

ONTARIO  
SUPERIOR COURT OF JUSTICE – COMMERCIAL LIST

BETWEEN:

CITY OF TORONTO

Applicant

and

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC

Respondent

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FACTUM OF THE APPLICANT

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**PART I – OVERVIEW – THE NATURE OF THE APPLICATION**

1. Social housing programs are government-funded initiatives designed to provide affordable rental accommodation to low-income households. In the late 1990s, as part of Ontario’s initiative to realign local services, the province began to download its social housing responsibilities, both administrative and financial, to the local municipalities. This process culminated with the passage of the *Social Housing Reform Act, 2000*, S.O. 2000, c. 43 (the “SHRA”), which received royal assent on December 12, 2000, and which has since been updated and superseded with the passage of the *Housing Services Act, 2011*, S.O. 2011, c. 6, Schedule 1 (the “HSA”).<sup>1</sup>

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<sup>1</sup> A detailed overview of the relevant legislative framework is set out in paragraphs 8 through 27 of the *Affidavit of Julie Western Set*, sworn on November 10, 2022, found at pages 53 through 59 of the **Application Record (the “AR”)**, at **Tab 3**.

2. Responsibility for administering and funding a number of social housing programs in Ontario rests with the municipalities in which these housing programs operated. These municipalities are designated as Service Managers under the HSA. The Applicant City of Toronto (the “City” or the “Service Manager”) is the Service Manager charged with overseeing those housing projects in its territorial jurisdiction, including the housing project being operated by the Respondent Harry Sherman Crowe Housing Co-operative Inc. (“Harry Sherman”, the “Housing Provider”, or the “Co-op”) – a series of townhome blocks and a residential apartment building which are located at 51 The Chimneystack Road that were built in 1993 and rest on land that is owned by, and leased from, York University.<sup>2</sup>
3. In the course of monitoring housing provider operations within its jurisdiction, the City determined that Harry Sherman was experiencing challenges in respect of its operations and the administration of its Rent-Geared-to-Income (“RGI”) portfolio – those units it is to make available at below market rent to qualifying households. The City also identified issues in respect of the Housing Provider’s financial position, which has been deteriorating over time.
4. Despite efforts made by the Service Manager, pursuant to, and in accordance with the governing legislation, to identify these issues, to bring them to the Housing Provider’s attention, and to direct Harry Sherman to take the necessary remedial action, these issues have persisted and remain unresolved. Among other things, the Housing Provider is unable to pay its debts as they become due, and the governance, financial control and rent-geared-to-income

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<sup>2</sup>HSA, section 12, Schedule B of the Applicant’s Factum.

administration processes and practices at the Housing Project have gaps that need to be addressed.

5. The Service Manager has formulated the view, based on the information that has been made available to it, that a Receiver, appointed by the Superior Court of Justice to oversee the affairs and assets of the Housing Provider in accordance with the provisions of the HSA, will be able to properly diagnose the various issues facing the Co-op and take appropriate action to outline how the housing project can best be rehabilitated, so that the longstanding and unresolved issues that have been identified do not persist and deteriorate further and it can continue to operate as a viable, going concern.
6. The City of Toronto is bringing this Application pursuant to rule 14.05(2) of the *Rules of Civil Procedure*<sup>3</sup> and pursuant to subsection 85(7) of the HSA, asking this Honourable Court to appoint RSM Canada Limited as the Receiver and Manager over the assets of the Housing Provider for the reasons outlined above in paragraph 5 and detailed in its submissions below.<sup>4</sup>

## **PART II – THE FACTS**

### **(A) - THE RELEVANT LEGISLATIVE FRAMEWORK**

#### **The *Housing Services Act, 2011*, and the Municipality’s Duty to Administer and Fund Social Housing Programs**

7. The Service Manager’s primary obligations are to monitor housing provider operations to ensure that they meet their obligations under the governing legislation and to ensure that housing providers receive the funding to which they are entitled.

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<sup>3</sup> Rule 14.05, Rules of Civil Procedure, Schedule B of the Applicant’s Factum.

<sup>4</sup>HSA, section 95, Schedule B of the Applicant’s Factum.

**(i) Monitoring Housing Provider Operations**

8. Housing providers' obligations include, but are not limited to, the establishment of (and adherence to) prescribed RGI practices and protocols, submitting reports regarding key aspects of the housing provider's operations to the service manager, and using the government funding it receives appropriately. If issues with respect to the management of a given social housing project arise, the Service Manager works to ensure that these issues are identified and resolved. The City can also provide housing providers with advice and support with an eye to helping them operate independently as viable going concerns, through their Boards of Directors and their staff.

**(ii) The Housing Services Act, 2011's Funding Formula**

9. Housing providers that were originally developed, administered, and funded by the provincial government received two forms of subsidy - an operating subsidy and a rent subsidy. They continue to receive these subsidies under the HSA regime. These subsidies are provided pursuant to, and in accordance with, formulae set out in regulations promulgated under the HSA, including *Ontario Regulation 369/11*, which aim to achieve the following objectives:
- the **operating subsidy** is paid to subsidize building operating costs in excess of the building market rent potential. It covers any number of operating costs, including, but not limited to: (i) administration and maintenance expenses; (ii) insurance premiums; (iii) bad debt expenses; (iv) utility costs (such as electricity, fuel, water, and sewer charges); and (v) contributions to the housing provider's capital reserve fund<sup>5</sup>. This operating subsidy would cover any shortfall that the housing provider would have to negotiate between provincially established benchmarked annual expenses and revenues.

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<sup>5</sup> Housing providers are responsible for maintaining a capital reserve under the framework established by the HSA. These funds must be set aside so that the housing project can undertake large scale capital projects that it must anticipate having to take on in any given year. Housing providers are expected to establish capital plans to ensure that they are able to manage their budgets so that enough funds are available to cover the costs associated with keeping their buildings in a good state of repair.

- the **rent subsidy** is paid to cover the difference between the amount that qualified tenants can pay, based upon their income, and the lesser of the benchmarked or actual market rent for the units they live in. It is given to housing providers so that they can make units available to families that would not otherwise be able to afford to pay market rents. Housing providers are required to set aside a prescribed number of subsidized units in their buildings. They are expected to meet these targets as failing to do so will reduce access to affordable housing in the City. The governing legislation also prescribes how these units are to be filled from a centralized waiting list.<sup>6</sup>

10. The Respondent Co-op is funded and administered in accordance with the above described framework. The Co-op is currently receiving a combined operating and Rent-Geared-to-Income (RGI) subsidy of \$128,640 every month. Based on information the Service Manager currently has access to, the estimated combined operating and rental annual subsidy that the housing provider will receive for the fiscal year ending June 30, 2023 is \$1,534,680.

***(iii) The Housing Provider's Reporting Obligations***

11. Housing providers must complete annual reports in accordance with requirements established by service managers and forward said reports along with audited financial statements no later than 5 months after the end of the fiscal year. In the City of Toronto, the requisite annual report is called Annual Information Return (an "AIR"). The information provided in the audited financial statements and in the AIR is necessary as it allows the service manager to: (i) calculate the housing providers' subsidy entitlement and reconcile their funding each fiscal year; and (ii) monitor the number of RGI households, vacancies, and other critical statistical housing information.

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<sup>6</sup> There are 14,494 households on the waiting list who have indicated that they would like to be housed at Harry Sherman. Of these more than 14,000 households, 2,051 have been on the waiting list for more than 10 years, 8,226 have been on the waiting list for between 5-10 years, and 4,267 have been on the waiting list for less than 5 years.

## **The Powers that the HSA Grants to Municipalities to Ensure that the Interests of Households that Depend on Social Housing Programs are Protected**

12. The HSA provides comprehensive administrative mechanisms to help municipalities manage their social housing responsibilities. It includes specific enforcement provisions that grant municipal service managers powers that they can exercise to ensure that these housing projects are properly managed and that the tenants and members in these housing projects have access to the protections and services that they may need.
  
13. In the event that a social housing provider fails to operate a housing project properly, having regard to the normal practices of similar housing providers, a service manager can take certain steps under the HSA to remedy the situation. Service Managers, in appropriate circumstances, can appoint a receiver to step in to act as a surrogate for the housing provider and as a steward for the housing project where the assistance of a third party is deemed necessary to ensure that the housing project is operated and managed properly, and to protect the health of the enterprise as an ongoing concern.
  
14. Subsection 85(6) of the HSA provides that the service manager may appoint an interim receiver for the housing project.<sup>7</sup> Subsection 85(7) of the HSA provides that the service manager may seek the appointment of a receiver by the Superior Court of Justice.

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<sup>7</sup> The receiver or receiver and manager has the power to act as the housing provider with respect to its assets, liability, and undertakings, including its housing projects, in keeping with the powers set out in subsection 104(2) of the *Ontario Regulation 367/11*.

**(B) - THE HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC. HOUSING PROVIDER**

15. The Respondent is an independent, self-governing co-operative housing corporation with a Board of Directors (the "Board") elected by its membership. The Board is responsible for making decisions related to the governance of the corporation, including giving appropriate direction to building management and staff who are responsible for the day-to-day operation of the Co-op.<sup>8</sup>

16. As referenced above, the housing provided by the H is located within a campus comprised of a series of townhome blocks and a residential apartment building. The Co-op's housing complex contains 164 units. The townhome blocks contain 29 townhome units, while the remaining 135 units are contained within a high-rise apartment building. Through and until October 2019, the Co-op was required to maintain a minimum of 82 RGI units. Since October 2019, the Co-op was required to maintain a minimum of 90 RGI units.<sup>9</sup>

**(C) – INITIAL INDICATIONS THAT THE HOUSING PROVIDER WAS STRUGGLING WITH SEVERAL ISSUES**

17. In 2019, reviews undertaken by the Service Manager carried out in the normal course revealed that the Housing Provider was struggling with issues on two fronts - in respect of the Housing Provider's operations (including governance) and the administration of its RGI portfolio, and in respect of the Housing Provider's finances.

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<sup>8</sup> AR, Tab 3, paragraph 28, page 59.

<sup>9</sup> AR, Tab 3, paragraphs 28 and 29, page 60.

## The 2019 Operational and RGI Review

18. An operational review of the Housing Provider's operations was carried out in November 2019.

It revealed that the housing provider had failed to meet 12 out of the 16 identified HSA and local rule requirements. The Housing Provider did not:

- have a process for the management of policy and procedure documentation;
- ensure that a Minute Book was properly maintained in keeping with the standards set out in the *Co-operative Corporations Act*. In addition, the Service Manager identified how the Minutes that the Board had kept showed that the Board was presented with correspondence from the Service Manager and variance reports in respect of the corporation's annual budget and actual costs/expenses, but had failed to document how any action was taken in response to them; nor
- have in place the required policies related to: internal transfers; RGI reviews, administration, and filling of RGI units; guests; the collection, use, and disclosure of personal information; records management; occupancy agreements.<sup>10</sup>

19. A review of the Housing Provider's RGI processes and portfolio were undertaken in November 2019 as well. The 2019 RGI Review identified deficiencies in the administration of the RGI portfolio that needed to be addressed, including issues related to possible overhousing, appropriate documentation evidencing eligibility, and the need to ensure the appropriate leases and consents were executed and in place.<sup>11</sup>

20. The Service Manager wrote to the Housing Provider in November 2019 to identify these failures and set out in detail what steps the Housing Provider could take to cure these deficiencies. The Housing Provider was directed to take the specified curative actions by February 6, 2020.<sup>12</sup>

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<sup>10</sup> AR, Tab 3, paragraphs 34 and 35, page 61.

<sup>11</sup> AR, Tab 3, paragraph 37, page 62.

<sup>12</sup> AR, Tab 3, paragraphs 36 and 38, pages 61 and 62.

21. Though the Housing Provider took some steps to address these issues in the following months, which the City of Toronto commended it for, there remained several outstanding issues that persisted despite the efforts made by the Service Manger to draw the Housing Provider's focus to these outstanding matters and resolve them. These steps included following up with the Housing Provider through correspondence on February 10<sup>th</sup>, July 7<sup>th</sup>, and August 31, 2020.<sup>13</sup>

### **The September 18, 2020 Meeting with Members of the Co-op's Board**

22. In 2020, a number of the Co-op's members raised concerns to the Service Manager regarding the processes at the housing project for responding to maintenance requests and work orders. As a result, the City approached the Housing Provider and asked if it could meet with the Board. This meeting was meant to also provide the Service Manager and the Board of the Housing Provider an opportunity to discuss the housing provider's approach to dealing with larger scale capital repairs, while maintaining the short and long term financial viability of the Co-op.<sup>14 and 15</sup>

23. The meeting was held on September 18, 2020 and the above-described matters were discussed with the Board's president and the other Board members who attended. These discussions raised concerns on the part of the City that:

- the Board was unable to demonstrate how it had a financial plan in place to deal with day-to-day maintenance issues that might arise, or with larger scale capital works that the housing provider might have to undertake in the future; and

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<sup>13</sup> AR, Tab 3, paragraph 39 through 43, pages 62 through 64.

<sup>14</sup> The City's concerns about Harry Sherman's cash flow and financial position stemmed, in part, from a request HSS staff had received to provide Harry Sherman with a \$120,000 advance in order to cover certain immediate costs that it had and could not cover.

<sup>15</sup> AR, Tab 3, paragraph 44, page 64.

- the Housing Provider was not willing to work with or co-operate with sector organizations that operate within the social housing space to work through the issues that the housing project was facing.<sup>16 and 17</sup>

### **The Ongoing Review of the Housing Provider's Finances [the Fiscal Year Ending on June 30, 2019]**

24. In the fall of 2019, Harry Sherman delivered an independent Auditor's Report, prepared by Mr. Ed M. Roscetti – a CPA and a CA - for the fiscal year ending June 30, 2019. This report was considered in conjunction with a letter that Mr. Roscetti prepared, dated September 24, 2019, and the Housing Provider's Annual Information Return for the 2019 fiscal year.<sup>18 and 19</sup> The Service Manager reviewed the submissions that Harry Sherman made in respect of the fiscal year ending on June 30, 2019. Its review of these submissions revealed the following:<sup>20</sup>

- **There Was Evidence of a Lack of Internal Controls at the Housing Provider -** The Housing Provider's independent auditor identified significant deficiencies in respect of internal controls over several aspects of the housing project's finances. These deficiencies included: (i) A high rate of management turnover; (ii) Inaccurate commercial parking accounts; (iii) Inaccurate Toronto Hydro accounts; and (iv) Insufficient petty cash controls.

The independent auditor identified that Housing Provider had unapproved board minutes and set out how approved and signed Minutes of Board of Directors meetings are essential in order to ensure that key financial decisions made by the Board on how to use the housing project's resources are properly authorized. They also highlighted how not all of the Housing Provider's expenditures had the appropriate and expected support and authorization.

- **The Co-op Incurred a Significant In-Year Deficit -** The Co-op incurred an in-year deficit of \$83,753. This in-year deficit is the result of an increase across 4 expense categories of costs that the Housing Provider is responsible for managing:

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<sup>16</sup> City staff suggested that, among other things, Harry Sherman could reach out to sector organizations who specialize in providing advice and support to non-profit housing co-operative corporations. One such organization was the Co-operative Housing Federation of Toronto ("CHFT")

<sup>17</sup> AR, Tab 3, paragraphs 45 and 46, pages 64 and 65.

<sup>18</sup> These reports were submitted by the Housing Provider as required by the HSA. The audited financial statements that were to be submitted, along with a report at the end of every fiscal year, must be prepared by an independent auditor, approved by the Co-op's Board, and it must examine and report on the housing provider's accounts.

<sup>19</sup> AR, Tab 3, paragraphs 47 and 48, page 65.

<sup>20</sup> AR, Tab 3, paragraph 49, page 66.

- maintenance costs increased by 29.12% (an increase of \$102,690);
  - utility costs increased by 12.27% (an increase of \$58,270);
  - insurance costs increased by 12.74% (an increase of \$5,600);
  - bad debts increased by 100% (an increase of \$5,474).
- **A Large Number of Units Remained Vacant for Significant Periods of Time** - Units within the housing project were vacant for 16 months across the fiscal year. These reported vacancies caused a significant loss of revenue for the Co-op, on the order of \$18,276.
  - **High Rental Arrear Amounts** – The Housing Provider reported arrears in the amount of \$31,198. This amount corresponded to 2.36% of its total revenue. This is a high amount and percentage of arrears for a project of the size of Harry Sherman.

25. The 2019 AIR revealed how there were fluctuations in the total number of occupied RGI units (from 84 to 87), but that there was no record of households from the centralized waiting list gaining access to any vacant unit at the housing project.<sup>21</sup>

26. In an effort to ensure that the Service Manager's real concerns about the financial issues the Co-op needed to address were clearly articulated, and with an eye to encouraging the Housing Provider to address these issues in conjunction with the outstanding governance and RGI administration issues that the City's operational and RGI reviews, the Service Manager wrote to Harry Sherman on October 6<sup>th</sup> and 9<sup>th</sup>, 2020:<sup>22</sup>

- the October 6, 2020 correspondence captured what was discussed in the September 18, 2020 meeting with certain members of the Co-op's Board, flagging how if the Housing Provider failed to take steps to improve the financial situation of the housing project by instituting spending controls, establishing a plan to addresses maintenance and capital

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<sup>21</sup> AR, Tab 3, paragraph 50, page 67.

<sup>22</sup> AR, Tab 3, paragraphs 51-53 and 54, pages 67 and 68.

issues, and reducing vacancy losses and arrears, the Service Manager will take any necessary steps that it can to meet its own statutory responsibilities; and

- the October 9, 2020 captured the concerns raised by the financial submissions that the Housing Provider delivered in respect of the fiscal year ending on June 30, 2019, and requested that the Housing Provider respond to the issues it identified by November 25, 2020. The City's correspondence of October 6, 2020, was prepared in good faith and in keeping with the Service Manager's oversight obligations under the HSA, raising legitimate concerns about the failure to have in place a formalized financial plan, a formalized approach to prioritizing both general maintenance and larger capital repair projects, and an accurate account of the Housing Provider's unwillingness to seek assistance from the relevant sector organization.

27. The only response that the City received following delivery of these two letters was a response to the Service Manager's letter of October 6, 2020 by letter dated October 26, 2020.

28. The October 26, 2020 Housing Provider correspondence did not respond in any substantial or meaningful way to the City's letters of October 6<sup>th</sup> and 9<sup>th</sup>.<sup>23</sup> Unfortunately, the response prepared by the Co-op's Board inaccurately described the City's efforts to provide advice and direction as "accusatory", "unfair", and "grossly unmerited".<sup>24</sup> Rather than address the issues that had been raised on their merits, this correspondence: (i) levels bald and unfounded allegations of impropriety and bad faith that targeted individual members of the Service Manager's staff who had been working diligently to help support Housing Provider operations; and (ii) references internal and ongoing tensions and disputes between current and former members of the Co-op's Board that appear to be affecting the operation of the housing project. Setting aside these unfounded attacks on the conduct of City staff and tensions among certain

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<sup>23</sup> AR, Tab 3, paragraph 59, page 69.

<sup>24</sup> AR, Tab 3, paragraphs 54 and 56, pages 68 and 69.

of the Co-op's members, the Service Manager notes that, among other things, the October 26<sup>th</sup> response:

- acknowledged that the Housing Provider was struggling with cash flow;
- acknowledged that the Housing Provider was running a deficit;
- acknowledged that the Housing Provider was carrying a liability in the form of nearly \$40,000 in rental arrears; and
- failed to articulate any policies that were in place regarding the filling of vacancies that was consistent with the rules established by the governing legislation.<sup>25</sup>

#### **(D) – THE DETERIORATING HEALTH OF THE HOUSING PROJECT**

##### **The Ongoing Review of the Housing Provider's Finances [the Fiscal Year Ending on June 30, 2020]**

29. In the fall of 2020, Harry Sherman delivered an independent Auditor's Report, prepared by Mr. Roscetti for the fiscal year ending June 30, 2020, a letter that Mr. Roscetti prepared, dated September 10, 2020, and the Housing Provider's Annual Information Return for the 2020 fiscal year.<sup>26</sup> The Service Manager reviewed the submissions that Harry Sherman made in respect of the fiscal year ending on June 30, 2020. Its review of these submissions revealed the following:<sup>27</sup>

- **There Remained Evidence of a Lack of Internal Controls at the Housing Provider -** The Housing Provider's independent auditor identified significant deficiencies in respect of internal controls over several aspects of the housing project's finances. These deficiencies included: (i) Inaccurate commercial parking accounts; (ii) Inaccurate Toronto Hydro accounts; and (iii) Insufficient petty cash controls. In addition, the auditor highlighted that:
  - *The Housing Provider's Financial Position Continued to Deteriorate* – The capital reserve fund, as reported in the audited financial statements, only had a balance of

<sup>25</sup> AR, Tab 3, paragraphs 57 and 58, page 69.

<sup>26</sup> AR, Tab 3, paragraph 60, page 70.

<sup>27</sup> AR, Tab 3, paragraph 61, page 70 through 72.

approximately \$50,000 – a decrease of \$166,851 from the amount reported in the audited financial statements for the 2019 fiscal year. The Co-op was carrying a deficit of \$129,087 based on the audited financial statements that were submitted, as compared to 2019, where it reported a surplus of \$63,244 – a change in its financial position of \$192,331. Having identified these issues, Mr. Roscetti implored the Housing Provider to assess how it planned to reverse this downward trend in its finances, and stated expressly that it "...simply cannot afford to maintain expenditures at this level, it will run out of cash."

Harry Sherman's own auditor confirmed that the concerns about cash flow that the City had identified and brought to the Board's attention were well founded.

- Member Subsidy Files Were Not Properly Monitored/Administered – Mr. Roscetti noted how an important component of the audit process requires that the review examine the subsidies that Co-op members were receiving. He advised how his review of the available RGI subsidy records found deficiencies, including missing and/or inaccurate RGI entitlement calculations. He flagged how the Housing Provider is entrusted with significant subsidy funds each year, and it must ensure that these subsidy dollars are distributed in keeping with the governing rules. Complete and accurate subsidy files are key in being able to substantiate how subsidy funds are distributed.

This identified deficiency aligns with the deficiencies that the service manager had noted in its November 18, 2019, report to the housing provider, which was issued after it had completed its RGI review. As of the fall of 2020, HSS staff had not yet received the required specific response to its November 18, 2019, reporting letter, which called for identified deficiencies to be addressed.

- Inadequate Board Records/Packages – Mr. Roscetti noted how it is extremely important for the Board to be fully aware at all times of the Co-op's financial picture. Concerned that the Board may not have all the information that it required to make decisions about the housing project, he listed key records that must be included in packages that the Board had before at its monthly meetings.
- **The Co-op Incurred a Significant In-Year Deficit** - The Co-op incurred an in year deficit in the amount of \$202,355. This includes a loss of \$149,144 due to a fraudulent EFT transaction. It was noted that:
  - administration expenses increased by 30% (an increase of \$61,378); and
  - insurance costs increased by 30% (an increase of \$15,048).
- **A Large Number of Units Remained Vacant for Significant Periods of Time** - Units within the housing project were vacant for 20 months across the fiscal year. These vacancies were unusual, given the requirement that all Housing Provider must abide by the requirement to fill any vacant RGI unit with households from Toronto's centralized waiting

list for social housing. This centralized waiting list, which is managed by Housing Connections, is so extensive that households wait for years to secure subsidized housing. The specific waiting periods for Harry Sherman are set out in footnote 6, above. These reported vacancies caused a significant loss of revenue for the Co-op, in the amount of \$5,295.

- **High Rental Arrear Amounts** – The Housing Provider reported arrears in the amount of \$28,212. This amount corresponded to 2.10% of its total revenue. This is a high amount and percentage of arrears for a project of the size of Harry Sherman.

30. A review of the 2020 records that the housing provider submitted reveals how the number of RGI units dropped from 87, at the beginning of the year, to 81, at the end of the fiscal year. There was no record of households from the centralized waiting list gaining access to any vacant unit at Harry Sherman. In addition, the Service Manager identified that the Housing Provider was struggling with the administration of the RGI units at Harry Sherman. By way of example, subsidy funding had been improperly allocated to one of the units.<sup>28</sup>

**(E) - THE SERVICE MANAGER ISSUES A NOTICE OF TRIGGERING EVENTS PURSUANT TO THE PROVISIONS OF THE HSA**

31. In the spring of 2021, in keeping with its oversight responsibilities under the governing legislation, the Service Manager examined the information available to it about the health of the Harry Sherman housing project. The City had brought up issues it had identified in respect of the housing provider's operations and its deteriorating financial position to the attention of the Co-op, along with requests that steps be taken to address them. No substantive actions were taken to address these issues, which had persisted, and in some instances were worsening, since the fall of 2019.<sup>29</sup> These unresolved issues constituted contraventions of the HSA and

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<sup>28</sup> AR, Tab 3, paragraphs 62 and 63, pages 72 and 73.

<sup>29</sup> AR, Tab 3, paragraph 64, page 73.

its regulations, failures to comply with the requirements of the HSA to ensure that the project was well managed, and failures to operate the designated housing project properly. These are all considered "triggering events" under section 83 of the HSA.<sup>30</sup>

32. Pursuant to, paragraph 90(1)(a) of the HSA, the service manager prepared and delivered notice of the above described triggering events to the Housing Provider on March 29, 2021 (the "NTE"), which specified the particulars of the triggering events. It articulated how:

a) The Housing Provider had contravened subsection 75(1) of the HSA by failing to operate the housing project and govern itself in accordance with the prescribed provincial requirements and local standards made by the Service Manager. It had inadequate documented policies that needed to be in place to deal with, among other things, internal transfers, records management, and with reviews regarding RGI households that had been delegated to it. The Housing Provider also failed to correctly implement required policies and procedures regarding the administration of its RGI units and/or the filling of any vacant RGI units in accordance with the applicable local standards;

b) The Housing Provider had contravened subsection 69(2) of the HSA by failing to ensure that housing project was well managed. Among other things, it had failed to establish appropriate governance procedures; and

c) The Housing Provider had contravened subsection s. 83(11) of the HSA by failing to operate the housing project properly, as evidence by its significant deficit, its poor financial position, and its failure to establish adequate internal financial controls.<sup>31</sup>

33. The March 29, 2021, NTE set out the steps that the Housing Provider was required to take to address these identified contraventions and expressly stated how failure to address all or any aspect of the contraventions that had been identified as triggering events may result in the City, as Service Manager, exercising any or all remedies available to it under section 85 of the HSA.<sup>32</sup>

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<sup>30</sup> AR, Tab 3, paragraph 65, page 73.

<sup>31</sup> AR, Tab 3, paragraph 67 and 68, page 74.

<sup>32</sup> AR, Tab 3, paragraph 69, page 74.

**(F) - THE HOUSING PROVIDER'S FAILURE TO ADDRESS THE ISSUES RAISED BY THE NOTICE OF TRIGGERING EVENTS**

**The Initial Response to the Notice of Triggering Events**

34. The Co-op's Board responded to the NTE on May 20, 2021. Unfortunately, as was the case with the Board's correspondence to the City of Toronto of October 26, 2020, a review of the Board's May 10<sup>th</sup> response leaves one with the impression that the NTE was not received in the spirit with which it was given – as a tool or guide that would help the Housing Provider and its members. It included unfounded and unwarranted allegations that called into question the conduct and integrity of individual members of the Service Manager's staff, and it was predicated on a categorical denial that any violation of the HSA had occurred, stating that all of the triggering events identified by the City's NTE were false.<sup>33</sup>

35. Despite this categorical denial, the Housing Provider's May 10, 2021, response:

- acknowledged how the identified issues regarding the maintenance of the property were "factual";
- confirmed that the Housing Provider appears to have issues regarding its ability to properly manage its RGI portfolio;
- set out an unwillingness on the part of the Co-op's Board to enlist the assistance of its own management company to help it conduct its meetings; and
- set out how the Co-op's Board was not prepared to develop and submit an action plan regarding the Co-op's financial position to the Service Manager.

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<sup>33</sup> AR, Tab 3, paragraphs 70 through 74, pages 75 and 76.

36. Between March 2021 and March 2022, the Service Manager made efforts to engage with the Housing Provider in order to help it focus on the triggering events that had been identified and to address same by:

- writing to Harry Sherman on May 20, 2021;
- following up in June and July 2021;
- participating in a Board meeting, convened on September 22, 2021, along with a senior CHFT official; and
- participating in a follow-up meeting on January 14, 2022.<sup>34</sup>

### **Ongoing Review of the Housing Provider's Finances [the Fiscal Year Ending on June 30, 2021]**

37. While these efforts were ongoing, Harry Sherman delivered an independent Auditor's Report, prepared by Mr. Roscetti for the fiscal year ending June 30, 2021, a letter that Mr. Roscetti prepared, dated September 20, 2021, and the Co-op's Annual Information Return for the 2021 fiscal year.<sup>35</sup> The Service Manager reviewed the submissions that Harry Sherman made in respect of the fiscal year ending on June 30, 2021. Its review of these submissions revealed the following<sup>36</sup>:

- **There Remained Evidence of a Lack of Internal Controls at the Housing Provider** - The Housing Provider's independent auditor identified significant deficiencies in respect of internal controls over several aspects of the housing project's finances. These deficiencies included:
  - *The Housing Provider's Financial Position Continued to Deteriorate* – The capital reserve fund, as reported in the audited financial statements, was fully depleted – a decrease of \$50,617 from the amount reported in the audited financial statements for the 2020 fiscal year. The Co-op was carrying a deficit of \$287,000 – a change in its financial position of \$157,913.

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<sup>34</sup> AR, Tab 3, paragraphs 76 through 79, pages 76-78.

<sup>35</sup> AR, Tab 3, paragraph 80, page 78.

<sup>36</sup> AR, Tab 3, paragraph 81, page 78 through 80.

Having identified these issues, Mr. Roscetti made the following comment to the Co-op's Board: "While I can appreciate the Co-op's desire to renovate and take care of all backlogged projects, it is essential that it keep in mind that there are very limited financial resources at its disposal. As at June 30, 2021, the co-op had about \$190,000 in total cash on hand, yet its accounts payable were over \$450,000. The inability to pay suppliers on time will result in late payment charges, interest expense, a poor credit rating, possible legal action, and the potential loss of reputable suppliers. **It is essential for the Co-op, at this point, to assess its current financial situation and determine how to strengthen it.**" [emphasis added].

The assessment and comments of the Housing Provider's own independent auditor sets out how – **despite the fact that the Service Manager alerted the Co-op to these issues back in the fall of 2019** - the Co-op's financial position was continuing to deteriorate. This confirmed that the Service Manager's concern about Harry Sherman's financial situation was well founded, and that the Service Manager's direction to review that situation and prepare a financial plan mapping out how it proposed to improve that situation was sound and appropriate advice. Moreover, Mr. Roscetti expressly sets out how the housing project's financial situation had put it in a position where it would not be able to meet its financial obligations as they become due.

- *Inadequate Board Records/Minutes* – Mr. Roscetti noted how it is extremely important for the Board to maintain records of its meeting, as they provide a record and overview of key financial decisions made by the Housing Provider. His review revealed that minutes of all the Board's meetings were not available. The Housing Provider was advised that it was essential that all minutes be prepared, signed and filed chronologically in the Co-op's office for future review and verification of any proceedings and decisions it made.
- **A Large Number of Units Remained Vacant for Significant Periods of Time** - Units within the housing project were vacant for 12 months across the fiscal year. These vacancies were unusual, given the requirement that all housing provider must abide by – the requirement to fill any vacant RGI units with households from Toronto's centralized waiting list for social housing. This centralized waiting list, which is managed by Housing Connections, is so extensive that households wait for seven years (on average) to be housed. These reported vacancies caused a significant loss of revenue for the Co-op of just over \$12,000.
- **High Rental Arrear Amounts** – The housing provider reported arrears in the amount of \$20,893. This is a high amount and percentage of arrears for a project the size of Harry Sherman.

38. The City's review of the Housing Provider's 2021 AIR revealed that the same RGI related reporting issues that were encountered in respect of the 2019 and 2020 AIR submissions persisted. It failed to rent out all of the 90 units it was required to at below market rent, and vacancies that appeared to arise in its below-market-rent portfolio were not filled by households that were on the City of Toronto's centralized waiting list. On the basis of its review, the Service Manager's concerns about the Housing Provider's inability to manage its RGI portfolio continued to grow. It was not prepared to accept the 2021 AIR that was submitted as being accurate and wrote to the Housing Provider to advise it of this issue and granting it an opportunity to resubmit the required AIR. The Service Manager also wrote to the Housing Provider to highlight the issues in respect of its financial position that flowed from the City's review of the financial information for the 2020 fiscal year, which remained unresolved. The City has not yet received an updated and accurate AIR for the 2021 fiscal year or a response to the other issues raised in these letters.<sup>37</sup>

39. By the end of March 2022, over a year had passed since the issuance of the NTE. Despite this passage of time, the Housing Provider had failed to take the required actions to resolve the triggering events. On March 31, 2022, HSS staff sent the Housing Provider's counsel and its Board of Directors a letter, which noted that it had not received a received a plan from the Housing Provider that addressed the events noted in the NTE. It requested that the Housing Provider deliver a substantive response to each of the issues listed in the NTE by May 9, 2022

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<sup>37</sup> AR, Tab 3, paragraph 82, page 80.

and reminded the Housing Provider that failure to comply with the NTE could result in the exercise of the remedies available to it under section 85 of the HSA.<sup>38</sup>

**The Service Manager Determines that it is Appropriate for it to Exercise its Authority and Appoint a Receiver and Manager Under Subsection 85(6) of the HSA to Ensure the Issues at the Housing Provider Will be Properly Assessed and Addressed**

40. On May 9, 2022, the Housing Provider delivered correspondence to the City that it presented as a response to the March 29, 2021, NTE.<sup>39</sup> The Service Manager carefully considered all of the information provided to it by Harry Sherman following the delivery of the NTE, including the Housing Provider's May 9<sup>th</sup> correspondence and the information that accompanied it. It determined that the Housing Provider failed to comply with all or part of the NTE. These failures included, but were not limited to:

(a) A failure – over the course of the 14 months since the delivery of the NTE through and until May 9, 2022 – to ensure that the following statements and reports were prepared and provided to the Service Manager:

- **Balance Sheet** showing cash on hand, investments and monies owed;
- **Statement of Revenue and Expense** showing budget, actual data, and variances;
- **Payables List** showing all outstanding invoices;
- **Arrears Report** showing occupancy charge amounts unpaid by residential members; and
- **Investment Ledger (Report)** showing the balance of all investments

(b) A failure to deliver an action plan detailing what steps the Board would take to eliminate the accumulated deficit and ensure that the Co-op will not incur losses in future years; and

(c) A failure to create and submit the prescribed training plan that all members of the Board of Directors was to receive.

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<sup>38</sup> AR, Tab 3, paragraph 83, page 81.

<sup>39</sup> AR, Tab 3, paragraph 84, page 81.

41. The May 9<sup>th</sup> correspondence acknowledged the NTE and accepted that the issues it raised were well founded and needed to be addressed, but only proposed to deal with these matters – which had first been raised in the fall of 2019 - in piecemeal fashion and, critically, without the requisite degree of detail and specificity that would demonstrate that the ongoing triggering events had been resolved.<sup>40</sup>
42. The Service Manager concluded that the triggering events that had been identified remained unresolved and the Housing Provider was not able to pay its debts as they became due. It determined that it was appropriate to exercise its authority under the HSA and appoint an interim receiver over the housing project, pursuant to subsection 85(6) of the Act. The steps taken by the City to appoint the interim receiver were taken in order to ensure that the significant issues facing Harry Sherman, financial and otherwise, were properly diagnosed and to ensure that steps were being taken to normalize the operation of the Housing Provider.<sup>41</sup>
43. RSM Canada Limited ("RSM") was appointed as the interim receiver of the housing project (the "Receiver") pursuant to 85(6) of the HSA on May 27, 2022, and was requested, in that capacity, to take control, direction, and possession of the housing project, the revenue and the assets of the housing provider, and the books, records, and accounts of the housing provider or any part of them, pertaining to the housing project.<sup>42</sup>

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<sup>40</sup> AR, Tab 3, paragraph 86, page 82.

<sup>41</sup> AR, Tab 3, paragraph 87, page 82.

<sup>42</sup> AR, Tab 3, paragraph 88, page 83.

## **The Housing Provider's Refusal to Recognize the Service Manager's Decision to Appoint the Receiver Pursuant to Subsection 85(6) of the HSA**

44. Members of the Board escorted the Receiver off the property. Following the exchange of correspondence between May 30<sup>th</sup> and June 3<sup>rd</sup>, 2022, the Service Manager was advised that Harry Sherman would not recognize the Service Manager's authority to appoint a Receiver under the governing legislation unless it secured a Court Order to that effect.<sup>43</sup>

## **(G) - THE SERVICE MANAGER'S DECISION TO SEEK THE APPOINTMENT OF THE RECEIVER BY THE SUPERIOR COURT OF JUSTICE PURSUANT TO SUBSECTION 85(7) OF THE HSA**

45. The City of Toronto considered what next steps should be taken given its concerns about the housing project, given the Housing Provider's actions and stated position. It decided to provide Harry Sherman with notice pursuant to paragraph 90(6(a)) of the HSA that it was considering making an application to seek the appointment of a receiver or receiver and manager pursuant to subsection 85(7) of the Act, as a remedy to address the triggering events which the City identified and which were continuing.<sup>44</sup>

46. The July 14<sup>th</sup> notice provided a comprehensive and detailed outline of the triggering events that the Housing Provider had failed to address and which were persisting, and the specifics about the curative actions that had yet to be taken. In addition, it outlined the reasons why the Service Manager was considering the appointment of a receiver, namely, that:

- the Housing Provider was unable to pay its debts as they become due, has inadequate cash on hand to pay its debts, and its current liabilities exceeded its current assets;

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<sup>43</sup> AR, Tab 3, paragraphs 89 through 91, pages 83 and 84.

<sup>44</sup> AR, Tab 3, paragraph 92, page 84.

- the policies and procedures that were submitted to the City did not fully address the gaps in governance, financial control, and RGI administration processes that the City had identified;
- the Housing Provider had not demonstrated that it had implemented the policies and procedures it had submitted, even putting aside any deficiencies such policies and procedures may have; and
- the triggering events identified in the NTE remained outstanding.<sup>45</sup>

47. In addition, the July 14<sup>th</sup> notice set out how the Housing Provider had the opportunity to make a written submission to the Service Manager concerning its proposed exercise of the subsection 85(7) remedy within 60 days, which submission the Service Manager would consider, and how if no submission was made within the prescribed time, the Service Manager would make its decision based on the information available to it. The Housing Provider was given until Wednesday September 14, 2022, to respond to the July 14<sup>th</sup> notice. The Housing Provider failed to deliver any response to the July 14<sup>th</sup> notice by September 14, 2022. The only response the City received was correspondence dated September 22, 2022, in which the Housing Provider asked for additional time to make a submission.<sup>46</sup>

48. The Service Manager was not prepared to grant the housing provider any further extension given the passage of time and provided the Housing Provider with its Notice of Decision on September 23, 2022, in accordance with, and pursuant to, subsection 90(6) of the HSA. The Notice of Decision specified that the City had decided to make an application to seek the appointment of a receiver or receiver and manager under subsection 85(7), for the following reasons:

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<sup>45</sup> AR, Tab 3, paragraph 93, page 85.

<sup>46</sup> AR, Tab 3, paragraphs 95 and 96, pages 85 and 86.

- the Housing Provider was unable to pay its debts as they become due;
- the policies and procedures that had been submitted to the Service Manager did not fully address the gaps in the governance, financial control and rent-gear-to-income administration processes that the Service Manager had identified;
- the Housing Provider had not demonstrated that it has implemented the policies and procedures that it had submitted;
- the triggering events specified in Appendix "A" attached to the July 14<sup>th</sup>, 2022 notice had not been addressed in the manner required by the Notice of Triggering Events delivered to Harry Sherman Crowe Housing Co-operative Inc. on March 29, 2021, all of which were continuing.

As a result, in the opinion of the Service Manager, the Housing Provider continued to contravene the provisions of the Act and has failed, and is failing, to operate the housing project properly.<sup>47</sup>

### **PART III – THE LAW AND ARGUMENT**

49. Paragraph 85(7) of the HSA provides that if a triggering event occurs, a Service Manager may seek the appointment by the Superior Court of Justice of a receiver or receiver and manager for the Housing provider in circumstances where the housing provider is unable to pay its debts as they become due.<sup>48</sup> Section 83 of the HSA sets out a list of those triggering events.

50. Having first identified issues in respect of the operation of the Housing Provider, including issues in respect of Harry Sherman’s deteriorating financial position, in 2019 and in 2020, and having unsuccessfully attempted to engage with the Housing Provider to address them, the City determined that these issues remained unresolved and in many respects were worsening.

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<sup>47</sup> AR, Tab 3, paragraphs 97 and 98, page 86.

<sup>48</sup> HSA, subsection 85(7), section 94, and subsection 90(5), Schedule B of the Applicant's Factum.

The Service Manager determined that the Housing Provider had contravened the HSA and its regulations and failed to operate the Housing Project properly. These failures constituted triggering events under the governing legislation.<sup>49</sup>

51. On March 29, 2021, the City delivered a Notice of Triggering Events to Harry Sherman pursuant to, and in accordance with, subsection 90(1)(a) of the HSA.<sup>50</sup>

52. The Triggering Events persisted. Furthermore, the information available to the Service Manager, received subsequent to the issuance of the March 2021 Notice of Triggering Events, indicated how the Housing Provider's financial position was deteriorating further. This information included the report and covering letter that it was provided by Harry Sherman's auditor, who assessed the Housing Provider's financial position at the end of the 2021 fiscal year. The auditor's assessment includes the following passage:

As at June 30, 2021, the Co-operative's capital replacement reserve was fully depleted and its accumulated deficit was almost \$287,000.

While I can appreciate the Co-op's desire to renovate and take care of all backlogged projects, it is essential that it keep in mind that there are very limited financial resources at its disposal. As at June 30, 2021, the Co-op only had about \$190,000 in total cash, yet its accounts payable were over \$450,000. The inability to pay suppliers on time will result in late payment charges, interest expense, a poor credit rating, possible legal action and the potential loss of reputable suppliers.

It is essential for the Co-op, at this point, to assess its current financial situation and determine how to strengthen it.<sup>51</sup>

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<sup>49</sup> HSA, subsection 83(1) and 83(11), Schedule B of the Applicant's Factum, page B-2.

<sup>50</sup> HSA, subsection 90(1)(a), Schedule B of the Applicant's Factum, page B-2.

<sup>51</sup> AR, Tab 3, Exhibit X, letter dated September 20, 2021, page 309.

53. The above referenced audited financial statements in respect the fiscal year ending in June 2021 are the last audited financial statement that the City has been provided with. It has not received the audited financial statements for the fiscal year ending in June 2022, nor has it received the Annual Information Returns that the Housing Provider was required to deliver in respect of the 2021 and 2022 fiscal years.

54. In July 2022, the City notified the Housing Provider of its intention to apply to the Superior Court of Justice and seek the appointment of the receiver in accordance with subsection 90(6)(a) of the HSA.<sup>52</sup> As articulated in its account of the relevant facts, above, the July 14, 2022 notice set out a comprehensive and detailed outline of the triggering events that the Housing Provider had failed to address and which were persisting, and the specifics about the curative actions that had yet to be taken. It also outlined the reasons why the Service Manager was considering the appointment of a receiver:

- the Co-op was unable to pay its debts as they become due, has inadequate cash on hand to pay its debts, and its current liabilities exceeded its current assets;
- the policies and procedures that were submitted to the City did not fully address the gaps in governance, financial control, and RGI administration processes that the City had identified;
- the Co-op had not demonstrated that it had implemented the policies and procedures it had submitted, even putting aside any deficiencies such policies and procedures may have; and
- the triggering events identified in the NTE remained outstanding.

55. The Housing Provider was also afforded the opportunity to make a written submission to the Service Manager concerning its proposed exercise of the subsection 85(7) remedy.

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<sup>52</sup> HSA, subsection 90(6)(1), Schedule B of the Applicant's Factum, page B-2.

56. On September 23, 2022, the City provided the Co-op with a Notice of Decision in accordance with subsection 90(6)(a) of the HSA specifying that the City had decided to make an application to seek the appointment of a receiver or receiver and manager for the following reasons:

- the Housing Provider was unable to pay its debts as they become due;
- the policies and procedures that had been submitted to the Service Manager did not fully address the gaps in the governance, financial control, and rent-g geared-to-income administration processes that the Service Manager had identified;
- the Housing Provider had not demonstrated that it had implemented the policies and procedures that it had submitted; and
- the triggering events specified in Appendix "A" attached to the Service Manager's July 14<sup>th</sup>, 2022 notice had not been addressed in the manner required by the Notice of Triggering Events delivered to Housing Provider on March 29, 2021, all of which were continuing.

57. The City submits that, for the reasons identified above, this Honourable Court should exercise its authority and order that a Receiver be appointed pursuant to subsection 85(7) of the HSA.

58. The appointment of a receiver – a remedy expressly contemplated by the HSA – will help address the issues the Housing Provider has been struggling with and will benefit the housing project and its membership in both the short and long term. A receiver will be able to properly diagnose the various issues facing the Co-op, and take appropriate action to:

- (i) outline how the housing project can best be rehabilitated so that the longstanding and unresolved issues that have been identified do not persist and deteriorate further, and so that it can continue to operate as a viable, going concern; and
- (ii) take active steps to rehabilitate the Housing Project.

#### PART IV – THE ORDER REQUESTED

59. The Applicant City of Toronto has prepared a draft Order that it proposes be issued should this Honourable Court grant the City the relief it is seeking. The City had prepared a draft Order that it appended to its Notice of Application and which can be found in the Application Record. That draft Order has since been refined on the basis of a dialogue that the Applicant and the Respondent have had since the issuance and delivery of the City’s Notice of Application. That revised and updated draft Order is attached as Schedule “C” to this Factum. A comparison between this revised draft Order and the Model Order is attached, for the benefit of the Court, as Schedule “D” to this Factum. The Consent of the Receiver to Act can be found at Schedule “E” to this Factum.

60. The Model Order has been adjusted to ensure it reflects the fact that the receiver is being appointed pursuant to the provisions of the *Housing Services Act, 2011*, and not the *Bankruptcy and Insolvency Act*. The Model Order has also been adjusted to incorporate three terms that the Service Manager and the Housing Provider have agreed were appropriate in all the circumstances of this case:

- that the Receiver report to the Service Manager on the progress of the receivership on a quarterly basis, and that said reports be shared with the Housing Provider’s membership;
- that the Receiver report to the Court on the progress of the receivership at least once a year; and
- that the Service Manager agree to fund the costs of the receiver and their appointed counsel.

61. The City respectfully submits that the balance of the tools that the Model Order makes available to receivers charged with the care and control of assets of which they are stewards

and of which they are asked to rehabilitate are tools that the receiver should have access to in the instant case. To further modify the terms of the Model Order would compromise the ability of the receiver to act diligently in the discharge of its duties and could unnecessarily prolong the term of its appointment.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Dated: March 9, 2023



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**MARK SIBONI**  
lawyer for the Applicant



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**RYAN KRAHN**  
lawyer for the Applicant

**SCHEDULE A – CASELAW**

## **SCHEDULE B - APPLICABLE LEGISLATION**

### **Courts of Justice Act**

R.S.O. 1990, CHAPTER C.43

### **INTERLOCUTORY ORDERS**

#### **Injunctions and receivers**

**101** (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so. R.S.O. 1990, c. C.43, s. 101 (1); 1994, c. 12, s. 40; 1996, c. 25, s. 9 (17).

#### **Terms**

(2) An order under subsection (1) may include such terms as are considered just. R.S.O. 1990, c. C.43, s. 101 (2).

### **Courts of Justice Act**

R.R.O. 1990, REGULATION 194

### **RULES OF CIVIL PROCEDURE**

#### **Applications — By Notice of Application or Application for Certificate**

**14.05** (1) The originating process for the commencement of an application is, as applicable,

- (a) a notice of application (Form 14E, 14E.1, 68A or 73A); or
- (b) an application for a certificate of appointment of estate trustee (Form 74A or 74J), small estate certificate (Form 74.1A) or amended small estate certificate (Form 74.1E). O. Reg. 383/21, s. 3; O. Reg. 709/21, s. 2.

#### ***Application under Statute***

(2) A proceeding may be commenced by an application to the Superior Court of Justice or to a judge of that court, if a statute so authorizes. R.R.O. 1990, Reg. 194, r. 14.05 (2); O. Reg. 292/99, s. 1 (2).

## **Housing Services Act, 2011**

### **S.O. 2011, CHAPTER 6**

#### **SCHEDULE 1**

#### **Purpose of the Act**

**1** The purpose of this Act is,

(a) to provide for community based planning and delivery of housing and homelessness services with general provincial oversight and policy direction; and

(b) to provide flexibility for service managers and housing providers while retaining requirements with respect to housing programs that predate this Act and housing projects that are subject to those programs. 2011, c. 6, Sched. 1, s. 1.

#### **Role of service manager**

**12** A service manager shall, in accordance with its housing and homelessness plan, carry out measures to meet the objectives and targets relating to housing needs within the service manager's service area. 2011, c. 6, Sched. 1, s. 12.

#### **General powers of service manager**

**13** (1) A service manager may establish, administer and fund housing and homelessness programs and services and may provide housing directly. 2011, c. 6, Sched. 1, s. 13 (1).

## **PART VI**

### **GENERAL RULES FOR TRANSFERRED HOUSING PROGRAMS AND PROJECTS**

#### **General duty of service manager**

**68** (1) A service manager shall administer and fund a transferred housing program as it relates to a housing project designated in the regulations for the purposes of this subsection. 2011, c. 6, Sched. 1, s. 68 (1).

#### **How duty carried out**

(2) A service manager shall carry out the duty under subsection (1) in accordance with,

(a) this Act and the regulations, including such criteria and rules as may be prescribed for the program for the purposes of this clause; and

(b) any applicable pre-reform operating agreement. 2011, c. 6, Sched. 1, s. 68 (2).

### **General duty of housing provider**

**69** (1) This section applies to a housing provider that operates a designated housing project. 2011, c. 6, Sched. 1, s. 69 (1).

### **General management**

(2) The housing provider shall ensure that the project is well managed, maintained in a satisfactory state of repair and fit for occupancy. 2011, c. 6, Sched. 1, s. 69 (2).

### **Rent and leases**

(3) The housing provider is responsible, in relation to the project, for the collection of rent and the administration of leases. 2011, c. 6, Sched. 1, s. 69 (3).

### **Information to service manager**

(4) The housing provider shall give such information as the regulations require to the service manager that administers the transferred housing program to which the project is subject. 2011, c. 6, Sched. 1, s. 69 (4).

### **Plans**

(5) The housing provider shall prepare and follow such plans relating to the governance or operation of the housing provider as the regulations may require. 2011, c. 6, Sched. 1, s. 69 (5).

### **Operating rules for projects**

**75** (1) A housing provider shall operate a Part VII housing project and govern itself in accordance with,

- (a) the prescribed provincial requirements; and
- (b) the local standards made by the service manager. 2011, c. 6, Sched. 1, s. 75 (1).

### **Triggering events**

**83** The following are triggering events for the purposes of sections 84 to 98:

1. The housing provider contravenes this Act or the regulations.
2. The housing provider becomes bankrupt or insolvent, takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors.
3. Steps are taken or proceedings are commenced by any person to dissolve or wind up the housing provider.
4. The housing provider ceases or threatens to cease to carry on business in the normal course.

5. A trustee, receiver, receiver and manager or similar person is appointed with respect to the business or assets of the housing provider.
6. REVOKED: 2017, c. 2, Sched. 3, s. 5 (1).
7. Any assets of the housing provider are seized under execution or attachment.
8. The housing provider is unable to fulfil its obligations.
9. The housing provider incurs an expenditure that is, in the opinion of the service manager, substantial and excessive.
10. The housing provider incurs an accumulated deficit that is, in the opinion of the service manager, substantial and excessive.
11. In the opinion of the service manager, the housing provider has failed to operate a designated housing project properly.
12. The housing provider contravenes a lease under which it has a leasehold interest in a designated housing project or in land where a designated housing project is located. 2011, c. 6, Sched. 1, s. 83; 2017, c. 2, Sched. 3, s. 5 (1).

## **Remedies**

**85** If a triggering event occurs, the service manager may exercise the following remedies:

1. The service manager may discontinue or suspend the subsidy payments under section 78.
2. The service manager may reduce the amount of the subsidy payments under section 78.
3. The service manager may deduct amounts from the subsidy payments under section 78 to pay all or part of a debt of the housing provider.
4. The service manager may,
  - i. exercise any of the powers or perform any of the duties of the housing provider under this Act, or
  - ii. act as the housing provider with respect to all or part of the assets, liabilities and undertakings of the housing provider, including its housing projects.
5. The service manager may appoint an operational advisor for the housing provider.
6. The service manager may appoint an interim receiver or interim receiver and manager for the housing provider.
7. The service manager may seek the appointment by the Superior Court of Justice of a receiver or receiver and manager for the housing provider.
8. The service manager may remove some or all of the directors or the deemed directors of the housing provider, regardless of whether they were elected or appointed or became directors by virtue of their office.
9. The service manager may appoint one or more individuals as directors of the housing provider. 2011, c. 6, Sched. 1, s. 85.

### **Other remedies not limited**

**86** (1) Nothing in sections 84 to 98 limits the exercise of any remedy the service manager may have other than under section 85. 2011, c. 6, Sched. 1, s. 86 (1).

### **Exception**

(2) Subsection (1) does not apply with respect to the appointment, by the court, of a receiver or receiver and manager for a housing provider and a service manager may not seek such an appointment other than under paragraph 7 of section 85. 2011, c. 6, Sched. 1, s. 86 (2).

### **Multiple remedies allowed**

**87** In respect of the same occurrence of a triggering event, the service manager may,

- (a) exercise more than one remedy; or
- (b) exercise the same or different remedies at different times. 2011, c. 6, Sched. 1, s. 87.

### **Remedy must be reasonable**

**89** The service manager may exercise a remedy only if, in the circumstances, it is reasonable to exercise the remedy and the remedy is exercised in a reasonable way. 2011, c. 6, Sched. 1, s. 89.

### **Notice, opportunity to rectify and make submission**

**90** (1) A service manager may exercise a remedy under section 85 in respect of an occurrence of a triggering event only if,

- (a) the service manager has given the housing provider a written notice that complies with subsection (2);
- (b) the triggering event continues following the last day of the period referred to in clause (2) (c), and the service manager has subsequently given the housing provider a written notice that complies with subsection (4);
- (c) the service manager has given the housing provider an opportunity to make a submission to the service manager in accordance with clause (4) (c); and
- (d) the service manager has considered the submission if a submission is made, made a decision, and provided the housing provider with notice of the decision and the reasons for it. 2011, c. 6, Sched. 1, s. 90 (1).

### **Content of notice of triggering event**

(2) The notice referred to in clause (1) (a) must,

- (a) specify the particulars of the occurrence of the triggering event or events;
- (b) specify what if anything the housing provider must do or refrain from doing to rectify the situation that gave rise to the occurrence of the triggering event or events in order to avoid an exercise of a remedy or remedies;
- (c) specify the period within which the housing provider must comply with the notice, which may not be less than 60 days from the date the notice is given; and
- (d) if the notice provides for the submission of a plan by the housing provider, specify the matters that must be addressed in the plan. 2011, c. 6, Sched. 1, s. 90 (2).

#### **Content of notice regarding submission**

(4) The notice referred to in clause (1) (b) must,

- (a) specify the particulars of the occurrence of the triggering event or events;
- (b) specify the remedy or remedies that the service manager is considering exercising to address the triggering event or events and the reasons why the service manager is considering them;
- (c) inform the housing provider that it can make a written submission on the service manager's proposed exercise of a remedy or remedies to the service manager by a date that is not less than 60 days after the date the notice is given;
- (d) inform the housing provider that if no submission is received within the period referred to in clause (c), the service manager will make a decision based on the information that is available to it; and
- (e) if the service manager is considering exercising the remedy under paragraph 4 of section 85, advise the housing provider of which powers the service manager would be exercising, which duties the service manager would be performing and the assets, liabilities or undertakings with respect to which it would be acting as the housing provider. 2011, c. 6, Sched. 1, s. 90 (4).

#### **Exceptions**

(5) Subsection (1) does not apply if,

- (a) the triggering event is a contravention of section 162;
- (b) the housing provider is unable to pay its debts as they become due;
- (c) the housing provider has operated a designated housing project in a way that has resulted in,
  - (i) significant physical deterioration of the housing project affecting the structural integrity of the housing project, or
  - (ii) danger to the health or safety of the residents of the housing project;

- (d) a report of an audit or investigation of the housing provider alleges fraud, criminal activity or a misuse of the assets of the housing provider and the alleged fraud, criminal activity or misuse of assets has been referred to a law enforcement agency;
- (e) a designated housing project of the housing provider is subject to a mortgage guaranteed by the Province of Ontario and the mortgage is in default;
- (f) the number of directors of the housing provider has been less than the quorum needed for a meeting of the board of directors for a period of 90 days and remains less than the quorum; or
- (g) a circumstance exists that is prescribed for the purpose of this clause. 2011, c. 6, Sched. 1, s. 90 (5); 2020, c. 16, Sched. 3, s. 10 (3).

### **Opportunity to make submission regarding court appointed receiver**

(6) Where a service manager is entitled to seek the appointment of a receiver or a receiver and manager under paragraph 7 of section 85, or to make an application for an extension of the appointment of an interim receiver or an interim receiver and manager under subsection 95 (3), the service manager shall not make a decision to do so unless,

- (a) the service manager has first given the housing provider a written notice that complies with subsection (7);
- (b) the service manager has given the housing provider an opportunity to make a submission to the service manager in accordance with clause (7) (c); and
- (c) the service manager has considered the submission if a submission is made, made a decision, and provided the housing provider with notice of the decision and the reasons for it. 2011, c. 6, Sched. 1, s. 90 (6).

### **Content of notice**

(7) The notice referred to in clause (6) (a) must,

- (a) specify the particulars of the occurrence or continuation of the triggering event or events and the circumstances in subsection (5) that are continuing;
- (b) specify that the service manager is considering making an application to seek the appointment of a receiver or a receiver and manager under paragraph 7 of section 85 or extend the appointment of an interim receiver or an interim receiver and manager under subsection 95 (3) and the reasons why the service manager is doing so;
- (c) inform the housing provider that it can make a written submission on the service manager's proposed exercise of the remedy or application for extension by a date that is not less than 60 days after the date the notice is given; and
- (d) inform the housing provider that if no submission is received by the date specified by the service manager under clause (c), the service manager will make a decision based on the information that is available to it. 2011, c. 6, Sched. 1, s. 90 (7).

### **Restriction on appointment of receiver, etc.**

**94** A service manager may appoint an interim receiver or interim receiver and manager under paragraph 6 of section 85, or seek the appointment of a receiver or receiver and manager under paragraph 7 of section 85, only if one of the situations listed in subsection 90 (5) is continuing. 2011, c. 6, Sched. 1, s. 94.

**Service manager – appointed receiver, etc.**

**95** (1) This section applies with respect to the exercise of the remedy to appoint an interim receiver or interim receiver and manager under paragraph 6 of section 85. 2011, c. 6, Sched. 1, s. 95 (1).

**Time limit**

(2) The maximum period during which there may be an interim receiver or interim receiver and manager is 180 days. 2011, c. 6, Sched. 1, s. 95 (2).

**Extension by court**

(3) The Superior Court of Justice may, on application of the service manager, extend the maximum period under subsection (2). 2011, c. 6, Sched. 1, s. 95 (3).

**Qualification on time limit**

(4) Subsection (2) does not limit the appointment of an interim receiver or interim receiver and manager in respect of a different occurrence of a triggering event. 2011, c. 6, Sched. 1, s. 95 (4).

**Appointment by agreement**

(5) The interim receiver or interim receiver and manager shall be appointed under an agreement between the service manager and the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (5).

**Termination, etc.**

(6) Despite anything to the contrary in the agreement appointing the interim receiver or interim receiver and manager, the service manager may, without the consent of the interim receiver or interim receiver and manager, terminate or shorten the appointment at any time. 2011, c. 6, Sched. 1, s. 95 (6).

**Return of control**

(7) When it is appropriate, in the opinion of the service manager, to return control to the housing provider, the service manager shall terminate the appointment of the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (7).

**Copy of agreement to housing provider**

(8) The interim receiver or interim receiver and manager shall give the housing provider a copy of the agreement appointing the interim receiver or interim receiver and manager and any amendment to the agreement. 2011, c. 6, Sched. 1, s. 95 (8).

### **Powers**

(9) The interim receiver or interim receiver and manager has the prescribed powers, subject to subsection (10) and any limits in the agreement appointing the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (9).

### **Powers continued**

(10) The powers of an interim receiver do not include the power to sell, convey, lease, assign, give as security or otherwise dispose of the assets of the housing provider, including its housing projects, outside of the ordinary course of business of the housing provider. 2011, c. 6, Sched. 1, s. 95 (10).

### **Powers are exclusive**

(11) The powers of the interim receiver or interim receiver and manager are exclusive and no other person may exercise those powers during the appointment of the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (11).

### **Restriction on dealing with housing project**

(12) For greater certainty, section 162 applies to an interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (12).

### **Remuneration**

(13) The remuneration of the interim receiver or interim receiver and manager shall be determined under the agreement appointing the interim receiver or interim receiver and manager and shall be paid out of the funds of the housing provider. 2011, c. 6, Sched. 1, s. 95 (13).

### **Duty to co-operate**

(14) The housing provider shall co-operate with the interim receiver or interim receiver and manager and give the interim receiver or interim receiver and manager full access to the housing provider's books and records. 2011, c. 6, Sched. 1, s. 95 (14).

### **Ratification of acts of receiver, etc.**

(15) The housing provider is deemed to ratify and confirm what the interim receiver or interim receiver and manager does during the appointment of the interim receiver or interim receiver and manager, but only with respect to things done in accordance with this Act, the regulations and the agreement appointing the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (15).

### **Release of receiver, etc.**

(16) The housing provider is deemed to release and discharge the service manager and the interim receiver or interim receiver and manager and every person for whom the service manager and the interim receiver or interim receiver and manager is responsible from every claim of any nature arising by reason of any act or omission done or omitted during the appointment of the interim receiver or interim receiver and manager, other than the following claims:

1. A claim for an accounting of the money and other property received by the interim receiver or interim receiver and manager or another person for whom the interim receiver or interim receiver and manager is responsible.
2. A claim arising from negligence or dishonesty by the interim receiver or interim receiver and manager or by another person for whom the interim receiver or interim receiver and manager is responsible. 2011, c. 6, Sched. 1, s. 95 (16).

### **Reports to housing provider**

(17) Every three months, the interim receiver or interim receiver and manager shall give the housing provider and service manager a written report that includes,

- (a) a summary of what the interim receiver or interim receiver and manager has done during the period covered by the report;
- (b) a summary of what the interim receiver or interim receiver and manager proposes to do in the future;
- (c) a summary of the operations of the housing provider during the period covered by the report; and
- (d) a general description of the financial situation of the housing provider. 2011, c. 6, Sched. 1, s. 95 (17).

### **Not bound by proposed actions**

(18) The interim receiver or interim receiver and manager is not required to do anything or prevented from doing anything only because it was included or not included in a report under clause (17) (b). 2011, c. 6, Sched. 1, s. 95 (18).

### **Reports to cover entire appointment period**

(19) The interim receiver or interim receiver and manager shall make reports under subsection (17) covering the entire period of the appointment of the interim receiver or interim receiver and manager, even if that requires a report to be made after the end of the appointment of the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (19).

### **Access by housing provider**

(20) The interim receiver or interim receiver and manager shall give the housing provider access to the books and records of the housing provider at reasonable times during the appointment of the interim receiver or interim receiver and manager. 2011, c. 6, Sched. 1, s. 95 (20).

### **Limit on report requirements**

(21) Subsections (17) and (20) do not require the disclosure of information that, in the opinion of the interim receiver or interim receiver and manager, may relate to fraud or other criminal activity by a director, member or employee of the housing provider. 2011, c. 6, Sched. 1, s. 95 (21).

### **Restriction**

(22) An interim receiver or interim receiver and manager may not be the same person as a property manager retained to act on behalf of the service manager in the exercise of paragraph 4 of section 85 or an operational advisor appointed under paragraph 5 of section 85 in respect of the housing provider. 2011, c. 6, Sched. 1, s. 95 (22).

### **Court appointed receiver, etc.**

**96** (1) This section applies with respect to the exercise of the remedy to seek the appointment of a receiver or receiver and manager under paragraph 7 of section 85. 2011, c. 6, Sched. 1, s. 96 (1).

### **Return of control**

(2) When it is appropriate, in the opinion of the service manager, to return control to the housing provider, the service manager shall seek the termination by the court of the appointment of the receiver or receiver and manager. 2011, c. 6, Sched. 1, s. 96 (2).

### **Limits on receivers, etc., appointed by service manager or court**

**97** (1) This section applies with respect to a receiver or receiver and manager appointed under paragraph 7 of section 85. 2011, c. 6, Sched. 1, s. 97 (1).

### **Restriction on dealing with housing project**

(2) For greater certainty, section 162 applies to a receiver or receiver and manager. 2011, c. 6, Sched. 1, s. 97 (2).

### **Restriction on transfer to service manager, etc.**

- (3) A receiver or receiver and manager shall not transfer a designated housing project unless,
- (a) the receiver or receiver and manager used an open and competitive process to select a transferee that would continue to operate the project under the transferred housing program administered by the service manager; or
  - (b) the receiver or receiver and manager was of the opinion that it would not be reasonable to use such a process. 2011, c. 6, Sched. 1, s. 97 (3).

## Housing Services Act, 2011

### ONTARIO REGULATION 367/11

#### GENERAL

#### ENFORCEMENT

#### **Service manager-appointed receiver, etc., powers, s. 95 (9) of the Act**

**104.** (1) This section prescribes, for the purposes of subsection 95 (9) of the Act, the powers that an interim receiver or interim receiver and manager has. O. Reg. 367/11, s. 104 (1).

(2) The interim receiver or interim receiver and manager has the power to act as the housing provider with respect to its assets, liabilities and undertakings, including its housing projects. O. Reg. 367/11, s. 104 (2).

(3) Without limiting the generality of subsection (2), the powers under that subsection include the following:

1. The power to carry on and manage the business and affairs of the housing provider.
2. The power to take possession of, preserve and protect the assets of the housing provider, including its housing projects.
3. The power to commence, conduct or defend legal proceedings.
4. The power to borrow money.
5. The power to receive payments or anything else in satisfaction of any obligation to the housing provider and to compromise any such obligation.
6. The power to enter into contracts, sign documents or do anything incidental to the exercise of its other powers. O. Reg. 367/11, s. 104 (3).

(4) The interim receiver or interim receiver and manager shall not exercise any of its powers unless all of the following are satisfied:

1. The interim receiver or interim receiver and manager has insurance acceptable to the service manager and has provided the service manager with proof of such insurance.
2. The interim receiver or interim receiver and manager has provided the service manager with undertakings, satisfactory to the service manager, that the interim receiver or interim receiver and manager and all persons who the interim receiver or interim receiver and manager procures the assistance of in the carrying out of the powers of the interim receiver or interim receiver and manager,
  - i. shall not do anything that would result in a conflict of interest, and
  - ii. shall comply with the requirements, to which the housing provider was subject, relating to the collection, use, disclosure and safeguarding of privacy of personal information and for a person's access to his or her personal information. O. Reg. 367/11, s. 104 (4).

## Housing Services Act, 2011

### ONTARIO REGULATION 369/11

#### SUBSIDIES FOR PART VII HOUSING PROJECTS

##### PART II DETERMINATION OF SUBSIDY

###### Application of Part

4. This Part applies with respect to the subsidy that a service manager pays a housing provider unless the housing provider is set out in the Schedule opposite the service manager. O. Reg. 369/11, s. 4.

###### Determination under this Part

5. The amount of the subsidy for a fiscal year that a service manager shall pay a housing provider shall be determined using the following formula,

$$\text{IBOpCosts} + \text{SMCosts} - \text{IBRev} + \text{RGISub} + \text{PTx} - \text{Sur}$$

in which,

“IBOpCosts” is the provider’s indexed benchmark operating costs for the fiscal year in respect of its housing projects determined under section 6,

“SMCosts” is the provider’s shelter mortgage costs for the fiscal year in respect of its housing projects determined under section 15,

“IBRev” is the provider’s indexed benchmark revenue for the fiscal year in respect of its housing projects determined under section 7,

“RGISub” is the provider’s rent-gear-to-income subsidy for the fiscal year in respect of its housing projects determined under section 8,

“PTx” is the property taxes payable by the provider for the fiscal year in respect of its housing projects, and

“Sur” is the amount equal to 50 per cent of the provider’s surplus for the fiscal year in respect of its housing projects determined under section 9, or such lesser amount as the service manager may determine.

O. Reg. 369/11, s. 5.

###### Indexed benchmark operating costs

6. (1) For the purposes of section 5, the housing provider's indexed benchmark operating costs for a fiscal year in respect of its housing projects is the amount determined by,

- (a) calculating the indexed benchmark operating cost for the fiscal year for each item listed in the Table to this subsection by,
  - (i) expressing as a decimal number the operating cost index for the item for the fiscal year, as determined by the Minister under subsection (2) or (3),
  - (ii) adding one to the number determined under subclause (i), and
  - (iii) multiplying the indexed benchmark operating cost for the item for the prior fiscal year by the number determined under subclause (ii); and
- (b) calculating the sum of the indexed benchmark operating costs determined under clause (a) for all the items.

TABLE

Item No.	Item	Index
1.	Administration and maintenance	Ontario Consumer Price Index (All items), as published by Statistics Canada.
2.	Insurance	Ontario Consumer Price Index (Homeowners' home and mortgage insurance sub-index), as published by Statistics Canada.
3.	Bad debt	Market rent index, as determined under section 10.
4.	Electricity	Ontario Consumer Price Index (Electricity sub-index), as published by Statistics Canada.
5.	Water	Ontario Consumer Price Index (Water sub-index), as published by Statistics Canada.
6.	Natural gas	Ontario Consumer Price Index (Natural gas sub-index), as published by Statistics Canada.
7.	Oil and other fuel	Ontario Consumer Price Index (Fuel oil and other fuel sub-index), as published by Statistics Canada.
8.	Capital reserves	Ontario Consumer Price Index (All items), as published by Statistics Canada.

O. Reg. 369/11, s. 6 (1).

(2) For the purposes of subclause (1) (a) (i), the operating cost index for an item listed in the Table to subsection (1), other than for item 3, is determined by,

- (a) dividing the index listed in the Table opposite the item for May of the calendar year before the year in which the fiscal year begins by that index for May of the calendar year before that;
- (b) subtracting one from the number determined under clause (a);
- (c) expressing the number determined under clause (b) as a percentage. O. Reg. 369/11, s. 6 (2).

(3) For the purposes of subclause (1) (a) (i), the operating cost index for item 3 of the Table to subsection (1) is the market rent index determined under section 10. O. Reg. 369/11, s. 6 (3).

(4) To reflect a change in the circumstances of a housing provider, the Minister may, after consulting with the housing provider and the service manager, determine a different indexed benchmark operating cost for the fiscal year for an item to be used instead of what would otherwise be calculated under clause (1) (a). O. Reg. 369/11, s. 6 (4).

### **Indexed benchmark revenue**

7. (1) For the purposes of section 5, the housing provider's indexed benchmark revenue for a fiscal year in respect of its housing projects is the amount determined using the following formula,

$$\text{IBRev(MarkRent)} - \text{IBVacLoss} + \text{BNonrentRev}$$

in which,

“IBRev(MarkRent)” is the provider's indexed benchmark revenue for market rent for the fiscal year in respect of its housing projects determined under subsection (2),

“IBVacLoss” is the provider's indexed benchmark vacancy loss for the fiscal year in respect of its housing projects determined under subsection (3), and

“BNonrentRev” is the provider's benchmark non-rental revenue for the prior fiscal year.

O. Reg. 369/11, s. 7 (1).

(2) For the purposes of subsection (1), the housing provider's indexed benchmark revenue for market rent for a fiscal year in respect of its housing projects is the amount determined by,

- (a) expressing as a decimal number the market rent index determined under section 10;
- (b) adding one to the number determined under clause (a); and
- (c) multiplying the provider's indexed benchmark revenue for market rent for the prior fiscal year by the number determined under clause (b). O. Reg. 369/11, s. 7 (2).

(3) For the purposes of subsection (1), the housing provider's indexed benchmark vacancy loss for a fiscal year in respect of its housing projects is the amount determined by,

- (a) expressing as a decimal number the market rent index determined under section 10;
- (b) adding one to the number determined under clause (a); and
- (c) multiplying the provider's indexed benchmark vacancy loss for the prior fiscal year by the number determined under clause (b). O. Reg. 369/11, s. 7 (3).

(4) To reflect a change in the circumstances of a housing provider, the Minister may, after consulting with the housing provider and the service manager,

- (a) determine a different benchmark non-rental revenue for the fiscal year instead of what would otherwise be used in the formula under subsection (1); or
- (b) determine a different amount for the fiscal year to be used instead of what would otherwise be calculated under subsection (2) or (3). O. Reg. 369/11, s. 7 (4).

### **Rent-geared-to-income subsidy**

**8.** (1) For the purposes of section 5, the housing provider's rent-geared-to-income subsidy for a fiscal year in respect of its housing projects is the amount determined using the following formula,

$$\text{MarkRent} - \text{RGIRent}$$

in which,

“MarkRent” is the lesser of,

- (a) the total of the provider's indexed benchmark market rent, determined under subsection (2), for the fiscal year from the rent-geared-to-income units in the provider's housing projects, and
- (b) the total of what the rent would be for the fiscal year from the rent-geared-to-income units if no rent-geared-to-income assistance was given in respect of those units, and

“RGIRent” is the rent payable to the provider for the fiscal year by the households accommodated in those rent-geared-to-income units.

O. Reg. 369/11, s. 8 (1).

(2) For the purposes of subsection (1), the total of a housing provider's indexed benchmark market rent for a fiscal year from rent-geared-to-income units in its housing projects is the amount determined by,

- (a) expressing as a decimal number the market rent index determined under section 10;
- (b) adding one to the number determined under clause (a); and
- (c) multiplying the number determined under clause (b) by the total of the provider's indexed benchmark market rent for the prior fiscal year. O. Reg. 369/11, s. 8 (2).

(3) To reflect a change in the circumstances of a housing provider, the Minister may, after consulting with the housing provider and the service manager, determine a different total indexed benchmark market rent for the fiscal year to be used instead of what would otherwise be calculated under subsection (2). O. Reg. 148/16, s. 1.

### **Surplus**

**9.** (1) For the purposes of section 5, the housing provider's surplus for a fiscal year in respect of its housing projects is the amount determined under this section. O. Reg. 369/11, s. 9 (1).

(2) If the housing provider's accumulated surplus in respect of its housing projects, determined under subsection (6), at the beginning of the fiscal year or the beginning of any previous fiscal year for which the service manager paid the housing provider a subsidy under section 78 of the Act or section 102 of the former Act is equal to or greater than the product of \$300 multiplied by the number of units in the provider's housing projects at the beginning of the fiscal year or that previous fiscal year, as the case may be, the provider's surplus for the fiscal year is the

provider's net operating income for its housing projects for the fiscal year determined under subsection (5). O. Reg. 369/11, s. 9 (2).

(3) If subsection (2) does not apply and if the amount determined using the following formula is positive, the housing provider's surplus for the fiscal year is the amount determined using the following formula,

$$\text{NetOpInc} + \text{AccSur} - \text{Amt}(\$300)$$

in which,

"NetOpInc" is the provider's net operating income for its housing projects for the fiscal year determined under subsection (5),

"AccSur" is the provider's accumulated surplus in respect of its housing projects at the beginning of the fiscal year determined under subsection (6), and

"Amt(\$300)" is the product of \$300 multiplied by the average number of the housing provider's units in the fiscal year.

O. Reg. 369/11, s. 9 (3).

(4) If neither subsection (2) nor (3) applies for the fiscal year, the housing provider's surplus for the fiscal year is nil. O. Reg. 369/11, s. 9 (4).

(5) For the purposes of this section, the net operating income of a housing provider for a fiscal year for its housing projects is the amount by which its revenue for the fiscal year from those projects determined under subsection 16 (1), exceeds its operating costs for the fiscal year with respect to those projects determined under subsection 16 (2). O. Reg. 369/11, s. 9 (5).

(6) For the purposes of this section, a housing provider's accumulated surplus in respect of its housing projects at the beginning of a fiscal year is the portion of its retained earnings at the end of the previous fiscal year determined in accordance with generally accepted accounting principles as they apply to social housing, that can reasonably be considered to be derived from its housing projects. O. Reg. 369/11, s. 9 (6).

### **Market rent index**

**10.** (1) For the purposes of sections 6, 7 and 8, the market rent index applicable for a fiscal year to a housing provider's housing projects is the lesser of,

- (a) the guideline published under subsection 120 (3) of the *Residential Tenancies Act, 2006*; and
- (b) the percentage change in the average rent for rental units, as determined under subsection (2). O. Reg. 369/11, s. 10 (1).

(1.1) Despite subsection (1), for the purposes of sections 6, 7 and 8, the market rent index applicable to a housing provider's housing projects for a fiscal year that begins in 2021 is the lesser of,

- (a) the guideline determined under subsection 120 (3.1) of the *Residential Tenancies Act, 2006* rather than the guideline published in *The Ontario Gazette* on August 29, 2020; and
- (b) the percentage change in the average rent for rental units, as determined under subsection (2). O. Reg. 713/20, art. 1.

(2) For the purposes of clause (1) (b), the percentage change in the average rent for rental units is determined using the following formula, rounded to the first decimal point:

$$(\text{AvRentRecent}/\text{AvRentPrior} - 1) \times 100$$

in which,

“AvRentRecent” is the number indicated in the edition of the Rental Market Report for fall of the second calendar year before the year in which the fiscal year begins, published by the Canada Mortgage and Housing Corporation, as the “Total” average rent for a “Private Apartment” or “Private Row (Townhouse)”, as the case may be, and for a census metropolitan area centre, census agglomeration centre or a zone, as the case may be, and

“AvRentPrior” is the number indicated in the report published one year before the report referred to in “AvRentRecent” that corresponds to the number determined under “AvRentRecent”.

O. Reg. 369/11, s. 10 (2).

(3) If the Rental Market Report does not provide data required for the calculation of “AvRentRecent” or “AvRentPrior”, then “AvRentRecent” or “AvRentPrior”, as the case may be, is equal to the number indicated in the Rental Market Report as the “Total” average rent for the census metropolitan area centre or census agglomeration centre, as the case may be, or, if that data is not available, for Ontario. O. Reg. 369/11, s. 10 (3).

## **PART IV COMMON RULES**

### **Shelter mortgage costs**

**15.** For the purposes of sections 5 and 12, the housing provider’s shelter mortgage costs for a fiscal year in respect of its housing projects is the total amount of principal and interest payable by the provider for the fiscal year, where such payments are,

- (a) payable under mortgages guaranteed by the Province of Ontario in respect of those projects; and
- (b) applicable to the portions of those housing projects that are used for residential accommodation and ancillary functions, including meeting rooms, recreational facilities, laundry facilities, parking areas and exterior grounds. O. Reg. 369/11, s. 15; O. Reg. 231/21, s. 1.

### **Revenue and operating costs**

**16.** (1) For the purposes of sections 9 and 12, the revenue of a housing provider for a fiscal year with respect to its housing projects is the total of the following types of revenue earned by the housing provider in the fiscal year in respect of the housing projects and units in the housing projects:

1. Revenue derived from the parts of the housing projects allocated to residential accommodation.
2. Revenue related to facilities used for ancillary purposes.
3. Revenue derived from the use of parking areas, exterior grounds, external building walls and roofs. O. Reg. 369/11, s. 16 (1).

(2) For the purposes of this Regulation, a housing provider's operating costs for a fiscal year from its housing projects is the total of the following expenses, allowances and contributions of the housing provider for the year that are reasonably applicable to the portions of those housing projects used for residential accommodation and ancillary functions, as determined in accordance with generally accepted accounting principles as they apply to social housing:

1. Administration and maintenance expenses.
2. Insurance premiums.
3. Bad debt expenses.
4. Utility costs, including electricity, fuel, water and sewer charges.
5. Contributions to the housing provider's capital reserve. O. Reg. 369/11, s. 16 (2).

(3) For the purposes of this section, gifts and donations made to a housing provider are not revenue of the housing provider. O. Reg. 369/11, s. 16 (3).

### **Calculations, rounding off**

**17.** (1) All amounts that are not whole numbers that are used in calculations under this Regulation or that result from calculations under this Regulation must be rounded to two decimal places, unless otherwise indicated. O. Reg. 369/11, s. 17 (1).

(2) Subsection (1) does not apply when a percentage is expressed as a decimal number. O. Reg. 369/11, s. 17 (2)



ON READING the Application Records of both parties, the joint Consent of the parties to Appoint a Receiver, and the Consent of RSM Canada Limited to act as the Receiver:

### **APPOINTMENT**

1. THIS COURT ORDERS that pursuant to section 85(7) of the HSA and section 101 of the CJA, RSM Canada Limited is hereby appointed as Receiver, without security, of all of the assets, undertakings, and properties of the Debtor acquired for, or used in relation to, a business carried on by the Debtor, including the Housing Project, and including all proceeds thereof (the "Property").

### **RECEIVER'S POWERS**

2. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable, providing that, in doing so, the Receiver complies with the HSA and its regulations:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Respondent, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Respondent;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises, or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Respondent and to exercise all remedies of the Respondent in collecting such monies, including, without limitation, to enforce any security held by the Respondent;
- (g) to settle, extend, or compromise any indebtedness owing to the Respondent;
- (h) to execute, assign, issue, and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondent, for any purpose pursuant to this Order;
- (i) to initiate, prosecute, and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Respondent, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) to sell, convey, transfer, lease, or assign the Property or any part or parts thereof out of the ordinary course of the Respondent's business,
  - (i) without the approval of this Court, in respect of any transaction not exceeding \$25,000.00, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
  - (ii) with the approval of this Court, in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required;
- (l) to report to, meet with and discuss with such Persons (as defined below), as well as the City of Toronto, as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, as the Receiver deems advisable and pursuant to the terms set out below, subject to such terms as to confidentiality;
- (m) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondent;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondent, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondent;
- (p) to exercise any member, partnership, joint venture, or other rights which the Respondent may have;

- (q) to increase the rents, housing charges, and any other fees and charges the occupants of the Housing Project (as that term is defined in the HSA) are required to pay, as the Receiver deems appropriate under the circumstances, and in accordance with the provisions of the HSA, the HSA's regulations, and the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, as amended (the "RTA");
- (r) to terminate the occupancy of any resident of the Property, in accordance with the HSA, the HSA's regulations, and the RTA; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Respondent, and the Respondent's Board of Directors, and without interference from the Respondent, the Respondent's Board of Directors, and any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

3. THIS COURT ORDERS that (i) the Respondent, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and members, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

4. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate, and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondent, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records")

in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain, and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, and physical facilities relating thereto, provided however that nothing in this paragraph 4 or in paragraph 5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

5. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase, or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

6. THIS COURT ORDERS that no proceeding (including any arbitration proceeding) or enforcement process in any court tribunal, or before an arbitrator (each, a "Proceeding"), shall be commenced or continued against the Receiver, except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE RESPONDENT OR THE PROPERTY**

7. THIS COURT ORDERS that no Proceeding against or in respect of the Respondent or the Property shall be commenced or continued, except with the written consent of the Receiver or with leave of this Court, and any and all Proceedings currently under way against or in respect

of the Respondent or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

8. THIS COURT ORDERS that all rights and remedies against the Respondent, the Receiver, or affecting the Property, are hereby stayed and suspended, except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Respondent to carry on any business which the Respondent is not lawfully entitled to carry on; (ii) exempt the Receiver or the Respondent from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

9. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by the Respondent, without written consent of the Receiver or leave of this Court.

10. THIS COURT ORDERS that the Respondent, its directors, employees, members, and/or agents be and are hereby restrained from issuing cheques on, withdrawing any monies from, or in any way dealing with the property of the Respondent or in which the Respondent has an interest, including but not limited to personal property, bank accounts, trust accounts and real property.

11. THIS COURT ORDERS that the Respondent shall be deemed to ratify and confirm whatever the Receiver does in the course of the receivership, so long as it is done in accordance with the HSA, the HSA's regulations, and the terms of the Receiver's appointment, and the Receiver shall not be required to consult with, obtain the approval of, or have its actions ratified by the Respondent.

## **REPORTING REQUIREMENTS**

12. THIS COURT ORDERS that the Receiver shall provide quarterly updates to the Applicant Service Manager, which reports shall be shared with the Respondent and its members, to update the Service Manager and, through it, the Housing Provider and its membership, of the actions taken and decisions made by the Receiver in respect of the Property, provided that the information included in such reports shall be in the sole discretion of the Receiver.

13. THIS COURT ORDERS that the Receiver shall also provide an annual report to this Court, the purpose of which is to advise the Court of the actions taken and decisions made by the Receiver under its appointment.

## **CONTINUATION OF SERVICES**

14. THIS COURT ORDERS that all Persons having oral or written agreements with the Respondent or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Respondent, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Respondent's current telephone numbers, facsimile numbers, internet addresses, and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Respondent or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

## **RECEIVER TO HOLD FUNDS**

15. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver, and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any rents and accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies

standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

16. THIS COURT ORDERS that all employees of the Respondent shall remain the employees of the Respondent until such time as the Receiver, on the Respondent's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as may provided under any other applicable legislation, other than such amounts as the Receiver may specifically agree in writing to pay.

### **PIPEDA**

17. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

18. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession, or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release,

or deposit of a substance contrary to any federal, provincial, or other law respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act*, and all regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

19. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Receiver by any other applicable legislation, including the protections afforded to the Receiver by the HSA and its regulations or any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

20. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall, subject to the limits set out in the provisions of the HSA and its regulations, form a first charge on the Property in priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person

21. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court. Any monies advanced to the Receiver and/or the Receiver's Legal Counsel, as set out in this paragraph, shall be reimbursed to the Respondent Applicant, following notice by the Receiver to the Applicant of such advances.

#### **FUNDING OF THE RECEIVERSHIP**

23. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge, subject to and the limitations set out in the provisions of the HSA and its regulations.

24. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

25. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

26. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### **SERVICE AND NOTICE**

27. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL <http://www.rsmcanada.com/harry-sherman-crowe-housing-co-op>

28. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, or facsimile transmission to the Respondent's creditors or other interested parties at their respective addresses as last shown on the records of the Respondent and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

30. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

31. 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.

32. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory, or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

33. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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## SCHEDULE "A"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that RSM Canada Limited, the receiver and manager (the "Receiver") without security, of all of the assets, undertakings, and properties of Harry Sherman Crowe Housing Co-operative Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including operation of the housing project at 51 The Chimneystack Road on the York University Campus in the City of Toronto, Province of Ontario, including all proceeds thereof (collectively, the "Property"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

RSM CANADA LIMITED, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

Schedule D - Comparison to Model Order

Revised: January 21, 2014  
s.243(1) BIA (National Receiver) and s. 101 CJA (Ontario) Receiver

Court File No. \_\_\_\_\_

Court File No. CV-22-00688248-00CL

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

THE HONOURABLE ) WEEKDAY, THE #  
 )  
JUSTICE ) \_\_\_\_\_, THE  
 )  
\_\_\_\_\_ DAY OF MONTH, 20YR MARCH,  
 2023

**PLAINTIFF<sup>†</sup>**

Plaintiff

**CITY OF TORONTO**

Applicant

- and -

**DEFENDANT**

Defendant

**HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.**

<sup>†</sup> The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application. This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

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Respondent

**ORDER**  
**(appointing Receiver)**

THIS ~~MOTION~~APPLICATION made by the Plaintiff<sup>2</sup> Applicant for an Order pursuant to section ~~243(185(7))~~ of the ~~Bankruptcy and Insolvency~~Housing Services Act, R-2011, S.C. 1985O. 2011, c. B-36, Sch. 1, as amended (the "~~BIA~~"HSA"), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "~~CJA~~"CJA"), appointing ~~[RECEIVER'S NAME]~~RSM Canada Limited as receiver ~~and manager~~ (in such capacities, the "~~Receiver~~"Receiver"), without security, of all of the assets, undertakings, and properties of ~~[DEBTOR'S NAME]~~ (Harry Sherman Crowe Housing Co-operative Inc. ("Harry Sherman" or "the Debtor")), acquired for, or used in relation to ~~a business carried on by~~, the operation of the Debtor, including the housing project at 51 The Chimneystack Road on the York University Campus in the City of Toronto, Province of Ontario (the "Housing Project"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavitApplication Records of ~~[NAME]~~ sworn [DATE] ~~both parties, the joint Consent of the parties to Appoint a Receiver, and the Exhibits thereto and on hearing the submissions of counsel for [NAMES], no one appearing for [NAME] although duly served as appears from the affidavit~~Consent of ~~service of [NAME] sworn [DATE] and on reading the consent of [RECEIVER'S NAME]~~RSM Canada Limited to act as the Receiver;

**SERVICE**

1. ~~THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated<sup>3</sup> so that this motion is properly returnable today and hereby dispenses with further service thereof.~~

<sup>2</sup>Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

<sup>3</sup>If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

## APPOINTMENT

2.1. THIS COURT ORDERS that pursuant to section 243(185(7)) of the BIAHSA and section 101 of the CJA, [RECEIVER'S NAME]RSM Canada Limited is hereby appointed as Receiver, without security, of all of the assets, undertakings, and properties of the Debtor acquired for, or used in relation to, a business carried on by the Debtor, including the Housing Project, and including all proceeds thereof (the "Property").

## RECEIVER'S POWERS

3.2. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable: providing that, in doing so, the Receiver complies with the HSA and its regulations:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the DebtorRespondent, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the DebtorRespondent;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise

of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises, or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor/Respondent and to exercise all remedies of the Debtor/Respondent in collecting such monies, including, without limitation, to enforce any security held by the Debtor/Respondent;
- (g) to settle, extend, or compromise any indebtedness owing to the Debtor/Respondent;
- (h) to execute, assign, issue, and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor/Respondent, for any purpose pursuant to this Order;
- (i) to initiate, prosecute, and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor/Respondent, the Property or the Receiver, and to settle or compromise any such proceedings.<sup>4</sup> The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

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<sup>4</sup> ~~This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.~~

(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of the Respondent's business,

(i) without the approval of this Court, in respect of any transaction not exceeding \$ \_\_\_\_\_, \$25,000.00, provided that the aggregate consideration for all such transactions does not exceed \$ \_\_\_\_\_; \$100,000; and

(ii) with the approval of this Court, in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~for section 31 of the Ontario *Mortgages Act*, as the case may be,~~<sup>5</sup> shall not be required, ~~and in each case the Ontario *Bulk Sales Act* shall not apply;~~

~~(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;~~

~~(m)~~(1) to report to, meet with and discuss with such ~~affected~~ Persons (as defined below), ~~as well as the City of Toronto~~, as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share

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<sup>5</sup> If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.

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information, as the Receiver deems advisable and pursuant to the terms set out below, subject to such terms as to confidentiality ~~as the Receiver deems advisable~~;

- ~~(m)~~(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of ~~the~~ Property;
- ~~(n)~~(n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor/Respondent;
- ~~(o)~~(o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor/Respondent, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor/Respondent;
- ~~(p)~~ to exercise any ~~shareholder/member~~, partnership, joint venture, or other rights which the Debtor/Respondent may have;
- ~~(q)~~ to increase the rents, housing charges, and any other fees and charges the occupants of the Housing Project (as that term is defined in the HSA) are required to pay, as the Receiver deems appropriate under the circumstances, and in accordance with the provisions of the HSA, the HSA's regulations, and the *Residential Tenancies Act, 2006, S.O. 2006, c. 17, as amended (the "RTA")*;
- ~~(r)~~(r) to terminate the occupancy of any resident of the Property, in accordance with the HSA, the HSA's regulations, and the RTA; and
- ~~(s)~~(s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below),

including the DebtorRespondent, and the Respondent's Board of Directors, and without interference from the Respondent, the Respondent's Board of Directors, and any other Person.

**DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4.3. THIS COURT ORDERS that (i) the DebtorRespondent, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholdersmembers, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5.4. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate, and accounting records, and any other papers, records and information of any kind related to the business or affairs of the DebtorRespondent, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain, and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, and physical facilities relating thereto, provided however that nothing in this paragraph 5.4 or in paragraph 6.5 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6.5. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the

information as the Receiver in its discretion deems expedient, and shall not alter, erase, or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

~~7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.~~

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

~~8.6.~~ THIS COURT ORDERS that no proceeding (including any arbitration proceeding) or enforcement process in any court ~~or~~ tribunal, or before an arbitrator (each, a "Proceeding"), shall be commenced or continued against the Receiver, except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTORRESPONDENT OR THE PROPERTY**

~~9.7.~~ THIS COURT ORDERS that no Proceeding against or in respect of the DebtorRespondent or the Property shall be commenced or continued, except with the written consent of the Receiver or with leave of this Court, and any and all Proceedings currently under way against or in respect of the DebtorRespondent or the Property are hereby stayed and suspended pending further Order of this Court.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

~~10.8.~~ THIS COURT ORDERS that all rights and remedies against the Debtor/Respondent, the Receiver, or affecting the Property, are hereby stayed and suspended, except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Debtor/Respondent to carry on any business which the Debtor/Respondent is not lawfully entitled to carry on; (ii) exempt the Receiver or the Debtor/Respondent from compliance with statutory or regulatory provisions relating to health, safety or the environment; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH THE RECEIVER**

~~11.9.~~ THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate, or cease to perform any right, renewal right, contract, agreement, licence, or permit in favour of or held by the Debtor/Respondent, without written consent of the Receiver or leave of this Court.

10. THIS COURT ORDERS that the Respondent, its directors, employees, members, and/or agents be and are hereby restrained from issuing cheques on, withdrawing any monies from, or in any way dealing with the property of the Respondent or in which the Respondent has an interest, including but not limited to personal property, bank accounts, trust accounts and real property.

11. THIS COURT ORDERS that the Respondent shall be deemed to ratify and confirm whatever the Receiver does in the course of the receivership, so long as it is done in accordance with the HSA, the HSA's regulations, and the terms of the Receiver's appointment, and the Receiver shall not be required to consult with, obtain the approval of, or have its actions ratified by the Respondent.

#### **REPORTING REQUIREMENTS**

12. THIS COURT ORDERS that the Receiver shall provide quarterly updates to the Applicant Service Manager, which reports shall be shared with the Respondent and its members.

to update the Service Manager and, through it, the Housing Provider and its membership, of the actions taken and decisions made by the Receiver in respect of the Property, provided that the information included in such reports shall be in the sole discretion of the Receiver.

13. THIS COURT ORDERS that the Receiver shall also provide an annual report to this Court, the purpose of which is to advise the Court of the actions taken and decisions made by the Receiver under its appointment.

#### CONTINUATION OF SERVICES

~~12.14.~~ THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor/Respondent or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor/Respondent, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's/Respondent's current telephone numbers, facsimile numbers, internet addresses, and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor/Respondent or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

#### RECEIVER TO HOLD FUNDS

~~13.15.~~ THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver ~~from~~ and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any rents and accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## EMPLOYEES

~~14.16.~~ THIS COURT ORDERS that all employees of the Debtor/Respondent shall remain the employees of the Debtor/Respondent until such time as the Receiver, on the Debtor's/Respondent's behalf, may terminate the employment of such employees.- The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as may provided ~~for in section 14.06(1.2) of the BIA~~ under any other applicable legislation, other than such amounts as the Receiver may specifically agree in writing to pay, ~~or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act.~~

## PIPEDA

~~15.17.~~ THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor/Respondent, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

~~16.18.~~ THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession, or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release, or deposit of a substance contrary to any federal, provincial, or other law respecting the protection, conservation, enhancement, remediation, or rehabilitation of the environment or

relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act*, and all regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

~~17.19.~~ THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, ~~or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act.~~ Nothing in this Order shall derogate from the protections afforded the Receiver by ~~section 14.06 of the BIA or by any other applicable legislation,~~ including the protections afforded to the Receiver by the HSA and its regulations or any other applicable legislation.

#### **RECEIVER'S ACCOUNTS**

~~18.20.~~ THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall, subject to the limits set out in the provisions of the HSA and its regulations, form a first charge on the Property in

priority to all security interests, trusts, liens, charges, and encumbrances, statutory or otherwise, in favour of any Person, ~~but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.~~<sup>6</sup>

~~19-21.~~ THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

~~20-22.~~ THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court. Any monies advanced to the Receiver and/or the Receiver's Legal Counsel, as set out in this paragraph, shall be reimbursed to the Respondent Applicant, following notice by the Receiver to the Applicant of such advances.

#### FUNDING OF THE RECEIVERSHIP

~~21-23.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$~~\_\_\_\_\_~~\$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. ~~The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge, subject~~

<sup>6</sup> ~~Note that subsection 243(6) of the BIA provides that the Court may not make such an 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".~~

to and the ~~charges as~~ limitations set out in ~~sections 14.06(7), 81.4(4), and 81.6(2)~~ the provisions of the BIAHSA and its regulations.

~~22-24.~~ THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

~~23-25.~~ THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

~~24-26.~~ THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### SERVICE AND NOTICE

~~25-27.~~ THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. -This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ~~<del>~~ <http://www.rsmcanada.com/harry-sherman-crowe-housing-co-op>

~~26-28.~~ THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, or facsimile transmission to the ~~Debtor's~~ Respondent's creditors or other interested parties at their respective

addresses as last shown on the records of the ~~Debtor~~Respondent and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### GENERAL

~~27-29.~~ THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

~~28-30.~~ THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

~~29-31.~~ 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.~~

~~30-32.~~ THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory, or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

~~31. THIS COURT ORDERS that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.~~

32. **33. THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

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**SCHEDULE "A"**

**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that [RECEIVER'S NAME], RSM Canada Limited, the receiver and manager (the "Receiver") without security, of all of the assets, undertakings, and properties [DEBTOR'S NAME] of Harry Sherman Crowe Housing Co-operative Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including operation of the housing project at 51 The Chimneystack Road on the York University Campus in the City of Toronto, Province of Ontario, including all proceeds thereof (collectively, the "Property<sup>22</sup>"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number \_\_-CL-\_\_\_\_\_, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the Bankruptcy and Insolvency Act, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[RECEIVER'S NAME], RSM CANADA LIMITED, solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

**ONTARIO  
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

**B E T W E E N:**

**CITY OF TORONTO**

Applicant

and

**HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.**

Respondent

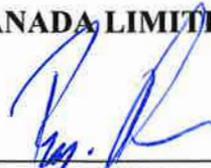
APPLICATION UNDER SECTION 85(7) OF THE *HOUSING SERVICES ACT, 2011, S.O. 2011, c. 6, SCH. 1*, AS AMENDED (the "HSA") AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O, 1990, c. C43, AS AMENDED (the "CJA")

**CONSENT**

The undersigned, RSM Canada Limited ("RSM"), hereby consents to the appointment of RSM as receiver and manager, without security, of all of the assets, undertakings and properties of Harry Sherman Crowe Housing Co-operative Inc. acquired for, or used in relation to a business carried on by the Debtor including the operation of the housing project at 51 The Chimneystack Road on the York University Campus in the City of Toronto, Province of Ontario in accordance with an order substantially in the form of the order sought and included in the Application Record of City of Toronto.

Dated at Toronto, this 14th day of November, 2022.

**RSM CANADA LIMITED,**

Per: 

\_\_\_\_\_  
Bryan A. Tannenbaum, FCPA, FCA, FCIRP, LIT  
President

BETWEEN:

**CITY OF TORONTO**  
*(Applicant)*

-and-

**HARRY SHERMAN CROWE HOUSING  
CO-OPERATIVE INC.**  
*(Respondent)*

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**ONTARIO**  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)  
Proceeding commenced at Toronto

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**APPLICANT'S FACTUM**

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**CITY SOLICITOR'S OFFICE**

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55 John St., 26<sup>th</sup> Floor  
Toronto, ON M5V 3C6

**Mark Siboni/Ryan Krahn**

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*Lawyers for the Applicant, City of Toronto*