Court File No. CV-24-00098058-0000

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.

SECOND SUPPLEMENTARY MOTION RECORD
(Receiver's Motion for Ancillary Order – Envie I, Returnable August 28, 2025)

August 27, 2025

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

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

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

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

TO: SERVICE LIST

Court File No. CV-24-00098058-0000

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TAB 1

Second Supplement to Fourth Report to Court of KSV Restructuring Inc. as Receiver and Manager of 2067166 Ontario Inc., 2265132 Ontario Inc., Ashcroft Homes – La Promenade Inc., 2195186 Ontario Inc., 1384274 Ontario Inc. and 1019883 Ontario Inc.

August 27, 2025

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COURT FILE NO.: CV- 24-00098058-0000

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

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SECOND SUPPLEMENT TO FOURTH REPORT OF KSV RESTRUCTURING INC. AS RECEIVER AND MANAGER

AUGUST 27, 2025

1.0 Introduction

1. This report (the "**Second Supplemental Report**") supplements the Fourth Report to the Court dated July 23, 2025 (the "**Fourth Report**") and the Supplement to the Fourth Report dated July 31, 2025 (the "**First Supplemental Report**").

2. Unless otherwise defined herein, capitalized terms have the meanings provided to them in the Fourth Report or the First Supplemental Report, as the case may be.

3. This Second Supplemental Report is subject to the restrictions in the Fourth Report.

1.1 Purposes of this Second Supplemental Report

1. The purposes of this Second Supplemental Report are to:

   a) provide a further update to the Court on the Receiver's activities related to the Residential Tenants since the First Supplemental Report;

   b) summarize an amendment to the APS dated August 18, 2025;

   c) provide the Court with an update on the status of the Revised Settlement and a summary of the remaining tenants who have yet to sign the Revised Settlement; and

   d) provide the Court with an update on safety concerns regarding the mould in the Building raised by the elevator service provider.

2.0 Residential Tenants

1. Pursuant to an Order dated August 1, 2025, the Court approved the Revised Settlement. The terms of the Revised Settlement were summarized in the First Supplemental Report.

2. The Receiver and Varsity have corresponded extensively with the Residential Tenants regarding the Revised Settlement, including, among other things, the treatment of outstanding balances owing by certain Residential Tenants for unpaid rent and its setoff with the three months' compensation, and a revised deadline of August 22, 2025 to accept the Revised Settlement.

3. The Fourth Report stated that, as of the date of the Fourth Report, occupancy at the Building was 207 residents, with 18 additional Residential Leases commencing August 1 and September 1, 2025. The Receiver and Varsity reviewed each of the Residential Leases and based on their further review, the actual number of Residential Tenants with Residential Leases as of the date of the Fourth Report was 249 (which included four tenants scheduled to move in on August 1, 2025, and 14 tenants scheduled to move in on September 1, 2025). These 249 Residential Tenants also included 5 Residential Tenants who had previously executed N9 forms to terminate their Residential Leases pursuant to an offer made in this regard by the Receiver in its notice letter to Residential Tenants dated May 16, 2025. Their leases terminated on July 31, 2025 and they all moved out prior to August 1, 2025.

4. As of August 7, 2025, being the date the Court approved the Revised Settlement, there were 226 Residential Tenants with Residential Leases. This figure excludes the four tenants who were scheduled to move in on August 1, 2025, and the 14 tenants scheduled to move in on September 1, 2025.

5. As of August 26, 2025, 228 Residential Tenants had executed the Revised Settlement (including the four tenants who were scheduled to move in on August 1, 2025, and the 14 tenants scheduled to move in on September 1, 2025).

6. The Receiver, Varsity and the Purchaser are reviewing each Revised Settlement. The Receiver will be making payments forthwith to Residential Tenants upon confirmation that the Revised Settlement has been fully completed with all required signatures.

7. Of the 16 remaining Residential Tenants who have not signed the Revised Settlement:

    a) Eight have advised the Receiver that they are not prepared to sign the Revised Settlement, and six of these eight are represented by counsel;

    b) One signed the Revised Settlement, but changed the tenancy termination date to October 1, 2025, which is after the Court-approved date of September 26, 2025. Discussions are ongoing with this individual to facilitate a September 26, 2025 lease termination date;

    c) Three had previously executed N9 forms to terminate their Residential Leases pursuant to an offer in this regard made by the Receiver in its notice letter to Residential Tenants dated May 16, 2025. Their leases terminated on August 26, 2025 and they have all moved out;

d) Three are currently the subject of eviction proceedings before the Landlord Tenant Board for rent arrears incurred prior to August, 2025 (the eviction proceedings are scheduled to take place on September 2, 3 and 18, 2025); and

e) One appears to have abandoned their Residential Unit - the Residential Unit is vacant and the individual has not responded to several inquiries from the Receiver's counsel or the property manager Varsity.

8. To the extent any Residential Tenants do not vacate their Residential Units by their agreed upon lease termination date as set out in their Revised Settlement or following eviction orders made by the Landlord Tenant Board with respect to the pending eviction proceedings, the Receiver intends to return to Court to seek an Order directing the Sherriff of the City of Ottawa to expeditiously take possession of the relevant Residential Unit and deliver possession to the Receiver.

3.0 Notice of Constitutional Question

1. On August 13, 2025, the Receiver provided a Notice of Constitutional Question to the Attorney General for Ontario and the Attorney General for Canada, a copy of which is provided as **Appendix "A"**.

4.0 APS

1. The summary of the APS in the Fourth Report referenced, among other things, two conditions, being: a) the status of the SFA; and b) that the City of Ottawa consent to the Transaction pursuant to a Notice of Site Plan Agreement, including the satisfaction of any outstanding requirements to obtain such consent. The APS provided for both conditions to be waived on or before August 21, 2025.

2. The Receiver and its counsel have been addressing the conditions with the Purchaser and its counsel; however, they have not yet been resolved. Accordingly, the Receiver and the Purchaser executed an amendment to the APS (the "**7th Amendment**"), principally to extend the date for the conditions to be waived to September 5, 2025. A copy of the 7th Amendment is provided as **Appendix "B"**.

5.0 Elevator Service – Safety Concerns

1. There are three elevators that service the Residential Units in the Building. Otis Canada Inc. ("**Otis**") is the elevator maintenance and emergency service provider.

2. On July 31, 2025, Otis advised Varsity as follows:

> "Our Environmental Health and Safety Manager team has some concerns regarding the existence of mould in the premises at 101 Champagne. We understand that there was some water damage in the building several years ago.
>
> Could you please provide more information regarding this issue? We will need a mould and air quality sampling of the common elevators areas and machine rooms to confirm there is no hazard to our workers. After the information has been confirmed we can continue working in the building."

3. On or about August 20, 2025, one of the elevators stopped working and a service call was placed to Otis for an inspection and repair. Otis has refused to attend at the Building to conduct the inspection of the elevator, and any maintenance work or repairs necessary to put the elevator back in service, due to the presence of mould at the Building. Specifically, Sabrina Pomeroy, the Environmental Health and Safety Manager – Canadian Lead with Otis, stated the following in an email to Varsity dated Friday, August 22, 2025:

   > "Thank you for your response, unfortunately we do not have sufficient information to ensure the site is safe for our employees to work at this location. What was published in a news article states that there are mold spores throughout the building including the common areas. There was a court decision to evacuate tenants due to widespread mould in the building. Please note that the elevator hoistway shares the same air quality as all the floors in the building as the hoistway is much like a vacuum as the elevator travels up and down the hoistway. We will need to have air sampling data collected in the areas where our employees are required to work prior to working on this site."

4. Varsity continues to work with Otis to address the need for air sampling data in the areas around the elevators.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court grant the relief set out in the draft Order provided as **Appendix "C"**.

All of which is respectfully submitted,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.
IN ITS CAPACITY AS RECEIVER AND MANAGER OF
2067166 ONTARIO INC., 2265132 ONTARIO INC.,
ASHCROFT HOMES – LA PROMENADE INC., 1384274 ONTARIO INC.,
2195186 ONTARIO INC. AND 1019883 ONTARIO INC.
AND NOT IN ITS PERSONAL CAPACITY

Appendix “A”

Court File No. CV-24-00098058-0000

ONTARIO
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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

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NOTICE OF CONSTITUTIONAL QUESTION

KSV Restructuring Inc. (the "**Receiver**"), in its capacity as the Court appointed Receiver over the assets and undertaking of 2195186 Ontario Inc, intends to question the constitutional applicability of Section 39 of the *Residential Tenancies Act,* 2006, S.O. 2006, c.17 (the "***RTA***").

The question is to be argued (*choose one of the following*)

☒ In person

☐ By telephone conference

☒ By video conference

at the following location

Ottawa Courthouse
161 Elgin Street, 2nd Floor
Ottawa, ON K2P 2K1

on Friday, September 12, 2025, at 10:00 a.m.

The following are the material facts giving rise to the constitutional question: *(Set out concisely the material facts that relate to the constitutional question. Where appropriate, attach pleadings or reasons for decision.)*

See Schedule "A"

The following is the legal basis for the constitutional question: *(Set out concisely the legal basis for each question, identifying the nature of the constitutional principles to be argued.)*

See Schedule "B"

August 13, 2025

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

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

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

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

TO **THE ATTORNEY GENERAL OF ONTARIO**
CONSTITUTIONAL LAW BRANCH
4th Floor
720 Bay Street
Toronto, Ontario M5G 2K1
Email: clbsupport@ontario.ca

AND TO **THE ATTORNEY GENERAL OF CANADA**
120 Adelaide Street West
Suite 400
Toronto, Ontario M5H 2K1
NCQ-AQC.Toronto@justice.gc.ca

Justice Building
284 Wellington Street
Ottawa, Ontario K1A 0H8
AGC_PGC_OTTAWA@justice.gc.ca

AND TO **CASSELS BROCK & BLACKWELL LLP**
Bay Adelaide Centre, Suite 3200
40 Temperance St.
Toronto, ON M5H 0B4

Jeremy D. Bornstein
(416) 869-5386
jbornstein@cassels.com

Lawyers for ACM Advisors Ltd.

AND TO **BENNETT JONES LLP**
3400 One First Canadian Place
P.O. Box 130
Toronto, Ontario
M5X 1A4 Canada

Raj S. Sahni
(416) 777.4804
sahnir@bennettjones.com

Aiden Nelms
(416) 777.4642 |
NelmsA@bennettjones.com

Lawyers for Peoples Trust Company

AND TO **GOODMANS LLP**
333 Bay Street, #3400
Toronto, ON M5H 2S7

Christopher Armstrong
(416) 849-6013
carmstrong@goodmans.ca

Lawyers for the Proposed Purchaser

AND TO **MANN LAWYERS LLP**
11 Holland Avenue, Suite 300 (Tower A),
Ottawa, ON K1Y 4S1

Alexander Bissonnette
(613) 369-0358
alexander.bissonnette@mannlawyers.com

Lawyers for 2195186 Ontario Inc.

AND TO **PRO BONO ONTARIO**
PO Box 72566
Greenwin Square PO
Toronto, ON M4W 3S9

Karen Steward
info@probonoontario.org

Lawyers for Pro Bono Ontario

AND TO **POLLEY FAITH LLP**
77 King Street W, #2110
Toronto, ON M5K 1H1

Emily Young
(416) 306-8077
eyoung@polleyfaith.com

Jeffrey Wang
(416) 365-3113
jwang@polleyfaith.com

Litigation Counsel for Pro Bono Ontario

AND TO **COMMUNITY LEGAL SERVICES OF OTTAWA**
1299 Richmond Road
Ottawa, ON K2B 7Y4

Christelle Azzi
(613) 596-1641
Christelle.azzi@clso.cljc.ca

AND TO **OAK HOLDINGS LTD.**
35 Oak Street
North York, ON M9N 1A1

Kevin Wiener
(416) 618-3615

Lawyers for Muhammad Yaasir Hosenie

Schedule "A"

The following are the material facts giving rise to the constitutional question:

Background

1. Since January 3, 2025, KSV Restructuring Inc. (the "**Receiver**") has been the Court appointed Receiver[1] over the assets and undertaking of 2195186 Ontario Inc. (the "**Debtor**" or "**Envie I**"), including a 29-storey student housing apartment building in Ottawa (the "**Building**") with 185 residential units and 592 beds (the "**Residential Units**").

2. As of July 23, 2025, there were approximately 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 (each a "**Residential Lease**" and collectively the "**Residential Leases**").

3. On February 21, 2025, KSV entered into an agreement of purchase and sale for the Building (the "**APS**"), which was subject to due diligence by the purchaser (the "**Purchaser**"). The APS originally contemplated that the transaction contemplated thereby (the "**Transaction**") would proceed with the Residential Tenants remaining in their respective Residential Units.

Discovery of Significant Mould Issues

4. The Purchaser discovered during its due diligence that the Residential Units contained extensive – and potentially hazardous – mould (the "**Mould Issues**"). The Mould Issues were identified by the Purchaser's environmental consultant, Pinchin Ltd. ("**Pinchin**"). Pinchin opined

[1] Appointed Interim Receiver on January 3, 2025 and Receiver on February 24, 2025

that the Mould Issues present a serious health and safety concern for the Residential Tenants. Neither the existence nor the seriousness of the Mould Issues has been disputed by any party.

5. Pinchin's expert recommendation is that a "full gut" remediation of the Building is necessary to remediate the Mould Issues (the "**Mould Remediation**"). Additionally, Pinchin has advised that 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. As a result, the Mould Remediation cannot proceed while Residential Tenants remain in the Building.

6. On May 16, 2025, immediately following the Receiver's receipt of the report from Pinchin, the Receiver provided written notice to the Residential Tenants of the Mould Issues. The Receiver offered tenants the option of terminating their Residential Leases immediately, without penalty. The Receiver also stopped leasing any further Residential Units so that no new tenants would be exposed to the health and safety risks associated with the Mould Issues.

The Debtor's Current Financial Position

7. There are two mortgages over the Building (combined amounts owing are over $60 million). As a result of the number of Residential Tenants who accepted the Receiver's offer on May 16, 2025, to terminate their lease coupled with the freeze on leasing Residential Units, the Building no longer generates sufficient revenues to make any portion of the monthly payments due under either mortgage. Further, the Receiver has no ability to fund the carrying costs for the Building or the Mould Remediation.

The Current Status of the Transaction

8. The diligence period under the APS was extended until an amended APS was entered into effective July 21, 2025, which amendment also provided for an outside closing date for the Transaction of October 1, 2025.

9. If the Transaction closes, the Purchaser will proceed 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). Because the Residential Units are primarily used for student housing, almost all new Residential Leases start in September, and if Residential Units are not leased by September then they are likely to remain vacant until the following September.

The *Residential Tenancies Act*

10. The Receiver cannot comply with the obligation pursuant to section 20 of the *Residential Tenancies Act*, 2006, S.O. 2006, c.17 (the "***RTA***") to maintain the residential complex in a state fit for habitation, and that complies with applicable health and safety standards:[2]

> 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

11. The Building may not currently be fit for habitation and may not be able to be properly maintained because of the Mould Issues. Maintenance service providers have refused to complete

[2] *RTA*, s.20.

routine maintenance until the Mould Issues are resolved or confirmed to not impact their employees' health and safety. Certain routine maintenance may also disrupt the mould, further exacerbating the inability of the Receiver to comply with section 20 of the RTA and increasing the risk to the residents' health and safety. The Building cannot be rendered fit for habitation unless and until it is vacant. In these circumstances, vacant possession is required in order to comply with the positive obligation in the *RTA* to ensure that the Building is fit for habitation.

12. The *RTA* does not provide a procedure to address this problem.

13. The *RTA* does provide a mechanism for, among other things, notice and compensation to be given to a tenant who has their lease terminated when possession of their rental unit is required for extensive repairs or renovation (the "**RTA Repair Provisions**"). 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. The payments contemplated by the RTA Repair Provisions are unsecured claims that will rank behind the Debtor's secured debt. The Receiver does not expect that proceeds from the Transaction will be sufficient to repay all of the Debtor's secured debt and it does not expect any recovery for unsecured creditors.

14. However, there is no provision in the *RTA* that addresses extensive repairs or renovations urgently required to address health and safety issues. While it is possible that, under the *Building Code Act, 1992*, a building inspector may prohibit the use or occupancy of the building if a remediation order issued by a municipal inspector is not complied with, no steps have been taken by the relevant municipal authority.

15. Regardless, the *RTA* Repair Provisions are not an option available to the Receiver to obtain vacant possession in the context of the proposed Transaction, which has an outside closing date of October 1, 2025, to provide the time 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.

16. As a result, there is insufficient time for the Receiver to terminate the Residential Leases under the *RTA* Repair Provisions having regard to the Transaction timeline. If the Transaction does not proceed, there will be no ability to comply with the positive obligations under section 20 of the *RTA*.

The Receiver's Motion

17. The Receiver was appointed pursuant to section 243(1) of the *BIA*, which confers broad jurisdiction on the Court to appoint a receiver to, among other things, take possession of the Debtor's property, exercise control over the Debtor's property or take any other step that the Court considers advisable. The Receiver has worked to maximize value for all stakeholders.

18. On July 23, 2025, the Receiver brought a motion, among other things, seeking approval of the Transaction as well as the Court's authorization of a proposed fair and reasonable settlement agreement to fulfill the vacant possession condition of the APS so the Transaction can close on or before October 1, 2025 (each a "**Settlement Agreement**", and collectively the "**Settlement Agreements**"). The Settlement Agreement offers compensation equal to three (3) months rent (*i.e.* the same as under the RTA) as well as various ancillary benefits, including no rent being required to be paid for September 2025 and a contractual right to rent a similar unit from the Purchaser upon the building becoming available for re-leasing at the same rent currently payable by the

Residential Tenant. Following Court approval, the Receiver has, and continues, to work with the Residential Tenants to enter into Settlement Agreements for those who are prepared to voluntarily terminate their Residential Lease and provide vacant possession of their Residential Unit by September 26, 2025.

19. The Court approved the Transaction pursuant to an Approval and Vesting Order dated August 7, 2025.

20. The Receiver is now seeking an Order providing it with vacant possession of the Building effective September 27, 2025, with respect to any Residential Tenants who have not vacated the Building on a voluntary basis pursuant to the Settlement Agreement (or otherwise), so that the Transaction can proceed and the Mould Remediation can be completed safely and promptly.

21. It is the Receiver's submission that, given the functional gap between the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the "***BIA***") and the *RTA*, the Court has jurisdiction to order vacant possession of Residential Units for which a Settlement Agreement has not been entered into to facilitate the extensive Mould Remediation urgently required to address health and safety issues and to facilitate a value maximizing Transaction.

Schedule "B"

The following is the legal basis for the constitutional question:

22. There is a gap in provincial legislation under the *RTA* in relation to obtaining vacant possession of residential units to facilitate extensive remediation or large-scale construction urgently required to address health and safety issues.

23. As a result, the issue is whether approving the Transaction and granting vacant possession of the Building to facilitate the Mould Remediation is an appropriate exercise of the Court's jurisdiction under sections 183[3] or 243(1)(b) or (c)[4] of the *BIA* to address these unique and very

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[3] *BIA*, s.183.
Courts vested with jurisdiction

- **183 (1)** The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:
    - **(a)** in the Province of Ontario, the Superior Court of Justice;
    - **(b)** [Repealed, 2001, c. 4, s. 33]
    - **(c)** in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
    - **(d)** in the Provinces of New Brunswick and Alberta, the Court of Queen's Bench;
    - **(e)** in the Province of Prince Edward Island, the Supreme Court of the Province;
    - **(f)** in the Provinces of Manitoba and Saskatchewan, the Court of Queen's Bench;
    - **(g)** in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
    - **(h)** in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

[4] *BIA*, s. 243(1)(c).
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.

challenging circumstances. The exercise of the Court's jurisdiction is equitable in the circumstances and provides for a solution that fairly and practically responds to the circumstances at hand.[5]

The *BIA* Permits a Sale of the Debtor's Property

24. The Supreme Court has noted that the "very expansive wording" of section 243(1)(c) of the *BIA*, which 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.[6] This broad jurisdiction permits the Court "to do not only what 'justice dictates' but also what 'practicality demands'".[7]

25. It is well-established that section 243 of the *BIA* allows the Receiver to sell the Debtor's property pursuant to a vesting order, which allows the Court to authorize the transfer of property free and clear of other interests – including interests held by third parties.[8]

26. Although the Court of Appeal held in *Fraser v. Beach* that the termination of residential tenancies is within the exclusive jurisdiction of the Landlord and Tenant Board ("**LTB**")[9], this decision was made outside of the insolvency context and so the Court did not consider the jurisdiction under the *BIA*. Here, the Receiver is not seeking to terminate the residential tenancy of any Residential Tenant who does not voluntarily execute a Settlement Agreement; rather, it is seeking to obtain vacant possession of the Building so the Transaction can close, the Mould

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[5] *BIA*, s. 243(1)(c).
[6] *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.
[7] *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.
[8] *Third Eye Capital Corporation v Ressources Dianor Inc.*, 2019 ONCA 508 at para. 77
[9] *Fraser v. Beach*, 2005 CanLII 14309 (ON CA), at para 15.

Remediation can be completed and the remediated Building can be made available for re-leasing as soon as possible, including to any Residential Tenants who wish to exercise their right of return under the *RTA* (should they not agree to terminate their tenancy under a Settlement Agreement), or their contractual right to lease a similar unit pursuant to a Settlement Agreement.

27. The Court's broad jurisdiction (including 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.[10] This jurisdiction gives the Court broad powers to take action when necessary to make a legislative scheme operable in light of a functional gap.[11]

28. There are two preconditions for the Court exercising its inherent jurisdiction: (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.[12]

29. The functional gap undoubtedly exists in the case at bar because the Receiver is unable to comply with Section 20 of the *RTA*[13] while the Building is occupied, and the *BIA* provides no guidance in this regard.

30. The Receiver's position is that notwithstanding section 39 of the *RTA*, the Court has the jurisdiction under sections 183 and/or 243(1)(b) or (c) of the *BIA* to fill the legislative gap in relation to the Receiver obtaining vacant possession of the Building because:

---

[10] *Re Portus Alternative Asset Management Inc.* (2007), 2007 CanLII 44814 (ON SC) at para 22 [*Portus Alternative*].
[11] *Portus Alternative* at paras 23, 25 and 39.
[12] *Re Residential Warranty Co. of Canada Inc.*, 2006 ABQB 236, at para 26; aff'd 2006 ABCA 293; *Portus Alternative* at paras 21-23.
[13] *RTA*, s.20.

(a) the Mould Remediation is urgently required to address health and safety issues caused by the Mould Issue; and

(b) in order to complete the Mould Remediation, the Receiver is required to provide vacant possession of the Building by October 1, 2025, so that the Purchaser can carry out the "full gut" of the Building.

31. The Court exercising its jurisdiction in this manner would provide an efficient means of resolving the functional gap in the *RTA* and the *BIA* to the benefit of Residential Tenants and the mortgagees. Complying with the RTA Repair Provisions in the circumstances would require unnecessary delays to complete the Mould Remediation and result in termination of the Transaction, without any obvious benefit. Considering the receivership and the Transaction, it is practically impossible and commercially unreasonable to require compliance with the RTA Repair Provisions as a path to satisfying the obligations under section 20 of the *RTA*. Considering tenants have the option to receive the same compensation under the Settlement Agreements as under the RTA Repair Provision and the contractual right to return to the Building after the remediation is complete in a manner substantially consistent with the RTA Repair Provisions, precluding the Court from exercising its jurisdiction under the *BIA* would create a significant burden without a corresponding benefit.

32. More specifically, the benefits of granting vacant possession of the Building outweigh the prejudice because:

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

(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 Agreement offers the Residential Tenants fair and reasonable compensation to voluntarily terminate their leases and vacate their Residential 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 available, whether another transaction or otherwise; 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 available and viable alternative.

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

NOTICE OF CONSTITUTIONAL QUESTION

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

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

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

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto, ON M5K 1E7

Jennifer Stam (LSO #46735J)
(416) 202-6707 (Tel)
Jennifer.stam@nortonrosefulbright.com

Lauren Archibald (LSO #87151U)
(416) 278-3787 (Tel)
Lauren.archibald@nortonrosefulbright.com

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

Appendix “B”

AMENDMENT NO. 7 TO
AGREEMENT OF PURCHASE AND SALE

MADE EFFECTIVE AS OF THE 18TH DAY OF AUGUST, 2025.

AMONG:

HS CANADA 101 CHAMPAGNE, L.P. by its general partner, HS CANADA 101 CHAMPAGNE GP INC.

(the "**Buyer**")

- and -

KSV RESTRUCTURING INC.,
solely in its capacity as the Court-appointed Receiver, without security, of the property and lands listed on Schedule I of the APS and all of the property, assets and undertaking of 2195186 Ontario Inc., and not in its personal capacity or in any other capacity

(in such capacity, the "**Seller**")

WHEREAS:

A. The Parties entered into an Agreement of Purchase and Sale made as of the 21st day of February, 2025 (the "**Original APS**");

B. The Parties amended the Original APS by way of an amendment to the Original APS dated as of the 24th day of March, 2025 (the "**First Amendment**");

C. The Parties further amended the Original APS, as amended by the First Amendment by way of a second amendment thereto as of the 1st day of May, 2025 (the "**Second Amendment**");

D. The Parties further amended the Original APS, as amended by the First Amendment and the Second Amendment by way of a third amendment thereto as of the 29th day of May, 2025 (the "**Third Amendment**");

E. The Parties further amended the Original APS, as amended by the First Amendment, the Second Amendment and the Third Amendment by way of a fourth amendment thereto as of the 9th day of July, 2025 (the "**Fourth Amendment**");

F. The Parties further amended the Original APS, as amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment by way of a fifth amendment thereto as of the 14th day of July, 2025 (the "**Fifth Amendment**");

G. The Parties further amended the Original APS, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment by way of a sixth amendment thereto as of the 21st day of July, 2025 (the "**Sixth Amendment**"); and

H. The Parties desire to further amend the Original APS as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment (collectively, the "**APS**") on the terms set forth in this agreement (this "**Seventh Amendment**").

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Fifth Amendment have the respective meanings assigned to them in the APS.

2. Amendments. The APS shall be amended as follows:

   (a) Each of Section 3(b) and Section 3(c) of the Sixth Amendment are hereby amended by replacing "August 21, 2025" with "September 5, 2025".

3. Limited Effect. Except as expressly provided in this Seventh Amendment, all of the terms and provisions of the APS, are and will remain in full force and effect. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the APS or as a waiver of or consent to any further or future action on the part of any Party that would require the waiver or consent of the other Parties.

4. References. On and after the date hereof, each reference in the APS to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import will mean and be a reference to the APS as amended by this Seventh Amendment.

5. Third Party Beneficiaries. The Parties intend that this Seventh Amendment shall not benefit or create any right or cause of action in, or on behalf of, any Person other than the Parties to this Seventh Amendment and no person or entity, other than the Parties to this Seventh Amendment shall be entitled to rely on the provisions of this Seventh Amendment in any claim, action, proceeding, suit, hearing or other forum.

6. Successors and Assigns. All of the covenants and agreements in this Seventh Amendment shall be binding upon the Parties and their respective successors and assigns and shall enure to the benefit of and be enforceable by the Parties and their respective successors and their permitted assigns pursuant to the terms and conditions of this Seventh Amendment.

7. Counterparts. This Seventh Amendment may be executed in counterparts and by the email transmission of an originally executed document.

8. Governing Law. This Seventh Amendment shall be governed by the laws of the Province of Ontario.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Seventh Amendment as of the date hereof.

HS CANADA 101 CHAMPAGNE, L.P.
by its general partner, HS CANADA 101 CHAMPAGNE GP INC.

By: _____
Jonathan Turnbull
Authorized Signatory

By: _____
Stephen Gordon
Authorized Signatory

I/we have authority to bind the Limited Partnership

KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed Receiver, without security, of the property and lands listed on Schedule 1 of the APS and all of the property, assets and undertaking of 2195186 Ontario Inc., and not in its personal capacity or in any other capacity

By: _____

I have authority to bind the Corporation

Appendix “C”

Court File No. CV- 24-00098058-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	THURSDAY, THE 28th
	)	
JUSTICE MEW	)	DAY OF AUGUST, 2025

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.

ANCILLARY RELIEF ORDER
(2195186 ONTARIO INC.)

THIS MOTION made by KSV Restructuring Inc. ("**KSV**") in its capacity as receiver and manager (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties of the Respondent 2195186 Ontario Inc. (the "**Debtor**"), and all proceeds thereof, for an Order, *inter alia* (i) approving the activities described in the Receiver's fourth report dated July 23, 2025 (the "**Fourth Report**"); (ii) following the completion of the sale transaction (the "**Transaction**") of the real property (the "**Real Property**") contemplated by an agreement of purchase and sale dated February 21, 2025, as amended (the "**Sale Agreement**"), between the Receiver and HS Canada 101 Champagne, L.P., by its general partner, HS Canada 101 Champagne GP Inc., as purchaser, as assigned to HS Canada 101 Champagne Property Inc. (collectively, the "**Purchaser**"), approved pursuant to an Approval and Vesting Order of the Court dated August 7,

2025 (the "**AVO**"), authorizing and directing the Receiver to make certain payments and distributions to the first mortgagee over the Real Property, Peoples Trust Company ("**Peoples**"), and to the second mortgagee over the Real Property, ACM Advisors Ltd ("**ACM**"); (iii) directing the Receiver to assign the Debtor, or to cause the Debtor to be assigned, into bankruptcy naming KSV, or another Licensed Insolvency Trustee, to administer the bankrupt estate; and (iv) amending the Receivership Order *nunc pro tunc* to 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.", was heard this day by way of Zoom videoconference.

ON READING the Fourth Report and the appendices thereto, the First Supplement to the Fourth Report dated July 31, 2025 (the "**First Supplemental Report**"), and the Second Supplement to the Fourth Report dated August 27, 2025 (the "**Second Supplemental Report**"), and upon hearing submissions of counsel for (i) the Receiver; (ii) Peoples; (iii) ACM; (iv) the Debtor; (v) the Purchaser; and (vi) all other parties set out in the attendance sheet for this motion, and no one else appearing although duly served as set out in the affidavits of service of Chad Kopach sworn July 24, 2025, August 6, 2025, and August 27, 2025, and the affidavits of service of Eric Golden sworn July 29, 2025, 2025, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Second Supplemental Report be and is hereby abridged, that service of the Second Supplemental Report is hereby validated, and that further service thereof is hereby dispensed with.

REPORT APPROVAL

2. **THIS COURT ORDERS** that the Fourth Report, and the actions of the Receiver described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

AMENDMENT TO RECEIVERSHIP ORDER

3. **THIS COURT ORDERS** that the Receivership Order be and is hereby amended, *nunc pro tunc,* to 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."

ASSIGNMENT INTO BANKRUPTCY

4. **THIS COURT ORDERS** that the Receiver is directed to assign the Debtor, or to cause the Debtor to be assigned, into bankruptcy naming KSV, or another Licensed Insolvency Trustee, as the Debtor's trustee in bankruptcy.

5. **THIS COURT ORDERS** that, notwithstanding any bankruptcy of the Debtor, the Receiver shall remain the receiver and manager of the Debtor's Property (as defined in the Receivership Order) until its discharge pursuant to further Order of this Court. Without limiting the Receiver's powers pursuant to the Receivership Order in any way, following any bankruptcy of the Debtor the Receiver shall remain authorized to deal with the Debtor's Property (including the proceeds thereof) to the exclusion of all other persons (including the Trustee), including to perform its obligations under the Sale Agreement, complete the Transaction pursuant to the AVO (to the extent not already completed prior to the bankruptcy) and to effect the Distributions

contemplated by this Order. For greater certainty, any bankruptcy of the Debtor shall have no impact on the Transaction, the Receiver's obligations under the Sale Agreement or the relief granted pursuant to the AVO or this Order.

GENERAL

6. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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

8. **THIS COURT ORDERS** that this Order is effective from 12:01am (Ottawa time) on today's date and is enforceable without the need for entry and filing.

_____

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

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Court File No. CV-24-00098058-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at OTTAWA

ANCILLARY RELIEF ORDER
(2195186 ONTARIO INC.)

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

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

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

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto, ON M5K 1E7

Jennifer Stam (LSO #46735J)
(416) 202-6707 (Tel)
Jennifer.stam@nortonrosefulbright.com

Lauren Archibald (LSO #87151U)
(416) 278-3787 (Tel)
Lauren.archibald@nortonrosefulbright.com

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

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Court File No. CV-24-00098058-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at OTTAWA

SECOND SUPPLEMENTARY MOTION RECORD
(Receiver's Motion for Ancillary Order – Envie I, Returnable August 28, 2025)

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

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

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

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000
Toronto, ON M5K 1E7

Jennifer Stam (LSO #46735J)
(416) 202-6707 (Tel)
Jennifer.stam@nortonrosefulbright.com

Lauren Archibald (LSO #87151U)
(416) 278-3787 (Tel)
Lauren.archibald@nortonrosefulbright.com

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