

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

**IN THE MATTER OF SECTION 47(1) OF THE *BANKRUPTCY AND INSOLVENCY  
ACT, R.S.C. 1985, C. B-3, AS AMENDED***

B E T W E E N:

**ADDENDA CAPITAL INC.**

Applicant

and

**249 ONTARIO STREET HOLDINGS INC.,  
GROSS PROPERTIES INC.  
and 2413667 ONTARIO INC.**

Respondents

**MOTION RECORD**

Date: April 1, 2021

**DICKINSON WRIGHT LLP**  
Barristers & Solicitors  
199 Bay Street  
Suite 2200, Box 447  
Commerce Court Postal Station  
Toronto, ON M5L 1G4

**David P. Preger (36870L)**  
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**Dylan E. Augruso (72125G)**  
Tel: 416-777-2406  
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Email: daugruso@dickinsonwright.com

Lawyers for the Interim Receiver,  
Deloitte Restructuring Inc.

TO: **SERVICE LIST**

## SERVICE LIST

TO: **249 ONTARIO STREET HOLDINGS INC.**  
200 Ronson Drive, Suite #201  
Toronto ON M9W 5Z9

Respondent

AND TO: **GROSS PROPERTIES INC.**  
200 Ronson Drive, Suite #201  
Toronto ON M9W 5Z9

Respondent

AND TO: **2413667 ONTARIO INC.**  
321 Brant Street, Suite #201  
Burlington ON L7R 2G5

Respondent

AND TO: **CANNECT INTERNATIONAL MORTGAGE CORPORATION**  
83 Navy Wharf Court, Unit #1  
Toronto ON M5V 3S3

Second Mortgagee

AND TO **GROSS CAPITAL INC.**  
200 Ronson Drive, Suite #201  
Toronto ON M9W 5Z9

Third Mortgagee

AND TO: **DEPARTMENT OF JUSTICE**  
The Exchange Tower  
130 King Street West, Suite 3400  
Toronto, ON M5X 1K6

**Attention: Diane Winters**  
(416) 973-3172 (Tel)  
(416) 973-0810 (Fax)  
Email: [diane.winters@justice.gc.ca](mailto:diane.winters@justice.gc.ca)

AND TO: **HER MAJESTY THE QUEEN IN RIGHT OF THE  
PROVINCE OF ONTARIO AS REPRESENTED BY  
THE MINISTER OF FINANCE**

Insolvency Unit  
33 King Street West, 6th Floor  
Oshawa, ON L1H 8H5

**Attention: Leslie Crawford**  
(416) 433-5657 (Tel - Reception)  
Email: leslie.crawford@ontario.ca; unit@ontario.ca

4836-7260-6426 v1 [85587-11]

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**TAB 1**

Court File No. CV-21-00656098-00CL

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

**IN THE MATTER OF SECTION 47(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED**

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

**ADDENDA CAPITAL INC.**

Applicant

- and -

**249 ONTARIO STREET HOLDINGS INC.,  
GROSS PROPERTIES INC.  
and 2413667 ONTARIO INC.**

Respondents

**NOTICE OF MOTION**

Deloitte Restructuring Inc., in its capacity as interim receiver (“**Deloitte**” or the “**Receiver**”) of certain property held by the Respondent 249 Ontario Street Holdings Inc., (“**Holdings**”) as registered owner and nominee for the Respondent Gross Properties Inc., (“**GPI**”) as to an 80% interest, and the Respondent 2413677 Ontario Inc., (“**241**”) as to a 20% interest, municipally known as 249 Ontario Street, in Port Hope, Ontario and legally described in Schedule “A” hereto (the “**Property**”), will make a motion to the Honourable Mr. Justice Cavanagh by Zoom videoconference on Wednesday, April 7, 2021, at 2.00 pm.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard by videoconference.

**THE MOTION IS FOR:**

1. If necessary, an Order abridging the time for service and filing of this Notice of Motion and the Receiver’s Motion Record such that the Motion is properly returnable

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on April 7, 2021, and dispensing with further service thereof;

2. An Order approving the activities of the Receiver as described in its First Report to the Court dated April 1, 2021 (the “**First Report**”);
3. An Order authorizing the Receiver to enter into the Property Management Agreement dated April 1, 2021 with Prime Real Estate Group Inc. (“**Prime**”);
4. An Order, substantially in the form of the draft order attached as Schedule “B”, extending the interim receivership until further order of this Court; and
5. Such further relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. The Property is owned by Holdings as nominee for GPI, as to an 80% interest, and 241, as to a 20% interest (Holdings, GPI and 241 are referred to, collectively, as the “**Debtors**”);
2. The building on the Property has approximately 26,100 leasable square feet on two storeys and is demised into 23 units, including a 2,395 square foot Shoppers Drug Mart pharmacy on the ground floor;
3. As at the date of the Appointment Order (defined below), the building was only 43% occupied;
4. Due to both monetary and non-monetary defaults, including the failure by the Debtors to make significant property tax and certain utility payments, the Applicant, Addenda Capital Inc. (“**Addenda**”), which holds the first mortgage over the Property, applied to the Court for the appointment of an interim receiver in order to stabilize the operations of the Property, actively re-let the vacant space, including funding such

repairs or leasehold improvements as may be necessary to re-let the vacant space, and collect and account for rents;

5. By Order of Justice Cavanagh dated March 9, 2021 (the “**Appointment Order**”), Deloitte was appointed interim receiver over the Property;
6. The Appointment Order is set to expire 30 days after the day on which the interim receiver was appointed, being April 8, 2021, unless extended by this Court, and provided that the parties shall come back before this Court on April 7, 2021 to report on the Property;
7. Addenda has advised the Receiver that it supports the interim receivership being extended until further Order of this Court;

#### **The Property Management Agreement**

8. As detailed in the First Report, the Receiver contacted four property management companies with experience in medical office centres to submit proposals to provide property management services at the Property. After reviewing the three proposals received, the Receiver opted to proceed with the proposal from Prime for the reasons set out in the First Report;
9. The Receiver and Prime have entered into a Property Management Agreement dated as of April 1, 2021, which is subject to Court approval;

#### **Continuing Need for an Interim Receiver**

10. Although Addenda’s demand and *BIA* notice were issued on October 16, 2020, none of the defaults have been cured;
11. Property taxes and water arrears have accrued and continue to accrue against the

Property;

12. Given the high vacancies in the building, Deloitte should continue as interim receiver to actively re-let the vacant space in the building, fund such repairs or leasehold improvements as may be reasonably necessary to re-let the vacant space, and collect and account for rents;
13. Section 47(1) of the *Bankruptcy and Insolvency Act*;
14. Rules 1.04, 2.01, 3.02, 16.04, 16.08, 37 and 41.05 of the *Rules of Civil Procedure*; and,
15. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. The First Report; and
2. Such further and other material as counsel may advise and this Honourable Court may permit.

April 1, 2021

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**DICKINSON WRIGHT LLP**

Barristers & Solicitors

199 Bay Street

Suite 2200, Box 447

Commerce Court Postal Station

Toronto, ON M5L 1G4

**David P. Preger (36870L)**

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Email: [daugruso@dickinsonwright.com](mailto:daugruso@dickinsonwright.com)

Tel: 416-777-0101

Fax: 1-844-670-6009

Lawyers for the Applicant

TO: **SERVICE LIST**

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**SCHEDULE "A"****THE PROPERTY**

*PIN* 51078-0317 LT

*Description* LT 15 E/S ONTARIO ST PL 11 PORT HOPE; PT LT 14 E/S ONTARIO ST, 16 E/S ONTARIO ST, 17 E/S ONTARIO ST, 12 W/S WELLINGTON ST, 13 W/S WELLINGTON ST PL 11 PORT HOPE PT 1 9R2679; S/T PH75108; PORT HOPE.

*Address* 249 ONTARIO ST  
PORT HOPE

## SCHEDULE "B"

Court File No. CV-21-00656098-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 47(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED**

THE HONOURABLE	)	WEDNESDAY, THE 7 <sup>th</sup>
	)	
JUSTICE CAVANAGH	)	DAY OF APRIL, 2021

B E T W E E N:

**ADDENDA CAPITAL INC.**

Applicant

- and -

**249 ONTARIO STREET HOLDINGS INC.,  
GROSS PROPERTIES INC.  
and 2413667 ONTARIO INC.**

Respondents

**ORDER**

**THIS MOTION**, made by Deloitte Restructuring Inc. in its capacity as the interim receiver and manager (the "**Receiver**") of certain property held by the Respondent 249 Ontario Street Holdings Inc., as registered owner and nominee for the Respondent Gross Properties Inc., as to an 80% interest, and the Respondent 2413677 Ontario Inc., as to a 20% interest, municipally known as 249 Ontario Street, in Port Hope, Ontario and legally described in Schedule "A" hereto (the "**Property**"), was heard this day by Zoom videoconference due to the Covid-19 pandemic.

**ON READING** the First Report of the Receiver dated April 1, 2021 (the “**First Report**”) and on hearing the submissions of the Receiver, no one appearing for anyone else on the service list, although properly served, as appears from the Affidavit of Janet Nairne sworn April 1, 2021, filed,

### **SERVICE**

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the Receiver’s Notice of Motion and Motion Record, including the First Report, is hereby abridged and validated so that the motion is properly returnable today and hereby dispenses with further service thereof.

### **RECEIVER’S ACTIVITIES**

2. **THIS COURT ORDERS AND DECLARES** that the activities and proposed activities of the Receiver described in the First Report, including, without limitation, the Receiver entering into the Property Management Agreement with Prime Real Estate Group Inc. dated April 1, 2021, are hereby approved.

### **APPOINTMENT**

3. **THIS COURT ORDERS AND DECLARES** that the status and mandate of the Receiver pursuant to the Appointment Order of the Honourable Mr. Justice Cavanagh dated March 9, 2021 (the “**Appointment Order**”), is hereby extended on the same terms set out in the Appointment Order until further order and direction of this Court.

### **CONTINUING EFFECT OF APPOINTMENT ORDER**

4. **THIS COURT ORDERS** that except as otherwise varied and amended by this Order, all other terms of the Appointment Order shall remain in full force and effect.

---

**SCHEDULE "A"****THE PROPERTY**

*PIN* 51078-0317 LT

*Description* LT 15 E/S ONTARIO ST PL 11 PORT HOPE; PT LT 14 E/S ONTARIO ST, 16 E/S ONTARIO ST, 17 E/S ONTARIO ST, 12 W/S WELLINGTON ST, 13 W/S WELLINGTON ST PL 11 PORT HOPE PT 1 9R2679; S/T PH75108; PORT HOPE.

*Address* 249 ONTARIO ST  
PORT HOPE

**ADDENDA CAPITAL INC.**  
Applicant

-and-  
Respondents

**249 ONTARIO STREET HOLDINGS INC., et al**

Court File No. CV-21-00656098-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
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Suite 2200, Box 447  
Commerce Court Postal Station  
Toronto, ON M5L 1G4

**David P. Preger (36870L)**

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Lawyers for the Applicant

**ADDENDA CAPITAL INC.**  
Applicant

-and-

**249 ONTARIO STREET HOLDINGS INC., et al**  
Respondents

Court File No. CV-21-00656098-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**NOTICE OF MOTION**

**DICKINSON WRIGHT LLP**

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Lawyers for the Applicant

# TAB 2

Court File No. CV-21-00656098-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**BETWEEN:**

**ADDENDA CAPITAL INC.**

Applicant

and

**249 ONTARIO STREET HOLDINGS INC.,  
GROSS PROPERTIES INC.  
and 2413667 ONTARIO INC.**

Respondents

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**FIRST REPORT OF THE INTERIM RECEIVER**

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**DATED APRIL 1, 2021**

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## APPENDICES

- A** Appointment Order of Justice Cavanagh of the Ontario Superior Court of Justice dated March 9, 2021
- B** Notice and Statement of Receiver dated March 17, 2021
- C** Property Management Agreement between the Receiver and Prime Real Estate Group Inc. dated April 1, 2021

## INTRODUCTION

1. By Order of Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 9, 2021 (the “**Appointment Order**”), Deloitte Restructuring Inc. was appointed as the interim receiver (the “**Receiver**”) of certain real property held by 249 Ontario Street Holdings Inc. (the “**Company**”), as registered owner and nominee for Gross Properties Inc. (“**Gross Properties**”) and 2413677 Ontario Inc., municipally known as 249 Ontario Street, in Port Hope, Ontario (the “**Property**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. The Appointment Order authorizes the Receiver to, among other things:
  - (a) take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
  - (b) engage contractors, tradespersons, quantity surveyors, consultants, appraisers, agents, experts, auditors, accountants, managers, including a property manager, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver’s powers and duties;
  - (c) undertake any renovations and make any repairs to the Property necessary to ensure the Property is well maintained and rentable and is in compliance with the applicable laws and building codes; and
  - (d) market available rental units, enter into new rental agreements or renew expiring rental agreements where applicable.
3. The Appointment Order, together with this report and other key documents have been posted on the Receiver’s website at [www.insolvencies.deloitte.ca/en-ca/249OntarioStreetHoldingsInc](http://www.insolvencies.deloitte.ca/en-ca/249OntarioStreetHoldingsInc).
4. Section 47(1)(c) of the *Bankruptcy and Insolvency Act* (“**BIA**”) provides that an interim receiver is to be appointed until the earliest of:

- (a) the taking of possession by a receiver, within the meaning of subsection 243(2), of the debtor's property over which the interim receiver was appointed,
  - (b) the taking of possession by a trustee of the debtor's property over which the interim receiver was appointed, and
  - (c) the expiry of 30 days after the day on which the interim receiver was appointed or of any period specified by the court.
5. The 30-day period is set to expire on April 8, 2021. The Applicant, Addenda Capital Inc. ("**Addenda**"), has advised the Receiver that it supports the interim receivership being extended until further order of this court.

#### **PURPOSE OF REPORT**

6. The purpose of this first report of the Receiver (the "**First Report**") is to:
- (a) provide the Court with information on the current status of the Property;
  - (b) provide the Court with a description of the Receiver's activities to date in dealing with the numerous issues related to the Property;
  - (c) provide the Court with the evidentiary basis to make an order:
    - (i) extending the interim receivership until further order of this Court;
    - (ii) approving the activities of the Receiver as described in this First Report.

#### **TERMS OF REFERENCE**

7. In preparing this First Report, the Receiver has reviewed unaudited financial information and other records related to the Property provided by Prime Real Estate Group Inc. ("**Prime**"), information provided by third-party sources, and has held discussions with individuals involved in administering the Property (including the building superintendent) (collectively, the "**Information**"). Except as described in this report:

- (a) the Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
  - (b) the Receiver has prepared this First Report in its capacity as a Court-appointed officer to support the Court’s approval of an extension to the expiry date of the interim receivership, and the other relief being sought. Parties using this report, other than for the purposes outlined herein, are cautioned that it may not be appropriate for their purposes.
8. Unless otherwise stated, all dollar amounts contained in this First Report are expressed in Canadian dollars.
9. Unless otherwise provided, all other capitalized terms not otherwise defined in this First Report are as defined in the Appointment Order.
10. The Receiver has sought the advice of Dickinson Wright LLP (“DW”), counsel to the Applicant, for general legal matters that have arisen in respect of the interim receivership. Where the Receiver has required independent legal advice, the Receiver has sought the counsel of Blaney McMurtry LLP (“Blaneys”).

## **BACKGROUND**

11. The Property is approximately 2.08 acres in size fronting onto Ontario Street in Port Hope. The building on the Property, known as the Port Hope Medical Centre, is two storeys in height consisting of approximately 26,100 square feet of leasable space with 10 suites located on the first floor and 13 suites located on the second floor. The building was constructed in two phases, with the original east portion of the building constructed in approximately 1974 while a west side addition was built in 1991. Tenants consist of a Shoppers Drug Mart

pharmacy on the first floor, a Dynacare lab, a diagnostic imaging centre, a dental practice and various other medical professionals.

12. As at the date of the Appointment Order, the building was 43% occupied.
13. As set out in the Application Record dated February 2, 2021, due to both monetary and non-monetary defaults, including the failure by the Company to make significant property tax and certain utility payments, Addenda (which holds the first mortgage over the Property) applied to the Court for the appointment of an interim receiver in order to stabilize the operations of the Property, actively re-let the vacant space, including funding such repairs or leasehold improvements as may be necessary to re-let the vacant space, and collect and account for rents.

#### **RECEIVER'S ACTIVITIES TO DATE**

14. The Receiver has undertaken the following activities in accordance with the terms of the Appointment Order:
  - (a) Attended at the Property to inspect the building, including its common areas, vacant units, service rooms, outside grounds, areas of access, etc., to assess the condition of the Property and ensure the Property was reasonably secure. As a result of this review, the Receiver determined that it was not necessary nor appropriate to change the locks on the access doors;
  - (b) Ensured that the Property was adequately insured. The Receiver obtained a copy of the current insurance policy for the Property and provided it to its insurer who advised that the coverages were sufficient and appropriate in the circumstances. As a result, the Receiver contacted the broker for the current policy and requested that the insurer add the Receiver as an additional insured on the policy. The insurer complied with the Receiver's request;
  - (c) Contacted Prime to request access to all books and records related to the Property. Prime has provided all of the information requested, including rent rolls, tenant contact

- information, tenant leases, accounts payable listings, banking information, service contracts and insurance coverage details;
- (d) Contacted The Toronto-Dominion Bank (“**TD**”) to advise them to freeze the Company’s bank account, to not permit any more disbursements from the account but to allow deposits until further notice, and to forward copies of bank statements to the Receiver. TD complied with Receiver’s request and advised that approximately \$86,000 remained in the account. The Receiver has requested that those funds be forwarded to it and awaits receipt;
  - (e) Wrote to each of the tenants advising of the interim receivership, the Receiver’s mandate, and where to direct future rent payments;
  - (f) Contacted the utility providers for the Property to advise of the interim receivership and to set up new accounts;
  - (g) Contacted four property managers, including the incumbent manager, to solicit proposals to act as manager for the Property. The Receiver received three proposals, and as set out below, has elected to continue to use Prime as property manager under a new property management agreement;
  - (h) Established a bank account in the Receiver’s name which is the Receiver’s trust account. The Receiver is in the process of establishing a second account which will operate as the property management account for the operation of the Property into which rent payments are deposited and property-related disbursements are paid. The Receiver has/will have sole signing authority over both accounts. The Receiver has not yet had any receipts nor made any disbursements, and, as such, does not at this time have a statement of receipts and disbursements to submit to the Court for approval;
  - (i) Contacted two engineering firms to obtain quotes to conduct a building condition audit which will report on any deficiencies in the building that require rectification. The Receiver is in the process of engaging one of those firms to proceed with the audit;

- (j) Established a webpage on the Receiver's website to post all Court Orders, Receiver's reports and other important documents related to the interim receivership;
- (k) Arranged to register the Appointment Order on title for the Property;
- (l) Issued a Notice and Statement of the Receiver pursuant to subsections 245(1) and 246(1) of the *BIA*. A copy of this notice is attached hereto as **Appendix "B"**;
- (m) Discussed the leasing status of the Property with Prime and another leasing agent to understand the reasons for the level of vacancies at the Property and to determine the appropriate path forward to establish a leasing program to re-let the vacant space as discussed further below;
- (n) Contacted the Canada Revenue Agency to obtain a new HST number for the Receiver;
- (o) Retained Blaneys to act as legal counsel in the event the Receiver requires independent legal advice; and
- (p) Responded to various creditor inquiries.

#### **CURRENT LEASING STATUS OF THE PROPERTY AND THE RECEIVER'S INTENDED COURSE OF ACTION**

15. Based on discussions with Prime, the current property manager, and a review of historic rent rolls, there have been a number of departures from the building since 2017, when the building was approximately 75% occupied, which was the result of retiring medical practitioners who had sold their practice to younger doctors who elected to lease space elsewhere in Port Hope.
16. It would appear that the reason for the high vacancy situation at the Property is the Company's failure to invest in leasehold improvements in the Property to retain those tenants who purchased medical practices in the building and were lured away to newer medical office space as well as attract new tenants. Most of the now vacant units contain dated finishes and will require significant leasehold improvements in order to establish new tenancies.

17. The Receiver is currently in discussions with Prime and a third-party leasing consultant to establish a strategy for attracting new tenants to the Property.

### **PROPERTY MANAGEMENT AGREEMENT**

18. As discussed above, the Receiver contacted four property management companies with experience in medical office centres to submit proposals to provide property management services at the Property. Three firms submitted proposals while the fourth declined to participate. Of the three proposals received, the Receiver opted to proceed with the proposal from Prime for the following reasons:

- Prime has been involved with the Property since March 2016 and thus has intimate knowledge of the area, the Property and the tenants;
- Prime specializes in the healthcare industry and is one of the leaders in Ontario for medical properties, servicing 12 other medical centres across Ontario. The other two firms managed two to three properties each;
- Prime has recently installed a new manager for the Property who has been well received by the tenants and very responsive to the Receiver's inquiries; and
- The monthly property management fee was approximately one-half of the other proposals received;

19. Prime disclosed to the Receiver that Gross Capital Inc. ("**Gross Capital**"), a company controlled by the principals of Gross Properties, one of the Respondents which has a beneficial ownership interest in the Property, has a minority ownership interest in Prime. Prime also disclosed that they manage a number of other properties owned by Gross Properties; however, the majority of the properties they manage are for third parties. Prime advises that they operate independently of Gross Capital and that the Respondents have no management oversight or control of Prime. The Receiver is satisfied that Prime is operating independently and that its relationship with Gross Capital or Gross Properties will not impact it carrying out of its duties and responsibilities as property manager of the Property.

20. The Receiver and Prime have entered into a Property Management Agreement (the “**PM Agreement**”) dated as of April 1, 2021, which agreement is subject to Court approval. A copy of the PM Agreement is attached hereto as **Appendix “C”**.
21. The details of the PM Agreement are as follows:
- Term: April 1, 2021 to March 31, 2022, automatically extended for successive one-year terms unless otherwise terminated by other party
  - Key services to be performed include:
    - tenant liaison for the receipt and collection of rents, including the collection of arrears, maintain tenant records and billing of tenants;
    - prepare disbursements for approval and signature by the Receiver;
    - handle all banking and conduct monthly banking reconciliations;
    - supervise and be responsible for all repairs, maintenance, and upkeep of the Property, including compliance with all laws and by-laws;
    - prepare an initial operating budget and cash flow forecast and annual budgets for operations, capital expenditures, leasing and cash flow;
    - prepare monthly reports which include monthly operating statements, accounts receivable reporting; and
    - prepare and file HST returns.
  - Compensation: \$2,000 per month plus HST, plus direct out-of-pocket expenses. Additional fees are applicable for planning, bidding and negotiating contracts and project management of capital repair projects which are to be negotiated.
  - Termination: Either party can terminate the PM Agreement on 30 days’ notice
22. For the reasons set out above, the Receiver is seeking this Court’s approval of the PM Agreement.

**RECEIVER'S REQUESTS**

23. As described above, while the Receiver has taken the initial steps to stabilize the property, there is substantial work to be done to increase occupancy. For these reasons, the Receiver requests that the Court make an Order:
- (a) extending the expiry date of the Interim Receivership until further order of this Court;
  - (b) approving the activities of the Receiver as described in this First Report;
  - (c) approving that the Receiver enter into PM Agreement with Prime; and
  - (d) such further and other relief as counsel may advise and this Honourable Court may permit.

All of which is respectfully submitted at Toronto, Ontario this 1<sup>st</sup> day of April, 2021.

**DELOITTE RESTRUCTURING INC.,**  
solely in its capacity as the Court-appointed  
Interim Receiver of certain real property held  
by 249 Ontario Street Holdings Inc., and  
without personal or corporate liability

Per:



Hartley Bricks, MBA, CPA, CA, CIRP, LIT  
*Senior Vice-President*

**Appendix “A”**

Order of Justice Cavanagh of the Ontario Superior Court of Justice dated March 9, 2021

Court File No. CV-21-00656098-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 47(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED**

THE HONOURABLE	)	TUESDAY, THE 9TH
	)	
JUSTICE CAVANAGH	)	DAY OF MARCH, 2021

B E T W E E N:

**ADDENDA CAPITAL INC.**

Applicant

- and -

**249 ONTARIO STREET HOLDINGS INC.,  
GROSS PROPERTIES INC.  
and 2413667 ONTARIO INC.**

Respondents

**APPOINTMENT ORDER  
(Interim Receiver)**

**THIS APPLICATION** made by Addenda Capital Inc. (the “**Applicant**”) for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the “**BIA**”) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as interim receiver of certain property held by the Respondent 249 Ontario Street Holdings Inc., as registered owner and

nominee for the Respondent Gross Properties Inc., as to an 80% interest, and the Respondent 2413677 Ontario Inc., as to a 20% interest, municipally known as 249 Ontario Street, in Port Hope, Ontario and legally described in Schedule “A” hereto (the “**Property**”), was heard this day by Zoom videoconference due to the Covid-19 pandemic.

**ON READING** the Affidavit of Savvas Pallaris sworn February 1, 2021 and the Exhibits thereto, the Supplementary Affidavit of Savvas Pallaris sworn March 5, 2021, the Factum of the Applicant, and on reading the Consent of Deloitte to act as the interim receiver and hearing submissions of Counsel for the Applicant,

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 471) of the *BIA*, Deloitte is hereby appointed interim receiver (in such capacity, the “**Receiver**”) of the Property.

### **RECEIVER’S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of

independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to engage to engage contractors, tradespersons, quantity surveyors, consultants, appraisers, agents, experts, auditors, accountants, managers, including a property manager, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to undertake any renovations and make any repairs to the Property necessary to ensure the Property is well maintained and rentable and is in compliance with the applicable laws and building codes;
- (e) to market available rental units, enter into new rental agreements or renew expiring rental agreements where applicable;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Respondents in respect of the Property and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents in respect of the Property;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Property and to settle or compromise any such proceedings, and the authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (i) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (j) to register a copy of this Order against title to the Property;
- (k) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority in respect of the Property and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondents;
- (l) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

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

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondents in respect of the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

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

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

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

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

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

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

#### **CONTINUATION OF SERVICES**

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

#### **RECEIVER TO HOLD FUNDS**

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

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

### **EMPLOYEES**

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

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

14. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the Canadian *Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers

under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

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

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

16. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

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

18. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its

fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

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

19. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

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

21. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

22. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates

evidencing the same or any part thereof shall rank on a pari passu basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### **SERVICE AND NOTICE**

23. **THIS COURT ORDERS** that the service of documents shall be made by way of an HTML link to the documents as posted by the serving party on either the Case Website (set out below) or if time does not permit, on the serving party's own website, or as a PDF attachment where the party serving the documents is unable to create an HTML link, with HTML Links to the website for cross-referenced documents already posted there (the "**Protocol**"), and such service shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure*, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<[www.insolvencies.deloitte.ca/en-ca/](http://www.insolvencies.deloitte.ca/en-ca/)>'.

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

### **GENERAL**

25. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder, and shall come back before this Court on April 7, 2021 to report on the Property.

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

27. **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.

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

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

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

31. **THIS COURT ORDERS** that notwithstanding the commencement of the within Application and the appointment of the Receiver, the Applicant shall be deemed to be protecting its security, shall not be deemed to have resorted to realizing upon its security over the Property, and the equitable right of redemption in respect of the Applicant's mortgage over the Property shall not be triggered.

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**SCHEDULE "A"****THE PROPERTY**

*PIN* 51078-0317 LT

*Description* LT 15 E/S ONTARIO ST PL 11 PORT HOPE; PT LT 14 E/S ONTARIO ST, 16 E/S ONTARIO ST, 17 E/S ONTARIO ST, 12 W/S WELLINGTON ST, 13 W/S WELLINGTON ST PL 11 PORT HOPE PT 1 9R2679; S/T PH75108; PORT HOPE.

*Address* 249 ONTARIO ST  
PORT HOPE

**SCHEDULE “B”**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc., the interim receiver (the “**Receiver**”) of certain property held by 249 Ontario Street Holdings Inc., as registered owner and nominee for Gross Properties Inc., as to an 80% interest, and 2413677 Ontario Inc., as to a 20% interest, municipally known as 249 Ontario Street, in Port Hope, Ontario (the “**Property**”), pursuant to the Appointment Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the 9th day of March, 2021 (the “**Order**”) made in an application having Court file number CV-21-00656098-00CL, has received as such Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the 1st day of each month after the date hereof at a notional rate per annum equal to the rate of two per cent above the prime commercial lending rate of Royal Bank of Canada from time to time.

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

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

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

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

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

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

DATED the \_\_\_ day of \_\_\_\_\_, 2021.

DELOITTE RESTRUCTURING INC., solely in its capacity as Receiver of the Property, and not in its personal or corporate capacity

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

Name:

Title:

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

Name:

Title:

## **Appendix “B”**

Notice and Statement of the Receiver

District of: Ontario  
 Division:  
 Court No: CV-21-00656098-00CL  
 Estate No.:

## FORM 87

### Notice and Statement of the Receiver (Subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*)

The Interim Receiver gives notice and declares that:

1. On the 9<sup>th</sup> day of March, 2021, Deloitte Restructuring Inc. (“Deloitte”) became the Interim Receiver in respect of certain property held by 249 Ontario Street Holdings Inc. (the “Company”), as registered owner and nominee of Gross Properties Inc. and 2413677 Ontario Inc., municipally known as located at 249 Ontario Street in Port Hope, Ontario (the “Property”) pursuant to Paragraph 2 of the Appointment Order (defined below). All amounts included in this Notice and Statement of the Receiver are denominated in Canadian Dollars.

<b>Description</b>	<b>Book Value (*) as at December 31, 2019</b>
Cash	\$ 10,203
Accounts receivable	247,790
Prepaid expenses and deposits	20,482
Deferred financing costs	8,508
Land	1,315,547
Building	6,906,624

(\*) – Based on information compiled by the Company as at December 31, 2019, unless otherwise stated. Deloitte has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the information and, accordingly, Deloitte expresses no opinion or other form of assurance on the information contained herein.

2. Deloitte became Interim Receiver by virtue of being appointed by Court Order (“Appointment Order”) dated and effective March 9, 2021 of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) pursuant to Section 47(1) of the *Bankruptcy and Insolvency Act*, attached hereto as Appendix A.
3. The undersigned commenced the exercise of its power in respect of that appointment on the 9<sup>th</sup> day of March 2021.
4. The following information relates to the interim receivership:
  - (a) Address of insolvent company: 249 Ontario Street  
Port Hope, Ontario L1A 3Y9
  - (b) Principal line of business: Medical Centre
  - (c) Location(s) of business: 249 Ontario Street, Port Hope
  - (d) Amounts owed by the Company to each creditor who appear to hold a security interest on the property described above include:

District of: Ontario  
 Division:  
 Court No: CV-21-00656098-00CL  
 Estate No.:

Addenda Capital	\$5,014,319
Gross Capital Inc.	\$932,407
1592106 Ontario Inc.	\$1.00
Blue Chip Leasing Corporation	\$1.00
De Lage Landen Financial	\$1.00

- (e) Attached herein as Appendix B is a list of creditors to be notified of the receivership, including parties identified as secured creditors and unsecured creditors.
- (f) The intended plan of action of the receiver during the receivership, to the extent that such a plan has been determined, is as follows: The Receiver will preserve the property, take control of receipts and disbursements, collect the rents, and undertake a repair and maintenance program to stabilize the property in order to increase occupancy.
- (g) Contact person for Receiver:  
 Hartley Bricks  
 Deloitte Restructuring Inc.  
 8 Adelaide Street West, Suite 200  
 Toronto, ON M5H 0A9  
 Telephone: 416-775-7326  
 Fax: 416-601-6690  
 Email: [hbricks@deloitte.ca](mailto:hbricks@deloitte.ca)

Dated at Toronto, Ontario, this 17<sup>th</sup> day of March, 2021.

**DELOITTE RESTRUCTURING INC.,**  
 solely in its capacity as Interim Receiver of  
 certain real property held by  
 249 Ontario Street Holdings Inc.  
 and not in its personal or corporate capacity

Per: 

Hartley Bricks, MBA, CPA, CA, CIRP, LIT  
 Senior Vice-President

District of: Ontario

Division:

Court No: CV-21-00656098-00CL

Estate No.:

**APPENDIX A – APPOINTMENT ORDER**

Court File No. CV-21-00656098-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 47(1) OF THE  
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED**

THE HONOURABLE	)	TUESDAY, THE 9TH
	)	
JUSTICE CAVANAGH	)	DAY OF MARCH, 2021

B E T W E E N:

**ADDENDA CAPITAL INC.**

Applicant

- and -

**249 ONTARIO STREET HOLDINGS INC.,  
GROSS PROPERTIES INC.  
and 2413667 ONTARIO INC.**

Respondents

**APPOINTMENT ORDER  
(Interim Receiver)**

**THIS APPLICATION** made by Addenda Capital Inc. (the “**Applicant**”) for an Order pursuant to section 47(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, (the “**BIA**”) appointing Deloitte Restructuring Inc. (“**Deloitte**”) as interim receiver of certain property held by the Respondent 249 Ontario Street Holdings Inc., as registered owner and

nominee for the Respondent Gross Properties Inc., as to an 80% interest, and the Respondent 2413677 Ontario Inc., as to a 20% interest, municipally known as 249 Ontario Street, in Port Hope, Ontario and legally described in Schedule “A” hereto (the “**Property**”), was heard this day by Zoom videoconference due to the Covid-19 pandemic.

**ON READING** the Affidavit of Savvas Pallaris sworn February 1, 2021 and the Exhibits thereto, the Supplementary Affidavit of Savvas Pallaris sworn March 5, 2021, the Factum of the Applicant, and on reading the Consent of Deloitte to act as the interim receiver and hearing submissions of Counsel for the Applicant,

### **SERVICE**

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### **APPOINTMENT**

2. **THIS COURT ORDERS** that pursuant to section 471) of the *BIA*, Deloitte is hereby appointed interim receiver (in such capacity, the “**Receiver**”) of the Property.

### **RECEIVER’S POWERS**

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the engaging of

independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to engage to engage contractors, tradespersons, quantity surveyors, consultants, appraisers, agents, experts, auditors, accountants, managers, including a property manager, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (d) to undertake any renovations and make any repairs to the Property necessary to ensure the Property is well maintained and rentable and is in compliance with the applicable laws and building codes;
- (e) to market available rental units, enter into new rental agreements or renew expiring rental agreements where applicable;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Respondents in respect of the Property and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents in respect of the Property;
- (g) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;
- (h) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Property and to settle or compromise any such proceedings, and the authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (i) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (j) to register a copy of this Order against title to the Property;
- (k) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority in respect of the Property and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Respondents;
- (l) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

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

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

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Respondents in respect of the Property, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

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

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

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

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

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

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

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

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

#### **CONTINUATION OF SERVICES**

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

#### **RECEIVER TO HOLD FUNDS**

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

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

### **EMPLOYEES**

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

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

14. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the Canadian *Environmental Protection Act*, the Ontario *Environmental Protection Act*, the Ontario *Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers

under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

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

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

16. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

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

18. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its

fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

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

19. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000.00 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*.

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

21. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

22. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates

evidencing the same or any part thereof shall rank on a pari passu basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

### **SERVICE AND NOTICE**

23. **THIS COURT ORDERS** that the service of documents shall be made by way of an HTML link to the documents as posted by the serving party on either the Case Website (set out below) or if time does not permit, on the serving party's own website, or as a PDF attachment where the party serving the documents is unable to create an HTML link, with HTML Links to the website for cross-referenced documents already posted there (the "**Protocol**"), and such service shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure*, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<www.insolvencies.deloitte.ca/en-ca/●>'.

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

### **GENERAL**

25. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder, and shall come back before this Court on April 7, 2021 to report on the Property.

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

27. **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.

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

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

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

31. **THIS COURT ORDERS** that notwithstanding the commencement of the within Application and the appointment of the Receiver, the Applicant shall be deemed to be protecting its security, shall not be deemed to have resorted to realizing upon its security over the Property, and the equitable right of redemption in respect of the Applicant's mortgage over the Property shall not be triggered.



Digitally signed by  
Peter Cavanagh

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**SCHEDULE "A"****THE PROPERTY**

*PIN* 51078-0317 LT

*Description* LT 15 E/S ONTARIO ST PL 11 PORT HOPE; PT LT 14 E/S ONTARIO ST, 16 E/S ONTARIO ST, 17 E/S ONTARIO ST, 12 W/S WELLINGTON ST, 13 W/S WELLINGTON ST PL 11 PORT HOPE PT 1 9R2679; S/T PH75108; PORT HOPE.

*Address* 249 ONTARIO ST  
PORT HOPE

**SCHEDULE “B”**  
**RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that Deloitte Restructuring Inc., the interim receiver (the “**Receiver**”) of certain property held by 249 Ontario Street Holdings Inc., as registered owner and nominee for Gross Properties Inc., as to an 80% interest, and 2413677 Ontario Inc., as to a 20% interest, municipally known as 249 Ontario Street, in Port Hope, Ontario (the “**Property**”), pursuant to the Appointment Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated the 9th day of March, 2021 (the “**Order**”) made in an application having Court file number CV-21-00656098-00CL, has received as such Receiver from the holder of this certificate (the “**Lender**”) the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the 1st day of each month after the date hereof at a notional rate per annum equal to the rate of two per cent above the prime commercial lending rate of Royal Bank of Canada from time to time.

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

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

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

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

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

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

DATED the \_\_\_ day of \_\_\_\_\_, 2021.

DELOITTE RESTRUCTURING INC., solely in its capacity as Receiver of the Property, and not in its personal or corporate capacity

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

Name:

Title:

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

Name:

Title:

District of: Ontario

Division:

Court No: CV-21-00656098-00CL

Estate No.:

**APPENDIX B – SECURED AND UNSECURED CREDITORS**

## Interim Receivership of Certain Property held by 249 Ontario Street Holdings Inc.

## Secured Creditors

Creditor	Amount
Addenda Capital	5,014,319
Gross Capital Inc.	932,407
1592106 Ontario Inc.	1
Blue Chip Leasing Corporation	1
De Lage Landen Financial	1
<b>Total Secured Creditors</b>	<b>\$ 5,946,729</b>

## Unsecured Creditors

Creditor	Amount
a.p.i. Alarm Inc.	1
Aird & Berlis LLP	71
Bell	1
Canada Revenue Agency	72,639
Elexicon Energy	1
Enbridge Gas (Union Gas)	1
Global Sanitation Solutions Ltd.	352
Gross Capital Inc.	186,257
King's Management Services	1,695
M.T. Cleaning Services Ltd.	4,723
Municipality of Port Hope	248,295
Plankraft Construction Group Inc.	39,530
Prime Real Estate Group Inc.	11,180
Sign Sense Peterborough	62
Space Database	1
Stadtke Plumbing & Heating Ltd.	261
Tyr LLP	772
Waste Connections of Canada Inc.	1
Whitetrims Farms Ltd.	5,424
<b>Total Unsecured Creditors</b>	<b>\$ 571,267</b>

## **Appendix “C”**

Property Management Agreement

# **PRIME REAL ESTATE GROUP INC.**

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## **PROPERTY MANAGEMENT AGREEMENT**

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**RECEIVER:**

DELOITTE RESTRUCTURING INC. INTERIM RECEIVER  
249 ONTARIO STEET, PORT HOPE

**PROPERTY:**

249 ONTARIO STREET, PORT HOPE ONTARIO

**DATE:**

APRIL 1<sup>ST</sup>, 2021

## PROPERTY MANAGEMENT AGREEMENT

THIS AGREEMENT made as of the 1<sup>st</sup> day of April, 2021.

**BETWEEN:**

**DELOITTE RESTRUCTURING INC.**, solely in its capacity as Court-appointed interim receiver of certain property held by 249 Ontario Street Holdings Inc. municipally known as 249 Ontario Street, in Port Hope, Ontario and not its personal or corporate capacity.

hereinafter called the “Receiver”,

OF THE FIRST PART,

- and -

**PRIME REAL ESTATE GROUP INC.**

hereinafter called the “Manager”,

OF THE SECOND PART.

**WHEREAS:**

- A.** 249 Ontario Street Holdings Inc. (the “Owner”) is the owner of the lands and premises known as:

Name of Property:	Port Hope Medical Centre
Municipal Address:	249 ONTARIO ST.
City or Town:	Port Hope ON
Brief description of type:	Medical Office Building
Approximate size in sq. ft.:	26,000
Brief Legal Description:	LT 11/15/16 E/S ONTARIO ST PL 11
Approximate year built:	

(the “Property”);

- B.** On March 9<sup>th</sup>, 2021, the Ontario Superior Court of Justice (Commercial List) appointed the Receiver as interim receiver of the Property;

**C.** The Receiver has taken possession of the Property and wishes to retain a property manager to manage the Property on its behalf;

**D.** The Manager is a professional property manager and is familiar with the management of properties similar to the Property;



E: The Receiver has agreed to engage the Manager pursuant to the terms of this Agreement, to perform certain duties in connection with the management of the Property, not as agent of the Receiver, but as an independent contractor, for and in consideration of the provisions of this Agreement, which Agreement is subject to Court approval.

NOW THEREFORE IN CONSIDERATION of the premises and of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which each party hereby acknowledges, the parties hereto covenant and agree as follows:

## 1.0 INTERPRETATION

1.01 **Definitions:** Unless the subject matter or context otherwise requires, in this Agreement:

- (a) **"Agreement"** means this Agreement, as amended from time to time, and any indenture, agreement or instrument supplemental or ancillary hereto;
- (b) **"Auditor"** means the auditors or accountants, or such other person as may be appointed by the Receiver from time to time to perform such function pursuant to the terms hereof;
- (c) **"Bank Account"** means a bank account at a Schedule 1 chartered bank established by the Receiver
- (d) **"Business Day"** means any day of any week except for Saturday, Sunday and any other day which is a statutory holiday;
- (e) **"Gross Operating Revenue"** shall mean all revenue generated from the use and operation of the Property, including Tenants' minimum and percentage rentals, interest, insurance proceeds but excluding: (i) recoveries from Tenants' real property taxes, operating costs, management and administration fees and other similar amounts recoverable from Tenants pursuant to their lease obligations, and (ii) any other revenue received which the Auditor in accordance with generally accepted accounting principles shall determine to be received on capital account. For the purposes hereof, that portion of Gross Operating Revenue received from Tenants on account of their minimum and percentage rentals shall be deemed to have been received in the month to which its application, or a part thereof, relates. This agreement is subject to approval of the Court.
- (f) **"Property"** means the lands and premises described in Recital A hereto, or where applicable, Schedule "A" hereto; if more than one separate parcel or project is described in Recital A hereto, or where applicable, Schedule "A" hereto, then **"Property"** shall mean each of the same, collectively;
- (g) **"Tenant"** means a tenant or licensee or prospective tenant or licensee of any part of the Property.

1.02 **Headings:** All headings used herein are for convenience only and do not affect the construction or interpretation of this Agreement.

1.03 **Severability:** If any covenant, obligation or agreement of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such covenant, obligation or agreement to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each covenant, obligation and agreement of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

1.04 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein and shall be treated in all respects as an Ontario contra

*F*

## 2.0 RETAINER OF MANAGER AND TERM

2.01 **Supervision of Management:** The Receiver hereby appoints the Manager to be the sole Manager of the Property for and on behalf of the Receiver, and the Manager hereby accepts such appointment in accordance with the terms hereof. Under and pursuant to the provisions of this Agreement, the Manager as independent contractor shall responsibly and prudently perform the services described below to administer and supervise the management of all aspects of the operation of the Property in a businesslike manner in keeping with the standards for similar properties in the Province of Ontario for a term of one (1) year, commencing on the later of:

a) **April 1<sup>st</sup> 2021** and expiring on **March 31<sup>st</sup>, 2022,**

2.02 **Extension:** Unless the parties declare a contrary intention in writing on or before the expiry hereof or otherwise terminate this Agreement pursuant to this Article 2, this Agreement shall be automatically extended for successive terms of one (1) year each upon the same terms and conditions as herein contained, *mutatis mutandis*.

2.03 **Termination by Manager:** The Manager may terminate its obligations under this Agreement:

- (a) if the Receiver shall have failed to make any payment to which the Manager shall be entitled under this Agreement; or
- (b) if the Receiver shall have failed to give or execute directions, consents, approvals, or documents or take such action as may be properly or reasonably requested or required by the Manager in the orderly operation of the Property and for the performance of the covenants, obligations and agreements herein contained; or
- (c) upon written notice of termination from the Manager to the Receiver.

in any case upon not less than thirty (30) days prior written notice of its intention to so terminate and on the expiry of such 90-day period, the provisions of this Agreement shall be terminated.

2.04 **Termination by Receiver:** The Receiver may terminate this Agreement:

- (a) without cause upon not less than thirty (30) days prior written notice of its intention to so terminate and on the expiry of such 30-day period, the provisions of this Agreement shall be terminated; or
- (b) for cause if at any time there occurs an unrectified Cause for Termination as hereinafter defined. Such termination is to be conducted on the following basis:
  - (i) The Receiver shall give written notice to the Manager specifying in reasonable detail the Cause for Termination (the "**Notice of Default**");
  - (ii) Within 10 days of receipt of the Notice of Default, the Manager shall take reasonable steps to cure such default or give reasonable assurance that such default will be cured or rectified within a reasonable period faithfully and competently to industry standards, and the manner in which such default is proposed to be cured.
  - (iii) If the Cause for Termination remains unrectified, or the Manager has failed to give reasonable assurance that such default will be cured or rectified within a reasonable period of time, within such 10-day period, the Receiver may terminate upon written notice to the Manager, whereupon the provisions of this Agreement shall be terminated.



- (d) For the purposes hereof, any of the following circumstances constitutes "Cause for Termination":
- (i) a failure of the Manager to perform its duties and discharge its obligations under this Agreement to the extent that the leasing, operation and management of the Property is materially hindered or delayed as a result thereof.

2.05 *Sale by Receiver:* The Receiver is not empowered by the Court to sell the Property. Notwithstanding anything to the contrary herein contained, should the Receiver in the future be empowered to sell the Property, this Agreement shall automatically terminate on the day that the Receiver completes a sale of the Property, **providing the Receiver has provided at least sixty (60) days prior written notice outlining the Sale date.**

2.06 *Consequences of Termination:* Upon the expiry or termination of this Agreement:

- (a) The Manager shall forthwith remit to the Receiver the entire balance of funds on hand to the credit of the Receiver;
- (b) The Receiver shall continue to be responsible for the payment of any and all bills, accounts and expenses incurred by the Manager during the term of, and within the authority granted to it pursuant to the provisions of, this Agreement and shall reimburse the Manager for all such expenses, which are paid by the Manager after such termination;
- (c) There shall be an accounting with respect to the monies due by each party to the other under the terms of this Agreement and each of the parties agrees to promptly pay to the other by cash or immediately available funds whatever money shall be found owing by one to the other pursuant to such accounting.
- (d) The Manager shall forthwith deliver to the Receiver all books of account, ledgers, financial statements, cheque books, bank statements and other records pertaining to the operation of the Property so as to ensure the orderly continuance of the operation of the Property. However, such books and records shall thereafter be available to the Manager at all reasonable times for inspection, audit, examination, and transcription (at the Manager's expense) for a period of two (2) years;
- (e) The Manager shall be entitled to one month's further compensation as calculated pursuant to Section 4.01 as compensation for any additional assistance that may be required to facilitate the transition of the property management operation to a new property manager; and
- (f) The Manager shall cease to hold itself out or to act as the Manager of the Property.

2.07 *Survival of Obligations:* Termination of this Agreement shall not relieve either party of any liability which it may have to the other as a result of an event giving rise to such termination or as a result of any default in the performance by it of any of its covenants, obligations and agreements herein contained.

### **3.00 SERVICES TO BE RENDERED BY MANAGER**

3.01 *Services:* Subject to the direction of the Receiver and the provisions of this Agreement, the Manager shall perform the following services necessary for the efficient and safe management, operation and maintenance and repair of the Property, and in so doing shall act honestly and in good faith and shall exercise that degree of care and skill which is consistent with that exercised by a prudent and reasonable owner of a similar property of the size, age, and location of the Property. The Manager shall manage the Property, in accordance with current landlord and tenant legislation, in accordance with the leases respecting the said Property and in accordance

with the terms of this Agreement. In furtherance of this obligation to administer and supervise the management of all aspects of the operation of the Property, the Manager shall diligently and efficiently and in a timely manner:

- (a) *Tenant Liaison:* Supervise the establishment and maintenance for and on behalf of the Receiver a suitable scheme of liaison between each of the Tenants and the Receiver;
- (b) *Notices to Tenants:* Be responsible for the giving of all notices and statements required to be given to Tenants under the terms of the respective Tenants' leases and the giving of all other notices necessary to accomplish efficient management of the Property;
- (c) *Receive Rents:* For and on behalf of and for the account of the Receiver receive all rents and other amounts paid or payable by Tenants pursuant to their respective leases of Property and obtain in accordance with the provisions of such leases Tenants' sales figures, and calculate percentage rent to be derived therefrom if applicable, and if the Manager deems it necessary, to cause inspection of Tenants' books to be made and cause audits of Tenants' books to be made if deemed necessary by the Manager;
- (d) *Timely Payment:* Use diligent efforts to ensure that all rent and additional charges and other amounts from time to time payable by Tenants in respect of their leases, including without limitation percentage rent, additional rent and incidental charges, amounts in respect of real estate taxes, maintenance and operating costs, insurance premiums, special charges and other like payments are regularly received by the Manager for the account of the Receiver in accordance with the terms of the respective Tenants' leases;
- (e) *Collection of Arrears:* Endeavour by issuing demand for payment, to collect any amounts, the collection of which is the responsibility of the Manager and which amounts are in arrears from any of the Tenants with all possible dispatch, and shall use its best efforts to obtain payment of such amounts which are due without suit or with the **Receiver's approval** resort to any action or any other legal or equitable remedies available to the Receiver and (in accordance with the provisions of this Section) shall institute suit or take advantage of such remedies at the Receiver's expense only if, in the opinion of the Manager, other reasonable steps have failed to or will not achieve satisfactory results;
- (f) *Landlord's Rights and Obligations:* Do or cause to be done all such things which are necessary so as to ensure compliance by the Receiver (to the extent that the same is within the Manager's power and authority hereunder) and the Tenants with all the terms and conditions of all restrictions, agreements and obligations, statutory, municipal or otherwise with respect to the Receiver, or the Property and entered into or imposed upon the Receiver or for which the Receiver may be liable by law, including without limitation all leases with Tenants, and in so doing may call upon the Receiver to provide any payments necessary in connection therewith, and the Receiver shall forthwith cause such payments to be made;
- (g) *Tenant Files:* To establish and maintain records of any and all correspondence between the Tenants of the Property, and the Manager. The Manager shall use its best efforts to obtain from all Tenants of the Property, written acknowledgements of all notices of assignment of lease and sub-lease together with certificates to the status of their leases as required by the Receiver.
- (h) *Rules and Regulations:* Consider and advise the Receiver from time to time as to the rules and regulations or any additional rules and regulations required to be made under the leases with Tenants for the better or more efficient operation of the Property and cause the same to be honoured by Tenants;
- (i) *Operating Disbursements:* On a monthly basis, or on some other basis as agreed to between the Receiver and the Manager, the Manager shall prepare disbursement cheques to pay for all of the operating expenses of the Property and shall provide the cheques to the Receiver, together with



satisfactory documentation to support the making of each disbursement, for signature by the Receiver;

- (j) *Employees:* It is understood that the Manager has the sole responsibility for employing/contracting any staff necessary to execute management functions concerning the operation and management of the Property. The cost of hiring, employing, contracting and terminating the building operating staff required from time to time to operate the Property, efficiently shall be an operating expense of the Property on a pro rata basis, properly chargeable to the Receiver. The Manager shall maintain proper payroll records (unless otherwise agreed upon), file all returns required by law, and remit to the proper authorities all deductions from remuneration with respect to such employees.
- (a) Maintenance of Property: The Manager shall arrange for, supervise, and be responsible for, all repairs, maintenance and upkeep of the Property and the purchase of supplies and labour therefor in accordance with the approved budget and the provisions of this Agreement. Without limiting the generality of the foregoing, the Manager shall:
  - i. ensure that all heating, air conditioning, plumbing, elevators, and electrical equipment in or about the Property are maintained in good working order;
  - ii. make contracts in the name of the Receiver for electricity, gas, fuel, water, heating, and air conditioning equipment, telephone, general cleaning, window cleaning, garbage removal, landscaping, snow removal, building security and the purchase of such reasonable and necessary supplies and services, as contemplated herein; and
  - iii. disclose to the Receiver, in writing and prior to entering into any contract with a supplier of goods or services, all direct and indirect interests it may have in such supplier and obtain the Receiver's written approval prior to utilizing such supplier.

3.02 *Accounting and Management of Funds:* In furtherance of its obligations to administer and supervise the management of all aspects of the operation of the Property, the Manager shall perform the following accounting and financial services:

- (a) *Initial Property Budget:* To assist the Receiver in its financial planning, the Manager will submit an initial property budget with 5 business days of the commencement of this Agreement. The initial property budget will include:
  - i. An operating budget for the remainder of the initial calendar year;
  - ii. An estimation of the anticipated net cash flow for the remainder of the initial calendar year.

The Receiver shall, within 5 business days after receipt of such budget, in writing approve or disapprove or suggest reasonable amendments thereto, provided that the Manager shall be entitled to rely upon the draft initial budgets approved by the Receiver; if a budget is not approved, but the Manager shall have received from the Receiver comments thereon, a revised budget shall be provided by the Manager to the Receiver within 10 business days of receipt of such comments and the approval process aforesaid shall apply. The final budgets shall be settled and agreed upon within 10 business days of receipt thereof by the Receiver, failing which such budgets shall be deemed to be approved by the Receiver.

- (b) *Annual Budgets:* To assist the Receiver in its financial planning, the Manager not less than 30 days after the commencement of this Agreement, and not less than 60 days prior to the commencement of the ensuing financial year shall prepare and submit to the receiver, with appropriate supporting details:
  - (i) an annual operating budget;



- (ii) an annual capital expenditure budget;
- (iii) an annual leasing budget;
- (iv) an annual budget which shall reasonably estimate the anticipated net cash flow;

for the Property for the ensuing fiscal year and thereafter shall prepare orderly revisions of such budgets as necessary. The Receiver shall, within 30 days after receipt of such budgets, in writing approve or disapprove or suggest reasonable amendments thereto, provided that the Manager shall be entitled to rely upon the draft budgets until receipt of the final budgets approved by the Receiver; if a budget is not approved, but the Manager shall have received from the Receiver comments thereon, a revised budget shall be provided by the Manager to the Receiver within 10 days of receipt of such comments and the approval process aforesaid shall apply. The final budgets shall be settled and agreed upon within 60 days of receipt thereof by the Receiver, failing which such budgets shall be deemed to be approved by the Receiver;

- (c) *Reports:* The Manager shall provide full financial reports to the Receiver on a monthly basis not later than the 15th day of the month following the month reported upon, setting out all information and in such detail as required by the Receiver from time to time, including:
  - (i) a monthly profit and loss operating financial statement, a comparison between budgets and the actual results achieved and an analysis of any variances;
  - (ii) an aged accounts receivable report and commentary on the accounts receivable and recommendations of any actions to be followed;
  - (iii) a sales report for retail Tenants, if applicable;
  - (iv) a progress report on leasing activity and leasing related issues, if applicable
- (d) *Annual Financial Statements:* In connection with the reports of the Manager to the Receiver in the administration and management of the Property, the Manager shall within 60 days after the end of each fiscal period prepare and submit to the Receiver statements prepared as of such date in accordance with generally accepted accounting principles including a profit and loss statement, a source and application of funds statement and such other statements as may be required by the Receiver, for the such fiscal period;
- (e) *Billings:* The Manager shall, in connection with the operations of the Property, establish and maintain suitable records and systems to handle and shall handle all billings to Tenants including without limitation taxes and escalations thereof, maintenance and operating costs and escalations thereof, any special utility charges, miscellaneous charges, and any other payments which by the terms of any lease for premises in the Property or other enforceable contract in writing are to be collected as a part of rent or otherwise on a periodic basis;
- (a) *Banking:* The Receiver shall establish the Bank Account in the name of the Receiver in relation to the operation of the Property. The Manager shall handle all banking necessary for the due performance of the Manager's duties hereunder and for the receipt and disbursement of all monies of the Receiver pertaining to the operations of the Property. The Manager shall prepare monthly reconciliations of the Bank Account. All disbursements shall require the signature of the Receiver. Any cash surplus available from time to time shall be remitted to the Receiver upon request;
- (b) *Provision of Funds:* The Manager shall not present disbursements to the Receiver for signature should there not be sufficient funds in the Bank Account to satisfy those disbursements. If the amount of any potential expenditure required to be made exceeds at any time the amount in the Bank Account, the Manager shall advise the Receiver of the amount of funds that are required to satisfy those disbursements and the Receiver shall immediately furnish to the Bank Account

*Handwritten signature*

sufficient funds to enable it to make such expenditures. The Manager shall not be required to expend any of its own funds for any obligation of the Receiver;

- (c) *Monies Held in Trust:* The Manager acknowledges that all monies received by the Manager pursuant to this Agreement for or on account of the Receiver shall be deposited in the Bank Account;
- (d) *Books of Account:* The Manager shall at all times maintain at its registered office appropriate books of account and records with respect to the Property and all transactions in connection with this Agreement. The Manager shall maintain such accounts in order to readily extract financial statements pertaining to the management of the Property in the form required by the Receiver. The Manager shall cooperate with the Auditor in the preparation of financial statements from time to time. The Receiver shall have the right to appoint the Auditor, and the Manager shall permit all books of account and records to be inspected and copied from time to time by the Receiver or its authorized representatives;
- (e) *H.S.T. Returns:* The Manager shall collect and record all amounts required to be collected by the Receiver on account of Harmonized Sales Tax ("H.S.T."), and shall file such H.S.T. returns and make such H.S.T. remittances as are from time to time necessary;

3.03 *Services, Materials and Supplies:* The Manager shall not have, and shall not represent that it has, any authority to commit the Receiver to any expenditure or to enter into any contract or agreement on behalf of the Receiver unless such expenditure, contract or agreement:

- (a) has been specifically approved in writing by the Receiver;
- (b) is made in accordance with a budget previously approved in writing by the Receiver; or
- (c) is undertaken for work required to be performed by reason of an emergency situation where it is not possible, acting reasonably, to obtain the Receiver's approval, in which case the Manager is hereby authorized to proceed with such work to the extent necessary to avoid the injury or damage.

In addition, the Manager shall not enter into any contract or agreement on behalf of, or binding upon, the Receiver unless such contract or agreement terminates, or may be terminated by the Receiver without cost or penalty, on or before Termination.

3.04 *Insurance:* The Manager shall provide the Receiver with a recommended outline of insurances that are deemed reasonable and appropriate for the type of Property being managed. The Manager may liaise with the Receiver's or the Owner's insurers or insurance brokers, as the case may be, and assist the Receiver in placing, or causing to be placed, any insurances required by the Receiver from time to time with respect to the Property, provided that the Receiver shall assume all responsibility with respect to the adequacy of coverages, and the Manager will not be held responsible for any inadequacy of coverage placed by the Receiver. The Manager shall co-operate in settling any claims. The Manager shall be named on the Receiver's or the Owner's liability coverage, as the case may be, as an additional named insured and all coverages shall waive subrogation rights as against the Manager. The Receiver shall provide minimum coverages for comprehensive general liability in the amount of \$5,000,000.00.

3.05 *Incidental Duties:* The Manager shall cause to be provided at the expense of the Receiver's all services necessary and incidental in respect of the operations of the Property.

3.06 *Tenant Negotiations re Changes:* The Manager shall supervise the making of any physical changes to the Property which may be provided for or required under the terms of the Tenants' lease.

**4.00 COMPENSATION**

4.01 **Basic Management Compensation:** For the services to be provided by the Manager under the provisions of this Agreement in respect of the administration and supervision of the management of the Property, the Manager shall receive from the Receiver and the receiver shall pay to the Manager in each year of the term a fee net of H.S.T./G.S.T. (the "**Basic Management Compensation**") equal to the sum of:

Twenty-Four Thousand Dollars (\$24,000.00) per annum (the "**Minimum Amount**") plus HST. The Minimum Amount comprising part of the Basic Management Compensation shall be payable in monthly installments of \$2,000.00 plus HST in advance on the first day of each month in each year during the term hereof. **This fee commences April 1<sup>st</sup>, 2021.**

It is understood that the Basic Management Compensation includes compensation to the Manager for all such general office overhead and administrative expenses and all office and bookkeeping services of the Manager in connection with the management and operation of the Property.

4.02 **Pro-rated Compensation:** In the event of termination of this Agreement for any reason prior to the expiry of any fiscal period, the Basic Management Compensation shall be pro-rated for the period up to the date of termination.

4.03 **Expenses:** In addition, the Receiver shall pay to the Manager all direct out-of-pocket expenses reasonably incurred by the Manager in accordance with this Agreement and associated with the administration and supervision of the management of the Property, including without limitation, remuneration (including salary and benefits) paid to maintenance and operating staff for the Property, the pro-rata share of remuneration (including salary and benefits) paid to any person designated as the "Property Superintendent" of the Property. All third-party leasing fees shall be in addition to the compensation payable to the Manager hereunder.

4.04 **Concessions:** The Manager hereby undertakes not to accept for its own account in the execution of its duties hereunder any commissions, reductions, finders' fees, or other concessions from tradesmen, suppliers, contractors, insurers, or Tenants. If such concessions are received by the Manager, they shall be remitted to or credited to the Receiver forthwith upon receipt.

4.05 **Special Services:** The following services shall constitute special services which the Manager may provide to the Receiver from time to time upon request, for which the additional compensation stated below will be paid by the Receiver to the Manager if such services are provided by the Manager:

Description of Service	Commission / Fee
Planning, bidding and negotiating contracts for the Owner for capital repair and improvement programs	INCLUDED IN BASE FEE
Project management for capital repair and improvement programs	TO BE NEGOTIATED
Contract payment and security administration	N/A

*Handwritten signature*

4.06 Leasing Services: If so requested by the Receiver in writing to conduct Leasing Services in respect of the Property, and the Manager shall be entitled to receive during the Initial Term of the Agreement or renewal thereof leasing fees as follows:

- I) For new Tenants not previously Tenants in the Property or Tenants who have entered into a new agreement after the expiry of their lease and have no option to renew, a fee of \$0.80 per square foot of rentable area of the new Tenants premises for each year of the new Tenants Lease term. This fee will also be levied on any expansion space for an existing Tenant.
- II) For renewal of existing Tenants in the Property a fee of \$0.40 per square foot of rentable area of the existing Tenants premises for each year of the Tenants renewal term;
- III) A lease preparation fee of \$500.00 for each transaction will be levied in addition to the above outlined fees; and
- IV) The Receiver agrees that the leasing fees payable to the manager pursuant to section 4.06 shall be paid in full on the commencement date of the new or renewal lease term as the case may be.

4.07 The Leasing Services and Property Management Services outlined in this agreement do not include investment consulting and financing services.

#### 5.00 INDEMNITIES

5.01 *Indemnity to Manager:* The Receiver agrees to indemnify and save harmless the Manager and its employees, agents, officers, directors, and their respective heirs, executors, administrators, successors and assigns, from any action, cause of action, suit, debt, cost, expense, claim and demand whatsoever at law or in equity in connection with the performance by the Manager of any and all of its obligations under this Agreement or any part hereof, including but not limited to any damage or injury whatsoever to any other person or property arising out of the use, administration or control of the Property or other assets of the Receiver or any part or parts thereof during the currency of this Agreement and thereafter, but this indemnity shall not extend to any unlawful or willful act or omission or neglect of the Manager or any of its employees, servants, agents or persons for whom it is responsible, and shall not extend to any action taken by the Manager outside the scope of authority set forth in this Agreement or any part thereof.

5.02 *Indemnity to Receiver:* The Manager agrees to indemnify and save harmless the Receiver and its employees, agents, officers, directors, and their respective heirs, executors, administrators, successors and assigns, from any action, cause of action, suit, debt, cost, expense, claim and demand arising in respect of damages, costs and expenses sustained as a direct result of acts or omissions by the Manager which are in breach of this agreement or which are the direct result of any negligent act or omission of the Manager or its employees, servants, agents or persons for whom it is responsible; but the indemnity provided under this Section shall not extend to any consequential losses arising from the said defaults, breach of contract or duty nor shall it extend to any act or omission or neglect on the part of the Receiver or any of its employees, servants, agents or persons for whom it is responsible. The Manager shall provide the Receiver with a certificate of insurance confirming that the Manager maintains liability and fidelity insurance in respect of the liability of the Manager to indemnify the Receiver hereunder, which certificate shall include an undertaking by the insured to give the Receiver at least thirty (30) days prior written notice of any cancellation or material change to such insurance coverage.

5.03 *Survival of Indemnity:* The foregoing indemnity shall continue in full force and effect notwithstanding the termination of this Agreement.

#### 6.0 RECEIVER'S DISCRETION



6.01 **Policies:** The Receiver shall be free from time to time to use its discretion to establish and provide the Manager with written policies, limitations, instructions and procedures governing the management and leasing of the Property, provided always that the same shall not conflict with matters theretofore approved by the parties, or with existing leases with Tenants, and the Manager shall at all times endeavour to act in accordance with such policies in the performance of its duties hereunder.

6.02 **Information:** The parties shall at all times and from time to time supply to the other such documents and information which may be requested by the other for the most efficient and most profitable operation and management of the Property, and to enable the other to carry out its obligations hereunder.

## 7.0 GENERAL

7.01 **Notices:** All notices, acceptances and exercise of options, in order to be effective, shall be in writing and may be delivered personally or shall be sent by prepaid mail or fax or other electronic communication addressed to the person or persons intended to receive same, at the following addresses:

- (a) to the Receiver at: **Deloitte Restructuring Inc., interim Receiver**  
**249 Ontario Street, Port Hope**  
 8 Adelaide Street West, Suite 200 Toronto ONT  
 M5H 0A9

Attn: Hartley Bricks  
 Email: [hbricks@deloitte.ca](mailto:hbricks@deloitte.ca)

With a copy to the solicitors for the Receiver at:

Dickinson Wright LLP  
 Barristers & Solicitors  
 199 Bay Street  
 Suite 2200, Box 447  
 Commerce Court Postal Station  
 Toronto, ON M5L 1G4

Attn: David P. Preger  
 Email: [dpreger@dickinsonwright.com](mailto:dpreger@dickinsonwright.com)

- (b) to the Manager at: Prime Real Estate Group Inc.  
 200 Ronson Drive, Suite 101  
 Toronto, Ontario  
 M9W 5Z9

Attn: Justin Di Ciano  
 Email: [jdiciano@primerealestategroup.ca](mailto:jdiciano@primerealestategroup.ca)

or such other address as may be given by any one of them to the other in writing from time to time, and such notices, requests, demands, acceptances and other communications shall be deemed to have been received when delivered, or if sent by fax or other electronic communication, when sent if receipt is acknowledged or, if mailed, on the second Business Day after the mailing thereof; provided that if such notice, request, demand or acceptance or other communication shall have been mailed or if regular mail service shall have been interrupted by strikes or other irregularities before the second Business Day after the mailing thereof, such notices, requests, demands, acceptances



and other communications shall be deemed to have been received on the third business day following the resumption of normal mail service.

7.02 **Time:** Time shall be of the essence of this Agreement.

7.03 **Waiver:** No consent or waiver, express or implied, by a party to or of any breach or default by another party in the performance of such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party hereunder. Failure on the part of a party to complain of any act or failure to act of another party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first-mentioned party of its rights hereunder.

7.04 **Amendments:** This Agreement may not be modified or amended except with the written consent of the parties hereto.

7.05 **Assignment:** All of the terms and provisions of this Agreement shall be binding on the parties hereto and their respective successors and assigns but shall endure to the benefit of and be enforceable by successors and assigns of any party only to the extent that they are permitted successors and assigns pursuant to the terms hereof. The Manager shall be entitled to assign this Agreement to a purchaser of all or substantially all of the business of the Manager if the assignee continues to carry on the business of the Manager and delivers a written covenant to the Receiver to assume the obligations of Manager hereunder. Save as aforesaid, neither party may assign this Agreement without obtaining the prior written consent of the other. In the event of a permitted assignment, the assigning party shall in any event not be released from its obligations hereunder.

7.06 **Further Assurances:** The parties hereto agree that they will from time to time at the reasonable request of any of them, execute and deliver such assignments, instruments and conveyances and take such further action as may be required to accomplish the purposes of this Agreement.

7.07 **No Partnership:** Nothing in this Agreement shall be deemed in any way to constitute any party a partner of any other in the conduct of any business or otherwise or a member of a joint venture or joint enterprise with any other party hereto.

7.08 **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and supersedes any prior or contemporaneous agreements, understandings, negotiations, and discussions, whether oral or written, of the parties, and there are no warranties, representations or other agreements between the parties in connection with the subject matter except as specifically set forth herein or in the schedules attached hereto.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the date first above-written.

SIGNED, SEALED AND DELIVERED

) DELOITTE RESTRUCTURING INC.  
 ) in its capacity as Court-appointed Interim  
 ) Receiver of certain property held by  
 ) 249 Ontario Street Holdings Inc.  
 ) and not in its personal or corporate capacity.  
 ) (Receiver)

)   
 )  
 ) Per: \_\_\_\_\_  
 ) Hartley Bricks, Senior Vice President

) PRIME REAL ESTATE GROUP INC.  
 ) (Manager)

)   
 )  
 ) Per: \_\_\_\_\_  
 ) Authorized Signing Officer  
 ) JUSTIN DICIANO COO

4848-5694-0003 v1 [85587-11]

ADDENDA CAPITAL INC.  
Applicant

-and-

249 ONTARIO STREET HOLDINGS INC., et al  
Respondents

Court File No. CV-21-00656098-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

**MOTION RECORD**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, Box 447  
Commerce Court Postal Station  
Toronto, ON M5L 1G4

**David P. Preger (36870L)**

dpreger@dickinsonwright.com  
Tel: (416) 646-4606

**Dylan E. Augruso (72125G)**

Tel: 416-777-2406  
Fax: 1-844-670-6009  
Email: daugruso@dickinsonwright.com

Lawyers for the or the Interim Receiver,  
Deloitte Restructuring Inc.