

# TAB 2

Court File No. CV-09-8156-00-CL

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

BETWEEN:

**DESJARDINS FINANCIAL SECURITY LIFE  
ASSURANCE COMPANY**

Applicant

- and -

**CRAIGLEE NURSING HOME LIMITED**

Respondent

**THIRD REPORT TO THE COURT OF THE RECEIVER  
(dated December 14, 2012)**

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## INTRODUCTION

1. Pursuant to an Order of Justice Campbell of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated April 28, 2009 (the “**Appointment Order**”), Deloitte & Touche Inc. (“**Deloitte**”) was appointed as Interim Receiver and Receiver and Manager (the “**Receiver**”) of all of the current and future assets, undertakings and properties of Craiglee Nursing Home Limited (“**Craiglee**” or the “**Debtor**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. As at the date of the Appointment Order (the “**Appointment Date**”), Craiglee’s assets comprised primarily of Craiglee Nursing Home, a 169-bed nursing home located at 102 Craiglee Avenue, Toronto, Ontario (the “**Home**”). Craiglee was also the registered owner of the property located at 9 Vanbrugh Ave., Toronto (“**9 Vanbrugh**”), a single family two-storey residence which is located adjacent to the Home.
3. On September 1, 2010, Justice Newbould granted an Order approving, among other things (i) the Receiver’s activities from the Appointment Date to July 15, 2010, including its pre-receivership activities; (ii) the fees and disbursements of the Receiver and those of its counsel; and (iii) the Receiver’s engagement of John A. Jensen Realty Inc. (“**Jensen**”) as the Receiver’s real estate broker to commence a marketing and sale process for Craiglee (the “**September 1 Order**”). In support of the motion that resulted in the September 1 Order, the Receiver submitted its First Report to the Court (the “**First Report**”). A copy of the First Report, without appendices, is attached hereto as **Appendix “B”**. A copy of the September 1 Order is attached hereto as **Appendix “C”**.
4. On November 9, 2011, Justice Wilton-Siegel granted an Approval and Vesting Order (the “**Vesting Order**”) approving the Receiver entering into and completing an Agreement of Purchase and Sale (the “**APS**”) for the sale of Craiglee to CVH (No. 1) LP (“**CVH**” or the “**Purchaser**”), the assignee of the APS, and vesting in CVH the Debtor’s right, title and interest in the Purchased Assets (as defined in the Vesting Order) subject to the closing of the transaction with CVH and the Receiver filing with the Court a Receiver’s Certificate

(the “**Receiver’s Certificate**”). Also on November 9, 2011, Justice Wilton-Siegel granted an Order (the “**November 9 Order**”) approving: i) the fees and disbursements of the Receiver from June 1, 2010 to July 31, 2011; ii) the fees and disbursements of Blaney McMurtry LLP (“**Blaneys**”) for the period July 1, 2010 to September 30, 2011; iii) the actions of the Receiver and its counsel up to November 2, 2011; and iv) the Receiver’s Interim Statement of Receipts and Disbursements for the period from April 28, 2009 to October 27, 2011. In support of the motion that resulted in the Vesting Order and the November 9 Order, the Receiver submitted its Second Report to the Court (the “**Second Report**”) dated November 2, 2011 and the Supplemental Report to the Second Report dated November 8, 2011. Copies of the Second Report and Supplemental Report to the Second Report, both without appendices, are attached hereto as **Appendix “D”**. Copies of the November 9 Order and the Vesting Order are attached hereto as **Appendix “E”** and **Appendix “F”**, respectively.

5. The purpose of this Third Report of the Receiver (the “**Third Report**”) is to:
- i) report to the Court on the closing of the transaction providing for the sale of Craiglee;
  - ii) request approval to make a payment of \$742,794.70 to Canada Revenue Agency (“**CRA**”) in respect of CRA’s “deemed trust” claim against the assets of Craiglee;
  - iii) request approval of a proposed distribution to Desjardins Financial Security Life Assurance Company (“**Desjardins**”) of \$8,200,000.00 from the Receiver’s trust account relating to Craiglee; and
  - iv) request the Court’s approval of the Receiver’s Interim Statement of Receipts and Disbursements for the period April 28, 2009 to November 30, 2012, the Receiver’s fees to October 31, 2012, the Receiver’s activities to November 30, 2012, and the fees of the Receiver’s counsel to October 31, 2012.

6. Capitalized terms not defined in this Report are as defined in the Appointment Order, the First Report, the Second Report and the Supplemental Report to the Second Report. All references to dollars are in Canadian currency unless otherwise noted.

#### **TERMS OF REFERENCE**

7. In preparing the Third Report, the Receiver has relied upon records of Craiglee and unaudited financial information and other information prepared and/or provided by Craiglee, or Extendicare (Canada) Inc. ("**Extendicare**"), the manager of the Home. The Receiver has not performed an audit or other verification of such information. The Receiver has not relied on that information in making its recommendations herein.
8. The Receiver has sought the advice of Blaneys, counsel to the Applicant, for general legal matters that have arisen in respect of the receivership. Where the Receiver has required independent legal advice, the Receiver has sought the counsel of Gowling Lafleur Henderson LLP ("**Gowlings**").

#### **MINISTRY OF HEALTH AND LONG-TERM CARE ("MOH") APPROVAL**

9. Following issuance of the Vesting Order, by letter dated December 2, 2011, the Receiver advised the MOH that the Receiver had entered into the APS and of the Receiver's desire to sell Craiglee to CVH. The December 2, 2011 letter caused the MOH to commence its Licensing Approval Process in order to issue a new nursing home licence (the "**Licence**") to CVH pursuant to the *Long-Term Care Homes Act, 2007* (the "**Act**"), which process according to the MOH could take four to six months to complete.
10. The APS provided, among other things, that: i) the MOH shall have approved the purchase by CVH contemplated under the APS, and the MOH shall have approved the Purchaser for transfer of the Licence(s) or for the issue of licences similar to the Licence(s) on or before March 30, 2012 (the "**MOH Approval Date**"); ii) CVH was to be satisfied within 15 days of the MOH Approval Date as to any conditions imposed by the MOH on the transaction (the "**MOH Conditions Date**"); and iii) the Closing Date

was to be no later than May 15, 2012. However, as the MOH did not provide its approval for the transfer of the Licence by March 30, 2012, the parties entered into Amending Agreement No. 9 which extended the MOH Approval Date to May 31, 2012 and the Closing Date to July 15, 2012.

11. Licence approval from the MOH was not received until October 30, 2012 requiring the parties to enter into Amending Agreement Nos. 10, 11, 12 and 13, all of which had the ultimate effect of extending the MOH Approval Date to November 9, 2012 and the Closing Date to no later than November 30, 2012. Attached hereto as **Appendix "G"** are copies of Amending Agreement Nos. 9 through 13.
12. By letter dated October 30, 2012 (the "**MOH Approval Letter**"), the MOH advised CVH that it would approve the issuance of the Licence to CVH once the following conditions were met:
  - i) the MOH receives written confirmation of the actual date of the sale closing;
  - ii) the MOH responds to a public submission received October 30, 2012 regarding the proposal to transfer the Licence;
  - iii) the MOH receives a letter from the Vendor (the Receiver) surrendering the current licence held by the Vendor along with the original current licence for Craiglee;
  - iv) the Purchaser agrees in a form acceptable to the MOH that it will reimburse the Local Health Integration Network or the MOH any amounts owed to either of them by the Vendor resulting from the reconciliation process as set out in s.243 of Ontario Regulation 79/10 under the Act or under the previously applicable legislation and service agreement in respect of Craiglee; and
  - v) the Purchaser agrees to correct all outstanding findings of non-compliance set out in the inspection reports issued by the MOH to the Vendor, and to comply with all outstanding orders issued by a MOH inspector or the Director against the Vendor, if any, and all inspection reports and orders should be available from the Vendor



and they must be posted in the Home pursuant to applicable law.

13. With respect to condition iv) above, the amounts referred to therein involve obligations that are repayable to the MOH due to any overfunding by the MOH of Craiglee in the period after the Appointment Date up to the Closing Date. Overfunding could occur for a number of reasons, including:

- Actual occupancy levels lower than funded levels;
- Failure to spend amounts funded on qualified expenditures; and
- Disallowance of expenditures by the MOH.

#### **MOH CLOSING ADJUSTMENT AND ESTABLISHMENT OF AN ESCROW AGREEMENT**

14. Section 2.8(c) of the APS provided for an adjustment on closing of the estimated amount, as agreed to between the parties, that may be repayable to or receivable from the MOH in regard to any overpayments/credits for the period prior to the closing (the “**MOH Closing Adjustment**”). The MOH Closing Adjustment was intended to provide a credit on closing to CVH for the obligations that CVH was assuming (if any) pursuant to condition iv) of the MOH Approval Letter.

15. While the MOH had completed its annual reconciliations for 2009 and 2010, it had not yet completed its annual reconciliation for 2011. In addition, the Long-Term Care Home Annual Report (“**Annual Report**”) for 2012 was not scheduled to be completed and submitted until sometime in 2013 and would probably not be reviewed by the MOH until sometime in 2014. Given the uncertainty surrounding the amounts that may be recoverable by the MOH for the period from January 1, 2011 to the Closing Date that would represent the Final MOH Closing Adjustment, the parties agreed to enter into Amending Agreement No. 14 which amended the terms governing the MOH Closing Adjustment as follows:

- i) The Vendor and the Purchaser, acting reasonably, shall agree to adjust on Closing based on an estimated amount reflecting the parties' view concerning the net position with the MOH for the period from January 1, 2011 to September 30, 2012 (the "**Preliminary MOH Closing Adjustment**"), which shall be an amount allowed to the Purchaser if the Vendor is determined to be in a net payable position with the MOH, or an amount allowed to the Vendor if the Vendor is in a net receivable position with the MOH; and
  - ii) In addition to the Preliminary MOH Closing Adjustment, the Vendor and the Purchaser, acting reasonably, shall agree on a further estimated adjustment amount for the period from October 1, 2012 to the Closing Date concerning the net position with the MOH for that period (the "**Further MOH Closing Adjustment**", which together with the Preliminary MOH Closing Adjustment constitute the **MOH Closing Adjustment**). The Further MOH Closing Adjustment was to be determined within 30 days after the Closing, such that the MOH Closing Adjustment would be determined within 30 days after Closing.
16. Amending Agreement No. 14 further provided for the establishment of an escrow fund of \$150,000 out of the purchase price payable by the Purchaser upon Closing (the "**Escrow Fund**"), to be held in escrow for any further required adjustments in favour of the Purchaser over and above the MOH Closing Adjustment. The purpose of the Escrow Fund is to permit payment, if necessary, once the MOH Final Adjustment (as defined in Amending Agreement No. 14) is determined and compared to the MOH Closing Adjustment (as defined above). Other than the MOH Closing Adjustment and the claims to the Escrow Fund, Amending Agreement No. 14 provides that there shall be no further adjustment with respect to any further or other claims relating to the MOH. Attached hereto as **Appendix "H"** are copies of Amending Agreement No. 14 and the Escrow Agreement.
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**CLOSING OF THE SALE OF CRAIGLEE**

17. On November 2, 2012, pursuant to the terms of the MOH Approval Letter, the Receiver  
i) advised the MOH that the Closing Date of the transaction was November 13, 2012, and  
ii) subject to the closing of the transaction and the issuance of a Licence to CVH, surrendered to the MOH Craiglee's original nursing home licence.
18. On November 13, 2012, the sale of Craiglee closed and the Receiver's Certificate was provided to the Purchaser, and was filed with the Court on November 28, 2012. The MOH issued the License to CVH on November 13, 2012.
19. The Receiver and Extencicare continue to address matters relating to the receivership of Craiglee, including ensuring that all required filings to the MOH and other government authorities are made on a timely basis.

**SALE-RELATED MATTERS***SEIU*

20. Amending Agreement No. 6 of the APS, attached as Appendix "K" to the Second Report, provided for the Receiver to use its best efforts to facilitate an agreement between the Purchaser and Service Employees International Union Local 204 (the "Union"), conditional upon Closing for a roll over collective agreement ("**Rollover Agreement**") to be entered into between the Purchaser and the Union (with an expiry date one year after the Closing Date).
21. On April 23, 2012, the Receiver convened a meeting at its offices for the purposes of introducing the Purchaser to representatives of the Union and to facilitate discussions between the Purchaser and the Union regarding a Rollover Agreement. Subsequent to that meeting, the Receiver understands the Purchaser and the Union held further discussions in an effort to negotiate a mutually acceptable Rollover Agreement. However, no agreement was entered into and the condition was waived by the Purchaser.

22. By letter dated November 20, 2012, the Receiver's counsel advised the SEIU of the closing of the transaction and that i) the Purchaser has become the successor employer to Craiglee for the purposes of bargaining and collective agreement obligations in relation to employment in the business, and ii) the Receiver has no on-going liability or obligation remaining to the SEIU.
23. As of the Closing Date, four grievances remained outstanding with current or former employees. Upon closing, the Purchaser agreed to take carriage of those grievances subject to the Receiver's approval of the disposition of those grievances.

#### *Employees*

24. In view of the pending closing of the APS, on November 7, 2012, the Receiver attended a meeting with Craiglee's employees at which meeting the employees were advised of the upcoming closing of the transaction with CVH. Both union and non-union employees were advised they would become employees of CVH upon the closing of the transaction. Furthermore, these employees were told that pursuant to the Receiver's agreement with CVH, all of the terms of their employment with the Receiver, including wage rates, vacation pay entitlements, sick credit entitlements, and seniority rights, would be recognized by CVH. Representatives of CVH also attended the meeting and confirmed CVH's assumption of the employees and their terms of employment.
25. By letter dated November 12, 2012, the Receiver advised non-union employees that as a result of the closing of the sale of Craiglee, their employment by the Receiver had come to an end. The form of letter provided to non-union employees is attached hereto as **Appendix "I"**. No letter was provided to Union employees due to the notice given the Union's counsel as discussed in paragraph 22 above.

#### *Suppliers*

26. By letter dated November 9, 2012, the Receiver advised suppliers to Craiglee that the assets of Craiglee were sold to CVH, that the Receiver would be paying for goods and

services provided prior to November 13, 2012 in the normal course and that the Receiver would not be responsible for goods and services provided to Craiglee after November 12, 2012. The form of letter provided to suppliers is attached hereto as **Appendix "J"**.

*Closing Proceeds*

27. The APS provided for a Purchase Price of \$10,550,000. After the adjustments set out in the Statement of Adjustments, the proceeds payable to the Receiver were \$9,802,075. After consideration of the \$150,000 Escrow Fund, real estate commission of \$298,037.50, and \$109,742.53 paid to Scotia Mortgage Corporation to discharge its first mortgage over 9 Vanbrugh, which amounts were paid by Blaneys, the Receiver received from Blaneys net proceeds of \$9,244,294.97.

*Potential Future Proceeds*

(a) *Escrow Fund*

28. On closing, \$150,000 of the closing proceeds were delivered to Gowlings to be administered in accordance with the terms of the Escrow Agreement. Amending Agreement No. 14 provides for the release of amounts from the Escrow Fund as follows:
- i) to the Purchaser on receipt of a monthly Long-Term Care Home Payment Notice ("MOH Monthly Payment Notice") from the MOH that an amount relating to the MOH Final Adjustment Period will be recovered or withheld from any scheduled monthly payment to be made to CVH and such amount has not already been fully adjusted for in the MOH Closing Adjustment; and
  - ii) to the Receiver on receipt by the Escrow Agent of correspondence issued by the MOH that confirms that the reconciliations for all periods in the MOH Final Adjustment Period are finalized or closed and that no further amounts are owing.
29. Based on the Receiver's experience, the MOH's review and reconciliation of Craiglee's Annual Report for 2012 may take approximately two years to complete. As a result, the

time frame for the final release of amounts from the Escrow Fund is unknown. However, the Escrow Agreement establishes June 30, 2015 as the outside date for the release of the balance of funds in the Escrow Fund. Therefore, it may be June 30, 2015 before the Receiver receives the balance remaining in the Escrow Fund. The potential further proceeds available to the Receiver is the total amount of the Escrow Fund of \$150,000, prior to consideration of Gowlings' fees to administer the Escrow Fund.

*(b) Post-Closing Adjustments*

30. The APS provides for each party to provide an undertaking to readjust any item on or omitted from the statement of adjustments, except for the MOH Closing Adjustment, for a period of six (6) months from Closing. Since the adjustment on closing relating to accrued vacation pay was based on an estimate as of the Closing Date, the Receiver anticipates that post-closing adjustment(s) will be required for, at a minimum, vacation pay. The Receiver has also identified certain prepaid items of a nominal value that will require further adjustment with the Purchaser.

**OCCUPATIONAL HEALTH AND SAFETY ACT AND HUMAN RIGHTS  
COMPLAINT**

31. On or about October 12, 2010, the Receiver received notice from the Ontario Labour Relations Board ("**OLRB**") of an application under Section 50 ("**First OHSA Application**") of the *Occupational Health and Safety Act* ("**OHSA**"). The application was made by Marianne Amodeo, a former Craiglee employee ("**Amodeo**"). The First OHSA Application named Angie Heinz, Paul Tuttle, Margaret Lazure (an Extendicare manager) and Hartley Bricks (of the Receiver) as the Responding Parties (the "**OHSA Respondents**").
32. Amodeo was hired by the Receiver on or about October 27, 2009 as a part-time Social Worker for Craiglee. Amodeo was terminated on or about June 29, 2010 for performance related issues. In the First OHSA Application, Amodeo alleged violations of harassment

- under Sections 32 and 50(1) of the OHSA as well as a violation under Part VII, Section 17(1) of the *Employment Standards Act, 2000*.
33. On October 25, 2010, Blaneys, on behalf of the OHSA Respondents and on the Receiver's direction, submitted a Response to the OLRB denying the allegations in the First OHSA Application.
  34. On November 12, 2010, the parties attended a pre-hearing at the OLRB which was intended to attempt to effect a settlement of the First OHSA Application. No settlement was reached.
  35. On or about November 21, 2010, Amodeo filed a further application under Section 50 of the OHSA (the "**Second OHSA Application**", and which together with the First OHSA Application constitute the "**OHSA Applications**") naming Rodrigo Cartagena, a former Administrator at Craiglee, and Chantal LaFreniere, former acting Director of Care at Craiglee, as Respondents. The Second OHSA Application alleges harassment under Sections 50(1) and 50.1 of the OHSA in the context of the same allegations of facts. On December 3, 2010, Blaneys, on behalf of Mr. Cartagena and Ms. LaFreniere and on the Receiver's direction, submitted a Response to the OLRB denying the allegations contained in the Second OHSA Application.
  36. On December 18, 2010, Amodeo filed an Application (the "**OHRT Application**") under the Ontario *Human Rights Code* naming Mr. Cartagena, Ms. LaFreniere and Gary Loder, a manager at Extendicare, as Respondents (collectively, the "**OHRT Respondents**"). The OHRT Application alleged discrimination on the grounds of association with a person with a disability in connection with a Craiglee resident and discrimination due to reprisal or threat of reprisal.
  37. On January 21, 2011, the Tribunal issued a Notice of Intent to Defer the OHRT Application pending resolution of the OHSA Applications. On February 18, 2011, Blaneys, on behalf of the OHRT Respondents and on the Receiver's direction, made submissions to the Tribunal as to why the OHRT Application should be deferred.

38. By way of Interim Decision dated March 21, 2011, the Tribunal decided that the OHRT Application would be deferred pending the results of the OHSA Applications to avoid a multiplicity of proceedings based upon essentially the same set of facts and allegations.
39. On May 9, 2011, the OLRB issued a decision adjourning the First OHSA Application for a period of up to one (1) year and confirming that Amodeo would require the Receiver's permission or leave of the Court in order to proceed with the First OHSA Application. On May 11, 2011, Amodeo advised that she would be seeking leave of the Court to proceed with the OHSA Applications and the OHRT Application. On June 8, 2011, Blaneys, on behalf of the Receiver, advised Amodeo that the Receiver would not be providing its consent to Amodeo's application to proceed as it was the Receiver's position that Amodeo's claims were the result of managerial discipline arising out of the course of her employment at Craiglee and do not constitute claims within the jurisdiction of the OLRB or the OHRT.
40. On or about February 17, 2012, Amodeo's counsel forwarded to Blaneys a draft Statement of Claim (the "**Proposed Statement of Claim**") naming the Receiver, Desjardins, Craiglee and Extendicare as defendants. The Proposed Statement of Claim claimed, among other things:
- i) special damages in an amount as yet unascertained;
  - ii) general damages in the sum of \$125,000 for emotional upset, anxiety, humiliation, vexation, embarrassment, and mental distress;
  - iii) exemplary and aggravated damages in the amount of \$100,000;
  - iv) punitive damages in the sum of \$100,000; and
  - v) damages for wrongful dismissal in the amount of \$89,154 or such greater or other amount as the court may deem just.



Amodeo's counsel advised that it was seeking to obtain an order of the Court to lift the stay of proceedings created by the Appointment Order in order to file the Proposed Statement of Claim and to proceed with both the OHSA Applications and the OHRT Application.

41. On or about March 9, 2012, Amodeo, the Receiver, Extendicare and Craiglee entered into Minutes of Settlement in which the Receiver, on behalf of itself and Craiglee, and Extendicare agreed to consent to an Order that would provide for, among other things:
- i) the lifting of the stay of proceedings in respect of: a) the OHSA Applications and the OHRT Application, and b) the Proposed Statement of Claim for the purposes of allowing Amodeo to issue the Proposed Statement of Claim;
  - ii) the discontinuance and/or withdrawal of claims or proceedings against various individual respondents and defendants such that the proceedings would continue, as may be necessary, against Craiglee, Extendicare and Deloitte & Touche Inc., solely in its capacity as Receiver of Craiglee; and
  - iii) Amodeo to first proceed with the OHSA Applications before proceeding with the OHRT Application or the Proposed Statement of Claim.

A copy of the Minutes of Settlement is attached hereto as **Appendix "K"**.

42. On March 14, 2012, Justice Campbell issued an Order (the "**March 14 Order**") on consent that confirmed the terms of the Minutes of Settlement. A copy of the March 14 Order is attached hereto as **Appendix "L"**. Subsequent to the issuance of the March 14 Order, the individual respondents were removed as named parties from the OHSA Applications and the OHRT Application.
43. On September 19, 2012, the OLRB issued its Decision of the Board that the OHSA Applications failed to establish that the responding parties engaged in workplace

harassment and it dismissed the OHSa Applications. A copy of the OLRB's Decision of the Board is attached hereto as **Appendix "M"**.

44. On November 8, 2012, Amodeo filed a Request for Reconsideration of the Decision of the Board ("**Request for Reconsideration**") made on September 19, 2012. As of the date of this Third Report, the OLRB has not yet decided on the Request for Reconsideration.
45. The applications and claims filed by Amodeo were not assumed by the Purchaser as part of the sale of Craiglee. The Receiver will continue to respond to and defend itself and Extencicare in the various proceedings.

#### **INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS**

46. Attached hereto as **Appendix "N"** is the Receiver's Interim Statement of Receipts and Disbursements for the period April 28, 2009 to November 30, 2012 (the "**Interim R&D**") for Craiglee. The Interim R&D indicates the Receiver is holding \$10,129,160 of cash in its trust account in respect of Craiglee ("**Craiglee Trust Account**") which includes the proceeds from the sale of Craiglee (but excluding \$150,000 placed into escrow with Gowlings).
47. The Interim R&D reflects transactions through the Receiver's account and does not reflect the receipts and disbursements of Craiglee's operating and payroll accounts managed by Extencicare (the "**Extencicare Accounts**") for the Receiver. The Receiver has been funding the Extencicare Accounts on a monthly basis based on Extencicare's cash requirements to operate the facility. As of November 30, 2012, the balance in the Extencicare Accounts was \$83,291.
48. Extencicare is in the process of assessing the amount of funds it will require to satisfy all of the operating costs incurred up until closing which may require further funding from the Receiver. Extencicare will maintain the Extencicare Accounts until it and the Receiver are satisfied that all operating expenditures relating to the Receiver's period of operations have been paid.

### CITY OF TORONTO UTILITY PAYMENT

49. As set out in the Second Report, pre-receivership water charges outstanding and owing to the City of Toronto (the “**City**”) as of the Appointment Date of \$21,307.91 (the “**Pre-Receivership Amount**”) were paid by the Receiver. After further consideration of this matter with Blaneys, given the anticipated costs of litigation, the probability of recovery and the amount in issue, the Receiver has decided that it will not be seeking an Order directing the City to repay this amount.

### PROPOSED DISTRIBUTION

50. As set out above, the balance in the Craiglee Trust Account is \$10,129,160. Desjardins has informed the Receiver that it would like to receive a payment against the outstanding balance of Craiglee’s indebtedness to it.
51. With respect to the assets, undertakings and properties of Craiglee, Desjardins holds various security (the “**Security**”), including:
- a) the real property collateral described as follows:
    - i) a charge/mortgage of land from Craiglee in favour of First National Financial Corporation (“**First National**”) which was registered on title to the real property as Instrument No. AT3911092 on January 22, 2004 assigned by First National to Desjardins pursuant to a general assignment of rights dated December 2005 and a Transfer of Charge registered as Instrument No. AT1017117 on December 21, 2005 and as amended pursuant to an agreement amending charge/mortgage dated December 20, 2005 between Craiglee, Desjardins and Roy and Doris McDougall (the “**Desjardins First Charge**”). This first mortgage covers all of Craiglee’s real property save and except for 9 Vanbrugh; and

- ii) a second charge/mortgage of land from Craiglee in favour of Desjardins which was registered on title to the real property bearing property identification number 06432-0409(LT) as Instrument No. AT2015651 on February 20, 2009 (the “**Desjardins Second Charge**”). This second mortgage covers all of Craiglee’s real property including 9 Vanbrugh over which Scotia Mortgage Corporation held a first mortgage that was paid out of the proceeds of sale (see paragraph 27 above); and
  - b) the collateral to which the *Personal Property Security Act (Ontario)* (the “**PPSA**”) applies and in which a security interest was granted under the Security (collectively, with the Desjardins First Charge and the Desjardins Second Charge, the “**Desjardins Security**”).
- 52. The Receiver has received an independent legal opinion (the “**Security Opinion**”) from Gowlings dated December 9, 2011 that, subject to the qualifications and limitations as stated in the Security Opinion, the Desjardins Security to which Craiglee is a party constitutes a legal, valid and binding obligation of Craiglee enforceable against it in accordance with its terms and would be valid and enforceable against the trustee in bankruptcy and the estate of the Debtor. A copy of the Security Opinion is included in the attached **Appendix “O”**.
- 53. The Security Opinion references four Writs of Seizure and Sale against Craiglee issued by the Sheriff for the City of Toronto (the “**Writs**”). The first Writ is in favour of Workplace Safety and Insurance Board (“**WSIB**”) in the amount of \$43,739.58 plus interest and costs, and registered on June 24, 2008 (the “**WSIB Writ**”). Desjardins is in the process of negotiating this debt with WSIB.
- 54. The second and fourth Writs are in respect of Employer Health Tax and Corporations Tax owing by Craiglee to the Ministry of Finance (Ontario). These Writs were registered on April 14, 2009 and September 25, 2009, and are in the amounts of \$367,819.48 and

\$17,250.05, respectively (plus interest and costs). These Writs rank behind the Desjardins Security. There is also a PPSA registration against Craiglee in respect of these Writs, but it also ranks behind the Desjardins PPSA registration, and was ordered deleted and expunged by the Vesting Order.

55. The third Writ is in respect of monies owing by Craiglee to CRA. As set out below in paragraphs 57 to 59, the Receiver is seeking the Court's approval to pay the portion of the amount owing to CRA representing the CRA Deemed Trust Claim (as defined below).
56. A copy of Desjardins' Statement for Discharge Purposes effective December 14, 2012 with respect to the Desjardins Security is attached hereto as **Appendix "P"**. As of December 14, 2012, the outstanding balance (principal and interest) owing to Desjardins is \$13,590,093.56.
57. By letter dated November 23, 2009, a copy of which is attached hereto as **Appendix "Q"**, CRA advised the Receiver that as of the Appointment Date, Craiglee had unremitted employee and employer source deductions, including interest, amounting to \$1,120,729.45 (the "**CRA Indebtedness**"). CRA further advised that with respect to the CRA Indebtedness, pursuant to the provisions of subsection 227(4) of the *Income Tax Act of Canada*, subsection 23(3) of the *Canada Pension Plan*, subsection 57(2) of the *Unemployment Insurance Act* and subsection 86(2) of the *Employment Insurance Act*, \$742,794.70 are trust funds and form no part of the property, business or estate of Craiglee (the "**CRA Deemed Trust Claim**").
58. Blaneys has advised the Receiver that the amount of the CRA Deemed Trust Claim ranks in priority to the Desjardins Security.
59. Accordingly, the Receiver is seeking this Court's approval to pay the CRA Deemed Trust Claim from the funds in the Craiglee Trust Account. Should the Court approve payment of the CRA Deemed Trust Claim, the balance remaining in the Craiglee Trust Account would be \$9,386,365.

60. The Receiver has determined that \$8,200,000.00 would be an appropriate amount to distribute to Desjardins as payment against the Desjardins First Charge and is seeking this Court's approval to make that payment. After consideration of the amount of the proposed distribution, the Receiver should have sufficient cash to: i) address post-closing sale adjustments; ii) address any operating cost obligations in excess of the funds being held in the Extendicare Accounts; iii) maintain a reserve until the eventual disposition of the various applications and claims made by Amodeo; iv) pay the fees of Extendicare; (v) deal with the WSIB Writ; and vi) fund professional fees incurred as a result of the closing of the APS and future fees to be incurred to complete the receivership.
61. The Receiver is also seeking this Court's approval to make subsequent distributions to Desjardins should the Receiver determine that it is in a position to distribute excess cash in its trust account.

#### **STATEMENTS OF ACCOUNT OF THE RECEIVER AND ITS COUNSEL**

62. The Receiver's fees for services rendered for the period August 1, 2011 to October 31, 2012 are particularized in the Affidavit of Daniel Weisz sworn December 4, 2012 and the invoices attached as exhibits thereto. The total amount of the invoices for this period is \$207,064.05 including HST (the "**Receiver's Fees**").
63. The fees and disbursements of Blaneys, counsel for the Applicant, in respect of work performed for the Receiver, for the period October 1, 2011 to October 31, 2012 are particularized in the Affidavit of William Anderson of Blaneys sworn December 14, 2012 and the invoices attached as exhibits thereto. The total amount of the invoices for this period is \$115,028.52 including HST ("**Blaneys' Fees**").
64. The fees and disbursements of Gowlings, independent counsel for the Receiver, in respect of work performed for the period October 14, 2011 to December 9, 2011 are particularized in the Affidavit of Patrick Shea of Gowlings to be sworn and the invoices to be attached as exhibits thereto. The total amount of the invoices for this period is \$13,926.78 including HST ("**Gowlings' Fees**").

65. The Receiver has reviewed Blaneys' Fees and Gowlings' Fees and finds the work performed and charges to be appropriate and reasonable.
66. The Receiver has sought and received the approval of Desjardins of the Receiver's Fees and Blaneys' Fees.
67. The Receiver is herein seeking the Court's approval of its activities up to November 30, 2012 and the Receiver's Fees. The Receiver is also seeking the Court's approval of Blaneys' Fees and Gowlings' Fees.

#### **RECEIVER'S REQUEST TO THE COURT**

68. The Receiver is respectfully seeking an order:
  - i) approving the actions and activities of the Receiver to November 30, 2012;
  - ii) approving the Interim R&D;
  - iii) approving the payment of the CRA Deemed Trust Claim of \$742,794.70;
  - iv) approving a distribution to Desjardins in the amount of \$8,200,000.00 to be applied against the balance outstanding on the Desjardins Security;
  - v) approving the Receiver making subsequent distributions to Desjardins from excess cash on hand in the Craiglee Trust Account; and
  - vi) approving the Receiver's Fees, Blaneys' Fees and Gowlings' Fees.

All of which is respectfully submitted to this Honourable Court.

DATED this 14<sup>th</sup> day of December, 2012.

**Deloitte & Touche Inc.**

Interim Receiver and Receiver and Manager of  
the assets, undertakings and properties of  
Craiglee Nursing Home Limited and  
not in its personal capacity

*Deloitte + Touche Inc.*

Daniel R. Weisz, CA•CIRP, CIRP  
Senior Vice President

Hartley Bricks, MBA, CA•CIRP, CIRP  
Vice President