

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Applicant/Responding Party

and

**ASHCROFT HOMES – 101 RICHMOND ROAD INC.,  
ASHCROFT HOMES – 108 RICHMOND ROAD INC., and ASHCROFT HOMES – 111  
RICHMOND ROAD INC.**

Respondents/Moving Parties

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**RESPONDENTS/MOVING PARTIES' MOTION RECORD**

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November 4, 2024

**MANN LAWYERS LLP**

300-11 Holland Avenue  
Ottawa, ON K1Y 4S1

**Raymond Murray (LSO# 50507D)**

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Lawyers for the Respondents, Ashcroft Homes  
– 101 Richmond Road Inc., Ashcroft Homes –  
108 Richmond Road Inc., and Ashcroft Homes –  
111 Richmond Road Inc.

**TO: SERVICE LIST**

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# TAB 1



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Applicant/Responding Party

and

**ASHCROFT HOMES – 101 RICHMOND ROAD INC.,  
ASHCROFT HOMES – 108 RICHMOND ROAD INC., and ASHCROFT HOMES – 111  
RICHMOND ROAD INC.**

Respondents/Moving Parties

**NOTICE OF MOTION**

The Respondent, Ashcroft Homes – 101 Richmond Road Inc., Ashcroft Homes – 108 Richmond Road Inc., and Ashcroft Homes – 111 Richmond Road Inc. (“**Ashcroft**” or the “**Debtor**”) will make a motion before the Honourable Justice C. MacLeod of the Ontario Superior Court of Justice (the “**Court**”) on November 5, 2024 at 10:00 a.m.

**PROPOSED METHOD OF HEARING:** The motion is to be heard

☐ In writing under subrule 37.12.1 (1) because it is made without notice;

☐ In writing as an opposed motion under subrule 37.12.1 (4);

☐ In person;

☐ By telephone conference; or,

[X] By video conference

at the following location: 161 Elgin Street, Ottawa, ON, K2P 2K1 via Zoom

**THE MOTION IS FOR:**

1. If necessary, abridging the time for service of Ashcroft's Notice of Motion and Responding Motion Record and validating service;
2. Leave of this Honourable Court to pursue a proceeding as against the Receiver, BDO Canada Limited (the "**Receiver**") pursuant to paragraph 10 of the Amended and Restated Order attached as Schedule "A" to the Endorsement of Justice Corthorn dated September 3, 2024 ("September 3, 2024 Endorsement"), if required, as it relates to the Directions Ashcroft pursues in the relief below;
3. Directions from this Honourable Court for the orderly administration of the entities under the Receivership and the discharge of the Receiver; namely,
  - a) An Order that Ashcroft is authorized and directed to complete the refinancing with HP ABL Fund Inc. in the amount of \$8,750,000 (the "**Financing**"), as directed and outlined in the payments below, with the surplus amounts under the Financing being available to Ashcroft on the terms and conditions outlined in the Financing and for its general corporate purposes.
  - b) An Order directing payment by the Ashcroft to the Applicant, DUCA Financial Services Credit Union Ltd. ("**DUCA**") in accordance with DUCA's payment statement as of November 5, 2024;
  - c) An Order, upon DUCA's receipt of the payment set out at paragraph (b) above, discharging all DUCA encumbrances on Ashcroft's properties particularized at Schedule "A" of the September 3, 2024 Endorsement (the "**Property**");

- d) An Order, directing payment by Ashcroft in the amount set out in Receiver's receipts and disbursements that it intends to file in its motion record (the "**Disputed Amount**"), to the Receiver, which amount shall be held in escrow without prejudice to Ashcroft's right to request the Court to compel the Receiver to pass its accounts;
  - e) An Order, upon payment by Ashcroft to the Receiver set out at paragraph (d) above, discharging the registration of the Receivership Order, as outlined at paragraph 20 of the Amended and Restated Order of the September 3, 2024 Endorsement (the "**Receivership Order**");
  - f) An Order suspending the Sales Process set out at Schedule B of the September 3, 2024 Endorsement (the "**Sales Process Order**");
- 4. The costs of this motion; and,
  - 5. Such further and other Relief as this Honourable Court may deem just.

#### **THE GROUNDS FOR THE MOTION ARE:**

##### **Background**

- 6. The Applicant, DUCA Financial Services Credit Union Ltd. ("**DUCA**") is a credit union and granted the Debtor, Ashcroft, a non-revolving five-year term loan in the amount of \$8,800,000 (the "**Loan**") in relation to the Ashcroft properties, 101 Richmond Road and 108 Richmond Road (the "**Property**").
- 7. Ashcroft defaulted on the Loan and on March 25, 2024, DUCA issued demands requesting payment of the indebtedness and a notice of intention to enforce security under the Loan. Ashcroft was unable to satisfy the requests.

8. Consequently, DUCA commenced an application on April 23, 2024, to appoint BDO Canada Limited as receiver (the “**Receiver**”), without security, over the assets, property and undertakings of Ashcroft Homes – 108 Richmond Road Inc. and Ashcroft Homes – 111 Richmond Road Inc. (the “**Property**”).
9. On May 16, 2024, Justice MacLeod granted DUCA’s Application in part, appointing the Receiver pursuant to an Order dated May 16, 2024 (the “Receivership Order”). The Receiver’s appointment was stayed until June 17, 2024.
10. On September 3, 2024, the Receiver brought a motion to approve its proposed sale process of the Property, its’ First Report and its’ interim statement of receipts and disbursements, which tallied a net receipt of \$185,402. Ashcroft did not consent to or oppose the motion.
11. On September 3, 2024, Justice Corthorn granted the relief sought by the Receiver, and issued an endorsement with two accompanying Orders, one which restated and amended Justice MacLeod’s May 16, 2024, Order (the “**Amended Order**”) and the other which dealt with the sale of the Property (the “**Sales Process Order**”).

### **Ashcroft’s Refinancing**

12. On August 27, 2024, Ashcroft requested a payout statement from the Receiver, explaining that it wanted to know the amount it would require to satisfy all debts, including the cost of the receivership.
13. On September 19, 2024, Ashcroft again requested a statement and particulars from both DUCA and the Receiver to pay off its debts and the receivership fees, expenses and receipts. The request was made so Ashcroft understood the amount it required to pay off all debts and discharge the Receiver.

14. On September 23, 2024, DUCA provided a breakdown of balances owed by Ashcroft in respect of its loan in the amount of \$6,836,833.73.
15. On September 23, 2024, the Receiver informed Ashcroft that its combined fees and disbursements, including counsel fees, were \$425,000. The Receiver neither set out how it calculated these fees nor outlined any other fees or outstanding debts. Since this communication, Ashcroft has requested a breakdown and particulars of the \$425,000 several times but the Receiver has never provided this information.
16. In late September 2024, based on the Receiver's representations, Ashcroft secured sufficient funds to realize its debt to DUCA and to pay the Receiver's receipts, expenses, and fees.
17. On October 4, 2024, Ashcroft advised the Receiver and DUCA that it had secured a refinancing loan, which it had directed to its solicitors' trust account to pay out all debts and receivership fees.
18. On October 7, 2024, the Receiver advised Ashcroft that it required \$8,500,000 in financing to cover its debts and to discharge the Receiver. The Receiver provided a breakdown on how it arrived at the \$8,500,000. The Receiver also advised that it would provide a breakdown and particulars of the \$425,000 the following day, namely by October 8, 2024.
19. At the same meeting, Ashcroft advised that it would attempt to provide particulars of its refinancing by the next day, namely October 8, 2024.
20. The following day, on October 8, 2024, Ashcroft advised both the Receiver and DUCA that it had secured the amount of \$8,750,000 in the refinancing arrangement, and

provided particulars and a breakdown of how these funds were sufficient to discharge the Receiver and pay all debts.

21. On October 9, 2024, the Receiver newly communicated, *inter alia*, that:

- (a) It had not completed a breakdown of the alleged \$425,000 in fees and expenses but reminded the Debtor that the debts accrue daily;
- (b) It was unsure when it would be able to provide information related to the \$425,000 in alleged fees and expenses;
- (c) It had not considered other liabilities and debts owed by Ashcroft when providing the \$425,000 figure, although it was neither able to state what were the other debts, nor their amounts;
- (d) The amount owed by Ashcroft fluctuated daily to the extent that the Receiver was struggling to compute the rent revenues and debt; and,
- (e) The \$8,750,000 loan may be insufficient to cover the DUCA payout and outstanding debts required before the Receiver could be discharged.

22. BDO's communications at the October 9 meeting were shocking to Ashcroft after it had been told less than two business days earlier that \$8,500,000 was sufficient to pay all outstanding debts and liabilities and discharge the Receiver. Ashcroft was equally concerned that the Receiver had failed to take care of the ongoing expenses and day-to-day operations of the Property. Finally, Ashcroft was concerned about the Receiver's comments that there are incomputable fluctuations in the debt and receipts of the Property.

23. On October 10, 2024, counsel for DUCA and the Receiver, sent a list of questions regarding the refinancing secured by Ashcroft. This email also confirmed that the

Receiver would stay the Sales Process for one week, until October 17, 2024, and that it would consider extending that timeline based on Ashcroft's responses.

24. On October 11, 2024, Ashcroft provided fulsome answers to the questions and provided all documentation pertaining to the refinancing secured by Ashcroft.
25. On October 11, 2024, counsel for DUCA provided a per diem amount for interest of \$875.41, with professional fees still floating and accruing.
26. On October 11, 2024, the Receiver provided Ashcroft with a summary of estate accounts along with an estimate of the refinancing use of proceeds as of October 31, 2024, and noted that the \$8,750,000 would be marginally sufficient to cover the costs associated with terminating the proceedings. The Receiver did not address whether it would extend the suspension of the Sales Process.
27. In its October 11 correspondence, the Receiver set out that its professional fees up until September 30, 2024 were \$519,802.84, which was a \$94,802.84 increase from the \$425,000 in fees it had reported on September 23, 2024.
28. The Receiver also requested assurance by Ashcroft that funding was available to cover shortfalls without providing any particulars of why there would be a shortfall.
29. For reasons unknown to Ashcroft, the Receiver failed or otherwise refused to provide particulars related to the quantum required to satisfy and discharge the Receiver of its duties or to provide a timeline regarding same, despite repeated requests since August 27, 2024, up until Friday, October 11, 2024.
30. On October 15, 2024, the Receiver contacted the Court requesting that an urgent court proceeding be heard to deal with the Receivership.

## **Discharging the Receiver and Operating the Ashcroft Business**

31. Ashcroft has communicated and been in the position to discharge the Receiver since October 4, 2024. This Ashcroft business consists of three condominiums with residential and commercial properties, some of which are let and others that have been or will be sold. There are no employees. A transfer from Ashcroft to the Receiver could be accomplished in 5 business days or less. Beyond the payment to DUCA and the Receiver and the transfer of documentation and billings, there is little remaining for the Receiver to carry out to transfer the business back to Ashcroft.
32. Ashcroft has its personnel and agents prepared to transfer its business back and recommence operations immediately. It has the finances in place to carry on business for over a year without taking into account future sales.
33. On October 21 and again on November 1, 2024, Ashcroft provided draft orders to stay the sale process, transfer funds in full to DUCA and discharge the receiver. BDO did not respond to the draft order proposals.
34. BDO has not provided its Second Report, its interim statements of receipts and disbursements, or any fee affidavits.
35. Rules 1.04, 1.05, 2.01, 2.03, 16.04, 37, 41.06, 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194.
36. Section 67 of the *Personal Property Security Act*, R.S.O. 1990, c. P.10.
37. Section 247 and 248 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3.
38. Such further and other grounds as the lawyers may advise and this Honourable Court may deem just.



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

39. The Affidavit of Manny Difilippo, sworn November 4, 2024;

40. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

Date: November 4, 2024

**MANN LAWYERS LLP**  
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Lawyers for the Respondents/Moving Parties,  
Ashcroft Homes – 101 Richmond Road Inc.,  
Ashcroft Homes – 108 Richmond Road Inc., and  
Ashcroft Homes – 111 Richmond Road Inc.

**TO: SERVICE LIST**

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

-and-

**ASHCROFT HOMES – 101 RICHMOND  
HOMES – 108 RICHMOND ROAD INC.  
– 111 RICHMOND ROAD INC.**

Applicant/Responding Party

Respondents/Moving Parties

Court File

**ONTARIO  
SUPERIOR COURT OF  
PROCEEDING COMMENCEMENT  
OTTAWA**

**NOTICE OF MOTION**

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Lawyers for the Respondents/Moving Parties  
Richmond Road Inc., Ashcroft Homes – 108 Richmond Road Inc.,  
Ashcroft Homes – 111 Richmond Road Inc.

# TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Applicant

and

**ASHCROFT HOMES – 101 RICHMOND ROAD INC., ASHCROFT HOMES – 108  
RICHMOND ROAD INC., and ASHCROFT HOMES—111 RICHMOND ROAD INC.**

Respondents

**AFFIDAVIT OF MANNY DIFILIPPO**

I, Manny DiFilippo, of the City of Toronto, in the Province of Ontario, MAKE OAT AND SAY  
AS FOLLOWS:

1. I have acted as Chief Financial Officer of Ashcroft Homes (“**Ashcroft**”), the parent company of 111 Richmond Road Inc. and 108 Richmond Road Inc. through the amalgamation of 101 Richmond Road Inc. and 111 Richmond Road Inc. (collectively the “**Ashcroft**”), since 2022 and as such have knowledge of the matters hereinafter deposed to. Where I do not have direct knowledge, I identify the source of the information and believe it to be true.
2. Ashcroft is a lander developer and a builder of residential housing both in low rise and high rise.

3. The residential projects known as 111 Richmond Road, 101 Richmond Road, and 108 Richmond Road represent over 600 residential condos and approximately 38,000 square feet of commercial space. Apart from 18 condominiums retained as rental properties, all the residential condominiums have been sold. The commercial space has been retained and the intent remains to rent out these spaces when Ashcroft takes back its assets and property from the Receiver upon discharge.

## **Background**

4. The Applicant, DUCA Financial Services Credit Union Ltd. (“**DUCA**”) is a credit union and granted the Debtor, Ashcroft, a non-revolving five-year term loan in the amount of \$8,800,000 (the “**Loan**”) in relation to the Ashcroft properties, namely 101 and 108 Richmond Road (the “**Property**”).
5. Ashcroft defaulted on the Loan and on March 25, 2024, DUCA issued demands requesting payment of indebtedness and a notice of intention to enforce security under the Loan. Ashcroft was unable to satisfy the requests.
6. Consequently, DUCA commenced an application on April 23, 2024, to appoint BDO Canada Limited (“**BDO**”) as receiver, without security, over the assets, property and undertakings of the Ashcroft.
7. By Order of His Honour Justice MacLeod, dated on or around May 16, 2024, BDO was appointed as receiver over the Property, which was stayed until June 17, 2024 to allow for us to pursue and secure refinancing. A copy of Justice MacLeod’s endorsement, dated May 16, 2024, is attached as **Exhibit “A”**.

8. At the time the Order of Justice MacLeod was made, as noted in His Honour's endorsement, Ashcroft had a financing commitment.
9. On September 3, 2024, BDO brought a motion to approve its proposed sale process of the Property, its' First Report and its' interim statement of receipts and disbursements, which tallied a net receipt of \$185,402 for the Property. Ashcroft did not consent to or oppose the motion.
10. On September 3, 2024, Justice Corthorn granted the relief sought by BDO, and issued an endorsement with two accompanying Orders, one which restated and amended Justice MacLeod's May 16, 2024, Order (the "**Amended Order**") and the other which dealt with the sale of the Ashcroft Parties (the "**Sales Process Order**").

### **Ashcrofts Refinancing**

11. On August 27, 2024, Ashcroft requested a payout statement from BDO, specifically requesting the amount required for Ashcroft to pay out the full amount of indebtedness, including its costs and fees as well as those of its counsel, Dentons. A copy of the email from our counsel to BDO's counsel dated August 27, 2024, is attached as **Exhibit "B"**.
12. On September 19, 2024, having not heard back from BDO about a total amount including BDO's and its counsel's fees, we again requested a statement and particulars from both DUCA and BDO as to the amount needed to pay off the indebtedness in full, including the costs of fees of BDO and its counsel. In that same correspondence, I provided BDO with a signed commitment letter for \$8.5 million, which was set to fund by September 27, 2024. A copy of my email to Matthew Marchand dated September 19, 2024 is attached as **Exhibit "C"**.

13. On September 23, 2024, DUCA provided a breakdown of the balances owed by the Ashcroft in respect of its loan in the amount of \$6,836,833.73. A copy of the email from Ivan Bogdanovich to me is attached as **Exhibit “D”**.
14. On or around September 23, 2024, BDO informed Ashcroft that its combined fees and disbursements (including its legal fees) were \$425,000. BDO did not provide a breakdown setting out how it calculated these fees. A copy of this email from Matthew Marchand to me, dated September 23, 2024, is as **Exhibit “E”**.
15. Given the short period of time that Ashcroft had been under receivership and the work that I understood had be required of BDO in its role as Receiver, I believe the amounts and legal fees to be unusual and excessive. As a result, we persistently asked BDO for a breakdown and particulars of its fees, disbursements and legal fees in relation to the \$425,000. It is my understanding that to date, BDO has not provided any particulars in respect of the \$425,000.
16. In late September 2024, based on BDO’s representation that its currents fees, disbursements and expenses were \$425,000, Ashcroft secured sufficient financing to pay off the indebtedness owed to DUCA and BDO.
17. On October 4, 2024, BDO was advised that we had secured refinancing, which we directed to our solicitor’s trust account to be held to pay out the indebtedness owed to DUCA as well as BDO’s costs.
18. On October 7, 2024, BDO advised us that Ashcroft required \$8,500,000 in financing to cover its debts and to discharge the receiver. BDO also advised that it would provide a breakdown and particulars of the \$425,000 the following day, namely, by October 8, 2024.

19. At the same time, our counsel advised BDO that it would attempt to provide particulars of our refinancing by the next day as well.
20. On the following day, October 8, 2024, our counsel advised BDO and DUCA counsel that it had secured the amount of \$8,750,000 in the refinancing arrangement. Our counsel provided particulars and a breakdown of how these funds were sufficient to discharge the receiver and pay all debts, including debts not reported on by BDO in September, namely property taxes. A copy of the email by our counsel to BDO and DUCA counsel dated October 8, 2024 is attached as **Exhibit “F”**.
21. On October 9, 2024, BDO newly communicated that:
- (i) It had not completed a breakdown of the alleged \$425,000 in fees and expenses but reminded Ashcroft that the debts are accruing daily;
  - (ii) It was unsure when it would be able to provide information related to the \$425,000 in alleged fees and expenses;
  - (iii) It had not included other liabilities and debts owed by the Ashcroft when providing the \$425,000 figure, although it was neither able to state what the other debts were, nor their amounts;
  - (iv) BDO had, by that point, failed to pay HST and property taxes for the certain properties at issue;
  - (v) The amount owed by the Ashcroft fluctuated daily to the extent that the Receiver was struggling to compute the rent revenues and debt; and,
  - (vi) The \$8,750,000 loan may be insufficient to cover the DUCA payout and outstanding debts required before BDO could be discharged as receiver.



22. BDO's communication on October 9, 2024, was shocking and concerning to us, given that we had been told less than two business days earlier that \$8,500,000 was sufficient to pay all outstanding debts and liabilities and discharge BDO as the Receiver.
23. I was also very concerned to hear that BDO had failed to take care of the ongoing expenses and day-to-day operations of the properties, and that there were somehow incomputable fluctuations in the debt and receipts of the properties.
24. On or around October 10, 2024, counsel for DUCA sent, on its behalf and on behalf of BDO, a list of questions regarding the refinancing secured by Ashcroft. This email also confirmed that BDO would stay the Sales Process of the properties for one week, until October 17, 2024, to provide us with time to consider the questions being asked.
25. BDO did not commit to terminating the Sales Process all together, and instead indicated that they would consider the additional information we provided before making any such determination.
26. On or around October 11, 2024, I provided fulsome answers on behalf of the Ashcroft regarding the questions, and I provided all requested documentation pertaining to the refinancing, as requested. These answers and documentation were sent by our counsel to counsel for BDO and DUCA on October 11, 2024, a copy of this email is attached as **Exhibit "G"**.
27. On or around October 11, 2024, BDO provided Ashcroft with a summary of estate accounts along with an estimate of the use of refinancing proceeds as of October 31, 2024, noting that the amount of \$8.75 million would be "marginally sufficient" to cover the costs associated with terminating the proceedings. A copy of BDO counsel's email to DUCA and Ashcroft counsel dated October 11, 2024 is attached as **Exhibit "H"**.

28. At that time, BDO indicated that its professional fees up until September 30, 2024, were \$519,802.84 – which represents a \$94,802.84 increase from the \$425,000 amount in two weeks (September 13 to September 30). No explanation was provided by BDO for such a dramatic and significant increase in professional fees.
29. On October 11, 2024, counsel for DUCA provided a per diem amount for interest on the indebtedness of \$875.41, with professional fees still accruing.
30. In addition, BDO has requested assurance from us that funding is available to cover further shortfalls without providing any particulars for why there would be a shortfall.
31. For reasons unknown to me, BDO, in its role as Receiver, has failed or otherwise refused to provide particulars related to the total amount required to pay off all amounts owed and to discharge the Receiver or to provide a timeline regarding same, despite repeated requests for same from the Ashcroft since August 27, 2024.
32. The failure or refusal by BDO to provide these amounts in a timely manner or at all, has hindered our ability to pay off DUCA in full, despite having the necessary funds ready to do so. While we have received the necessary funds through refinancing, that new lender expects us to pay out DUCA and have BDO's receivership over the Ashcroft discharged in a timely manner, which has not happened due to BDO, and has threatened whether our funds will be available to pay DUCA once BDO finally provides us with a total amount including all costs and fees.
33. BDO's failure or refusal to provide a payoff statement or final amount to us has caused the receivership to continue unnecessarily, which has caused further interest to accrue on the indebtedness and has also allowed BDO and its counsel to continue adding additional fees and costs.

34. BDO's failure or refusal to provide a payoff statement or final amount to us has been frustrating, given that the Ashcroft have the necessary funds available to pay out DUCA and BDO's and its counsel's costs, which have been sitting in our counsel's trust account. We have been ready, willing, and able to pay out DUCA for over a month once the total amount to pay, including all fees, is confirmed by BDO, which has not happened.
35. On October 16, 2024, counsel for the Ashcroft contacted the Court requesting an urgent motion hearing, to seek relief from the Court regarding, inter alia, the timely discharge of BDO as Receiver and a stay of the Sales Process. Ashcroft included a draft Notice of Motion and Letter to the Court outlining its reasons for this request. Copies of the draft Notice of Motion and the Letter to the Court are attached as **Exhibit "I"**.
36. On October 21, 2024, counsel for the Ashcroft circulated a draft Order to all parties involved in the Receivership, which involved the discharge of BDO as receiver, with their fees being held in escrow as a disputed amount to be potentially subject to a formal passing of accounts and approval by the Court at a later date. A copy of our counsel's email and the accompanying draft order to counsel for DUCA and BDO is attached as **Exhibit "J"**.
37. The following day, on October 22, 2024, BDO served a Notice of Motion.

### **Discharging the Receiver and Operating the Ashcroft Business**

38. Ashcroft has communicated and been in the position to discharge the Receiver since October 4, 2024. This Ashcroft business consists of three condominiums with residential and commercial properties, some of which are let and others that have been or will be sold. There are no employees. A transfer from Ashcroft to the Receiver could be

accomplished in 5 business days or less. Beyond the payment to DUCA and the Receiver, and the transfer of documentation and billings, there is little remaining for the Receiver to carry out to transfer the business back to Ashcroft.

39. Ashcroft has its personnel and agents prepared to transfer its business back and re-commence operations immediately. It has the finances in place to carry on business for over a year without taking into account future sales.
40. On October 21 and again on November 1, 2024, Ashcroft provided draft orders to stay the sale process, transfer funds in full to DUCA and discharge the receiver. The draft order attached to the November 1 email is similar to the order circulated to all parties on October 21, 2024, in an effort to proactively work towards tendering payment to all parties and discharging the receivership.
41. The failure to discharge the receivership and/or take any proactive steps towards same has caused Ashcroft damages, namely in the form of ongoing interest charges, accruing fees, exacerbated costs, and reputation damage. A copy of our counsel's letter to counsel for DUCA and BDO dated November 1, 2024 with the accompanying draft order is attached as **Exhibit "K"**. BDO did not respond to either draft order proposal.
42. BDO has not provided its Second Report, its interim statements of receipts and disbursements, or any fee affidavits.
43. I make this affidavit in provide an update to the Court on this matter's status and for no other or improper purpose.

**SWORN** remotely by Manny DiFilippo, of the City of Toronto, in the Province of Ontario, before me at the City of Ottawa, in the Province of Ontario on November 4, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely. The Affiant was located in Toronto, Ontario while the commissioner was located in Perth, Ontario.



Commissioner for Taking Affidavits  
(or as may be)



**MANNY DIFILIPPO**

This is Exhibit “A” referred to in the Affidavit of Manny Difilippo sworn by Manny Difilippo of the City of Toronto, in the Province of Ontario, before me at the Town of Perth in the Province of Ontario, on November 4, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'S. Delvillano', with a horizontal line extending to the right.

*Commissioner for Taking Affidavits (or as may be)*

**SARAH DELVILLANO**

**CITATION:** Duca FSCUL v. Ashcroft Homes -101 Richmond et. al., 2024 ONSC 2830  
**COURT FILE NO.:** CV-24-95337  
**DATE:** 2024 05 16

**SUPERIOR COURT OF JUSTICE – ONTARIO**

APPLICATION UNDER 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

**RE:** DUCA FINANCIAL SERVICES CREDIT UNION LTD., Applicant

**AND:**

ASHCROFT HOMES - 101 RICHMOND ROAD INC., ASHCROFT HOMES - 108 RICHMOND ROAD INC., and ASHCROFT HOMES - 111 RICHMOND ROAD INC., Respondents

**BEFORE:** C. MacLeod RSJ

**COUNSEL:** Stephen Goudreau & Timothy Dunn, for the Applicant

Scott McLean & Sarah DelVillano, for the Respondents

**HEARD:** May 16, 2024

**ENDORSEMENT**

[1] The Respondents are indebted to the Applicant in the approximate amount of \$6,537,579.45. The Applicant holds security by way of mortgages and general security agreements over the Respondents' personal and real property. This is undisputed.

[2] The loan matured in November of 2023 and was not paid. The parties then entered into a "forbearance agreement" which has also expired without the Respondents paying the debt.

[3] By the terms of the forbearance agreement, the Respondents agreed that BDO Canada Limited would act as a "consultant" (effectively a monitor) during the term of the agreement. The Respondents also agreed that if the debt was not paid when the forbearance agreement expired, the Applicant would have the right to appoint a Receiver.

[4] The Applicant now moves to enforce the consent and asks the court for an order that BDO be appointed as a Receiver with the powers set out in the draft order modelled on the standard Commercial List receivership order.

[5] The Respondents do not dispute the amounts owing nor the right of the Applicants to put in a Receiver, but they request the court to postpone the receivership. The Respondents now have a financing commitment for \$7 million. That commitment is conditional upon a number of terms which the Respondents hope to fulfill within a matter of weeks.

[6] Notwithstanding the terms of the forbearance agreement and the right of the Applicant to seek this order, a receivership order pursuant to the *Courts of Justice Act* or the *Bankruptcy and Insolvency Act* is a discretionary order. The statutory language is that the court “may” appoint a receiver “if it is just or convenient to do so”.

[7] I agree entirely with the analysis of Osborne J. in *Macquarie Equipment Finance Limited v. Validus Power Corp. et al.*, 2023 ONSC 4772. The Alberta decision of *Servus Credit Union Ltd. v. Proform Management Inc.*, 202 ABQB 316 also contains a useful analysis of the law. Having regard to the agreement, the Respondents cannot argue about the merits of a receivership, and they cannot contest the right of the Applicants to seek the order.

[8] There is a public interest in enforcing security agreements. If creditors cannot rely on the efficient enforcement of their security, that has implications for the ability to obtain credit and the terms on which it might be offered. There is also a public interest in avoiding catastrophic loan defaults, running up unnecessary costs or triggering insolvency or rearrangement proceedings. In this case, the respondents are units of the Ashcroft group of companies, there are significant assets to secure these loans and there are personal guarantees.

[9] The only justification for withholding the order is a question of commercial utility and convenience. There is little point in disrupting the business relationships of the Respondents if they are actually able to obtain the proposed financing to pay out the loan. There is also the possibility that immediate drastic action by the Receiver might impair the capacity of the Respondent to secure that financing. On the other hand, although the financing commitment has been signed by both parties, it remains conditional. The Applicant argues that it has been more than patient and has allowed the Respondents an already lengthy indulgence. Counsel argues that enough is enough”.

[10] I agree it would be unfair to dismiss the application and require a fresh application if the new financing does not appear. In my view the appropriate disposition is to grant the order now but to stay any steps by the receiver to take possession of the security or to sell the assets for 30 days. In the interim the receiver may monitor the business of the Respondents and the steps they are taking to secure the financing.

[11] I have signed the proposed order with these amendments.

[12] The Applicant does not ask for costs of the Application at this time. Under the terms of its loan agreements, it is entitled to costs of enforcement and it prefers to deal with the costs at the stage of calculating the loan payout. The Respondents are content with that approach.

[13] Order to go as signed.

---

Mr. Justice C. MacLeod

May 16, 2024



This is Exhibit "B" referred to in the Affidavit of Manny DiFilippo, sworn by Manny DiFilippo, of the City of Toronto, in the Province of Ontario, sworn before me at the Town of Perth, in the Province of Ontario, on November 4, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'S. Delvellano', with a stylized flourish at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**SARAH DELVELLANO**

RE: Duca Financial and Ashcroft Homes



K. Scott McLean  
To: Salmas, John  
Cc: Wilson, Sara-Ann; Mackinnon Blair, Fraser; Sarah DelVillano

Reply

Reply All

Forward

Tue 8/27/2024 10:26 AM

This is the most recent version, but you made changes to another copy. [Click here to see the other versions.](#)

John, that was a little unfortunate. I had one other point: Ashcroft would like to have a payout statement from the receiver, what would it take to fully satisfy the Debt, including the cost of the receivership to date, as close as the receiver might be.

Scott



**K. Scott McLean**  
**General Counsel and Director of Practice Development**  
**613-369-0375**  
  
11 Holland Avenue | Suite 300 | Ottawa | Ontario | K1Y 4S1  
t: 613-722-1500 | f: 613-722-7677

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This is Exhibit “C” referred to in the Affidavit of Manny Difilippo sworn by Manny Difilippo of the City of Toronto, in the Province of Ontario, before me at the Town of Perth, in the Province of Ontario, on November 4, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'S. Delvillano', written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

**SARAH DELVILLANO**

**From:** Manny Difilippo

**Sent:** September 19, 2024 11:43 AM

**To:** Marchand, Matthew <[mmarchand@bdo.ca](mailto:mmarchand@bdo.ca)>; Boettger, Adam <[aboettger@bdo.ca](mailto:aboettger@bdo.ca)>

**Cc:** David Choo <[dchoo@ashcrofthomes.ca](mailto:dchoo@ashcrofthomes.ca)>; Tara Bonsor <[tbonsor@ashcrofthomes.ca](mailto:tbonsor@ashcrofthomes.ca)>

**Subject:** RE: [EXT] BDO receivership at Qwest

Good morning Matthew, please find attached the signed commitment letter for \$8.5 MM which is set to fund by Sept 27<sup>th</sup>, subject to getting appraisal completed (at least in draft form). I have also included email communication with lender that shows the only matters outstanding is the appraisal and that the funds have be set aside and ready to fund by Sept 27<sup>th</sup>.

Please provide a statement of account at your earliest convenience.

Also, I will send the same documents and request to DUCA requesting a payout statement.

Thanks

---

This is Exhibit “D” referred to in the Affidavit of Manny Difilippo sworn by Manny Difilippo of the City of Toronto, in the Province of Ontario, before me at the Town of Perth, in the Province of Ontario, on November 4, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'S. Delvillano', written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

**SARAH DELVILLANO**

**From:** Manny Difilippo <[mdifilippo@ashcrofthomes.ca](mailto:mdifilippo@ashcrofthomes.ca)>  
**Sent:** Monday, September 23, 2024 4:37 PM  
**To:** Ivan Bogdanovich <[ibogdanovich@duca.com](mailto:ibogdanovich@duca.com)>  
**Cc:** David Choo <[dchoo@ashcrofthomes.ca](mailto:dchoo@ashcrofthomes.ca)>; Tara Bonsor <[tbonsor@ashcrofthomes.ca](mailto:tbonsor@ashcrofthomes.ca)>; Daniella Sicoli-Zupo <[daniella.sicoli-zupo@mannlawyers.com](mailto:daniella.sicoli-zupo@mannlawyers.com)>; K. Scott McLean <[scott.mclean@mannlawyers.com](mailto:scott.mclean@mannlawyers.com)>; Timothy Dunn <[TDunn@blaney.com](mailto:TDunn@blaney.com)>  
**Subject:** RE: [EXT] BDO receivership at Qwest

Thank you Ivan for the prompt response.

---

Manny

---

**From:** Ivan Bogdanovich <[ibogdanovich@duca.com](mailto:ibogdanovich@duca.com)>  
**Sent:** September 23, 2024 4:18 PM  
**To:** Manny Difilippo <[mdifilippo@ashcrofthomes.ca](mailto:mdifilippo@ashcrofthomes.ca)>  
**Cc:** David Choo <[dchoo@ashcrofthomes.ca](mailto:dchoo@ashcrofthomes.ca)>; Tara Bonsor <[tbonsor@ashcrofthomes.ca](mailto:tbonsor@ashcrofthomes.ca)>; Daniella Sicoli-Zupo <[daniella.sicoli-zupo@mannlawyers.com](mailto:daniella.sicoli-zupo@mannlawyers.com)>; K. Scott McLean <[scott.mclean@mannlawyers.com](mailto:scott.mclean@mannlawyers.com)>; Timothy Dunn <[TDunn@blaney.com](mailto:TDunn@blaney.com)>  
**Subject:** RE: [EXT] BDO receivership at Qwest

Hello,

Further to my previous email please see a breakdown of outstanding balances owing as of

September 27<sup>th</sup> excluding receivership costs:

- \$6,456,740.92 Principal;
- \$166,327.94 Interest;
- \$137,102.46 Legal bill (estimate until closing);
- \$76,662.41 Financial consultancy bill;
- **\$6,836,833.73 Total amount payable.**

Best regards,

Ivan Bogdanovich, MBA  
Director, Special Assets

DUCA Financial Services Credit Union Ltd.  
5255 Yonge St. Toronto, ON M2N 6P4, Canada  
T: 416.590.2175 | C: 416.550.8157

[ibogdanovich@duca.com](mailto:ibogdanovich@duca.com)  
[www.duca.com](http://www.duca.com)



---

**From:** Ivan Bogdanovich  
**Sent:** September 20, 2024 9:51 AM  
**To:** Manny Difilippo <[mdifilippo@ashcrofthomes.ca](mailto:mdifilippo@ashcrofthomes.ca)>  
**Cc:** David Choo <[dchoo@ashcrofthomes.ca](mailto:dchoo@ashcrofthomes.ca)>; Tara Bonsor <[tbonsor@ashcrofthomes.ca](mailto:tbonsor@ashcrofthomes.ca)>; Daniella Sicoli-Zupo <[daniella.sicoli-zupo@mannlawyers.com](mailto:daniella.sicoli-zupo@mannlawyers.com)>; K. Scott McLean <[scott.mclean@mannlawyers.com](mailto:scott.mclean@mannlawyers.com)>; Timothy Dunn <[TDunn@blaney.com](mailto:TDunn@blaney.com)>  
**Subject:** RE: [EXT] BDO receivership at Qwest

Hi Manny,  
I acknowledge receipt of your email.

DUCA will provide payout amounts effective September 27 in the coming days as requested. I have copied Tim Dunn of Blaney McMurtry LLP as counsel to DUCA. Please make sure he is copied with respect to any communications to DUCA going forward.

Best regards,

Ivan Bogdanovich, MBA  
Director, Special Assets

DUCA Financial Services Credit Union Ltd.  
5255 Yonge St. Toronto, ON M2N 6P4, Canada  
T: 416.590.2175 | C: 416.550.8157

[ibogdanovich@duca.com](mailto:ibogdanovich@duca.com)



---

**From:** Manny Difilippo <[mdifilippo@ashcrofthomes.ca](mailto:mdifilippo@ashcrofthomes.ca)>  
**Sent:** September 19, 2024 12:49 PM  
**To:** Ivan Bogdanovich <[ibogdanovich@duca.com](mailto:ibogdanovich@duca.com)>  
**Cc:** David Choo <[dchoo@ashcrofthomes.ca](mailto:dchoo@ashcrofthomes.ca)>; Tara Bonsor <[tbonsor@ashcrofthomes.ca](mailto:tbonsor@ashcrofthomes.ca)>; Daniella Sicoli-Zupo <[daniella.sicoli-zupo@mannlawyers.com](mailto:daniella.sicoli-zupo@mannlawyers.com)>; K. Scott McLean <[scott.mclean@mannlawyers.com](mailto:scott.mclean@mannlawyers.com)>  
**Subject:** FW: [EXT] BDO receivership at Qwest

**Please be cautious**

This email was sent to you from someone outside of DUCA.

Good afternoon Ivan, I hope you are keeping well. I am forwarding to you the email that was forwarded to BDO this morning requesting a statement of accounts in order to payout all required expenses for the assets related to your loan. Accordingly I would ask that you provide a payout statement for which our lawyers can include as part of the closing adjustments for the transaction that is set to be funded for Sept 27<sup>th</sup>, as per the attached emails and commitment letter.

Let me know if there is any other matters to address prior to the Sept 27<sup>th</sup> date.

Thank you,

Manny

---

**From:** Manny Difilippo  
**Sent:** September 19, 2024 11:43 AM  
**To:** Marchand, Matthew <[mmarchand@bdo.ca](mailto:mmarchand@bdo.ca)>; Boettger, Adam <[aboettger@bdo.ca](mailto:aboettger@bdo.ca)>  
**Cc:** David Choo <[dchoo@ashcrofthomes.ca](mailto:dchoo@ashcrofthomes.ca)>; Tara Bonsor <[tbonsor@ashcrofthomes.ca](mailto:tbonsor@ashcrofthomes.ca)>  
**Subject:** RE: [EXT] BDO receivership at Qwest

Good morning Matthew, please find attached the signed commitment letter for \$8.5 MM which is set to fund by Sept 27<sup>th</sup>, subject to getting appraisal completed (at least in draft form). I have also included email communication with lender that shows the only matters outstanding is the appraisal and that the funds have been set aside and ready to fund by Sept 27<sup>th</sup>.

Please provide a statement of account at your earliest convenience.



Also, I will send the same documents and request to DUCA requesting a payout statement.

Thanks

Manny

---

**From:** Marchand, Matthew <[mmarchand@bdo.ca](mailto:mmarchand@bdo.ca)>  
**Sent:** September 18, 2024 12:26 AM  
**To:** Manny Difilippo <[mdifilippo@ashcrofthomes.ca](mailto:mdifilippo@ashcrofthomes.ca)>; Boettger, Adam <[aboettger@bdo.ca](mailto:aboettger@bdo.ca)>  
**Cc:** David Choo <[dchoo@ashcrofthomes.ca](mailto:dchoo@ashcrofthomes.ca)>; Tara Bonsor <[tbonsor@ashcrofthomes.ca](mailto:tbonsor@ashcrofthomes.ca)>  
**Subject:** RE: [EXT] BDO receivership at Qwest

Hi Manny,

Please provide us with documentation supporting the refinancing, such as the binding term sheet and confirmation of funds held in trust. Has DUCA been made aware of this development?

We will prepare a statement of fees incurred by the Receiver up to the end of last week, and request Dentons prepare same. DUCA will need to provide a payout statement inclusive of accrued interest and other costs incurred on their end. Please note fees and expenses will continue to accrue until a payout is finalized so the information we will provide shortly may only be used as an estimate at this time, and actual costs will be higher than those shared.

Please also note that a Court order will need to be obtained to, potentially among other things, complete the payout to DUCA, terminate the sales process and the receivership proceedings.

Thank you,

**Matthew Marchand, CPA, CMA, CIRP, LIT**  
*Partner & Senior Vice President, Business Restructuring & Turnaround Services*  
Financial Advisory Services  
Direct: 416-369-4755  
**BDO Canada Limited**  
20 Wellington Street East, Suite 500  
Toronto, Ontario, Canada M5E 1C5

---

**From:** Manny Difilippo <[mdifilippo@ashcrofthomes.ca](mailto:mdifilippo@ashcrofthomes.ca)>  
**Sent:** Tuesday, September 17, 2024 8:42 AM  
**To:** Marchand, Matthew <[mmarchand@bdo.ca](mailto:mmarchand@bdo.ca)>; Boettger, Adam <[aboettger@bdo.ca](mailto:aboettger@bdo.ca)>  
**Cc:** David Choo <[dchoo@ashcrofthomes.ca](mailto:dchoo@ashcrofthomes.ca)>; Tara Bonsor <[tbonsor@ashcrofthomes.ca](mailto:tbonsor@ashcrofthomes.ca)>  
**Subject:** [EXT] BDO receivership at Qwest

Good morning gentlemen, further to my previous emails of this morning, we have a lender that has put sufficient funds in trust to enable us to payout the DUCA loan and other related costs. The lender is able to fund the loan between Sept 20 to the 27<sup>th</sup>, subject to getting an appraisal done within this time frame. However, as I do not have a statement of accounts from BDO as to what funds will be needed to payout all necessary costs, I would like to ensure my estimate is sufficient to cover all costs that need to be covered by the funds that the lender has put in trust

with their lawyers.

Based on our discussion of 2 weeks ago, BDO was going to provide a summary of the accounts, which I have not yet received. Your attention to this request is greatly appreciated, as there is significant assurance that the matter could be resolved within the next 2 weeks, and thus would prevent any further unnecessary costs to be incurred....including the potential commissions to Colliers.

Thank you.

Manny

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---

This is Exhibit “E” referred to in the Affidavit of Manny Difilippo sworn by Manny Difilippo of the City of Toronto, in the Province of Ontario, before me at the Town of Perth, in the Province of Ontario, on November 4, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'S. Delvillano', with a horizontal line extending to the right.

*Commissioner for Taking Affidavits (or as may be)*

**SARAH DELVILLANO**

**From:** [Marchand, Matthew](#)  
**To:** [Manny Difilippo](#)  
**Cc:** [Boettger, Adam](#)  
**Subject:** Ashcroft re receivership fees  
**Date:** September 23, 2024 10:43:38 AM  
**Attachments:** [image4a9a36.PNG](#)  
[image28e827.PNG](#)

---

Good morning Manny,

Further to your request, the combined fees and disbursements of the Receiver and its legal counsel, amount to approximately \$425,000 for the period up to September 13<sup>th</sup>. Applicable sales taxes are in addition to this amount. Please note fees will continue to be incurred until the Receiver is discharged.

Are you able to provide an update on the status of the refinancing, including when the appraisal condition will be satisfied?

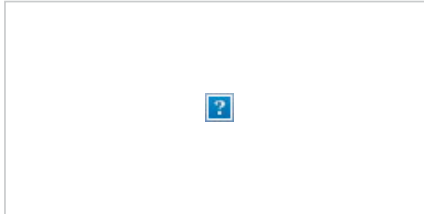
Thank you,

Matthew Marchand, CPA, CMA, CIRP, LIT  
*Partner & Senior Vice President, Business Restructuring & Turnaround Services*  
Financial Advisory Services  
Direct: 416-369-4755  
[BDO Canada Limited](#)  
20 Wellington Street East, Suite 500  
Toronto, Ontario, Canada M5E 1C5

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This is Exhibit “F” referred to in the Affidavit of Manny Difilippo sworn by Manny Difilippo of the City of Toronto, in the Province of Ontario, before me at the Town of Perth, in the Province of Ontario, on November 4, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'S. Delvillano', with a horizontal line extending to the right.

*Commissioner for Taking Affidavits (or as may be)*

**SARAH DELVILLANO**

**From:** Raymond Murray  
**Sent:** Tuesday, October 8, 2024 8:47 PM  
**To:** [john.salmas@dentons.com](mailto:john.salmas@dentons.com)  
**Cc:** Sarah DelVillano <[sarah.delvillano@mannlawyers.com](mailto:sarah.delvillano@mannlawyers.com)>; [TDunn@blaney.com](mailto:TDunn@blaney.com); [SGaudreau@blaney.com](mailto:SGaudreau@blaney.com); [sara.wilson@dentons.com](mailto:sara.wilson@dentons.com)  
**Subject:** Re: BDO - Receiver Discharge Statement and Breakdown - Ashcroft Re-Financing Information

Good Evening John: \_\_\_\_\_

This email is further to yours dated October 7, 2024 and more particularly as it relates to our repeated requests for your client’s discharge statement, including a breakdown of the receiver’s receipts, fees and expenses.

In the interest of moving forward corroboratively, and as we again requested and you undertook yesterday, please provide us with a breakdown of the \$425,000, namely the receipts, fees, and expenses, and outline any additional costs incurred since the September 23, 2024 email. Further, please also provide us with the figure and particulars of any monies collected by BDO including the rents.

We have taken great care to check and recheck the Loan, Allocations, and Receipt of Funds which came into our trust account late Friday afternoon, October 4 as we advised you. In this regard, please note as follows:

Total loan amount:	\$8,750,000
Held back by HP:	
Interest reserve	\$ 921,375
Lender Fee	\$ 155,000
HawCo Peters fee	\$ 183,750
Title insurance	\$ 4,636
Legal fees and trust fees	\$ 33,456

**Transferred to Mann Lawyers                   \$7,451,783**

Total allocation for use of Funds: Loan amount	\$8,750,000
Interest reserve (9 months)	\$ 921,375
BDO fees and Denton’s legal fees estimated	\$ 425,000
DUCA loan payout and associated legal fees	\$6,836,833
HawCo Peters Fee	\$ 183,750
Lender Fee	\$ 155,000

Lender legal and Trust fees and Title insurance	\$ 38,092
Reserve for Property taxes and other costs	\$ 189,950

<b>Total Loan</b>	<b>\$8,750,000</b>
-------------------	--------------------

In addition to the detail and breakdowns which you have undertaken to provide, we look forward to receipt of your motion materials to discharge the receiver, including your draft order and release.

For your ease of reference, my bio can be found at the Mann website at <https://www.mannlawyers.com/our-people/raymond-murray/>

Best regards,

Ray



**Raymond Murray**  
**Lawyer**  
**613-369-0367**

11 Holland Avenue | Suite 300 | Ottawa | Ontario | K1Y 4S1  
t: 613-722-1500 | f: 613-722-7677

---

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This is Exhibit "G" referred to in the Affidavit of Manny DiFilippo, sworn by Manny DiFilippo, of the City of Toronto, in the Province of Ontario, sworn before me at the Town of Perth, in the Province of Ontario, on November 4, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'S. Delvellano', written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

**SARAH DELVELLANO**



**From:** [Raymond Murray](#)  
**To:** [Stephen Gaudreau](#); [john.salmas@dentons.com](mailto:john.salmas@dentons.com)  
**Cc:** [Sarah DelVillano](#); [Timothy Dunn](#); [sara.wilson@dentons.com](mailto:sara.wilson@dentons.com); [MATTHEW MARCHAND \(mmarchand@bdo.ca\); Boettger, Adam](mailto:MATTHEW MARCHAND (mmarchand@bdo.ca); Boettger, Adam)  
**Subject:** Re: BDO Suspension of Sales Process / Ashcroft Response to Questions and Refinancing Information  
**Date:** Friday, October 11, 2024 11:34:17 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[Scan2024-09-19\\_113147.pdf](#)  
[BRW30C9AB1889EE\\_000186.pdf](#)

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Dear Counsel:

We have provided answers to the questions posed by you below in red. We also **attach** the two commitment letters obtained by our client from the refinancing lender. Finally, this email confirms our understanding that the sales process was suspended on October 9, 2024 and will remain suspended until October 17, 2024 given that we have provided a fulsome and particularized response to the questions below.

Best,

Ray



**Raymond Murray**  
**Lawyer**  
**613-369-0367**

11 Holland Avenue | Suite 300 | Ottawa | Ontario | K1Y 4S1  
t: 613-722-1500 | f: 613-722-7677

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This e-mail message is intended for the indicated recipient only and may contain confidential information that is subject to solicitor-client privilege. If you have received this message in error, kindly advise the sender by reply e-mail or phone and destroy any copies in your possession.

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**From:** Stephen Gaudreau <[SGaudreau@blaney.com](mailto:SGaudreau@blaney.com)>  
**Sent:** Thursday, October 10, 2024 9:18 AM  
**To:** Raymond Murray <[raymond.murray@mannlawyers.com](mailto:raymond.murray@mannlawyers.com)>; [john.salmas@dentons.com](mailto:john.salmas@dentons.com)  
**Cc:** Sarah DelVillano <[sarah.delvillano@mannlawyers.com](mailto:sarah.delvillano@mannlawyers.com)>; Timothy Dunn <[TDunn@blaney.com](mailto:TDunn@blaney.com)>; [sara.wilson@dentons.com](mailto:sara.wilson@dentons.com); MATTHEW MARCHAND ([mmarchand@bdo.ca](mailto:mmarchand@bdo.ca)) <[mmarchand@bdo.ca](mailto:mmarchand@bdo.ca)>; Boettger, Adam <[aboettger@bdo.ca](mailto:aboettger@bdo.ca)>  
**Subject:** RE: BDO - Receiver Discharge Statement and Breakdown - Ashcroft Re-Financing Information

Good Morning Ray and Sarah D:

Thanks for the call yesterday afternoon. The Receiver has reviewed and agrees with the contents of this

email. I am sending it in the interests of efficiency and to avoid duplication.

As discussed, the following are questions that we think are important to consider for next steps, and overall to determine whether the proposed refinancing and termination of the receivership is viable. This is not meant to be an exhaustive list and issues/more questions may come up as the parties (including your client) considers this further.

With that being said, I understand from the Receiver that the MLS Listings went live yesterday, however, they are agreeable to suspending the sales process for a week (to October 17<sup>th</sup>) to give you and your client time to consider/answer the questions. To be clear, I understand that the Receiver is not committing to terminating the sales process altogether and will need to consider the additional information given before making any determinations.

#### Questions:

1. Please send all unredacted refinancing documents. It appears that there were likely amendments/revisions to the previous refinancing commitment delivered, and we would like to review. Also the previous documents sent had redactions and were missing schedules. Transparency will be key here. I attach the 2 fully executed documents that has all conditions met for the original loan of \$8.5 MM which was then increased to \$8.75 MM. We are not entirely clear on what missing schedules you are referring to, however, if you are referring to the schedules that list the assets forming the security, I am aware of an email from Manny Difilippo to Matthew Marchand and Adam Boettger dated August 19, which provided fully executed copies of the CL, the increased loan amount, and schedules A,B,C referenced in the CL is again contained in the above.
2. Has the financing closed? For example:
  - a. Are all conditions waived and the funds can be released? If any conditions remain to be met, please advise which. All conditions have been met. As we have previously confirmed, the funds identified in the table provided are held in trust in our trust account and ready to be released without restrictions.
  - b. Are there any deadlines/conditions/constraints in the refinancing that would require the return of funds in the event they are not met? No.
  - c. Note: This is also why we want to review the refinancing documents, so we can understand the mechanics of the deal. The mechanics of the refinancing are particularized in our response #1 and in the attached commitment letters.
3. Can the interest reserve be drawn against to cover any shortfall required to satisfy all debts to terminate the receivership? If not, would this be something Ashcroft could explore with the lender? We need to understand the potential magnitude of this before we can answer your question. For this and other questions, we continue to request details of full statement of accounts needed to have DUCA and the Receiver discharged.

4. Please confirm that the intention is that all pre-filing claims would continue post-filings. **I have not been able to determine what you intend to mean by this question.**
5. Does Ashcroft have built in working capital for after the receivership ends? **Yes, particularly with the interest reserve in place for a 9 month period, the net cash from operations would be more than sufficient for Ashcroft to continue operations.**
6. What's Ashcroft's plan with the properties after the receivership ends? **It is my understanding that the plan is to immediately sell all of the residential assets in order to pay off the HP loan before the interest reserve is utilized.**
7. Will Ashcroft need any support of the Receiver to transition the return of possession and control of the properties, as this will impact overall costs? In most receiverships, on a practical basis, there is a transition period/cost. **Absolutely not.**

**Next Steps:**

I understand that the Receiver is working on the estimated amounts for post-filing claims that will need to be satisfied in order to terminate the receivership. They are working on getting those together (understanding that some of the amounts will be floating and continue to accrue, so it will be difficult to nail down a hard number).

Duca will provide you with a per diem interest accrual amount as well – again keeping in mind that professional fees are floating and are also accruing.

Please feel free to send along answers/documents as they come in.

We appreciate your work on this, and look forward to the information requested.

Thanks,

Stephen Gaudreau  
Partner

[sgaudreau@blaney.com](mailto:sgaudreau@blaney.com)

📞 416-596-4285 | 📞 416-594-3594

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# HP ABL FUND 1 GP INC.

September 17, 2024

To:

Ashcroft Homes – 108 Richmond Road Inc.  
Ashcroft Homes – 111 Richmond Road Inc.  
David Choo

VIA EMAIL: [dchoo@ashcrofthomes.ca](mailto:dchoo@ashcrofthomes.ca)

Dear David,

We are pleased to present this Commitment Letter pertaining to the proposed Credit Facility offered by the Lender to the Borrowers, which provides the terms and conditions in respect of same. The terms and conditions contained in this Commitment Letter are to be held confidential and may not be shared with third parties unless otherwise agreed to by the Lender in writing.

**Lender:** HP ABL Fund I Limited Partnership, by its general partner HP ABL Fund I GP Inc. (the "**Lender**"), or entity as assigned. The Lender is a limited partnership formed and existing under and pursuant to the *Partnership Act* (Alberta)

**Borrower(s):** Ashcroft Homes – 108 Richmond Road Inc.  
Ashcroft Homes – 111 Richmond Road Inc.  
(collectively, the "**Borrowers**", each a "**Borrower**")

**Guarantor(s):** David Choo (the "**Guarantor**")

**Property:** Approximately 38,935 square feet of mixed retail and commercial condominium units and residential condominium units, all as more particularly described in Schedules "A", "B", and "C" attached hereto and forming a part hereof (the "**Property**").

**Loan Type and Amount:** Non-revolving term loan of a maximum of **EIGHT MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS** (\$8,500,000.00) (the "**Credit Facility**").

**Currency:** Unless otherwise indicated, all amounts contained herein are in Canadian dollars.

**Term:** Twelve (12) month facility with a minimum term of TEN (10) months.

**Interest Rate:** 1.17% per month (14.04% per annum) on daily balance outstanding under the Credit Facility. To the extent permitted by law, the default rate of interest will be 2% per month (24% per annum).

**Lender Fees:** The Lender Fee is **ONE HUNDRED SEVENTY THOUSAND DOLLARS AND NO CENTS** (\$170,000.00) (the "**Lender Fee**"), of which **TWENTY THOUSAND DOLLARS AND NO CENTS** (\$20,000.00) has been paid and received (the "**Initial Fee Payment**") with the balance of **ONE HUNDRED FIFTY THOUSAND DOLLARS AND NO CENTS** (\$150,000.00) due on closing and payable out of the Advance. Should the transaction contemplated by this Commitment Letter not close for any reason, the Borrowers shall use the Initial Fee Payment to pay the Lender's due diligence and legal expenses on a solicitor and his own client full-indemnity basis.

**Amortization:** Interest only, compounded monthly with monthly interest payments. Full loan balance due at end of Term.

**Interest Reserve:** There shall be an Interest Reserve provided by the Borrower on closing in the amount of **NINE HUNDRED NINETY FOUR THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS** (\$994,500.00) which will be utilized to fund the first TEN (10) months' interest. If this loan is not repaid in full after TEN (10) months, then monthly interest payments are to be provided one (1) month in advance for each of the next TWO (2) months when the loan is due in full.

**Target Advance Date:** September 27, 2024  
Interest shall accrue from the Advance Date of the Credit Facility, whether or not the Borrowers and Guarantor are in a position to draw funds.

- First Payment: October 27, 2024 (interest payment out of the Interest Reserve)
- Balance Due Date: September 26, 2025
- Prepayment: The Credit Facility may only be prepaid in full or in part prior to the minimum 10-month term upon thirty (30) days' written notice and upon full payment of all accrued interest and other amounts owing to the Lender, provided a minimum of TEN (10) months of interest has been paid.
- Repayment: The full amount of the Credit Facility plus any costs, charges, fees, interest, or other amounts payable, accrued, or unpaid, are to be repaid immediately upon the expiry of the term of the Credit Facility.
- Documents Required: The Lender will proceed in obtaining a formal approval conditional upon the following:
- 1) Each Borrower and Guarantor delivering to the Lender or the Lender's Solicitor any and all documentation as may be requested by them relating in any way to the Property, the market value of the Property, the Security and/or its enforceability or the ability of each Borrower and Guarantor to comply with their material obligations under this Commitment Letter (the "**Deliveries**"). Such Deliveries shall include but not be limited to:
    - a) Lender satisfactory review of historic financial statements, T1 General & Notice of Assessment (3-year history), from each Borrower and Guarantor. Satisfactory review is to include confirmation of all taxes paid in full (if requested);
    - b) Updated appraisal of the Property confirming a minimum value of TWENTY MILLION DOLLARS (\$20,000,000.00);
    - c) Copies of all leases in place;
    - d) Personal Net Worth Statement, satisfactory to the Lender, for each non-incorporated Borrower and Guarantor;
    - e) Corporate organizational chart for each incorporated Borrower and Guarantor showing ultimate beneficial ownership to individuals as applicable and confirmed with the Central Share Registry;
    - f) Satisfactory Appraisal Transmittal Letter addressed to the Lender with respect to appraisals of the Property;
    - g) Environmental Phase I Site Assessment report prepared by an external consultant commissioned and acceptable to the Lender. Documentation of any and all remediation and sign off by appropriate organization.
    - h) Photo Identification satisfactory to the Lender for each non-incorporated Borrower and Guarantor, and any individual holding greater than 20% of common ownership in any Borrower or Guarantor.
  - 2) The Lender having reviewed the Deliveries and finding same acceptable in its sole and absolute discretion.
- Security: All such additional documents and information as the Lender shall require, which may include but not limited to the following:
- 1) Commitment Letter;
  - 2) First-ranking:
    - a) mortgage charging the Property owned by each Borrower, as described in Schedules A, B, and C, for the amount of \$8,500,000.00, and
    - b) general assignment of rents registered against the Property of each Borrower, (collectively, the "**Mortgage Collateral**");
  - 3) General Security Agreement charging all present and after acquired personal property of each Borrower (the "**GSA Collateral**", and together with the Mortgage Collateral, collectively the "**Collateral**");

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- 4) Guarantee by David Choo, limited to the principal amount of **FOUR MILLION DOLLARS AND NO CENTS (\$4,000,000.00)**;
- 5) Assignment of insurance with Lender as a loss payee against the assets of the Borrowers, including the Property;
- 6) Irrevocable Direction of Payment of Funds as more particularly described herein under the heading "Advance" (the "**Direction of Funds**");
- 7) Such further security and other documentation the Lender and its solicitor may reasonably require.

**Loan Documents:**

**"Loan Documents"** means, collectively, this Commitment Letter, the documents listed under the heading "Security" hereunder, and all other documents, instruments and agreements executed and delivered by each Borrower and Guarantor, or any other obligor, in connection directly or indirectly with this Commitment Letter or the Credit Facility, or otherwise referred to or contemplated under or by this Commitment Letter or any such documents, instruments or agreements, as they may be amended, restated, supplemented or replaced from time to time.

**Representations and Warranties:** Each Borrower and Guarantor hereby represent and warrant the following:

- 1) Each Borrower and Guarantor, as applicable, is duly formed and validly existing and in good standing, in compliance with its governing laws, and has the necessary capacity, power and authority to (a) carry on its business, (b) borrow, guarantee and/or grant security over its assets, as the case may be, and (c) enter into this Commitment Letter and the other Loan Documents to which it is a party and to perform its obligations thereunder.
- 2) Prior to funding of the Advance, the execution, delivery and performance of the Loan Documents by each Borrower and Guarantor, as applicable, will have been authorized by all necessary action and each Borrower and Guarantor has duly and validly executed and delivered the Loan Documents to which it is a party.
- 3) Upon execution thereof, the obligations of each Borrower and Guarantor under the Loan Documents to which each is a party will constitute legal, valid, and binding obligations, enforceable against each of them in accordance with their terms.
- 4) The execution, delivery and performance of the Loan Documents do not require any consents or approvals (except such that have been obtained), do not violate any applicable laws, do not conflict with, violate, or constitute a breach under the constating documents or under any agreements, contracts, or deeds to which each Borrower or Guarantor, as applicable, is a party or which is binding upon it or its assets.
- 5) Upon the disbursement of the Advance in accordance with the Direction of Funds to discharge all obligations to DUCA Financial Services Credit Union Ltd. ("DUCA") and BDO Canada Limited ("BDO") in relation to the Receivership appointed by Ontario Superior Court of Justice Court File No. CV-24-00095337-0000 (the "Receivership"), and as otherwise disclosed to the Lender in writing (hereafter referred to as, "discharging DUCA and BDO obligations"), each Borrower and Guarantor shall in all material respects be in compliance with all agreements to which it is a party or by which it is bound. Each Borrower and Guarantor holds all permits, licenses, certificates, approvals, consents, and other authorizations required under applicable laws (including environmental laws) to own its assets and to carry on its business. Each Borrower and Guarantor is in compliance with all of the conditions attaching to its permits, licenses, certificates, approvals, consents and other authorizations and its articles and by-laws.
- 6) Upon discharging DUCA and BDO obligations, there will be no actions, suits or arbitration proceedings and there are no legal proceedings pending or, to the best knowledge and belief of each Borrower and Guarantor, after due inquiry, threatened against any Borrower or Guarantor; and there are no actions, suits or arbitration proceedings and there are no legal proceedings relating directly or indirectly to the Property or that could potentially have a material adverse effect on the Property.
- 7) Each Borrower and Guarantor has filed, when due, all tax returns, reports and statements required to be filed by it and has paid, when due, all taxes due and payable on or before the due date thereof.

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- 8) **Upon discharging DUCA and BDO obligations**, each Borrower and Guarantor will have good and marketable title to all its assets and each Borrower and Guarantor is the sole and absolute beneficial owner and registered owner of the Property, as applicable, with good and marketable title thereto, free and clear of all liens.
- 9) **Upon discharging DUCA and BDO obligations**, each Borrower and Guarantor will be solvent.
- 10) All information provided by each Borrower and Guarantor to the Lender is true and accurate in all material respects and the said information contains no material misstatement of fact nor does it omit a material fact which is necessary to make such information not misleading, and there is no fact which each Borrower or Guarantor has not disclosed in writing to the Lender which could have a material adverse effect.
- 11) The financial statements delivered from time to time to the Lender are complete and correct and fairly present the financial condition and results of operations of each Borrower or Guarantor, as applicable, as at their stated date, all in accordance with GAAP (or IFRS if adopted by each Borrower and Guarantor, as applicable, applied on a consistent basis throughout the periods specified).
- 12) The head offices of each Borrower and all its assets are located in the province of Ontario.
- 13) The head offices of each Guarantor and all its assets are located in the province of Ontario.
- 14) All real estate taxes in connection with the Property have been paid, when due on or before the due date thereof, including, without limitation, any municipal taxes, school taxes, and transfer duties.

The representations and warranties contained herein or in any certificates or documents delivered to the Lender pursuant hereto shall continue in full force and effect until the full payment and performance of all obligations hereunder or pursuant hereto.

Positive Covenants:

Each Borrower and Guarantor shall:

- 1) Duly and punctually pay all sums of money due and payable by it under or pursuant to this Commitment Letter and any other Loan Documents at the times and places, in the currencies and in the manner specified therein;
- 2) Conduct its business in a proper and efficient manner in accordance with normal industry standards, keep proper books, records, and accounts, preserve, protect and obtain all intellectual property, preserve and maintain in good repair, working order and condition all other assets used or useful in the conduct of its business, and obtain and maintain all material licenses, permits and regulatory approvals required for the operation of its business;
- 3) Promptly pay and discharge, when due, all its taxes, indebtedness, and other liabilities;
- 4) Insure and keep insured the Property and all other property, assets and business for its full insurable value and maintain civil liability insurance for such coverage and amounts as are acceptable to the Lender;
- 5) Give written notice to the Lender forthwith upon the occurrence of (a) any Event of Default, specifying the action contemplated in this respect; (b) the commencement of any action, suit or proceeding involving any Borrower and Guarantor or its assets, including the Property; (c) the registration of any lien; (d) a change or effect which has or could have a material adverse effect; (e) any new place of business; or (f) the existence of any new subsidiary;
- 6) Permit representatives of the Lender to examine, copy and make extracts from its books and records, to inspect any of its properties or assets, including the Property, and to discuss its business and affairs with its officers and auditors;
- 7) Diligently and in good faith contest or settle any actions, suits or legal proceedings instituted and outstanding or pending against it;
- 8) Ensure that all representations and warranties made in the Loan Documents are true and correct at all times, except for representations which, by their nature, are made only at the time when they are so made;
- 9) Promptly pay, when due, all real estate taxes in connection with the Property, including, without limitation, any municipal taxes, school taxes, and transfer duties.

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## Negative Covenants:

Each Borrower and Guarantor shall not:

- 1) Directly or indirectly, at any time, assume, create, incur, or suffer to exist any lien upon any of the Collateral, present and future, other than in favour of the Lender or as consented to in writing by the Lender;
- 2) Sell, alienate, assign, lease or otherwise dispose of the Collateral, present and future, other than sales in the normal course of its business;
- 3) Directly or indirectly make any loan to or investment in any person;
- 4) Change the nature of its business, cease to conduct its business or terminate its existence;
- 5) In the case of a Borrower, change the location of its head offices or move its assets outside the province of Ontario;
- 6) In the case of a Guarantor, change the location of its head offices or move its assets outside the province of Ontario;
- 7) Enter into any merger, consolidation, or amalgamation, or liquidate, wind up or dissolve itself;
- 8) Make any material changes in its accounting or reporting or financial reporting practices, except as required by GAAP.

## Ongoing Reporting:

Each Borrower and Guarantor will provide such financial and other information as the Lender may reasonably request, from time to time, including, but not limited to:

- 1) Monthly bank statements of each Borrower;
- 2) Quarterly in-house financials of each Borrower;
- 3) Evidence of payment of all government priority payables within FIFTEEN (15) days of their respective due dates; and
- 4) Monthly report as to sales of units of the Property secured as Collateral in connection with this Credit Facility.

## Ongoing Covenants:

Each Borrower and Guarantor shall pay when due all statutory liens, trust, other Crown claims including employee source deductions, GST, PST, EHT, WEPPA, Property taxes and Worker Compensation program premiums.

## Conditions:

Availability of borrowings and disbursement of the net Advance after deductions in accordance with this Commitment Letter are conditional upon, but not limited to:

- 1) Acceptance by each Borrower and Guarantor of this Commitment Letter;
- 2) Approval of transaction by Lender's Credit Committee;
- 3) Satisfactory inspection by Lender or its agent(s) of the assets pledged, including potential site visit;
- 4) Delivery and registration of the Security in a form acceptable to the Lender;
- 5) Each Borrower and Guarantor having paid statutory liens, trust, and other Crown Claims, including employee source deductions, GST, PST, etc.;
- 6) Confirmation of taxes owing on the Property paid prior to funding the Advance;
- 7) Corporate legal opinion pertaining to each Borrower and Guarantor (as applicable) to be issued by counsel for each Borrower and Guarantor, as applicable, with underlying resolution(s) and officer's certificate;
- 8) Each Borrower and Guarantor, as applicable, obtaining a Title Insurance policy over the Property in favour of the Lender and in form and substance satisfactory to the Lender.

## Events of Default:

The Borrower(s) shall (jointly) be in default under this Commitment Letter and a default shall occur pursuant to this Commitment Letter and any other existing or future agreements delivered by each Borrower to the Lender or between each Borrower and the Lender if (each, an "Event of Default"):

- 1) a Borrower or Guarantor fails to pay any of the principal, interest, costs or other fees under this Commitment Letter or any other Loan Document when due;
- 2) a Borrower or Guarantor fails to comply with any other obligation to the Lender;
- 3) any representation or warranty made by a Borrower or Guarantor in this Commitment Letter and in any agreement between a Borrower and the Lender, or any loan or credit application made in connection with any indebtedness, was untrue when made;

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- 4) any priority or legal charge is registered against all or any part of the Collateral and is not discharged within SEVEN (7) days after a request by the Lender that such priority or legal charge be discharged;
- 5) all or any material part of the Property is condemned or expropriated;
- 6) a Borrower or Guarantor becomes bankrupt or insolvent;
- 7) a petition in bankruptcy is filed against a Borrower or any Guarantor;
- 8) a Borrower or Guarantor makes a proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy;
- 9) a Borrower or Guarantor makes an application as a debtor in any insolvency proceeding or any other person makes an application against a Borrower or Guarantor in any insolvency proceeding;
- 10) a Borrower or Guarantor sells, transfers, or disposes of in any other manner the Collateral, any part thereof, or any interest therein (unless the Lender has approved in writing such sale, transfer or other disposition);
- 11) An execution, judgment or order of execution is filed or made against the Property or any part thereof and remains unsatisfied for a period of ten (10) days;
- 12) A change in control of a Borrower or Guarantor occurs without the prior written consent of the Lender.

## Advance:

Upon approval and satisfaction of all Conditions Precedent to advance the Credit Facility, the Lender will fund an advance in accordance with the **Direction of Funds** in the amount of \$8,500,000.00 of which (approximately):

- 1) \$6,500,000.00 shall be paid to discharge existing first mortgage registered to DUCA plus approximately \$200,000.00 in accrued interest;
- 2) \$400,000.00 shall be paid to BDO in connection with Court Costs and associated legal fees;
- 3) \$994,500.00 shall be paid to Lender for the Interest Reserve (heldback from Advance by Lender at time of funding);
- 4) \$150,000.00 shall be paid to Lender for the balance of the Lender Fee (heldback from Advance by Lender at time of funding);
- 5) \$170,000.00 to Hawco Peters & Associates for advisory service fees,

with the balance, if any, paid to the Borrowers' solicitors after all legal accounts in connection with services to the Lender are paid. For clarity: **the Lender's legal fees shall be paid from the Advance prior to the balance, if any, being disbursed to the Borrowers' solicitor. In the event there is a shortfall or anticipated shortfall in paying all of the foregoing from the Advance, including the legal accounts rendered in connection with services to the Lender, the Borrowers shall satisfy and discharge such shortfall with their own funds by way of solicitor's trust cheque payable to the Lender's solicitor before the Advance shall be disbursed as set out herein.**

## Documentation:

The Loan Documents and Security shall be in a form in all respects satisfactory to the Lender and its solicitors. All legal fees and expenses relating to the granting of the above Credit Facility shall be borne by the Borrower, including the Lender's legal fees.

## Governing Law:

The laws applicable in the Province of Ontario, Canada, shall apply to this Commitment Letter.

## Previous Agreements:

This Commitment Letter replaces any other document or agreement issued prior to the date hereof in respect of the Credit Facility, including, without limitation, the Term Sheet dated August 28, 2024.

## Acceptance:

This Commitment Letter is open for acceptance by the Borrower by executing where indicated on the signature page and returning same to the Lender by 5:00 p.m. on September 18, 2024, after which time this Commitment Letter shall, at the option of the Lender, become null and void.

*[Remainder of page intentionally left blank; signature page to follow.]*

**HP ABL FUND 1 LIMITED PARTNERSHIP**  
by its general partner **HP ABL FUND 1 GP INC.**

By: Michael McLean  
Michael McLean, Authorized signatory

Acceptance:

This Commitment Letter may be accepted by each Borrower and Guarantor by signing, dating, and returning to the Lender, by the Acceptance date, a duly executed copy of this letter.

Accepted this 18 day of September, 2024.

Borrower:

**ASHCROFT HOMES – 108 RICHMOND ROAD INC.**

By: [Signature]  
Manny Difilippo, Chief Financial Officer  
*I have authority to bind the corporation*

Borrower:

**ASHCROFT HOMES – 111 RICHMOND ROAD INC.**

By: [Signature]  
Manny Difilippo, Chief Financial Officer  
*I have authority to bind the corporation*

Guarantor:

[Signature]  
David Choo

1250, 639 5<sup>th</sup> Avenue SW, Calgary, Alberta, T2P 0M9

# HP ABL FUND 1 GP INC.

September 26, 2024

To: Ashcroft Homes – 108 Richmond Road Inc.  
Ashcroft Homes – 111 Richmond Road Inc.  
David Choo

VIA EMAIL: [dchoo@ashcrofthomes.ca](mailto:dchoo@ashcrofthomes.ca)

Dear David,

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Borrower(s): Ashcroft Homes – 108 Richmond Road Inc.  
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(collectively, the “**Borrowers**”, each a “**Borrower**”)

Guarantor(s): David Choo (the “**Guarantor**”)

Property: Approximately 38,935 square feet of mixed retail and commercial condominium units and residential condominium units, all as more particularly described in **Schedules “A”, “B”, and “C”** attached hereto and forming a part hereof (the “**Property**”).

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Currency: Unless otherwise indicated, all amounts contained herein are in Canadian dollars.

Term: Twelve (12) month facility with a minimum term of **NINE (9)** months.

Interest Rate: 1.17% per month (14.04% per annum) on daily balance outstanding under the Credit Facility. To the extent permitted by law, the default rate of interest will be 2% per month (24% per annum).

Lender Fees: The Lender Fee is **ONE HUNDRED SEVENTY FIVE THOUSAND DOLLARS AND NO CENTS** (\$175,000.00) (the “**Lender Fee**”), of which **TWENTY THOUSAND DOLLARS AND NO CENTS** (\$20,000.00) has been paid and received (the “**Initial Fee Payment**”) with the balance of **ONE HUNDRED FIFTY FIVE THOUSAND DOLLARS AND NO CENTS** (\$155,000.00) due on closing and payable out of the Advance. Should the transaction contemplated by this Commitment Letter not close for any reason, the Borrowers shall use the Initial Fee Payment to pay the Lender’s due diligence and legal expenses on a solicitor and his own client full-indemnity basis.

Amortization: Interest only, compounded monthly with monthly interest payments. Full loan balance due at end of Term.

Interest Reserve: There shall be an Interest Reserve provided by the Borrower on closing in the amount of **NINE HUNDRED TWENTY ONE THOUSAND THREE HUNDRED SEVENTY FIVE DOLLARS AND NO CENTS** (\$921,375.00) which will be utilized to fund the first **NINE (9)** months’ interest, subject to paragraph 2) of the “Prepayment” section below. If this loan is not repaid in full after **NINE (9)** months, then monthly interest payments are to be provided one (1) month in advance for each of the next **THREE (3)** months when the loan is due in full.

Target Advance Date: October 1, 2024  
Interest shall accrue from the Advance Date of the Credit Facility, whether or not the Borrowers and Guarantor are in a position to draw funds.



- First Payment: November 1, 2024 (interest payment out of the Interest Reserve)
- Balance Due Date: September 30, 2025
- Prepayment:
- 1) The Credit Facility may only be prepaid in full or in part prior to the minimum 9-month term upon thirty (30) days' written notice and upon full payment of all accrued interest and other amounts owing to the Lender, provided a minimum of NINE (9) months of interest has been paid.
  - 2) Additionally, and notwithstanding the foregoing, the Borrowers shall pay all proceeds (net of realtor and legal fees and associated closing costs) from sale of residential condominium units to Lender in lieu of Lender applying Interest Reserve to monthly interest payments, provided however that Lender shall at all times retain Interest Reserve and apply the same to interest owing after the expiry of the minimum 9-month term of this Credit Facility unless the Borrowers have prepaid the Credit Facility in full in accordance with paragraph 1) of this "Prepayment" section.
- Repayment: The full amount of the Credit Facility plus any costs, charges, fees, interest, or other amounts payable, accrued, or unpaid, are to be repaid immediately upon the expiry of the term of the Credit Facility.
- Documents Required: The Lender will proceed in obtaining a formal approval conditional upon the following:
- 1) Each Borrower and Guarantor delivering to the Lender or the Lender's Solicitor any and all documentation as may be requested by them relating in any way to the Property, the market value of the Property, the Security and/or its enforceability or the ability of each Borrower and Guarantor to comply with their material obligations under this Commitment Letter (the "**Deliveries**"). Such Deliveries shall include but not be limited to:
    - a) Lender satisfactory review of historic financial statements, T1 General & Notice of Assessment (3-year history), from each Borrower and Guarantor. Satisfactory review is to include confirmation of all taxes paid in full (if requested);
    - b) Updated appraisal of the Property confirming a minimum value of TWENTY MILLION DOLLARS (\$20,000,000.00);
    - c) Copies of all leases in place;
    - d) Personal Net Worth Statement, satisfactory to the Lender, for each non-incorporated Borrower and Guarantor;
    - e) Corporate organizational chart for each incorporated Borrower and Guarantor showing ultimate beneficial ownership to individuals as applicable and confirmed with the Central Share Registry;
    - f) Satisfactory Appraisal Transmittal Letter addressed to the Lender with respect to appraisals of the Property;
    - g) Environmental Phase I Site Assessment report prepared by an external consultant commissioned and acceptable to the Lender. Documentation of any and all remediation and sign off by appropriate organization.
    - h) Photo Identification satisfactory to the Lender for each non-incorporated Borrower and Guarantor, and any individual holding greater than 20% of common ownership in any Borrower or Guarantor.
  - 2) The Lender having reviewed the Deliveries and finding same acceptable in its sole and absolute discretion.
- Security: All such additional documents and information as the Lender shall require, which may include but not limited to the following:
- 1) Commitment Letter;
  - 2) First-ranking;

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- a) mortgage charging the Property owned by each Borrower, as described in Schedules A, B, and C, for the amount of \$8,750,000.00, and
- b) general assignment of rents registered against the Property of each Borrower, (collectively, the "**Mortgage Collateral**");
- 3) General Security Agreement charging all present and after acquired personal property of each Borrower (the "**GSA Collateral**", and together with the Mortgage Collateral, collectively the "**Collateral**");
- 4) Guarantee by David Choo, limited to the principal amount of **FOUR MILLION DOLLARS AND NO CENTS** (\$4,000,000.00);
- 5) Assignment of insurance with Lender as a loss payee against the assets of the Borrowers, including the Property;
- 6) Irrevocable Direction of Payment of Funds as more particularly described herein under the heading "Advance" (the "**Direction of Funds**");
- 7) Such further security and other documentation the Lender and its solicitor may reasonably require.

**Loan Documents:**

"**Loan Documents**" means, collectively, this Commitment Letter, the documents listed under the heading "Security" hereunder, and all other documents, instruments and agreements executed and delivered by each Borrower and Guarantor, or any other obligor, in connection directly or indirectly with this Commitment Letter or the Credit Facility, or otherwise referred to or contemplated under or by this Commitment Letter or any such documents, instruments or agreements, as they may be amended, restated, supplemented or replaced from time to time.

**Representations and Warranties:**

Each Borrower and Guarantor hereby represent and warrant the following:

- 1) Each Borrower and Guarantor, as applicable, is duly formed and validly existing and in good standing, in compliance with its governing laws, and has the necessary capacity, power and authority to (a) carry on its business, (b) borrow, guarantee and/or grant security over its assets, as the case may be, and (c) enter into this Commitment Letter and the other Loan Documents to which it is a party and to perform its obligations thereunder.
- 2) Prior to funding of the Advance, the execution, delivery and performance of the Loan Documents by each Borrower and Guarantor, as applicable, will have been authorized by all necessary action and each Borrower and Guarantor has duly and validly executed and delivered the Loan Documents to which it is a party.
- 3) Upon execution thereof, the obligations of each Borrower and Guarantor under the Loan Documents to which each is a party will constitute legal, valid, and binding obligations, enforceable against each of them in accordance with their terms.
- 4) The execution, delivery and performance of the Loan Documents do not require any consents or approvals (except such that have been obtained), do not violate any applicable laws, do not conflict with, violate, or constitute a breach under the constating documents or under any agreements, contracts, or deeds to which each Borrower or Guarantor, as applicable, is a party or which is binding upon it or its assets.
- 5) **Upon the disbursement of the Advance in accordance with the Direction of Funds to discharge all obligations to DUCA Financial Services Credit Union Ltd. ("DUCA") and BDO Canada Limited ("BDO") in relation to the Receivership appointed by Ontario Superior Court of Justice Court File No. CV-24-00095337-0000 (the "Receivership"), and as otherwise disclosed to the Lender in writing (hereafter referred to as, "discharging DUCA and BDO obligations"),** each Borrower and Guarantor shall in all material respects be in compliance with all agreements to which it is a party or by which it is bound. Each Borrower and Guarantor holds all permits, licenses, certificates, approvals, consents, and other authorizations required under applicable laws (including environmental laws) to own its assets and to carry on its business. Each Borrower and Guarantor is in compliance with all of the conditions attaching to its permits, licenses, certificates, approvals, consents and other authorizations and its articles and by-laws.

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- 6) **Upon discharging DUCA and BDO obligations**, there will be no actions, suits or arbitration proceedings and there are no legal proceedings pending or, to the best knowledge and belief of each Borrower and Guarantor, after due inquiry, threatened against any Borrower or Guarantor; and there are no actions, suits or arbitration proceedings and there are no legal proceedings relating directly or indirectly to the Property or that could potentially have a material adverse effect on the Property.
- 7) Each Borrower and Guarantor has filed, when due, all tax returns, reports and statements required to be filed by it and has paid, when due, all taxes due and payable on or before the due date thereof.
- 8) **Upon discharging DUCA and BDO obligations**, each Borrower and Guarantor will have good and marketable title to all its assets and each Borrower and Guarantor is the sole and absolute beneficial owner and registered owner of the Property, as applicable, with good and marketable title thereto, free and clear of all liens.
- 9) **Upon discharging DUCA and BDO obligations**, each Borrower and Guarantor will be solvent.
- 10) All information provided by each Borrower and Guarantor to the Lender is true and accurate in all material respects and the said information contains no material misstatement of fact nor does it omit a material fact which is necessary to make such information not misleading, and there is no fact which each Borrower or Guarantor has not disclosed in writing to the Lender which could have a material adverse effect.
- 11) The financial statements delivered from time to time to the Lender are complete and correct and fairly present the financial condition and results of operations of each Borrower or Guarantor, as applicable, as at their stated date, all in accordance with GAAP (or IFRS if adopted by each Borrower and Guarantor, as applicable, applied on a consistent basis throughout the periods specified).
- 12) The head offices of each Borrower and all its assets are located in the province of Ontario.
- 13) The head offices of each Guarantor and all its assets are located in the province of Ontario.
- 14) All real estate taxes in connection with the Property have been paid, when due on or before the due date thereof, including, without limitation, any municipal taxes, school taxes, and transfer duties.

The representations and warranties contained herein or in any certificates or documents delivered to the Lender pursuant hereto shall continue in full force and effect until the full payment and performance of all obligations hereunder or pursuant hereto.

**Positive Covenants:**

Each Borrower and Guarantor shall:

- 1) Duly and punctually pay all sums of money due and payable by it under or pursuant to this Commitment Letter and any other Loan Documents at the times and places, in the currencies and in the manner specified therein;
- 2) Conduct its business in a proper and efficient manner in accordance with normal industry standards, keep proper books, records, and accounts, preserve, protect and obtain all intellectual property, preserve and maintain in good repair, working order and condition all other assets used or useful in the conduct of its business, and obtain and maintain all material licenses, permits and regulatory approvals required for the operation of its business;
- 3) Promptly pay and discharge, when due, all its taxes, indebtedness, and other liabilities;
- 4) Insure and keep insured the Property and all other property, assets and business for its full insurable value and maintain civil liability insurance for such coverage and amounts as are acceptable to the Lender;
- 5) Give written notice to the Lender forthwith upon the occurrence of (a) any Event of Default, specifying the action contemplated in this respect; (b) the commencement of any action, suit or proceeding involving any Borrower and Guarantor or its assets, including the Property; (c) the registration of any lien; (d) a change or effect which has or could have a material adverse effect; (e) any new place of business; or (f) the existence of any new subsidiary;
- 6) Permit representatives of the Lender to examine, copy and make extracts from its books and records, to inspect any of its properties or assets, including the Property, and to discuss its business and affairs with its officers and auditors;
- 7) Diligently and in good faith contest or settle any actions, suits or legal proceedings instituted and outstanding or pending against it;

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- 8) Ensure that all representations and warranties made in the Loan Documents are true and correct at all times, except for representations which, by their nature, are made only at the time when they are so made;
- 9) Promptly pay, when due, all real estate taxes in connection with the Property, including, without limitation, any municipal taxes, school taxes, and transfer duties.

**Negative Covenants:**

Each Borrower and Guarantor shall not:

- 1) Directly or indirectly, at any time, assume, create, incur, or suffer to exist any lien upon any of the Collateral, present and future, other than in favour of the Lender or as consented to in writing by the Lender;
- 2) Sell, alienate, assign, lease or otherwise dispose of the Collateral, present and future, other than sales in the normal course of its business;
- 3) Directly or indirectly make any loan to or investment in any person;
- 4) Change the nature of its business, cease to conduct its business or terminate its existence;
- 5) In the case of a Borrower, change the location of its head offices or move its assets outside the province of Ontario;
- 6) In the case of a Guarantor, change the location of its head offices or move its assets outside the province of Ontario;
- 7) Enter into any merger, consolidation, or amalgamation, or liquidate, wind up or dissolve itself;
- 8) Make any material changes in its accounting or reporting or financial reporting practices, except as required by GAAP.

**Ongoing Reporting:**

Each Borrower and Guarantor will provide such financial and other information as the Lender may reasonably request, from time to time, including, but not limited to:

- 1) Monthly bank statements of each Borrower;
- 2) Quarterly in-house financials of each Borrower;
- 3) Evidence of payment of all government priority payables within FIFTEEN (15) days of their respective due dates; and
- 4) Monthly report as to sales of units of the Property secured as Collateral in connection with this Credit Facility.

**Ongoing Covenants:**

Each Borrower and Guarantor shall pay when due all statutory liens, trust, other Crown claims including employee source deductions, GST, PST, EHT, WEPPA, Property taxes and Worker Compensation program premiums.

**Conditions:**

Availability of borrowings and disbursement of the net Advance after deductions in accordance with this Commitment Letter are conditional upon, but not limited to:

- 1) Acceptance by each Borrower and Guarantor of this Commitment Letter;
- 2) Approval of transaction by Lender's Credit Committee;
- 3) Satisfactory inspection by Lender or its agent(s) of the assets pledged, including potential site visit;
- 4) Delivery and registration of the Security in a form acceptable to the Lender;
- 5) Each Borrower and Guarantor having paid statutory liens, trust, and other Crown Claims, including employee source deductions, GST, PST, etc.;
- 6) Conformation of taxes owing on the Property paid prior to funding the Advance;
- 7) Corporate legal opinion pertaining to each Borrower and Guarantor (as applicable) to be issued by counsel for each Borrower and Guarantor, as applicable, with underlying resolution(s) and officer's certificate;
- 8) Each Borrower and Guarantor, as applicable, obtaining a Title Insurance policy over the Property in favour of the Lender and in form and substance satisfactory to the Lender.

**Events of Default:**

The Borrower(s) shall (jointly) be in default under this Commitment Letter and a default shall occur pursuant to this Commitment Letter and any other existing or future agreements delivered by each Borrower to the Lender or between each Borrower and the Lender if (each, an "**Event of Default**"):

- 1) a Borrower or Guarantor fails to pay any of the principal, interest, costs or other fees under this Commitment Letter or any other Loan Document when due;

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- 2) a Borrower or Guarantor fails to comply with any other obligation to the Lender;
- 3) any representation or warranty made by a Borrower or Guarantor in this Commitment Letter and in any agreement between a Borrower and the Lender, or any loan or credit application made in connection with any indebtedness, was untrue when made;
- 4) any priority or legal charge is registered against all or any part of the Collateral and is not discharged within SEVEN (7) days after a request by the Lender that such priority or legal charge be discharged;
- 5) all or any material part of the Property is condemned or expropriated;
- 6) a Borrower or Guarantor becomes bankrupt or insolvent;
- 7) a petition in bankruptcy is filed against a Borrower or any Guarantor;
- 8) a Borrower or Guarantor makes a proposal in bankruptcy or files a notice of intention to make a proposal in bankruptcy;
- 9) a Borrower or Guarantor makes an application as a debtor in any insolvency proceeding or any other person makes an application against a Borrower or Guarantor in any insolvency proceeding;
- 10) a Borrower or Guarantor sells, transfers, or disposes of in any other manner the Collateral, any part thereof, or any interest therein (unless the Lender has approved in writing such sale, transfer or other disposition);
- 11) An execution, judgment or order of execution is filed or made against the Property or any part thereof and remains unsatisfied for a period of ten (10) days;
- 12) A change in control of a Borrower or Guarantor occurs without the prior written consent of the Lender.

**Advance:**

Upon approval and satisfaction of all Conditions Precedent to advance the Credit Facility, the Lender will fund an advance in accordance with the **Direction of Funds** in the amount of \$8,750,000.00 of which (approximately):

- 1) \$6,836,833.73, or such other amount as is required, shall be paid to discharge existing first mortgage registered to DUCA;
- 2) \$425,000.00, or such other amount as is required, shall be paid to BDO in connection with Court Costs and associated legal fees;
- 3) \$921,375.00 shall be paid to Lender for the Interest Reserve (heldback from Advance by Lender at time of funding);
- 4) \$155,000.00 shall be paid to Lender for the balance of the Lender Fee (heldback from Advance by Lender at time of funding);
- 5) \$183,750.00 (being \$175,000.00 plus GST) to Hawco Peters & Associates for advisory service fees,

with the balance, if any, paid to the Borrowers' solicitors after all legal accounts in connection with services to the Lender are paid. For clarity: **the Lender's legal fees shall be paid from the Advance prior to the balance, if any, being disbursed to the Borrowers' solicitor. In the event there is a shortfall or anticipated shortfall in paying all of the foregoing from the Advance, including the legal accounts rendered in connection with services to the Lender, the Borrowers shall satisfy and discharge such shortfall with their own funds by way of solicitor's trust cheque payable to the Lender's solicitor before the Advance shall be disbursed as set out herein.**

**Documentation:**

The Loan Documents and Security shall be in a form in all respects satisfactory to the Lender and its solicitors. All legal fees and expenses relating to the granting of the above Credit Facility shall be borne by the Borrower, including the Lender's legal fees.

**Governing Law:**

The laws applicable in the Province of Ontario, Canada, shall apply to this Commitment Letter.

**Previous Agreements:**

This Commitment Letter replaces any other document or agreement issued prior to the date hereof in respect of the Credit Facility, including, without limitation, the Term Sheet dated August 28, 2024.

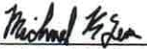
**[Remainder of page intentionally left blank; signature page to follow]**



Acceptance:

This Commitment Letter is open for acceptance by the Borrower by executing where indicated on the signature page and returning same to the Lender by 5:00 p.m. on September 27, 2024, after which time this Commitment Letter shall, at the option of the Lender, become null and void.

**HP ABL FUND 1 LIMITED PARTNERSHIP**  
by its general partner **HP ABL FUND 1 GP INC.**

By:   
Michael McLean, Authorized signatory


Acceptance:

This Commitment Letter may be accepted by each Borrower and Guarantor by signing, dating, and returning to the Lender, by the Acceptance date, a duly executed copy of this letter.

Accepted this 27 day of September, 2024.

Borrower:

**ASHCROFT HOMES – 108 RICHMOND ROAD INC.**

By:   
David Choo, President  
*I have authority to bind the corporation*

Borrower:

**ASHCROFT HOMES – 111 RICHMOND ROAD INC.**

By:   
David Choo, President  
*I have authority to bind the corporation*

Guarantor:

  
David Choo

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This is Exhibit "H" referred to in the Affidavit of Manny DiFilippo, sworn by Manny DiFilippo, of the City of Toronto, in the Province of Ontario, sworn before me at the Town of Perth, in the Province of Ontario, on November 4, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'S. Delvellano', written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

**SARAH DELVELLANO**

**From:** [Marchand, Matthew](#)  
**To:** [Timothy Dunn](#); [Raymond Murray](#); [Stephen Gaudreau](#); [john.salmas@dentons.com](mailto:john.salmas@dentons.com)  
**Cc:** [Sarah DelVillano](#); [sara.wilson@dentons.com](mailto:sara.wilson@dentons.com); [Boettger, Adam](#)  
**Subject:** RE: [EXT] RE: BDO Suspension of Sales Process / Ashcroft Response to Questions and Refinancing Information  
**Date:** Friday, October 11, 2024 4:24:27 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[Ashcroft - Summary of Estate Accounts and Refinancing Calculation Estimate.xlsx](#)  
[Scan2024-09-19\\_162759.pdf](#)

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Ray,

Attached is a summary of estate accounts along with an estimate of the refinancing use of proceeds as at October 31, 2024. Although inclusive of numerous assumptions and notes, it appears as though the \$8.75 million will be marginally sufficient to cover the costs associated with terminating these proceedings. The attached remains subject to review and updating but we believe this is very much in the ballpark of the Receiver's past and future activities. Given the narrow margin, which we project will erode as time passes, we request assurance that funding is available to cover shortfalls, if any (such as from equity holders or a reduction in the Interest Reserve). The mechanics of reserves relative to the timing of terminating the proceedings can be discussed in due course.

Also attached is the list of property which was received on September 19 from Mr. Difilippo. Please confirm the attached fully represent the schedules supporting the commitment letter or alternatively, provide copies of the schedules.

With respect to #4 below, the question intends to confirm that the borrowers will (re)assume and service all pre-receivership liabilities, which are summarized in the Receiver's First Report to the Court.

Thank you,

**Matthew Marchand, CPA, CMA, CIRP, LIT**  
*Partner & Senior Vice President, Business Restructuring & Turnaround Services*  
Financial Advisory Services  
Direct: 416-369-4755  
[BDO Canada Limited](#)  
20 Wellington Street East, Suite 500  
Toronto, Ontario, Canada M5E 1C5

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**Ashcroft Homes - 108 Richmond Road Inc. ("108RR"), Ashcroft Homes - 111 Richmond Road Inc. ("111RR", and collectively  
Estimated Refinancing Use of Funds as at October 31, 2024**

HP ABL Fund 1 Limited Partnership Loan

Total loan amount	\$ 8,750,000.00
Held back by HP:	
Interest Reserve	(921,375.00)
Lender Fee	(155,000.00)
Hawco Peters fee	(183,750.00)
Title insurance	(4,636.00)
Legal fees and trust fees	(33,456.00)
<u>Subtotal</u>	<u>(1,298,217.00)</u>
Net loan transferred to Mann lawyers	\$ 7,451,783.00

Less: DUCA Indebtedness:

Principal	(6,456,740.92)
Legal fees (estimate, subject to change)	(137,102.46)
Financial consultancy fees	(76,662.41)
Interest (estimated to September 27, 2024)	(166,327.94)
Interest (estimated from September 27, 2024 to October 31, 2024)	(29,763.94)
<u>Estimated DUCA Indebtedness to October 31, 2024</u>	<u>(6,866,597.67)</u>

Less: Estimated Estates Adjusted Cash as at September 30, 2024	(459,182.35)
<u>Less: Estimated October 2024 Activity</u>	<u>(56,232.87)</u>
<u>Estimated refinancing surplus/(shortfall) as at October 31, 2024</u>	<u>69,770.11</u>

Note:

[1] It is estimated that future activity from November onwards will generate negative cash of approximately \$43,288 per month.

**Ashcroft Homes - 108 Richmond Road Inc. ("108RR"), Ashcroft Homes - 111 Richmond Road Inc. ("111RR", and collectively "Estate(s)")**  
**Details Supporting Summary of Estate Accounts and Estimate of Future Activity**

	108RR	111RR	Total	Reference
<b>Cash Position as at as at September 30, 2024</b>				
<b>Statement of receipts and disbursements as at September 30, 2024 [Actual]</b>				
Receipts:				
Rental Income	\$ 74,674.70	\$ 134,771.30	\$ 209,446.00	
Cash in bank accounts	50,797.17	66,517.91	117,315.08	
HST collected	4,172.03	15,522.34	19,694.37	
Interest income	413.00	764.03	1,177.03	
Total receipts	130,056.90	217,575.58	347,632.48	
Disbursements:				
Condo fees	73,571.25	50,240.54	123,811.79	
Repairs and maintenance	12,951.28	13,876.29	26,827.57	
Insurance	10,091.73	9,085.83	19,177.56	
Appraisal	3,076.16	3,222.58	6,298.74	
HST ITCs	2,117.53	2,648.34	4,765.87	
Utilities	583.17	3,842.10	4,425.27	
Property management fees	104.55	621.75	726.30	
Security	-	375.00	375.00	
Bank charges	51.00	107.00	158.00	
Filing fees	80.42	80.42	160.84	
Total disbursements	102,627.09	84,099.85	186,726.94	
Net receipts/(disbursements)	27,429.81	133,475.73	160,905.54	[A]
<b>September 2024 Accruals [Actual]</b>				
Add:				
September 2024 interest	197.30	516.84	714.14	
Less:				
Waste Management	-	(3,486.58)	(3,486.58)	
Utilities	(287.67)	(1,762.45)	(2,050.12)	
Repairs and maintenance	(390.00)	-	(390.00)	
Total	(480.37)	(4,732.19)	(5,212.56)	[B]
<b>September 2024 Accruals [Estimated]</b>				
Add:				
September 2024 net rent collections from property manager	18,239.92	29,087.17	47,327.09	
Less:				
Cleaning	-	(152.78)	(152.78)	
Utilities	-	(113.00)	(113.00)	
Total	18,239.92	28,821.39	47,061.31	[C]
<b>Priority Payables to September 30, 2024 [Estimated]</b>				
Pre-receivership HST liability	(9,270.92)	(15,378.31)	(24,649.23)	
Post-receivership HST liability (cash basis)	(2,930.29)	(18,478.20)	(21,408.49)	
Unpaid property taxes	(59,172.98)	(36,903.11)	(96,076.09)	
Total	(71,374.19)	(70,759.62)	(142,133.81)	[D]
<b>Professional fees to September 30, 2024</b>				
Receiver [BDO Canada]	(161,026.42)	(161,026.42)	(322,052.84)	
Receiver's legal counsel [Dentons]	(98,875.00)	(98,875.00)	(197,750.00)	
Total	(259,901.42)	(259,901.42)	(519,802.84)	[E]
<b>Future Estimated Monthly Cost Run Rate</b>				
<b>Standard Monthly Operations</b>				
Operating receipts	26,450.91	67,900.51	94,351.42	
Operating Disbursements	(21,190.36)	(25,227.19)	(46,417.55)	
Total	5,260.55	42,673.32	47,933.87	[F]
<b>Monthly Priority Payables [Estimated]</b>				
HST arrears during receivership	(836.78)	(5,526.20)	(6,362.98)	
Property taxes	(17,551.31)	(10,807.14)	(28,358.45)	
Total	(18,388.09)	(16,333.34)	(34,721.43)	[G]
<b>Monthly professional fees of Receiver and it's legal counsel [Estimated]</b>				
	(28,250.00)	(28,250.00)	(56,500.00)	[H]
<b>One-Time October 2024 Adjustments</b>				
Less:				
Pre-receivership condo fee arrears - June 2024	-	(7,945.31)	(7,945.31)	
Insurance	-	(5,000.00)	(5,000.00)	
Total	-	(12,945.31)	(12,945.31)	[I]

**Ashcroft Homes - 108 Richmond Road Inc. ("108RR"), Ashcroft Homes - 111 Richmond Road Inc. ("111RR", and collectively "Estate(s)")**  
**Summary of Estate Accounts and Estimate of Future Activity**

	Notes	108RR	111RR	Total	Reference
<b><u>Estimated Adjusted Cash as at September 30, 2024</u></b>					
Receiver's receipts over disbursements as at September 30, 2024	[1]	\$ 27,429.81	\$ 133,475.73	\$ 160,905.54	[A]
Less: Actual September 2024 accrued expenses	[2]	(480.37)	(4,732.19)	(5,212.56)	[B]
Add: Estimated September 2024 accruals	[3]	18,239.92	28,821.39	47,061.31	[C]
		45,189.36	157,564.93	202,754.29	
Less: Estimated priority payables to September 30, 2024	[4]	(71,374.19)	(70,759.62)	(142,133.81)	[D]
Less: Professional fees of Receiver and it's legal counsel to September 30, 2024	[5]	(259,901.42)	(259,901.42)	(519,802.84)	[E]
<b>Estimated Estates Adjusted Cash as at September 30, 2024</b>		<b>\$ (286,086.25)</b>	<b>\$ (173,096.10)</b>	<b>\$ (459,182.35)</b>	
<b><u>Estimated October 2024 Activity</u></b>					
Future estimated monthly normal course operating receipts/(disbursements)	[6]	\$ 5,260.55	\$ 42,673.32	\$ 47,933.87	[F]
Less: Estimated future monthly priority payables	[7]	(18,388.09)	(16,333.34)	(34,721.43)	[G]
Less: Estimated future monthly professional fees for Receiver and it's legal counsel	[8]	(28,250.00)	(28,250.00)	(56,500.00)	[H]
Less: Other adjustments	[9]	-	(12,945.31)	(12,945.31)	[I]
<b>Estimated October 2024 Activity</b>		<b>\$ (41,377.54)</b>	<b>\$ (14,855.33)</b>	<b>\$ (56,232.87)</b>	
<b><u>Estimated Monthly Activity (November onwards)</u></b>					
Future estimated monthly normal course operating receipts/(disbursements)	[6]	\$ 5,260.55	\$ 42,673.32	\$ 47,933.87	[F]
Less: Estimated future monthly priority payables	[7]	(18,388.09)	(16,333.34)	(34,721.43)	[G]
Less: Estimated future monthly professional fees for Receiver and it's legal counsel	[8]	(28,250.00)	(28,250.00)	(56,500.00)	[H]
<b>Estimated Monthly Activity</b>		<b>\$ (41,377.54)</b>	<b>\$ (1,910.02)</b>	<b>\$ (43,287.56)</b>	

**Notes:**

- [1] Receiver's activity from date of appointment to September 30, 2024, per Estate general ledgers.
- [2] Actual September 2024 accrued expenses paid in October 2024.
- [3] Estimated net September 2024 rental income to be received from property manager and unpaid accrued expenses.
- [4] Includes estimate of pre- and post-receivership HST and property taxes. Subject to confirmation with CRA and municipality.
- [5] Includes HST. Allocated equally (50/50) between Estates for purposes of presentation. Actual allocation subject to revision.
- [6] Estimated future monthly operating activity, excluding priority payable professional fees accruals.
- [7] Estimated accrual. Includes HST and property taxes.
- [8] Estimate subject to actual time incurred to complete activities necessary to administer Estates. Includes HST. Allocated equally (50/50) between Estates for purposes of presentation. Actual allocation subject to revision. Excludes DUCA's legal fees.
- [9] Estimated payment of one-time items.
- [10] Excludes pre-receivership liabilities unless noted otherwise, including:
- |  |              |              |              |
|--|--------------|--------------|--------------|
| (i) Potential pre-receivership condo fee arrears estimated to be:                  | \$ 36,683.26 | \$ -         | \$ 36,683.26 |
| (ii) External accountant fees engaged without Receiver's consent, estimated to be: | \$ 14,125.00 | \$ 14,125.00 | \$ 28,250.00 |
- [11] Remains subject to review and revision by the Receiver.
- [12] Estimates are based on assumptions related to future events. Actual results may differ from those estimated.
- [13] Cash flow timing differences are expected and have not been included herein (i.e. October net rent to be received in November).
- [14] Excludes HST ITC refunds, if any, from accrued and unpaid professional fees.
- [15] Excludes future interest earned in Estate accounts from October onwards.
- [16] Excludes DUCA's indebtedness, accrued interest thereon or any other costs incurred by DUCA, such as legal fees.
- [17] Excludes pre-receivership liabilities unless noted otherwise.
- [18] Excludes costs and fees, if any, associated with transitioning possession and control from Receiver to borrower.

## **SCHEDULE "A"**

### **LEGAL DESCRIPTIONS**

#### **101 Richmond Properties:**

1. Full Legal Description for PIN 15889-0006(LT): Unit 6, Level 1, Ottawa-Carleton Standard Condominium Plan No. 889 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1315688; City of Ottawa, being all of PIN 15889-0006(LT), in LRO #4.
2. Full Legal Description for PIN 15889-0011(LT): Unit 11, Level 1, Ottawa-Carleton Standard Condominium Plan No. 889 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1315688; City of Ottawa, being all of PIN 15889-0011(LT), in LRO #4.
3. Full Legal Description for PIN 15889-0012(LT): Unit 12, Level 1, Ottawa-Carleton Standard Condominium Plan No. 889 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1315688; City of Ottawa, being all of PIN 15889-0012(LT), in LRO #4.
4. Full Legal Description for PIN 15889—0013(LT): Unit 13, Level 1, Ottawa-Carleton Standard Condominium Plan No. 889 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1315688; City of Ottawa, being all of PIN 15889-0013(LT), in LRO #4.
5. Full Legal Description for PIN 15889-0014(LT): Unit 14, Level 1, Ottawa-Carleton Standard Condominium Plan No. 889 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1315688; City of Ottawa, being all of PIN 15889-0014(LT), in LRO #4.
6. Full Legal Description for PIN 15889-0015(LT): Unit 15, Level 1, Ottawa-Carleton Standard Condominium Plan No. 889 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1315688; City of Ottawa, being all of PIN 15889-0015(LT), in LRO #4.
7. Full Legal Description for PIN 15889-0056(LT): Unit 20, Level 3, Ottawa-Carleton Standard Condominium Plan No. 889 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1315688; City of Ottawa, being all of PIN 15889-0056(LT), in LRO #4.

#### **108 Richmond Properties:**

1. Full Legal Description for PIN 15963-0001(LT): Unit 1, Level 1, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as



set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0001(LT), in LRO #4.

2. Full Legal Description for PIN 15963-0002(LT): Unit 2, Level 1, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0002(LT), in LRO #4.
3. Full Legal Description for PIN 15963-0003(LT): Unit 3, Level 1, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0003(LT), in LRO #4.
4. Full Legal Description for PIN 15963-0004(LT): Unit 4, Level 1, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0004(LT), in LRO #4.
5. Full Legal Description for PIN 15963-0014(LT): Unit 11, Level 2, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0014(LT), in LRO #4.
6. Full Legal Description for PIN 15963-0089(LT): Unit 37, Level 4, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0089(LT), in LRO #4.
7. Full Legal Description for PIN 15963-0106(LT): Unit 6, Level 5, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0106(LT), in LRO #4.
8. Full Legal Description for PIN 15963-0166(LT): Unit 16, Level 6, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0166(LT), in LRO #4.
9. Full Legal Description for PIN 15963-0184(LT): Unit 34, Level 6, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0184(LT), in LRO #4.
10. Full Legal Description for PIN 15963-0187(LT): Unit 37, Level 6, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0187(LT), in LRO #4.



11. Full Legal Description for PIN 15963-0207(LT): Unit 7, Level 7, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0207(LT), in LRO #4.
12. Full Legal Description for PIN 15963-0315(LT): Unit 15, Level 9, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0315(LT), in LRO #4.
13. Full Legal Description for PIN 15963-0334(LT): Unit 34, Level 9, Ottawa-Carleton Standard Condominium Plan No. 963 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1653772; City of Ottawa, being all of PIN 15963-0334(LT), in LRO #4.

#### **111 Richmond Properties:**

1. Full Legal Description for PIN 15937-0002(LT): Unit 2, Level 1, Ottawa-Carleton Standard Condominium Plan No. 937 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1551657; City of Ottawa, being all of PIN 15937-0002(LT), in LRO #4.
2. Full Legal Description for PIN 15937-0007(LT): Unit 7, Level 1, Ottawa-Carleton Standard Condominium Plan No. 937 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1551657; City of Ottawa, being all of PIN 15937-0007(LT), in LRO #4.
3. Full Legal Description for PIN 15937-0009(LT): Unit 9, Level 1, Ottawa-Carleton Standard Condominium Plan No. 937 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1551657; City of Ottawa, being all of PIN 15937-0009(LT), in LRO #4.
4. Full Legal Description for PIN 15937-0010(LT): Unit 1, Level 2, Ottawa-Carleton Standard Condominium Plan No. 937 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1551657; City of Ottawa, being all of PIN 15937-0010(LT), in LRO #4.
5. Full Legal Description for PIN 15937-0015(LT): Unit 6, Level 2, Ottawa-Carleton Standard Condominium Plan No. 937 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1551657; City of Ottawa, being all of PIN 15937-0015(LT), in LRO #4.
6. Full Legal Description for PIN 15937-0020(LT): Unit 11, Level 2, Ottawa-Carleton Standard Condominium Plan No. 937 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1551657; City of Ottawa, being all of PIN 15937-0020(LT), in LRO #4.

7. Full Legal Description for PIN 15937-0048(LT): Unit 24, Level 3, Ottawa-Carleton Standard Condominium Plan No. 937 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1551657; City of Ottawa, being all of PIN 15937-0048(LT), in LRO #4.
8. Full Legal Description for PIN 15937-0164(LT): Unit 20, Level 8, Ottawa-Carleton Standard Condominium Plan No. 937 and its appurtenant interest; subject to easements as set out in Schedule A as in OC1551657; City of Ottawa, being all of PIN 15937-0164(LT), in LRO #4.

Full Legal Description for  
 set out in Schedule A as in OC1551657; City of Ottawa, being all of  
 in LRO #4.

**SCHEDULE "B"****COMMERICAL UNITS**

Borrower	Property	Municipal Address
Ashcroft Homes – 101 Richmond Road Inc.	101 Richmond Road	91, 93, 95, 97, 99, 103 Richmond Road
Ashcroft Homes – 108 Richmond Road Inc.	88, 98, 108 Richmond Road	90, 100, 110 Richmond Road
Ashcroft Homes – 111 Richmond Road Inc.	111 Richmond Road (now known as 360 Patricia Avenue)	111, 113, 115, 117, 119, 121 Richmond Road

**SCHEDULE "C"****RESIDENTIAL UNITS**

1. 101 Richmond Road, Unit 320
2. 108 Richmond Road, Unit 607
3. 108 Richmond Road, Unit 106
4. 108 Richmond Road, Unit 406
- 5.
6. 111 Richmond Road, Unit 201
7. 111 Richmond Road, Unit 102
8. 111 Richmond Road, Unit 107
- 9.
10. 111 Richmond Road, Unit 820
11. 111 Richmond Road, Unit 206
12. 111 Richmond Road, Unit 324
13. 111 Richmond Road, Unit 211
14. 88 Richmond Road, Unit 810
15. 88 Richmond Road, Unit 513
16. 88 Richmond Road, Unit 510
17. 88 Richmond Road, Unit 313
18. 88 Richmond Road, Unit 104
19. 98 Richmond Road, Unit 802
20. 98 Richmond Road, Unit 503

This is Exhibit “I” referred to in the Affidavit of Manny Difilippo sworn by Manny Difilippo of the City of Toronto, in the Province of Ontario, before me at the Town of Perth, in the Province of Ontario, on November 4, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'S. Delvillano', written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

**SARAH DELVILLANO**



**Raymond Murray**  
raymond.murray@mannlawyers.com  
Direct Dial: 613.369.0367

October 16, 2024

**VIA EMAIL**

**Ontario Superior Court of Justice**

Attn: Trial Coordination, Ottawa Courthouse  
161 Elgin Street, 2<sup>nd</sup> Floor  
Ottawa, ON K2P 2K1  
Ottawa.SCJ.TC.office@ontario.ca

**Re: Request for Virtual Urgent Motion Hearing**  
**DUCA Financial Services Credit Union Ltd. v. Ashcroft Homes et. al.**  
**Court File No. CV-24-00095337-0000**

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We are counsel for the Respondents/Moving Parties, Ashcroft Homes et. al. ("Ashcroft"), who is the debtor in the above-noted Application and within receivership. The Applicant is DUCA Financial Services Credit Union Ltd. ("DUCA"), a creditor, and the court-appointed receiver is BDO Canada Limited ("BDO").

Ashcroft requests an urgent motion virtually because, as known to BDO, it has secured funds to discharge the Receiver and pay its debts to DUCA. A Sales Process Order has issued and gone live. Ashcroft requests the following urgent relief: a stay of the Sales Process, without which the present opportunity to come out of receivership will inevitably be lost, and directions from the Court for the orderly administration of the entities under Receivership and discharge of the Receiver. The receiver will only suspend the Sales Process until Thursday October 17, 2024. The material facts for a determination of the issues are not in dispute, and the relevant status of the administration is set out in the notice of motion included herein, which will be supported by a brief affidavit setting out the issues in this administration.

On September 23, 2024, the Receiver informed Ashcroft that its combined fees and disbursements, including counsel fees, were \$425,000. The Receiver neither set out how it calculated these fees nor outlined any other fees or outstanding debts. Since this communication, Ashcroft has re-requested a breakdown and particulars of the \$425,000 several times but the Receiver has never provided this information.

Briefly, on October 4, 2024, Ashcroft advised the Receiver that sufficient funds had been transferred to its solicitors' trust account to address the administration of the estate.

On October 7, 2024, the Receiver advised that Ashcroft required \$8,500,000 in financing to cover its debts and to discharge the Receiver.

On October 8, 2024, Ashcroft confirmed that it had secured the amount of \$8,750,000 to satisfy the debts and discharge the Receiver, with an accounting.

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On October 9, 2024, the Receiver newly communicated, *inter alia*, that the \$8,750,000 loan would likely be insufficient to discharge the Receiver, that the net amounts owed were fluctuating to the extent that the Receiver was struggling to compute the total, and that the Receiver had not been paying HST and property taxes for the subject properties which would now have to be accounted for.

For reasons unknown to Ashcroft, the Receiver failed or otherwise refused to provide particulars related to the quantum required to satisfy and discharge the Receiver of its duties or to provide a timeline regarding same, despite repeated requests since August 27, 2024, up until Friday, October 11, 2024.

On Friday, October 11, 2024, the Receiver provided Ashcroft with a summary of estate accounts along with an estimate of the refinancing use of proceeds as of October 31, 2024, and noted that the \$8,750,000 would be marginally sufficient to cover the costs associated with terminating the proceedings. Notably, the Receiver indicated that its professional fees up until September 30, 2024, were \$519,802.84 – a \$94,802.84 increase from the \$425,000 represented a week earlier.

The Receiver has requested assurance that funding is available to cover shortfalls without providing any particulars for same. The intervention of the Court is urgently required. Any further delay will result in significant financial prejudice to Ashcroft because fees and interest costs are accruing daily, and according to the Receiver are fluctuating. The suspension of the sales process will ensure that unnecessary expenses and fees are not incurred.

Ashcroft requests an urgent virtual hearing be made available returnable on October 28, 2024.

We anticipate the length of the hearing to be one hour.

Yours very truly,

Mann Lawyers LLP

FOR   
Raymond Murray

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Applicant/Responding Party

and

**ASHCROFT HOMES – 101 RICHMOND ROAD INC.,  
ASHCROFT HOMES – 108 RICHMOND ROAD INC., and ASHCROFT HOMES – 111  
RICHMOND ROAD INC.**

Respondents/Moving Parties

**DRAFT NOTICE OF MOTION**

The Respondent Moving Parties, Ashcroft Homes – 108 Richmond Road Inc., and Ashcroft Homes – 111 Richmond Road Inc. (“Ashcroft”) will make a motion to the court on ....(day),.....(date), at ..... (time), or as soon after that time as the Motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard

☐ In writing under subrule 37.12.1 (1) because it is made without notice;

☐ In writing as an opposed motion under subrule 37.12.1 (4);

☐ In person;

☐ By telephone conference; or,



[X] By video conference

at the following location

161 Elgin Street, Ottawa, ON, K2P 2K1

**THE MOTION IS FOR:**

- (a) Leave of this Honourable Court to pursue a proceeding as against the Receiver pursuant to paragraph 10 of the Amended and Restated Order attached as Schedule “A” to the Endorsement of Justice Corthorn dated September 3, 2024 (“September 3, 2024 Endorsement”);
- (b) Directions from this Honourable Court for the orderly administration of the entities under the Receivership and the discharge of the Receiver; namely,
  - i. An Order suspending the Sales Process set out at Schedule B of the September 3, 2024 Endorsement, namely the Sales Process Order;
  - ii. An Order directing the payment of **\$XX** by the Debtor to the Applicant, DUCA Financial Services Credit Union Ltd. (“DUCA”);
  - iii. An Order, directing the payment of **\$XX** by the Debtor to the Receiver, BDO Canada Limited (the “Receiver”), without prejudice to the Debtor’s right to request the Court to compel the Receiver to pass its accounts;
  - iv. An Order discharging the Receiver’s Charge on the Property, as outlined in paragraph 20 of the Amended and Restated Order, attached as Schedule A of the September 3, 2024 Endorsement;



- v. An Order discharging all encumbrances on the Debtor's Property related to these proceedings, as outlined in Schedule "A" of the September 3, 2024 Endorsement; and,
  - vi. An Order providing a timetable for the Receiver's motion to discharge the receivership, including the delivery of its final report and accounts and the return of the Debtor's assets and property.
- (c) The costs of this motion and action; and,
- (d) Such further and other Relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) The Applicant, DUCA Financial Services Credit Union Ltd. ("DUCA") is a credit union and granted the Debtor, Ashcroft, a non-revolving five-year term loan in the amount of \$8,800,000 (the "Loan") in relation to the Ashcroft properties, 101 Richmond Road and 108 Richmond Road (the "Properties").
- (b) Ashcroft defaulted on the Loan and on March 25, 2024, DUCA issued demands requesting payment of the indebtedness and a notice of intention to enforce security under the Loan. Ashcroft was unable to satisfy the requests.
- (c) Consequently, DUCA commenced an application on April 23, 2024 to appoint BDO Canada Limited (the "Receiver") as receiver, without security, over the assets, property and undertakings of Ashcroft Homes – 108 Richmond Road Inc. and Ashcroft Homes – 111 Richmond Road Inc. ("Ashcroft").
- (d) On May 16, 2024, Justice MacLeod granted DUCA's Application in part, appointing the Receiver pursuant to an Order dated May 16, 2024 (the "Receivership Order"). The Receiver's appointment was stayed until June 17, 2024.

- (e) On August 27, 2024, Ashcroft requested a payout statement from the Receiver, namely the amount it would require to satisfy all debts, including the cost of the receivership.
- (f) On September 3, 2024, the Receiver brought a motion to approve its proposed sale process of the Properties, its' First Report and its' interim statement of receipts and disbursements, which tallied a net receipt of \$185,402 for the Properties. Ashcroft did not consent to or oppose the motion.
- (g) On September 3, 2024, Justice Corthorn granted the relief sought by the Receiver, and issued an endorsement with two accompanying Orders, one which restated and amended Justice MacLeod's May 16, 2024, Order (the "Amended Order") and the other which dealt with the sale of the Ashcroft Parties (the "Sales Process Order").
- (h) On September 19, 2024, Ashcroft again requested a statement and particulars from both DUCA and the Receiver to pay off its debts and the receivership fees, expenses and receipts. The request was made so it understood and was aware of the amount it required to pay off all debts and discharge the Receiver.
- (i) On September 23, 2024, DUCA provided a breakdown of balances owed by Ashcroft in respect of its loan in the amount of \$6,836,833.73.
- (j) On September 23, 2024, the Receiver informed Ashcroft that its combined fees and disbursements, including counsel fees, were \$425,000. The Receiver neither set out how it calculated these fees nor outlined any other fees or outstanding debts. Since this communication, Ashcroft has re-requested a breakdown and particulars of the \$425,000 several times but the Receiver has never provided this information.

- (k) In late September 2024, based on the Receiver's representations, Ashcroft secured sufficient funds to realize its debt to DUCA and to pay the Receiver's receipts, expenses, and fees.
- (l) On October 4, 2024, Ashcroft advised the Receiver and DUCA that it had secured a refinancing loan, which it had directed to its solicitors' trust account to pay out all debts and receivership fees.
- (m) On October 7, 2024, the Receiver advised Ashcroft that it required \$8,500,000 in financing to cover its debts and to discharge the receiver. The Receiver provided a breakdown on how it arrived at the \$8,500,000. The Receiver also advised that it would provide a breakdown and particulars of the \$425,000 the following day, namely by October 8, 2024.
- (n) At the same meeting, Ashcroft advised that it would attempt to provide particulars of its refinancing by the next day, namely October 8, 2024.
- (o) The following day, on October 8, 2024, Ashcroft advised both the Receiver and DUCA that it had secured the amount of \$8,750,000 in the refinancing arrangement, and provided particulars and a breakdown of how these funds were sufficient to discharge the receiver and pay all debts.
- (p) Conversely, the Receiver did not provide any particulars related to the \$425,000 figure.
- (q) On October 9, 2024, the Receiver newly communicated, *inter alia*, that:
- a. It had not completed a breakdown of the alleged \$425,000 in fees and expenses but reminded the Debtor that the debts accrue daily;
  - b. It was unsure when it would be able to provide information related to the \$425,000 in alleged fees and expenses;

- c. It had not considered other liabilities and debts owed by Ashcroft when providing the \$425,000 figure, although it was neither able to state what were the other debts, nor their amounts;
  - d. It had failed to pay HST and property taxes for the certain Properties at issue;
  - e. The amount owed by Ashcroft fluctuated daily to the extent that the Receiver was struggling to compute the rent revenues and debt; and,
  - f. The \$8,750,000 loan would likely be insufficient to cover the DUCA payout and outstanding debts required before the Receiver could be discharged.
- (r) BDO's communications on October 9, 2024 were shocking to Ashcroft after it had been told less than two business days earlier that \$8,500,000 was sufficient to pay all outstanding debts and liabilities and discharge the Receiver. Ashcroft was equally concerned that the Receiver had failed to take care of the ongoing expenses and day-to-day operations of the Properties. Finally, Ashcroft was concerned about the Receiver's comments that there are incomputable fluctuations in the debt and receipts of the Properties.
- (s) On October 10, 2024, counsel for DUCA, on behalf of DUCA and the Receiver, sent a list of questions regarding the refinancing secured by Ashcroft. This email also confirmed that the Receiver would stay the Sales Process for one week, until October 17, 2024, to provide Ashcroft with time to consider the questions being asked.
- (t) The Receiver did not commit to terminate the Sales Process altogether and it was indicated to Ashcroft that the Receiver would need to consider the additional information provided before making any such determinations.

- (u) On October 11, 2024, Ashcroft provided fulsome answers to the questions and provided all documentation pertaining to the refinancing secured by Ashcroft, as requested.
- (v) On October 11, 2024, counsel for DUCA provided a per diem amount for interest of \$875.41, with professional fees still floating and accruing.
- (w) On October 11, 2024, the Receiver provided Ashcroft with a summary of estate accounts along with an estimate of the refinancing use of proceeds as of October 31, 2024, and noted that the \$8,750,000 would be marginally sufficient to cover the costs associated with terminating the proceedings.
- (x) The Receiver indicated that the its professional fees up until September 30, 2024, were \$519,802.84 – a \$94,802.84 increase from the \$425,000 represented a week earlier.
- (y) The Receiver has requested assurance that funding is available to cover shortfalls without providing any particulars for same.
- (z) For reasons unknown to Ashcroft, the Receiver failed or otherwise refused to provide particulars related to the quantum required to satisfy and discharge the Receiver of its duties or to provide a timeline regarding same, despite repeated requests since August 27, 2024, up until Friday, October 11, 2024.
- (aa) On October 15, 2024, the Receiver contacted the Court requiring that an urgent court proceeding be heard to deal with the Receivership.
- (bb) Rules 37, 41.06, 57.01 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194.
- (cc) Section 67 of the *Personal Property Security Act*, R.S.O. 1990, c. P.10.
- (dd) Section 247 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3.
- (ee) Such further and other grounds as the lawyers may advise and this Honourable Court may deem just.

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

(ff) The Affidavit of Manny Difilippo, sworn XX, 2024;

(gg) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

Date: October \_\_, 2024

**MANN LAWYERS LLP**  
300-11 Holland Avenue  
Ottawa, ON K1Y 4S1

**Raymond Murray (LSO# 50507D)**  
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Tel: 613-722-1500  
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Lawyers for the Respondents, Ashcroft Homes  
– 101 Richmond Road Inc., Ashcroft Homes –  
108 Richmond Road Inc., and Ashcroft Homes –  
111 Richmond Road Inc.

**TO: SERVICE LIST**

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

-and-

**ASHCROFT HOMES – 101 RICHMOND ROAD INC., ASHCROFT  
HOMES – 108 RICHMOND ROAD INC., and ASHCROFT HOMES  
– 111 RICHMOND ROAD INC.**

Applicant/Responding Party

Respondents/Moving Parties

Court File No. CV-24-00095337-0000

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

**NOTICE OF MOTION**

**MANN LAWYERS LLP**  
300-11 Holland Avenue  
Ottawa ON K1Y 4S1

**K. Scott McLean (LSO# 16455G)**

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**Sarah DelVillano (LSO# 86550T)**

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Fax: 613-722-7677

Lawyers for the Respondents, Ashcroft Homes – 101 Richmond Road  
Inc., Ashcroft Homes – 108 Richmond Road Inc., and Ashcroft Homes  
– 111 Richmond Road Inc.

This is Exhibit "J" referred to in the Affidavit of Manny DiFilippo, sworn by Manny DiFilippo, of the City of Toronto, in the Province of Ontario, sworn before me at the Town of Perth, in the Province of Ontario, on November 4, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'S. Delvellano', written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

**SARAH DELVELLANO**



**From:** [Sarah DelVillano](#)  
**To:** [Stephen Gaudreau](#); [Campbell, Amanda](#); [Raymond Murray](#)  
**Cc:** [K. Scott McLean](#); [Alexander Bissonnette](#); [Mary Neill](#); [Salmas, John](#); [Wilson, Sara-Ann](#); [Timothy Dunn](#); [Mackinnon Blair, Fraser](#); [mmarchand@bdo.ca](mailto:mmarchand@bdo.ca); [Boettger, Adam](#)  
**Subject:** RE: CV-24-00095337-0000 - DUCA Financial Services Credit Union Ltd. v Ashcroft Homes -101 Richmond Road Inc. et al. - Request for Urgent Motion Hearing  
**Date:** Monday, October 21, 2024 6:28:00 PM  
**Attachments:** [2024-10-21 Consent Order.docx](#)

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Hello everyone,

In an effort to move towards what seems to be all parties' desire for the timely discharge of this Receivership, could you please review the attached Draft Order and indicate your willingness to consent to same (with additional information to be provided and agreed-upon by all parties).

While we await any word from the Court regarding our request, we also note that the Receiver has indicated its availability for a case conference on the proposed Motion date of October 28 or earlier to address the resolution of these issues. Should all parties agree on the attached Order, we propose providing same to the Court in a timely manner, suggesting October 28 as an acceptable date to be heard as a Motion on Consent.

Thank you,  
Sarah



**Sarah DelVillano**  
**Lawyer**  
**613-369-0372**

11 Holland Avenue | Suite 300 | Ottawa | Ontario | K1Y 4S1  
t: 613-722-1500 | f: 613-722-7677

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	
	)	_____, the __ day
JUSTICE _____	)	of _____, 2024
	)	

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

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Applicant

and

**ASHCROFT HOMES – 101 RICHMOND ROAD INC.,  
ASHCROFT HOMES – 108 RICHMOND ROAD INC., and ASHCROFT HOMES – 111  
RICHMOND ROAD INC.**

Respondents

**ORDER**

**THIS MOTION**, made by Ashcroft Homes – 108 Richmond Road Inc. and Ashcroft Homes – 111 Richmond Road Inc. (“**Ashcroft**”), for an order seeking the discharge of BDO Canada Limited in its capacity as receiver and manager (the “**Receiver**”) over the undertaking, property and assets of Ashcroft, pursuant to the Amended and Restated Order of Justice Corthorn dated September 3, 2024, was heard this day by video conference.

**ON READING** the motion materials of Ashcroft, the motion materials of the Receiver and on hearing submissions from counsel for Ashcroft, the Receiver, and DUCA Financial Services Credit Union Ltd., and on being advised that the within Motion is on consent of the parties.

1. **THIS COURT ORDERS** that as of [REDACTED], 2024, as per the calculations set out in the attached Schedule “A” hereto:

- a. \$XX (the “**Funds**”) shall forthwith be paid by Ashcroft to DUCA Financial Services Credit Union Ltd. (the “**Lender**”) in full and final payment of all obligations owing to the Lender (the “**Payment**”).
- b. Upon receipt of the Payment, the Lender shall immediately provide, or cause to be provided, to Ashcroft or its counsel the following:
  - i. a signed discharge statement confirming the amounts payable as set out herein;
  - ii. a signed acknowledgment and direction re: discharge of charge having instrument number [REDACTED] (the “**Charge**”) and any and all related instruments from the Property;
  - iii. a registered discharge of the Charge; and,
  - iv. such further and other discharges and releases of the Lender’s security related to the indebtedness of Ashcroft to the Lender including all instruments registered on title to the Property as well as any and all registrations made pursuant to the *Personal Property Security Act* and other agreements, registrations and/or instruments, and
- c. Concurrently with the payment of the Funds, \$XX shall be paid by Ashcroft to the lawyers of the Receiver in trust to be held in escrow (the “**Disputed Amount**”), which amount shall stand in the place and stead of all security standing for the benefit of the Receiver in these proceedings. The Disputed Amount shall remain in trust pending either:
  - (i) the agreement between Ashcroft and the Receiver, or
  - (ii) further Order of this Honourable Court, regarding its appropriate allocation.

d. Upon Receipt of the Disputed Amount, the Receiver shall forthwith: (a) discharge the registration of the Receivership Order having instrument number [REDACTED] (the “**Receivership Order Registration**”) from title to the Property; (b) release all of the assets and undertakings of Ashcroft from the Receivership Order and the Receivership Order Registration, and (c) file the certificate substantially in the form attached hereto as Schedule “B” (the “Receiver’s Certificate”), whereupon all powers of the Receiver shall be vacated..,

2. **THIS COURT ORDERS** that upon registration of the Receiver’s Certificate in the Land Registry/Office for the Registry Division of Ottawa-Carleton (No. 4), the Land Registrar is hereby directed to delete and expunge from title to the properties municipally known as 108 Richmond Road and 111 Richmond Road in Ottawa, Ontario, and legally described as all of PIN [REDACTED] instrument number [REDACTED], being an Application to Register Court Order registered on [REDACTED], 2024.

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**SCHEDULE “A”**

**Breakdown of Amounts Listed in the Statement of Account Dated , 2024**

**Total Amount**

September 27, 2024, Statement of Account	\$6,836,833.73
Per diem interest to October 28, 2024	\$27,137.71
<hr/>	
Total amount payable to DUCA	\$6,863,971.44

**Disputed Amounts**

<hr/>	
Total Disputed Amount	
Less (?)	
<hr/>	
Total Amount Paid in Escrow	
Total Amount to be Released to Lender	

## **SCHEDULE “B”**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Applicant

and

**ASHCROFT HOMES – 101 RICHMOND ROAD INC.,  
ASHCROFT HOMES – 108 RICHMOND ROAD INC., and ASHCROFT HOMES – 111  
RICHMOND ROAD INC.**

Respondents

APPLICATION UNDER Section 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

**RECEIVER’S CERTIFICATE**

**WHEREAS** pursuant to the Order of the Honourable Justice \_\_\_\_\_ of the Ontario Superior Court of Justice made \_\_\_\_\_ (the "**Order**"), the Receivership Order Registration (as defined in the Order) of BDO Canada Limited. (the "**Receiver**") was vacated, effective upon the Receiver filing a certificate with this Honourable Court certifying that the refinancing transaction and the payment in full of the Corporation’s indebtedness to DUCA, as contemplated by paragraph 2 of the Order, has been completed (the "**Refinancing and Repayment**").

**THE UNDERSIGNED HEREBY CERTIFIES** as follows:

1. The Refinancing and Repayment has been completed to the satisfaction of the Receiver.

**DATED** at Ottawa, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**BDO CANADA LIMITED**, solely in its  
capacity as court-appointed receiver of the  
assets, undertakings of the **Corporation** and  
not in its personal capacity.

Per:



**DUCA FINANCIAL SERVICES CREDIT  
UNION LTD.**

-and-

**ASHCROFT HOMES – 101 RICHMOND  
ASHCROFT HOMES – 108 RICHMOND  
ASHCROFT HOMES – 111 RICHMOND**

Applicant

**ONTARIO  
SUPERIOR COURT**  
  
PROCEEDING COMING  
OTTAWA

**ORDER**

**MANN LAWYERS LLP**

Barristers & Solicitors  
300-11 Holland Ave.  
Ottawa, ON K1Y 4S1

**Raymond Murray** (LSO# 50507D)  
raymond.murray@mannlawyers.com

Tel.: 613 722 1500  
Fax: 613 722 7677

Lawyers for the Respondents, Ashcroft  
Inc., Ashcroft Homes – 108 Richmond  
Homes – 111 Richmond Road Inc.

This is Exhibit "K" referred to in the Affidavit of Manny DiFilippo, sworn by Manny DiFilippo, of the City of Toronto, in the Province of Ontario, sworn before me at the Town of Perth, in the Province of Ontario, on November 4, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'S. Delvellano', written over a horizontal line.

*Commissioner for Taking Affidavits (or as may be)*

**SARAH DELVELLANO**

**From:** [Sarah DelVillano](#)  
**To:** ["Stephen Gaudreau"](#); ["Campbell, Amanda"](#); [Raymond Murray](#)  
**Cc:** [Alexander Bissonnette](#); [Mary Neill](#); ["Salmas, John"](#); ["Wilson, Sara-Ann"](#); ["Timothy Dunn"](#); ["Mackinnon Blair, Fraser"](#); ["mmarchand@bdo.ca"](#); ["Boettger, Adam"](#)  
**Subject:** RE: CV-24-00095337-0000 - DUCA Financial Services Credit Union Ltd. v Ashcroft Homes -101 Richmond Road Inc. et al. - Request for Urgent Motion Hearing  
**Date:** Friday, November 1, 2024 2:49:00 PM  
**Attachments:** [2024-11-01 With Prejudice Letter and Enclosures.pdf](#)

---

Hello,

Please see attached **with prejudice** letter and enclosures from Raymond Murray of today's date.

Thank you,  
Sarah



**Sarah DelVillano**  
**Lawyer**  
**613-369-0372**



11 Holland Avenue | Suite 300 | Ottawa | Ontario | K1Y 4S1  
t: 613-722-1500 | f: 613-722-7677

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Raymond Murray  
raymond.murray@mannlawyers.com  
Direct Dial: 613.369.0367

**WITH PREJUDICE**

November 1, 2024

**VIA EMAIL**

**Re: DUCA Financial Services Credit Union Ltd. V. Ashcroft Homes et. al.  
Our File No. 2401960**

---

This letter is further to the Court's direction for our urgent motions to be heard on November 5, 2024, and more particularly encloses our proposed draft order to halt the sales process, discharge the receiver, and allocate refinancing monies owed to the creditor.

Since October 4, 2024, our client has communicated its willingness and ability to tender funds to discharge its obligation to DUCA and the receiver. Notwithstanding our client's willingness to do so, you have failed to facilitate the discharge of this receivership, which has caused our client damages, namely ongoing interest charges (on both the new and the existing facilities), exacerbated costs, and reputational damage. Accordingly, the tender of funds as contemplated in the attached order is made under protest, reserving our client's rights to review and seek compensation for the damages this delay has caused them, and to investigate and object to the receiver's fees, professional fees and expenses. The draft order leaves certain monetary amounts blank because we have not received your current fees and disbursements and we will include the updated DUCA discharge amount, which we will request from DUCA counsel under separate cover today.

Further to our email correspondence dated October 11, 2024, we again reiterate that our client fully intends to continue its operation in the normal course, including dealing with any pre-receivership liabilities.

Given the urgent nature of getting this matter addressed and the receiver discharge, we expect to receive your materials as soon as possible and no later than end of day.

Yours very truly,

Mann Lawyers LLP

A handwritten signature in black ink, appearing to be 'RM' with a stylized flourish.

Raymond Murray  
RM/swd

11 Holland Avenue  
Suite 300  
Ottawa, ON K1Y 4S1

T: 613.722.1500  
F: 613.722.7677  
www.mannlawyers.com

Encls.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	
	)	_____, the ____ day
JUSTICE _____	)	of _____, 2024
	)	

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

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Applicant

and

**ASHCROFT HOMES – 101 RICHMOND ROAD INC.,  
ASHCROFT HOMES – 108 RICHMOND ROAD INC., and ASHCROFT HOMES – 111  
RICHMOND ROAD INC.**

Respondents

**ORDER**

**THIS MOTION**, made by Ashcroft Homes – 108 Richmond Road Inc. and Ashcroft Homes – 111 Richmond Road Inc. (“**Ashcroft**”), for an order seeking the discharge of BDO Canada Limited in its capacity as receiver and manager (the “**Receiver**”) over the undertaking, properties (the “**Property**”) and assets of Ashcroft, pursuant to the Amended and Restated Order of Justice Corthorn dated September 3, 2024, was heard this day by video conference.

**ON READING** the motion materials of Ashcroft, the motion materials of the Receiver and on hearing submissions from counsel for Ashcroft, the Receiver, and DUCA Financial Services Credit Union Ltd. (the “**Lender**”), and with the undisputed understanding that Ashcroft has

secured refinancing with HP ABL Fund 1 GP Inc. in the amount of \$8,750,000 (the “**Financing**”),

1. **THIS COURT ORDERS** that the Debtor is authorized and directed to complete the Financing and directs the Debtor to advance, or caused to be advanced, the proceeds of such Financing as directed and outlined in this Order, whereupon any surplus amounts available under the Financing shall be available to the Debtor on the terms and conditions outlined in the Financing and for its general corporate purposes to maintain the day-to-day operations of the Debtor.
2. **THIS COURT ORDERS** that as of November 5, 2024,
  - a. **\$XX** (the “**Funds**”) shall forthwith be paid by Ashcroft to the Lender in full and final payment of all obligations owing to the Lender (the “**Payment**”).
  - b. Upon receipt of the Payment, the Lender shall immediately provide, or cause to be provided, to Ashcroft or its counsel the following:
    - i. a signed discharge statement confirming the amounts payable as set out herein;
    - ii. a signed acknowledgment and direction re: discharge of all DUCA charges, including instrument numbers OC2066793, OC2066800, and OC2066810 (the “**Charges**”) and any and all related instruments from the Property, including the general assignment of rents general having instrument numbers OC2066797, OC2066806, and OC2066813 (the “**Notices**”);
    - iii. a registered discharge of the Charges and Notices; and,
    - iv. such further and other discharges and releases of the Lender’s security related to the indebtedness of Ashcroft to the Lender including all instruments registered on title to the Property as well as any and all registrations made pursuant to the

*Personal Property Security Act* and other agreements, registrations and/or instruments.

- c. Concurrently with the payment of the Funds, \$XX shall be paid by Ashcroft to the lawyers of the Receiver in trust to be held in escrow (the “**Disputed Amount**”), which amount shall stand in the place and stead of all security standing for the benefit of the Receiver in these proceedings. The Disputed Amount shall remain in trust pending either:
    - (i) the agreement between Ashcroft and the Receiver, or (ii) further Order of this Honourable Court, regarding its appropriate allocation.
  - d. Upon Receipt of the Disputed Amount, the Receiver shall forthwith: (a) discharge the registration of the Receivership Order having instrument number OC2702189 (the “**Receivership Order Registration**”) from title to the Property; (b) release all of the assets and undertakings of Ashcroft from the Receivership Order and the Receivership Order Registration, and (c) file the certificate substantially in the form attached hereto as Schedule “A” (the “**Receiver’s Certificate**”), whereupon all powers of the Receiver shall be vacated.
  - e. Upon Receipt of the Disputed Amount, the Receiver shall immediately halt (1) the Sales Process as contemplated in the Amended and Restated Order attached as Schedule “A” to the Endorsement of Justice Corthorn dated September 3, 2024 (“September 3 Endorsement”) and (2) any and all duties of the Receiver as outlined in Schedule “A” of the September 3 Endorsement.
3. **THIS COURT ORDERS** that upon registration of the Receiver’s Certificate in the Land Registry/Office for the Registry Division of Ottawa-Carleton (No. 4), the Land Registrar is hereby directed to delete and expunge from title to the properties municipally known as 108



Richmond Road and 111 Richmond Road in Ottawa, Ontario, instrument number 2702189 being an Application to Register Court Order registered on June 27, 2024 (the “**Property**”).

4. **THIS COURT ORDERS** that upon registration of the Receiver’s Certificate in the Land Registry/Office for the Registry Division of Ottawa-Carleton (No. 4), the Land Registrar is hereby directed to delete and expunge from title all encumbrances to the Debtor’s Property related to these proceedings, as outlined in Schedule “A” of the September 3, 2024, Endorsement.

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**SCHEDULE "A"**

Court File No. CV-24-00095337-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

Applicant

and

**ASHCROFT HOMES – 101 RICHMOND ROAD INC.,  
ASHCROFT HOMES – 108 RICHMOND ROAD INC., and ASHCROFT HOMES – 111  
RICHMOND ROAD INC.**

Respondents

APPLICATION UNDER Section 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

**RECEIVER'S CERTIFICATE**

**WHEREAS** pursuant to the Order of the Honourable Justice \_\_\_\_\_ of the Ontario Superior Court of Justice made \_\_\_\_\_ (the "**Order**"), the Receivership Order Registration (as defined in the Order) of BDO Canada Limited. (the "**Receiver**") was vacated, effective upon the Receiver filing a certificate with this Honourable Court certifying that the refinancing transaction and the payment in full of the Corporation's indebtedness to DUCA, as contemplated by paragraph 2 of the Order, has been completed (the "**Refinancing and Repayment**").

**THE UNDERSIGNED HEREBY CERTIFIES** as follows:

1. The Refinancing and Repayment has been completed to the satisfaction of the Receiver.

**DATED** at Ottawa, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**BDO CANADA LIMITED**, solely in its capacity as court-appointed receiver of the assets, undertakings of the **Corporation** and not in its personal capacity.

Per:

**DUCA FINANCIAL SERVICES CREDIT  
UNION LTD.**

-and-

**ASHCROFT HOMES – 101 RICHMOND  
ASHCROFT HOMES – 108 RICHMOND  
ASHCROFT HOMES – 111 RICHMOND**

Applicant

**ONTARIO  
SUPERIOR COURT**  
  
PROCEEDING COMING  
OTTAWA

**ORDER**

**MANN LAWYERS LLP**

Barristers & Solicitors  
300-11 Holland Ave.  
Ottawa, ON K1Y 4S1

**Raymond Murray** (LSO# 50507D)  
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Lawyers for the Respondents, Ashcroft  
Inc., Ashcroft Homes – 108 Richmond  
Homes – 111 Richmond Road Inc.

**DUCA FINANCIAL SERVICES  
CREDIT UNION LTD.**

Applicant

- and -

**ASHCROFT HOMES – 101 RICHMOND  
ASHCROFT HOMES – 108 RICHMOND  
ASHCROFT HOMES – 111 RICHMOND**  
Respondents

Court File

**ONTARIO  
SUPERIOR COURT OF JUSTICE**  
  
**PROCEEDING ON  
MOTION**

**AFFIDAVIT OF MANNING**

**MANN LAWYERS LLP**  
300-11 Holland Avenue  
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Lawyers for the Respondents, Ashcroft Homes Inc.,  
Ashcroft Homes – 108 Richmond Road Inc., and  
Richmond Road Inc.

**DUCA FINANCIAL SERVICES CREDIT UNION LTD.**

-and-

**ASHCROFT HOMES – 101 RICHMOND  
HOMES – 108 RICHMOND ROAD INC.  
– 111 RICHMOND ROAD INC.**

Applicant/Responding Party

Respondents/Moving Parties

Court File

**ONTARIO  
SUPERIOR COURT OF  
PROCEEDING COMMERCIAL  
OTTAWA**

**RESPONDENTS/MOVING PARTIES**

**MANN LAWYERS LLP**  
300-11 Holland Avenue  
Ottawa ON K1Y 4S1

**Raymond Murray (LSO# 50507D)**  
[raymond.murray@mannlawyers.com](mailto:raymond.murray@mannlawyers.com)  
**Sarah DelVillano (LSO# 86550T)**  
[Sarah.delvillano@mannlawyers.com](mailto:Sarah.delvillano@mannlawyers.com)

Tel: 613-722-1500  
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Lawyers for the Respondents, Ashcroft Homes Inc., Ashcroft Homes – 108 Richmond Road Inc., Ashcroft Homes – 111 Richmond Road Inc.