing efforts, and also with the secured lender to the Promenade Retirement Residence property in relation to the proposed sale of the Promenade properties.

[61] Anticipating (and then responding to) opposition by a number of the secured creditors to restructuring proceedings under the CCAA, the applicants argue that the proposed extension of the stay of proceedings is appropriate given that:

- a. Since the granting of the initial order they have acted in good faith and with due diligence to stabilise and continue the ordinary course operations of the businesses, to develop strategies, increase occupancy levels, and advance their restructuring objectives;
- b. It is desirable to prevent uncoordinated and value destructive enforcement efforts by the secured lenders;
- c. The CCAA process will best facilitate the maintenance of the residential communities, facilities and services comprising the projects (as compared to uncoordinated enforcement actions, such as the appointment of separate receivers to individual applicants and their projects, which will come at significant social and economic costs in the circumstances);
- d. There is very significant equity in each of the properties, and therefore no risk that secured lender funds will not ultimately be recoverable;
- e. The capital of the secured lenders will not be tied up for a longer period of time under the CCAA (as compared to receivership, having regard in particular to the sales and refinancing strategies already under way on behalf of the applicants);

- f. The costs of up to eight separate receivers to the applicants and their respective advisors will far outweigh the costs of the continuing appointment of the Monitor and the Financial Advisor under the CCAA;
- g. The stay of proceedings will preserve the *status quo* and afford the applicants “the breathing space and stability” required to continue the businesses in their ordinary course operations;
- h. A stay is necessary to enable the continuations of engagement with the secured lenders and other stakeholders;
- i. The revised cash flow forecast prepared by the Monitor demonstrates that the applicants, separately and together, have sufficient liquidity to fund their obligations and the costs of the CCAA proceedings; and
- j. The Monitor is supportive of the proposed extension and stay of proceeding.

### **The Position of the Secured Lenders**

[62] All but one of the secured lenders responding to the comeback motion oppose continuation of CCAA protection.

[63] ACM, CLMS Financial Ltd., Equitable Bank and IMC hold, between them, approximately \$194,000,000 in secured debt, representing 68% of the total. Each of these lenders seeks the appointment of KSV Restructuring Inc. (“KSV”) as interim receiver.

[64] CWB also supports the ACM motion and the appointment of KSV as interim receiver.

[65] Collectively, I will refer to ACM, CLMS Financial Ltd., Equitable Bank, IMC and CWB as the “ACM Group”.

[66] Central 1, representing another approximately \$38,000,000 of secured debt, supports the ACM Group, but with BDO Canada Limited as receiver and manager, as previously directed by MacLeod RSJ.

[67] The ACM Group and Central 1 together represent \$232,000,000, or 84%, of the applicants’ secured indebtedness.

[68] Peoples Trust, as the first priority lender on the Envie I project, does not oppose the CCAA order sought. The Envie I property is in the midst of a sale process. Peoples Trust’s main concern is that whatever is determined appropriate by the court should not impede that sale. Accordingly, so long as Peoples Trust continues to receive monthly payments, it sees no reason to oppose the creditor protection that has been sought.

[69] The ACM Group argued that the test established by s. 11.02(2) has not been met. Section 11.02(2) provides that the court may extend a stay order for any period necessary, if the court is

satisfied that: (a) circumstances exist to make the order appropriate; and (b) the applicants have acted, and are acting, in good faith, and with due diligence.

[70] In respect of the first of these elements, the secured creditors say that it is unusual (although not completely unheard of) to order creditor protection under the CCAA for real property-centric entities, due to the nature of their security structures and operations. Rather, those entities and their stakeholders more commonly benefit from simpler receivership proceedings.

[71] On the second element, the secured lenders assert that the applicants proceeded to obtain a stay without notice to their major lenders, representing a marked departure from usual restructuring practices and the applicants' obligations under the CCAA to act in good faith and with diligence. These concerns were compounded by the failure of the applicants to serve their comeback hearing materials until less than 24 hours before the comeback hearing.

[72] Just as the making of orders under s. 11.02 of the CCAA are discretionary, so is the appointment of a receiver. Section 101 of the *Courts of Justice Act* provides that the court may appoint a receiver where it is just or convenient to do so. While a court must have regard to all of the circumstances when determining whether it is appropriate to appoint a receiver, the applicants submit that particular regard is to be had to the nature of the property and the rights of interests of all parties in relation thereto: *Bank of Nova Scotia v. Freure Village on Clair Creek*, 1996 CanLII 8258 (ON SC). Accordingly, as Osborne J. observed in *Antibe Therapeutics Inc. (Re)*, unreported, 22 April 2024, at para. 59:

[W]here...there are competing applications for a continued insolvency proceeding under the CCAA, or the appointment of a receiver, the Court must consider all of the relevant factors in the exercise of its discretion to determine the most appropriate path forward.

[73] The secured creditors focus on a number of points, which they ask the court to consider in the exercise of its discretion.

[74] First, the proposed interim receiver, KSV, is already providing financial advice to CMLS Financial Ltd. regarding its loans to Ashcroft Urban Developments Inc. and has also provided advisory services to IMC in respect of its mortgages registered on title to certain of the applicants' real properties. KSV has ongoing experience as the receiver and manager of a seniors' residence in Oshawa, Ontario, where it has worked with a specialist property manager, Brightwater Senior Living Group LLC, to stabilise the performance of the seniors' residence and improve its financial results. If appointed as interim receiver of the Ashcroft entities, KSV intends to engage Brightwater to review and oversee the operations of the retirement properties owned by the applicants. With respect to the student housing residences, KSV intends to engage Varsity Properties Inc. to oversee their operations, having previously worked with Varsity on a prior student residence receivership in Kingston, Ontario. KSV's plan envisages similarly engaging a party with expertise in the hospitality sector to review and provide recommendations on improving the performance of the hotel property owned by Ashcroft Urban (REStays).

[75] The secured creditors contrast KSV's plan with what they describe as the absence of a restructuring pathway put forward by the applicants. To the extent that there is a path forward by the applicants, it comprises what the secured creditors consider to be unrealistic marketing plans. Furthermore, the cash flow projections provided by the monitor show that after thirteen weeks, there would be almost no DIP financing left.

[76] Another concern is that the values relied upon by the applicants are based on what the secured lenders regard as obsolete appraisals, some dating as far back as 2017. For example, in relation to the Park Place property, while Mr. Choo claims that there is \$24.6 million of net equity after secured debt, the secured lender, ACM's internal valuation estimates reflect that there may not be any equity in that property.

[77] Second, and closely connected to the secured lenders' misgivings about the lack of a cogent road map for the restructuring, is a mounting loss of confidence in the applicants' management.

[78] For example, Promenade Senior Suites, a relatively new senior suite facility built in 2020, has a 65% occupancy rate. Yet the appraisal relied upon by the applicants assumes a stabilised 90% occupancy rate.

[79] There have also been regulatory and reputational concerns, and associated negative publicity, with respect to the management and operation of the Ashcroft seniors' and retirement facilities.

[80] The secured creditors say that trust has also been undermined as a result of what they regard as a lack of candour and straight dealing. IMC offers two examples.

[81] IMC had asked Ashcroft to keep it apprised about material developments on Ashcroft's whole portfolio of assets. IMC expressed concern when it was informed by Ashcroft that Central 1 was proposing a forbearance agreement or a receiver on the \$43,000,000 facility related to the Ravines Retirement project. Significantly, Ashcroft did not disclose to IMC that one of the conditions of the forbearance agreement proposed by Central 1 was that La Promenade was to sign as a guarantor of the outstanding \$38,000,000 in debt owed by Ashcroft to Central 1. Notwithstanding IMC's known concerns, Ashcroft then entered into a forbearance agreement with Central 1, doing so without notice to or approval of IMC, and contrary to Ashcroft's loan agreement with IMC.

[82] Subsequent to that, Ashcroft caused La Promenade to be amalgamated with another Ashcroft-controlled entity, again without IMC's consent (Ashcroft did originally request IMC's consent, which it knew was contingent upon completion of due diligence, but, when told by IMC on 25 October 2024 that providing the consent by a drop-dead date of 31 October was unrealistic, Ashcroft immediately proceeded, the same day, with the amalgamation). The secured lenders' concerns were further deepened by the immediate pre-filing conduct (i.e., lack of notice) of the applicants, to which reference has already been made.

[83] There are also claims that Ashcroft has exaggerated occupancy rates of some of the subject buildings. For example, ACM claims that on 18 September 2024, Ashcroft reported that Envie I

was 80% leased but when ACM's Vice-President – Investments toured Envie I on 18 November 2024, the property manager advised that the building was only 70%-73% leased.

[84] A third generalised cause for concern is that proceeding without sensitivity to the legal and practical separation between each of the eight projects, and their isolated contractual relations with the lenders, will prejudice the secured creditors.

[85] Although the applicants assert that each of the projects is managed separately, with segregated operations, including bank accounts, books and records, and assets, and with intercompany transactions effected at arm's length, the merger of the properties into what the secured creditors call an "asset melting pot" under the CCAA order, would force lenders to rescue properties to which they had no contractual relation.

[86] Despite the involvement, since August, of Hawco Peters, the investment advisors' efforts have not, to date, contributed to meeting the applicants' obligations to their secured lenders. Furthermore, the engagement of Hawco Peters relates to projects both outside and within the CCAA application.

[87] While the applicants' draft proposed ARIO has been amended to respond to the secured creditors' concerns about the lack of ringfencing on a project by project basis (a provision has been added which would prevent the applicants from making payments or other transfer of assets to any affiliated entities or related parties), as well as to limit the engagement of Hawco Peters to the applicants only, the secured creditors remain concerned that their interests will be prejudiced as a result of effected *de facto* extensions of their loan or forbearance agreements, coupled with a concomitant loss of ability to control the process and the possibility that their loans may not be fully covered by the projects they are secured against.

[88] Fourth, factors which might otherwise favour a CCAA process are, at best, neutral in the present case. There is no clear threat to the employees of the applicants. There are no duelling receiverships. The suggestion by Mr. Choo that tenants need to be protected from forced entries and disruptive conduct which might be taken by or on behalf of aggressive lenders is strongly refuted by the secured creditors.

[89] Finally, the secured creditors do not share Mr. Choo's belief that the prospects of successful refinancing, sale and restructuring efforts will be enhanced by providing CCAA protection. Some of the creditors are sanguine about the state of distress in the current commercial real estate market in general, and the Ottawa area market in particular.

[90] Ishbel Buchan, the Executive Vice President – Investments at ACM deposes that:

ACM, and many other lenders I have spoken to, are dealing with multiple distressed assets. These lenders have in many instances, elected to make efforts to negotiate out-of-court arrangements with their commercial mortgage borrowers, similar to how ACM has unsuccessfully attempted to resolve matters with the Ashcroft.

She continues:

Not surprisingly, the challenging macro-economic factors and market conditions described above have had a snowball effect where the relatively high number of distressed real assets has further led to depressed valuations and sales volumes. For example, Bobby Kofman of KSV, the proposed interim receiver, has advised me that in KSV's experience as the court-officer of dozens of real property projects across Canada, real property valuations are currently impaired, and transactions are limited, except at distressed pricing, including for industrial, development, residential, multi-family and hospitality properties.

Ms. Buchan concludes by stating that ACM is concerned that its secured indebtedness in relation to the Ashcroft projects will similarly be affected by the current state of the commercial real estate market in terms of property values and related sales velocity, such that the properties may sell for “significantly below estimated values and/or take much longer to sell than anticipated”.

[91] Ultimately, the secured creditors regard the applicants as having sought CCAA protection in order to buy time to continue their hitherto ineffective attempt to raise meaningful amounts of new funding.

### **Discussion**

[92] As D. M. Brown J. observed in *Romspen Investment Corporation v. 6711162 Canada Inc.*, 2014 ONSC 2781, at para. 61, both an order appointing a receiver and an initial order under the CCAA are highly discretionary in nature, requiring the court to consider and balance the competing interests of the various economic stakeholders. The specific factors taken into account by the court will, as a consequence, vary from case to case.

[93] Further, and as noted by Justice Osborne in *Antibe Therapeutics*, at para. 55:

In making a determination about whether it is, in the circumstances of a particular case, just or convenient to appoint a receiver, the Court must have regard to all of the circumstances, but in particular the nature of the property and the rights and interests of all parties in relation thereto: *Bank of Nova Scotia v. Freure Village on the Clair Creek*, 1996 O.J. No. 5088, 1996 CanLII 8258.

### *No Presumption in Favour of Receivership*

[94] Although, as commentators have observed, there is a presumption among insolvency practitioners that, when it comes to real property, in a contest between a receivership and the CCAA, the receivership is bound to emerge victorious (see Jeremy Opolsky, Jacob Babad and Mike Noel, *Receivership versus CCAA in Real Property Development: Constructing a Framework for Analysis* (2020), 18 Annual Review of Insolvency Law 199, 2020 CanLIIDocs 3602), there is no hard and fast rule to that effect. The nature of the security and the secured creditor's views are not fully determinative of whether a CCAA proceeding will be preferred: *BCIMC Construction Fund Corporation v. The Clover on Yonge Inc.*, 2020 ONSC 1953, per Koehnen J. at para. 104.

*The Secured Creditors' Opposition*

[95] As is the case in many real estate driven CCAA proceedings, the secured creditors see little incentive for surrendering control over the process of enforcing their security. Circumstances similar to those in the present case pertained in *Octagon Properties Group Ltd. (Re)*, [2009] A.J. No. 936 (Q.B.), where, at para. 17, Kent J. observed:

This is not a case where it is appropriate to grant relief under the CCAA. First, I accept the position of the majority of first mortgagees who say that it is highly unlikely that any compromise or arrangement proposed by Octagon would be acceptable to them. That position makes sense given the fact that if they are permitted to proceed with foreclosure procedures and taking into account the current estimates of value, for most mortgagees on most of their properties they will emerge reasonably unscathed. There is no incentive for them to agree to a compromise. On the other hand if I granted CCAA relief, it would be these same mortgagees who would be paying the cost to permit Octagon to buy some time. Second, there is no other reason for CCAA relief such as the existence of a large number of employees or significant unsecured debt in relation to the secured debt. I balance those reasons against the fact that even if the first mortgagees commence or continue in their foreclosure proceedings that process is also supervised by the court and to the extent that Octagon has reasonable arguments to obtain relief under the foreclosure process, it will likely obtain that relief.

[96] It is noteworthy that in the present case, fully 84% of the secured creditors not only oppose the CCAA relief sought, but have combined to put forward the nomination of a common receiver to assist with the enforcement of their security. This arrangement significantly dilutes the force of the argument advanced by the applicants that the costs of up to eight separate receivers and their respective advisors will far outweigh the costs of continuing with the appointment of the Monitor and the Financial Advisor under the CCAA. It also renders as far less likely the prospect of “uncoordinated and stress sales or forced liquidations of the subject properties and projects”.

*Is There a Clear Plan?*

[97] In their article *Receivership versus CCAA in Real Property Development: Constructing a Framework for Analysis*, Opolsky *et al.* express the following observation, based on a review of real-estate driven CCAA cases:

An important consideration for the courts in granting a CCAA is the feasibility of a resolution under that CCAA proceeding. If the chances of a successful proposal are low, then a court may decide to order a receivership rather than spend time on a failed CCAA.

[98] The evidence and submissions put forward on behalf of the applicants have a distinctly aspirational quality. Their message is one of hope, despite the failures of the past eighteen months. The appointment of the Monitor to steady the ship, and bring order to the process of holding the

secured creditors at bay will, they hope, allow for a coordinated process, that maximises value and best serves the interests of all concerned parties.

[99] While there is a superficial attraction to the proposition that the applicants, with the assistance and guidance of the Monitor and the Financial Advisor, will succeed in the coming months, the applicants' plans, such as they are, appear to largely rest on a more benign interest rate environment, a more active property market, and improving occupancy rates. Despite changes in the interest environment in the year to date and well publicised public concerns about a lack of affordable housing, the applicants' malaises continue.

[100] I find myself more inclined to the view that the applicants are simply buying time (“[i]t is envisaged that this strategy will allow sufficient time to allow for the continued sell down of assets which will further deleverage the Ashcroft Homes Group, including the Applicants”) and not much more.

[101] Specifically, I see nothing markedly better in the plans put forward by the applicants than those articulated by the secured creditors. Indeed, if anything, the plan put forward by KSV, the proposed interim receiver, has more substance, including the engagement of specialist property managers operating in the retirement residence and student residence markets in Ontario.

#### *Confidence in Management*

[102] The refrain that secured creditors have “lost confidence in management” of debtor companies is a familiar one in CCAA proceedings. This matter is clearly no exception.

[103] For at least eighteen months or more, the applicants have been engaged in an ongoing juggling act with their secured creditors, culminating in their current insolvent positions.

[104] Furthermore, a number of the secured creditors have raised concerns about the some of the cross-default and cross-collateralisation arrangements that have been made, as well as about the applicants' honesty and forthrightness in their dealings with the secured creditors. These concerns were compounded by what the secured creditors regard as a failure of the applicants to give any notice of their intention to seek an initial order (followed by extremely short service of the materials supporting their motion for an ARIO).

[105] The experience of Central 1 is perhaps indicative. Central 1 commenced receivership proceedings. There was a contested application heard by MacLeod RSJ. He found that it was apparent that the debtor – 2139770 Ontario Inc. – had not been able to comply with all of the terms of the forbearance agreement it had entered into, and that the defaults were not trivial. The debtor had failed to deliver “important information by the deadline it agreed to”. He granted a postponement of the receivership order on strict terms, failing which the receivership order “will be made”. Despite this, Central 1 complains that there have been numerous further breaches of the terms ordered by MacLeod RSJ. They say that the debtor failed to execute collateral security documents, and refused to pay the professional fees incurred under the forbearance agreement. On 2 December 2024, Central 1's lawyers requested an urgent return of the receivership application. The apparent response to that was the commencement of this proceeding, with the resultant affect

of securing a stay of Central 1's receivership proceeding, a stay that it seems highly unlikely could have been obtained in the receivership proceeding itself.

[106] While I would not subscribe to the view that the applicants have acted in bad faith, the secured creditors' expressed lack of confidence in management is understandable.

### *Outdated Appraisals*

[107] The appraisals supporting Mr. Choo's stated valuation of the respective properties vary in their antiquity. The most dated appraisal is from 2017. None of them are from 2024. According to Ms. Buchan of ACM, once an appraisal is aged more than a few months, it is typically no longer relevant given various factors, including macro-economics and market conditions. This is particularly pertinent given the current level of distress in the commercial real estate market.

[108] The applicants concede that some of the appraisals are dated, but nevertheless maintain that they are reliable evidence of the value of the various properties and that, even allowing for some diminution of value due to the state of the current commercial property market, all of the properties have more than adequate net equity and, thus, that the CCAA proceeding poses little risk that the secured creditors will not fully realise their security.

[109] If the concerns about the true value of the properties were the only major objection of the secured creditors, it would probably not be enough to carry the day in favour of the receivership applications. However, viewed alongside other considerations, the concerns about valuation are yet another weight pulling on the receivership side of the scale.

### **Conclusion**

[110] All of the parties agree that there is a need to stabilise the applicants' businesses. The question is whether that is best achieved through a receivership or a CCAA proceeding.

[111] The secured creditors have lost patience with the management of the applicants. Despite having brought on board investment advice from Hawco Peters, progress has been modest. Expectations that term sheets will shortly be presented for refinancing have yet to be realised. Unpaid taxes have mounted. Unsecured creditors have gone unpaid. Occupancy rates have remained sub-optimal. Regulators have even become involved due to concerns about the way in which one of the retirement residences is being run, with attendant poor publicity and reputational damage.

[112] Secured creditors representing 84% of the secured debt oppose the CCAA application. With the exception of Central 1, they all propose to use the same receiver. Their collaborative approach largely neutralises the usual concerns that an applicant for CCAA protection raises concerning uncoordinated and stress sales or forced liquidation. Nor is there any convincing evidence that the remedy proposed by the secured creditors will damage the interests of employees or tenants.

[113] The receivership remedy gives effect to the bargain made between the secured lenders and the applicants, and transfers control of the process from debtors in whom confidence has been lost

to creditors who should be entitled to make good on their security while there are still good prospects of them being made whole.

[114] Mr. Choo candidly acknowledges that the applicants have found themselves in a “difficult position to address their current liquidity obligations”. Yet, to use the terminology of C. Campbell J. in *Dondeb Inc. (Re)*, 2012 ONSC 6087, at para. 25, to some extent the applicants have, by the manner in which they have (sometimes chaotically) played insolvent projects and their secured creditors off against each other and eroded the confidence of the creditors, been the authors of their own misfortune.

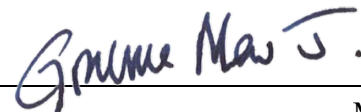
[115] It could, potentially, have been otherwise. Counsel for Peoples Trust submitted that one option that could have been considered would be to impose a shorter stay of proceedings to see if the other parties’ concerns about the applicants’ proposal could be resolved by the monitor, perhaps with a “super monitor order” to allay concerns about the applicants’ management continuing to have control of the restructuring. And in *Dondeb Inc.*, Campbell J. observed, at para. 26, that had there been full and timely communication both the creditors and the court may have concluded that an acceptable CCAA plan could be developed. Because of the way this application has unfolded, that has not occurred. With the benefit of hindsight, that might be seen by the applicants as a missed opportunity.

### **Decision**

[116] For the foregoing reasons, the motion to extend the stay of proceedings granted by the initial order is dismissed. The motion made by ACM Advisors Ltd., and supported by CMLS Financial Ltd., Equitable Bank, Institutional Mortgage Capital Canada Inc. and Canadian Western Bank for the appointment of a receiver and associated relief is granted.

[117] The receivership order and transition order requested by Central 1, in accordance with the order of MacLeod RSJ in Court File No. CV-24-00097134-0000 is granted.

[118] If the parties are unable to agree on any of the terms of the orders resulting from this decision, I may be spoken to.



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Mew J.

**CITATION:** Ashcroft Urban Developments Inc. (Re), 2024 ONSC 7192  
**COURT FILE NO.:** CV-24-98508  
(Ottawa)  
**DATE:** 20241220

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

IN THE MATTER OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF ASHCROFT URBAN  
DEVELOPMENTS INC., 2067166 ONTARIO INC.,  
2139770 ONTARIO INC., 2265132 ONTARIO INC.,  
ASHCROFT HOMES – LA PROMENADE INC.,  
2195186 ONTARIO INC., ASHCROFT HOMES –  
CAPITAL HALL INC. and 1019883 ONTARIO INC.

Applicants

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**REASONS FOR DECISION**

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Mew J.

**Released:** 20 December 2024

# APPENDIX C

**2139770 Ontario Inc. o/a Ravines Retirement Residences**  
**Statement of Receipts and Disbursements**  
**For the period December 20, 2024 to April 2, 2025**

	2139770 CIBC Account	Receiver's Account	Total
<b>Receipts</b>			
Cash on hand	\$ 111,334	\$ -	\$ 111,334
Rental Income	725,321	2,001,743	2,727,064
Advance pursuant to Receiver's Certificate	-	360,000	360,000
Transfer (from)/to Estate account	(5,903)	5,903	-
<b>Total Receipts</b>	<b>\$ 830,751</b>	<b>\$ 2,367,646</b>	<b>\$ 3,198,397</b>
<b>Disbursements</b>			
Payroll, Benefits and Source Deductions	\$ 717,465	\$ 388,851	\$ 1,106,317
Property taxes	-	459,311	459,311
Union Dues	-	62,183	62,183
WSIB	5,312	-	5,312
Operating Expenses and Materials	-	33,133	33,133
Food	53,533	96,838	150,372
Maintenance	1,153	41,516	42,669
Equipment Lease Payments	-	3,349	3,349
Insurance	-	17,080	17,080
Professional fees	150	-	150
Contractors	3,296	39,602	42,898
Management fees	32,832	26,657	59,489
Utilities	4,543	75,860	80,403
Office expenses and general	5,921	4,595	10,516
RHRA Fees	6,183	4,098	10,280
Interest and bank charges	363	294	657
HST Current	-	940	940
Misc. Costs	-	1,340	1,340
Appraisals	-	-	-
<b>Total Disbursements</b>	<b>\$ 830,751</b>	<b>\$ 1,255,646</b>	<b>\$ 2,086,397</b>
<b>Net Cash Balance</b>	<b>\$ -</b>	<b>\$ 1,112,000</b>	<b>\$ 1,112,000</b>

# APPENDIX D



## FORM 87 - NOTICE AND STATEMENT OF THE RECEIVER

### Subsection 245(1) & 246(1) of the BIA

In the Matter of the appointment of BDO Canada Limited as receiver (the “Receiver”) over all of the assets, undertaking and properties of 2139770 Ontario Inc. (“**213**”).

#### TAKE NOTICE THAT:

1. On the 20<sup>th</sup> day of December, 2024 the undersigned BDO Canada Limited was appointed Receiver, and became a Receiver under s. 243(1) of the *Bankruptcy and Insolvency Act* in respect of the assets, undertakings and properties of 2139770 Ontario Inc. (“**213**” or the “**Debtor**”), an insolvent person as described below:

	<u>Net Book Value</u>
• Cash	\$ 111,000
• Accounts Receivable	Unknown
• Due from related companies	Unknown
• Property and Equipment	\$13,900,000

2. The undersigned became a Receiver in respect of the property described above by virtue of being appointed by the Ontario Superior Court of Justice on the 20<sup>th</sup> day of December, 2024 (the “**Receivership Order**”). A copy of the Receivership Order can be found at the Receiver’s website:

<https://www.bdo.ca/services/financial-advisory-services/business-restructuring-turnaround-services/current-engagements/2139770-ontario-inc-0a-ravines-retirement-home>

4. The following information relates to the receivership:

Address of insolvent persons: 626 Prado Private,  
Ottawa, Ontario  
K2E OB3

Principal line of business: Retirement Home

Location(s) of businesses: 626 Prado Private,  
Ottawa, Ontario  
K2E OB3



Secured Creditor:

1. Central 1 Credit Union \$38,173,000

Unsecured Creditors: See Schedule A

5. The retirement home operations will continue while the Receiver undertakes a Court approved sale process for the benefit of all Stakeholders.

Contact person for Receiver: BDO Canada Limited  
25 Main Street West, Suite 805  
Hamilton, Ontario  
L8P 1H1  
Attention: Angelo Consoli

Tel No. (289) 678-0230  
Fax No. (905) 570-0249

DATED at Hamilton, this 10<sup>th</sup> day of January, 2025.

BDO CANADA LIMITED,  
In its capacity as Receiver of  
2139770 Ontario Inc.

Per:

A handwritten signature in black ink, appearing to read 'Christopher Mazur', written over a faint horizontal line.

Christopher Mazur, CIRP, LIT  
Senior Vice President

## Schedule A: 2139770 Ontario Inc. o/a Ravine's Retirement Residence

Creditor	Current Owed
5010520 Ontario Inc. Clear Choice Contracting	\$ 0.01
Advanced Capital Heating	\$ 468.41
Aenos	\$ 13,802.82
Allstream	\$ 2,113.07
Altus Group	\$ 3,305.25
Ashcroft Homes - Central Park Inc.	\$ 28,006.41
Ashcroft Homes-Crown Pointe	\$ 1,024.20
Baldwin, Bonny	\$ 530.00
Bell Canada- Account #552129239	\$ 967.47
Benson Pools	\$ 777.49
BMR Renovation	\$ 48,816.00
Canada Bread - Ontario #T6249	\$ 404.93
Canon Canada	\$ 3,007.03
Capital Cutlery West	\$ 340.00
Carpet Kleener Division of Scharf Group Inc.	\$ 2,218.70
CERIDIAN CANADA Ltd.	\$ 4,111.87
Chris Sandes	\$ 100.00
Christian Goudreault	\$ 250.00
Chubb Life Insurance Company of Canada	\$ 2,644.14
City Of Ottawa - Offense Court Office	\$ 90.00
Classic Fire & Life Safety Inc.	\$ 6,013.30
Colnamatic	\$ 3,411.19
Convergint Technologies LTD	\$ 1,617.03
Creative Friction	\$ 1,898.40
Cunningham, Jennifer	\$ 600.00
Debbie Ranger	\$ 495.00
Diversey Canada Inc.	\$ 8,085.37
Dy Medicine Professional Corporation	\$ 30,500.00
Emond Harnden	\$ 2,209.15
Employees	\$ 1,264.53
Enbridge Gas #93 06 10 15451 1	\$ 21,902.62
Enbridge Gas 86 56 34 82999 0	\$ 5,369.55
Fibreoptic Inc. Division De Videotron Ltee	\$ 7,649.68
Fit Minds	\$ 261.40
Gal Power Systems Ottawa Ltd.	\$ 5,625.28
Gareau, Andre	\$ 600.00
Gerald Cammy	\$ 100.00
Gordon Food Service	\$ 35,286.22
GRAND & TOY	\$ 976.21
H. B. R. E. F	\$ 1,836.25
Hampton Carling Family Med. Associates	\$ 3,500.00
HD Supply FM Toronto 0200	\$ 1,379.42
Heart For Music	\$ 112.50
Hiromi McPhail	\$ 800.00
HourGlass Agency	\$ 623.76
Jaadco Hospitality Inc.	\$ 7,525.80
Jeff Stoddard	\$ 165.00
Joel Z. Yan	\$ 300.00
Keith McCuaig	\$ 1,200.00
Labourers' Pension Fund	\$ 22,869.98
LIUNA Local 3000	\$ 10,591.44
Living Green Landscaping Inc.	\$ 1,949.85
Lord Blue Cleaning Supplies & Accessories	\$ 2,959.49
Magnotta	\$ 2,149.40

## Schedule A: 2139770 Ontario Inc. o/a Ravine's Retirement Residence

Creditor	Current Owed
Malcolm Wade	\$ 271.20
Mann Lawyers LLP	\$ 32,554.98
Marsh Canada Limited	\$ 2,001.00
MCL Hospitality Ltd.	\$ 2,535.85
Mitel Networks Corporation	\$ 3,114.28
Mr. Dumpster	\$ 427.54
Myers Orleans	\$ 125.55
National Leasing	\$ 209.03
Nationwide Imaging	\$ 1,075.46
Navy Chadsey	\$ 75.00
Noel Dimaranan	\$ 340.00
Orkin Canada Corporation	\$ 1,496.97
Ottawa Fire Department Client Services	\$ 815.86
Park Place Retirement Residence	\$ 555.00
Park Place Senior Suites	\$ 3,147.50
Peter Foret	\$ 70.00
Petro Canada	\$ 616.93
PointClickCare Technologies Inc.	\$ 7,899.25
Promenade Senior Suites & Retirement Residence	\$ 1,400.00
Pyron Fire Protection	\$ 943.27
Ravines Retirement Residence	\$ 428.00
Receiver General	\$ 109,411.20
Red Beryl Concept	\$ 13,899.00
ROCK & ROLL ED	\$ 455.00
Rockland Pharmacy	\$ 2,135.04
Rogers - 240-67265101	\$ 2,892.80
Rogers 240 - 713692901	\$ 8,678.40
Rona Inc.	\$ 7,348.14
S&R Mechanical	\$ 9,116.32
Salah Piro	\$ 89.77
Schindler Elevator Corp	\$ 15,238.81
Senior Care Services	\$ 21,260.58
Shred-It International ULC	\$ 212.29
Silver Linings Healthcare Inc.	\$ 12,347.57
Snelling	\$ 3,514.22
Solva Senior Living	\$ 7,910.00
Streekless	\$ 2,542.50
Sunset Singers	\$ 150.00
T.P. Crawford Limited	\$ 985.27
Taxitab	\$ 342.85
Tea & Toast Inc.	\$ 22,148.00
Tenants (Vacated)	\$ 206,061.88
Trajectory Beverage Partners	\$ 1,557.64
Uline Canada Corporation	\$ 552.00
VAN HOUTTE COFFEE SERVICES INC.	\$ 1,711.27
Walker Environmental Group	\$ 1,955.26
Waste Connections of Canada	\$ 477.87
Waste Management of Canada Corporation	\$ 18,445.53
Worldwide Information Systems Corp	\$ 10,119.16
Wright, Larry	\$ 185.00
Zirimwabagabo, Djamali	\$ 48.46
Total	\$ 846,700.12

CENTRAL 1 CREDIT UNION  
Applicant

-and- 2139770 ONTARIO INC.  
Respondent

Court File No. CV-24-00097134-0000

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT OTTAWA

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**MOTION RECORD**

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**SimpsonWigle LAW LLP**  
1006 Skyview Drive, Suite 103  
Burlington, ON L7P 0V1

**Rosemary A. Fisher** (LSO #32238T)  
E-mail: fisherr@simpsonwigle.com  
Tel: (905) 639-1052  
Fax: (905) 528-9008

Lawyers for BDO Canada Limited., in its capacity as  
Receiver of the assets, undertakings and property of  
2139770 Ontario Inc.