

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF SUBSECTION 243(1) OF THE BANKRUPTCY AND  
INSOLVENCY ACT, R.S.C 1985, C. B-3, AS AMENDED AND SECTION  
101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C. 43, AS  
AMENDED

AND IN THE MATTER OF THE APPOINTMENT OF A RECEIVER  
OVER THE PROPERTY, ASSETS AND UNDERTAKING OF 2067166  
ONTARIO INC., 2265132 ONTARIO INC., ASHCROFT HOMES – LA  
PROMENADE INC., 2195186 ONTARIO INC., 1384274 ONTARIO INC. AND  
1019883 ONTARIO INC.

**FACTUM OF THE COURT-APPOINTED RECEIVER,  
KSV RESTRUCTURING INC.  
(Receiver's Motion for Sale Approval and Vesting Order and  
Distribution and Ancillary Order – Envie I,  
Returnable July 31, 2025)**

July 29, 2025

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**TO: SERVICE LIST**

## PART I – OVERVIEW

1. As set out in detail below, this motion is to, among other things, approve a Transaction for a large student housing building which requires extensive remediation due to the presence of mould. The only way for that Transaction to proceed is for vacant possession to be delivered to the Purchaser on September 1, 2025, being the contemplated closing date, or as soon as possible thereafter. The Receiver has carefully considered all the factors related to the proposed Transaction, including its impact on the tenants in the building, the two mortgagees and the remaining stakeholders, and recommends that the Court make the Orders being sought as fair and reasonable and an appropriate balancing of stakeholder interests in the circumstances.<sup>1</sup>

## PART II - FACTS

### Background

2. On December 5, 2024, Justice Mew issued an Order granting protection under the *Companies' Creditors Arrangement Act* (the “**CCAA**”) to 2195186 Ontario Inc. (the “**Debtor**” or “**Envie I**”) and several related companies (such proceedings being the “**CCAA Proceedings**”).<sup>2</sup>

3. Pursuant to the Reasons for Decision of Justice Mew dated December 20, 2024, the Court dismissed the motion to extend the CCAA Proceedings, and by way of Order issued January 3, 2025 (the “**Interim Receivership Order**”), appointed KSV Restructuring Inc. (“**KSV**”) as interim receiver (in such capacity, the “**Interim Receiver**”) of the Debtor (and others).<sup>3</sup>

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<sup>1</sup> Capitalized terms used in this introduction are as defined later in this factum.

<sup>2</sup> Fourth Report of the Receiver, dated July 23, 2025 (the “**Fourth Report**”), at para 1.0.1.

<sup>3</sup> Fourth Report, at para 1.0.3.

4. By way of Order dated February 24, 2025 (the “**Receivership Order**”), the Interim Receivership was converted to a Receivership and KSV was appointed as receiver and manager (in such capacity, the “**Receiver**”) of the Debtor (among others).<sup>4</sup>

5. The Debtor’s principal asset is a 29-storey student housing apartment building in Ottawa (the “**Building**”) with 185 residential units and 592 beds (each a “**Residential Unit**”, and collectively, the “**Residential Units**”), and one ground floor commercial unit (the “**Commercial Unit**”). The Debtor operates the Building as a student residence, with each unit having between two and four rooms, where each room is fully furnished, and individually leased (each a “**Residential Lease**”, and collectively the “**Residential Leases**”).<sup>5</sup>

6. There are currently 207 residential tenants (each a “**Residential Tenant**”, and collectively, the “**Residential Tenants**”) occupying the Residential Units, on either year-long or month-to-month leases. Four additional tenancies that were scheduled to commence on August 1, 2025, have been cancelled by the incoming tenants. Another fourteen are scheduled to begin on September 1, 2025, some of which have also now been cancelled by the incoming tenants. The Building will be less than 38% occupied as of September 1, 2025.<sup>6</sup>

7. On July 17, 2024, CMLS Realty Ltd. (“**CMLS**”) was retained on behalf of the Debtor to market and sell the Building. Notwithstanding a fulsome and thorough marketing process from a national brokerage with recent experience in the Ottawa market for student multi-residential housing, only one offer was made for the Building prior to the CCAA Proceedings (the “**LOI**”). KSV entered into negotiations with the party (an experienced student housing investor) that

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<sup>4</sup> Fourth Report, at para 1.0.5.

<sup>5</sup> Fourth Report, at para 1.0.7.

<sup>6</sup> Fourth Report, at para 5.1.2.

delivered the LOI (the “**Purchaser**”) which resulted in the proposed sale transaction (the “**Transaction**”) with the Purchaser pursuant to an agreement of purchase and sale dated February 21, 2025, as amended from time to time with the sixth and final amendment to the APS made as of July 21, 2025 (the “**APS**”).<sup>7</sup>

8. It was originally contemplated that the Transaction would proceed with the Residential Tenants remaining in place. However, during the course of the Purchaser’s due diligence, extensive mould was identified in Residential Units and common areas throughout the Building (the “**Mould Issues**”) by the Purchaser’s environmental consultant, Pinchin Ltd. (“**Pinchin**”).<sup>8</sup> The second floor of the building (which includes certain amenity spaces, including the gymnasium) was found to be impacted by mould so severely that it had to be closed off, and the tenants on that floor relocated.<sup>9</sup>

9. On May 16, 2025,<sup>10</sup> immediately following the Receiver’s receipt of the report from Pinchin, the Receiver provided written notice to the Residential Tenants of the Mould Issues, and provided them the option of early (i.e. immediate) termination of their Residential Leases, without penalty. As of July 23, 2025, 48 Residential Tenants had accepted this offer.<sup>11</sup>

10. Pinchin’s expert view is that a “full gut” remediation of the Building is required to remediate the Mould Issues (the “**Mould Remediation**”). A “full gut” was preferred over piecemeal abatement due to the high likelihood of more extensive mould and water damage being discovered during remediation than could be identified during Pinchin’s inspection. As a result,

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<sup>7</sup> Fourth Report, at paras 4.0.1 – 4.0.3.

<sup>8</sup> Fourth Report, at para 4.2.4.

<sup>9</sup> Fourth Report, at para 4.2.19.

<sup>10</sup> Fourth Report, at para 4.2.19.

<sup>11</sup> Fourth Report, at para 4.2.19.

subject to closing, the Purchaser will be proceeding with the Mould Remediation as soon as possible so that it can be completed in time to re-let the Building for September, 2026 (the start of the 2026-2027 academic year).<sup>12</sup>

11. The health and safety risks associated with the Mould Issues will be most acute during the Mould Remediation process, when the mould is disturbed and the mould spores become airborne,<sup>13</sup> meaning that the Residential Tenants cannot remain in the Building during the Mould Remediation process. In light of the Mould Remediation and the impending “full gut”, the APS requires the Receiver to provide vacant possession of the Building on closing (save for the separate commercial unit where no remediation is required). The closing of the Transaction is scheduled for September 1, 2025, with an outside date of October 1, 2025.

12. In order to secure vacant possession, the Receiver is seeking Court approval to enter into a settlement agreement with Residential Tenants who are prepared to *voluntarily* terminate their Residential Lease and provide vacant possession of their Residential Unit by August 31, 2025 (each a “**Settlement Agreement**”, and collectively the “**Settlement Agreements**”) in return for, among other things, payment to the Residential Tenant of two months’ rent, last month’s rent being applied to August, 2025, and the Residential Tenant providing a release.<sup>14</sup> In circumstances where there is not expected to be any value available for unsecured creditors (and the Residential Tenants would be unsecured creditors for any compensation potentially owing to them under the *Residential Tenancies Act*, 2006, S.O. 2006, c.17 (the “**RTA**”)), the option to receive monetary

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<sup>12</sup> Fourth Report, at paras 4.2.15, 4.2.25, 5.1.4 and 5.1.5.

<sup>13</sup> Fourth Report, at para 4.2.16.

<sup>14</sup> Fourth Report, at para 7.0.2.

compensation represents a significant benefit for the Residential Tenants, and has been consented to (and will be funded by) the mortgagees.

13. The Receiver is, however, also seeking an Order, providing it with vacant possession of the Building effective September 1, 2025, as well as vesting the Building in the Purchaser free and clear of the Residential Leases, irrespective of whether a Residential Tenant enters into a Settlement Agreement.

14. Without conceding whether the Court in exercising its broad jurisdiction under section 243(1)(c) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the “BIA”),<sup>15</sup> could issue an Order actually requiring termination of leases on a non-voluntary basis, or “eviction” of any of the Residential Tenants, the Receiver is mindful that pursuant to section 39 of the *RTA*, and the Court of Appeal’s 2005 decision in *Fraser v. Beach*, the termination of residential tenancies appears to be within the exclusive jurisdiction of the Landlord and Tenant Board (“LTB”).<sup>16</sup>

15. However, the Supreme Court has noted that the “very expansive wording” of section 243(1)(c) of the BIA has been interpreted as giving judges “the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise” in the context of a Court-ordered receivership.<sup>17</sup> This broad jurisdiction permits the Court “to do not only what ‘justice dictates’ but also what ‘practicality demands’”.<sup>18</sup>

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<sup>15</sup> *BIA*, s. 243(1)(c).

<sup>16</sup> *Fraser v. Beach*, 2005 CanLII 14309 (ON CA), at para 15.

<sup>17</sup> *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41 [Peace River] at para 148, citing *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, 2021 ABCA 226 [Third Eye] at para 20.

<sup>18</sup> *Canada (Minister of Indian Affairs and Northern Development) v Curragh Inc*, 1994 CanLII 7468, 114 D.L.R. (4th) 176 (Ont Ct J (GD)) at para 16.

16. The Mould Issues and the need to address them is a challenging development for all stakeholders. It has reduced the current value of the Building, made apparent the need for a significant investment to fund the Mould Remediation, and necessitates the Residential Tenants being displaced in order to complete the remediation.

17. The Transaction represents the best (and only) means of addressing these challenges available to stakeholders. It will offer fair and reasonable compensation to the Residential Tenants in the circumstances of the receivership and the Debtor's insolvency, facilitate the required remediation of the Building such that it will be available for re-leasing to the Ottawa student housing community as soon as possible, and maximize value for the mortgagees in accordance with their priority legal entitlements.

18. The alternative to the Transaction proceeding is no new Residential Tenants moving in, the Mould Remediation not being completed, any Residential Tenants who choose to remain in the Building paying rent and placing their health and safety at risk while the Building empties out until it is a ghost building (likely with no ability to recover for any harm caused to them from staying in the Building because Envie I is insolvent), the eventual loss of over five hundred student housing beds in the Ottawa market for an indeterminate period, and the prospect of significant losses for one or both of the mortgagees as carrying costs mount with no certainty that a superior transaction could be completed.

19. Approving the Transaction and granting the relief requested to facilitate it is an appropriate exercise of the Court's jurisdiction under section 243(1)(c) of the BIA to address these unique and

very challenging circumstances, and enable a solution that fairly and practically responds to the circumstances at hand.<sup>19</sup>

20. For these and the reasons that follow, the Receiver respectfully requests that the Court grant the Orders sought.

### **Activities Following Appointment of KSV – Discovery of the Mould Issues**

21. Following its appointment as Interim Receiver, KSV corresponded with and met CMLS to discuss the Sale Process. Based on these discussions, KSV was satisfied that the market was appropriately canvassed and agreed with CMLS's recommendation to accept the LOI and proceed to prepare an APS, subject to a diligence condition and Court approval.<sup>20</sup>

22. Thereafter, the Receiver, the Purchaser, in consultation with the mortgagees, and their respective counsel negotiated the APS, which included an initial diligence condition deadline of March 24, 2025 (the "**Diligence Date**"). The APS originally contemplated that the Building would be sold to the Purchaser with all Residential Tenants in place. As part of the Purchaser's due diligence, among other things, the Purchaser engaged the following professionals:

- (a) Pinchin, an environmental engineering, building science, and health & safety consulting firm, to perform an environmental review and building condition assessment; and
- (b) Finnegan Marshall Inc. ("**FM**"), a leading real estate cost consultant, to review the condition of the Real Property.

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<sup>19</sup> *BIA*, s. 243(1)(c).

<sup>20</sup> Fourth Report, at para 4.2.1.



23. On March 3, 2025, the Purchaser provided the Receiver with draft preliminary reports from Pinchin and FM which, among other things, identified the presence of mould in common areas and certain Residential Units (the “**Preliminary Mould Findings**”).<sup>21</sup>

24. Pinchin’s report advised that:

These findings indicate conditions, possibly systemic, that necessitate further intrusive investigation to quantify their extent throughout the building, and to determine immediate remediation strategies along with budgetary cost estimates for their remediation.<sup>22</sup>

25. The Receiver and the Purchaser executed an amendment to the APS which, among other things, extended the Diligence Date, to accommodate the further investigation.<sup>23</sup>

26. Pinchin provided periodic verbal and written updates while its further investigation was ongoing. As a result of those updates, Pinchin advised of the potential requirement for an extensive remediation to the Building that would be required due to the Mould Issues. Accordingly, on April 24, 2025, the Receiver instructed Keilty Realty Management Inc. operating as Varsity (“**Varsity**”, the property manager), to cease all new leasing activities at Envie I pending the Receiver’s receipt and review of a comprehensive report from Pinchin.<sup>24</sup>

27. On May 1, 2025, the Diligence Date was further extended until June 9, 2025, to allow time for Pinchin to complete its report, and for the Receiver and the Purchaser, among others, to review it.<sup>25</sup> In anticipation of Pinchin’s report, the Receiver retained Fisher Engineering Limited

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<sup>21</sup> Fourth Report, at para 4.2.4.

<sup>22</sup> Fourth Report, at para 4.2.5.

<sup>23</sup> Fourth Report, at para 4.2.9.

<sup>24</sup> Fourth Report, at para 4.2.10.

<sup>25</sup> Fourth Report, at para 4.2.11.

(“**Fisher**”), an environmental engineering firm, to peer review the report that Pinchin would be delivering.<sup>26</sup>

28. On May 14, 2025, Pinchin issued a draft report on the mould growth at the Building dated May 9, 2025 (the “**May 9<sup>th</sup> Pinchin Report**”), which the Receiver shared with the first mortgagee Peoples Trust Company (“**Peoples**”), the second mortgagee ACM Advisors Ltd. (“**ACM**”), CMLS, Fisher, Varsity, and the principal of the Debtor.<sup>27</sup> The May 9<sup>th</sup> Pinchin Report noted that there was extensive and sporadic mould growth throughout the building, with growth identified in 65% of inspected locations (i.e., the Mould Issues). Pinchin recommended extensive remediation (i.e., the Mould Remediation), and that the information in the May 9<sup>th</sup> Pinchin Report be shared with tenants.<sup>28</sup>

29. On May 15, 2025, the Receiver discussed the May 9<sup>th</sup> Pinchin Report with Fisher. Fisher’s preliminary feedback was that the extent and severity of the mould may be less than as described in the May 9<sup>th</sup> Pinchin Report, but that Fisher would require time to perform testing before it could share substantive comments. Fisher did agree that the extent of the mould in certain areas of the Building, especially on the second floor, required the immediate closure of the Residential Tenants’ access to the second-floor amenities (including the gymnasium), and relocating the Residential Tenants from that floor. Fisher also recommended that air samples be taken from the Residential Units.<sup>29</sup>

30. On May 16, 2025, the Receiver prepared, with input from Varsity, a notice to the Residential Tenants (“**May 2025 Tenant Notice**”) and a list of frequently asked questions

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<sup>26</sup> Fourth Report, at para 4.2.12.

<sup>27</sup> Fourth Report, at para 4.2.13.

<sup>28</sup> Fourth Report, at para 4.2.14.

<sup>29</sup> Fourth Report, at para 4.2.18.

(“FAQ”). Varsity distributed the Tenant Notice and FAQ by email to the Residential Tenants on May 16, 2025, and posted them in the Building.<sup>30</sup>

31. Among other things, the May 2025 Tenant Notice advised that the presence of mould at the Building had been confirmed via laboratory tests, and provided Residential Tenants with a link to the Health Canada website containing reference materials on mould in the home.

32. The May 2025 Tenant Notice advised the Residential Tenants that early termination of their leases without penalty would be permitted. At the same time, the Receiver directed that Varsity close off access to the amenities on the second floor of the Building, and that the Residential Tenants located on that floor be relocated, as high levels of mould had been confirmed.<sup>31</sup>

33. On June 5, 2025, after receiving the Fisher Report (defined below) and Pinchin’s response to that report, Varsity, the Receiver and its counsel, Blaney McMurtry LLP (“**Blanneys**”), held a webinar for the Residential Tenants to provide them an update on the mould investigation, and to respond to questions.<sup>32</sup>

34. In order to deal with the Mould Issues, Pinchin recommended the Mould Remediation, among other things, which includes:

the removal of all interior finishes to effectively address hidden mould growth during remediation. A complete removal (“gut”) is strongly preferred over piecemeal abatement due to the high likelihood of more extensive concealed mould and water damage than could be confirmed during our inspection.<sup>33</sup>

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<sup>30</sup> Fourth Report, at para 4.2.19, Appendix “F”, Tenant Notice and FAQ.

<sup>31</sup> Fourth Report, at para 4.2.19, Appendix “F”, Tenant Notice and FAQ.

<sup>32</sup> Fourth Report, at para 4.2.23.

<sup>33</sup> Fourth Report, at para 4.2.15.

35. Pinchin's advice is also that the health and safety concerns would be most acute if the mould is disturbed, which occurs once remediation commences, as spores are likely to become airborne during the remediation process.<sup>34</sup>

36. The Purchaser requested estimates in order to determine the anticipated time and cost to remediate the entire Building.<sup>35</sup>

37. Fisher conducted further testing of certain Residential Units at the Building (one per floor) on an urgent basis, and provided a draft report to the Receiver on May 28, 2025 (the "**Fisher Report**"), pursuant to which it advised that, among other things, based on its limited review, the mould appeared to be localized (though in several localized areas) and may be able to be addressed via localized remediation (as opposed to a "full gut").<sup>36</sup> Fisher also confirmed Pinchin's advice that remediation would disturb the mould and enhance health and safety concerns for the entire Building.

38. The Receiver shared the Fisher Report with the Purchaser and Pinchin (among others). Pinchin disagreed with Fisher's findings that contradicted with Pinchin's, noted that the data in the Fisher Report "often supports the presence of building-wide mould concerns", and that Fisher's findings "ultimately reinforce, rather than dispute, the validity of the observations and recommendations set forth in [the May 9<sup>th</sup> Pinchin Report]", and supported Pinchin's initial conclusions that the Mould Issues were building-wide, and that a full gut was required.<sup>37</sup>

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<sup>34</sup> Fourth Report, at para 4.2.16.

<sup>35</sup> Fourth Report, at para 4.2.17.

<sup>36</sup> Fourth Report, at para 4.2.20.

<sup>37</sup> Fourth Report, at para 4.2.21.

39. The Purchaser advised that it would only proceed based on the recommendations of Pinchin and its other consultants regarding the required “full gut” remediation and repairs to the Building. The Purchaser further advised that it was prepared to proceed with the Transaction subject to an adjustment to the purchase price for the estimated cost of completing the Mould Remediation, and the carrying costs and lost rental income over the expected construction period of 8-12 months.<sup>38</sup>

40. Based on the Purchaser’s requirement that the Building be completely remediated, the Receiver retained a contractor to provide a cost and time estimate for the Mould Remediation. The Receiver compared the proposal for the Mould Remediation it received with the three estimates presented by the Purchaser for the Mould Remediation, each of which was generally consistent related to cost and timing.<sup>39</sup> The cost of the Mould Remediation is expected to be in the tens of millions of dollars.

### **The Sixth Amendment to the APS**

41. The Receiver and the Purchaser negotiated several extensions to the APS, and ultimately a substantive amendment to the APS made as of July 21, 2025 (the “**Sixth Amendment**”), which, among other things, adjusted the purchase price downward for the expense and related losses in revenue resulting from the Mould Remediation and the need for vacant possession, and contemplates a closing with vacant possession by September 1, 2025, to begin the Mould Remediation, as well as the termination of the vast majority of the Residential Leases as a condition to the Purchaser’s obligation to close.<sup>40</sup>

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<sup>38</sup> Fourth Report, at para 4.2.25.

<sup>39</sup> Fourth Report, at para 4.2.24.

<sup>40</sup> Fourth Report, at paras 4.2.26 and 4.2.27.

42. It is also a condition of closing that the Purchaser be satisfied with the status of a shared facilities agreement with the neighbouring building at 105 Champagne Avenue South (including 127 parking spaces in an underground parking lot in that neighbouring building), and the consent to the Transaction from the City of Ottawa (and the satisfaction of any outstanding requirements to obtain such consent), both of which are expected to be addressed on or before August 21, 2025.<sup>41</sup>

### **Summary of the Transaction**

43. The assets being acquired by the Purchaser include, among other things, the Debtor's rights, title and interest in the Real Property, including the Building, equipment warranties, any contracts elected to be assumed by the Purchaser in accordance with the APS (including the Commercial Lease), and certain intellectual property excluding any intellectual property rights related to the "Envie" branding (the "**Purchased Assets**").<sup>42</sup> The Purchased Assets are being sold on an "as is, where is" basis.<sup>43</sup>

44. The Purchaser is not acquiring any asset of the Receiver and the Debtor other than the Purchased Assets.<sup>44</sup>

45. The Purchase Price is to be adjusted on closing for property taxes and other adjustments standard for real estate transactions. The Purchase Price will be satisfied by a combination of a

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<sup>41</sup> Fourth Report, Appendix "G", Redacted APS and Amendments, s. 3, and Confidential Appendix "2", Unredacted APS and Amendments, s.3.

<sup>42</sup> Fourth Report, at para 5.0.1(b), Appendix "G", Redacted APS and Amendments, and Confidential Appendix "2", Unredacted APS and Amendments.

<sup>43</sup> Fourth Report, at para 5.0.1(f), Appendix "G", Redacted APS and Amendments, and Confidential Appendix "2", Unredacted APS and Amendments.

<sup>44</sup> Fourth Report, at para 5.0.1(e), Appendix "G", Redacted APS and Amendments, and Confidential Appendix "2", Unredacted APS and Amendments.

cash payment and the assumption of the Peoples Loan and ACM Loan (in whole or in part), which together total over \$60 million.<sup>45</sup>

46. The Sale Process undertaken by CMLS, which has extensive experience in the student housing sector, appropriately canvassed the market. In the Receiver's view, the terms of the APS are commercially reasonable<sup>46</sup> and the Transaction represents the highest available realization and otherwise best outcome in the circumstances.<sup>47</sup>

47. Peoples and ACM have advised the Receiver that they consent to and support the Court's approval of the Transaction.<sup>48</sup>

48. Absent the Transaction being completed, a further protracted marketing period may be necessary. The ongoing carrying costs, including municipal property taxes, utilities, insurance, the accruing interest on the Peoples Mortgage and ACM Mortgage, and the professional costs will erode the proceeds available for distribution, but with no certainty that a superior transaction could be completed. Furthermore, neither Peoples nor ACM is prepared to fund the costs of a further marketing process or the associated carrying costs, nor are they prepared to fund the costs of the Receiver undertaking the Mould Remediation.<sup>49</sup> Any result other than approval of the Transaction will result in further uncertainty and could very well jeopardize the future of the Building and the ultimate loss of over five hundred student housing beds in the Ottawa market.

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<sup>45</sup> Fourth Report, at para 5.0.1(c).

<sup>46</sup> Fourth Report, at para 5.2.1(a)-(c).

<sup>47</sup> Fourth Report, at para 5.2.1(d)-(f).

<sup>48</sup> Fourth Report, at para 5.2.1(h).

<sup>49</sup> Fourth Report, at para 5.2.1(g).

## Vacant Possession

49. As of September 1, 2025, there will be approximately 225 Residential Leases for the Building.<sup>50</sup>

50. The *RTA* does provide a mechanism for, among other things, notice and compensation to be given to a tenant who has their lease forcibly terminated when possession of their rental unit is required for extensive repairs or renovation (the “**RTA Repair Provisions**”).<sup>51</sup> In those circumstances, the tenant can be entitled to, among other things, at least four months (or 120 days) notice of termination, payment of up to three months' rent, and the right of first refusal to occupy the rental unit once the repairs or renovations are completed.

51. There is insufficient time for the Receiver to terminate the Residential Leases under the *RTA* Repair Provisions having regard to the timeline needed to complete the Mould Remediation so that the Building can be ready for the fall 2026 school year – a critical element that underpins the value and economics of the Transaction. Further, any entitlement of the Residential Tenants to compensation under the *RTA* is an unsecured claim that, in the circumstances of the receivership and the Debtor's insolvency, is not expected to have any recovery. Accordingly, the Receiver seeks the Court's authorization to present the Residential Tenants with the proposed Settlement Agreement to fulfill the vacant possession condition of the APS so the Transaction can close on September 1, 2025, or as soon thereafter as possible.

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<sup>50</sup> Fourth Report, at para 5.1.2.

<sup>51</sup> *Residential Tenancies Act*, 2006, SO 2006, c 17, [s. 20](#), [s. 50](#), [s. 53](#) and [s.54](#).



52. The Receiver seeks authorization to enter into Settlement Agreements with Residential Tenants who are prepared to terminate their Residential Lease on the following terms:<sup>52</sup>

- (a) a monetary inducement to each Residential Tenant in the amount of two months' rent pursuant to the lease terms of that Residential Tenant, payable upon delivery of vacant possession of the Residential Unit, plus:
  - (i) for the Residential Tenants whose lease terms have already commenced, the last month's rent previously paid by the Residential Tenant will be applied to rent payable for August, 2025, but without pro-ration if the Residential Tenant terminates their Residential Lease before August 31, 2025; and,
  - (ii) for the 18 Residential Tenants whose leases begin August 1 or September 1, 2025, the refund of their deposit for last month's rent;
- (b) permission to each Residential Tenant whose Residential Lease term has already commenced, following the execution of the Settlement Agreement, and upon providing vacant possession, to remove and retain any furniture from the Residential Unit that the Residential Tenant had occupied;
- (c) execution of an N11 - Agreement to End the Tenancy form; and
- (d) a release of the Debtor, the Receiver, Varsity, Peoples, ACM, ACM Advisors Ltd., the Purchaser and certain related persons (collectively, the "**Released Parties**"), from any and all liability arising from, among other things, the Residential Leases

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<sup>52</sup> Fourth Report, at para 7.0.2.

and the Transaction, and an agreement to not commence any claims against such parties in relation to the released matters, including any claim seeking any form of relief under the *RTA*.

53. To facilitate and assist the Residential Tenants with their relocation efforts, a list of other buildings with vacancies, along with landlord contact information, was provided to the Residential Tenants in the notice included with the Settlement Agreement delivered to the Residential Tenants.<sup>53</sup>

54. To fund the Settlement Agreements, the Receiver seeks an amendment of the Receivership Order to increase the amount the Receiver is authorized to borrow in respect of the Debtor from \$500,000 to \$650,000.

55. For those who choose not to sign Settlement Agreements (which number cannot exceed the cap in the APS), the Receiver seeks an Order requiring them to vacate their Residential Units so that the Mould Remediation can commence as soon as possible following closing of the Transaction.

56. The Receiver also requires a mechanism to enforce obtaining vacant possession of these Residential Units. Accordingly, the Receiver recommends that an Order be made granting it, as of September 1, 2025, leave to issue a Writ of Possession in respect of the Residential Unit of any Residential Tenant who has not entered into a Settlement Agreement with the Receiver by August 15, 2025. As well, the Receiver seeks leave to issue a Writ of Possession in respect of any Residential Unit which is not vacant as of September 1, 2025, regardless of whether or not a

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<sup>53</sup> Fourth Report, at para 7.0.4.

Settlement Agreement has been entered into with a Residential Tenant for that Residential Unit, and also in respect of any remaining areas in the Building that are not vacant as of September 1, 2025, save and except for the Commercial Unit.<sup>54</sup>

57. Given the tight timelines at issue, the Receiver further requests an Order that within three (3) business days of the Receiver delivering to the Local Registrar of the City of Ottawa a Requisition directed to the Sheriff for the City of Ottawa (the “**Sheriff**”) for issuance of a Writ of Possession in respect of one or more Residential Units in furtherance of the Order, the Registrar shall issue the requested Writ of Possession, and that within five (5) business days of the Receiver delivering to the Sheriff an issued Writ of Possession in respect of one or more Residential Units in furtherance of the Order, the Sheriff will enforce the issued Writ of Possession.

### **Registered Security**

58. Peoples is the principal secured creditor of the Debtor pursuant to a loan agreement dated October 24, 2017 (the “**Peoples Loan**”). The Peoples Loan is secured by a first-ranking mortgage over the Real Property (the “**Peoples Mortgage**”).<sup>55</sup> As of June 1, 2025, the amount owing under the Peoples Loan was approximately \$50.2 million, exclusive of legal costs, and with interest and costs continuing to accrue.<sup>56</sup>

59. ACM is the second-ranking secured creditor of the Debtor pursuant to a loan agreement dated November 24, 2017 (the “**ACM Loan**”). The ACM Loan is secured by a second-ranking mortgage over the Real Property (the “**ACM Mortgage**”).<sup>57</sup> As of June 1, 2025, the amount owing

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<sup>54</sup> Fourth Report, at para 7.0.6.

<sup>55</sup> Fourth Report, at para 2.0.6.

<sup>56</sup> Fourth Report, at para 2.0.6.

<sup>57</sup> Fourth Report, at para 2.0.7.

under the ACM Loan is approximately \$12.6 million, with interest and costs continuing to accrue.<sup>58</sup>

60. The Debtor is also subject to a claim from the CRA for outstanding HST (the “**CRA Claim**”). The CRA Claim relates to a reassessment by the CRA in 2019 when construction of Envie I Little Italy was completed. The Debtor filed a Notice of Appeal in 2020, objecting to the CRA’s reassessment, with the matter now pending before the Tax Court of Canada.<sup>59</sup>

### **Proposed Distribution**

61. The Receiver recommends that the Court issue an Order authorizing and directing the Receiver to make one or more distributions from the net proceeds of sale of the Transaction, or other property available for distribution, to the first mortgagee Peoples and the second mortgagee ACM as per paragraph 2 of the draft Distribution and Ancillary Relief Order attached as Tab 4 of the Receiver’s Motion Record (the “**Net Proceeds Distribution**”).<sup>60</sup> Although it is contemplated most of the balance of those mortgages will be assumed by the Purchaser, some amounts owing to Peoples (principal and interest arrears and legal expenses) are to be paid in cash from Transaction proceeds. Further, it is possible that the entire amount of the ACM loan may not be assumed, with the result that ACM may have an outstanding secured claim for the balance owing to it, to be satisfied from any other property available for distribution.

62. No distribution will be made to unsecured creditors.<sup>61</sup>

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<sup>58</sup> Fourt Report, at para 2.0.7.

<sup>59</sup> Fourt Report, at para 2.0.8.

<sup>60</sup> Motion record of the Receiver dated July 23, 2025, Tab 4, Draft Ancillary Relief Order.

<sup>61</sup> Fourth Report, at para 8.1.1.

63. The Receiver has obtained an independent opinion from its counsel, Blaneys, with respect to the validity and enforceability of the Peoples' and ACM's security over the Debtor. This opinion confirms that, subject to standard assumptions and qualifications, Peoples' and ACM's security constitute valid and enforceable charges against the Debtor.<sup>62</sup>

64. Other than the Receiver's Charge and the Receiver's Borrowing Charge (as defined in the Receivership Order), the only other potential priority charge against the Real Property is the CRA Claim.

### **Proposed Bankruptcy of the Debtor**

65. The CRA Claim is disputed by the Debtor.<sup>63</sup>

66. The Receiver refers to the CRA Claim as being a "potential" priority charge, as the CCAA Proceedings preceded the Receivership Order. CRA's claims for sales taxes are unsecured in a CCAA proceeding. The Receiver is of the view that the claim would remain unsecured in a subsequent receivership.<sup>64</sup>

67. For the avoidance of any doubt, the Receiver proposes to assign the Debtor into bankruptcy to reverse the priority of the CRA Claim, if it exists, and for KSV or another Licensed Insolvency Trustee, to administer the bankruptcy as Trustee.<sup>65</sup>

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<sup>62</sup> Fourth Report, at para 8.0.3.

<sup>63</sup> Fourth Report, at para 9.0.1.

<sup>64</sup> Fourth Report, at para 9.0.2.

<sup>65</sup> Fourth Report, at para 9.0.2.

### **PART III – ISSUES**

68. The issues on this motion are whether the Court should:

- (a) approve the Transaction;
- (b) approve the Settlement Agreements and authorize the Receiver to enter into the Settlement Agreements with Residential Tenants who choose to voluntarily terminate their Residential Leases on the terms set out in the Settlement Agreements;
- (c) grant vacant possession of the Building to the Receiver (save for the Commercial Unit), including in respect of the Residential Units where the Residential Tenant does not enter into a Settlement Agreement, and grant leave to the Receiver to enforce the Order for vacant possession;
- (d) vest the Residential Leases out pursuant to the Approval and Vesting Order;
- (e) grant a stay of any proceedings before the LTB for any matters commenced by any of the current or former Residential Tenants or any other current and former occupants of the Real Property against the Debtor, the Receiver, Varsity, the Purchaser, Peoples, ACM and certain related persons;
- (f) authorize the Receiver to disclaim contracts entered into between the Debtor and its vendors and suppliers that are not being assumed by the Purchaser;

- (g) seal the reporting letter of CMLS Realty Ltd. attached as Confidential Appendix “1”, and the unredacted APS (and related amendments) attached as Confidential Appendix “2”, respectively, to the Fourth Report;
- (h) authorize the Receiver, upon completion of the Transaction, to make the Net Proceeds Distribution in relation to the balance owing on the Peoples Mortgage and ACM Mortgage, respectively, for any amounts not assumed by the Purchaser;
- (i) authorize the Receiver to assign the Debtor, or cause the Debtor to be assigned, into bankruptcy pursuant to the *Bankruptcy and Insolvency Act*;
- (j) amend the Receivership Order by increasing the Receiver’s borrowing limit from \$500,000 to \$650,000, and *nunc pro tunc* correct a typographical error in the one reference to the Debtor in the first preamble of the Receivership Order, from “2195132 Ontario Inc.” to “2195186 Ontario Inc.”

## **PART IV – LAW AND ARGUMENT**

### **A. The Approval and Vesting Order Should be Granted**

69. The purpose of a receivership under Section 243 of the *BIA* is to “enhance and facilitate the preservation and realization of the assets for the benefit of creditors”. This purpose is generally achieved through the liquidation of the debtors’ assets.<sup>66</sup> In *Royal Bank v. Soundair*, the Court of

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<sup>66</sup> *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) (Ont. CA) at [para. 73](#)

Appeal stated that the following factors must be considered when considering the approval of a proposed sale:<sup>67</sup>

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the efficacy and integrity of the process by which offers are obtained;
- (c) whether there has been unfairness in the working out of the process; and,
- (d) the interests of all parties.

70. The Sale Process had commenced in November 2024 prior to the appointment of the Receiver (initially in its capacity as Interim Receiver in December 2024), with marketing already being carried out by CMLS, and the Purchaser having already submitted the LOI at the time of the Interim Receivership Order. The Receiver reviewed the Sale Process and is satisfied that the Sale Process conducted by CMLS was a comprehensive and fair process that thoroughly canvassed the market of potential buyers of the Building.

71. Courts have frequently approved transactions that were the product of a pre-filing marketing process conducted by a party other than a receiver, so long as it was fair and reasonable, and where the court was of the view that no purpose would be served by a further marketing process.<sup>68</sup> However, even in such circumstances, the *Soundair* principles remain applicable to the approval of the transaction and the efficacy of the sales process undertaken.<sup>69</sup>

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<sup>67</sup> *Royal Bank of Canada v. Soundair Corp.* (“*Soundair*”), [1991 CanLII 2727 \(Ont CA\)](#), at para. 16.

<sup>68</sup> *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, [2023 ONSC 5911](#) at para 48

<sup>69</sup> *Elleway Acquisitions Limited v. 4358376 Canada Inc.*, [2013 ONSC 7009](#), at paras 33-34



72. Each of the *Soundair* factors is satisfied in respect of the Sale Process:

- (a) **Fairness, Transparency and Integrity:** The Sale Process was conducted in a fair and transparent manner that maintained the appropriate levels of integrity. All potential purchasers were treated fairly and equally, with interested parties being provided financial and other information to engage in due diligence, and with such interested parties being granted access to the Confidential Information Memorandum and the Virtual Data Room upon signing of an NDA, and an opportunity to submit an LOI;<sup>70</sup>
- (b) **Commercial Efficacy:** The Sale Process was conducted by CMLS, which has extensive experience selling student residents in and around the Ottawa area, including a previous sale in October 2024 of another student residence on behalf of the Ashcroft Group of Companies.<sup>71</sup> CMLS canvassed a significant number of prospective purchasers during the Sale Process, with interested parties able to perform due diligence, facilitated by CMLS. Other than the LOI from the Purchaser, no other offers for Envie I were submitted.<sup>72</sup>
- (c) **Process Designed to Obtain Best Possible Price:** the market was widely canvassed, with 114 potential purchasers receiving the Teaser.<sup>73</sup> The Transaction is the result of the only offer received, and provides the highest (and only current) available realization for the Debtor's stakeholders.<sup>74</sup> The LOI and APS were

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<sup>70</sup> Fourth Report, at paras 4.0.2. and 4.1.1.

<sup>71</sup> Fourth Report, at paras 4.0.2.

<sup>72</sup> Fourth Report, at para 4.1.5.

<sup>73</sup> Fourth Report, at para 4.0.1(c).

<sup>74</sup> Fourth Report, at para 5.2.1(d)

heavily negotiated between the Purchaser and the Receiver in consultation with the mortgagees.

73. The first mortgagee, Peoples, and the second mortgagee and fulcrum creditor, ACM, both support the Transaction, including the terms of the APS requiring the Purchaser's assumption of the Peoples Mortgage and the ACM Mortgage.

74. The commercial decisions of a receiver regarding a sale process are afforded broad deference by the courts. The business judgment of a receiver is accepted by the Court absent exceptional circumstances.<sup>75</sup> Where a receiver has acted reasonably, prudently and not arbitrarily, the Court should not sit in appeal from the receiver's decision by conducting a detailed review of every element of the procedure by which a receiver's decision was made.<sup>76</sup>

75. The Receiver submits that the Transaction should be approved for the reasons outlined above. The Sale Process was carried out fairly, transparently and with all due integrity and efficacy, and was a commercially reasonable process which obtained the highest recovery available in the circumstances.

## **B. The Settlement Agreements Should be Authorized and Approved**

76. Under the RTA, a notice of termination is not required where the landlord and a tenant have agreed to terminate a tenancy.<sup>77</sup>

37 (3) A notice of termination need not be given if a landlord and a tenant have agreed to terminate a tenancy.

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<sup>75</sup> *Soundair*, at [para 21](#) and [58](#).

<sup>76</sup> *Bank of Montreal v. Dedicated National Pharmacies Inc. et al*, [2011 ONSC 4634](#) (Ont. S.C.J. - Commercial List), at [para 43](#).

<sup>77</sup> *RTA*, [s.37\(3\)](#).

77. Pursuant to paragraph 6(c) of the Receivership Order, the Receiver is empowered to enter into any agreements on behalf of the Debtor.<sup>78</sup> As set out above at paragraphs 51 to 53, the Settlement Agreement reasonably compensates the Residential Tenants for the termination of their Residential Leases in the circumstances of the receivership and specifically the Mould Issues, and the Receiver recommends that it be authorized to enter into the Settlement Agreements with Residential Tenants.

78. The Mould Issues are a serious health and safety concern for the Residential Tenants. The status quo with respect to the Mould Issues is not an option.

79. Section 20 of the *RTA* requires a landlord to maintain a residential complex in a state fit for habitation, and requires compliance with health and safety standards, among other things.<sup>79</sup>

20 (1) A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.

(2) Subsection (1) applies even if the tenant was aware of a state of non-repair or a contravention of a standard before entering into the tenancy agreement.

80. Based on section 20 of the *RTA*, there is a positive obligation to remediate the Mould Issues. Because the Mould Remediation requires the Building to be vacant, it is submitted this positive obligation extends to obtaining vacant possession of the Building so the Mould Remediation can commence.

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<sup>78</sup> Fourth Report, Appenidx “A”, Receivership Order, at para 6(c).

<sup>79</sup> *RTA*, [s.20](#).

81. The only option to address the Mould Issues is the Mould Remediation process that will be undertaken by the Purchaser, but this requires *all* Residential Units to be vacated, as the spores that will be released during remediation will pose a significant health risk to occupants (as advised by Pinchin and Fisher), in potential contravention of section 20 of the *RTA*.

82. While the *RTA* provides for a mechanism to terminate tenancies and obtain vacant possession of units to perform extensive repairs or renovations (that is, the *RTA* Repair Provisions), there is no provision in the *RTA* that addresses extensive repairs or renovations urgently required to address health and safety issues. Further, as described previously, the *RTA* Repair Provisions are not an option available to the Receiver to obtain vacant possession in the context of the proposed Transaction that will maximize value for stakeholders. As described in more detail in paragraphs 86 to 89, 93 and 94 below, the Receiver submits the Court has the inherent jurisdiction to fill the legislative gap in relation to the Receiver obtaining vacant possession to facilitate extensive repairs or renovations urgently required to address health and safety issues.

### **C. Vacant Possession Should be Ordered and the Writs of Possession Should be Authorized**

83. Courts have previously granted vacant possession to receivers of residential premises where vacant possession was necessary to fulfil the receiver's mandate to sell a property, albeit in circumstances where the occupant of the property did not appear to be a tenant within the meaning of the *RTA*.<sup>80</sup>

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<sup>80</sup> *KingSett Mortgage Corporation v 30 Roe Investments Corp.*, [2023 ONSC 3323](#), at [paras. 22-59](#). See also the [Order \(Writ of Possession\)](#) of Justice Steele dated May 5, 2025 in *Bank of Montreal et al. v. 1000000152 Ontario Inc. et al.* (Court File No. CV-24-00727540-00CL).

84. Pursuant to section 39 of the *RTA*, unless a tenant has vacated or abandoned the rental unit, for a landlord to “recover possession” of rental unit, an Order of the LTB “evicting” the tenant to obtain possession is required:<sup>81</sup>

39 A landlord shall not recover possession of a rental unit subject to a tenancy unless,

- (a) the tenant has vacated or abandoned the unit; or
- (b) an order of the Board evicting the tenant has authorized the possession.

85. The Court of Appeal for Ontario has interpreted this section to mean that only the LTB may make an order “terminating a tenancy and evicting a tenant” (although that decision was not made in the context of an insolvency proceeding where a Court was exercising its broad jurisdiction under the BIA, a federal statute).<sup>82</sup>

86. However, as set above at paragraphs 14 and 15, the Court has very broad jurisdiction under section 243(1)(c) of the BIA, whose wording the Supreme Court has referred to as “very expansive”, and which has been interpreted as giving judges “the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise” in the context of a Court-ordered receivership.<sup>83</sup> This broad jurisdiction permits the Court “to do not only what ‘justice dictates’ but also what ‘practicality demands’”.<sup>84</sup>

87. In the current context, the Receiver seeks vacant possession of the Residential Units of any non-settling Residential Tenants so that the Transaction can proceed and the Mould Remediation

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<sup>81</sup> *RTA*, s. 39.

<sup>82</sup> *Fraser v. Beach*, 2005 CanLII 14309 (ON CA), at para 15.

<sup>83</sup> *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41 [Peace River] at para 148, citing *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, 2021 ABCA 226 [Third Eye] at para 20.

<sup>84</sup> *Canada (Minister of Indian Affairs and Northern Development) v Curragh Inc*, 1994 CanLII 7468, 114 D.L.R. (4th) 176 (Ont Ct J (GD)) at para 16.

can be completed safely and promptly, on the basis that the Court has inherent jurisdiction to address the functional gap between the BIA and the *RTA* in relation to obtaining vacant possession of units to facilitate the extensive remediation urgently required to address health and safety issues. The Court's inherent jurisdiction is often invoked in insolvency proceedings and may be applied to matters where the Court is satisfied that a functional gap exists within a certain statute.<sup>85</sup> The inherent jurisdiction gives the Court broad powers to take action when necessary to make a legislative scheme operable in light of a functional gap.<sup>86</sup>

88. There are two preconditions for the Court exercising its inherent jurisdictions: (a) the BIA must be silent on a point or not have dealt with a matter exhaustively; and (b) after balancing competing interests, the benefit of granting the relief must outweigh the relative prejudice to those affected by it.<sup>87</sup>

89. The functional gap undoubtedly exists in the case at bar because the receiver is unable to comply with Section 20 of the *RTA* and the BIA provides no guidance in this regard.

90. The benefits of granting vacant possession also outweigh the prejudice:

- (a) the Mould Issues create health and safety risks for the Residential Tenants who may have no ability to recover for any harm caused to them from staying in the Building because Envie I is insolvent;

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<sup>85</sup> *Re Portus Alternative Asset Management Inc.* (2007), [2007 CanLII 44814 \(ON SC\)](#) at [para 22](#) [*Portus Alternative*].

<sup>86</sup> *Portus Alternative* at [paras 23, 25](#) and [39](#).

<sup>87</sup> *Re Residential Warranty Co. of Canada Inc.*, [2006 ABQB 236](#), at [para 26](#); *aff'd* [2006 ABCA 293](#); *Portus Alternative* at [paras 21-23](#).

- (b) vacant possession is necessary to complete the Mould Remediation, and it is required at this time for the Mould Remediation to be completed in time for occupancy by the fall 2026 school year;
- (c) the Settlement Agreements offer the Residential Tenants fair and reasonable compensation to voluntarily terminate their leases and vacate their units, where otherwise there would be no value available to them as unsecured creditors;
- (d) vacant possession is a condition to complete the Transaction and there is no alternative transaction available; and
- (e) if vacant possession is not obtained, there is the prospect of significant losses for one or both of the mortgagees with no path to an alternative transaction.

91. Pursuant to Rule 60.03, an order for the delivery of the possession of land, such as an order for vacant possession, may be enforced by a Writ of Possession,<sup>88</sup> which can be ordered to be issued within the context of a motion for an approval and vesting order.<sup>89</sup>

92. The purpose of a writ of possession is to direct the Sheriff to enforce an order that, separately from the writ itself, has determined the right of possession.<sup>90</sup>

93. Accordingly, upon providing an order for vacant possession of the Real Property, the Court should also grant the Receiver leave to issue a Writ of Possession. To facilitate the Receiver obtaining vacant possession of the Building, it requests that the Court direct the Local Registrar to issue a Writ of Possession within three (3) business days of the Receiver delivering to the Local Registrar of the City of Ottawa a Requisition directed to the Sheriff for the City of Ottawa (the

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<sup>88</sup> *Rules of Civil Procedure*, [R.R.O. 1990, Reg. 194](#), r. 60.03.

<sup>89</sup> *KingSett Mortgage Corporation v 30 Roe Investments Corp.*, [2023 ONSC 3323](#), at [paras 54 – 64](#).

<sup>90</sup> *Gauthier v. White*, [2019 ONSC 7336](#), at [para 16](#).

“**Sheriff**”) for issuance of a Writ of Possession in respect of one or more Residential Units in furtherance of the Order, and direct the Sheriff to enforce the Writ of Possession within five (5) business days of the Receiver delivering to the Sheriff an issued Writ of Possession in respect of one or more Residential Units in furtherance of the Order.

**D. The Residential Leases Should be Vested Out**

94. The Court of Appeal has opined that in considering the vesting out of interests in real property, the Court should follow a cascade analysis that assesses:

- (a) the nature of the interest in the land, including whether it is more akin to a fee simple that is in substance an ownership interest, or whether the interest is more akin to a fixed monetary interest;
- (b) whether the interest holder has consented to the vesting out of their interest; and
- (c) if these factors prove to be ambiguous or inconclusive, the Court should engage in a consideration of the equities to determine if a vesting order is appropriate in the circumstances of the case.<sup>91</sup>

95. In the present case, it is appropriate to vest out the Residential Leases:

- (a) the Residential Leases are short term (one year, or month to month) leases of student housing, not fee simple interests or long term leases of family residences. In a number of cases, the tenants have yet to occupy their unit. None of the leases are registered on title to the Building. While the Residential Leases are not mere

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<sup>91</sup> *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at [paras 102 – 110](#).



monetary interests, they do not rise to an ownership interest in property of the type that Courts have cautioned against vesting out. In the non-residential context, Courts have vested out leasehold interests in real property to facilitate sale transactions by receivers.<sup>92</sup>

- (b) the Receiver will seek the tenants' consent to the termination of their Residential Leases pursuant to the Settlement Agreement. For those that consent, there is no question that the Residential Leases are appropriately vested out. For those that do not consent, the Receiver submits that it is still appropriate to vest out their Residential Leases as it is a condition to closing of the Transaction.
- (c) for the reasons discussed above at paragraphs 16 to 19, consideration of the equities also supports vesting out the Residential Leases. The parties originally intended to complete the Transaction with all tenants in place. The discovery of the Mould Issues and the need to undertake the Mould Remediation necessitated a change in this approach, both to address health and safety issues (including a means of completing the remediation) and to facilitate a viable and value maximizing Transaction for the benefit of stakeholders. When the remediation is complete, the Building will be re-opened for its current use as student housing.

#### **E. Stay of Proceedings Before the Landlord Tenant Board**

96. The Receiver seeks a stay of any proceedings that have been, or may be, brought before the LTB, by any Residential Tenant or other current or former occupant of the Building against

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<sup>92</sup> See *Romspen Investment Corp. v Woods Property Development Inc.*, [2011 ONSC 3648](#), rev'd on other grounds [2011 ONCA 817](#); *Meridian Credit Union Ltd. v 984 Bay Street Inc.*, [2006 CanLII 26476](#) and *Business Development Bank of Canada v Blugo Enterprise Inc.*, [2022 ONSC 5108](#).

the Receiver, the Debtor, the Purchaser, Varsity, Peoples, ACM and certain related parties, except with leave of the Court.

97. This specific stay relief is necessary to prevent proceedings being commenced before the LTB that may seek to collaterally attack the Approval and Vesting Order (should this Court grant it). Insolvency courts routinely stay proceedings before tribunals and receivership courts have extended stay relief to third parties as necessary to facilitate the objectives of a receivership.<sup>93</sup> The Court will maintain supervisory jurisdiction to consider any request to lift the stay in the future.

#### **F. The Court Should Authorize and Direct the Receiver to Terminate and Disclaim the Vendor and Supplier Contracts**

98. The Receiver seeks authorization to disclaim any contracts of vendors or suppliers of the Debtor. The Receivership Order authorize the Receiver to cease to perform and to disclaim any contracts of the Debtors. Further, caselaw supports the ability of a Receiver to disclaim a contract with third parties.<sup>94</sup>

#### **G. The Sealing Order Should be Granted**

99. Pursuant to s. 137(2) of the *Courts of Justice Act*, R.S.O. c. C.43, the Receiver requests that the CMLS Report and the unredacted APS, being Confidential Appendix “1” and “2” to the Fourth Report, be temporarily treated as confidential and sealed, and not form part of the public record, pending the closing of the Transaction.<sup>95</sup>

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<sup>93</sup> *KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al.*, [2023 ONSC 5881 \(Ont. S.C.J. - Commercial List\)](#), at [paras 61-64](#).

<sup>94</sup> *Romspen Investment Corporation v Horseshoe Valley Lands Ltd.*, [2017 ONSC 426](#) (Ont. S.C.J. - Commercial List), at [para 31](#).

<sup>95</sup> Fourth Report, at paras 6.0.1 – 6.0.3.

100. The test for a sealing order was established by the Supreme Court in *Sierra Club*, and subsequently recast in *Sherman Estate*. The test requires the court to consider whether:<sup>96</sup>

- (a) Court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identifiable interest because reasonable alternative measures will not prevent this risk; and,
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

101. Each of these considerations support the proposed sealing order:

- (a) **Public Interest:** The maximization of recovery in insolvency has been found to constitute an important public interest for the purpose of obtaining a sealing order. The granting of a sealing order in respect of commercially sensitive information is therefore “standard practice” in insolvency proceedings,<sup>97</sup> and courts have approved sealing orders where they are required to protect commercially sensitive information, including the ultimate purchase price.<sup>98</sup> As the publication of the offers purchase price in the APS could adversely impact the future marketability of Envie I should the Transaction not close, the sealing of this information is necessary to ensure that recoveries in these receivership proceedings are maximized.
- (b) **Lack of a Reasonable Alternative:** Courts in insolvency proceedings have found that there is no reasonable alternative to a sealing order in circumstances where

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<sup>96</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#), at [para. 38](#).

<sup>97</sup> *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2](#) (YT. S.C.), at [para. 39](#).

<sup>98</sup> *Danier Leather Inc., Re*, [2016 ONSC 1044](#) (Ont. S.C.J. – Commercial List), at [para. 84](#); *Elleway Acquisitions Limited v. 4358376 Canada Inc. (“Elleway Acquisitions”)*, [2013 ONSC 7009](#) (Ont. S.C.J. - Commercial List), at [para 48](#).

declining to grant the proposed order would materially impair the maximization of asset value for the benefit of stakeholders.<sup>99</sup> In the present case, there are no reasonable alternatives to a sealing order which would prevent the risks to the stakeholders outlined above.

- (c) **Proportionality:** The benefits of the proposed sealing order greatly exceed any disadvantages. No party will be prejudiced by the temporary sealing of the commercially sensitive information, and no public interest will be served, if it is made public prior to closing, prejudicing stakeholder recoveries in the process.<sup>100</sup>

## H. The Distribution Order Should be Granted

102. If the Transaction is approved by the Court, the Receiver seeks authorization and direction to distribute proceeds in the following order of priority: (a) first, to Peoples, in the amount the amount required to satisfy any amounts in respect of legal fees and costs of Peoples and Canada Mortgage and Housing Corporation and any outstanding principal, interest or other amounts owing under the Peoples mortgage, not satisfied through the assumption of the Peoples mortgage, (b) second, to repay any amounts owing in respect of the borrowings under the Receiver's Borrowing Charge (as defined in the Receivership Order), (c) third, to pay any amounts outstanding under the Receiver's Charge (as defined in the Interim Receivership Order in this proceeding, and Receivership Order), (d) fourth, to repay Priority Payables as defined in the APS, and (e), fifth, to

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<sup>99</sup> *Original Traders Energy Ltd. (Re)*, (“*Original Traders*”), [2023 ONSC 753](#) (Ont. S.C.J. - Commercial List), at [paras. 60-62](#).

<sup>100</sup> See *Elleway Acquisitions*, at [para. 48](#), in which the court held that the beneficial effects of maximizing recoveries in insolvency greatly outweigh any deleterious effects which could result for sealing an APA pending a transaction closing.

ACM, up to up to the amount required to satisfy any balance owing under the ACM Mortgage not satisfied directly by the Purchaser through the assumption of the ACM Mortgage.

103. Courts commonly grant distribution orders as part of sale approvals in a receivership.<sup>101</sup> In *AbitibiBowater*, the court approved the distribution of proceeds from sale proceeds from a CCAA sale process on amongst other grounds: (i) the distributions were made in accordance with a valid and enforceable security interest; and (ii) the distributions would leave the debtor with sufficient liquidity.<sup>102</sup>

104. The proposed Distribution complies with the *AbitibiBowater* criteria. The Peoples mortgage ranks first in priority to any other charge on the Real Property, and the ACM mortgage ranks second. Based on the security opinions provided by Blaneys, it is the Receiver's opinion that both Peoples and ACM have a valid and enforceable charge.

105. Finally, the Transaction is structured to ensure that the Receiver retains sufficient liquidity. The proposed distributions account for various expenses, including property taxes and utilities, and a portion of the proceeds will be retained by the Receiver in order to pay closing costs (such as broker commissions) and the costs of these proceedings (including the fees and costs of the Receiver and its counsel).

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<sup>101</sup> See, i.e., *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, [2014 ONSC 1173](#) (Ont. S.C.J. – Commercial List) at [para. 53](#); *Dorr Capital Corporation v. Highview Building Corp Inc.*, (September 29, 2023) Ont. S.C.J. [Commercial List] Court File No. CV-23-00698632-00CL ([Endorsement of Justice Conway](#)) at para. 4; *Farm Credit Canada v. Whyte's Foods Inc./Les Ailments et. al.*, (November 6, 2023) Ont. S.C.J. [Commercial List] Court File No. CV-23-00707205-00CL ([Endorsement of Justice Steele](#)) at paras. 19-21.

<sup>102</sup> *AbitibiBowater inc.* ("*AbitibiBowater*"), [2009 QCCS 6461](#) (Que. S.C.) at [para. 75](#).

## **I. The Receiver Should be Authorized to Assign the Debtor into Bankruptcy**

106. The Receiver seeks the authorization and direction of the Court to assign the Debtor into bankruptcy. This relief is not extraordinary, with the Ontario Superior Court of Justice confirming that it has the authority to empower a Receiver to file an assignment into bankruptcy on behalf of a debtor company.<sup>103</sup>

107. In granting such authority to receivers, the Court should consider the specific facts of the case to understand whether bankruptcy might be a preferable condition.<sup>104</sup>

108. The Court of Appeal has held that a bankruptcy order may be sought with the express purpose of affecting priorities.<sup>105</sup> Courts have approved of a receiver seeking the authority to assign a debtor into bankruptcy in order to reverse the priorities associated with unremitted HST on a motion for an approval and vesting order.<sup>106</sup>

109. In light of the CRA Claim, as detailed above and in the Fourth Report, it is appropriate for the Court to amend the Receivership Order to grant the Receiver the power and authority to assign the Debtor into bankruptcy for the benefit of the Debtor's stakeholders.

## **J. Amendments to the Receivership Order**

110. The Receiver seeks to amend the Receivership Order by (a) increasing the amount the Receiver is authorized to borrow from \$500,000 to \$650,000, and (b) amending, *nunc pro tunc*, a

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<sup>103</sup> *RBC v. Gustin*, [2019 ONSC 5370](#), at [para 15](#); *Bank of Montreal v. Owen Sound Golf and Country Club*, [2012 ONSC 557](#), at [para 7](#).

<sup>104</sup> *Royal Bank v. Sun Squeeze Juices Inc.*, [1994 CarswellOnt 266](#), [1994] O.J. No. 567 (Gen. Div. [CommercialList]) [Westlaw], aff'd [1994 CanLII 8771 \(ONCA\)](#), at para. 11

<sup>105</sup> *Grant Forest Products Inc. v. Toronto-Dominion Bank*, [2015 ONCA 570](#), at [para 118](#).

<sup>106</sup> *American General Life Insurance Company et al. v. Victoria Avenue North Holdings Inc.*, [2023 ONSC 3322](#) (Ont. S.C.J. - Commercial List), at [paras 10-20](#).

typographical error in the one reference to the Debtor in the first preamble of the Receivership Order, from “2195132 Ontario Inc.” to “2195186 Ontario Inc.”

111. The increase in the amount the Receiver is entitled to borrow is necessary to allow the Receiver to borrow funds from Peoples in order to effect the terms of the Settlement Agreement. Without such an increase, the Receiver will be unable to pay the monetary compensation called for under the Settlement Agreement to the Residential Tenants who enter into that agreement. Accordingly, the borrowing limit increase is necessary to effect the terms of the Settlement Agreement and, ultimately, to secure vacant possession of the Real Property.

112. The amendment to the preamble of the Receivership Order is *de minimis* in nature, and simply to correct a single instance of the Debtor being misnamed in the Receivership Order.

113. Neither of the above noted amendments would prejudice any party herein, and are not objected to by any party to these proceedings.

#### **PART V – ORDER REQUESTED**

114. For the reasons set out above, the Receiver requests that this Court grant the relief sought in paragraphs 1 through 20 of the Receiver’s Notice of Motion dated July 23, 2025.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 29<sup>th</sup> day of July, 2025.



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Lawyers for KSV Restructuring Inc. in its  
capacity as Court-appointed Receiver

**SCHEDULE “A”**  
**LIST OF AUTHORITIES**

1. *Fraser v. Beach*, [2005 CanLII 14309 \(ON CA\)](#)
2. *Peace River Hydro Partners v Petrowest Corp.*, [2022 SCC 41](#)
3. *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, [2021 ABCA 226](#)
4. *Canada (Minister of Indian Affairs and Northern Development) v Curragh Inc.*, [1994 CanLII 7468, 114 D.L.R. \(4th\) 176 \(Ont Ct J \(GD\)\)](#)
5. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) (Ont. CA)
6. *Royal Bank of Canada v. Soundair Corp.* (“**Soundair**”), [1991 CanLII 2727 \(Ont CA\)](#)
7. *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, [2023 ONSC 5911](#)
8. *Elleway Acquisitions Limited v. 4358376 Canada Inc.*, [2013 ONSC 7009](#)
9. *Bank of Montreal v. Dedicated National Pharmacies Inc. et al.*, [2011 ONSC 4634](#) (Ont. S.C.J. - Commercial List)
10. *Portus Alternative Asset Management Inc. (Re)*, [2007 CanLII 44814 \(ON SC\)](#)
11. *Re Residential Warranty Co. of Canada Inc.*, [2006 ABQB 236](#)
12. *KingSett Mortgage Corporation v 30 Roe Investments Corp.*, [2023 ONSC 3323](#)
13. *Gauthier v. White*, [2019 ONSC 7336](#)
14. *Romspen Investment Corp. v Woods Property Development Inc.*, [2011 ONSC 3648](#)
15. *Meridian Credit Union Ltd. v 984 Bay Street Inc.*, [2006 CanLII 26476](#)
16. *Business Development Bank of Canada v Blugo Enterprise Inc.*, [2022 ONSC 5108](#)
17. *KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al.*, [2023 ONSC 5881 \(Ont. S.C.J. - Commercial List\)](#)
18. *Romspen Investment Corporation v Horseshoe Valley Lands Ltd.*, [2017 ONSC 426 \(Ont. S.C.J. - Commercial List\)](#)
19. *Sherman Estate v. Donovan*, [2021 SCC 25](#)



20. *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2 \(YT. S.C.\)](#)
21. *Danier Leather Inc., Re*, [2016 ONSC 1044 \(Ont. S.C.J. – Commercial List\)](#)
22. *Elleway Acquisitions Limited v. 4358376 Canada Inc.* (“*Elleway Acquisitions*”), [2013 ONSC 7009 \(Ont. S.C.J. - Commercial List\)](#)
23. *Original Traders Energy Ltd. (Re)*, (“*Original Traders*”), [2023 ONSC 753 \(Ont. S.C.J. - Commercial List\)](#)
24. *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, [2014 ONSC 1173 \(Ont. S.C.J. – Commercial List\)](#)
25. *Dorr Capital Corporation v. Highview Building Corp Inc.*, (September 29, 2023) Ont. S.C.J. [Commercial List] Court File No. CV-23-00698632-00CL ([Endorsement of Justice Conway](#))
26. *Farm Credit Canada v. Whyte’s Foods Inc./Les Ailments et. al.*, (November 6, 2023) Ont. S.C.J. [Commercial List] Court File No. CV-23-00707205-00CL ([Endorsement of Justice Steele](#))
27. *AbitibiBowater inc.* (“*AbitibiBowater*”), [2009 QCCS 6461](#) (Que. S.C.)
28. *RBC v. Gustin*, [2019 ONSC 5370](#)
29. *Bank of Montreal v. Owen Sound Golf and Country Club*, [2012 ONSC 557](#)
30. *Royal Bank v. Sun Squeeze Juices Inc.*, [1994 CarswellOnt 266](#), [1994] O.J. No. 567 (Gen. Div. [Commercial List]) [Westlaw]
31. *Grant Forest Products Inc. v. Toronto-Dominion Bank*, [2015 ONCA 570](#)
32. *American General Life Insurance Company et al. v. Victoria Avenue North Holdings Inc.*, [2023 ONSC 3322 \(Ont. S.C.J. - Commercial List\)](#)

I certify that I am satisfied as to the authenticity of every authority.

Dated: July 29, 2025



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**Eric Golden**  
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capacity as Court-appointed Receiver

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS, AND BY-LAWS**

#### ***BANKRUPTCY AND INSOLVENCY ACT***

R.S.C., 1985, c. B-3, as amended

#### **Court may appoint receiver**

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

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

#### **Restriction on appointment of receiver**

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

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

#### **Definition of receiver**

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

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

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

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

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

**Trustee to be appointed**

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

**Place of filing**

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

**Orders respecting fees and disbursements**

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

**Meaning of disbursements**

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

**RESIDENTIAL TENANCIES ACT**  
2006, SO 2006, c 17, as amended

**Landlord's responsibility to repair**

20 (1) A landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards. 2006, c. 17, s. 20 (1).

**Same**

(2) Subsection (1) applies even if the tenant was aware of a state of non-repair or a contravention of a standard before entering into the tenancy agreement. 2006, c. 17, s. 20 (2).

**Termination only in accordance with Act**

37 (1) A tenancy may be terminated only in accordance with this Act. 2006, c. 17, s. 37 (1).

**Termination by notice**

(2) If a notice of termination is given in accordance with this Act and the tenant vacates the rental unit in accordance with the notice, the tenancy is terminated on the termination date set out in the notice. 2006, c. 17, s. 37 (2).

**Termination by agreement**

(3) A notice of termination need not be given if a landlord and a tenant have agreed to terminate a tenancy. 2006, c. 17, s. 37 (3).

**Restriction on recovery of possession**

39 A landlord shall not recover possession of a rental unit subject to a tenancy unless,

- (a) the tenant has vacated or abandoned the unit; or
- (b) an order of the Board evicting the tenant has authorized the possession. 2006, c. 17, s. 39.

**Notice, demolition, conversion or repairs**

50 (1) A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to,

- (a) demolish it;
- (b) convert it to use for a purpose other than residential premises; or
- (c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit. 2006, c. 17, s. 50 (1).

### **Same**

(2) The date for termination specified in the notice shall be at least 120 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term. 2006, c. 17, s. 50 (2).

### **Same**

(3) A notice under clause (1) (c) shall inform the tenant that if he or she wishes to exercise the right of first refusal under section 53 to occupy the premises after the repairs or renovations, he or she must give the landlord notice of that fact in accordance with subsection 53 (2) before vacating the rental unit. 2006, c. 17, s. 50 (3).

### **Compensation, demolition or conversion**

**52** (1) A landlord shall compensate a tenant in an amount equal to three months rent or offer the tenant another rental unit acceptable to the tenant if,

- (a) the tenant receives notice of termination of the tenancy for the purposes of demolition or conversion to non-residential use;
- (b) the residential complex in which the rental unit is located contains at least five residential units; and
- (c) in the case of a demolition, it was not ordered to be carried out under the authority of any other Act. 2006, c. 17, s. 52.

### **Tenant's right of first refusal, repair or renovation**

**53** (1) A tenant who receives notice of termination of a tenancy for the purpose of repairs or renovations may, in accordance with this section, have a right of first refusal to occupy the rental unit as a tenant when the repairs or renovations are completed. 2006, c. 17, s. 53 (1).

### **Written notice**

(2) A tenant who wishes to have a right of first refusal shall give the landlord notice in writing before vacating the rental unit. 2006, c. 17, s. 53 (2).

### **Tenant's right to compensation, repair or renovation**

**54** (1) A landlord shall compensate a tenant who receives notice of termination of a tenancy under section 50 for the purpose of repairs or renovations in an amount equal to three months rent or shall offer the tenant another rental unit acceptable to the tenant if,

- (a) the tenant does not give the landlord notice under subsection 53 (2) with respect to the rental unit;

(b) the residential complex in which the rental unit is located contains at least five residential units; and

(c) the repair or renovation was not ordered to be carried out under the authority of this or any other Act. 2006, c. 17, s. 54 (1)

## **COURTS OF JUSTICE ACT**

RSO 1990, c C.43

### **Documents public**

**137** (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

### **Sealing documents**

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

## **RULES OF CIVIL PROCEDURE**

RRO 1990, Reg 194

### **Enforcement of Order for Possession of Land**

**60.03** An order for the recovery or delivery of the possession of land may be enforced by a writ of possession (Form 60C) under rule 60.10. R.R.O. 1990, Reg. 194, r. 60.03.

IN THE MATTER OF SUBSECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C 1985, C. B-3, AS AMENDED AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C. 43, AS AMENDED

AND IN THE MATTER OF THE APPOINTMENT OF A RECEIVER OVER THE PROPERTY, ASSETS AND UNDERTAKING OF 2067166 ONTARIO INC., 2265132 ONTARIO INC., ASHCROFT HOMES – LA PROMENADE INC., 2195186 ONTARIO INC., 1384274 ONTARIO INC. AND 1019883 ONTARIO INC.

Court File No. CV-24-00098058-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

**FACTUM OF THE COURT-APPOINTED RECEIVER,  
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