

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) FRIDAY THE 16<sup>th</sup> DAY  
JUSTICE CAVANAGH ) OF SEPTEMBER, 2022

**IN THE MATTER OF THE RECEIVERSHIP OF 2589504 ONTARIO INC.**

**AND IN THE MATTER OF A MOTION PURSUANT TO SUBSECTION 243(1)  
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. C.42 as amended**

**SALE APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by BDO Canada Limited., in its capacity as the Court-appointed receiver (the "**Receiver**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) and section 101 of the *Courts of Justice Act* of the assets, undertakings and property of 2589504 Ontario Inc. (the "**Debtor**") for an order, among other things, abridging the time for service of the Receiver's Notice of Motion and Motion Record herein, authorizing and directing the Receiver to carry out the purchase and sale agreement (the "**Sale Agreement**") between the Receiver and 1000105943 Ontario Inc. (the "**Purchaser**") dated August 18, 2022, and appended to the First Report of the Receiver dated September 13, 2022 (the "**First Report**"), approving the sale transaction (the "**Transaction**") contemplated by the Sale Agreement and vesting in the Purchaser the Debtor's rights, title and interests in and to the property described in the Sale Agreement as listed on Schedule "B" hereto (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario by "Zoom" videoconference.

**ON READING** the Receiver's Motion Record dated September 13, 2022, including the First Report and the Confidential Supplement to the First Report dated September 13, 2022 (the "**Motion Materials**"), and on hearing the submissions of counsel for the Receiver, the Debtor, Equitable Bank, 2413974 Ontario Inc., Grant Thornton Limited and the Purchaser, no one

appearing for any other person on the service list, although properly served as appears from the affidavit of Eric Golden sworn September 15, 2022, filed:

1. **THIS COURT ORDERS** that the time for service and filing of the Motion Materials is abridged and validated so that this motion is properly returnable today and dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "A" hereto (the "**Receiver's Certificate**"), all of the Debtor's rights, title and interests in and to the Purchased Assets described in the Sale Agreement as listed on Schedule "B" hereto shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "Claims"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated June 15, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule "C" hereto (all of which are collectively referred to as the "Encumbrances", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule "D" hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by

the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in Schedule “B” hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule “C” hereto including the Application to register Court Order registered as Instrument No. AT6108763 on June 16, 2022.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor.

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

9. **THIS COURT ORDERS** that this order is effective from today's date and is enforceable without the need for entry and filing.

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**Schedule A – Form of Receiver’s Certificate**

Court File No. CV-22-00687176-00CL

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**IN THE MATTER OF THE RECEIVERSHIP OF 2589504 ONTARIO INC.**

**AND IN THE MATTER OF A MOTION PURSUANT TO SUBSECTION 243(1)  
OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. C.42 as amended**

**RECEIVER’S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated June 15, 2022, BDO Canada Limited was appointed as the receiver (the "**Receiver**") of the assets, undertakings and property of 2589504 Ontario Inc. (the "**Debtor**").

B. Pursuant to an Order of the Court dated September 16 2022 (the "**Sale Approval and Vesting Order**"), the Court approved the purchase and sale agreement dated August 18, 2022 (the "**Sale Agreement**") between the Receiver and 1000105943 Ontario Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor’s rights, title and interests in and to the property described in the Sale Agreement as listed in Schedule "B" of the Sale Approval and Vesting Order including the real property municipally known as 100 Sheppard Ave. West, Toronto, Ontario (the "**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction contemplated by the Sale Agreement has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The transaction contemplated by the Sale Agreement has been completed to the satisfaction of the Receiver.

THIS CERTIFICATE was delivered by the Receiver at <\*> on <\*>, 2022.

**BDO CANADA LIMITED**, solely in its capacity as Court-appointed Receiver of the assets, undertakings and property of 2589504 Ontario Inc. and not in any personal, corporate or other capacity

Per: \_\_\_\_\_

Name:

Title:

## **Schedule B – Purchased Assets**

### **1. Real Property**

100 Sheppard Ave. West, Toronto, Ontario

Legal: Parcel 23-1, Section M389 Lot 23 and Part Lot 24 Plan 66M389; Commencing at the southeast angle of Lot 24; Thence Westerly along the north limit of Sheppard Avenue 20 feet more or less to a point distant 30 feet easterly from the southwest angle of said Lot; Thence northerly parallel to the west limit of said Lot, 117 feet 8 inches more or less to the north limit thereof; Thence easterly along said north limit 20 feet more or less to the northeast angle of said lot; Thence southerly along the east limit of said lot 117 feet 8 inches more or less to the place of beginning; Township of York/North York; City of Toronto

PIN#:10145-0014 (LT)

### **2. Leases**

As set out in Schedule “A” to the Sale Agreement

### **3. Chattels:**

As defined in the Sale Agreement

### **4. Assumed Contracts**

Any Assumed Contracts by the Purchaser, if any, pursuant to and in accordance with the Sale Agreement.

### **5. Accounts**

As defined in the Sale Agreement.

**For greater certainty, Purchased Assets shall not and do not include, Input Tax Credits owing to or in relation to the Debtor and any recovery from the Debtor or in relation to the Debtor regarding any settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation.**

**Schedule C – Claims to be deleted and expunged from title to Real Property**

1. Instrument No. AT4820571 registered March 14, 2018, being a Transfer to the current registered owner 2589504 Ontario Inc.
2. Instrument No. AT4820574 registered March 14, 2018, being a second Charge (by postponement AT5372319 registered February 25, 2020) to and in favour of Direct Capital Investments Inc. in the original principal amount of \$2,100,000.
3. Instrument No. AT4820575 registered March 14, 2018 being a second Notice of Assignment General (Rents) (by postponement AT5372320 registered February 25, 2020), also in favour of Direct Capital Investments Inc.
4. Instrument No. AT5371311 registered February 24, 2020, being a first Charge (by postponement AT5372319 registered February 25, 2020), to and in favour of Equitable Bank in the original principal amount of \$4,000,000.
5. Instrument No. AT5371312 registered February 24, 2020, being a first Notice of Assignment General (Rents) (by postponement AT5372320 registered February 25, 2020), also in favour of Equitable Bank.
6. Instrument No. AT5372319 registered February 25, 2020 to and in favour of Equitable Bank.
7. Instrument No. AT5372320 registered February 25, 2020 to and in favour of Equitable Bank.
8. Instrument No. AT5885468 registered October 15, 2021, being a third Charge to and in favour of 2413974 Ontario Inc. in the original principal amount of \$457,500.
9. Instrument No. AT6048652 registered April 19, 2022 in favour of Grant Thornton Limited.
10. Instrument No. AT6108763 registered June 16, 2022, being an Application to Register a Court Order appointing BDO Canada Limited as Receiver of assets of 2589504 Ontario Inc.

**Schedule D – Permitted Encumbrances, Easements and Restrictive Covenants  
related to the Real Property**

**(unaffected by the Vesting Order)**

1. Any municipal by-laws or regulations affecting the Real Property or its use and any other municipal land use instruments including without limitation, official plans and zoning and building by-laws, as well as decisions of the committee of adjustment or any other competent authority permitting variances therefrom, and all applicable building codes;
2. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including without limitation, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements; provided same have been complied with or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant authority or regulated utility;
3. Any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Purchaser's intended use of the Purchased Assets;
4. Any restrictive covenants and building restrictions affecting the Real Property;
5. Any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the Real Property;
6. Liens for taxes, local improvements, assessments or governmental charges or levies not at the time due or delinquent;
7. Undetermined, inchoate or statutory liens and charges (including, without limitation, the liens of public utilities, workers, suppliers of materials, contractors, subcontractors, architects and unpaid vendors of moveable property) incidental to any current operations of the Real Property which have not been filed pursuant to any legal requirement or which relate to obligations not yet due or delinquent;
8. Such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Real Property or any part thereof, or materially impair the value thereof;
9. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute;
10. The following exceptions and qualifications contained in Section 44(1) of the *Land Titles Act*: paragraphs 7, 8, 9, 10, 12 and 14;
11. Instrument No. B67867 registered July 24, 1961, being a Notice of a Decision of The Committee of Adjustments;

12. Instrument No. B220278 registered May 16, 1968, being a Notice of a Decision of The Committee of Adjustments; and
13. Instrument No. 66BA1611 registered January 10, 1980, being a Plan under the Boundaries Act.

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
(IN BANKRUPTCY AND INSOLVENCY)**

PROCEEDING COMMENCED AT  
TORONTO

**SALE APPROVAL AND VESTING ORDER**

**BLANEY McMURTRY LLP**  
Barristers & Solicitors  
2 Queen Street East, Suite 1500  
Toronto ON M5C 3G5

**Eric Golden** (LSO #38239M)  
Tel: (416) 593-3927  
egolden@blaney.com

**Chad Kopach** (LSO #48084G)  
Tel: (416) 593-2985  
ckopach@blaney.com

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