

Court File No. CV-25-00000751-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**CRESTVIEW INVESTMENT CORPORATION**

Applicant

and

**2782736 ONTARIO INC. and AKASH AURORA**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED, AND RULE 14.05(3)(h) OF THE RULES OF CIVIL PROCEDURE, R.R.O. 1990, REG. 194, AS AMENDED

**FACTUM OF THE APPLICANT**

March 17, 2025

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**FACTUM OF THE APPLICANT**

**PART I - INTRODUCTION**

1. This Application is made by the Applicant, Crestview Investment Corporation (“**Crestview**”), for an Order substantially in the form attached at Tab 3 of the Application Record dated March 12, 2025 (the “**Draft Order**”) appointing KSV Restructuring Inc. (“**KSV**”), as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the property, assets and undertaking of the Respondent, 2782736 Ontario Inc. (the “**Debtor**”), including the property municipally known as 20 Fairview Road, Barrie, Ontario and more particularly described in Schedule “A” to the Notice of Application (the “**Fairview Property**”) pursuant to section 101 of the *Courts of Justice Act*, RSO 1990, c

C.43, as amended (the “**CJA**”) and section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”).

2. Crestview sold the Fairview Property to the Debtor on November 3, 2020 (the “**Closing Date**”).

3. The purchase price was financed, in part, by a vendor take-back loan (the “**VTB Loan**”) in the principal amount of \$11,000,000.00.

4. The VTB Loan was secured by a first position charge registered on title to the Fairview Property on the Closing Date (the “**Charge**”). The Charge was amended by three successive Agreements Amending Charge dated September 29, 2023, April 5, 2024 and June 30, 2024 (collectively, the “**Amending Agreements**”).

5. Under the terms of the Charge, as amended by the Amending Agreements, the Charge matured on September 30, 2024 (the “**Third Extended Maturity Date**”).

6. The Debtor failed to repay the VTB Loan and all amounts secured by the Charge on or after the Third Extended Maturity Date.

7. On October 7, 2024, Crestview issued a demand letter (the “**Demand**”) and Notice of Intention to Enforce Security under section 244(1) of the BIA (the “**BIA Notice**”) to the Debtor.

8. Crestview and the Debtor entered into a Forbearance Agreement dated November 20, 2024 (the “**Forbearance Agreement**”) under which, in order to allow the Debtor an opportunity to refinance the VTB Loan, *inter alia*, Crestview agreed to forbear from taking steps to enforce its security under the Charge for a period ending not later than February 15, 2025 (the “**Forbearance Period**”).

9. The Debtor failed to repay the VTB Loan indebtedness and amounts secured by the Charge before or after the expiry of the Forbearance Period.

10. The Applicant has lost confidence in the Debtor’s ability to obtain refinancing or do so within a reasonable timeframe and is no longer prepared to forbear from

exercising the rights and seeking the remedies available to it under the Charge and the Forbearance Agreement.

11. In the circumstances, it is just and convenient to appoint the Receiver on the terms of the Draft Order and the Debtor has consented to such appointment.

## **PART II - SUMMARY OF FACTS**

### **A. The Debtor, the Guarantor and the Default**

12. The Debtor purchased the Fairview Property from Crestview pursuant to an Agreement of Purchase and Sale dated July 16, 2020, as assigned and amended, for \$15,500,000.00.<sup>1</sup>

13. The Purchase Price was funded, in part, by the VTB Loan.<sup>2</sup>

14. The VTB Loan was secured by a first-position charge registered on title to the Fairview Property as Instrument No. SC1725927 on the Closing Date.<sup>3</sup>

15. The Debtor's indebtedness under the VTB Loan was guaranteed by a principal of the Debtor, Akash Aurora (the "**Guarantor**") pursuant to a Guarantee dated November 2, 2020 (the "**Guarantee**").<sup>4</sup>

16. The Charge was subsequently amended by the Amending Agreements,<sup>5</sup> pursuant to which the Third Extended Maturity Date was set for the maturity of the VTB Loan.

17. The Debtor defaulted on the terms of the Charge, as amended by the Amending Agreements, and failed to repay the indebtedness under the VTB Loan as secured by the Charge on or after the Third Extended Maturity Date.<sup>6</sup>

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<sup>1</sup> Affidavit of Shawn Goldberg sworn March 6, 2025 ("**Goldberg #1**") at para 4 and Exhibit "A"; Application Record, Tab 2, p 21 and Tab 2-A, pp 31-86.

<sup>2</sup> Goldberg #1 at para 7; Application Record, Tab 2, p 21.

<sup>3</sup> Goldberg #1 at para 8 and Exhibit "C"; Application Record, Tab 2, p 21 and Tab 2-C, pp 92-93.

<sup>4</sup> Goldberg #1 at para 9 and Exhibit "D"; Application Record, Tab 2, p 22 and Tab 2-D, pp 95-104.

<sup>5</sup> Goldberg #1 at paras 12-14; Application Record, Tab 2, pp 22-3.

<sup>6</sup> Goldberg #1 at para 16; Application Record, Tab 2, p 23.

## B. Demand and Forbearance

18. On October 7, 2024, Crestview issued the Demand and BIA Notice.<sup>7</sup>
19. At the request of the Debtor, the Debtor and Crestview entered into the Forbearance Agreement on November 20, 2024.<sup>8</sup>
20. Under the Forbearance Agreement, the Debtor agreed, *inter alia*:
  - (a) to repay the VTB Loan indebtedness secured by the Charge on or before the expiry of the Forbearance Period;<sup>9</sup>
  - (b) to keep all utilities and property taxes in respect of the Fairview Property current;<sup>10</sup>
  - (c) that the Debtor and Guarantor were in default under the terms of the Charge as amended by the Amending Agreements;<sup>11</sup>
  - (d) that the Demand and the BIA Notice are valid and effective without limitation and qualification.<sup>12</sup>
21. Further under the Forbearance Agreement:
  - (a) the Debtor executed and delivered a Consent to an Order appointing a receiver (the “**Receivership Consent**”);<sup>13</sup> and
  - (b) the Debtor and Guarantor executed and delivered a Consent to Judgment (the “**Consent to Judgment**”).<sup>14</sup>

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<sup>7</sup> Goldberg #1 at para 17 and Exhibit “K”; Application Record, Tab 2, p 23 and Tab 2-K, pp 140-2.

<sup>8</sup> Goldberg #1 at para 22 and Exhibit “L”; Application Record, Tab 2, p 24 and Tab 2-L, pp 144-76.

<sup>9</sup> Forbearance Agreement, s 13, Goldberg #1, Exhibit “L”; Application Record, Tab 2-L, p 149.

<sup>10</sup> Forbearance Agreement, s 9(a), Goldberg #1, Exhibit “L”; Application Record, Tab 2-L, p 148.

<sup>11</sup> Forbearance Agreement, s 7(d), Goldberg #1, Exhibit “L”; Application Record, Tab 2-L, p 147.

<sup>12</sup> Forbearance Agreement, s 7(e), Goldberg #1, Exhibit “L”; Application Record, Tab 2-L, p 147.

<sup>13</sup> Goldberg #1 at para 49 and Exhibit “V”; Application Record, Tab 2, p 28 and Tab 2-V, pp 224-38.

<sup>14</sup> Goldberg #1 at para 52 and Exhibit “W”; Application Record, Tab 2, p 29 and Tab 2-W, pp 240-1.

### C. The Debtor's Unsuccessful Refinancing Efforts

22. The Debtor has been working on a proposed refinancing of the VTB Loan with an Alberta-based lender, KV Capital ("**KV Capital**"), since no later than the beginning of October 2024.<sup>15</sup>

23. Over the course of approximately five months from October 2024 to February 2025, KV Capital provided periodic updates directly to Crestview and via the Debtor. As of February 13, 2025, KV Capital was still in the process of reviewing the proposed transaction with a view to issuing a non-binding letter of intent.<sup>16</sup>

24. On March 7, 2025 Crestview received a discussion paper dated March 7, 2025 and issued by KV Capital (the "**Discussion Paper**") in contemplation of KV Capital potentially issuing a binding commitment letter to the Debtor.<sup>17</sup>

25. Based on correspondence from the Debtor on March 12, 2025, the Debtor was not, as of that date, in a position to countersign the Discussion Paper in order to move forward toward a potential commitment letter being issued by KV Capital.<sup>18</sup>

26. As of March 13, 2025 the Debtor had not provided Crestview with a fully-signed Discussion Paper, commitment letter, or a schedule for the completion of the proposed refinancing.

27. The Debtor has also not advised Crestview of any other prospective sources of funding available to repay the VTB Loan indebtedness.<sup>19</sup>

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<sup>15</sup> Goldberg #1 at para 20; Application Record, Tab 2, p 24.

<sup>16</sup> Goldberg #1 at para 40 and Exhibit "S"; Application Record, Tab 2, p 27 and Tab 2-S, pp 209-10.

<sup>17</sup> Affidavit of Shawn Goldberg sworn March 13, 2025 ("**Goldberg #2**") at para 3 and Exhibit "B"; Supplementary Application Record, Tab 1, p 6 and Tab 1-B, pp 16-23.

<sup>18</sup> **Goldberg #2** at para 9 and Exhibit "A"; Supplementary Application Record, Tab 1, p 7 and Tab 1-A, pp 10-4.

<sup>19</sup> Goldberg #1 at para 43; Application Record, Tab 2, p 27.

#### **D. The Tax Arrears and Subsequent Mortgages**

28. The City of Barrie (the “**City**”) is owed approximately \$968,042.43 for property tax arrears accrued in respect of the Fairview Property (the “**Tax Arrears**”).<sup>20</sup>

29. Further, without the consent, knowledge or authorization of Crestview, the Debtor caused or allowed two additional charges to be registered on title to the Fairview Property as follows:<sup>21</sup>

- (a) a charge in favour of Zaherali Visram registered as Instrument No. SC1743811 on January 6, 2021 (the “**Second Mortgage**”); and
- (b) a charge in favour of Neemtree Investments Ltd. and 2665731 Ontario Inc. registered as Instrument No. SC1935814 on October 7, 2022 (the “**Third Mortgage**” and, together with the Second Mortgage, the “**Subsequent Mortgages**”).

30. Crestview has not received a fully-executed copy of the Discussion Paper and does not have any information with respect to the likelihood or timing of a proposed refinancing transaction with KV Capital.<sup>22</sup>

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

#### **A. It is Just and Convenient to Appoint the Receiver**

31. Crestview seeks the appointment of the Receiver pursuant to section 243(1) of the BIA and section 101 of the CJA. Under section 243(1) of the BIA, the court may appoint a receiver where it is “just and convenient” to do so.<sup>23</sup>

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<sup>20</sup> Goldberg #1 at para 36 and Exhibit “M”; Application Record, Tab 2, p 25 and Tab 2-M, pp 178-80.

<sup>21</sup> Goldberg #2 at paras 13-16; Supplementary Application Record, Tab 1, p 7.

<sup>22</sup> Goldberg #2 at para 12; Supplementary Application Record, Tab 1, p 7.

<sup>23</sup> [BIA, s 243\(1\)](#).

32. In determining whether it is “just and convenient” to appoint a receiver on an application by a secured creditor pursuant to section 243(1) of the BIA and section 101 of the CJA, the Court should have regard to all the circumstances of the case and, in particular:

- (a) the effect of appointing the receiver, including potential costs and the likelihood of maximizing return on and preserving the subject property;
- (b) the conduct of the parties; and
- (c) the nature of the property and the rights and interests of all parties in relation to it.<sup>24</sup>

33. The nature of the Fairview Property, being an operating hotel,<sup>25</sup> presents unique considerations, including with respect to the preservation of value and the marketing and sale processes. A qualified Receiver under Court supervision is best positioned to handle these issues and maximize return. Accordingly, it is submitted that the appointment of the Receiver will maximize the return on and best preserve the Fairview Property.

34. It is further submitted that the appointment of the Receiver is just and convenient in view of the multiple interests at issue, including those of the City and the mortgagee creditors under the Subsequent Mortgages (the “**Subsequent Mortgagees**”).

35. Lastly, the conduct of the parties strongly militates in favour of granting the relief sought. The Debtor has been unable to obtain refinancing, despite prolonged efforts facilitated by Crestview’s ongoing forbearance. This raises concerns regarding the viability of the Debtor’s business and the value of the Fairview Property that are best addressed through the intervention of the Receiver under the supervision of the Court.

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<sup>24</sup> [Callidus Capital Corp. v Carcap Inc.](#), 2012 ONSC 163 at [para 41](#) (“*Callidus*”).

<sup>25</sup> Goldberg #1 at para 10; Application Record, Tab 2, p 22.

36. Furthermore, the Debtor has expressly consented to an order appointing a receiver under the terms of the Forbearance Agreement and the Receivership Consent. In such cases, the analysis under the above-noted factors is overtaken by the debtor's consent.

37. Such were the circumstances in *ATB Financial v. Mayfield Investments Ltd.* where the debtor had given its consent to an order appointing a receiver.<sup>26</sup> Pursuant to that consent, the court issued an order appointing a receiver and stayed its effect subject to the terms of the parties' forbearance agreement.<sup>27</sup>

38. The issue before the Court was whether the lender was entitled, in the circumstances of ongoing forbearance defaults,<sup>28</sup> to a lift of the stay of the receivership order in accordance with its terms.

39. The court held that, given the parties' consent, whether it was just and convenient to appoint a receiver was decided based on the agreement and consent of the parties.<sup>29</sup>

40. In a recent Ontario case involving a debtor consenting to the appointment of a receiver under the terms of a forbearance agreement,<sup>30</sup> citing the reasoning in *ATB Financial*, Justice Kimmel held that where a creditor has agreed to forbear and defer exercising its enforcement remedies in exchange for a debtor's consent to the appointment of a receiver if the forbearance did not lead to the expected refinancing "[c]ommercial certainty for all stakeholders dictates that parties should expect that courts will hold them to their bargains."<sup>31</sup>

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<sup>26</sup> *ATB Financial v Mayfield Investments Ltd.*, 2024 ABKB 635 at [para 18](#) ("*ATB Financial*").

<sup>27</sup> *ATB Financial*, *supra* note 26 at [para 19](#).

<sup>28</sup> *ATB Financial*, *supra* note 26 at [para 22](#).

<sup>29</sup> *ATB Financial*, *supra* note 26 at [para 35](#).

<sup>30</sup> *JBT Transport Inc. (Re)*, 2025 ONSC 1436 at [para 26](#) ("*JBT Transport*").

<sup>31</sup> *JBT Transport*, *supra* note 30 at [para 53](#).

41. As was the case in *ATB Financial* and *JBT Transport*,<sup>32</sup> Crestview has afforded the Debtor a long period of forbearance during which the Debtor has been unable to secure the necessary funding. Furthermore, the best available prospect of refinancing as set out in the Discussion Paper<sup>33</sup> would not raise funds sufficient to pay out the Tax Arrears and the VTB Loan balance in full.

42. It is respectfully submitted that having acted reasonably in cooperating with the Debtor, allowing every reasonable opportunity for a refinancing to be arranged, Crestview has earned the right to exercise its enforcement remedy and have the Receiver appointed in accordance with the Receivership Consent.<sup>34</sup>

### **B. The Terms of the Draft Order are Appropriate**

43. The Draft Order is closely based on the Toronto Commercial List model receivership order (the “**Model Order**”). Variations to the Model Order are minimal and designed to address features of the Debtor’s business and the Fairview Property.

#### **(1) Receiver’s Charges**

44. Under section 243(6) of the BIA, in appointing a Receiver, the Court may make an order respecting the payment of fees and disbursements of the Receiver, including granting the Receiver a charge, ranking ahead of secured creditors if satisfied that those who would be affected by such an order were given reasonable notice and an opportunity to make representations.<sup>35</sup>

45. Under section 101(2) of the CJA, the Court may appoint a Receiver on “such terms as are considered just.”<sup>36</sup>

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<sup>32</sup> *JBT Transport*, *supra* note 30 at [para 54](#).

<sup>33</sup> Goldberg #2, Exhibit “B”; Supplementary Application Record, Tab 1-B, p 17.

<sup>34</sup> *JBT Transport*, *supra* note 30 at [para 56](#).

<sup>35</sup> *BIA*, s 243(6).

<sup>36</sup> *CJA*, s 101(2).

46. The Draft Order provides for a “Receiver’s Charge” on the Property (as defined in the Draft Order) to secure the reasonable fees and disbursements of the Receiver and its counsel, in each case at their standard rates, and a “Receiver’s Borrowings Charge” (together with the Receiver’s Charge, the “**Receiver’s Charges**”) to secure monies borrowed by the Receiver from time to time for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by the Draft Order.

47. Given the absence of information as to the Debtor’s cash resources and the financial position of the Debtor’s business, it is expected that the Receiver may require additional funding during the Receivership proceeding. Such funding would be raised through borrowings by the Receiver.

48. The Receiver’s Charges will rank ahead of Crestview’s existing security and the security of any other parties holding a security interest in the Fairview Property, including the City and the Subsequent Mortgagees. All those parties have been given notice of this Application and have an opportunity to make representations.

49. It is submitted that the granting of the Receiver’s Charges is both appropriate in the circumstances and within the Court’s jurisdiction under the BIA and the CJA.

## ***(2) Receiver’s Counsel***

50. The Draft Order contemplates that counsel for Crestview may act for the Receiver in this proceedings in respect of all matters in which there is no conflict of interests. The Draft Order further allows the Receiver to retain independent counsel for matters in which a conflict of interests exists or may exist.

51. Such relief has been granted by the Court in similar circumstances.<sup>37</sup>

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<sup>37</sup> [Canadian Imperial Bank of Commerce v Urbancorp \(Leslieville\) Developments Inc et al.](#) (CV-16-11409-00CL), Order Appointing Receiver dated May 31, 2016, at para 5(d).

52. As the senior secured creditor with a significant outstanding debt owing to it under the VTB Loan, Crestview's interests and objectives in seeking to maximize recovery are generally aligned with those of the Receiver and other stakeholders.

53. It is respectfully submitted that permitting the Receiver to retain Crestview's counsel will advance those objectives by allowing for a more efficient representation of the Receiver by counsel who is familiar with the Debtor, the Fairview Property and the interests of all stakeholders. To the extent any issues arise in these proceedings where the Receiver determines that it would be appropriate to engage independent counsel, it is empowered by the Draft Order to do so.

### **C. Crestview is Entitled to a Declaration against the Guarantor**

54. Under the Forbearance Agreement, the Debtor and Guarantor each delivered the Consent to Judgment, consenting to Crestview obtaining a judgment against them in accordance with the terms of the Consent to Judgment (the "**Judgment**").<sup>38</sup>

55. The quantum of such Judgment is indeterminate at this point, given that Crestview has not yet realized on the Fairview Property and the amount of the deficiency, if any, is not yet known.

56. It is submitted that, nevertheless, Crestview is, at this time, entitled to a declaration that the Guarantor is liable to Crestview for the indebtedness owing by the Debtor to Crestview in accordance with the terms of the Guarantee.

57. A reference may be directed, if appropriate, at a later date to determine the quantum of the Judgment based upon the extent of the recovery made in the Receivership proceeding.

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<sup>38</sup> Goldberg #1, Exhibit "W"; Application Record, Tab 2-W, pp 240-1.

**PART IV - ORDER REQUESTED**

58. Crestview seeks an Order substantially in the form of the Draft Order at Tab 3 of the Application Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 17th day of March, 2025.



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Nedko M. Petkov

March 17, 2025

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## SCHEDULE "A"

### LIST OF AUTHORITIES

1. [ATB Financial v Mayfield Investments Ltd.](#), 2024 ABKB 635.
2. [Callidus Capital Corp. v Carcap Inc.](#), 2012 ONSC 163.
3. [Canadian Imperial Bank of Commerce v Urbancorp \(Leslieville\) Developments Inc et al.](#) (CV-16-11409-00CL), Order Appointing Receiver dated May 31, 2016.
4. [JBT Transport Inc. \(Re\)](#), 2025 ONSC 1436.

## SCHEDULE “B”

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. [Bankruptcy and Insolvency Act, RSC, 1985, c B-3: Section 243](#)

*Court may appoint receiver*

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

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

*Restriction on appointment of receiver*

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

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

*Definition of “receiver”*

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

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or

bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt – under

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

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

*Definition of “receiver” — subsection 248(2)*

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

*Trustee to be appointed*

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

*Place of filing*

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

*Orders respecting fees and disbursements*

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

*Meaning of “disbursements”*

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

2. [Courts of Justice Act, RSO 1990, c C.43: Section 101](#)

*Injunctions and receivers*

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

*Terms*

(2) An order under subsection (1) may include such terms as are considered just.

**CRESTVIEW INVESTMENT CORPORATION**

Applicant

- and - **2782736 ONTARIO INC. et al.**

Court File No. CV-25-00000751-0000

Respondents

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

**FACTUM OF THE APPLICANT**

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