

**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

**FACTUM OF THE RECEIVER  
(returnable September 3, 2024)**

Date: August 22, 2024

**DENTONS CANADA LLP**  
77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, ON M5K 0A1

**John Salmas** (LSO # 42336B)  
Tel: 416-863-4737  
[john.salmas@dentons.com](mailto:john.salmas@dentons.com)

**Sara-Ann Wilson** (LSO # 56016C)  
Tel: 416-863-4402  
[sara.wilson@dentons.com](mailto:sara.wilson@dentons.com)

**Fraser Mackinnon Blair** (LSO #66683L)  
Tel: 613-783-9647  
[fraser.mackinnon.blair@dentons.com](mailto:fraser.mackinnon.blair@dentons.com)

*Lawyer for BDO Canada Limited, in its  
capacity as the Court-appointed Receiver of  
Ashcroft Homes – 101 Richmond Road Inc.,  
Ashcroft Homes – 108 Richmond Road Inc. and  
Ashcroft Homes – 111 Richmond Road Inc.*

**TO: SERVICE LIST**

**Service List  
as at August 15, 2024**

TO:	<p><b>BLANEY MCMURTRY LLP</b> Barristers &amp; Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5</p> <p><b>Timothy R. Dunn</b> Tel: 416-597-4880 <a href="mailto:tdunn@blaney.com">tdunn@blaney.com</a></p> <p><b>Stephen Gaudreau</b> Tel: 416-596-4285 <a href="mailto:sgaudreau@blaney.com">sgaudreau@blaney.com</a> <i>Counsel to the Applicant</i></p>
AND TO:	<p><b>MANN LAWYERS LLP</b> 300-11 Holland Avenue Ottawa, ON K1Y 4S1</p> <p><b>K. Scott McLean</b> Tel: 613-369-0375 <a href="mailto:scott.mclean@mannlawyers.com">scott.mclean@mannlawyers.com</a></p> <p><b>Sarah DelVillano</b> Tel: 613-369-0372 <a href="mailto:sarah.delvillano@mannlawyers.com">sarah.delvillano@mannlawyers.com</a> <i>Counsel to the Respondents, Ashcroft Homes – 101 Richmond Road Inc., Ashcroft Homes – 108 Richmond Road Inc., and Ashcroft Homes – 111 Richmond Road Inc.</i></p>
AND TO:	<p><b>MANN LAWYERS LLP</b> 300-11 Holland Avenue Ottawa, ON K1Y 4S1</p> <p><b>K. Scott McLean</b> Tel: 613-369-0375 <a href="mailto:scott.mclean@mannlawyers.com">scott.mclean@mannlawyers.com</a> <i>Counsel to David Choo, Guarantor</i></p>

AND TO:	<p><b>DENTONS CANADA LLP</b> 77 King Street West, Suite 400 Toronto-Dominion Centre Toronto, ON M5K 0A1</p> <p><b>John Salmas</b> Tel: 416-863-4737 <a href="mailto:john.salmas@dentons.com">john.salmas@dentons.com</a></p> <p><b>Sara-Ann Wilson</b> Tel: 416-863-4402 <a href="mailto:sara.wilson@dentons.com">sara.wilson@dentons.com</a></p> <p><b>Fraser Mackinnon Blair</b> Tel: 613-783-9647 <a href="mailto:fraser.mackinnon.blair@dentons.com">fraser.mackinnon.blair@dentons.com</a></p> <p><i>Counsel to BDO Canada Limited, in its capacity as the Court-appointed receiver of Ashcroft Homes – 101 Richmond Road Inc., Ashcroft Homes – 108 Richmond Road Inc. and Ashcroft Homes – 111 Richmond Road Inc.</i></p>
AND TO:	<p><b>BDO CANADA LIMITED</b> 222 Bay Street, Suite 2200 Toronto, ON, M5K 1H1</p> <p><b>Matthew Marchand</b> Tel: 416-865-0111 <a href="mailto:mmarchand@bdo.ca">mmarchand@bdo.ca</a></p> <p><i>The Receiver</i></p>
AND TO:	<p><b>MCMILLAN LLP</b> Brookfield Place 181 Bay Street, Suite 4400 Toronto, ON M5J 2T3</p> <p><b>Tushara Weerasooriya</b> Tel: 416-865-7890 <a href="mailto:tushara.weerasooriya@mcmillan.ca">tushara.weerasooriya@mcmillan.ca</a></p> <p><b>Jeffrey Levine</b> Tel: 416-865-7048 <a href="mailto:jeffrey.levine@mcmillan.ca">jeffrey.levine@mcmillan.ca</a></p> <p><i>Counsel for Royal Bank of Canada, Creditor</i></p>

AND TO:	<b>OFFICE OF THE SUPERINTENDENT OF BANKRUPTCY CANADA</b> 151 Yonge St., Fourth Floor Toronto, ON M5C 2W7 <a href="mailto:osbservice-bsfservice@ised-isde.gc.ca">osbservice-bsfservice@ised-isde.gc.ca</a>
AND TO:	<b>DEPARTMENT OF JUSTICE</b> Ontario Regional Office 120 Adelaide Street West, Suite 400 Toronto, ON M5H 1T1 <a href="mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca">AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</a>
AND TO:	<b>MINISTRY OF FINANCE</b> Ministry of the Attorney General (Ontario) 6-33 King St West Oshawa, ON L1H 8H5 <b>Civil Law Division - Legal Services Branch</b> <a href="mailto:steven.groeneveld@ontario.ca">steven.groeneveld@ontario.ca</a> <b>Collections Branch – Bankruptcy and Insolvency Unit</b> Tel: 1-866-668-8297 <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a>
AND TO:	<b>CANADIAN IMPERIAL BANK OF COMMERCE</b> 595 Bay Street, 5th Floor Toronto, ON M5G 2C2 <i>Creditor</i>

### Email List

[john.salmas@dentons.com](mailto:john.salmas@dentons.com); [sara.wilson@dentons.com](mailto:sara.wilson@dentons.com); [fraser.mackinnon.blair@dentons.com](mailto:fraser.mackinnon.blair@dentons.com);  
[tdunn@blaney.com](mailto:tdunn@blaney.com); [sgaudreau@blaney.com](mailto:sgaudreau@blaney.com); [scott.mclean@mannlawyers.com](mailto:scott.mclean@mannlawyers.com);  
[sarah.delvillano@mannlawyers.com](mailto:sarah.delvillano@mannlawyers.com); [osbservice-bsfservice@ised-isde.gc.ca](mailto:osbservice-bsfservice@ised-isde.gc.ca); [AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca); [steven.groeneveld@ontario.ca](mailto:steven.groeneveld@ontario.ca);  
[insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca); [mmarchand@bdo.ca](mailto:mmarchand@bdo.ca); [tushara.weerasooriya@mcmillan.ca](mailto:tushara.weerasooriya@mcmillan.ca);  
[jeffrey.levine@mcmillan.ca](mailto:jeffrey.levine@mcmillan.ca)

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## **PART 1 – OVERVIEW**

1. BDO Canada Limited (“**BDO**”), in its capacity as the court-appointed receiver and manager (the “**Receiver**”) of the assets, undertakings and properties of Ashcroft Homes – 101 Richmond Road Inc., Ashcroft Homes – 108 Richmond Road Inc. and Ashcroft Homes – 111 Richmond Road Inc. (the “**Debtors**”), save and except for the 114 Richmond Property (defined below) (collectively, the “**Property**”), submits this factum in support of its motion, returnable September 3, 2024, for an Order:
  - (a) amending and restating the Receivership Order of the Honourable Justice MacLeod dated May 16, 2024 (the “**Receivership Order**”) to include the full legal description of the real property of the Debtors that is located in Ottawa, Ontario (the “**Proposed ARRO**”);
  - (b) approving the proposed sales process (the “**Sales Process**”) as described in the First Report of the Receiver dated August 21, 2024 (the “**First Report**”), to be commenced immediately;
  - (c) approving the First Report and the activities of the Receiver as described therein;
  - (d) approving the Receiver’s interim statement of receipts and disbursements (the “**R&D**”); and
  - (e) granting certain other ancillary relief.

2. The terms of the Proposed ARRO are not controversial and are necessary for the Receiver to exercise its powers pursuant to paragraph 4(n) of the Receivership Order, and therefore, the Proposed ARRO ought to be made.
3. The proposed Sales Process is fair and reasonable, and will enable the Receiver to undertake a comprehensive, transparent and efficient sale process for the Real Property (as defined below) in a manner that maximizes value for creditors and achieves closing of potential transaction(s) on appropriate timelines. It is critical that the Sales Process be commenced as soon as possible in order to capitalize upon favourable expected market conditions during the fall of 2024. Accordingly, the Sales Process ought to be approved.
4. Capitalized terms used but not otherwise defined in this Factum shall have the meanings given to them in the First Report.

## **PART II – THE FACTS**

### **Background**

5. BDO was appointed as Receiver over the Property pursuant to the Receivership Order.

**Receivership Order, dated May 26, 2024 (the “Receivership Order”), attached as Appendix “A” to the First Report to the Court of the Receiver, dated August 21, 2024 ( the “First Report”), being Tab 2 of the Motion Record of the Receiver (“MRR”).**

6. The Debtors are the registered owners of eighteen (18) residential condominium units and approximately 38,400 square feet of commercial condominium space located in the Westboro neighbourhood of Ottawa, Ontario (the “**Real Property**”), as more particularly described in the First Report.



**First Report, para. 7, MRR, Tab 2**

7. The various condominium units that comprise the Real Property are located within the following buildings:
  - (a) a 9-story building comprised of three interconnected towers with the municipal addresses 88, 90, 98, 100, 108 Richmond Road, Ottawa, ON; and
  - (b) two 6-story buildings with the municipal addresses 91, 97, 103, 101, 111, 117, 119, 121 Richmond Road, Ottawa, ON and 360 Patricia Avenue, Ottawa, ON.
8. The Receivership Order expressly excludes the real property that is owned by the Debtors and is located at the municipal address of 114 Richmond Road, Ottawa, Ontario (the “**114 Richmond Property**”).

**First Report, para. 10, MRR, Tab 2**

**Receivership Order, being Appendix “A” to the First Report, para. 2. MRR Tab 2(a)**

**The Proposed ARRO**

9. Paragraph 4(n) of the Receivership Order empowers and authorizes, but does not obligate, the Receiver to register a copy of the Receivership Order against title to any of the Property, including the Real Property. It is customary in receivership proceedings that involve real property assets that the receivership order be registered against title to any real property owned by the debtor in order to provide notice of the pendency of the receivership proceedings and to prevent stakeholders from impacting real property title and the receiver’s ability to market and sell the property.

**First Report, para. 32, MRR, Tab 2**

**Receivership Order, being Appendix “A” to the First Report, para. 4(n)**

10. In this case, the Land Registrar declined to register the Receivership Order against title to any of the Real Property because the Receivership Order does not contain the full legal descriptions of the Real Property.

**First Report, paras. 32-33, MRR, Tab 2**

11. In the circumstances, the proposed amendments to the Receivership Order contained in the Proposed ARRO are necessary for the Receiver to exercise its powers pursuant to paragraph 4(n) of the Receivership Order with respect to the Real Property, and therefore, ought to be granted.

**The Proposed Sales Process**

12. The proposed Sales Process has been prepared by the Receiver with the objective of obtaining offers for the Real Property pursuant to a thorough and transparent process that is designed to provide the greatest value to the Debtors’ creditors and other stakeholders. The proposed Sales Process provides for an efficient marketing process which will balance the need to complete a sale in a reasonable time while ensuring adequate exposure for the Real Property to the market in a manner that will maximize recovery for stakeholders.

**First Report, paras. 39-46, MRR, Tab 2.**

13. The Receiver proposes to engage Colliers Macaulay Nicolls Inc., Brokerage (“**Colliers Brokerage**”) to lead the proposed Sales Process. Prior to selecting Colliers Brokerage, the Receiver approached nine licensed real estate brokers to solicit listing proposals for the Real Property and received a total of six listing proposals from interested parties.

**First Report, para. 42, MRR, Tab 2.**

14. The proposed Sales Process is divided into the following three components to reflect the unique composition of the Real Property, which is made up of a mix of occupied and vacant residential and commercial units spread across one 9-story and two 6-story buildings:

- (a) The listing of the Occupied Residential Units and the Vacant Residential Units, in three (3) 'small blocks' of five (5) to seven (7) units per block, with each block being comprised of units within the same building;
- (b) The listing of the Occupied Commercial Units as a single block of units; and
- (c) The listing of each of the Vacant Commercial Units separately.

**First Report, para. 42, MRR, Tab 2.**

15. The key aspects of the Sales Process are summarized in the following table:

<b>Term / Event    Description</b>	
<b><u>Occupied Residential Units and Vacant Residential Units</u></b>	
<b>Pricing Strategy</b>	<ul style="list-style-type: none"><li>• Listings will be priced.</li><li>• Based on the estimated investment value.</li></ul>
<b>Offer Deadline</b>	<ul style="list-style-type: none"><li>• The Receiver will utilize a bid-after date, which is estimated to be set for 2-weeks following the launch of marketing efforts by Colliers Brokerage. After the bid-after date, offers will be reviewed on a first-come, first-serve basis.</li></ul>
<b><u>Occupied Commercial Units</u></b>	
<b>Pricing Strategy</b>	<ul style="list-style-type: none"><li>• Listing will be unpriced (although presented as \$1 on MLS system).</li></ul>
<b>Offer Deadline</b>	<ul style="list-style-type: none"><li>• An offer date will be set at a time after sufficient market interest has been obtained and will not be set within the first 30-days following the launch of marketing efforts by Colliers Brokerage.</li></ul>

<b>Term / Event</b>	<b>Description</b>
	<ul style="list-style-type: none"> <li>Once determined, offer deadline date will be set to 10-days and communicated to all parties which have expressed an interest in submitting an offer.</li> </ul>
<b><u>Vacant Commercial Units</u></b>	
<b>Pricing Strategy</b>	<ul style="list-style-type: none"> <li>Listings will be priced.</li> <li>Pricing range will be based on square footage.</li> </ul>
<b>Offer Deadline</b>	<ul style="list-style-type: none"> <li>No offer deadline.</li> <li>Offers will be considered as received after listing on a first-come, first-serve basis.</li> </ul>
<b><u>Common Terms to the Sales Process</u></b>	
<b>Solicitation</b>	<ul style="list-style-type: none"> <li>Marketing materials created by Colliers Brokerage at the cost of Colliers Brokerage.</li> <li>Notification to potential interested parties performed by Colliers Brokerage.</li> <li>Listing on website of Colliers Brokerage.</li> <li>Listing on the MLS system.</li> </ul>
<b>Due Diligence</b>	<ul style="list-style-type: none"> <li>Interested parties shall be required to execute a non-disclosure agreement and return it to Colliers Brokerage in order to gain access to confidential information maintained in a data room.</li> </ul>
<b>Deposit</b>	<ul style="list-style-type: none"> <li>A deposit of 10% of the purchase price is required with each offer.</li> <li>Deposits for all unsuccessful offers will be returned.</li> <li>Deposits for successful offers are non-refundable.</li> </ul>
<b>Court Approval</b>	<ul style="list-style-type: none"> <li>All sale transactions will be subject to Court approval.</li> </ul>
<b>Closing Date</b>	<ul style="list-style-type: none"> <li>As mutually agreed upon between the Receiver and purchaser(s).</li> </ul>
<b>Commission</b>	<ul style="list-style-type: none"> <li>3.5% (cooperating at 1.5%) for the Occupied Residential Units and Vacant Residential Units.</li> </ul>

<b>Term / Event</b>	<b>Description</b>
	<ul style="list-style-type: none"> <li>• 3.0% (cooperating at 1.5%) for the Occupied Commercial Units and Vacant Commercial Units.</li> </ul>
<b>Break Fee</b>	<ul style="list-style-type: none"> <li>• No break fees.</li> </ul>
<b>Listing Term</b>	<ul style="list-style-type: none"> <li>• 6-months.</li> </ul>
<b>Receiver's Reservation of Rights</b>	<ul style="list-style-type: none"> <li>• The Receiver reserves the right in its reasonable discretion to, among other things: <ul style="list-style-type: none"> <li>○ waive strict compliance with any one or more of the Sales Process parameters detailed herein;</li> <li>○ create or extend any deadline set forth in the Sales Process;</li> <li>○ reject any or all offers;</li> <li>○ not be bound to accept the highest or any offer;</li> <li>○ consult with DUCA and other stakeholders as it determines necessary or appropriate, in its sole discretion;</li> <li>○ terminate the Sales Process in consultation with DUCA and other stakeholders; and</li> <li>○ adopt such ancillary and procedural rules not otherwise set out in the Sales Process.</li> </ul> </li> </ul>

**First Report, para. 43, MRR, Tab 2.**

16. As is noted in the First Report, it is necessary that the proposed Sales Process be commenced as soon as possible in order to take advantage of favourable market conditions that are expected to arise during the late summer and early fall of 2024.

**First Report, para. 41(b), MRR, Tab 2.**

17. At the conclusion of the proposed Sale Process, the Receiver will make a motion to this Court to obtain approval of any successful bid(s) and one or more vesting orders with respect to the Real Property with any ultimate successful bidder(s).

**First Report, para. 43, MRR, Tab 2.**

### **PART III – THE ISSUES**

18. The issues before this Honourable Court are as follows:
- (a) Should the Court grant the Proposed ARRO?
  - (b) Should the proposed Sales Process be approved, and commenced immediately?
  - (c) Should this Court approve the Receiver's activities as described in the First Report?

### **PART IV – LAW & ARGUMENT**

#### **A. The Proposed ARRO Should be Granted**

19. In accordance with its powers under paragraph 4(n) of the Receivership Order and as is customary in receivership proceedings, upon its appointment the Receiver attempted to register the Receivership Order on title to the Real Property. However, the Land Registry did not permit the Receiver to register the Receivership Order against title to any of the Real Property because the Receivership Order does not contain the complete legal description of any of the Real Property that is the subject of the Receivership Proceedings.

**First Report, paras. 32-33, MRR, Tab 2**

20. The main purpose, and indeed, the only substantive function of the Proposed ARRO is to expressly include the legal description of the Real Property that is owned by the Debtors and the subject of the Receivership Proceedings.
21. In the Receiver's view, the Proposed ARRO is fair and reasonable, and necessary in order for the Receiver to avail itself of its powers under paragraph 4(n) of the Receivership Order. The Proposed ARRO is also required in order to prevent other stakeholders from impacting title to the Real Property and the Receiver's ability to market and sell the Real Property during the proposed Sales Process.

**First Report, paras. 32-33 and 46, MRR, Tab 2**

**B. The Proposed Sales Process Should be Approved**

22. The Receivership Order explicitly authorizes and empowers the Receiver to market any and all of the property of the Debtors, which includes the Real Property, and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate. The Receiver's powers under the Receivership Order are consistent with the broad powers that may be afforded to receivers by the Court pursuant to Section [243\(1\)](#) of the *BIA* and Section [101](#) of the *Courts of Justice Act*.

**Receivership Order, being Appendix "A" to the First Report, paras. 4(d) and (k)**

***Bankruptcy and Insolvency Act*, RSC 1985, c B-3, [s. 243](#).**

***Courts of Justice Act*, RSO 1990, c C.43, [s. 101](#).**

23. The Court of Appeal has recognized that the purpose of a receivership proceeding is to enhance and facilitate the preservation and realization of receivership assets for the benefit of creditors, and that this purpose is generally achieved through a liquidation of the debtor's

assets. Sale processes are routinely approved and undertaken in receivership proceedings to facilitate such sales.

*Third Eye Capital Corp v. Dianor Resources Inc.*, 2019 ONCA 508, at para [73](#).

*2056706 Ontario Inc. v. Pure Global Cannabis Inc.*, 2021 ONSC 5533, at para [11](#).

24. Although the decision to approve a particular form of sale process is distinct from the approval of a proposed sale transaction, the Court has held that the factors which a Court is to consider on such motions are intertwined with and drawn from the oft-cited principles set out in *Royal Bank v Soundair Corp.*, being: (i) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and, (iv) the interests of all parties.

*CCM Master Qualified Fund Ltd. v blutip Power Technologies Ltd.*, 2012 ONSC 1750 at para [6](#) [“CCM”].

*Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#) at para 16 [“Soundair”].

*Choice Properties Limited Partnership v Penady (Barrie) Ltd.*, 2020 ONSC 3517 at para [16](#).

*Yukon (Government of) v Yukon Zinc Corporation*, 2020 YKSC 17 at para [62](#).

25. Accordingly, when reviewing a sales process proposed by a receiver, the Court should assess:
- (a) The fairness, transparency and integrity of the proposed process;
  - (b) The commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and,



- (c) Whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.
26. Importantly, the proposed sales process need not be perfect, only reasonable, and a Court should also give significant weight to the recommendation of the receiver, a Court-appointed officer with significant expertise in insolvency proceedings.

*Marchant Realty Partners Inc. v 2407553 Ontario Inc.*, 2021 ONCA 375 at paras [10](#), [15](#) and [19](#).

*Sanjel Corporation*, 2016 ABQB 257 at para [80](#).

27. Each of the factors outlined in *Soundair* and *CCM* support the approval of the proposed Sales Process at this time:

- (a) Whether the proposed Sales Process is fair and transparent: The proposed Sales Process is a fair, open and transparent process that contemplates a broad public marketing process pursuant to marketing materials that will be prepared by Colliers Brokerage. The Real Property will also be publicly listed through the MLS website. Furthermore, the Receiver will provide all prospective purchasers with access to confidential information pertaining to the Real Property in a data room maintained by the Receiver upon the execution of a non-disclosure agreement. Any transaction or transactions by the Receiver involving the Real Property will require this Court's approval.

**First Report, paras. 39-43, MRR, Tab 2**

- (b) Whether the proposed Sales Process is commercially efficient: The Sales Process will be overseen and conducted by the Receiver and Colliers Brokerage. The engagement of Colliers Brokerage is the result of a broad and competitive

solicitation process undertaken by the Receiver that involved consulting with nine licensed potential brokers. The assistance and involvement of Colliers Brokerage with the proposed Sales Process will ensure that the proposed Sales Process is efficient and maximizes the recovery available.

**First Report, paras. 39-43, MRR, Tab 2**

- (c) Whether the proposed Sales Process optimizes the chances of securing the best possible price: The proposed Sales Process will commence immediately in order to take advantage of expected favourable market conditions throughout the fall of 2024. The proposed Sales Process has been designed in a manner that will provide a customized process for the sale of each of the residential units, the occupied commercial units and the vacant commercial units, which recognizes the unique considerations that will affect the marketing, diligence and eventual disposition of the different kinds of Real Property. By offering the sale of the Real Properties on an *en bloc* or individual basis (in the case of the Vacant Commercial Units only), the proposed Sales Process is flexible to accommodate more bids and maximize the value returnable.

**First Report, paras. 39-43, MRR, Tab 2**

28. For the reasons set out above, the Receiver submits that the proposed Sales Process is consistent with the criteria established in *CCM*, in that it will optimize the chance of securing the best possible price for the Real Property and will promote a disposition of the Real Property in a manner that satisfies the *Soundair* criteria. Accordingly, the Receiver submits that the Court should approve the Sales Process.

**C. The Receiver's Activities and the First Report Should be Approved**

29. In *Target Canada*, the Court noted that a practice has developed in CCAA proceedings where Monitors will routinely seek approval for their reports and the activities described in them. The Court added that there are good policy and practical reasons to grant such approval, including (a) allowing the Monitor to bring its activities before the Court; (b) allowing an opportunity for stakeholders' concerns to be addressed; (c) enabling the Court to satisfy itself that the Monitor's activities have been conducted in prudent and diligent manners; (d) providing protection for the Monitor not otherwise provided by the CCAA; and (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the Monitor.

*Re Target Canada Co.*, 2015 ONSC 7574, at paras [2](#), [22](#) and [23](#).

30. These comments, and the policy considerations identified by the Court, apply with equal force to receivership proceedings and motions seeking approval for a receiver's report and activities.

*Re Hangfen Evergreen Inc.*, 2017 ONSC 7161, at para [15](#).

31. The activities of the Receiver, as set out in detail in the First Report, were necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order and were in each case in the best interests of the Debtors' stakeholders generally. The Receiver therefore respectfully submits that the First Report and the Receiver's activities described therein should be approved.

**First Report, paras. 14-31, MRR, Tab 2**

**PART V – ORDER SOUGHT**

32. The Receiver requests Orders granting the relief sought in its Notice of Motion, dated August 19, 2024.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

August 22, 2024



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**DENTONS CANADA LLP**

*Lawyers for BDO Canada Limited, in its capacity as  
Court-approved Receiver*

**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508 \(CanLII\)](#)
2. *2056706 Ontario Inc. v. Pure Global Cannabis Inc.*, [2021 ONSC 5533 \(CanLII\)](#)
3. *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750 \(CanLII\)](#)
4. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#)
5. *Choice Properties Limited Partnership v. Penady (Barrie) Ltd.*, [2020 ONSC 3517 \(CanLII\)](#)
6. *Yukon (Government of) v. Yukon Zinc Corporation*, [2020 YKSC 17 \(CanLII\)](#)
7. *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, [2021 ONCA 375 \(CanLII\)](#)
8. *Sanjel Corporation (Re)*, [2016 ABQB 257 \(CanLII\)](#)
9. *Target Canada Co. (Re)*, [2015 ONSC 7574 \(CanLII\)](#)
10. *Hanfeng Evergreen Inc., (Re)*, [2017 ONSC 7161 \(CanLII\)](#)

**SCHEDULE “B”**  
**STATUTES AND REGULATIONS**

**[Courts of Justice Act, RSO 1990, c C.43](#)**

**Injunctions and receivers**

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

**[Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)**

**Court may appoint receiver**

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

**Restriction on appointment of receiver**

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

**Definition of receiver**

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

(a) is appointed under subsection (1); or

(b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

### **Definition of receiver — subsection 248(2)**

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

### **Trustee to be appointed**

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

### **Place of filing**

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

### **Orders respecting fees and disbursements**

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver’s claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

### **Meaning of disbursements**

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

DUCA FINANCIAL SERVICES CREDIT UNION  
LTD.  
Applicant

-and-

ASHCROFT HOMES – 101 RICHMOND ROAD INC., et al.

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT OTTAWA

**FACTUM OF THE RECEIVER**

**DENTONS CANADA LLP**  
77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, ON M5K 0A1

**John Salmas** (LSO # 42336B)  
Tel: 416-863-4737  
[john.salmas@dentons.com](mailto:john.salmas@dentons.com)

**Sara-Ann Wilson** (LSO # 56016C)  
Tel: 416-863-4402  
[sara.wilson@dentons.com](mailto:sara.wilson@dentons.com)

**Fraser Mackinnon Blair** (LSO #66683L)  
Tel: 613-783-9647  
[fraser.mackinnon.blair@dentons.com](mailto:fraser.mackinnon.blair@dentons.com)

*Lawyer for BDO Canada Limited, in its capacity as the Court-  
appointed Receiver of Ashcroft Homes – 101 Richmond Road Inc.,  
Ashcroft Homes – 108 Richmond Road Inc. and Ashcroft Homes –  
111 Richmond Road Inc.*