Court File No.: CV-15-23011

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

WINDSOR FAMILY CREDIT UNION LIMITED

Applicant

-and-

LAKESHORE OASIS INC.

Respondent

MOTION RECORD

Date: April 22, 2016

HARRISON PENSA LLP Barristers & Solicitors 450 Talbot St. PO Box 3237 London, ON N6A 4K3

Timothy C. Hogan (LSUC# 36553S) Melinda Vine (LSUC #56312R)

Tel: 519-679-9660 Fax: 519-667-3362

Solicitors for BDO Canada Limited, court appointed Receiver of all of the property, assets and undertakings of Lakeshore Oasis Inc.

To: Service List attached

SERVICE LIST

TO: Lakeshore Oasis Inc.

> 3200 Denziel Drive, Suite 410 Windsor, ON N8W 5K8

AND

TO: Lakeshore Oasis Inc.

> 140-486 Advance Boulevard Tecumseh, ON N8N 0B8

AND

TO: 2154161 Ontario Limited

322 Seacliff Drive West Leamington ON N8H 4E1 Attention: Randy Saccucci Email: rsaccucci@hotmail.com

Kirwin Partners LLP Lawyers Attention: John McMahon 432 Pelissier Street Winsor, Ontario N8A 4L2 Tel: (519) 255.9840 ext 127

Fax: (519) 255-1413

Email: JMcMahon@Kirwinpartners.com

AND

TO: Windsor Family Credit Union Limited

2800 Tecumseh Road East Windsor, ON N8W 1G4

Attention: Tom Serafimovski McTague Law Firm LLP **Barristers & Solicitors** 455 Pelissier Street Windsor, ON N9A 6Z9

Tel: (519) 255-74386 Fax: (519) 255-4384

Email: tserafimovski@mctaguelaw.com

AND

Dr. Juliana Bilibajkich Medicine Professional Corporation TO:

> 486 Advance Blvd, Suite 140 Tecumseh, ON N8N 0B8

AND

TO: Juliana Bilibajkich

> 134 Marentette Drive Lakeshore, ON NOR 1A0

AND: Dr. Mara Bilibajkich Medicine Professional Corporation

TO: 486 Advance Blvd, Suite 140 Tecumseh, ON N8N 0B8

Email: maramelinda@yahoo.com

AND

TO: Mara Bilibajkich 246 Elmgrove Drive Lakeshore ON N8N 3S3

Thornton Grout Finnigan LLP **Attention: Leanne Williams**

Suite 3200, 100 Wellington Street West

P.O. Box 329

Toronto Dominion Centre Tel: (416) 304-0060 Fax: (416) 304 1313

Email: <u>lwilliam@tgf.ca</u>

AND

TO: Terry Huhtala

246 Elmgrove Drive

Lakeshore ON N8N 3S3

AND

TO: Michelle Cannon

1554 Caille Avenue

Lakeshore, ON N0R 1A0

AND

TO: Mark Lackorzynski

12540 Keith Court

Tecumseh, ON N8N 4A8

AND

TO: Lackorzynski Dentistry Professional Corporation

486 Advance Blvd, Suite 170 Tecumseh, ON N8N 0B8

AND

TO: Roscon Investments Inc.

6555 Malden Road Windsor, ON N9H 1T5

AND

TO: Rosati Construction Inc.

6555 Malden Road Windsor, ON N9H 1T5

Attention: Brian L. Chillman

Shibley Righton LLP Tel: 519-969-9844 Fax: 519 969-8045

Email: <u>brian.chillman@shibleyrighton.com</u>

AND

TO:

Her Majesty the Queen in Right of Ontario as represented by the Ministry of Revenue Legal Services Branch 33 King Street West, 6th Floor Oshawa, ON L1H 8H5

Attention: Kevin O'Hara

Senior Counsel, Ministry of Finance

Tel: 905-433-6934 Fax: 905-436-4510

Email: kevin.ohara@fin.gov.on.ca

AND Canada Revenue Agency c/o Department of Justice TO: Ontario Regional Office

The Exchange Tower, Box 36 130 King Street West, Suite 3400

Toronto, ON M5X 1K6

Attention: Diane Winters

Tel: 416-973-3172 Fax: 416-973-0810

E-mail: diane.winters@justice.gc.ca

Attention: Peter Zevenhuizen

E-mail: peter.zevenhuizen@justice.gc.ca

Town of Lakeshore AND

419 Notre Dame Street TO: Belle River, ON NOR 1A0

AND Hydro One Networks Inc.

483 Bay Street TO:

South Tower, 8[™] Floor Registration

Toronto, ON M5G 2P5

AND Carolyn Fowler

100-486 Advance Blvd TO:

Tecumseh, ON N8N 0B8

Email: carolyn@salonutopiamedspa.com

AND Rosati Group

TO:

6555 Malden Road Windsor, ON N9H 1T5

Attention: Kathryn Hengl Email: <u>Kathryn.hengl@rosatigroup.com</u>

Court File No.: CV-15-23011

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WINDSOR FAMILY CREDIT UNION LIMITED

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LAKESHORE OASIS INC.

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First Report of the Receiver and appendices attached thereto dated April 21, 2016	2

Court File No.: CV-15-23011

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

WINDSOR FAMILY CREDIT UNION LIMITED

Applicant

-and-

LAKESHORE OASIS INC.

Respondent

NOTICE OF MOTION (returnable May 10, 2016)

BDO Canada Limited ("BDO"), in its capacity as court-appointed receiver (the "Receiver"), appointed pursuant to order of the Court dated December 8, 2015 (the "Appointing Order") of the Property (as defined in the Appointment Order) of the Respondent, Lakeshore Oasis Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor will make a Motion to a Judge on May 10, 2016 at 10:00 a.m., or as soon after that time as the Motion can be heard at the Superior Court of Justice at 245 Windsor, Avenue, Windsor, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard:

[]	in writing under subrule 37.12.1(1) because it is on consent;
[]	in writing as an opposed motion under subrule 37.12.1(4),
[X]	orally.

THE MOTION IS FOR:

Orders substantially in the form of the draft Orders attached hereto as Schedule "A" (Approval and Vesting Order), and Schedule "B" (Ancillary Order) including without limitation, Orders, *inter alia*;

a. An Order that the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispenses with further service and confirmation hereof;

APPROVAL AND VESTING ORDER

- b. An Order approving the Receiver's First Report to the Court dated April 21, 2016 (the "First Report") and the Confidential Report to the First Report dated April 21, 2016 ("Confidential Report") and the activities and conduct of the Receiver as detailed therein;
- c. An Order and Declaration that the sale of the Purchased Assets (as defined the Sale Agreement) including the real property described as, PT LT 4 CON EAST PIKE CREEK DESIGNATED AS PTS 3, 10 TO 15 INCL. & 26 PL 12R23533; S/T EASE OVER PT 15 PL 12R23533 AS IN R353169, S/T EASE OVER PT 11 PL 12R23533 AS IN CE155227, S/T EASE OVER PTS 10,12 & 26 PL 12R23533 AS IN CE334031, S/T EASE OVER PTS 2 & 5 PL 12R23699 AS IN CE354848, S/T EASE OVER PTS 3, 10, 11, 12, 15, & 26 PL 12R23533 AS IN CE334374, S/T EASE OVER PTS 3,10,12,15 & 26 PL 12R23533 as in CE372385; T/W EASE OVER PTS 1, 18-22 INCL., 28 & 29 PL 12R23533 AS IN CE334374, T/W EASE OVER PTS 4-9 INC., 24, 25 PL 12R23533 AS IN CE372385; TOGETHER WITH AN EASEMENT OVER PTS 1,3,5 & 6 PL 12R25956 AS IN CE634267; SUBJECT TO AN EASEMENT OVER PTS 3, 10, 12, 15 & 26 PL 12R25956 IN FAVOUR OF PTS 1 TO 6 INCL. PL 12R25956 AS IN CE634267; TOWN OF LAKESHORE (PIN 75007-0389 LT) (the "Real Property") (the "Transaction") contemplated by the Agreement of Purchase and Sale between Rosati Construction Inc., in trust (the

- "Purchaser") and the Receiver dated March 16, 2016 and effective March 24, 2016 and appended to the Confidential Report at Appendix "A" (the "Sale Agreement") be approved and the execution of the Sale Agreement by the Receiver be authorized and approved, and the Receiver be 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;
- d. An Order and Declaration that upon the delivery to the Purchaser of and the filing with this Honourable Court by the Receiver of a certificate (the "Closing Certificate") substantially in the form set out in the Order sought herein at Schedule "A" hereto, that all of the Debtor's right, title and interest in and to the Purchased Assets 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 Patterson dated December 8, 2015; (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 B to the Order sought herein (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 C to the Order sough herein) 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.

- e. An Order that upon the registration in the Land Registry Office for the Land Titles Division of Essex of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver in the Land Titles Division of Essex 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 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 B hereto.
- f. An Order 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.
- g. An Order that the Receiver file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.
- h. An Order 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 any 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 fraudulent preference, assignment, fraudulent conveyance, 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.

- i. An Order that the *Bulk Sales Act*, R.S.O. 1990, c. B-14 does not apply to the Transaction and the Transaction may be completed without compliance with:
 - (a) the provisions of the *Mortgages Act*, R.S.O. 1990, c. M-40 as amended;
 - (b) section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"); or,
 - (c) provisions of Part V of the *Personal Property Security Act*, RSO 1990, c. P. 10 as amended (the "**PPSA**"),

or any other notice, requirement, statutory or otherwise which a creditor or other party may be required to issue in order to dispose of the collateral of the Debtor;

ANCILLARY ORDER

- j. An Order that the Confidential Report be sealed until such a time as the Transaction is complete and funds are received by the Receiver;
- k. An Order that the Statement of Receipts and Disbursements as detailed in the First Report (the "Statement of Receipts and Disbursements") be approved;

- An Order that the fees and disbursements of the Receiver as detailed in the First Report (the "Receiver's Fees") and payment of same be approved;
- m. An Order that the fees and disbursements of counsel to the Receiver,
 Harrison Pensa LLP, as detailed in the First Report (the "Counsel Fees")
 and payment of same be approved;
- n. An Order that, after payment of the Receiver's Fees and Counsel Fees herein approved and all realty taxes owing as against the Real Property (the "Realty Taxes") and subject to the Receiver maintaining sufficient reserves:
 - i. to satisfy all charges as set out in the Appointing Order, and
 - ii. as the Receiver deems necessary to complete the administration of the Receivership proceedings;

the Receiver be authorized to make a distribution from proceeds on hand to:

- i) the Windsor Family Credit Union Limited ("WFCU"); and.
- ii) 2154161 Ontario Limited ("215");

following the completion of the Transaction in a sum not to exceed the full amount of the indebtedness owing to each of WFCU and 215 plus accruing interest and costs owed to WFCU and 215 pursuant to security held and thereafter such subsequent distributions not to exceed the full amount of the indebtedness owing to each of WFCU and 215 plus accruing interest and costs owed to WFCU and 215 pursuant to security held on such dates and terms as determined by the Receiver to WFCU and 215 as the Receiver deems appropriate;

o. An Order that BDO be released and discharged from any and all liability that BDO now has or may hereafter have by reason of, or in any way

arising out of, the acts or omissions of BDO, prior to the date of this Order, while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, BDO be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings prior to the date of this Order including any claims made as against the proceeds subject to the distribution, save and except for the Receiver's gross negligence or willful misconduct; and

p. Such fürther and other relief as counsel may request and this honourable court may permit.

THE GROUNDS FOR THE MOTION ARE:

<u>Appointment</u>

- 1. BDO was appointed Receiver of the Property of the Debtor described in the Appointing Order by way of application by WFCU.
- 2. The Debtor is the owner of the Real Property.
- 3. WFCU provided certain financing to the Debtor by way of Commercial Mortgage Loan and is owed \$5,975,491.04 as of April 11, 2016 (the "WFCU Indebtedness").
- 4. 215 provided certain financing to the Debtor by way of a Mortgage Loan and is owed the sum of \$953,397.65 as of April 11, 2016 (the "215 Indebtedness").

The WFCU Security

- 5. In relation to the WFCU Indebtedness, the Debtor provided the following security to WFCU:
 - a. A Charge/Mortgage of Land in the principal amount of \$6,162,000 from Lakeshore registered March 17, 2008 and receipted as

CE319516 (the "Mortgage") that charges the Real Property municipally known as Advanced Boulevard and more particularly described as:

PART LOT 4 CON EAST PIKE CREEK MAIDSTONE DESIGNATED AS PARTS 5, 6, 7 & 8 PL 12R21742 SAVE & EXCEPT PART 18 ON CE303662; LAKESHORE S/T EASE AS IN R353169, S/T EASE OVER PART 6 PL 12R21742 AS IN CE155227 (PIN 75007-0329)

With such property now being described as:

PT LT 4 CON EAST PIKE CREEK DESIGNATED AS PTS 3, 10 TO 15 INCL. & 26 PL 12R23533; S/T EASE OVER PT 15 PL 12R23533 AS IN R353169, S/T EASE OVER PT 11 PL 12R23533 AS IN CE155227, S/T EASE OVER PTS 10,12 & 26 PL 12R23533 AS IN CE334031, S/T EASE OVER PTS 2 & 5 PL 12R23699 AS IN CE354848, S/T EASE OVER PTS 3, 10, 11, 12, 15, & 26 PL 12R23533 AS IN CE334374, S/T EASE OVER PTS 3,10,12,15 & 26 PL 12R23533 as in CE372385; T/W EASE OVER PTS 1, 18-22 INCL., 28 & 29 PL 12R23533 AS IN CE334374, T/W EASE OVER PTS 4-9 INC., 24, 25 PL 12R23533 AS IN CE372385; TOGETHER WITH AN EASEMENT OVER PTS 1,3,5 & 6 PL 12R25956 AS IN CE634267; SUBJECT TO AN EASEMENT OVER PTS 3, 10, 12, 15 & 26 PL 12R25956 IN FAVOUR OF PTS 1 TO 6 INCL. PL 12R25956 AS IN CE634267; TOWN OF LAKESHORE (PIN 75007-0389 LT)

(collectively the "Property").

- b. A General Security Agreement dated January 22, 2008
- c. Notice of Assignment of Rents-General registered on March 17, 2008 over the Property and receipted as CE319518 and Assignment of Rents dated January 22, 2008
- 6. Counsel to the Receiver has provided an opinion to the Receiver concluding that, subject to the customary qualifications and certain caveats, that the security granted by the Debtor to WFCU are valid first charges against the Real Property and Personal Property of the

Debtor, subject to the payment of realty taxes, the payment of any deemed trusts in favour of Crown taxing authorities of a priority nature and the charges under the Appointing Order.

The 215 Security

- 7. In relation to the 215 Indebtedness, the Debtor provided the following security to 215:
 - a. A Charge/Mortgage of Land in the principal amount of \$1,700,000 from Lakeshore registered August 6, 2009 and receipted as CE388334 (the "Mortgage") that charges the Property;
 - b. Notice of Assignment of Rents-General registered on August 6, 2009 over the Property and receipted as CE3883335;
 - c. Agreement Amending Charge or Mortgage (CE388334) between Lakeshore and 215 and Registered on title as Instrument CE634844, dated October 31, 2014, and registered November 4, 2014 (the "Amending Agreement");
- 8. Counsel to the Receiver has provided an opinion to the Receiver concluding that, subject to the customary qualifications and certain caveats, that the security granted by the Debtor to 215 is a valid second charge against the Real Property subject to the payment of realty taxes, the payment of any deemed trusts in favour of Crown taxing authorities of a priority nature and the charges under the Appointment Order.

Receiver's Activities

 The Receiver has previously reported to the Court by way of the First Report.

- 10. Pursuant to the Appointing Order, the Court approved the Sales Process as provided for in the Proposed Receiver's First Report dated November 23, 2015 (the "Proposed Receiver's Report")
- 11. The Receiver has taken additional steps as detailed in the First Report, including the completion of the Sales Process as defined therein.

Sale Process - Sale of the Real Property - Vesting Order

- 12. Pursuant to sub-paragraph 3(k) of the Appointing Order the Receiver was empowered and authorized to sell the Real Property with the approval of this court where the consideration for a transaction exceeds \$250,000.
- 13. The Receiver is further authorized to apply for any Vesting Order necessary to convey the Property to a purchaser, free and clear of any liens and encumbrances affecting the Property.
- 14. Following the completion of the Sale Process, offers were received for the purchase of the Debtor' assets as detailed in the First Report.
- 15. The Receiver believes that a fair and thorough sales process has taken place in order to obtain the best sale price for the Debtor' assets according to the market and in the circumstances.
- 16. The Receiver, with the approval of WFCU, has entered into the Sale Agreement for the Purchased Assets with the Purchaser, subject to Court approval.
- 17. The Transaction subject to the Sale Agreement results in the most provident return to the estate and WFCU supports the Receiver's acceptance of same.
- 18. Therefore, for the reasons as set out in the First Report and the Confidential Report, the Receiver seeks court approval for the sale of the Property pursuant to the Sale Agreement.

Sealing Order

19. Until such time as the sale of the Purchased Assets is completed and funds are received by the Receiver, the Receiver is of the view that the information and documentation contained in the Confidential Report should be sealed in order to avoid the negative impact that the dissemination of the confidential information contained therein would have if the recommended sale of the Purchased Assets failed to close for any reason. Publication of the purchase price would undermine the fairness of any future sales efforts.

Distribution

- 20. The Receiver is not aware of any contractual obligations of WFCU nor 215 with any other creditor limiting WFCU's nor 215's charge or priority over the assets of the Debtor.
- 21. WFCU and 215 have requested a distribution of funds to which they are entitled to. The Receiver recommends the distribution as detailed in its First Report. The Receiver anticipates holding a reserve to allow it to complete the administration of the estate.

Approval of Receiver's Accounts

- 22. The Appointing Order requires the Receiver and its legal counsel to pass its accounts from time to time.
- 23. The Receiver has properly incurred fees and disbursements as detailed in the First Report.
- 24. The fees incurred by the Receiver for services provided by its legal counsel, Harrison Pensa LLP are detailed in the First Report.
- 25. The Receiver seeks the approval of the Receiver's Fees and the Counsel Fees and payment of same.

- 26. Section 243 of the BIA.
- 27. Sections 101, 137(2) of the Courts of Justice Act.
- 28. Rules 2, 3, 37 and 38 of the Rules of Civil Procedure.
- 29. The grounds as detailed in the First Report and the Confidential Report.
- 30. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- 1. The Appointment Order;
- 2. The Proposed Receiver's Report;
- 3. The First Report of the Receiver;
- 4. Confidential Report to the First Report; and,
- 5. Such materials as counsel may advise and this Honourable Court may permit.

April 22, 2016

HARRISON PENSA LLP

Barristers & Solicitors 450 Talbot St. London, ON N6A 4K3

Timothy C. Hogan

Tel: 519-679-9660 Fax: 519-667-3362

Solicitors for the Receiver, BDO

Canada Limited

To: Please see attached Service List

SERVICE LIST

TO: Lakeshore Oasis Inc.

3200 Denziel Drive, Suite 410 Windsor, ON N8W 5K8

AND

TO:

Lakeshore Oasis Inc.

140-486 Advance Boulevard Tecumseh, ON N8N 0B8

AND

TO:

2154161 Ontario Limited 322 Seacliff Drive West Learnington ON N8H 4E1 Attention: Randy Saccucci Email: rsaccucci@hotmail.com

Kirwin Partners LLP Lawyers Attention: John McMahon 432 Pelissier Street Winsor, Ontario N8A 4L2 Tel: (519) 255.9840 ext 127

Fax: (519) 255-1413

Email: JMcMahon@Kirwinpartners.com

AND

TO:

Windsor Family Credit Union Limited 2800 Tecumseh Road East Windsor, ON N8W 1G4

Attention: Tom Serafimovski McTague Law Firm LLP Barristers & Solicitors 455 Pelissier Street Windsor, ON N9A 6Z9

Tel: (519) 255-74386 Fax: (519) 255-4384

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AND

TO:

Dr. Juliana Bilibajkich Medicine Professional Corporation 486 Advance Blvd, Suite 140

Tecumseh, ON N8N 0B8

AND

TO:

Juliana Bilibajkich 134 Marentette Drive Lakeshore, ON NOR 1A0 AND: Dr. Mara Bilibajkich Medicine Professional Corporation

TO: 486 Advance Blvd, Suite 140 Tecumseh, ON N8N 0B8

Email: maramelinda@yahoo.com

AND

TO: Mara Bilibajkich

246 Elmgrove Drive

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Tel: (416) 304-0060 Fax: (416) 304 1313 Email: lwilliam@tgf.ca

AND

TO: Terry Huhtala

246 Elmgrove Drive

Lakeshore ON N8N 3S3

AND

TO: Michelle Cannon

1554 Caille Avenue

Lakeshore, ON NOR 1A0

AND

TO: Mark Lackorzynski

12540 Keith Court

Tecumseh, ON N8N 4A8

AND

TO: Lackorzynski Dentistry Professional Corporation

486 Advance Blvd, Suite 170 Tecumseh, ON N8N 0B8

AND

TO: Roscon Investments Inc.

6555 Malden Road Windsor, ON N9H 1T5

AND

TO: Rosati Construction Inc.

6555 Malden Road

Windsor, ON N9H 1T5

Attention: Brian L. Chillman

Shibley Righton LLP Tel: 519-969-9844 Fax: 519 969-8045

Email: brian.chillman@shibleyrighton.com

AND

TO:

Her Majesty the Queen in Right of Ontario as represented by the Ministry of Revenue Legal Services Branch 33 King Street West, 6th Floor Oshawa, ON L1H 8H5

Attention: Kevin O'Hara

Senior Counsel, Ministry of Finance

Tel: 905-433-6934 Fax: 905-436-4510

Email: kevin.ohara@fin.gov.on.ca

AND Canada Revenue Agency
TO: c/o Department of Justice
Ontario Regional Office

The Exchange Tower, Box 36 130 King Street West, Suite 3400

Toronto, ON M5X 1K6

Attention: Diane Winters Tel: 416-973-3172 Fax: 416-973-0810

E-mail: diane.winters@justice.gc.ca
Attention: Peter Zevenhuizen

E-mail: peter.zevenhuizen@justice.gc.ca

AND Town of Lakeshore
TO: 419 Notre Dame Street
Belle River, ON N0R 1A0

AND Hydro One Networks Inc.

TO: 483 Bay Street

South Tower, 8TH Floor Registration

Toronto, ON M5G 2P5

AND Carolyn Fowler

TO: 100-486 Advance Blvd Tecumseh, ON N8N 0B8

Email: carolyn@salonutopiamedspa.com

AND Rosati Group TO: 6555 Malden Road Windsor, ON N9H 1T5

Attention: Kathryn Hengl Email: <u>Kathryn.hengl@rosatigroup.com</u>

		Revised: January 21, 2014		
	Schedule "A"	•	Formatted: Centered	
		Court File No. <u>CV-15-23011</u> ——		
	ONTARIO			
	SUPERIOR COURT OF JUS			
	COMMERCIAL LIST			
THE HONOURABLE)	WEEKDAY, THE #		
JUSTICE	, ,	DAY OF MONTH, 20YR		
BETWEEN:	FF-WINDSOR FAMILY CREDIT	r union i imited		
1 1/4 (HT WINDSON FAMILT CREDIT	Plaintiff		
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<u>Applicant</u>				
71pproduit	- and —		Formatted: Justified	
	DEFENDANT LAKESHORE OA	ASIS INIC		
	DETENDANT <u>EARCESTION</u> E OF	Defendant Respondent	i di	
	APPROVAL AND VESTING	<u>-</u>		
	ATTROVAL AND VESTING	ORDER		
THIS MOTION,	made by <u>BDO CANADA LIMI</u>	TED [RECEIVER'S NAME] in its		
capacity as the Court-appe	ointed receiver (the "Receiver"), v	vithout security, -of all of the assets,		
the undertakings, and pro	operties property and assets of the	ne Defendant, Lakeshore Oasis Inc.	SURVICE MEDICAL PROPERTY OF THE PROPERTY OF TH	
	_	o a business carried on by the Debtor		
		e Order dated December 8, 2015 for		
) contemplated by an agreement of		
purchase and sale (the "Sa	ale Agreement") between the Recei	iver and [NAME-OF-PURCHASER]		
DOCSTOR-1201927\14				

Rosati Construction Inc., in trust-(the "Purchaser") dated March 16, 2016 [DATE] and appended to the Confidential Report of the Receiver dated [DATE] (the "Confidential Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets") was heard this day at 330 University Avenue, Toronto, Ontario 245 Windsor Ave, Windsor, Ontario.

ON READING the <u>First Report of the Receiver dated []</u>, (the "First Report") and the <u>Confidential Report</u> and on hearing the submissions of counsel for the Receiver, <u>[NAMES OF OTHER PARTIES APPEARING]</u>, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [NAME] sworn [DATE] filed[‡]:

- 1. THIS COURT ORDERS AND DECLARES that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ 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.
- 2. 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 right, title and interest in and to the Purchased Assets described in the Sale Agreement [and listed on Schedule B hereto]⁴ 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,

⁴ To allow this Order to be free-standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.



^{*}This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.

^a In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debter and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

³ In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

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"s) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice T. Patterson [NAME] dated December 8, 2015 [DATE]; (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) 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.

- 3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the [Registry Division of (LOCATION) of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver] [Land Titles Division of (LOCATION) Essex No. 12 -of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act] 6, 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.
- 4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ 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

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds to arrive at "net proceeds".



⁵-The "Claims" being vested out may, in some eases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that ease, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee's view that a non specific vesting out of "rights, titles and interests" is vague and therefore undesirable.

⁶⁻Elect the language appropriate to the land registry system (Registry vs. Land Titles):

with the same priority as they had with respect to the Purchased Assets immediately prior to the sale⁸, 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.

- THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.
- 6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "•" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

7.6. 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 fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable

⁸—This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

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.

8-7. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9-8. 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.

Justice - Ontario Superior Court of Justice.

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Revised: January 21, 2014

Schedule A - Form of Receiver's Certificate

Court File No CV-15-23011-

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

BETWEEN:

PLAINTIFF WINDSOR FAMILY CREDIT UNION LIMITED

Plaintiff

- and -

DEFENDANT LAKESHORE OASIS INC.

Defendant

RECEIVER'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Mr. Justice T. Patterson -[NAME OF JUDGE] of the Ontario Superior Court of Justice (the "Court") dated <u>December 8, 2015 [DATE OF ORDER]</u>, <u>BDO Canada Limited [NAME OF RECEIVER]</u> was appointed as the receiver (the "Receiver") of the undertaking, property and assets of <u>Lakeshore Oasis Inc.</u> [DEBTOR] (the "Debtor").
- B. Pursuant to an Order of the Court dated [DATE], the Court approved the agreement of purchase and sale made as of [DATE OF AGREEMENT] (the "Sale Agreement") between the Receiver [Debtor] and [NAME-OF PURCHASER] Rosati Construction Inc., in trust—(the "Purchaser") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to 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

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to Closing as set out in section $\underline{4} \bullet$ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction 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 as set out in section 4• of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
- 3. The Transaction has been completed to the satisfaction of the Receiver.
- 4. This Certificate was delivered by the Receiver at _____ [TIME] on ____ [DATE]

[NAME OF RECEIVER], in its capacity as Receiver of the undertaking, property and assets of [DEBTOR], and not in its personal capacity

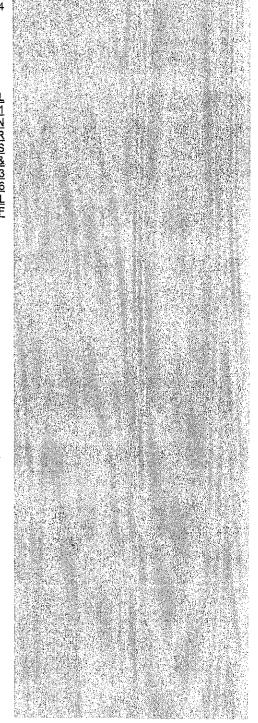
Per:		
	Name:	

Title:

Revised: January 21, 2014

Schedule B - Purchased Assets Real Property

PT LT 4 CON EAST PIKE CREEK DESIGNATED AS PTS 3, 10 TO 15 INCL. & 26 PL 12R23533; S/T EASE OVER PT 15 PL 12R23533 AS IN R353169, S/T EASE OVER PT 11 PL 12R23533 AS IN CE155227, S/T EASE OVER PTS 10,12 & 26 PL 12R23533 AS IN CE334031, S/T EASE OVER PTS 2 & 5 PL 12R23699 AS IN CE354848, S/T EASE OVER PTS 3, 10, 11, 12, 15, & 26 PL 12R23533 AS IN CE334374, S/T EASE OVER PTS 3,10,12,15 & 26 PL 12R23533 as IN CE372385; T/W EASE OVER PTS 1, 18-22 INCL., 28 & 29 PL 12R23533 AS IN CE334374, T/W EASE OVER PTS 4-9 INC., 24, 25 PL 12R23533 AS IN CE372385; TOGETHER WITH AN EASEMENT OVER PTS 1,3,5 & 6 PL 12R25956 AS IN CE634267; SUBJECT TO AN EASEMENT OVER PTS 3, 10, 12, 15 & 26 PL 12R25956 IN FAVOUR OF PTS 1 TO 6 INCL. PL 12R25956 AS IN CE634267; TOWN OF LAKESHORE (PIN 75007-0389 LT)



Revised: January 21, 2014

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

CE156255 (July 5, 2005) - Transfer

CE319516 (March 17, 2008) - Charge in favour of Windsor Family Credit Union

CE319518 (March 17, 2008) - Notice of Assignment of Rents - General in favour of Windsor Family Credit Union

CE320056 (March 20, 2008) - Postponement of Interest

CE320124 (March 20, 2008) - Application to Change Name - Instrument

CE320125 (March 20, 2008) – Application to Change Name – Instrument

CE388334 (August 6, 2009) - Charge in favour of 2154161 Ontario Limited

CE388335 (August 6, 2009) - Notice of Assignment of Rents - General in favour of 2154161 Ontario Limited

<u>CE470721 (May 19, 2011) – Charge in fayour of Dr. Mara Bilibajkich Medicine Professional Corporation and Dr. Juliana Bilibajkich Medicine Professional Corporation</u>

CE634397 (October 31, 2014) - Charge in favour of Rosati Construction Inc.

CE634844 (November 4, 2014) - Notice of Agreement Amending Charge CE388334

CE692166 (December 9, 2015) – Application to Register Court Order

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

(unaffected by the Vesting Order)

R353169 (March 8, 1966) - Easement

CE7533 (May 26, 2003) - Development Agreement

CE47426 (December 3, 2003) - Restrictive Covenants

CE113364 (November 3, 2004) - Partial deletion of Easement R353169

CE155227 (June 30, 2005) - Easement

CE286109 (August 2, 2007) - Site Plan Agreement

CE310600 (January 10, 2008) - Notice

12R-23533 (June 17, 2008) - Reference Plan

CE334031 (June 27, 2008) - Easement

CE334374 (June 27, 2008) - Easement

12R-23699 (October 23, 2008) - Reference Plan

CE354848 (November 5, 2008) - Easement

CE372385 (April 8, 2009) - Easement

12R-25956 (September 30, 2014) - Reference Plan

CE6342639267 (October 31, 2014) - Easement

CE615354 (June 25, 2014) - Lease - Lessee: Lackorzynski Dentistry Professional Corporation

Ident Court File No. CV-15-23011	ONTARIO SUPERIOR COURT OF JUSTICE	PROCEEDING COMMENCED AT WINDSOR	APPROVAL AND VESTING ORDER	HARRISON PENSA LLP	Barristers & Solicitors 450 Talbot Street	London, Ontario N6A 5J6	Timothy C. Hogan LSUC #36553S	Tel : (519) 661-6725 Fax: (519) 667-3362	Lawyers for the Plaintiff TCH/164308	Solicitors for BDO Canada Limited, the courtappointed Receiver	
Respondent											

LAKESHORE OASIS INC.

>

WINDSOR FAMILY CREDIT UNION

Applicant

APPENDIX B

ONTARIO SUPERIOR COURT OF JUSTICE

THE HONOURABLE)		DAY THE	DAY
)			
JUSTICE)	OF APRIL, 2016		

BETWEEN:

WINDSOR FAMILY CREDIT UNION LIMITED

Applicant

-and-

LAKESHORE OASIS INC.

Respondent

ANCILLARY ORDER

THIS MOTION, made by BDO Canada Limited ("BDO"), in its capacity as court appointed Receiver (in such capacities, the "Receiver"), without security, of all of the assets, undertakings and properties of Lakeshore Oasis Inc. (the "Debtor") appointed pursuant to the order of the Honourable Justice Patterson Shaw dated December 8, 2016 (the "Appointing Order") for an Order for:

Orders substantially in the form of the draft Orders attached hereto as Schedule "A" (Approval and Vesting Order), and Schedule "B" (Ancillary Order) including without limitation, Orders, *inter alia*;

a) An Order that the time for service, filing and confirmation of the Notice of Motion and the Motion Record be abridged so that this motion is properly returnable today and hereby dispenses with further service and confirmation hereof;

APPROVAL AND VESTING ORDER

- b) An Order approving the Receiver's First Report to the Court dated (the "First Report") and the Confidential Report to the First Report dated ("Confidential Report") and the activities and conduct of the Receiver as detailed therein:
- c) An Order and Declaration that the sale of the Purchased Assets (as defined the Sale Agreement) including the real property described as, PT LT 4 CON EAST PIKE CREEK DESIGNATED AS PTS 3, 10 TO 15 INCL. & 26 PL 12R23533; S/T EASE OVER PT 15 PL 12R23533 AS IN R353169, S/T EASE OVER PT 11 PL 12R23533 AS IN CE155227, S/T EASE OVER PTS 10,12 & 26 PL 12R23533 AS IN CE334031, S/T EASE OVER PTS 2 & 5 PL 12R23699 AS IN CE354848, S/T EASE OVER PTS 3, 10, 11, 12, 15, & 26 PL 12R23533 AS IN CE334374, S/T EASE OVER PTS 3,10,12,15 & 26 PL 12R23533 AS IN CE334374, T/W EASE OVER PTS 1, 18-22 INCL., 28 & 29 PL 12R23533 AS IN CE334374, T/W EASE OVER PTS 4-9 INC., 24, 25 PL 12R23533 AS IN CE372385; TOGETHER WITH AN EASEMENT OVER PTS 1,3,5 & 6 PL 12R25956 AS IN CE634267; SUBJECT TO AN EASEMENT OVER PTS 3, 10, 12, 15 & 26 PL 12R25956 IN FAVOUR OF PTS 1 TO 6 INCL. PL 12R25956 AS IN CE634267; TOWN OF

LAKESHORE (PIN 75007-0389 LT) (the "Real Property") (the "Transaction") contemplated by the Agreement of Purchase and Sale between Rosati Construction Inc., in trust (the "Purchaser") and the Receiver dated March 16, 2016 and appended to the Confidential Report at Appendix ["A"] (the "Sale Agreement") be approved and the execution of the Sale Agreement by the Receiver be authorized and approved, and the Receiver be 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;

d) An Order and Declaration that upon the delivery to the Purchaser of and the filling with this Honourable Court by the Receiver of a certificate (the "Closing Certificate") substantially in the form set out in the Order sought herein at Schedule "A" hereto, that all of the Debtor' right, title and interest in and to the Purchased Assets 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 Patterson dated December 8, 2015; (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 B 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 C) 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.

- e) An Order that upon the registration in the Land Registry Office for the Land Titles Division of Essex of a Transfer/Deed of Land in the form prescribed by the Land Registration Reform Act duly executed by the Receiver in the Land Titles Division of Essex 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 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 B hereto.
- f) An Order 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.

- g) An Order that the Receiver file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.
- h) An Order that, notwithstanding:
 - a. the pendency of these proceedings;
 - 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 any 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 fraudulent preference, assignment, fraudulent conveyance, 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.

- i) An Order that the *Bulk Sales Act*, R.S.O. 1990, c. B-14 does not apply to the Transaction and the Transaction may be completed without compliance with:
 - (a) the provisions of the *Mortgages Act*, R.S.O. 1990, c. M-40 as amended;
 - (b) section 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"); or,
 - (c) provisions of Part V of the *Personal Property Security Act*, RSO 1990, c. P. 10 as amended (the "**PPSA**"),

or any other notice, requirement, statutory or otherwise which a creditor or other party may be required to issue in order to dispose of the collateral of the Debtor;

ANCILLARY ORDER

- j) An Order that the Confidential Report be sealed until such a time as the
 Transaction is complete and funds are received by the Receiver;
- k) An Order that the Statement of Receipts and Disbursements as detailed in the First Report (the "Statement of Receipts and Disbursements") be approved;
- An Order that the fees and disbursements of the Receiver as detailed in the First Report (the "Receiver's Fees") and payment of same be approved;
- m) An Order that the fees and disbursements of counsel to the Receiver,

 Harrison Pensa LLP, as detailed in the First Report (the "Counsel Fees")

 and payment of same be approved;

- n) An Order that, after payment of the Receiver's Fees and Counsel Fees herein approved and all realty taxes owing as against the Real Property (the "Realty Taxes") and subject to the Receiver maintaining sufficient reserves:
 - i. to satisfy all charges as set out in the Appointing Order, and
 - ii. as the Receiver deems necessary to complete the administration of the Receivership proceedings;

the Receiver be authorized to make a distribution from proceeds on hand to:

- i) the Windsor Family Credit Union Limited ("WFCU"); and.
- ii) 2154161 Ontario Limited ("215");

following the completion of the Transaction in a sum not to exceed the full amount of the indebtedness owing to each of WFCU and 215 plus accruing interest and costs owed to WFCU and 215 pursuant to security held and thereafter such subsequent distributions not to exceed the full amount of the indebtedness owing to each of WFCU and 215 plus accruing interest and costs owed to WFCU and 215 pursuant to security held on such dates and terms as determined by the Receiver to WFCU and 215 as the Receiver deems appropriate;

o) An Order that BDO be released and discharged from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO, prior to the date of this Order, while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, BDO be forever released and discharged from any and all liability relating to matters that were raised, or which could have

been raised, in the within receivership proceedings prior to the date of this Order including any claims made as against the proceeds subject to the distribution, save and except for the Receiver's gross negligence or willful misconduct; and

p) Such further and other relief as counsel may request and this honourable court may permit.

was heard this day at the Court House, 245 Windsor Avenue, Windsor, Ontario.

ON READING the Notice of Motion, the First Report and the Confidential

Report with Appendices, Affidavit of Service of [] sworn [], 2016

and on hearing submissions from all counsel in attendance,

- THIS COURT ORDERS that the time for service, filing and confirmation of the Notice of Motion and Motion Record is abridged so that this motion is properly returnable today and hereby dispenses with further service and confirmation hereof;
- THIS COURT ORDERS that the Confidential Report be sealed until such a time as the Transaction is complete and funds are received by the Receiver;
- THIS COURT ORDERS that the Statement of Receipts and Disbursements are hereby approved

- THIS COURT ORDERS that the Receiver's Fees and payment of same are hereby approved
- THIS COURT ORDERS that the Counsel Fees and payment of same are hereby approved;
- 6. **THIS COURT ORDERS** that after payment of the Realty Taxes and subject to the Receiver maintaining sufficient reserves:
 - iii. to satisfy all charges as set out in the Appointing Order, and
 - iv. as the Receiver deems necessary to complete the administration of the Receivership proceedings;

the Receiver is hereby authorized to make a distribution from proceeds on hand to:

- i) the Windsor Family Credit Union Limited ("WFCU"); and.
- ii) 2154161 Ontario Limited ("215");

following the completion of the Transaction in a sum not to exceed the full amount of the indebtedness owing to each of WFCU and 215 plus accruing interest and costs owed to WFCU and 215 pursuant to security held and thereafter such subsequent distributions not to exceed the full amount of the indebtedness owing to each of WFCU and 215 plus accruing interest and costs owed to WFCU and 215 pursuant to security held on such dates and terms as determined by the Receiver to WFCU and 215 as the Receiver deems appropriate;

7. **THIS COURT ORDERS** that BDO be released and discharged from any and all liability that BDO now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of BDO, prior to the date of

this Order, while acting in its capacity as Receiver herein. Without limiting the generality of the foregoing, BDO be forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings prior to the date of this Order including any claims made as against the proceeds subject to the distribution, save and except for the Receiver's gross negligence or willful misconduct; and

Justice, Ontario Superior Court of Justice

	Court File No. CV-15-23011
LAKESHORE OASIS INC.	Respondent
>	:
WINDSOR FAMILY CREDIT UNION	Applicant

ONTARIO SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT WINDSOR

ANCILLARY ORDER

HARRISON PENSA LLP Barristers & Solicitors 450 Talbot Street

London, Ontario N6A 5J6

Timothy C. Hogan LSUC #36553S Tel: (519) 661-672

Tel : (519) 661-6725 Fax: (519) 667-3362 Lawyers for the Plaintiff

TCH/164308

Solicitors for BDO Canada Limited, the courtappointed Receiver

ndent Court File No. CV-15-23011	ONTARIO SUPERIOR COURT OF JUSTICE	PROCEEDING COMMENCED AT WINDSOR	NOTICE OF MOTION	HARRISON PENSA LLP Barristers & Solicitors 450 Talbot Street London, Ontario N6A 5J6	Timothy C. Hogan LSUC #36553S Tel: (519) 661-6725 Fax: (519) 667-3362 Lawyers for the Plaintiff TCH/164308 Solicitors for BDO Canada Limited, the courtappointed Receiver
Respondent					

LAKESHORE OASIS INC.

>

WINDSOR FAMILY CREDIT UNION

Applicant

ONTARIO SUPERIOR COURT OF JUSTICE IN BANKRUPTCY and INSOLVENCY

BETWEEN:

WINDSOR FAMILY CREDIT UNION LIMITED

Applicant -

- and -

LAKESHORE OASIS INC.

Respondents

FIRST REPORT TO THE COURT SUBMITTED BY BDO CANADA LIMITED, IN ITS CAPACITY AS RECEIVER OF LAKESHORE OASIS INC.

April 21, 2016

Table of Contents

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Appendices

Appendix A	-	Appointment Order dated December 8, 2015
Appendix B	-	First Report of the Proposed Receiver dated November 23, 2015
Appendix C	-	Statement of Receipts and Disbursements for the period December 8, 2015 through April 18, 2016
Appendix D	-	Fee Affidavit of Stephen Cherniak for the interim account of BDO Canada Limited as Receiver sworn April 21, 2016
Appendix E	-	Fee Affidavit of Lauren Lee for the interim account of Harrison Pensa LLP sworn April 20, 2016
Appendix F	-	Independent legal opinion of Harrison Pensa LLP dated March 28, 2016
Appendix G	-	Independent legal opinion of Harrison Pensa LLP dated April 15, 2016
Appendix H	-	Parcel abstract for Lakeshore Oasis Property dated April 21, 2016
Appendix I	-	Personal Property Act search as against Lakeshore Oasis Inc.

1.1 Introduction

- 1.1.1 This report is submitted by BDO Canada Limited, in its capacity as Receiver ("BDO" or the "Receiver") of all assets, undertakings and properties (the "Property") of Lakeshore Oasis Inc. ("Lakeshore Oasis" or the "Debtor"), including the Lakeshore Oasis Plaza (as defined below).
- 1.1.2 Upon application by Windsor Family Credit Union Limited ("WFCU") BDO was appointed as Receiver by the Order of Mr. Justice Patterson dated December 8, 2015 (the "Appointment Order"). A copy of the Appointment Order is attached as Appendix A to this report.

1.2 Background

- 1.2.1 At all material times, Lakeshore Oasis carried on business as the owner and operator of a retail and commercial plaza located at premises municipally known as 486 Advance Boulevard, Town of Lakeshore, Ontario ("486 Advance Boulevard" or the "Lakeshore Oasis Plaza").
- 1.2.2 The Lakeshore Oasis Plaza is legally described as PT LT 4 CON EAST PIKE CREEK DESIGNATED AS PTS 3, 10 TO 15 INCL. & 26 PL 12R23533; S/T EASE OVER PT 15 PL 12R23533 AS IN R353169, S/T EASE OVER PT 11 PL 12R23533 AS IN CE155227, S/T EASE OVER PTS 10, 12, & 26 PL 12R23533 AS IN CE334031, S/T EASE OVER PTS 2 & 5 PL 12R23699 AS IN CE354848, S/T EASE OVER PTS 3, 10, 11, 12, 15, & 26 PL 12R23533 AS IN CE334374, S/T EASE OVER PTS 3, 10, 12, 15 & 26 PL 12R23533 AS IN CE372385; T/W EASE OVER PTS 1, 18-22 INCL., 28 & 29 PL 12R23533 AS IN CE334374, T/W EASE OVER PTS 4-9 INCL., 24, 25 PL 12R23533 AS IN CE372385; TOGETHER WITH AN EASEMENT OVER PTS 1, 3, 5 & 6 PL 12R25956 AS IN CE634267; SUBJECT TO AN EASEMENT OVER PTS 3, 10,

- 12, 15 & 26 PL 12R25956 IN FAVOUR OF PTS 1 TO 6 INCL. PL 12R25956 AS IN CE634267; TOWN OF LAKESHORE (PIN 75007-0389 (LT))
- 1.2.3 BDO, in its capacity as the Proposed Receiver, submitted a Report to the Court dated November 23, 2015, which was included in WFCU's Application Record in support of the Appointment Order (the "Proposed Receiver's Report"). A copy of the Proposed Receiver's Report (without appendices) is attached as Appendix B.
- 1.2.4 The Appointment Order approved the Proposed Receiver's Report and the Sales Process as defined therein (the "Sales Process").
- 1.2.5 The Appointment Order did not include as Property the vacant parcel of land owned by the Debtor known as 480 Advance Boulevard, Town of Lakeshore, adjacent to the Lakeshore Oasis Plaza.

2.1 In preparing this First Report, the Receiver has relied upon unaudited and draft, internal financial information obtained from Lakeshore Oasis' books and records and discussions with management and staff (the "Information"). The Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information and expresses no opinion, or other form of assurance, in respect of the Information.

3. Purpose of the Receiver's First Report

- 3.1 This constitutes the Receiver's First Report to the Court (the "First Report") in this matter and is filed:
 - (a) To provide this Court with information on:
 - (i) the Receiver's activities since the date of the Appointment Order and the Receiver's activities as outlined therein;
 - (ii) the process undertaken by the Receiver with respect to the marketing and sale of the Lakeshore Oasis Plaza:
 - (iii) the Receiver's advice and recommendation with respect to the sale of the Lakeshore Oasis Plaza; and
 - (b) In support of an order of the Court (the "Approval and Vesting Order")
 - (i) approving the agreement of purchase and sale effective March 24, 2016 (the "Lakeshore Oasis Plaza APS") between the Receiver, as vendor, and Rosati Construction Inc. in trust ("Rosati"), as purchaser, in respect of the Lakeshore Oasis Plaza and authorizing and directing the Receiver to enter into and complete the transaction contemplated by the Lakeshore Oasis Plaza APS (the "Lakeshore Oasis Plaza Transaction" or the "Transaction") and thereafter to file the Receiver's certificate;
 - (ii) sealing the Confidential Supplement to the First Report dated April 21, 2016 and all appendices thereto (the "Confidential Supplement") filed with the Court from the public record until the Receiver has filed a copy of the Receiver's Certificate with the court following the closing of the Transaction;
 - (iii) vesting in Rosati all of Lakeshore Oasis' right, title and interest in and to the Lakeshore Oasis Plaza free and clear of any and all claims and encumbrances;

- (c) In support of an order of the Court (the "Ancillary Order"):
 - (i) approving the First Report, the Confidential Supplement and the activities and conduct of the Receiver described herein;
 - (ii) approving the Receiver's Statement of Receipts and Disbursements for the period December 8, 2015 to April 18, 2016 (the "Statement of Receipts and Disbursements");
 - (iii) approving BDO's accounts for professional fees and disbursements as Receiver ("BDO Fees");
 - (iv) approving the fees and disbursements of Harrison Pensa LLP ("HP"), counsel to the Receiver ("HP Fees") and collectively with the BDO Fees, the "Professional Fees");
 - (v) following completion of the Transaction, approving and authorizing the distribution of \$5,975,491.04, due as of April 11, 2016, plus per diem interest, to WFCU in full and final satisfaction of all claims of WFCU against Lakeshore Oasis pursuant to a Charge/Mortgage of Land registered on March 17, 2008 against title to the Lakeshore Oasis Plaza as Instrument No. CE319516;
 - (vi) following completion of the Transaction, approving and authorizing the distribution of the balance of funds currently on hand, less a holdback of \$75,000, to 2154161 Ontario Limited ("2154161 Ontario") pursuant to a Charge/Mortgage of Land registered on August 6, 2009 against title to the Lakeshore Oasis Plaza as Instrument No. CE388334;

- 4.1 The Receiver retained Today Management (Windsor) Inc. (the "**Property Manager**") as property manager of the Lakeshore Oasis Plaza.
- 4.2 The Receiver sent a Notice of Receiver pursuant to Section 245 and Section 246 of the *Bankruptcy & Insolvency Act* to all known creditors on December 16, 2015.
- 4.3 Through its Property Manager, the Receiver collected monthly rents from the twelve (12) tenants of the Lakeshore Oasis Plaza having lease agreements in place with Lakeshore Oasis.
- 4.4 Following the appointment of the Receiver, 2415114 Ontario Inc. operating as Oasis Tanning ("Oasis Tanning") vacated Unit 110 effective December 31, 2015. December rent was collected from Oasis Tanning.
- 4.5 The Receiver, through its Property Manager, undertook several minor repairs to the Lakeshore Oasis Plaza. Repairs included, but were not limited to, the roof, electrical room, parking lot lighting, refuse area and some minor interior repairs to one of the vacant units.
- 4.6 The Receiver contacted Hydro One and Union Gas and arranged for the numerous hydro and gas accounts to be transferred into the name of the Receiver.
- 4.7 The Lakeshore Oasis Plaza has a monitored alarm system. The Receiver advised the alarm company of the receivership and amended the contact information to the name of the Property Manager.
- 4.8 Unit 140-3 is occupied by Oasis Medical Centre ("Oasis Medical"), the principals of which are principals and shareholders of Lakeshore Oasis. The Receiver determined that there was no written lease agreement in place between Lakeshore Oasis, as landlord and Oasis Medical, as tenant. The Receiver negotiated an interim arrangement with Oasis Medical whereby the tenant agreed to pay \$5,652.00 per month, inclusive of common area and maintenance costs, utilities and HST.
- 4.9 The Receiver entered into a month to month lease with Integram Windsor Seating, a

division of Magna Seating Ltd. ("Integram") for the use of approximately 50 parking spaces located on the Lakeshore Oasis site for \$4,000 per month, exclusive of HST. Integram operates a manufacturing plant in close proximity to the Lakeshore Oasis Plaza and required additional parking for its employees.

- 4.10 The Receiver arranged for snow plowing and general maintenance and repairs.
- 4.11 The existing insurance policy expired after the appointment of the Receiver. The Receiver arranged a new policy, with a six month term, through Aon Reed Stenhouse (the "Insurance Policy") and paid the full premium on the Insurance Policy. Any unused portion of the premium is refundable to the Receiver.
- 4.12 The Receiver determined that in addition to its operating bank account with WFCU, Lakeshore Oasis also maintained a bank account with Royal Bank of Canada ("RBC"). Certain of the tenant rents were deposited to this account. The Receiver contacted RBC and arranged for the balance of funds in the account to be forwarded to the Receiver.
- 4.13 The Receiver engaged Ducharme, McMillen and Associates Inc. ("Ducharme") of London, Ontario to review the Municipal Property Assessment Corporation's ("MPAC") valuation of the Lakeshore Oasis Plaza and to file application for a refund of 2015 property taxes paid in respect of the vacant units. It was Ducharme's opinion that the current MPAC property valuation is reasonable.
- 4.14 The Receiver commissioned two appraisals of the Lakeshore Oasis Plaza. The appraisals were performed by Valco Consultants Inc. and Metrix Realty Group. Details of these appraisals are outlined in the Confidential Supplement.

- 5.1 The Lakeshore Oasis Plaza consists of two free-standing, multi-tenant buildings located at 486 Advance Boulevard, Town of Lakeshore, Ontario. The two buildings comprise 53,341 square feet of net leasable area on a 6.9 acre site, with approximately 490 feet of frontage along Advance Boulevard.
- 5.2 Section 4 of the Proposed Receiver's report outlined the Sale Process for the Lakeshore Oasis Plaza, which was approved under the Appointment Order. Additional details of the Sale Process conducted by the Receiver are provided below.
- 5.3 Advertisements were placed in each of The Windsor Star and The London Free Press on February 12, 2016 and February 18, 2016, and in the Globe and Mail on February 16 and February 25, 2016.
- 5.4 The Receiver circulated highlights of the Lakeshore Oasis Plaza sales process on its own internal network of approximately 400 partners in ninety-five (95) BDO offices across Canada.
- 5.5 The Receiver established a deadline for offers of Friday March 18, 2016 at 5:00 p.m. As required by the Appointment Order, the period between the date of the advertisements and the offer deadline exceeded 21 days.
- 5.6 Thirty-two (32) parties expressed interest in obtaining detailed information about the Lakeshore Oasis Plaza and the Sale Process and were provided with a Confidentiality and Non-Disclosure Agreement ("NDA") for execution.
- 5.7 As outlined in the Proposed Receiver's Report, the Receiver established an electronic data room ("Data Room") to make relevant information available to interested parties. The Data Room was maintained by a third party, Venue Client Services ("Venue"). Venue is part of RR Donnelly, a publicly traded, multinational company. Venue provides electronic data room services to major financial institutions and BDO has successfully utilized Venue services on other receivership and corporate finance engagements.
- 5.8 Access to the Data Room was restricted to parties who executed the NDA and was

- controlled and monitored by the Receiver. Twenty-four (24) parties executed the NDA and were provided with access to the Data Room.
- 5.9 As a result of the Lakeshore Oasis Plaza Sale Process, the Receiver and Rosati entered into the Lakeshore Oasis Plaza APS effective March 24, 2016.
- 5.10 A copy of the Lakeshore Oasis Plaza APS is attached as **Appendix A** to the Confidential Supplement.
- 5.11 The Receiver commissioned an appraisal of the Lakeshore Oasis Plaza from Valco Consultants Inc. of London, Ontario ("Valco"). Selected portions of the appraisal dated January 20, 2016 (the "Valco Lakeshore Oasis Plaza appraisal") are attached as Appendix B to the Confidential Supplement.
- 5.12 The Receiver commissioned an appraisal of the Lakeshore Oasis Plaza from Metrix Realty Group of London, Ontario ("Metrix"). Selected portions of the appraisal dated January 21, 2016 (the "Metrix Lakeshore Oasis Plaza appraisal") are attached as Appendix C to the Confidential Supplement.
- 5.13 The Receiver's analysis of the Lakeshore Oasis Plaza Transaction is contained in the Confidential Supplement.
- 5.14 The Receiver requests that this Court seal the Confidential Supplement in order to avoid the negative impact the dissemination of the confidential information would have if the Lakeshore Oasis Plaza Transaction failed to close for any reason. Publication of the purchase price would undermine the fairness of the resumption of the sale process that may be required if the Transaction does not close.
- 5.15 The Receiver sought the input of and concurrence of WFCU during the negotiation process with Rosati. WFCU supports the Receiver in recommending the Transaction.
- 5.16 In the event the Court grants the Approval and Vesting Order, the Lakeshore Oasis Plaza Transaction is scheduled to close two days following same.
- 5.17 It is the Receiver's view that the Lakeshore Oasis Plaza Transaction is appropriate in the circumstances.
- 5.18 The Receiver conducted the Lakeshore Oasis Plaza Sales Process as approved by the

- Court pursuant to the Appointment Order.
- 5.19 The Receiver is satisfied that the property subject to the Lakeshore Oasis Plaza Transaction was properly exposed to the relevant market place, that the offer process was conducted in a fair and commercially reasonable manner and the Lakeshore Oasis Plaza Transaction represents fair value for the purchased assets.
- 5.20 The Receiver is of the view that it has maximized the realization available and the Lakeshore Oasis Plaza Transaction is commercially reasonable in all respects. Given the foregoing, the Receiver is of the view that the Lakeshore Oasis Plaza Transaction is in the best interests of the stakeholders.
- 5.21 The Receiver recommends that this Court approve the completion of the Lakeshore Oasis Plaza Transaction.
- 5.22 The Receiver requests the Court grant an Approval and Vesting Order be made in favour of Rosati substantially in the form agreed by the parties and appended as Schedule "C" to the Lakeshore Oasis Plaza APS.

6. Statement of Receipts and Disbursements of the Receiver

6.1 The Receiver maintains an account at WFCU in Windsor, Ontario. Attached as Appendix C is the Statement of Receipts and Disbursements. Details of the Receiver's receipts and disbursements are as follows:

6.2 Receipts

- a) Rent collected (\$194,649.35) The Receiver collected rents of \$194,649.35, exclusive of HST collected, from the leased units and parking spaces.
- b) Cash in bank (\$47,614.13) The Receiver collected \$47,614.13 in Lakeshore Oasis funds that were on deposit with RBC.
- c) HST collected on rents (\$25,160.04) The Receiver collected \$25,160.04 in HST on commercial rents paid by the tenants.
- d) *Miscellaneous Refunds (\$2,127.45)* The Receiver received \$2,127.45 in refunds of deposits paid on accounts with Hydro One.
- e) HST Refunds (\$1,912.60) The Receiver received \$1,912.60 in refunds on HST returns filed.

6.3 Disbursements

- a) Receiver's fees (\$68,033.31) –The Receiver paid BDO's interim accounts for the period November 2, 2015 to March 14, 2016 in the amount of \$68,033.31 and is seeking approval of the Court for these accounts, and an additional invoice not yet paid.
- b) Insurance (\$19,676.49) The Receiver paid \$19,676.49 to Aon Reed Stenhouse for premiums on the Receiver's Insurance Policy.
- c) Repairs and Maintenance (\$17,432.69) The Receiver has paid \$17,432.69 in repairs and maintenance to the Lakeshore Oasis Plaza.

- d) HST paid (\$16,365.14) The Receiver has paid \$16,365.14 in HST on its disbursements.
- e) *Utilities* (\$12,625.30) The Receiver paid \$12,625.30 for utilities on vacant units and common areas.
- f) HST remitted (\$10,255.26) The Receiver has remitted \$10,255.26 in HST collected on rents, net of input credits.
- g) Advertising (\$9,758.28) The Receiver paid \$9,758.28 for advertising the request for offers for the Lakeshore Oasis Plaza in the Windsor Star, The London Free and The Globe and Mail.
- h) Appraisal fees (\$8,170.65) The Receiver paid \$8,170.65 to Valco and Metrix for an appraisals of the Lakeshore Oasis Plaza.
- i) Legal fees (\$7,886.96) –The Receiver paid HP's interim accounts for the period November 20, 2015 to January 22, 2016 in the amount of \$7,886.96, excluding HST, and is seeking approval of the Court for this invoice.
- j) Property management fees (\$6,195.00) The Receiver has paid \$6,195.00 to the Property Manager for property management of the Lakeshore Oasis Plaza.

7. Fees and Disbursements of the Receiver and Counsel to the Receiver

- 7.1 Pursuant to Paragraph 21 of the Appointment Order, the Receiver and counsel to the Receiver shall be paid their reasonable Professional Fees in each case at their standard rates and charges. The Receiver and counsel to the Receiver have been granted a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person as security for payment of the Professional Fees.
- 7.2 Pursuant to paragraph 23 of the Appointment Order, the Receiver is at liberty, from time to time, to apply reasonable amounts, out of the monies in its hands, against the Professional Fees, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its Professional Fees when and as approved by the Court.
- 7.3 Attached as **Appendix D** is the fee affidavit of Stephen N. Cherniak sworn April 18, 2016 containing BDO's interim accounts as Receiver for the following periods:
 - November 2, 2015 to January 15, 2016
 - January 16, 2016 to March 14, 2016
 - March 15, 2016 to April 15, 2016
- 7.4 The Receiver's fees to April 15, 2016, exclusive of HST, are as follows:

Fees paid and Court approved - \$68,033.31 Fees neither paid, nor Court approved - \$86,033.31

- 7.5 The Receiver submits that the hourly rates charged by the Receiver and its staff are commensurate with commercially reasonable rates for mid-market insolvency firms in the Southwestern Ontario region.
- 7.6 Attached as **Appendix E** is the fee affidavit of Lauren Lee containing the interim accounts of HP for the period November 20, 2015 to April 20, 2016.

7.7 It is the Receiver's opinion that the Professional Fees are fair and reasonable and justified in the circumstances and accurately reflect the work done by the Receiver and HP in connection with the receivership during the relevant periods. The Receiver recommends approval of the Professional Fees by the Court.

- 8.1 Provided Court approval is granted authorizing the Receiver to complete the Lakeshore Oasis Plaza Transaction, the Receiver anticipates having sufficient funds to fully repay the amounts owed by Lakeshore Oasis to WFCU and partially repay 2154161 Ontario.
- 8.2 The Receiver obtained an independent legal opinion from HP indicating that, subject to the customary assumptions and qualifications, the Charge/Mortgage of Lands registered against title to the Lakeshore Oasis Plaza in favour of WFCU as Instrument No. CE 319516 on March 17, 2008 (the "WFCU Mortgage") is valid, binding and enforceable in accordance with its terms. HP notes that there are no charges registered against title to the Lakeshore Oasis Plaza in priority to WFCU and WFCU holds the first registered charge as against the Lakeshore Oasis Plaza. A copy of the independent legal opinion of HP, dated March 28, 2016, is attached hereto as Appendix F.
- 8.3 WFCU has advised the Receiver that Lakeshore Oasis is indebted to WFCU on account of principal, interest and professional fees as at April 11, 2016 in the amount of \$5,975,491.04. Per diem interest is \$1,121.23. (the "WFCU Indebtedness"). The WFCU Indebtedness is secured by the WFCU Mortgage.
- 8.4 Counsel for WFCU has advised that WFCU may seek the repayment of certain fees as being due to WFCU in addition to the WFCU indebtedness. The Receiver has not included such fees in its recommended distribution.
- 8.5 The Receiver obtained an independent legal opinion from HP indicating that, subject to the customary assumptions and qualifications, the Charge/Mortgage of Lands registered against title to the Lakeshore Oasis Plaza in favour of 2154161 Ontario as Instrument No. CE388334 on August 6, 2009 (the "2154161 Ontario Mortgage") is valid, binding and enforceable in accordance with its terms. HP notes that the 2154161 Ontario Mortgage is the second registered charge against the property. A copy of the independent legal opinion of HP, dated April 15, 2016, is attached hereto as Appendix G.
- 8.6 2154161 Ontario has advised the Receiver that Lakeshore Oasis is indebted to 2154161 Ontario on account of principal, interest and professional fees as at April 11.

- 2016 in the amount of \$953,397.65 (the "2154161 Ontario Indebtedness"). The 2154161 Ontario Indebtedness is secured by the 2154161 Ontario Mortgage.
- 8.7 The Receiver anticipates there will not be sufficient funds to fully repay the 2154161 Ontario Indebtedness.
- 8.8 The Receiver has obtained an updated parcel abstract for the Lakeshore Oasis Property, dated April 21, 2016, a copy of which is attached hereto as **Appendix H**.
- 8.9 Attached hereto as **Appendix I** is a copy of a search under the *Personal Property* Security Act as against the Debtor.
- 8.10 The Receiver is seeking an Order to distribute the funds on hand after the completion of the Lakeshore Oasis Plaza Transaction as follows:
 - a) the sum of \$5,975,491.04, plus per diem interest from April 11, 2016 of \$1,121.23, to WFCU, in full satisfaction of the WFCU Indebtedness.
 - b) the balance of funds on hand, less a hold back of \$75,000 to satisfy final utility accounts, Property Manager fees, HST to be remitted, and final Professional fees (the "Holdback Funds") to 2154161 Ontario.
- 8.11 After the completion of the Transaction, the Receiver intends to seek its discharge. At this time any residual funds remaining from the Holdback Funds and future receipts will be paid to 2154161 Ontario.

- 9.1. The Receiver recommends and respectfully requests that the Court grant the following:
 - (a) the Approval and Vesting Order
 - (i) approving the Lakeshore Oasis Plaza APS and authorizing and directing the Receiver to enter into and complete the Lakeshore Oasis Plaza transaction and thereafter to file the Receiver's certificate;
 - (ii) sealing the Confidential Supplement filed with the Court from the public record until the Receiver has filed a copy of the Receiver's Certificate with the Court following the closing of the Transaction; and
 - (iii) vesting in Rosati all of Lakeshore Oasis' right, title and interest in and to the Lakeshore Oasis Plaza free and clear of any and all claims and encumbrances;

(b) the Ancillary Order

- (i) approving the First Report, the Confidential Supplement and the activities and conduct of the Receiver described herein;
- (ii) approving the Statement of Receipts and Disbursements:
- (iii) approving the Professional Fees:
- (iv) approving and authorizing the distribution of \$5,975,491.04, plus per diem interest, to WFCU in full and final satisfaction of the WFCU indebtedness as secured by the WFCU mortgage; and
- (v) approving and authorizing the distribution of the balance of funds on hand, less the Holdback Funds, to 2154161 Ontario in partial satisfaction of the 2154161 Ontario indebtedness as secured by the 2154161 Ontario Mortgage;

All of which is Respectfully Submitted this 21st day of April, 2016

BDO Canada Limited in its capacity as Court Appointed Receiver of Lakeshore Oasis Inc., and not in any personal capacity.

Stephen N. Cherniak, CPA, CA, CIRP Licensed Insolvency Trustee Per:

Senior Vice President