Court File No. 07-CL-7044

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF AN APPLICATION UNDER SECTION 116(1) 6 OF THE *SOCIAL HOUSING REFORM ACT, 2000*, S.O. 2000, c. 27

AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. 43

THE REGIONAL MUNICIPALITY OF YORK

Applicant

- and -

THORNHILL GREEN CO-OPERATIVE HOMES INC.

Respondent

First Report to the Court of
Mintz & Partners Limited,
in its capacity as Court-Appointed Receiver and Manager
of Thornhill Green Co-operative Homes Inc.

May 14, 2008

1. This report has been prepared in support of a motion by Mintz & Partners Limited, the court-appointed Receiver and Manager (the "Receiver") of Thornhill Green Co-operative Homes Inc. ("Thornhill Green"). It is the Receiver's first report to this Honourable Court.

PURPOSE AND INTRODUCTION

2. The motion is for, among other things, an Order:

   (a) approving a transaction of purchase and sale with Housing York Inc. ("HYI"), pursuant to an agreement of purchase and sale, providing for the transfer of Thornhill

Green's housing assets located at 51-95 Inverlochy Boulevard, Markham, Ontario (the "Property") to HYI and providing for the issuance of an Approval and Vesting Order;

(b) declaring that upon the filing of a certificate by the Receiver, that:

i. all occupancy agreements for the Property are hereby terminated;

ii. any lease agreements remaining to be executed between the tenants at the Property and HYI as the purchaser are deemed to be executed, valid and in full force and effect; and,

iii. the housing units (the "Units") at the Property are no longer part of any co-operative housing corporation.

3. This matter is urgent. Thornhill Green is a social housing project that receives housing subsidies from The Regional Municipality of York (the "Region"). Prior to the appointment of the Receiver, the Property had deteriorated substantially under the then board of directors of Thornhill Green. While the Receiver has stabilized the financial situation at Thornhill Green and overseen a large amount of capital work and repairs, more work is needed to preserve and protect the Property. The Region wishes to ensure that the social housing stock, and the Property in particular, is preserved and protected.

4. The Receiver has identified certain additional urgent and pressing capital work and maintenance repairs (the "Work") at the Property. The Work must be completed during the current construction season, failing which the condition of the Property will deteriorate further, resulting in further difficulties for Thornhill Green, the Property and its occupants.

5. The Region has advised the Receiver that it wishes the receivership be terminated for various reasons and that it is not prepared to provide further funding to the board of directors of Thornhill Green (the "Board"). Based on a number of facts, including that the Board has had past issues managing both the finances of Thornhill Green and the Property itself, such that a Receiver was required, and the overall lack of interest, and in some cases the outright self-interested opposition by the members of Thornhill Green towards the Receiver, the Region has decided that it will not fund the required repairs if control of Thornhill Green is returned to the Board, in any form. In fact, the Region has advised the Receiver that it will only provide funding for the Work if the Property is sold to HYI, the social housing arm of the Region.

6. If this Honourable Court sees fit to approve the sale of the Property to HYI, a corporation incorporated under the *Business Corporations Act* (Ontario) R.S.O. 1990, c. B.1 ("OBCA"), the Property will cease to exist under the governance of a housing co-operative. The additional relief sought addresses the transition issues that will result from the sale of the Property to HYI.

THE APPOINTMENT OF THE RECEIVER

7. On July 19, 2006, the Region appointed the Receiver as Receiver and Manager of Thornhill Green pursuant to s. 116(1) of the *Social Housing Reform Act, 2000,* S.O. 2000, c. 2 ("SHRA"). The appointment was made with the consent of the Ministry of Municipal Affairs and Housing (the "Ministry"), after the Board had failed to adequately respond to several concerns previously identified by the Region. Attached hereto as

Appendix "A" is a true copy of correspondence from the Region to the Board advising of the appointment of the Receiver and the reasons therefor.

8. The appointment of the Receiver followed the determination by the Region that the Board was unable to properly manage the Property and that the Board had allowed the financial situation of Thornhill Green to become quite precarious, by, among other things:

(a) failing to maintain adequate cost controls for expenditures;

(b) failing to maintain monthly rent at comparable rates to other social housing providers, thereby limiting revenues to Thornhill Green and putting Thornhill Green into a deficit position;

(c) failing to pay municipal property taxes for Thornhill Green such that its mortgage with TD Canada Trust, its former secured lender, was ultimately not renewed, forcing the Ministry to negotiate a more costly mortgage with the Royal Bank of Canada ("RBC");

(d) requiring the Region to provide emergency funds on several occasions, first for the sum of $148,000.00 in October 2005 to address urgent health and safety concerns, and second for the sum of $32,249.60 to pay outstanding property taxes in January 2006; and,

(e) accumulating an operating deficit of over $200,000.00 such that the Board had to pay operating costs of Thornhill Green out of its capital reserve funds and from the pool of last month's rent deposits paid by members, thereby depleting those funds to almost nil.

9. Upon its appointment, the Receiver took possession and control of the assets and property of Thornhill Green. Precision Property Management Inc. ("Precision") was the existing property management company managing the day-to-day operations at the Property. The Receiver terminated the then existing property management agreement, and retained Precision on a month-to-month basis on the same terms and conditions.

10. The Receiver also took steps to immediately identify the needs of Thornhill Green, both with respect to necessary repairs and capital works, and the need to stabilize and improve Thornhill Green's financial situation.

11. In that regard, the Receiver sought and obtained $2.1 million in funding from the Region for capital works, and restored Thornhill Green to a proper financial footing, all the while meeting with Thornhill Green's members and keeping them informed as to the steps taken by the Receiver. This is addressed in further detail below.

12. The SHRA provides that the appointment of a receiver or receiver and manager by a service manager (the Region, in this case) terminates at the end of one year, unless that appointment is extended by the Court.

13. As a result, on June 26, 2007, the Region sought and obtained an Order of the Honourable Justice Pepall (the "Appointment Order") appointing the Receiver as Receiver and Manager pursuant to s. 116(1)6 of the SHRA, and pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.43. Attached hereto and marked as **Appendix "B"** is a true copy of the Appointment Order.

14. The Appointment Order provides, among other things, that the Receiver:

(a) is not required to consult with, or obtain the approval or ratification of Thornhill Green for anything done pursuant to the SHRA and the terms of its appointment during the receivership, and that Thornhill Green is deemed to approve and ratify the Receiver's actions (paragraph 5);

(b) is empowered and authorized to execute, assign, issue and endorse documents in respect of the Property and assets of Thornhill Green (paragraph 7(h));

(c) is empowered and authorized to negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate (paragraph 7(k));

(d) is empowered and authorized to sell, convey, transfer, lease and assign the Property out of the ordinary course of its business, with the approval of the Court as necessary (paragraph 7(l)); and,

(e) is empowered and authorized to apply for any vesting order or other orders necessary to convey the Property to a purchaser free and clear of any encumbrances thereon (paragraph 7(m)).

15. In the Receiver's view, it is appropriate that the Property be sold so as to secure the additional funding for the completion of the necessary Work at the Property, but also to ensure the proper management of the Property going forward.

THE PROPERTY

16. The Property is the major asset of Thornhill Green, and comprises a 101-unit townhouse complex with one additional office unit. Of the 101 townhouse units (the "Units"), 40 units are maintained as rent-geared-to-income housing units (the "RGI Units") and

qualify for rent subsidies from the Region as part of the social housing stock. Occupants of the RGI Units pay rent according to their income, according to a formula set out in the SHRA. The other 61 units are rented out at market rates.

17. The Units were built in 1966 and initially operated as traditional rental properties. In 1991, Thornhill Green was incorporated pursuant to the *Co-operative Corporations Act*, R.S.O. 1990, c. 35 ("CCA"). The articles of incorporation and articles of amendment of Thornhill Green specify that the corporation is to have a charitable purpose and that, upon dissolution, the assets of Thornhill Green are to be distributed to a charity or an organization with a charitable purpose. Attached hereto as **Appendix "C"** is a true copy of the articles of incorporation of Thornhill Green. Attached hereto as **Appendix "D"** is a true copy of the articles of amendment of Thornhill Green.

18. With funding from the Province of Ontario, Thornhill Green purchased the Units as part of the Homes Now social housing program. Additional funding was provided by way of advances secured by mortgages registered against title to the Property.

19. It is important to note that the Property was acquired with public or borrowed funds and not with any funds of any of the occupants/ members or board members of Thornhill Green, and thus none of those individuals have any direct financial interest in the Property. Thornhill Green's articles of incorporation also specifically prohibit members from personally benefiting from any disposition of the assets of Thornhill Green.

Property Management Services

20. As noted above, Precision provides property management services to Thornhill Green. As part of the services provided, Precision provides an on-site housing administrator, property manager and maintenance staff. These are all employees of Precision; Thornhill Green does not have any employees.

21. Precision has performed its functions and reported to the Receiver during the term of the Receiver's appointment, providing monthly property management reports. The Receiver reviews those reports, provides additional comments, and provides the reports to the Region.

22. Pursuant to the provisions of the SHRA, property management contracts must be submitted for tender every three years. As Precision had been the property manager since 2005, and had been providing services on a month-to-month basis to the Receiver since the Receiver's appointment, the Receiver notified Precision that its monthly property management contract for Thornhill Green would be terminated effective May 31, 2008.

23. Precision was invited to participate in the new tender process; Precision declined to participate in the new tender process.

24. Accordingly, the Receiver carried out the tender process, held a mandatory site meeting and met with two prospective bidders. After reviewing the bids and consulting with the Region, the Receiver selected Ontario Property Management Group Inc. ("OPMG") as the successful bidder to act as the new property manager for the Property, effective June 1, 2008.

THE SECURED CREDITORS

(i) Royal Bank of Canada

25. Attached hereto as **Appendix "E"** is a true copy of the Parcel Register for the Property, dated May 14, 2008, showing the instruments registered on title to the Property.

26. In July 2006 when the Receiver was appointed, Thornhill Green maintained a mortgage with TD Canada Trust ("TD"), which was registered in a first secured position against title to the Property. The TD mortgage was set to expire on November 1, 2007.

27. The TD mortgage was negotiated by the Ministry, as part of its administration of a mortgage pool to maximize costs savings for all service managers and social housing providers in the Province.

28. Prior to the expiry of the TD mortgage, TD advised the Ministry that it would not renew the mortgage based on the Board's failure to pay municipal property taxes when due and due to the fact that Thornhill Green was in receivership.

29. As a result, the Ministry was forced to seek alternate financing, outside of the shared mortgage pool. It did so, obtaining new mortgage financing for Thornhill Green from the Royal Bank of Canada ("RBC"). The RBC mortgage commenced on December 1, 2007 for a five-year term. RBC replaced TD as the first secured, registered mortgagee on the Property, and the RBC mortgage is guaranteed by the Ministry. Attached hereto as **Appendix "F"** is a true copy of the RBC mortgage.

30. The interest rate of 5.45% currently being charged on the RBC mortgage is significantly higher than the interest rates of 4.6% to 4.9% charged on mortgages obtained by the Ministry at that time through the mortgage pool, resulting in increased costs for Thornhill Green and in turn, the Region (due to the fact that the Region is required under the SHRA to provide a mortgage subsidy based on the actual cost of the mortgage).

31. On April 28, 2008, the RBC mortgage was amended and extended. In that regard, the Receiver executed an Agreement of Amending and Extending Charge/Mortgage and an Acknowledgment and Direction re: Agreement Amending and extending Charge/Mortgage in favour of RBC. Attached hereto as **Appendix "G"** are true copies of these documents.

32. As at December 1, 2007, the principal sum of $6,779,861.42 remains outstanding on the RBC mortgage.

(ii) The Region

33. As referred to above, on December 10, 2006, the Receiver entered into a loan agreement (the "Loan Agreement") with the Region to obtain the necessary $2.1 million in funding (the "Loan") for various capital work to be carried out at the Property. Attached hereto as **Appendix "H"** is a true copy of the Loan Agreement.

34. The Receiver also executed certain security documentation in favour of the Region, including a promissory note, an assignment of rents, a collateral mortgage and a general security agreement (collectively referred to as the "Security"). Attached hereto as **Appendix "I"** are true copies of the Security executed in favour of the Region.

35. As noted on the Parcel Register for the Property, the Loan from the Region is in second position on title to the Property, after the RBC mortgage.

36. The Receiver deposited the Loan funds into an interest-bearing bank account and paid for the capital work and maintenance repairs as they were completed. On March 18, 2008, the Receiver entered into an amending agreement with the Region such that the interest earned on the deposited Loan funds would not be included in the Loan, and would therefore not need to be repaid to the Region. Accordingly, as at December 31, 2007, the interest accrued and owing on the Loan from the Region was $68,465.75, and the Receiver was able to use the interest earned on the Loan funds for the expenses of Thornhill Green. Attached hereto as **Appendix "J"** is a true copy of the Amending Agreement, dated March 18, 2008, together with correspondence from the Region confirming the accrued interest on the Loan.

37. The principal sum of $2,100,000.00 remains outstanding on the Loan Agreement. The full outstanding amount of the Loan is secured by the Security registered in a second-ranking secured position against the Property. The Parcel Register at Appendix "E" of this report shows the general assignment of rents and charge registered in favour of the Region against title to the Property.

(iii) Other secured creditors

38. Attached hereto as **Appendix "K"** is a true copy of an Enquiry Response Certificate under the Personal Property Security Registration System, which discloses certain security interests registered against Thornhill Green. There are three registrations in total, being the security interests of RBC and the Region, as described above, and

Kubota, an equipment lessor with a registered security interest in a tractor leased by Thornhill Green.

THE CURRENT FINANCIAL SITUATION

The Deficit Reduction Plan

39. Following a proper bid process, the Receiver retained Prentice Yates & Clark ("PYC") to continue as the auditor for Thornhill Green during the receivership. PYC has provided the Receiver and the Region with audited financial statements for the fiscal year ended January 31, 2006, January 31, 2007 and draft audited financial statements for the fiscal year ended January 31, 2008. Attached hereto as **Appendix "L"** are true copies of the audited financial statements for the fiscal year ended January 31, 2006, the fiscal year ended January 31, 2007 and the draft audited financial statements for the fiscal year ended January 31, 2008.

40. Thornhill Green's audited financial statements show that the operating deficit rose from $227,043.00 to $571,626.00 over the period from January 31, 2006 to January 31, 2007.

41. As requested by the Region, and in response to Thornhill Green's increasing operating deficit, the Receiver implemented a Deficit Reduction Plan ("DRP") in 2007 to assist Thornhill Green to operate within a budget and generate surpluses of $45,409.00 per year. The surpluses would allow Thornhill Green to begin paying down the operating deficit accumulated during the term of the Board's management. Attached hereto as **Appendix "M"** is a true copy of the Deficit Reduction Plan, signed by the Receiver on June 8, 2007.

42. The draft audited financial statements for the fiscal year ended January 31, 2008 show that, following the commencement of the DRP, the accumulated deficit of Thornhill Green fell to its lowest point in three years - $202,717.00 (after adjustments). Through the DRP, the Receiver has been successful in creating surpluses and paying down the accumulated deficit by $154,624 according to the draft financial statements for the year ended January 31, 2008.

43. Further, Thornhill Green is on track to pay down the deficit within five years, as envisioned by the DRP.

The Capital Reserve Fund

44. The deficit accumulated by the Board was all the more alarming to the Region in light of fact that the Board had depleted the capital reserve fund and the rent deposits to pay operating expenses while its deficit was increasing.

45. The capital reserve fund is invested by the firm of Phillips Hager & North ("PH&N"). Pursuant to the SHRA, Thornhill Green is required to make regular contributions to its capital reserve fund. The Board not only ceased making those required regular contributions, but also depleted the capital reserve fund to pay the operating costs of the Property.

46. As at June 30, 2006, the capital reserve fund had been depleted to the point that there was only $570.52 in the fund. As at June 30, 2007, under the control of the Receiver, the capital reserve fund had been increased to $49,581.95. However, despite that improvement, as noted on the audited financial statements for the fiscal year ended

January 31, 2007, the capital reserve fund remained under funded by the sum of $26,253.00.

47. The Receiver has corrected Thornhill Green's financial situation to the point that it is now able to make the required monthly contributions of $4,375.00 towards the capital reserve fund. As at March 31, 2008, the capital reserve fund had increased to $91,062.49, representing a significant increase from the point of near depletion prior to the Receiver's appointment. Attached hereto as **Appendix "N"** are true copies of the PH&N statements showing the increase in the capital reserve fund.

THE CAPITAL WORK AND REPAIRS

The Current Situation and the Need to Transfer the Property

48. As noted above, the Region provided $2.1 million in Loan funds to the Receiver, to permit the Receiver to carry out extensive capital work at the Property. That work is now substantially complete, though there are a number of remaining items and deficiencies that need to be corrected. In addition, during the construction period of the capital work, new items requiring the attention of the Receiver and the allocation of further funds became apparent. The Receiver reported these to the Region and it was determined that the Receiver would attend to those additional items, using the funds previously advanced to the Receiver.

49. The Receiver therefore oversaw the performing of the additional work and repairs, but was left without funds to complete all of the originally intended work.

50. As noted above, there is still urgent and necessary Work to be done. To ensure that the Work is completed and the Property secured, the only apparent alternatives are to:

(a) return governance and the responsibility for Thornhill Green to its members, either to the existing Board or a newly reconstituted board of existing members;

(b) continue the receivership indefinitely until such time as to the Work is done; or,

(c) transfer the Property to another entity capable of managing the Property as social housing.

51. Given the Board's past failure to properly manage the finances of Thornhill Green and the Property, the Region has advised the Receiver that it opposes the return of Thornhill Green and the Property to the Board and it prefers that the Receiver arrange to sell the Property to HYI, the Region's social housing arm.

52. Further, the Region has advised that it is only prepared to provide further funding for the remaining and additional Work to be done if HYI is the social housing provider in place to administer the remaining Work and manage the Property going forward.

53. It is also clear that the Board does not have specialized knowledge with respect to construction and has not had any involvement with the construction at Thornhill Green to date.

54. Even if a new board was elected and sought to have control of the Property returned to it, Thornhill Green's finances are not sufficient to fund the capital repairs or to seek and obtain additional debt financing. Further, under the terms of the SHRA, the Region and the Ministry would both be required to approve the encumbering of the Property. The

Region has advised the Receiver that it will not provide its approval for the taking on of any additional debt by Thornhill Green given the events leading up to the receivership.

55. Further, the Region has advised the Receiver that, if control of Thornhill Green was to be returned to a new Board, the Region could seek the reimbursement of all of the receivership costs that are currently being paid by the Region. The agreement in respect of the Loan from the Region also provides for the reimbursement of the receivership costs, that the Region could seek to recover by offsetting any future subsidies that would otherwise be payable to Thornhill Green.

56. While it is true that the Receiver could continue in place, it would need to borrow beyond the limit set out in the Appointment Order to complete the Work. The Region has indicated a preference that the appointment of the Receiver be terminated so as to permit the sale of the Property to HYI, as both a more cost effective remedy and one that would be more beneficial for Thornhill Green and its residents in the long run.

57. Further, prior to encumbering the Property with any further security given by the Receiver for additional loans, the Region and the Ministry must both consent and the position of the Region is that it will not so consent.

58. In all of the circumstances, it is clear to the Receiver that the only viable option for Thornhill Green and its stakeholders, and in particular its residents, is to transfer the Property to HYI.

59. The background to, and the reasons for, the Work are as follows.

The Background and the Work Completed

60. The need for the Work was first identified in late 2005, when the Board approached the Region for additional funds. In early 2006, the Region confirmed through an independent consultant that $2.1 million was required for immediate capital work for Thornhill Green, such as roof repair and replacement, and maintenance repairs, such as mould remediation and termite remediation.

61. The Receiver was subsequently appointed to administer the Work program as the Board had failed on numerous occasions to satisfactorily address the Region's concerns regarding management of the Property and Thornhill Green's financial difficulties, and in fact had created many of the problems. Further, the capital reserve fund had been depleted and used to pay operating expenses, contrary to its intended use, leaving Thornhill Green without funds to pay for necessary capital repairs in the future.

62. The Receiver, working with the Region, Precision and Halcrow Yolles, the construction consultant who was retained to oversee the Work, separated the required Work into three phases, with urgent and necessary items dealt with first.

Phase I Work

63. In Phase I, the roofs, eaves troughs, and fascia of the Units were replaced, as necessary, and certain masonry work was repaired and the windows and doors of the Units were sealed and caulked where required. Phase I was substantially completed in spring, 2007.

64. The Receiver anticipates that certain remaining deficiencies from the Phase I work will be completed shortly. Attached hereto as **Appendix "O"** is a list of remaining

deficiencies to be addressed by Atlas Apex Roofing Inc., under the supervision of the Receiver and Halcrow Yolles.

Phase II Work

65. In Phase II, the mould remediation program inside the Units was to take place, together with repairs to the interior finishes and installation of exhaust fans in the Units.

66. The mould remediation program was delayed and made more costly by the fact that there was no asbestos management program in place at Thornhill Green as required. The presence of asbestos on certain elements in the Units made the mould removal on those same elements more complicated.

67. As the Property is more than 40 years old, the Region and the Receiver were aware that asbestos may be present in the Property and that any construction would have to take that into account. The Receiver discovered that the Board had not developed or maintained an asbestos management plan for Thornhill Green, as required, and therefore the Receiver needed to develop and carry out an asbestos removal program as part of the overall work on the Property.

68. During the course of performing the capital work, contractors discovered asbestos in the ceiling material, the drywall joint compound and in certain vinyl floor products in the Units. The Receiver accordingly retained T. Harris Environmental Management Inc. to identify the locations of the asbestos and arrange for its removal, pursuant to provincial guidelines.

69. As it did with significant matters affecting the residents of the Property, the Receiver informed the members of the asbestos issue and how it was being corrected. Attached hereto as **Appendix "P"** is a true copy of the Minutes from the Members' Meeting held on July 12, 2007, where the Receiver and its contractor discussed the asbestos issue.

70. Identifying the asbestos issue and carrying out an asbestos removal program added additional cost and delay to the mould remediation program in Phase II of the Work. The asbestos removal had to be performed at the same time and on the same elements in the Units as the mould remediation work, which was an urgent concern and immediate need. Further, in certain cases, the Receiver was forced to provide alternate accommodations to members while the mould and asbestos removal was being performed in their Units.

71. The Receiver also moved the chemical treatment of the termite remediation program from Phase III to Phase II, as the Region and the Receiver agreed it was a more urgent need given that the Board had failed to properly address the termite issue that existed prior to the receivership.

72. In fact, in 2003, the Board undertook a chemical termite treatment program at Thornhill Green. However, the Board allowed certain members to refuse treatment in their Units. As the Units share common walls and foundations, all of the Units must be treated to ensure the termite issue is properly corrected.

73. The Board also allowed members to modify their Units to add or include certain wood elements, and failed to follow advice from its consultant to remove certain wood elements from the landscaping of the Property, all of which increased the risk of termites.

The Board's failure to properly address the termite issue resulted in the 2003 treatment program being ineffective, such that further termite treatments were required in 2007 and 2008.

74. As part of its work, the Receiver ensured that all Units were treated for termites, even going so far as to commence eviction procedures pursuant to the Appointment Order, the CCA and the SHRA against a member who refused entry to a Unit for the termite treatment. The member's opposition was eventually resolved and all Units have now been treated properly for termites.

75. The Phase II work was substantially completed in March 2008. The Receiver has approximately $600,000.00 remaining from the Loan funds. Due to fact that the termite remediation was moved forward in the process and the asbestos issue was addressed, the Receiver requires a further $600,000.00 to complete the remaining Phase III Work. Attached hereto as **Appendix "Q"** is a summary of the Receiver's Construction Statement of Receipts and Disbursements for the period February 14, 2007 to April 30, 2008.

Phase III Work

76. The Work to be completed in Phase III includes the removal of wood landscaping elements and certain vegetation to eliminate termite habitats, installation of concrete curbing, paving and steps, asphalt paving, site grading of the Property, foundation repairs and underground garage repairs as needed.

77. The Receiver tendered the Phase III Work for bids from contractors. Three contractors submitted bids for the Phase III Work. However, the Receiver has been unable to move forward with the Phase III Work without additional funding from the Region. Attached hereto as **Appendix "R"** is a true copy of correspondence from the Receiver to the Region, dated January 18, 2008 regarding the status of the Work and a request for additional funding.

78. As noted above, the Region has advised the Receiver that it is not prepared to fund the additional Work necessary at this time under the current circumstances. However, it is clear that failure to complete the Phase III Work during the 2008 summer construction season, and the delay over the winter leading into 2009, will only lead to further increased costs and potentially the need to repeat some of the work already completed. This is not a viable solution in the views of both the Region and the Receiver. It is therefore imperative that the transfer of the Property be approved and completed promptly.

THE PROPOSED SALE TO HYI

79. The Receiver supports the Region's view that HYI represents not only the most viable option for managing the Property going forward, but the only realistic option for keeping the RGI Units as part of the Region's social housing stock.

80. HYI is a corporation incorporated under the OBCA, and is the result of an amalgamation between two social housing providers – Region of York Housing Corporation and York Regional Housing Corporation. HYI was incorporated to streamline the management and administration of the Region's social housing portfolio. HYI is a wholly owned

subsidiary of the Region. Attached hereto as **Appendix "S"** is a true copy of the Report of the Commissioner of Community Services and Housing and Commissioner of Corporate & Legal Services, dated June 27, 2002, detailing the reorganization of the social housing providers into HYI.

81. HYI owns and manages approximately 2,000 units in 30 buildings. 85% of these units are RGI Units, with the balance being units rented at market rates. HYI administers an annual capital budget of approximately $3 million, well in excess of any other social housing provider in the Region. Further, HYI is the only entity in the Region with the technical skills necessary to manage social housing projects like Thornhill Green.

82. Therefore, HYI is the only social housing provider in the Region that has the experience, financial support, technical knowledge and staff to manage the Property and address the particular needs of a social housing project.

83. The Region has advised the Receiver that its Regional Council has approved the transfer of the Property to HYI and that HYI is prepared to acquire the Property. Attached as **Appendices "T"** and **"U"** respectively are reports prepared by the Commissioner of Community and Health Services and the General Manager of HYI detailing these steps.

84. The Region has also advised the Receiver that it has approved the additional funding of $600,000.00 for HYI to complete the Phase III Work and a further $135,000.00 to cover the cost of any land transfer taxes required to be paid on the transaction of purchase and sale. While the transaction of purchase and sale may be exempt from such land transfer taxes, the Region is prepared to pay the land transfer taxes promptly to ensure that no

time is lost for HYI to take over management of the Property and address the urgent and necessary Work.

85. Further, on April 11, 2008, the Ministry provided its consent to the proposed transaction of purchase and sale. Attached hereto as **Appendix "V"** is a true copy of the consent of the Minister in that regard, which consent is required to transfer any social housing property under the provisions of the SHRA. One of the conditions of the Minister granting its consent is that the Property be maintained as part of the Region's social housing stock and operated in accordance with the SHRA.

86. HYI has advised the Region and the Receiver that it has agreed to maintain the Property as part of the Region's social housing stock. The interests of all the stakeholders, including the Region, the Ministry, the members and HYI will thus be satisfied and protected.

87. Further, besides HYI, there is no other social housing provider in the Region who is better suited to manage the Property. Given the events leading up to the receivership, returning control of Thornhill Green to the Board and its members is not a viable option from the Region and the Receiver's standpoint.

88. The only other possibility beyond those noted earlier would be for the Receiver to offer the Property and other assets of Thornhill Green for sale on the open market via a traditional commercial sale process. However, this is neither in keeping with the Receiver's mandate, nor its instructions from the Region, nor the consent of the Minister.

Further, pursuant to the Appointment Order, the Receiver is to operate the Property in accordance with the SHRA and the agreement with the Region.

89. HYI is therefore the only viable option available to accomplish the urgent needs of the Property, that include obtaining sufficient funding immediately to complete the remaining Work, and maintaining the Property going forward as part of the Region's social housing stock.

THE CHANGE IN GOVERNANCE

90. If the Property is to be acquired by HYI, the Property will no longer be operated under co-operative governance. HYI is a corporation incorporated under the OBCA and there is no possibility of co-operative governance in a corporation incorporated under the OBCA. Governance will be provided by HYI's board of directors and management. Simply put, HYI owns and operates all of the properties under its control.

91. In the Receiver's view, this change in governance is desirable for a number of reasons.

Mismanagement by the prior Board

92. First, it was the financial and operational mismanagement of the Board that led to the appointment of the Receiver in the first instance. A significant amount of the Work required at the Property was the result of the Board failing to provide appropriate management and assure proper preventive maintenance and repair of the Property. Much of this has been referred to and detailed earlier in this report.

93. Further issues discovered by the Region and the Receiver in the course of its appointment, including the failure of the Board to install required carbon monoxide detectors in the Units, spending over $100,000.00 on appliance replacement from January 2004 to November 2005, despite there being more urgent needs such as health and safety issues, have all led the Region and the Receiver to conclude that the Board did not manage the Property appropriately and will not in the future if given another opportunity.

Members not acting in the collective interest of Thornhill Green

94. Secondly, in the view of the Region and the Receiver, returning control and management of the Property and the assets of Thornhill Green to a newly reconstituted board of directors comprised of members is also not a viable option going forward.

95. Throughout its appointment, the Receiver dealt with the members, held regular meetings to update the members on the status of the receivership and the Work. The Receiver encountered opposition from the members to the various changes throughout its appointment.

96. Certain members prevented the Receiver from entering their Units to carry out necessary work and threatened to sue the Receiver if it removed the wooden elements that contributed to the termite issue in and around their Units. Unfortunately, the Receiver has observed that the members have used the meetings with the Receiver to voice their individual complaints and concerns, rather than discussing the overall management of the Property and the Work, for which such meetings were intended.

97. Further, at no time have the members come forward and expressed any interest whatsoever in the management of the Property as a whole. No members have volunteered to be part of any reconstituted board going forward. Rather, the members' dealings with the Receiver have all been from the perspective of their own individual self-interest. Thus, it appears to the Receiver that the members have no desire to partake in the affairs or address the ongoing management of Thornhill Green.

98. Further, there is some question as to whether the members are even interested in continuing Thornhill Green as a social housing project. In 1998, the then Board and members approached the Ministry regarding a proposal to convert the Property to a condominium. The proposal would have allowed members to purchase their Units by buying out the social housing mortgage, at purchase prices far below market value. The proposal was unsuccessful, however it was an attempt by the members at that time to circumvent the charitable purpose of Thornhill Green, and to deal with the Property with a view to individual self-interest, rather than the collective interest of the corporation. Attached hereto as **Appendix "W"** is a true copy of the Ministry's response to the request by the members to convert their co-operative to a private condominium.

99. Finally, regardless of the intentions of the members, it appears doubtful that the members have sufficient experience and knowledge to operate the Property in a more efficient or successful fashion than HYI.

100. For Thornhill Green to be able to improve its financial situation, and build upon the results achieved by the Receiver over the past period, it will need aggressive rent increases to generate revenues. The members have no experience dealing with such

matters, and the Board has demonstrated a history of failing to keep rent rates in line with other social housing providers. Further, Thornhill Green needs proper management that is different from the self-interest demonstrated in the past by various Board members.

101. By way of contrast, HYI is in the business of owning and managing social housing projects and rental units, and the Region is confident that HYI has the expertise to carry the improvements of the Receiver forward.

102. As a result, unfortunately, given the facts in this particular case, the Region and the Receiver have concluded that a newly reconstituted board of directors comprised of members of Thornhill Green is not a viable option for managing the Property going forward.

THE PROCESS GOING FORWARD

103. Attached hereto as **Appendix "X"** is a copy of the draft agreement of purchase and sale ("APS") providing, subject to the approval of the Court, for the sale of the Property to HYI. If this Court were to provide its approval of the transaction contemplated by the APS, the Receiver and HYI expect to be in a position to execute the APS without material changes shortly thereafter and conclude the transaction of purchase and sale on July 2, 2008.

104. The APS provides that HYI will acquire the Property for consideration equal to the aggregate principal and accrued interest secured by the mortgages and the other security on the closing date. This will be accomplished by HYI assuming the RBC Mortgage and

the Loan from the Region. This will also be subject to the usual adjustments on closing for rents, occupancy charges, utilities and the other usual items.

105. Subject to the appropriate arrangements being made, HYI will also continue to make the regular payments to Kubota, Thornhill Green's other secured creditor, pursuant to the equipment lease agreement for the leased tractor at the Property.

106. As of the closing date, HYI will be entitled to the benefit of any housing charges to be paid as well as the Replacement Reserve Fund. Certain supply contracts will be transferred or assigned to HYI. A list of such contracts is at Schedule "E" to the APS.

107. Further, if this Honourable Court sees fit to approve the APS and the transfer of the Property to HYI, as each member of Thornhill Green occupies their individual Unit pursuant to an occupancy agreement with Thornhill Green, those occupancy agreements must accordingly be terminated. The members will then become tenants at the Property and they are required by HYI's enabling legislation to execute lease agreements between themselves and HYI. The Receiver can assist in trying to procure the executed lease agreements as between the current residents of Thornhill Green and HYI.

108. HYI requires that all of its tenants sign a lease agreement prior to the tenant being given a key and entering into possession of the unit. In Thornhill Green's case, the members are already in possession of their units and will remain so. Accordingly, it is possible that one or more members may choose not to execute a lease agreement with HYI. To ensure that the tenants comply with HYI's requirements, it is therefore appropriate that, where a

tenant refuses to execute a lease agreement, this Court deem the particular lease agreement effective and in full force and effect, as if it had been executed by the tenant.

109. The proposed form of lease agreements as set out in Schedules "E" and "F" of the draft form of Approval and Vesting Order. The draft lease agreements are comparable to the agreements used by HYI in all of its properties and includes express provisions for the calculation of subsidized rent, and specific references to the SHRA.

110. The Receiver therefore recommends that the Court approve a process whereby, upon the filing of a certificate by the Receiver, the occupancy agreements will be deemed to be terminated, any leases that remain to be executed shall be deemed to be executed so that they are in full force and effect and binding on the respective tenants, and the housing units at the Property shall no longer be part of any housing co-operative.

111. To assist the members of Thornhill Green with the transition to HYI, the Receiver intends to send a notice to the members in the form attached as Schedule "G" to the draft Approval and Vesting Order (the "Member Notice"). The Member Notice explains in plain language what will happen, and in particular that, despite the fact that the Property is being sold to HYI, that the residents of Thornhill Green will continue to occupy their same Units as they did before and that they will continue to pay rent, only this time to HYI. A copy of the Approval and Vesting Order will be served on each member together with the Member Notice. The Receiver and HYI will also hold a meeting with the members on Thursday June 12, 2008 at 7:00 p.m. to explain the changes and provide further information.

112. In addition, the Receiver intends to bring a further motion following the completion of the transaction of purchase and sale, if approved by this Honourable Court, to update the Court on the sale of Thornhill Green to HYI, to seek a discharge of the Receiver and to deal with ancillary matters.

RECOMMENDATIONS

113. The Receiver respectfully recommends that the Court issue an Order for the relief set out in terms of the Notice of Motion, specifically:

(a) approving the transaction contemplated by the APS between the Receiver and HYI and authorizing the Receiver to take such steps as are necessary to complete the transaction of purchase and sale;

(b) vesting the assets that are the subject of the transaction in and to HYI free and clear of any and all claims, subject to certain assumed liabilities and permitted encumbrances as set out in the APS;

(c) approving the forms of lease agreements set out at Schedules "E" and "F" of the draft Approval and Vesting Order; and,

(d) a declaration that, upon the filing of a Receiver's certificate, all occupancy agreements for the Property are deemed to be terminated, all lease agreements not yet executed shall be deemed to be so executed, so that they are in full force and effect, and binding on the respective tenants, and that the Units themselves are no longer part of any housing co-operative; and,

(e) approving the activities of the Receiver as set out in this report.

ALL OF WHICH is respectfully submitted this 14th day of May, 2008

MINTZ & PARTNERS LIMITED in its capacity as the Court Appointed Receiver and Manager of Thornhill Green Co-operative Homes Inc. and not in its personal capacity

Per: _____
Bryan Tannenbaum
President

Per: _____
Catherine Hristow
Vice President