

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

| | | |
|-----------------------|---|-----------------------|
| THE HONOURABLE |) | WEDNESDAY, THE 9TH |
| |) | |
| JUSTICE WILTON-SIEGEL |) | DAY OF NOVEMBER, 2011 |

BETWEEN:

DESJARDINS FINANCIAL SECURITY LIFE
ASSURANCE COMPANY

Applicant

- and -

CRAIGLEE NURSING HOME LIMITED

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by Deloitte & Touche Inc. in its capacity as the Court-appointed interim receiver and receiver and manager (the "**Receiver**") of the current and future assets, undertakings and properties of Craiglee Nursing Home Limited (the "**Debtor**") for an order approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale, as amended from time to time (the "**APS**") between the Receiver and SAC 4 Inc. made as of April 1, 2011 and appended to the Second Report of the Receiver dated November 2, 2011 (the "**Second Report**"), and vesting in CVH GP Inc., general partner of CVH (No. 1) LP, assignee of SAC 4 Inc., (the "**Purchaser**"), or in whose name SAC 4 Inc. may direct, the Debtor's right, title and interest in and to the assets described in the APS (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Receiver dated November 3, 2011 (the "**Motion Record**"), the Supplementary Motion Record of the Receiver dated November 8, 2011, the Second Report, the Supplemental Report to the Second Report dated November 8, 2011, and on hearing the submissions of counsel for the Receiver, the Purchaser and the City (as defined below), no one appearing for any other person on the service list, although properly served with the Motion Record as appears from the affidavit of Sharm Velvet Sowa sworn November 4, 2011, filed:

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion and Supplementary Notice of Motion returnable November 9, 2011 (collectively, the "**NOMs**"), and related motion material filed in support of those NOMs (the "**Motion Material**") be and is hereby abridged, that service of the NOMs and Motion Material is hereby validated, and that further service thereof is hereby dispensed with.

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

3. **THIS COURT ORDERS** that (i) the unredacted copy of the APS including the amendments thereto; and (ii) the appraisal of the Purchased Assets prepared by Carmichael Wilson Property Consultants Ltd. dated March 24, 2010 and the appraisal of the Purchased Assets prepared by Altus Group Limited dated March 30, 2010 (collectively the "**Appraisals**"), shall be treated as confidential and shall be sealed and segregated from the public record, pending the closing of the Transaction contemplated by the APS. When the Receiver delivers the Receiver's Certificate (as defined below), the unredacted copy of the APS and the amendments thereto, as well as a copy of the Appraisals, shall be unsealed.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the APS shall vest absolutely in the Purchaser, or in whose name SAC 4 Inc. may direct, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing; (i) any encumbrances or charges created by the Order of the Honourable Justice Campbell dated April 28, 2009; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule C** hereto (all of which are collectively referred to as the "**Encumbrances**"). For greater certainty, this Court orders that all

of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

5. **THIS COURT ORDERS AND DECLARES** that paragraph 4 above does not apply to permitted encumbrances, easements and restrictive covenants listed on **Schedule D** hereto, and any overpayments made to the Debtor after April 28, 2009, by the Ontario Ministry of Health and Long-Term Care (the "**MOH**"),

6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Registry Division of Toronto of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* (Ontario) duly executed by the Receiver, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject real property identified in **Schedule B** hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule C hereto.

7. **THIS COURT ORDERS** that the City of Toronto (the "**City**") is hereby prohibited from adding to the tax rolls relating to the Real Property any amounts now owing or subsequently determined to be owing by the Debtor on account of water, sewage and/or solid waste charges relating to the Real Property, including penalties and interest, which accrued prior to closing of the Transaction (the "**City Claims**"). Notwithstanding the foregoing, the City is permitted to advance a Claim in respect of the City Claims against the net proceeds from the sale of the Purchased Assets (the "**Net Proceeds**"), and all of the rights of the City to advance the position that the amount of the City Claims stand in priority to all other Claims against the Net Proceeds as if such amounts had been ^{added} to the municipal tax rolls prior to this Approval and Vesting Order are expressly reserved so as to be determined at a later date Ans

8. **THIS COURT ORDERS AND DECLARES** that, following the vesting of the Purchased Assets in the Purchaser, the MOH is hereby prohibited from exercising any right of set-off against any and all funds and/or payments to which the Purchaser may be entitled to receive from the MOH under the License (as defined in the APS which comprises a portion of the Purchased Assets) or pursuant to statute, with respect to any overpayments made by the MOH to the Debtor prior to April 28, 2009 (collectively, the "**MOH Overfunding**"). Notwithstanding the foregoing, the MOH is permitted to seek recovery of the Overfunding against the Net Proceeds.

9. **THIS COURT ORDERS** that the Receiver hold in trust from the Net Proceeds an amount sufficient to satisfy the City Claims and the MOH Overfunding as of the date of this Approval

and Vesting Order, until such time as a further Order is made authorizing the release of these trust funds.

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

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

12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Debtor's records pertaining to the Debtor's past and current employees, including personal information of the Assumed Employees, as defined in the APS. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

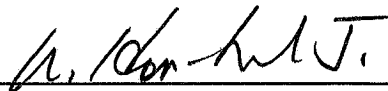
13. **THIS COURT ORDERS** that, notwithstanding:

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

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

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

15. **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.



SCHEDULE A

FORM OF RECEIVER'S CERTIFICATE

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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

BETWEEN:

DESJARDINS FINANCIAL SECURITY LIFE
ASSURANCE COMPANY

Applicant

CRAIGLEE NURSING HOME LIMITED

Respondent

RECEIVER'S CERTIFICATE

RECITALS

- A. Pursuant to an Order of the Honourable Justice Campbell of the Ontario Superior Court of Justice (the "**Court**") dated April 28, 2009, Deloitte & Touche Inc. was appointed as the interim receiver and receiver and manager (the "**Receiver**") of the current and future assets, undertakings and properties of Craiglee Nursing Home Limited (the "**Debtor**").
- B. Pursuant to an Order of the Court dated ●, the Court approved the agreement of purchase and sale made as of April 1, 2011, as amended from time to time (the "**APS**") between the Receiver and CVH GP Inc., general partner of CVH (No. 1) LP (the "**Purchaser**") and provided for the vesting in the Purchaser of the Debtor's right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 4 of the APS have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction contemplated by the APS has been completed to the satisfaction of the Receiver.
- C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APS.

THE RECEIVER CERTIFIES the following:

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

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

DELOITTE & TOUCHE INC., solely in its capacity as court appointed interim receiver and receiver and manager of the current and future assets, undertakings and properties of Craiglee Nursing Home Limited and not in its personal capacity

Per: _____

Name:

Title:

SCHEDULE B

REAL PROPERTY

In respect of those lands and premises municipally known as 94, 96 & 102 Craiglee Drive, Toronto, Ontario and 10 Shape Street, Toronto, Ontario:

Lots 508, 509, 510, 513, 514, 523 and 524, Plan M-388,
Part of Lot 526, Plan M-388, designated as Part 2, Plan 66R-20226,
Part of Lot 525, Plan M-388, designated as Part 4, Plan 66R-20226,
Part of Lot 512, being the westerly 7 feet 10 inches, Plan M-388,
Lot 511 (except Part 1, Plan 66R-11153), and Part of Lot 512
lying to the east of the northerly 7 feet 10 inches, Plan M-388,
City of Toronto, Land Titles Division of the Toronto Registry Office (No. 66),
being all of PIN 06432-0413(LT).

In, respect of those lands and premises municipally known as 9 Vanbrugh Avenue, Toronto, Ontario:

Part of Lot 526, Plan M-388, designated as Part 1, Plan 66R-20226,
Part of Lot 525, Plan M-388, designated as Part 3, Plan 66R-20226,
City of Toronto, Land Titles Division of the Toronto Registry Office (No. 66),
being all of PIN 06432-0409(LT).

SCHEDULE C

CLAIMS

I. CLAIMS TO BE DELETED AND EXPUNGED FROM TITLE TO REAL PROPERTY

(as of November 1, 2011)

A. In respect of those lands and promises municipally known as 94, 96 & 102 Craiglee Drive, Toronto, Ontario and 10 Sharpe Street, Toronto, Ontario:

1. Instrument No. AT391092 registered January 22, 2004, being a Charge/Mortgage to and in favour of First National Financial Corporation ("**First National**") securing the original principal sum of \$11,781,565.00 ("**First National Charge**").
2. Instrument No. AT391093 registered January 22, 2004, being a Notice of Assignment of Rents - General relating to the First National Charge.
3. Instrument No. AT391094 registered January 22, 2004, being a Notice of Assignment of Material Contracts and Agreements relating to the First National Charge.
4. Instrument No. AT391095 registered January 22, 2004, being a Notice of Security Interest relating to the First National Charge.
5. Instrument No. AT1017117 registered December 21, 2005, being a Transfer of the First National Charge to Desjardins Financial Security Life Assurance Company (the "Transfer of the First National Charge").
6. Instrument No. AT1017118 registered December 21, 2005, being a Notice of Assignment of Rents - General relating to the Transfer of the First National Charge.
7. Instrument No. AT1017119 registered December 21, 2005, being a Notice of Assignment of Material Contracts and Agreements relating to the Transfer of the First National Charge.
8. Instrument No. AT1017120 registered December 21, 2005, being a Notice of Security Interest relating to the Transfer of the First National Charge.
9. Instrument no. AT1019710 registered December 23, 2005, being a Notice of an Agreement Amending the First National Charge.
10. Instrument No. AT2025023 registered March 6, 2009, being a Charge/Mortgage to and in favour of Extencicare (Canada) Inc. securing the original principal sum of \$350,000.00.

B. In respect of those lands and premises municipally known as 9 Vanbrugh Avenue, Toronto, Ontario:

11. Instrument No. AT1889172 registered August 8, 2008, being a Charge/Mortgage to and in favour of Scotia Mortgage Corporation securing the original principal sum of \$126,000.00.

12. Instrument No. A12015651 registered February 20, 2009, being a Charge/Mortgage to and in favour of Desjardins Financial Security Life Assurance Company securing the original principal sum of \$11,781,565.00 (the "Desjardins Charge").
13. Instrument No. AT2015651 registered February 20, 2009, being a Notice of Assignment of Rents - General relating to the Desjardins Charge.
14. Instrument No. AT2025023 registered March 6, 2009, being a Charge/Mortgage to and in favour of Extendicare (Canada) Inc. securing the original principal sum of \$350,000.00.

II. CLAIMS TO BE DISCHARGED RE PERSONAL PROPERTY

(as of November 1, 2011)

| File# | Creation Date | Expiry Date | Period | |
|--------------------|-------------------------------------------------------------------------------|-----------------------------------------------------------------------|-------------------------|--------------|
| 079210305 | 6 Oct 1995 | 6 Oct 2028 | 33 years | |
| Reg Type | Secured Party(ies) | Debtor(s) | Registration# | Coll Classif |
| PPSA | THE EQUITABLE TRUST COMPANY | CRAIGLEE NURSING HOME LIMITED | 19951006 1449 0043 6475 | I E A O MV |
| Partial Assignment | DESJARDINS FINANCIAL SECURITY LIFE ASSURANCE COMPANY (Assignee) (Assignee) | | 20051223 1129 1862 2606 | |
| File# | Creation Date | Expiry Date | Period | |
| 612974196 | 28 Feb 2005 | 28 Feb 2015 | 10 years | |
| Reg Type | Secured Party(ies) | Debtor(s) | Registration# | Coll Classif |
| PPSA | HER MAJESTY THE QUEEN AS REPRESENTED BY MOF (RST/EHT/ CT) | CRAIGLEE NURSING HOME LIMITED | 20050228 1039 1031 9160 | I E A O |
| File# | Creation Date | Expiry Date | Period | |
| 646034499 | 12 Jun 2008 | 12 Jun 2014 | 3 years | |
| Reg Type | Secured Party(ies) | Debtor(s) | Registration# | Coll Classif |
| PPSA | THE CONSUMERS' WATERHEATER INCOME FUND | CRAIGLEE NURSING HOMES | 20080612 1403 1462 9218 | E |
| | General Collateral | HVAC EQUIPMENT LOCATED AT 102 CRAIGLEE DR., TORONTO, ONTARIO, M1N 2M7 | | |

| File# | Creation Date | Expiry Date | Period | | | | | |
|-----------|------------------------------------------------------------|----------------------------------|-------------------------|--------------|---|---|---|--|
| 652903866 | 22 Apr 2009 | 22 Apr 2019 | 10 years | | | | | |
| Reg Type | Secured Party(ies) | Debtor(s) | Registration# | Coll Classif | | | | |
| PPSA | DESJARDINS FINANCIAL SECURITY LIFE ASSURANCE COMPANY | CRAIGLEE NURSING HOME LIMITED | 20090422 1526 1862 5473 | | E | A | O | |
| | DESJARDINS FINANCIAL SECURITY LIFE ASSURANCE COMPANY | | | | | | | |

SCHEDULE D

PERMITTED ENCUMBRANCES, EASEMENTS AND RESTRICTIVE COVENANTS

RELATED TO THE REAL PROPERTY

(unaffected by the Vesting Order)

In respect of those lands and premises municipally known as 94,96 & 102 Craiglee Drive, Toronto, Ontario and 10 Sharpe Street, Toronto, Ontario:

1. Instrument No. A256117 registered December 3, 1968, being a By-Law of the Corporation of the Borough of Scarborough (the "**Borough**") (now forming part of the City of Toronto).
2. Instrument No. A375207 registered November 30, 1972, being an agreement in favour of the Borough.
3. Instrument No. A853871 registered May 27, 1980, being an agreement in favour of the Borough.
4. Instrument No. E603543 registered September 20, 2002, being an agreement in favour of the City of Toronto (the "City").
5. Instrument No. AT118898 registered March 11, 2003, being an Application to Consolidate Parcels.
6. Instrument No. AT118899 registered March 11, 2003, being an Application to Consolidate Parcels.
7. Instrument No. AT1014167 registered December 19, 2005, being an Application to Consolidate Parcels.

In respect of those lands and premises municipally known as 9 Vanbrugh Avenue, Toronto, Ontario (as of February 24, 2011):

1. Instrument No. A256117 registered December 3, 1968, being a By-Law of the Corporation of the Borough of Scarborough (now forming part of the City of Toronto).
2. Instrument No. AT118898 registered March 11, 2003, being an Application to Consolidate Parcels.

RELATED TO PERSONAL PROPERTY

(unaffected by the Vesting Order)

| File# | Creation Date | Expiry Date | Period | |
|-----------|----------------------------------------|-----------------------------------------------------------------------------------|-------------------------|--------------|
| 668952486 | 8 Apr 2011 | 8 Apr 2014 | 3 years | |
| Reg Type | Secured Party(ies) | Debtor(s) | Registration# | Coll Classif |
| PPSA | ENERCARE SOLUTIONS LIMITED PARTNERSHIP | CRAIGLEE NURSING HOME LTD | 20110408 1403 1462 4404 | E O |
| | General Collateral | DOMESTIC BOILER AND 2 STORAGE TANKS LOCATED AT 102 CRAIGLEE DR. TORONTO ON M1N2M7 | | |
| File# | Creation Date | Expiry Date | Period | |
| 668952612 | 8 Apr 2011 | 8 Apr 2014 | 3 years | |
| Reg Type | Secured Party(ies) | Debtor(s) | Registration# | Coll Classif |
| PPSA | ENERCARE SOLUTIONS LIMITED PARTNERSHIP | CRAIGLEE NURSING HOME LTD. | 20110408 1403 1462 4417 | E O |
| | General Collateral | HEATING BOILER LOCATED AT 102 CRAIGLEE DR. TORONTO M1N2M7 | | |
| File# | Creation Date | Expiry Date | Period | |
| 670367232 | 2 June 2011 | 2 June 2014 | 3 years | |
| Reg Type | Secured Party(ies) | Debtor(s) | Registration# | Coll Classif |
| PPSA | ENERCARE SOLUTIONS LIMITED PARTNERSHIP | CRAIGLEE NURSING HOMES | 20110602 1704 1462 8586 | E O |
| | General Collateral | DOMESTIC BOILER LOCATED AT 102 CRAIGLEE DR. TORONTO M1N2M7 | | |

DESJARDINS FINANCIAL SECURITY LIFE ASSURANCE COMPANY
Applicant

and **CRAIGLEE NURSING HOME LIMITED**
Respondent

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

IN THE MATTER OF AN APPLICATION UNDER SECTION
47(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C.
1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c.
C-43, AS AMENDED

Proceeding Commenced at **TORONTO**

APPROVAL AND VESTING ORDER

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

Eric Golden (LSUC #38239M)
Chad Kopach (LSUC #48084G)
(416) 593-3927 (Tel)
(416) 593-5437 (Fax)

Lawyers for the Receiver, Deloitte & Touche Inc. in its
capacity as Interim Receiver and Receiver and Manager of the
current and future assets, undertakings and properties of
Craiglee Nursing Home Limited