

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**THE HONOURABLE MR.
JUSTICE NEWBOULD**

**THURSDAY, THE 25th DAY
OF SEPTEMBER, 2014**

B E T W E E N:



THE TORONTO-DOMINION BANK

Applicant

– and –

FAIRVIEW NURSING HOME LIMITED

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED**

APPROVAL AND VESTING ORDER

THIS MOTION, made by BDO Canada Limited in its capacity as the Court-appointed Receiver (in such capacity, the “**Receiver**”), without security, for the purposes of marketing and selling the assets, undertakings, and properties of Fairview Nursing Home Limited (the “**Debtor**”) for an Order, *inter alia*, approving the sale transaction (the “**Transaction**”) between the Receiver, the Debtor, and Schlegel Villages Inc. (the “**Purchaser**”) contemplated by an Agreement of Purchase and Sale made as of July 22, 2014, and as subsequently amended by Letter Agreement dated August 29, 2014 (the “**Sale Agreement**”), and appended to the First Report of the Receiver dated September 15, 2014 (the “**Report**”), and vesting in the Purchaser the Receiver’s and the Debtor’s right, title, and interest in and to the assets described in the Sale

Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and the Confidential Supplement to the Report dated September 15, 2014 (the “**Confidential Supplement**”), and on hearing the submissions of counsel for the Receiver and those counsel listed on the Counsel Slip, no one appearing for any other person on the Service List, although properly served as appears from the Affidavit of Laura Taylor, sworn September 12 , 2014, filed:

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the Notice of Motion, Motion Record, and Report is hereby abridged such that this motion is properly returnable today, that the manner of service is hereby approved and validated, and that all parties entitled to notice of this motion have been properly served with notice of this motion, and service on any other parties is hereby dispensed with.

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

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the “**Receiver’s Certificate**”), all of the Receiver’s and Debtor’s right, title, and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Mr. Justice D. Brown dated

December 20, 2013 (the “**Appointment Order**”); (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) the Responsive Security (as defined in the Appointment Order); and (iv) those Claims listed on **Schedule C** hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule D**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division #66 of Toronto of an Application for Vesting Order in the form prescribed by the *Land Titles Act* (Ontario), the Land Registrar for the said Land Titles Division is hereby directed to enter Fairview LTC Inc. as the owner of the subject real property identified in **Schedule B** hereto (the “**Real Property**”) in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule C** hereto.

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

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

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor’s records pertaining to the Debtor’s past and current employees, including personal information of the Assumed Employees, as defined in the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal

information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

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

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

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

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

10. **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.

11. **THIS COURT ORDERS** that the Confidential Supplement is hereby sealed and shall not form part of the public record pending further Order of this Court.

2nd J.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

SEP 25 2014



SCHEDULE A

FORM OF RECEIVER'S CERTIFICATE

Court File No. CV-13-10365-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

THE TORONTO-DOMINION BANK

Applicant

– and –

FAIRVIEW NURSING HOME LIMITED

Respondent

RECEIVER'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Mr. Justice D. Brown of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated December 20, 2013, BDO Canada Limited was appointed Receiver (in such capacity, the "**Receiver**") of Fairview Nursing Home Limited (the "**Debtor**") as specifically set out in the Receivership Order of the Honourable Mr. Justice D. Brown of the Ontario Superior Court of Justice (Commercial List) dated December 20, 2013, pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended (the "**BIA**").

B. Pursuant to an Order of the Court dated ●, the Court approved the agreement of purchase and sale made as of July 22, 2014, and as subsequently amended by Letter Agreement dated August 29, 2014 (the "**Sale Agreement**") between the Receiver, Debtor and Schlegel Villages Inc. (the "**Purchaser**") and provided for the vesting in the Purchaser of the Receiver's and Debtor's right, title and interest in and to the Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Assets; (ii) that the conditions to Closing as set out in article 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in article 4 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver to the Purchaser at ● <Insert time.> on ● <Insert date.>.

BDO CANADA LIMITED, solely in its capacity as Court-appointed Receiver of Fairview Nursing Home Limited as specifically set out in the Receivership Order of the Honourable Mr. Justice D. Brown of the Ontario Superior Court of Justice (Commercial List) dated December 20, 2013, and not in its personal capacity

Per: _____

Name: Matthew Lem

Title: Senior Vice President

SCHEDULE B

SUBJECT REAL PROPERTY

LT 7-8 PL 366 CITY WEST; PT LT 9 PL 366 CITY WEST; PT LANE PL 366 CITY WEST
CLOSED BY CT526323, PT 3, 4, 6, 63R2391; PT LT 17-18 PL 1051 TORONTO PT 1,
63R2391; S/T CT500560E, CT526917E; CITY OF TORONTO, Property Identifier Number
21296-0399(LT); bearing municipal address 14 Cross Street, Toronto, Ontario, Canada.

SCHEDULE C

CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE TO REAL PROPERTY

1. Notice, Instrument No. CT802464
2. Assignment General, Instrument No. CT837982
3. Charge, Instrument No. AT2450748
4. Notice of Assignment of Rents General, Instrument No. AT2450749
5. Charge Instrument No. AT3487149
6. Charge, Instrument No. AT3527775

SCHEDULE D

PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS RELATED TO THE REAL PROPERTY

(unaffected by the Approval and Vesting Order)

1. Reference Plan 63R-2363
2. Reference Plan 63R-2391
3. Easement, CT500560E in favour of the Corporation of the City of Toronto
4. Easement, CT526917E in favour of the Corporation of the City of Toronto
5. Agreement, CT602855 in favour of the Corporation of the City of Toronto
6. Agreement, CT554379 in favour of the Corporation of the City of Toronto
7. VTB Mortgage as defined in the Agreement
8. Vendor's Notice of Claim/Caveat re: Section 2.19 of the Agreement

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

(PROCEEDING COMMENCED AT TORONTO)

APPROVAL AND VESTING ORDER

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