

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

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

B E T W E E N:

CITY OF TORONTO

Applicant

- and -

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

Respondent

REPLY MOTION RECORD

April 22, 2024

WEIRFOULDS LLP
Barristers & Solicitors
TD Bank Tower
Suite 4100, P.O. Box 35
66 Wellington Street West
Toronto, ON M5K 1B7

Philip Cho (LSO # 45615U)
pcho@weirfoulds.com

Tel: 416-365-1110
Fax: 416-365-1876

**Lawyers for the Receiver,
TDB Restructuring Limited**

TO: SERVICE LIST

SERVICE LIST

<p>TDB Restructuring Limited 11 King St. W., Suite 700 Toronto, Ontario M5H 4C7</p> <p>Arif Dhanani adhanani@tdbadvisory.ca</p> <p>Tel: 647-725-0183 Fax: 416-915- 6228</p> <p>Receiver</p>	<p>WeirFoulds LLP Barristers & Solicitors TD Bank Tower Suite 4100, P.O. Box 35 66 Wellington Street West Toronto, ON M5K 1B7</p> <p>Philip Cho (LSO # 45615U) pcho@weirfoulds.com</p> <p>Tel: 416-365-1110 Fax: 416-365-1876</p> <p>Counsel to the Receiver</p>
<p>City Solicitor's Office City of Toronto Station 1260, 26th floor, Metro Hall 55 John Street Toronto, Ontario M5V 3C6</p> <p>Mark Siboni (LSO #50101V) mark.siboni@toronto.ca</p> <p>Tel: (416) 392-9786 Fax: (416) 397-5624</p> <p>Ryan Krahn (LSO #74645M) ryan.krahn@toronto.ca</p> <p>Tel: (416) 338-1395 Fax: (416) 397-5624</p> <p>Lawyers for the Applicant</p>	<p>Betty's Law Office 2300 Yonge St., Suite 1600 Toronto, Ontario M4P 1E4</p> <p>Courtney Betty (LSO #28347U) betty@bettyslaw.com</p> <p>Tel: (416) 972-9472</p> <p>Lawyers for the Respondent</p>

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

BETWEEN:

CITY OF TORONTO

Applicant

- and -

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

Respondent


INDEX

TAB	DOCUMENT	PG. NO.
1	Receiver's Supplement to the First Report to the Court dated April 22, 2024	5
APPENDIX "A"	Notice of Triggering Events dated March 29, 2021	17
APPENDIX "B"	Audited Financial Statements dated June 30, 2023	22
2	Affidavit of Paul Fischer, sworn April 22, 2024	39
EXHIBIT "A"	Affidavit of Julie Western Set, sworn on November 10, 2022	45
EXHIBIT "B"	Affidavit of Rosell Kerr, sworn on December 21, 2022	84
EXHIBIT "C"	Reply Affidavit of Julie Western Set, sworn on January 16, 2023	103


TAB 1




TDB Restructuring Limited
Licensed Insolvency Trustee

11 King St. W, Suite 700 
Toronto, ON M5H 4C7

info@tdbadvisory.ca 

416-575-4440 

416-915-6228 

tdbadvisory.ca

**IN THE MATTER OF THE RECEIVERSHIP OF
HARRY SHERMAN CROWE HOUSING COOPERATIVE INC.**

**SUPPLEMENT TO THE FIRST REPORT TO THE COURT OF
TDB RESTRUCTURING LIMITED**

APRIL 22, 2024

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CITY OF TORONTO

Applicant

-and-

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

Respondent

Contents

1.0 INTRODUCTION..... 1

1.1 Purpose of the Supplemental Report1

2.0 REPLY TO THE KERR AFFIDAVIT..... 1

2.1 Notification of Change of Name 2

2.2 Triggering Events and Financial Stability of the Co-op..... 2

2.3 Market Rent vs. RGI Income and Financial Report 4

2.4 Maintenance and Repairs and Property Management Fees 5

2.5 Professional Fees and Disbursements..... 7

3.0 CONCLUSION 8

APPENDICES

Notice of Triggering Events A

Audited Financial Statements..... B

1.0 INTRODUCTION

1. By order of the Ontario Superior Court of Justice (the “**Court**”) dated March 14, 2023, RSM Canada Limited was appointed receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Harry Sherman Housing Cooperative Inc. (“**HSC**” or the “**Co-op**”) acquired for, or used in relation to a business carried on by HSC, including all proceeds thereof (the “**Appointment Order**”).
2. On March 1, 2024, the Court granted an order substituting the name TDB Restructuring Limited (“**TDB**”) in place of RSM Canada Limited (“**RCL**”) as Receiver.
3. This report (the “**Supplemental Report**”) is a supplement to the first report to the Court of the Receiver dated March 19, 2024 (the “**First Court Report**”) and should be read in conjunction with the First Court Report. Capitalized terms, unless otherwise expressly defined, shall have the meaning set out in the First Court Report.

1.1 Purpose of the Supplemental Report

4. The purpose of the Supplemental Report is to provide the Court with information in reply to the Affidavit of Rosell Kerr sworn April 16, 2024 (the “**Kerr Affidavit**”) and clarify certain matters raised in the Kerr Affidavit.
5. The Receiver notes that the Kerr Affidavit does not expressly indicate whether Ms. Kerr has submitted her evidence on behalf of the Co-op or its board members (the “**Board**”), or in her personal capacity. Significantly, Ms. Kerr does not indicate in the Kerr Affidavit whether she is authorized by the Co-op members or the Board to submit her affidavit and “raise areas of concern” in respect of the relief requested by the Receiver.

2.0 REPLY TO THE KERR AFFIDAVIT

6. The Receiver’s comments with respect to certain of the issues raised in Ms. Kerr’s affidavit are set out below. As preliminary comments, the Receiver:

- a) has not addressed every matter raised by Ms. Kerr and cannot speak: (i) to events that transpired prior to the Receiver’s appointment; and (ii) for the City of Toronto (the “**City**”);
- b) understands that many, if not all, of the items raised by Ms. Kerr with respect to the City were addressed and at issue in the City’s application for the appointment of the Receiver; and,
- c) has not engaged in “extensive audits” of the allegations made by the City, as suggested in paragraph 16 of the Kerr Affidavit, and is not aware of any such “audit”.

2.1 Notification of Change of Name

- 7. On February 1, 2024, the name RCL was changed to TDB and, as referred to above, on March 1, 2024, the Court issued an order substituting the name TDB for RCL on all of RCL’s ongoing mandates (the “**Omnibus Order**”). Community First Developments Inc. (“**CFDI**”), the property manager engaged by the Receiver, and the licensed insolvency trustees with carriage of this matter have remained the same throughout the receivership administration.
- 8. In paragraph 7 of the Kerr Affidavit, Ms. Kerr comments that the Omnibus Order was obtained without notice or service of any materials. The Receiver is unclear as to whether any issue is taken by Ms. Kerr, the Co-Op or the Board regarding notice of the application for the Omnibus Order, but the Receiver notes that the recitals to the Omnibus Order expressly state that the Application Record was served. The Receiver also notes that service of notice of the Application for the Omnibus Order is not required on stakeholders of the various mandates for which RCL was appointed as their rights or interests are not affected by the Omnibus Order.

2.2 Triggering Events and Financial Stability of the Co-op

- 9. As referred to in paragraph 20 of the Kerr Affidavit, certain triggering events led up to the appointment of the Receiver. These triggering events are identified pursuant to section 83 of the *Housing Services Act 2011* (the “**Act**”) and summarized in the City’s letter to the Co-op dated March 29, 2021 (the “**Notice of Triggering Events**”). A

copy of the Notice of Triggering Events is attached hereto as **Appendix “A”**. To summarize, the triggering events identified include:

- a) Contravening the Act or regulations by failing to comply with s. 75(1) of the Act to operate the housing project and govern itself in accordance with prescribed provincial requirements and local standards made by the Service Manager¹ and by failing to comply with s. 69(2) of the Act to ensure the project is well managed; and
 - b) Failing to operate the designated housing project properly.
10. The underlying issues giving rise to the triggering events leading up to the appointment of the Receiver, and the consequences arising therefrom, continue to be addressed by the Receiver, including the following items:
- a) CFDI is continuing to work with Rent-Geared-to-Income (“**RGI**”) households to obtain missing information in their files, which information was missing from prior to the Receiver’s appointment and continues to be outstanding notwithstanding repeated attempts by CFDI to obtain same;
 - b) as set out in the Kerr Affidavit, the number of RGI households required to be maintained by the Co-op is 90. The number of RGI units currently maintained by the Co-op is below the required threshold and the Receiver and CFDI are attempting to increase the number of RGI households as units within the Co-op are vacated over time by households paying market rent;
 - c) prior to the Receiver’s appointment, the Board filled vacated units with market rent households instead of RGI households, notwithstanding the City’s requirements, and either did not provide the City with accurate reporting or any reporting at all. As a result, the City provided a level of subsidy based on the misreported or historical number of RGI households, which subsidy levels exceeded warranted amounts. On the basis that the Receiver has now provided the City with audited financial statements and annual information reports for the years ended June 30, 2022 and 2023, the City has advised that it intends to

¹ The Service Manager under the Act is the City of Toronto

recoup the excess subsidies paid historically by reducing its monthly subsidy on a go forward basis. The Receiver is now managing the costs of operating the Co-op with a lower monthly subsidy from the City; and

- d) as described in the First Court Report, there are several capital projects that have been approved and partially funded by the City, which need to be completed by the Receiver.
11. In paragraph 20, the Kerr Affidavit states that the Receiver has invested \$431,250.00 in term deposits and that this is evidence that the Co-op is financially stable. At paragraphs 21 and 23 of the First Court Report and note 1 to the Receiver's statement of receipts and disbursements, the Receiver has explained that these funds have been advanced by the City for the specific purpose of completing capital projects approved by the City. The Receiver has invested the funds in a guaranteed investment certificate to: (i) earn a better rate of interest on the funds; and (ii) segregate the funds from general operating funds so that they are not unintentionally used for a purpose other than for what they have been specifically provided. The Receiver is uncertain as to whether Ms. Kerr has mistakenly understood that these funds are for general use. The financial stability of the Co-op is further discussed below.

2.3 Market Rent vs. RGI Income and Financial Report

12. As a preliminary matter, in paragraphs 21, 22 and 29 of the Kerr Affidavit, reference is made to the Receiver's "annual financial statements" or "annual financial report". To be clear, the Receiver has not provided financial statements or any form of annual financial report. The Receiver has provided quarterly reports and an annual report in accordance with its duties under the Appointment Order. The Receiver's report sets out the Receiver's activities, relevant information for the Court, the Receiver's interim statement of cash receipts and disbursements and fees to January 31, 2024 and seeks approval of the Court for same. The Receiver's interim statement of cash receipts and disbursements does not constitute a financial statement or financial report.
13. The Kerr Affidavit states at paragraph 22 that "the Board inquired from the Receiver answers in relation to the distinction between RGI income and market income. To date the Board have not received any clarification or breakdown from the Receiver."

The Receiver has no knowledge of any such request from Ms. Kerr or the Board to which she refers. Without any particulars as to the date and form in which these requests are alleged to have been made, the Receiver is unable to comment further.

14. In the Kerr Affidavit, at paragraph 25, Ms. Kerr has asked for a breakdown of, among other things, the subsidy paid by the City for the Receiver's fees. Paragraph 5 of the affidavit of Arif Dhanani states that the Receiver's fees and disbursements plus HST have been subsidized by the City of Toronto. To be clear, the full amount of the Receiver's fees, disbursements and HST associated therewith have been funded by the City and have not been paid from any subsidies intended for the housing project or in respect of RGI subsidies.
15. In order to be helpful and provide Ms. Kerr with financial information that she may be traditionally familiar with, the Receiver has attached hereto as **Appendix "B"**, the annual audited financial statements of the Co-op for the year ended June 30, 2023. The Receiver notes that:
 - a) although its financial position as at June 30, 2023 has improved slightly from June 30, 2022, the Co-op continues to be insolvent; and
 - b) the amount of the government subsidy (re)payable to the City has increased from the prior year. The Receiver believes that the subsidy (re)payable to the City may be even greater as at June 30, 2024 as a result of the full impact of the issue raised in 10 (c) above.

2.4 Maintenance and Repairs and Property Management Fees

16. In paragraph 27 of the Kerr Affidavit, Ms. Kerr sets out that repairs and maintenance costs reported by the Board's maintenance staff in 2022 were \$53,736 and that the forecast for 2023 was \$174,111; however, the audited financial statements set out that repairs and maintenance costs were actually much higher: (i) \$714,250 for the year ended June 30, 2022; (ii) \$658,319 for the year ended June 30, 2023; and (iii) the budgeted amount for repairs and maintenance costs for the year ended June 30, 2023 was \$440,586.

17. Property management fees have increased significantly on the basis that the Receiver engaged CFDI after evaluating the qualifications and performance of the property managers engaged by the Board following the Receiver's appointment. CFDI is a reputable property manager with a history of managing large properties and is well known in the non-profit and social housing sector, having a separate accounting department with appropriate internal controls and segregation of duties.
18. The Receiver's comments, observations and evaluation based on the Board's oversight of both the books and records of the Co-op, and the Co-op's property managers engaged prior to and at the time of the Receiver's appointment and CFDI's discussions with various residents after its engagement by the Receiver is set out below:
 - a) the property managers engaged by the Co-op at the time of the Receiver's appointment were two individuals;
 - b) there was no segregation of duties and one of the property managers was also completing the Co-op's accounting; however, this individual had no formal accounting accreditation or experience and the other individual did not appear to have any qualifications at all;
 - c) both property managers failed the Ontario Non-Profit Housing Association's RGI administration course, the successful completion of which is mandatory for all new RGI administrators in the City of Toronto regardless of whether new administrators have completed any previous training on RGI administration/simplification;
 - d) among other things, the books and records of the Co-op were in disarray, bank reconciliations had not been completed in several months until the Receiver requested that they be brought up to date and the Co-op's HST rebate claims had been rejected by Canada Revenue Agency on the basis that they were incorrectly filed;
 - e) the Co-op's former auditor advised that the June 30, 2022 financial statements had not been completed as there was missing information and outstanding questions that had not been answered by either the Board or the accounting/property management staff;

- f) the Receiver came to later learn from CFDI, based on resident complaints and work orders submitted, that a significant number of units, the common elements, and the building systems, had been neglected and that residents were suffering, among other things, from: (i) very significant pest control issues; (ii) severe plumbing issues; (iii) rotting kitchen and bathroom cabinets and raised flooring (as a result of leaks and flooding from the plumbing issues); and (iv) allergies from mould accumulation; and
 - g) a significant number of residents complained to CFDI about the above issues and that the issues were raised with the prior property managers and the Board and that nothing had been done about them.
19. The Receiver is of the view that the condition of the Property suffered from a lack of appropriate repairs and maintenance and as such, the present increase in property management fees and repair and maintenance fees, is appropriate and necessary. In addition, the Receiver recommends that its appointment continue until, among other things, the Property is brought back to an appropriate standard and condition, which includes the work described in the First Court Report.

2.5 Professional Fees and Disbursements

20. While the Kerr Affidavit sets out Ms. Kerr's opinion in paragraph 31 that the Receiver's average hourly rate of \$435.85 is excessive, based on the fee affidavits submitted by many of the Receiver's competitors in other insolvency proceedings, the Receiver's hourly rate in respect of this mandate is below market and was discounted to consider the nature of this particular engagement.
21. The webpage that Ms. Kerr refers to in paragraph 31 of her affidavit as something that "already existed" is misconstrued. The Receiver, as is standard practice in court-appointed receivership matters, is expected to create a case website in respect of these particular proceedings. The website referred to in the Receiver's invoices is the Receiver's website and the specific webpage referred to in the Receiver's invoices was set up in accordance with the Court's e-Service Protocol.
22. While the Receiver is surprised that it is required to provide this context, given the allegation made in the Kerr Affidavit at paragraph 32, it appears necessary. Mr.

Tannenbaum is the Receiver’s senior restructuring partner and has significant experience with receivership administrations in the non-profit and social housing sector. While there are numerous comments about Mr. Tannenbaum’s involvement with the file, including signing cheques and making electronic payments, it should be noted that the Receiver is a court-officer and a fiduciary and that it is responsible and accountable for the funds entrusted to it. The act of “signing cheques” involves Mr. Tannenbaum’s review and approval of all disbursements from the Co-op’s operating account and the Receiver’s trust account, all of which are critical to ensuring that every disbursement made is appropriate and accurate. No one in the Receiver’s office, other than a licensed insolvency trustee, has the ability or authority to sign cheques or make electronic payments. The approval and disbursement of trust funds is not an “administrative” task but is an important function reserved to be completed by a licensed insolvency trustee.

3.0 CONCLUSION

23. Based on the foregoing, the Receiver respectfully requests that the Court grant the order requested in the First Court Report.

All of which is respectfully submitted to this Court as of this 22nd day of April 2024.

TDB RESTRUCTURING LIMITED, solely in its capacity as Receiver and Manager of Harry Sherman Crowe Housing Cooperative Inc. and not in its personal or corporate capacity

Per:



Arif Dhanani, CPA, CA, CIRP, LIT
Managing Director

APPENDIX A

Shelter, Support & Housing Administration
Mary-Anne Bédard, General Manager

Housing Stability Services
Metro Hall, 6th Floor
55 John Street
Toronto, ON M5V 3C6

Tel: 416-392-0054
Fax: 416-696-3718
Doug.Rollins@toronto.ca

March 29, 2021

Board of Directors
Harry Sherman Crowe Housing Co-operative Inc.
Co-op Off – 51 The Chimneystack Rd.
Toronto, ON M3J 3L9

Dear Board of Directors,

Re: Notice of Triggering Events (NTE)

Notice is hereby given pursuant to clause 90(1)(a) of the *Housing Services Act 2011* ("**HSA**") that certain triggering events under the HSA have occurred with respect to Harry Sherman Crowe Housing Co-operative Inc. (**the "Housing Provider"**).

The particulars of the triggering events are as follows:

- 1) In the opinion of the City of Toronto, in its role as Service Manager, the Housing Provider has contravened the HSA and the regulations (HSA, s. 83. paragraph 1) :
 - a) The Housing Provider has failed to comply with the requirements of the HSA, s. 75(1) to operate the housing project and govern itself in accordance with (a) the prescribed provincial requirements; and (b) the local standards made by the Service Manager.
 - i. The Housing Provider has inadequate documented policies dealing with the following:
 - a) Internal transfers, O. Reg. 367/11, s. 47 (1) paragraph 5.
 - b) Guests, O. Reg. 367/11, s. 96 (4).
 - c) Dealing with information to ensure that the provider's directors, officers, employees, agents and volunteers comply with the standards prescribed by section 146. (O. Reg. 367/11, s. 146 (9)).
 - d) Records management to ensure that the provider's directors, officers, employees, agents and volunteers comply with HSA, s. 79 (1) and O. Reg. 367/11, s. 102 (1).
 - ii. The Board of Directors has not established the policies and procedures regarding:
 - a) System for dealing with reviews delegated to the Housing Provider under the Rent-Geared-to-Income Administration Services Agreement between the Service Manager and the Housing Provider; HSA s. 155 (3).
 - b) Lease/occupancy agreement policy, O.Reg. 367/11, s.100 (5) and City Guideline 2007-2.
 - iii. The Board of Directors has not implemented correctly the required policies and procedures regarding RGI administration or filling RGI Units in accordance with the local standards set forth in the Rent-Geared-to-Income (RGI) Administration Manual issued by the City of Toronto as described in the rent-geared-to income (RGI) review.
 - b) The Housing Provider has failed to comply with the requirements of the HSA, s. 69(2) to ensure that the project is well managed.

- i. The Board of Directors has failed to establish appropriate governance
- 2) In the opinion of the Service Manager, the Housing Provider has failed to operate a designated housing project properly (HSA, s. 83. Paragraph 11):
 - a) The Board of Directors has not established effective financial management controls resulting an accumulated deficit. As of June 30, 2020, the co-op had an accumulated deficit of \$129,087.
 - b) The Board of Directors has not ensured that the necessary policies and procedures are in place to ensure appropriate approvals and monitoring of internal controls

Effective immediately:

- 1) Notify the City of Toronto (City) at least two weeks in advance of the dates and times of all future Board of Directors meetings until further notice. City staff will attend as deemed necessary.
- 2) A copy of the agenda and "Board package" for each Board meeting is to be provided to the City at least two business days prior to each Board meeting.
- 3) Provide the City with a copy of the Minutes and all attachments no later than three weeks following all Board of Directors meetings, until further notice
- 4) Ensure that the following statements and reports are prepared monthly and are reviewed by the Board of Directors :
 - **Balance Sheet** showing cash on hand, investments and monies owed;
 - **Statement of Revenue and Expense** showing budget, actual data and variances;
 - **Payables List** showing all outstanding invoices;
 - **Arrears Report** showing occupancy charge amounts unpaid by residential members; and
 - **Investment Ledger (Report)** showing the balance of all investments.
- 5) A copy of each of the above noted reports must be provided to the City, no later than the last Thursday of the month until further notice.

No later than May 4, 2021:

- 6) Submit the Corporation's response to the Operational Review report conducted on November 8, 2019 as well as :
 - a) Update the Housing Provider's internal transfer policy and provide a copy of to the Service Manager as required by O.Reg 367/11 s. 47 and City Guideline 2012-1.
 - b) Establish a system for dealing with reviews as required by the HSA s. 155-158
 - c) Update written policies governing its standards for the collection, use, safeguarding and disclosure of personal information as required by HSA, O. Reg. 367/11, s. 145-147 and the RGI Service Agreement
 - d) Update written processes and procedures governing records management as required by the HSA, O.Reg. 367/11, s.102 and the RGI Service Agreement
 - e) Ensure the Housing Provider's occupancy agreements meet the requirements of the HSA O.Reg. 367/11, s.100, City Guideline 2007-2

- 7) Revise oversight and management processes to ensure that appropriate oversight is being provided over RGI administration to identify deficiencies, prevent recurrence and ensure the Corporation's RGI compliance rate exceeds the minimum standard. This should include :
 - a) Submitting the Corporation's response to the RGI Review report conducted on November 8, 2019
 - b) Following the *RGI Administration Manual* in carrying out the duties delegated by the City of Toronto to administer RGI subsidies in accordance with the rules as set out in the *Housing Services Act* and Regulations
 - c) Establishing documented business processes and procedures governing all aspects of RGI administration and filling RGI units
- 8) Submit an action plan detailing what steps the Board will take to eliminate the accumulated deficit and ensure that the Housing Provider will not incur losses in future years. The plan must include the following elements:
 - An assessment of the extent and nature of the financial difficulties;
 - A thorough analysis of qualitative factors contributing to the Housing Provider's financial problems;
 - A clear outline of specific steps to be taken to reduce expenditures and/or increase revenues
 - Specific objectives and detail on how they will be achieved;
 - A revised budget for the current year; and
 - Projected operating results for the next three years reflecting the Housing Provider's planned course of action and stated objectives.

Once the Housing Provider has been notified that the action plan has been accepted by the City, the Board of Directors must ensure that the plan is implemented and monitored, that operating losses are avoided and the accumulated deficit is eliminated in the time frame specified.

The Housing Provider must provide the City with a quarterly report assessing the effectiveness of its action plan. This report must be reviewed and approved by the Board of Directors prior to submission to the City. The first report must be submitted to the City 30 days following the end of the calendar quarter in which the City advised of its acceptance of the action plan. This report must be delivered to the City no later than ten days following the last day of each calendar quarter thereafter.

- 9) Submit policies and procedures governing the following activities for approval:
 - Review and approval of monthly financial statements by the Board of Directors;
 - Purchasing, including clearly defined authorities and limits for both Board members, staff and agents as it pertains to legally binding contractsThe Board must ensure that all processes include appropriate internal controls. The Housing Provider's internal controls should help to ensure that exposure to risk is managed. Once approved by the City the policies and procedures must be implemented immediately by the Housing Provider.
- 10) Create and submit a training plan outlining what courses will be taken to ensure that all members of the Board of Directors receive financial management and corporate governance training in a form acceptable to the City. The training plan must specify, at the very least, the names of the Board members, the course provider, the course name, and the scheduled date(s).

No later than May 14, 2021:

- 11) Provide to the Service Manager proof of successful completion of the financial management and corporate governance course by at least 50% of the Board members.
- 12) Submit a training strategy that ensures that new Board members and staff are appropriately trained in the future with respect to corporate governance, financial management and operation of the Housing Provider.

No later than June 23, 2021:

- 13) Provide to the Service Manager proof of successful completion of the financial management and corporate governance course by the remaining 50% of the Board members.

The Service Manager reserves the right to add to, vary or change the foregoing requirements if it deems it necessary to do so in order to cure the situations that have given rise to the triggering events. Harry Sherman Crowe Housing Co-operative Inc. is required to implement or comply with the directions given in this notice by the dates specified in the various sections of the notice.

Failure to comply with all or part of this notice of triggering events may result in the Service Manager exercising any or all remedies available to it under Section 85 of the Housing Services Act, which may include the following:

- Appointing an interim receiver or interim receiver and manager;
- Applying for the appointment by the superior court of justice of a receiver or receiver and manager for the housing provider;
- Removing some or all of the directors of the housing provider; and
- Appointing one or more individuals as directors of the housing provider.

Please direct all correspondence related to this matter to Suzana Lama, the Housing Consultant responsible for Harry Sherman Crowe Housing Co-operative Inc.

Sincerely,



Doug Rollins
Director, Housing Stability Services

cc. Mary-Anne Bédard, General Manager, Shelter Support & Housing Administration Division,
City of Toronto
Michael Smith, Counsel, City of Toronto
Julie Western Set, Manager, Housing Stability Services, City of Toronto
Suzana Lama, Housing Consultant, City of Toronto

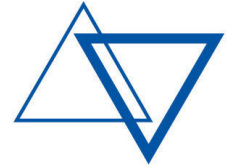
APPENDIX B

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

FINANCIAL STATEMENTS

JUNE 30, 2023

22 Stancroft Drive, Richmond Hill, Ontario L4C 4N1
Tel: 905 884-6320 Fax: 905 884-6346
Email: andrew.vahrmeyer@outlook.com



INDEPENDENT AUDITOR'S REPORT

To RSM Canada Limited, solely in its capacity as court appointed receiver and manager of Harry Sherman Crowe Housing Co-operative Inc. and the City of Toronto

Disclaimer of Opinion

We were engaged to audit the accompanying financial statements of Harry Sherman Crowe Housing Co-operative Inc. (the "Co-operative"), which comprise the balance sheet as at June 30, 2023 and the statements of revenues, expenditures and accumulated deficit, and cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies.

We do not express an opinion on the accompanying financial statements of the Co-operative. Because of the significance of the matters described in the Basis for Disclaimer of Opinion section of our report, we have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on these financial statements.

Basis for Disclaimer of Opinion

Management was unable to provide certain written representations required by Canadian Auditing Standards Section 580, Written Representations, pertaining to the period prior to the Receiver's appointment on March 14, 2023. These representations include, but are not limited to, management's responsibility for preparing the financial statements in conformity with the Co-operative's financial reporting framework, providing all relevant information and access as agreed in the terms of the audit engagement, representing that all transactions have been recorded and are reflected in the financial statements, management's responsibility for the Co-operative's compliance with laws, regulations, and contractual obligations, and the presence or absence of fraud or suspected fraud.

Material Uncertainty Related to Going Concern

We draw attention to Note 1 in the financial statements which indicates that the Co-operative has an accumulated deficit of \$130,405 as at June 30, 2023 and a replacement reserve fund balance of \$Nil. As stated in Note 1, these events or conditions, along with other matters as set forth in Note 1, indicate that a material uncertainty exists that may cast significant doubt about the Co-operative's ability to continue as a going concern. Our disclaimer of opinion is not modified in respect of this matter.

Emphasis of Matter - Basis of Accounting and Restriction on Distribution and Use

We draw attention to Note 2 to the financial statements, which describes the basis of accounting. The financial statements are prepared to assist the Co-operative to comply with the financial reporting provisions of the HSA. As a result, the financial statements may not be suitable for another purpose. Our report is intended solely for the Co-operative and the City of Toronto and should not be distributed to or used by parties other than the Co-operative or the City of Toronto. Our disclaimer of opinion is not modified in respect of this matter.

Other Matter

The financial statements for the year ended June 30, 2022 were audited by another auditor who included a disclaimer of opinion on those financial statements on October 17, 2022 for the reasons described in the Basis for Disclaimer of Opinion section.

Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with the financial reporting provisions of the HSA, and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Co-operative's ability to continue as a going concern, disclosing, as applicable, matters relating to going concern and using the going concern basis of accounting unless management either intends to liquidate the Co-operative or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Co-operative's financial reporting process.

Auditor's Responsibilities for the Audit of the Financial Statements

Our responsibility is to conduct an audit of the Co-operative's financial statements in accordance with Canadian generally accepted auditing standards and to issue an auditor's report. However, because of the matters described in the Basis for Disclaimer of Opinion section of our report, we were not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on these financial statements.

We are independent of the Co-operative in accordance with the ethical requirements that are relevant to our audit of the financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements.



Andrew T. Vahrmeyer Professional Corporation

Authorized to practice public accounting by the
Chartered Professional Accountants of Ontario

Richmond Hill, Ontario
December 20, 2023

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

BALANCE SHEET

AS AT JUNE 30, 2023

	2023	2022
ASSETS		
Current		
Cash	\$ 218,321	\$ 112,002
Short term investments (Note 3)	162,404	160,803
Members' receivable (net of allowance 2023 - \$6,412, 2022 - \$6,412)	30,241	43,486
HST rebate receivable	226,217	140,490
Government subsidy receivable	169,532	128,190
Other accounts receivable	26,154	3,547
Prepaid expenses	94	28,311
	832,963	616,829
Tangible capital assets (Note 5)	7,020,514	8,191,884
	\$ 7,853,477	\$ 8,808,713
LIABILITIES, RESERVE FUNDS AND ACCUMULATED DEFICIT		
Current		
Accounts payable and accrued liabilities (Note 7)	\$ 363,413	\$ 777,302
Members' rent deposits	124,786	117,771
Accrued mortgage payment	135,089	135,089
Government subsidy payable	292,119	153,238
HST payable	2,795	362
Deferred housing charge revenue	34,841	72,812
Current portion of mortgage payable (Note 6)	1,240,946	1,171,370
	2,193,989	2,427,944
Mortgage payable, net of current portion (Note 6)	5,779,568	7,020,514
	7,973,557	9,448,458
Replacement reserve fund (Note 8)	-	-
Contributed surplus	10,325	10,325
Accumulated deficit	(130,405)	(650,070)
	\$ 7,853,477	\$ 8,808,713

See accompanying notes to financial statements.

Approved by: RSM Canada Limited, solely in its capacity as court-appointed receiver and manager of Harry Sherman Crowe Housing Co-operative Inc., and not in its personal or corporate capacity



HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

STATEMENT OF REVENUES, EXPENDITURES AND ACCUMULATED SURPLUS

FOR THE YEAR ENDED JUNE 30, 2023

	2023 ACTUAL	2023 BUDGET	2022 ACTUAL
		(Note 13)	
Revenues			
Housing charges:			
Market	\$ 1,247,563	\$ 1,101,216	\$ 1,157,807
Rent geared to income	315,887	1,189,740	322,290
Utility charges	29,424	-	29,394
City of Toronto subsidy (Note 9):			
Original estimate	1,766,216	693,682	1,538,280
Year end reconciliation	(102,407)	-	(100,255)
Parking	99,690	100,761	86,132
Laundry	23,460	10,000	20,766
Investment income (loss)	2,175	-	(10,047)
Other	17,676	2,299	1,393
Recovery upon receivership - 2023 expenditures (Note 10)	<u>457,653</u>	<u>-</u>	<u>-</u>
	<u>3,857,337</u>	<u>3,097,698</u>	<u>3,045,760</u>
Expenditures			
Administrative overhead (Schedule 1)	486,066	187,358	270,715
Amortization of tangible capital assets	1,159,656	907,869	1,086,455
Bad debts (recovery)	2,232	3,000	(1,538)
Insurance	112,902	80,000	101,429
Repairs and maintenance (Schedule 2)	658,319	440,586	714,250
Mortgage interest	445,202	713,201	518,403
Municipal taxes	186,843	168,600	178,891
Utilities (Schedule 3)	474,162	443,000	436,960
Allocation to replacement reserve fund	<u>109,583</u>	<u>120,000</u>	<u>105,663</u>
	<u>3,634,965</u>	<u>3,063,614</u>	<u>3,411,228</u>
Shelter excess (deficiency) of revenues over expenditures before undernoted	222,372	\$ 34,084	(365,468)
Sector support (Schedule 4)	<u>7,219</u>	<u>23,568</u>	<u>7,369</u>
Excess (deficiency) of revenues over expenditures before undernoted	229,591	\$ 57,652	(358,099)
Recovery upon receivership - 2022 expenditures (Note 10)	<u>326,548</u>	<u>-</u>	<u>-</u>
Excess (deficiency) of revenues over expenditures	556,139	<u>\$ 57,652</u>	(358,099)
City prior period reconciliation adjustment (Note 11)	(36,474)		-
Accumulated deficit, beginning of year	<u>(650,070)</u>		<u>(291,971)</u>
Accumulated deficit, end of year	<u>\$ (130,405)</u>		<u>\$ (650,070)</u>

See accompanying notes to financial statements.

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

STATEMENT OF CASH FLOWS

FOR THE YEAR ENDED JUNE 30, 2023

	2023	2022
Cash provided by (used in)		
Operating activities		
Excess (deficiency) of revenues over expenditures	\$ 556,139	\$ (358,099)
City of Toronto prior period reconciliation adjustment	(36,474)	-
Non-cash items		
Amortization of tangible capital assets	1,171,370	1,097,450
Allocation to replacement reserve fund	<u>109,583</u>	<u>105,663</u>
	1,800,618	845,014
Net changes in		
Members' receivable	13,245	(22,593)
HST rebate receivable	(85,727)	(31,920)
Government subsidy receivable	(41,342)	540
Other accounts receivable	(22,607)	(2,063)
Prepaid expenses	28,217	8,083
Accounts payable and accrued liabilities	(413,889)	354,954
Members' rent deposits	7,015	(4,791)
Deferred housing charge revenue	(37,971)	40,871
Government subsidy payable	138,881	98,578
HST payable	<u>2,433</u>	<u>(1,367)</u>
	<u>1,388,873</u>	<u>1,285,306</u>
Financing activities		
Repayment of mortgage payable	<u>(1,171,370)</u>	<u>(1,097,450)</u>
Investing activities		
Expenditures from replacement reserve fund	(110,990)	(105,663)
Change in short-term investments	(1,601)	10,047
Investment income on replacement reserve funds	<u>1,407</u>	<u>-</u>
	<u>(111,184)</u>	<u>(95,616)</u>
Increase in unrestricted cash	106,319	92,240
Unrestricted cash, beginning of year	<u>112,002</u>	<u>19,762</u>
Unrestricted cash, end of year	<u>\$ 218,321</u>	<u>\$ 112,002</u>

See accompanying notes to financial statements.

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

NOTES TO FINANCIAL STATEMENTS

JUNE 30, 2023

NATURE OF ORGANIZATION

Harry Sherman Crowe Housing Co-operative Inc. (the "Co-operative") was incorporated under the Co-operative Corporations Act on September 29, 1988, as a corporation without share capital to provide subsidized housing. The Co-operative became fully operational on its interest adjustment date of July 1, 1993. A board of directors is elected from the Co-operative's membership which is made up of residents.

The Co-operative is exempt from tax under section 149(1)(l) of the Income Tax Act as a corporation operating exclusively for social welfare. No portion of the Co-operative's income is available for the personal benefit of any member.

On March 14, 2023, RSM Canada Limited was appointed as receiver and manager of the Co-operative as per a court order of the Ontario Superior Court of Justice.

1. GOING CONCERN

While the financial statements have been prepared on the basis of accounting principles applicable to a going concern, several adverse conditions and events cast some doubt upon the validity of this assumption. As at June 30, 2023, the Co-operative has an accumulated deficit of \$130,405, a replacement reserve fund equity balance of \$Nil, and a working capital deficiency. If not for the recovery upon the appointment of the receiver (Note 10), the Co-operative would have incurred an operating loss for the year. The Co-operative is in need of significant capital and operating repairs, which will require external sources of financing in order to fund. There is no guarantee that the Co-operative will receive additional subsidies or other funding from the City of Toronto.

The Co-operative's continued existence is dependent upon its ability to eliminate its accumulated deficit and meet current and future obligations. In addition, refer to Note 14 regarding the Co-operative's reliance on significant government subsidies.

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

NOTES TO FINANCIAL STATEMENTS

JUNE 30, 2023

2. SIGNIFICANT ACCOUNTING POLICIES

Basis of Accounting

These financial statements have been prepared in accordance with the significant accounting policies set out below to comply with the financial reporting framework prescribed by the Housing Services Act (the "HSA") and guidelines provided by the City of Toronto (the "City"). This framework, used in these financial statements, is in accordance with Canadian Accounting Standards for Not-For-Profit Organizations, subject to the following material exceptions:

- (i) Amortization of tangible capital assets includes amortization of the leasehold interest in land and is equal to the principal repaid on the related mortgage, rather than over the useful lives of the related assets. In determining mortgage principal repaid, an accrual is made for the amount of mortgage principal to be repaid on the first day following the Co-operative's year end;
- (ii) Capital assets funded by grant funding are amortized over the period in which the Co-operative meets the conditions of the grant agreement or at the time of repayment of the grant funding, rather than amortized over their estimated useful lives;
- (iii) The replacement reserve is funded by annual appropriations from operations based on amounts approved by the City of Toronto;
- (iv) Capital expenditures, unless otherwise funded by debt or grant funding, are expensed in the year of acquisition to the replacement reserve fund or to the statement of revenues, expenditures and accumulated surplus rather than capitalized and amortized over their estimated useful lives; and
- (v) Investment income earned on the restricted cash and investments of the replacement reserve fund is credited directly to the reserve fund rather than operations.

Financial Instruments

The Co-operative initially measures all of its financial assets and liabilities at fair value. Subsequently, all financial assets and financial liabilities are measured at amortized cost, except for investments in equity instruments that are quoted in an active market, which are measured at fair value. Changes in fair value are recognized on the statement of revenues, expenditures and accumulated surplus in the period incurred, except for changes to replacement reserve fund investments, which are recognized directly to the reserve fund.

Replacement Reserve Fund

The Co-operative is required to maintain a replacement reserve fund for the purpose of funding major asset repairs and replacement. This replacement reserve fund is funded by an annual charge to operations.

Cash and investments of the replacement reserve fund are externally restricted and can only be used for major asset repairs and replacement.

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.**NOTES TO FINANCIAL STATEMENTS****JUNE 30, 2023**

2. SIGNIFICANT ACCOUNTING POLICIES - continued**Tangible Capital Assets**

Tangible capital assets are comprised of the leasehold interest in land and building shelter costs and equipment as they existed at the interest adjustment date per the Certified Audited Statement of Final Capital Costs. Subsequent purchases of tangible capital assets, unless otherwise funded by debt or grant funding, are expensed or charged to the replacement reserve fund in the year acquired.

Revenue Recognition

Housing and utility charges are recognized at the beginning of each month, when they are due.

Government subsidies from the City of Toronto are recorded using the deferral method of accounting for contributions.

Laundry machines are provided by a third party. Laundry revenue is recognized when collected which occurs on a monthly basis.

Parking revenue is recognized on an accrual basis corresponding with the period during which the right to use the space is provided.

Sector support revenues are collected with housing charges and are recognized at the beginning of each month, when they are due.

All other income is reported on an accrual basis as it is earned.

Use of Estimates

The preparation of financial statements requires management to make assumptions about future events that effect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Key components of the financial statements requiring management to make estimates include the provision for doubtful accounts in respect of receivables. Actual results could differ from these estimates.

3. SHORT-TERM INVESTMENTS

As at June 30, 2023, short-term investments consist of \$162,404 (2022 - \$160,803) invested in the Encasa Canadian short-term bond fund distributed by Worldsource Financial Management Inc.

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

NOTES TO FINANCIAL STATEMENTS

JUNE 30, 2023

4. FINANCIAL INSTRUMENTS

The significant financial risks to which the Co-operative is exposed are credit risk, market risk, and liquidity risk.

Credit risk

Credit risk is the risk of financial loss should a counter-party in a transaction fail to meet its obligations. The Co-operative has exposure to credit risk to the extent that some members may fall into housing charge arrears. To manage this risk, member arrears are reviewed on a monthly basis. Further, member deposits are taken, in order to reduce credit exposure.

Market risk - consisting of price and interest rate risk

Market risk is the risk of potential financial loss caused by fluctuations in the fair value of future cash flow of financial instruments due to changes in market conditions. The Co-operative has exposure to price and interest rate risk in that investments in debt and equity instruments may fluctuate based on changes in market prices (caused by other than interest rates) and interest rate fluctuations. The Co-operative does not engage in any hedging or derivative transactions to manage market risk.

As the City subsidy funding fully contributes towards the cost of mortgage payments, the Co-operative is not exposed to interest rate risk on its mortgage.

Liquidity risk

Liquidity risk is the risk that the Co-operative encounters difficulty in meeting its financial obligations as they come due. The Co-operative's objective is to maintain a sufficient level of working capital in order to ensure it always has cash available to meet these obligations. The Co-operative's most significant short term liabilities include accounts payable and accrued liabilities, members' rent deposits, the accrued mortgage payment, and government subsidy payable.

As the City subsidy funding fully contributes towards the cost of mortgage payments, the Co-operative is not exposed to significant liquidity risk on the current portion of its mortgage.

5. TANGIBLE CAPITAL ASSETS

	<u>2023</u>	<u>2022</u>
Leasehold interest and buildings	\$ 23,572,561	\$ 23,572,561
Less: accumulated amortization	<u>16,552,047</u>	<u>15,380,677</u>
Net book value	<u>\$ 7,020,514</u>	<u>\$ 8,191,884</u>

The Co-operative housing was constructed on land leased from York University. The term of lease is 45 years, effective January 31, 1992. The entire lease payment of \$3,533,000 was paid up front and is reflected in the leasehold interest and buildings.

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

NOTES TO FINANCIAL STATEMENTS

JUNE 30, 2023

6. MORTGAGE

	<u>2023</u>	<u>2022</u>
First mortgage - fully insured by Canada Mortgage and Housing Corporation under section 6 of the National Housing Act, payable in blended monthly payments of \$135,089, with interest at 5.94%, maturing July 1, 2028	\$ 7,020,514	\$ 8,191,884
Less: current portion	<u>1,240,946</u>	<u>1,171,370</u>
	<u>\$ 5,779,568</u>	<u>\$ 7,020,514</u>

The principal to be paid over the next five fiscal years is as follows:

2024	\$ 1,240,946
2025	1,316,789
2026	1,396,168
2027	1,480,332
2028	1,569,458

7. PROPERTY TAXES PAYABLE

Included in accounts payable and accrued liabilities are property taxes owing to York University of \$171,875 as of June 30, 2023, which were dated prior to the receivership appointment order on March 14, 2023 (Note 10). These property taxes were paid by York University to the City of Toronto and subsequently charged back to the Co-operative by York University.

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

NOTES TO FINANCIAL STATEMENTS

JUNE 30, 2023

8. REPLACEMENT RESERVE FUND

	2023	2022
Balance, beginning of year	\$ -	\$ -
Allocation from operations	109,583	105,663
Expenditures	(110,990)	(105,663)
Investment income	<u>1,407</u>	<u>-</u>
Balance, end of year	<u>\$ -</u>	<u>\$ -</u>

Replacement reserve fund expenditures consist of the following:

	2023	2022
Unit repair and retrofit	\$ 246,422	\$ 105,663
Community room renovation	56,395	-
Appliances	14,866	-
Recovery upon receivership (Note 10)	<u>(206,693)</u>	<u>-</u>
	<u>\$ 110,990</u>	<u>\$ 105,663</u>

9. CITY OF TORONTO SUBSIDY

	2023	2022
Operating subsidy	\$ 586,544	\$ 496,864
RGI subsidy	667,886	762,270
Property tax subsidy	186,843	178,891
Additional subsidy to address cash flow issues	130,000	-
Additional subsidy to fund receiver fees	<u>92,536</u>	<u>-</u>
	<u>\$ 1,663,809</u>	<u>\$ 1,438,025</u>

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

NOTES TO FINANCIAL STATEMENTS

JUNE 30, 2023

10. RECOVERY UPON RECEIVERSHIP AND CONTINGENT LIABILITIES

Included in the receivership appointment order dated March 14, 2023, issued by the Ontario Superior Court of Justice (the "Court"), are the following court orders:

- (i) no proceeding against or in respect of the Co-operative or the Co-operative's assets and property shall be commenced or continued, except with the written consent of the Receiver or with leave of the Court, and any and all Proceedings currently under way against or in respect of the Co-operative or the Co-operative's assets and property are hereby stayed and suspended pending further order of the Court.
- (ii) all rights and remedies against the Co-operative, the Receiver, or affecting the Co-operative's assets and 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 Bankruptcy and Insolvency Act, and further provided that nothing in this paragraph shall: (i) empower the Receiver or the Co-operative to carry on any business which the Co-operative is not lawfully entitled to carry on; (ii) exempt the Receiver or the Co-operative 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.

The Receiver is appointed by the Court via an application of the City of Toronto under the Housing Services Act and the Receiver's mandate is not to realize on the property of the Co-operative, but rather to bring the Co-operative back into compliance with the HSA.

As of March 14, 2023, the Co-operative had a significant accumulated deficit and unpaid financial liabilities and there were not sufficient funds for distribution to unsecured creditors. Accordingly, a recovery was recorded to eliminate financial liabilities, which are impacted by the above court orders and for which the Co-operative does not anticipate will be paid.

Additionally, certain legal claims were outstanding against the Co-operative from prior to March 14, 2023 and which are also included in the stay pursuant to the above court orders.

No accrual of costs has been made in these financial statements, with respect to any liabilities which may be realized should the stays be lifted, except for municipal taxes which were originally funded through City of Toronto subsidies, as the outcome is not determinable. Any outstanding liabilities from prior to March 14, 2023 requiring payout will be recorded in the period such payout is determined.

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

NOTES TO FINANCIAL STATEMENTS

JUNE 30, 2023

11. CITY OF TORONTO PRIOR PERIOD RECONCILIATION ADJUSTMENT

The original annual information return ("AIR") submitted with the audited financial statements for the year ended June 30, 2021 was rejected by the City due to the inclusion of RGI units which were not properly selected from the City's centralized waiting list. This original AIR calculated the year end reconciliation amount owing back to the City of \$52,983.

The AIR for the year ended June 30, 2021 was amended and resubmitted on August 14, 2023 with a revised reconciliation amount owing back to the City of \$89,457. The difference of \$36,474 between the original and amended annual information returns is recorded as a prior period adjustment pertaining to 2021.

12. MANAGEMENT CONTRACT

The Co-operative has entered into a property management contract with Community First Developments Inc. ("CFDI") for the period from April 24, 2023 to April 30, 2024. This contract may be cancelled by the Co-operative or CFDI by providing at least 60 days written notice or 30 days in the event of default. The contract fees are based on annual rates of \$429,600 plus HST for management and \$25,680 plus HST for accounting, paid monthly in arrears.

13. BUDGET FIGURES

The comparative budget figures included in the statement of revenues, expenditures and accumulated surplus are unaudited.

14. ECONOMIC DEPENDENCE

The continued, sustained operation of Harry Sherman Crowe Housing Co-operative Inc. is dependent on significant government subsidies. Without this level of support the continued existence of the Co-operative is uncertain.

15. TRANSACTIONS WITH MEMBERS

Approximately 45% (2022 - 53%) of the Co-operative's revenue has been derived from or on behalf of members of the Co-operative.

16. UNIT RENOVATION COSTS

Building and equipment repairs and maintenance expenses include \$137,980 (2022 - \$223,272) of unit renovation costs that would have been charged to the replacement reserve fund based on the requirements of City of Toronto Guideline 2018-5, had sufficient funds been available in the replacement reserve fund.

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.**NOTES TO FINANCIAL STATEMENTS****JUNE 30, 2023**

17. COMPARATIVE FIGURES

Certain of the comparative figures have been reclassified to conform with the current year's presentation.

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.

SCHEDULES TO STATEMENT OF REVENUES, EXPENDITURES AND ACCUMULATED SURPLUS

FOR THE YEAR ENDED JUNE 30, 2023

	2023 ACTUAL	2023 BUDGET	2022 ACTUAL
			(Note 13)
SCHEDULE 1			
Administrative overhead			
Office and general	\$ 88,025	\$ 33,500	\$ 35,558
Telephone and internet	14,278	15,458	16,619
Management fees	175,644	90,000	130,041
Receiver fees (Note 9)	85,116	-	-
Professional fees	104,417	24,500	64,758
Social and recreation	<u>18,586</u>	<u>23,900</u>	<u>23,739</u>
	<u>\$ 486,066</u>	<u>\$ 187,358</u>	<u>\$ 270,715</u>
SCHEDULE 2			
Repairs and maintenance			
Building and equipment (Note 16)	\$ 371,779	\$ 163,298	\$ 423,490
Elevator	11,225	18,302	22,579
Grounds	64,174	62,715	68,290
Heating and plumbing	125,410	53,353	64,790
Waste removal	57,903	52,705	47,470
Security	<u>27,828</u>	<u>90,213</u>	<u>87,631</u>
	<u>\$ 658,319</u>	<u>\$ 440,586</u>	<u>\$ 714,250</u>
SCHEDULE 3			
Utilities			
Hydro	\$ 195,605	\$ 160,000	\$ 202,800
Gas	94,062	83,000	95,378
Water	<u>184,495</u>	<u>200,000</u>	<u>138,782</u>
	<u>\$ 474,162</u>	<u>\$ 443,000</u>	<u>\$ 436,960</u>
SCHEDULE 4			
Sector support			
Sector support revenue	\$ 23,430	\$ 23,568	\$ 23,580
Sector support amortization	(11,714)	-	(10,995)
Sector support interest	<u>(4,497)</u>	<u>-</u>	<u>(5,216)</u>
	<u>\$ 7,219</u>	<u>\$ 23,568</u>	<u>\$ 7,369</u>

TAB 2

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

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

BETWEEN:

CITY OF TORONTO

Applicant

and

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC

Respondent

**AFFIDAVIT of Paul Fischer
(Sworn April 22, 2024)**

I, Paul Fischer, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a Manager in Housing Stability Services Unit (the "HSS"). In this role, I manage a team of Housing Consultants, Co-ordinator Programs, and a Support Assistant. The City of Toronto's HSS unit is part of the Housing Secretariat office. The HSS was previously part of the City's Shelter, Support and Housing Administration Division (the "SSHA").

2. Housing providers are persons who operate housing projects. Under the *Housing Services Act, 2011* (the "HSA"), municipalities such as the City of Toronto are designated as service managers responsible for administering and funding housing provider organizations and their designated housing projects. The City of Toronto, in its capacity as service manager (the "City" or the "Service Manager"), acts through the HSS and its staff.

3. The HSS's primary obligation is to monitor housing provider operations to ensure that they meet their obligations under the governing legislation. The social housing projects that the City is responsible for are monitored by HSS Housing Consultants. These housing provider obligations include, but are not limited to, the establishment of (and adherence to) prescribed Rent-Geared-to-Income ("RGI") practices and protocols, submitting reports regarding key aspects of the housing provider's operations to the service manager, and using the government funding it receives appropriately. If issues with respect to the management of a given social housing project arise, the HSS works to ensure that these issues are identified and resolved.

4. The City – through the HSS – can also provide housing providers with advice and support with an eye to helping them operate independently as viable going concerns, through their Boards of Directors and their staff.

5. As a Manager overseeing social housing programs within the City of Toronto, I am responsible for carrying out the City's legislative duties to administer and fund social housing programs, including the one at 51 The Chimneystack Road (the "Housing Project"). Housing providers such as Harry Sherman Crowe Housing Co-operative ("Harry Sherman", the "Housing Provider", or the "Co-op"), who was operating the Housing Project prior to the appointment of the Receiver (referenced in paragraph 6, below), have a statutory obligation to make a prescribed number of RGI units available to residents of the City of Toronto. As such, I have knowledge of the matters to which I hereinafter depose.

6. I have reviewed the Affidavit of Ms. Rosell Kerr, sworn on April 16, 2024 (the "Kerr 2024 Affidavit"), and have prepared this affidavit in order to reply to certain issues raised in the Kerr 2024 Affidavit and in an effort to provide some additional context – in the event it can help

the Court understand and appreciate the circumstances that gave rise to the appointment of, and supports the continuation of, RSM Canada Limited (now TDB Restructuring Limited) as receiver and manager of the Co-op (“TDB” or the “Receiver”) by order of this Honourable Court, dated March 14, 2023 (the “Appointment Order”).

7. The Kerr 2024 Affidavit: (i) refers to the funding that the Co-op receives, generally, under the governing legislation, and the specific funding that it received prior to the appointment of the Receiver, in March 2023; and (ii) attempts to characterize the conduct of the City in its role as Service Manager as conduct that raises “a reasonable apprehension of Bias” or as otherwise improper.

8. These issues were raised by Ms. Kerr in response to the Service Manager’s underlying application to appoint the Receiver in accordance with and pursuant to the provisions of the HSA.¹ The Service Manager responded to these issues in the context of that application. The Service Manager set out: (i) the legislative regime under which housing providers such as Harry Sherman must operate, (ii) how the Service Manager patiently engaged with the Housing Provider in good faith efforts to help it address the operational issues that had been identified and the Co-op’s deteriorating financial position; and (iii) how the appointment of the Receiver was appropriate and warranted under the circumstances. For the benefit of the parties and the Court, and for ease of reference, I have attached copies of the following 3 Affidavits that were before the Court in the application to appoint the Receiver (without Exhibits) as Exhibits “A”, “B”, and “C”, respectively, to my affidavit:

- The Affidavit of Julie Western Set, sworn on November 10, 2022 (the “JWS 2022 Affidavit”, attached as Exhibit “A”)

- The Affidavit of Rosell Kerr, sworn on December 21, 2022 (the “Kerr 2022 Affidavit”, attached as Exhibit “B”)
- The Affidavit of Julie Western Set, sworn on January 16, 2023 (the “JWS 2023 Affidavit”, attached as Exhibit “C”)

9. The relevant legislative framework, including the funding framework under which housing providers must manage their operations in Ontario, is set out in paragraphs 8 through 23 of the JWS 2022 Affidavit, and paragraphs 5 through 13 of the JWS 2023 Affidavit.

10. The chronology of events and the interactions between the Service Manager and the Housing Provider culminating in the issuance of a Notice of Triggering Events, dated March 29, 2021 (the “NTE”), are set out at paragraphs 32 through 69 of the JWS 2022 Affidavit, and at paragraphs 14 through 17 of the JWS 2023 Affidavit.


11. The chronology of events and the interactions between the Service Manager and the Housing Provider subsequent to the issuance of the NTE and leading up to the Service Manager’s decision to apply to this Honourable Court to seek the appointment of the Receiver, are set out at paragraphs 70 through 99 of the JWS 2022 Affidavit and at paragraphs 19 through 28 of the JWS 2023 Affidavit.


12. The steps taken by the Receiver since its appointment are set out in the First Report to the Court of the Receiver, dated March 19, 2024, and the quarterly reports appended thereto. The Supplement to the First Report of the Receiver responds to those issues raised in the Kerr 2024 Affidavit that relate to the Receiver’s operations. Based on its review of the Receiver’s work, it is my belief that active and positive steps are being taken to address the operational and

¹ The Kerr 2024 Affidavit, footnotes 1 through 6.

financial issues at the Co-op. Those efforts - to ensure that the Co-op is being operated in full compliance with the HSA and to complete various capital projects being undertaken to rehabilitate the Housing Project - are ongoing.

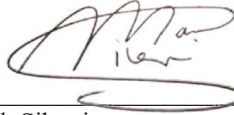
13. On the basis of the above, the City of Toronto, in its role as Service Manager under the HSA, supports the relief being sought by the Receiver as presented in its First Court Report.

SWORN before me)
at the City of Toronto,)
in the Province of Ontario, on)
this 22nd day of April, 2024.)
)
)
)
)
)
_____)
Mark Siboni)
A Commissioner for taking Affidavits)



Paul Fischer

This is Exhibit "A" referred to
in the Affidavit of Paul
Fischer, sworn on the 22nd
day of April, 2024.



Mark Siboni
A Commissioner for taking Affidavits

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

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

BETWEEN:

CITY OF TORONTO

Applicant

and

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC

Respondent

**AFFIDAVIT of Julie Western Set
(Sworn November 10, 2022)**

I, Julie Western Set, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Manager of Housing & Tenant Supports of the City of Toronto's Housing Stability Services Unit (the "HSS"). In this role, I manage a team comprised of 6 Housing Consultants, 3 Agency Review Officers, and two 2 Support Assistants.
2. The City of Toronto's HSS is part of Housing Secretariat. The HSS was previously part of the City's Shelter, Support and Housing Administration Division (the "SSHA").
3. Housing providers are persons who operate housing projects. Under the *Housing Services Act, 2011*, municipalities such as the City of Toronto are designated as service managers responsible for administering and funding housing provider organizations and their designated

housing projects. The City of Toronto, in its capacity as service manager (the "City" or the "Service Manager"), acts through the HSS and its staff.

4. The HSS's primary obligation is to monitor housing provider operations to ensure that they meet their obligations under the governing legislation. The social housing projects that the City is responsible for are monitored by HSS Housing Consultants. These housing provider obligations include, but are not limited to, the establishment of (and adherence to) prescribed Rent-Geared-to-Income ("RGI") practices and protocols, submitting reports regarding key aspects of the housing provider's operations to the service manager, and using the government funding it receives appropriately. If issues with respect to the management of a given social housing project arise, the HSS works to ensure that these issues are identified and resolved.

5. The City – through the HSS – can also provide housing providers with advice and support with an eye to helping them operate independently as viable going concerns, through their Boards of Directors and their staff.

6. I have worked for Housing Secretariat, and before that, the SSHA since 2001. During that time I have been actively involved in the administration of the transferred social housing programs within the City's boundaries. Since 2017, I have been employed as a Manager in the HSS. Prior to that, I worked primarily on the homelessness prevention. As a Manager overseeing social housing programs within the City of Toronto, I am responsible for carrying out the City's legislative duties to administer and fund social housing programs, including the one at 51 The Chimneystack Road (the "Housing Project"), which is operated by the Respondent, Harry Sherman Crowe Housing Co-operative ("Harry Sherman", the "Housing Provider", or the "Co-op"). As such, I have knowledge of the matters to which I hereinafter depose.

7. This affidavit is sworn in support of the City of Toronto's Application to appoint a receiver and manager, pursuant to subsection 85(7) of the *Housing Services Act*, 2011, SO 2011, c.6, Sch1, as amended (the "HSA").

(A) - THE RELEVANT LEGISLATIVE FRAMEWORK

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

(i) – Social Housing in Ontario

8. Social housing programs are government-funded initiatives designed to provide affordable rental accommodation to low income households.

9. Municipal non-profit corporations, private non-profit corporations, and co-operative non-profit corporations that own residential properties (or that manage residential buildings on lands that they lease from third parties) throughout the province act as “housing providers”. These housing providers make rental units available to eligible individuals and families who are part of low-income households. They are responsible for managing these housing projects.

10. Social housing in the City of Toronto was initially developed and administered by the federal and provincial governments. The Housing Project operated by Harry Sherman was developed under a provincial government program and was originally funded and administered by the Province of Ontario ("Ontario").

(ii) – The *Social Housing Reform Act*, 2000, and the *Housing Services Act*, 2011

11. In the late 1990s, as part of Ontario's initiative to realign local services, the province began to download its social housing responsibilities, both administrative and financial, to the

local municipalities. This process culminated with the passage of the *Social Housing Reform Act, 2000*, S.O. 2000, c. 43 (the “SHRA”), which received royal assent on December 12, 2000. The responsibility to fund and administer the Housing Project was transferred to the City in 2002.

12. The SHRA created a framework for the administration and funding of social housing projects, and created a comprehensive mechanism to help municipalities manage their new social housing responsibilities. The SHRA was repealed by the *Strong Communities through Affordable Housing Act, 2011*, S.O. 2011, c. 6 and was replaced within the same act by the *Housing Services Act, 2011*, S.O. 2011, c. 6, Schedule 1 (the "HSA" or the "Act"), which came in to force on January 1, 2012. The purpose of the HSA is to:

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

(ii) provide flexibility for service managers and housing providers while retaining requirements with respect to housing programs that predate the HSA (i.e. the SHRA and the Provincial and Federal Programs referenced above) and housing projects that are subject to those programs.

13. The framework created by the SHRA was carried through in the HSA, which is the operative legislation currently in effect.

(iii) – The Housing Services Act, 2011's Funding Framework

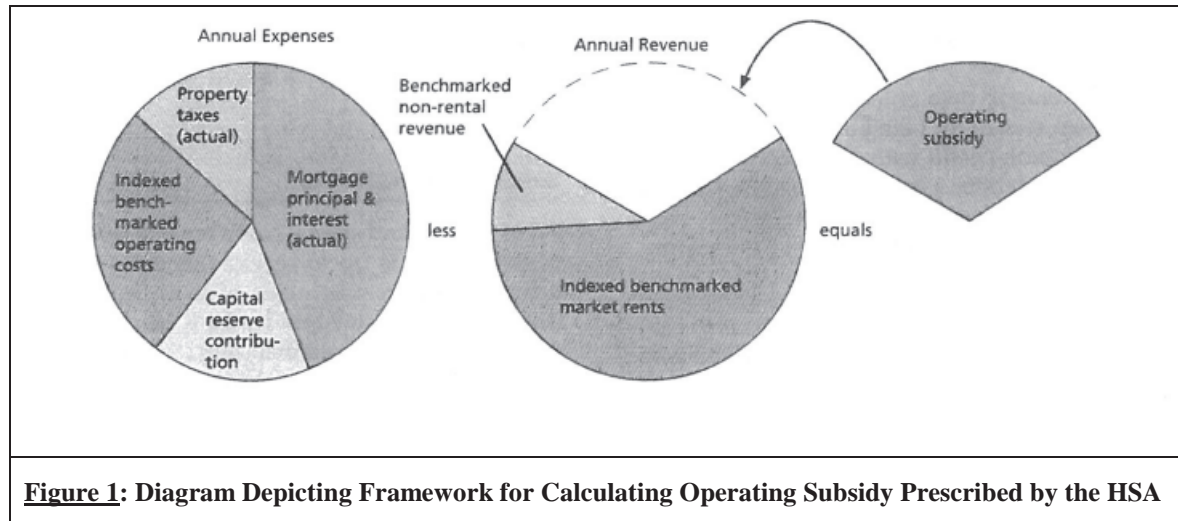
14. Housing providers that were originally developed, administered and funded by the provincial government received two forms of subsidy - an operating subsidy and a rent subsidy. They continue to receive these subsidies under the HSA regime. These subsidies are provided pursuant to, and in accordance with, formulae set out in regulations promulgated under the HSA, including *Ontario Regulation 369/11*.

15. The operating subsidy is paid to subsidize building operating costs in excess of the building market rent potential. The operating subsidy covers any number of operating costs, including, but not limited to: (i) administration and maintenance expenses; (ii) insurance premiums; (iii) bad debt expenses; (iv) utility costs (such as electricity, fuel, water, and sewer charges); and (v) contributions to the housing provider's capital reserve fund.

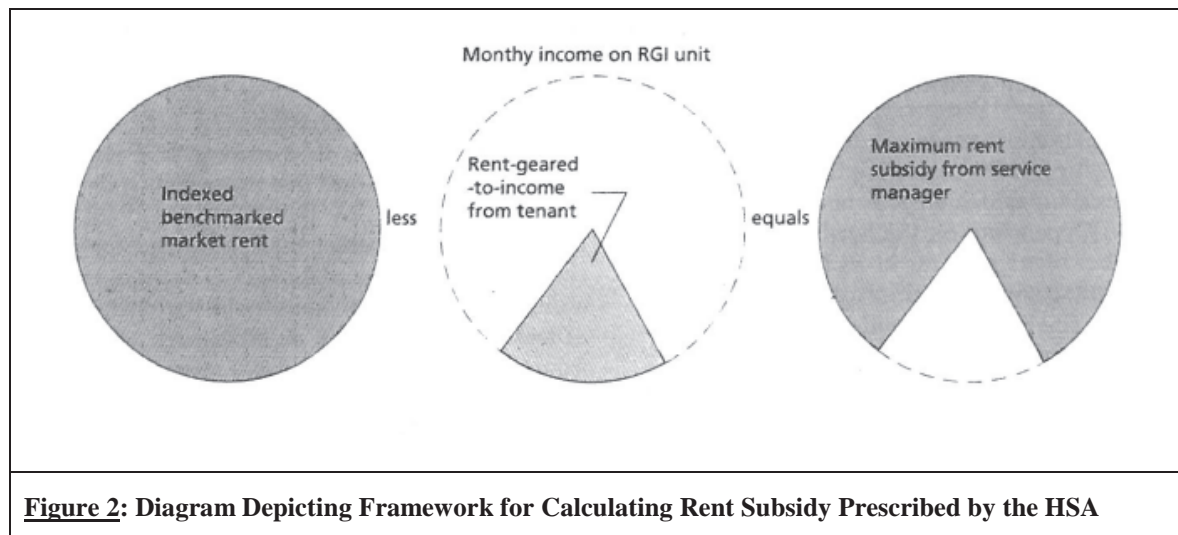
16. The operating subsidy is calculated by subtracting the total of the annualized indexed benchmarked rental and non-rental revenue (such as laundry and parking revenue) from the combined total of indexed benchmarked operating costs, estimated property taxes, and actual mortgage principal and interest payments. The indices and benchmarks used to calculate the subsidies are established by the Ministry of Municipal Affairs and Housing (the "MMAH"). Each year, the operating subsidy is adjusted by applying provincially set indices (that are based on Consumer Price Indices for various expense items) to either increase or decrease the operating subsidy.

17. In circumstances where a housing provider achieves a year end surplus in respect of its housing provider shelter operations, by either controlling expenses, or setting rents higher than the benchmarked market rents, the housing provider is required to pay 50% of any surplus amounts back to the service manager.

18. This operating subsidy would cover any shortfall that the housing provider would have to negotiate between the above described benchmarked annual expenses and housing provider's benchmarked annual revenues. The manner in which the operating subsidy is calculated is depicted visually in Figure 1, below:



19. The rent subsidy is paid to cover the difference between the amount that qualified tenants can pay, based upon their income, and the lesser of the benchmarked or actual market rent for the units they live in. This is depicted visually in Figure 2, below:



20. The rent subsidy is given to housing providers so that they can make units available to families that would not otherwise be able to afford to pay market rents. Housing providers are required to set aside a prescribed number of subsidized units in their buildings. They are expected to meet these targets as failing to do so will reduce access to affordable housing in the

City. The governing legislation also prescribes how these units are to be filled. In the City of Toronto, Access to Housing manages a centralized waiting list of households who are in need of housing. Housing providers like Harry Sherman are obligated to fill any vacancies from this centralized waiting list. There are 14,494 households on the waiting list who have indicated that they would like to be housed at Harry Sherman. Of these more than 14,000 households, 2,051 have been on the waiting list for more than 10 years, 8,226 have been on the waiting list for between 5-10 years, and 4,267 have been on the waiting list for less than 5 years.

21. Housing providers are responsible for maintaining a capital reserve under the framework established by the HSA. *Ontario Regulation 367/11* requires housing providers to make an annual contribution to the social housing project's reserve fund out of its revenues. These funds must be set aside so that the housing project can undertake large scale capital projects that it must anticipate having to take on in any given year. Housing providers are expected to establish capital plans to ensure that they are able to manage their budgets so that enough funds are available to cover the costs associated with keeping their buildings in a good state of repair.

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

information to the Ontario. They require this information, as reported in these financial documents, to meet these reporting obligations.

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

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

24. The HSA provides comprehensive administrative mechanisms to help municipalities manage their social housing responsibilities. It includes specific enforcement provisions that grant municipal service managers powers that they can exercise to ensure that these housing projects are properly managed and that the tenants and members in these housing projects have access to the protections and services that they may need.

25. In the event that a social housing provider fails to operate a housing project properly, having regard to the normal practices of similar housing providers, a service manager can take certain steps under the HSA to remedy the situation.

26. The powers that the HSA grants municipal service managers include the power to, in appropriate circumstances, appoint a receiver or receiver and manager to step in to act as a surrogate for the housing provider and as a steward for the housing project where the assistance

of a third party is deemed necessary to ensure that the housing project is operated and managed properly, and to protect the health of the enterprise as an ongoing concern.

27. Subsection 85(6) of the HSA provides that the service manager may appoint an interim receiver or receiver and manager for the housing project. The receiver or receiver and manager has the power to act as the housing provider with respect to its assets, liability, and undertakings, including its housing projects, in keeping with the powers set out in subsection 104(2) of the *Ontario Regulation 367/11*. Subsection 85(7) of the HSA provides that the service manager may seek the appointment of a receiver or receiver and manager for the housing project by the Superior Court of Justice.

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

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

29. The housing provided by the Co-op is located within a campus comprised of a series of townhome blocks and a residential apartment building on the property known municipally as 51 The Chimneystack Road at York University. The campus is located just south of Steeles Avenue West and west of Keele Street in the former municipality of North York, in the City of Toronto. These buildings were built in 1993 and rest on land that is owned by, and leased from, York University.

30. The Co-op's housing complex is comprised of a number of buildings that contain 164 units. Townhome blocks within the housing project's complex contain 29 townhome units, while the remaining 135 units are contained within a high rise apartment building. Through and until October 2019, the Co-op's targeting plan required that it maintain a minimum of 82 RGI units. In October 2019, the Co-op's targeting plan was changed. It is now required to maintain a minimum of 90 RGI units.

31. As outlined above, the properties are provincially reformed housing projects that are funded and administered in accordance with the HSA, as outlined above.

(C) – INITIAL INDICATIONS THAT THE CO-OP WAS STRUGGLING WITH SEVERAL ISSUES

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

The 2019 Operational and RGI Review

33. In the fall of 2019, the Service Manager conducted a routine review of the Housing Provider's operations and its RGI processes and portfolio. These reviews are conducted every 3 to 4 years. The operational review aimed at ensuring that Harry Sherman had the proper policies and procedures in place to enable it to govern and manage the housing project in keeping with the provisions of the HSA and the applicable local rules. The review of the Housing Provider's RGI processes and portfolio involved a spot inspection of randomly selected RGI files. This

would allow the service manager to verify the social housing rules were being followed and that households living in units being let at below market rent meet the requisite criteria for accessing these housing supports.

34. The operational review of the housing provider's operations was carried out in November 2019. The service manager's findings are set out in an Operational Review Report, dated November 18, 2019 (the "OR Report"), which was delivered to the housing provider. A copy of the OR Report is attached as Exhibit "A" to my affidavit.

35. As set out in the OR Report, the review undertaken by the Service Manager revealed that the housing provider had failed to meet 12 out of the 16 identified HSA and local rule requirements. The requirements that the Co-op had failed to meet were characterized as governance related requirements. The housing provider did not:

- Have a process for the management of policy and procedure documentation.
- Ensure that a Minute Book is properly maintained in keeping with the standards set out in the *Co-operative Corporations Act*. In addition, the Service Manager identified how the Minutes that the Board did keep showed that the Board was presented with correspondence from the Service Manager and variance reports in respect of the corporation's annual budget and actual costs/expenses, and that the Board failed to document how any action was taken in response to them.
- Have in place the required policies related to internal transfers, RGI reviews, guests, the collection, use and disclosure of personal information, records management, occupancy agreements, RGI administration, and filling RGI units.

36. In addition to identifying these failures to comply with the governing legislation and the applicable local rules, the OR Report that was prepared and delivered to the housing provider set out in detail what steps the Co-op could take to cure these deficiencies. In order to urge the

housing provider to voluntarily bring itself into compliance, the City directed that the specified curative actions be taken by February 6, 2020.

37. The review of the Housing Provider's RGI processes and portfolio were undertaken in November as well. The results of this spot inspection were shared with Harry Sherman by letter dated November 18, 2019 (the "2019 RGI Review"), a copy of which is attached as Exhibit "B" to my affidavit. The 2019 RGI Review identified deficiencies in the administration of the RGI portfolio as evidenced in those records that the City had the opportunity to review that needed to be addressed, including issues related to possible overhousing, appropriate documentation evidencing eligibility, and the need to ensure the appropriate leases and consents were executed and in place.

38. As with the OR Report, the November 18th correspondence sent to the Housing Provider not only identified these issues, but provided the housing provider with direction as to what specific steps needed to be taken to address them and requested that the requisite curative action be taken by February 6, 2020.

39. On February 6, 2020, the Housing Provider provided documentation that purported to respond to both the OR Report and the 2019 RGI Review. A copy of the documentation that the Co-op submitted is attached as Exhibit "C" to my affidavit.

40. The City reviewed the housing provision's submission and commended it for taking steps to deal with a number of the items that were identified in the OR Report. However, there remained 7 items that Co-op had yet to address fully, or at all. In order to continue working with Harry Sherman to resolve these remaining outstanding issues, the City updated the OR Report to

identify the actions that the housing provider had taken, the matters that remained outstanding, and the remedial action that still needed to be taken. The updated OR Report was issued on February 10, 2020, and delivered to Harry Sherman along with a request that the outstanding issues be addressed by March 26, 2020. Harry Sherman was invited the housing provider to reach out if they required any assistance. The City received no response by March 26, 2020, and so it sent follow-up correspondence to Harry Sherman on July 7, 2020, asking that Harry Sherman respond by August 10, 2020. In this follow-up correspondence the City made clear that a more detailed and specific response was required in respect of the 2019 RGI Report. The responses received to date were not submitted as requested. A copy of the updated OR Report is attached as Exhibit "D" to my affidavit. A copy of the follow-up correspondence is attached as Exhibit "E" to my affidavit.

41. The Housing Provider submitted its response to the update OR Report on August 31, 2020. The City thanked the Co-op for this response and reviewed it in detail. Unfortunately, only one of the 7 outstanding issues was addressed. The City revised the OR Report a second time to reflect that there remained 6 matters that still needed to be addressed.

42. The second updated OR Report, dated August 31, 2020, was delivered to housing provider, along with correspondence that itself provided additional clarity and direction as to the remaining outstanding issues and what steps needed to be taken to address them. The City requested that these issues be addressed by November 5, 2020. A copy of the second updated OR Report is attached as Exhibit "F" to my affidavit. A copy of the correspondence delivering the updated OR Report is attached as Exhibit "G" to my affidavit.

43. The correspondence delivering the updated OR Report also flagged for the Housing Provider that the Service Manager still had not received a response to the issues identified in the 2019 RGI Review letter, which was first delivered on November 18, 2019.

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

44. Prior to the November 5, 2020, target date, the Service Manager asked if it could meet with members of the Co-op's Board. It asked that this meeting be convened because a number of the Co-op's members had raised concerns for the Service Manager regarding the processes at the housing project for responding to maintenance request and work orders. This meeting would also provide the Service Manager and the Board of the Housing Provider to discuss the housing provider's approach to dealing with larger scale capital repairs, while maintaining the short and long term financial viability of the Co-op. The City's concerns about Harry Sherman's cash flow and financial position stemmed, in part, from a request HSS staff had received to provide Harry Sherman with a \$120,000 advance in order to cover certain immediate costs that it had, and could not cover.

45. The Board was kind enough to accommodate the City's request, and a meeting was held on September 18, 2020, where the above described issues were discussed. During that meeting, in order to assist the Housing Provider negotiate these issues, City staff suggested that, among other things, Harry Sherman could reach out to sector organizations who specialize in providing advice and support to non-profit housing co-operative corporations. One such organization was the Co-operative Housing Federation of Toronto ("CHFT").

46. The discussion that took place, with the Board's president and certain other Board members in attendance, raised concerns on the part of the City that the Board was unable to

demonstrate how it had a financial plan in place to deal with day-to-day maintenance issues that might arise, or with larger scale capital works that the housing provider might have to undertake in the future. The Service Manager formulated the view that its concerns about the housing provider's cash flows were warranted. The Service Manager was also concerned about its understanding that the Housing Provider was not willing to work with or co-operate with sector organizations that operate with the social housing space to work through the issues that the housing project was facing.

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

47. As set out above, the Housing Provider was required by the HSA to submit audited financial statements, along with a report at the end of every fiscal year. This report must be prepared by an independent auditor, approved by the Co-op's Board, and it must examine and report on the housing provider's accounts.

48. In the fall of 2019, Harry Sherman delivered an independent Auditor's Report, prepared by Mr. Ed M. Roscetti – a CPA and a CA - for the fiscal year ending June 30, 2019. A copy of the 2019 Auditor's Report is attached as Exhibit "H" to my affidavit. This report was to be considered in conjunction with a letter that Mr. Roscetti prepared, dated September 24, 2019, to the Co-op. A copy of this letter is attached as Exhibit "I" to my affidavit. The Housing Provider's Annual Information Return for the 2019 fiscal year was also submitted to the Service Manager.¹ A copy of the 2019 AIR is attached as Exhibit "J" to my affidavit.

¹ The AIR is a financial document that is prepared separate and apart from the audited financial statements and the Auditor's report referenced in paragraph 20, above.

49. The Service Manager reviewed the submissions that Harry Sherman made in respect of the fiscal year ending on June 30, 2019. Its review of these submissions revealed the following:

- **There Was Evidence of a Lack of Internal Controls at the Housing Provider** - The Housing Provider's independent auditor identified significant deficiencies in respect of internal controls over several aspects of the housing project's finances. These deficiencies included:
 - ***A High Rate of Management Turnover*** - This lack of stability and continuity in respect of the management of the housing project was identified as contributing to the other issues that the auditor listed.
 - ***Inaccurate Commercial Parking Accounts*** – The list of parking accounts was not accurate or complete. This resulted in errors that found their way into the Housing Provider's financial records. This deficiency is one that the Housing Provider's accountant had identified in 2018, and remained unresolved. A copy of the 2018 letter from the Housing Provider's accountant identifying this issue is attached as Exhibit "K" to my affidavit.
 - ***Inaccurate Toronto Hydro Accounts*** – The Housing Provider was charging flat rates to unit holders living in the housing project's townhomes. This is improper. Each townhome unit holder's hydro account must be reconciled with the actual amount of hydro used and this exercise was not being performed. Failure to take this step results in certain unit holder being charged unfairly high or low amounts. This deficiency is one that the Housing Provider's accountant had identified in 2018, as well, and remained unresolved.
 - ***Petty Cash Controls*** – The petty cash fund had not been reconciled.
 - ***Unapproved Board Minutes*** – Minutes of the Board of Directors meetings were reviewed and it was revealed that they were not signed. Approved and signed Minutes of Board of Directors meetings are essential in order to ensure that key financial decisions made by the Board on how to use the housing project's resources are properly authorized.
 - ***Unsupported Co-op Expenditures*** – All the Co-op's expenditures must have support in the form of an invoice/bill attached to a cheque requisition which is to be signed/initialed by a Board member with authority to do so. Not all of the Co-op's expenditures had the appropriate and expected support and authorization.
- **The Co-op Incurred a Significant In-Year Deficit** - The Co-op incurred an in-year deficit of \$83,753. This in-year deficit is the result of an increase across 4

expense categories of costs that the Housing Provider is responsible for managing:

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

50. A close review of the 2019 AIR also reveals how there were fluctuations in the total number of occupied RGI units (from 84 to 87), but that there was no record of households from the centralized waiting list gaining access to any vacant unit at the housing project. The increases in occupancy reported in the AIR should have been the result of households on the waiting list getting housed at Harry Sherman. There is no evidence that this happened.

51. In an effort to ensure that the Service Manager's real concerns about the financial issues the Co-op needed to address were clearly articulated, and with an eye to encouraging the Co-op to address these issues in conjunction with the outstanding governance and RGI administration issues that the City's operational and RGI reviews, referenced above, revealed, HSS staff wrote to Harry Sherman on October 6th and 9th, 2020.

52. The October 6, 2020, correspondence, attached as Exhibit "L" to my affidavit, captured what was discussed in the September 18, 2020, meeting with certain members of the Co-op's Board. It also flags how if the Housing Provider fails to take steps to improve the financial situation of the housing project by instituting spending controls, establishing a plan to address maintenance and capital issues, and reducing vacancy losses and arrears, the Service Manager will take any necessary steps that it can to meet its own statutory responsibilities.

53. The October 9, 2020, correspondence, attached as Exhibit "M" to my affidavit, captures the concerns raised by the financial submittals that the Co-op delivered in respect of the fiscal year ending on June 30, 2019. This October 9th correspondence requested that the Housing Provider respond to the issues it identified by November 25, 2020.

54. The only response that the City received following delivery of these two letters was a response to the Service Manager's letter of October 6, 2020 (which the correspondence incorrectly refers to as a letter from the Service Manager dated September 18, 2020). This response was received on October 26, 2020. A copy of the Co-op's reply is attached as Exhibit "N" to my affidavit.

55. The City's correspondence of October 6, 2020, was prepared in good faith and in keeping with the Service Manager's oversight obligations under the HSA. It provided Harry Sherman with an accurate summary of what was discussed at the September 18, 2020, meeting, an objective accounting of the Co-op's financial position and the related issues it was facing, and direction as to the steps to be taken (and the resources the housing provider could access) to work to resolve these issues. It also flagged legitimate concerns about the failure to have in place a formalized financial plan, a formalized approach to prioritizing both general maintenance

and larger capital repair projects, and an accurate account of the Housing Provider's unwillingness to seek assistance from the relevant sector organization.

56. Unfortunately, the response prepared by the Co-op's Board inaccurately describes the City's efforts to provide advice and direction as "accusatory", "unfair", and "grossly unmerited".

57. Rather than address the issues that had been raised on their merits, this correspondence: (i) levels bald and unfounded allegations of impropriety and bad faith that targeted individual members of the Service Manager's staff who had been working diligently to help support Housing Provider operations; and (ii) references internal and ongoing tensions and disputes between current and former members of the Co-op's Board that appear to be affecting the operation of the housing project.

58. Setting aside these unfounded attacks on the conduct of City staff and tensions among certain of the Co-op's members, the Service Manager notes that, among other things, the October 26th response:

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

59. The October 26, 2020, Housing Provider correspondence does not respond in any substantial or meaningful way to the City's letters of October 6th and 9th. The unfounded allegations of impropriety on the part individual members of HSS staff and the levelling of

allegations of impropriety on the part of unidentified members of the Co-op did not warrant a response. The Service Manager thus waited to receive a further, more substantive response from the housing provider, and continued to monitor the Co-op's operations.

(D) – THE DETERIORATING HEALTH OF THE HOUSING PROJECT

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

60. In the fall of 2020, Harry Sherman delivered an independent Auditor's Report, prepared by Mr. Roscetti for the fiscal year ending June 30, 2020. A copy of the 2020 Auditor's Report is attached as Exhibit "O" to my affidavit. This report was to be considered in conjunction with a letter that Mr. Roscetti prepared, dated September 10, 2020, to the Housing Provider. A copy of this letter is attached as Exhibit "P" to my affidavit. The Housing Provider's Annual Information Return for the 2020 fiscal year was also submitted to the Service Manager. A copy of the 2019 AIR is attached as Exhibit "Q" to my affidavit.

61. The Service Manager reviewed the submissions that Harry Sherman made in respect of the fiscal year ending on June 30, 2020. Its review of these submissions revealed the following:

- **There Remained Evidence of a Lack of Internal Controls at the Housing Provider** - The Housing Provider's independent auditor identified significant deficiencies in respect of internal controls over several aspects of the housing project's finances. These deficiencies included:
 - ***The Housing Provider's Financial Position Continued to Deteriorate*** – The capital reserve fund, as reported in the audited financial statements, only had a balance of approximately \$50,000 – a decrease of \$166,851 from the amount reported in the audited financial statements for the 2019 fiscal year. The Co-op was carrying a deficit of \$129,087 based on the audited financial statements that were submitted, as compared to 2019, where it reported a surplus of \$63,244 – a change in its financial position of \$192,331. Having identified these issues, Mr. Roscetti implored the Housing Provider to assess how it planned to reverse this downward trend

in its finances, and stated expressly that it "...simply cannot afford to maintain expenditures at this level, it will run out of cash."

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

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

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

- ***Inaccurate Commercial Parking Accounts*** – The list of parking accounts was not accurate or complete. This impacted in errors that found their way into the housing provider's financial records. This deficiency is one that the housing provider's accountant had identified in 2018 and 2019, and though improvements had been made, the issue remained and remained unresolved.
- ***Inaccurate Toronto Hydro Accounts*** – The Housing Provider was charging flat rates to unit holders living in the Co-op's townhomes. This is improper. Each townhome unit holder's hydro account must be reconciled with the actual amount of hydro used and this exercise was not being performed. This deficiency is one that the Co-op's accountant had identified in 2018 and 2019, and remained unresolved. Failure to reconcile these accounts continues to impact certain unit holders who are being charged unfairly high or low amounts.
- ***Petty Cash Controls*** – The petty cash fund had not been reconciled. This deficiency was identified in 2019, and remains unresolved.
- ***Inadequate Board Records/Packages*** – Mr. Roscetti noted how it is extremely important for the Board to be fully aware at all times of the Co-

op's financial picture. Concerned that the Board may not have all the information that it required to make decisions about the housing project, he listed key records that must be included in packages that the Board had before at its monthly meetings.

- **The Co-op Incurred a Significant In-Year Deficit** - The Co-op incurred an in year deficit in the amount of \$202,355. This includes a loss of \$149,144 due to a fraudulent EFT transaction. It was noted that:
 - Administration expenses increased by 30% (an increase of \$61,378);
 - Insurance Costs increased by 30% (an increase of \$15,048);
- **A Large Number of Units Remained Vacant for Significant Periods of Time** - Units within the housing project were vacant for 20 months across the fiscal year. These vacancies were unusual, given the requirement that all Housing Provider must abide by – the requirement to fill any vacant RGI unit with households from Toronto's centralized waiting list for social housing. This centralized waiting list, which is managed by Housing Connections, is so extensive that households wait for years to secure subsidized housing. The specific waiting periods for Harry Sherman are set out in paragraph 20, above. These reported vacancies caused a significant loss of revenue for the Co-op, in the amount of \$5,295.
- **High Rental Arrear Amounts** – The Housing Provider reported arrears in the amount of \$28,212. This amount corresponded to 2.10% of its total revenue. This is a high amount and percentage of arrears for a project of the size of Harry Sherman.

62. Prior to 2019, the Co-op was required to make 82 of its units available as RGI units. That year, the Co-op's targeting plan was changed, setting the number of units that the Co-op was required to make available at below market rent at 90. Effective October 1, 2019, the Co-op was required to fill all vacancies with households eligible for RGI until the new target was reached. A close review of the 2020 AIR reveals how, instead, the number of RGI units dropped from 87, at the beginning of the year, to 81, at the end of the fiscal year. There was no record of households from the centralized waiting list gaining access to any vacant unit at Harry Sherman.

The increases in occupancy reported in the AIR should have been filled by households on the waiting list getting housed at 51 The Chimneystack Road. There is no evidence that this happened.

63. A specific example of how the housing provider was struggling with the administration of the RGI units at Harry Sherman involved the inappropriate allocation of subsidy funding to one of the units, which the Service Manager brought to the attention of the Co-op by letter dated November 18, 2020, a copy of which is attached as Exhibit "R" to my affidavit.

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

64. In the spring of 2021, in keeping with its oversight responsibilities under the governing legislation, the Service Manager examined the information available to it about the health of the Harry Sherman housing project. As the above described chronology sets out, issues regarding the operation of the housing project – including the administration of its RGI portfolio – had been identified in the fall of 2019. That same chronology sets out how the Co-op's own independent auditor had reported that its financial position had been deteriorating over the past several years. The City had brought these issues to the attention of the Co-op, along with requests that steps be taken to address them. No substantive actions were taken to address these issues, which had persisted, and in some instances were worsening, since the fall of 2019.

65. These unresolved issues constituted contraventions of the HSA and its regulations, failures to comply with the requirements of the HSA to ensure that the project was well managed, and failures to operate the designated housing project properly. These are all considered "triggering events" under section 83 of the HSA.

66. In circumstances where a triggering event occurs, the enforcement provisions of the HSA are implicated, and Service Managers have the authority to exercise any one of a number of enumerated remedies in an effort to cure them. As outlined above, these remedies include the ability to appoint an interim receiver or interim receiver and manager, and the ability to seek the appointment by the Superior Court of Justice of a receiver or receiver and manager for the housing provider.

67. In keeping with, and pursuant to, paragraph 90(1)(a) of the HSA, the service manager prepared and delivered notice of the above described triggering events to the Co-op on March 29, 2021 (the "NTE"). A copy of the NTE is attached as exhibit "S" to my affidavit.

68. The NTE specified the particulars of the triggering events. It articulated how:

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

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

c) The Co-op had contravened subsection s. 83(11) of the HSA by failing to operate the housing project properly, as evidence by its significant deficit, its poor financial position, and its failure to establish adequate internal financial controls.

69. The March 29, 2021, NTE set out the steps that the Co-op was required to take to address these identified contraventions and expressly stated how failure to address all or any aspect of

the contraventions that had been identified as triggering events may result in the City, as Service Manager, exercising any or all remedies available to it under section 85 of the HSA.

(F) - THE CO-OP'S FAILURE TO ADDRESS THE ISSUES RAISED BY THE NOTICE OF TRIGGERING EVENTS

The Initial Response to the Notice of Triggering Events

70. The Service Manager's principal objective in preparing and serving the NTE was to ensure that the identified issues regarding the operation and deteriorating financial position of housing project remained priorities for the Housing Provider and its Board. By preparing and delivering the formal notice document, the City hoped to provide the Co-op with a road map that, if followed, would result in forward progress and the resolution of identified issues.

71. The Co-op's Board responded to the NTE on May 20, 2021. A copy of this letter is attached as Exhibit "T" to my affidavit.

72. Unfortunately, as was the case with the Board's correspondence to the City of Toronto of October 26, 2020, a review of the Board's May 10th response leaves one with the impression that the NTE was not received in the spirit with which it was given – as a tool or guide that would help the Housing Provider and its members.

73. It was equally unfortunate that the Board's response also included unfounded and unwarranted allegations that called into question the conduct and integrity of individual members of the Service Manager's HSS staff. The City notes how these improper, unhelpful, and hurtful allegations are predicated on the argument that certain identified contraventions of the HSA with respect to the completeness of required practices and policies had already been resolved as a result of communications that were sent to the City on behalf of the Co-op's Board in September

2020, and that the City did not respond to. A review of the chronology and the documentation that I have detailed and referenced above makes it clear that the correspondence to which the Board is referring to was delivered to the Service Manager in August 2020, not September. This correspondence was reviewed and City of Toronto HSS staff did respond to the Board's August 2020 submission in detail, identifying how 6 of the 16 governance related policies and protocols still needed to be addressed.

74. Setting these preliminary but important issues to one side, Co-op's response is predicated on a categorical denial that any violation of the HSA had occurred, stating that all of the triggering events identified by the City's NTE were false.

75. The service manager notes how, despite this categorical denial, the Co-op's May 10, 2021, response:

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

76. In an effort to maintain open channels of communication, the City replied to the Co-op on May 20, 2021. It assured the Co-op that the NTE was issued following due thought and deliberate consideration. It made it clear that the intent of the NTE was to identify areas of significant and ongoing concern for which resolution remained outstanding. The City also took the step of highlighting three specific issues that were of critical concern and proposed next steps

in the hope that doing so would allow for a more fulsome discussion of the issues and concerns facing the housing project.

77. While the Service Manager made it clear how the Housing Provider was to comply with all the directions that were set out in the NTE, the City identified the issues surrounding the selection of RGI households, the establishment of internal financial controls, and the financial position of the Co-op as critical. It also indicated how HSS staff could reach out to the members of the Board to discuss how best to move forward. A copy of the Service Manager's May 20, 2021, correspondence is attached as Exhibit "U" to my affidavit.

78. Throughout June and July 2021, HSS staff tried to reach the Board via phone and email to discuss the issues raised in the NTE multiple times. When those efforts failed, HSS staff wrote to Co-op's Board and requested that they be afforded the opportunity to attend a Board meeting that was scheduled to proceed in September 2021. A copy of the City's August 13, 2021, correspondence is attached as Exhibit "V" to my affidavit.

79. HSS staff were invited to the Board meeting convened on September 22, 2021. A senior official from CHFT was also invited and attended. At that meeting, the Service Manager made an effort to clarify, and respond to any questions that the Housing Provider had about, the NTE, what needed to be done in order to resolve the issues it identified, and any more general questions about the roles of the City as Service Manager and of the sector organization. The member of CHFT in attendance at the September 22nd meeting offered to assist the Board to address the issues requiring the Housing Provider's attention, including preparing a response to the NTE. A follow-up meeting between the parties was convened on January 14, 2022, at which

the Service Manager again made every effort to further clarify the NTE and the curative actions that the housing provider was expected.

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

80. In the fall of 2021, Harry Sherman delivered an independent Auditor's Report, prepared by Mr. Roscetti for the fiscal year ending June 30, 2021. A copy of the 2020 Auditor's Report is attached as Exhibit "W" to my affidavit. This report was to be considered in conjunction with a letter that Mr. Roscetti prepared, dated September 20, 2021, to the Housing Provider. A copy of this letter is attached as Exhibit "X" to my affidavit. The Co-op's Annual Information Return for the 2021 fiscal year was also submitted to the service manager. A copy of the 2021 AIR is attached as Exhibit "Y" to my affidavit.

81. The Service Manager reviewed the submissions that Harry Sherman made in respect of the fiscal year ending on June 30, 2021. Its review of these submissions revealed the following:

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

Having identified these issues, Mr. Roscetti made the following comment to the Co-op's Board: "While I can appreciate the Co-op's desire to renovate and take care of all backlogged projects, it is essential that it keep in mind that there are very limited financial resources at its disposal. As at June 30, 2021, the co-op had about \$190,000 in total cash on hand, yet its accounts payable were over \$450,000. The inability to pay suppliers on time will result in late payment charges, interest expense, a poor credit

rating, possible legal action, and the potential loss of reputable suppliers. **It is essential for the Co-op, at this point, to assess its current financial situation and determine how to strengthen it.**" [emphasis added].

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

- ***Inaccurate Toronto Hydro Accounts*** – The Housing Provider was charging flat rates to unit holders living in the housing project's townhomes. This is improper. Each townhome unit holder's hydro account must be reconciled with the actual amount of hydro used and this exercise was not being performed. This deficiency is one that the Housing Provider's accountant had identified in 2018, 2019, and 2020, and remained unresolved. Failure to reconcile these accounts continues to impact certain unit holders who are being charged unfairly high or low amounts.
- ***Inadequate Board Records/Minutes*** – Mr. Roscetti noted how it is extremely important for the Board to maintain records of its meeting, as they provide a record and overview of key financial decisions made by the Co-op. His review revealed that minutes of all the Board's meetings were not available. The Co-op was advised that it was essential that all minutes be prepared, signed and filed chronologically in the Co-op's office for future review and verification of any proceedings and decisions it made.
- **A Large Number of Units Remained Vacant for Significant Periods of Time** - Units within the housing project were vacant for 12 months across the fiscal year. These vacancies were unusual, given the requirement that all housing provider must abide by – the requirement to fill any vacant RGI units with households from Toronto's centralized waiting list for social housing. This centralized waiting list, which is managed by Housing Connections, is so extensive that households wait for seven years (on average) to be housed. These reported vacancies caused a significant loss of revenue for the Co-op of just over \$12,000.

- **High Rental Arrear Amounts** – The housing provider reported arrears in the amount of \$20,893. This is a high amount and percentage of arrears for a project of the size of Harry Sherman.

82. The City's review of the Housing Provider's 2021 AIR revealed that the same RGI related reporting issues that were encountered in respect of the 2019 and 2020 AIR submissions persisted. Though the Co-op was required to lease 90 of its units at below market rent, it reported renting out between 85 and 86 units at any given point in time during the fiscal year ending on June 30, 2021. Of greater concern to the Service Manager was that the 2021 AIR reported a jump in the number of RGI units that the Co-op was renting out from 81 on June 30, 2020 (as reported in the 2020 AIR) to 86 in July 2020 (as reported in the 2021 AIR). This jump in occupancy was not accompanied by any evidence or indication that the five rental units were made available to households on the City of Toronto's centralized waiting list, as Harry Sherman was required to do. On the basis of its review, the Service Manager's concerns about the Co-op's inability to manage its RGI portfolio continued to grow. It was not prepared to accept the 2021 AIR that was submitted as being accurate. It wrote to the Co-op on April 6, 2022, to advise it of this issue and granting it an opportunity to resubmit the required AIR by May 4, 2022. That same day, the Service Manager also wrote to the Co-op to highlight the issues in respect of its financial position that flowed from the City's review of the financial information for the 2020 fiscal year, which remained unresolved. Copies of the City's April 6th letters are attached as Exhibit "Z" to my affidavit. As of today's date, the City has not yet received an updated and accurate AIR for the 2021 fiscal year or a response to the other issues raised in these letters.

83. By the end of March 2022, over a year had passed since the issuance of the NTE. Despite this passage of time, the housing provider had failed to take the required actions to

resolve the triggering events. As a result, on March 31, 2022, HSS staff sent the Co-op's counsel and its Board of Directors a letter, which noted that it had not received a received a plan from the Co-op that addressed the events noted in the NTE. It requested that the Housing Provider deliver a response to each of the issues listed in the NTE. The City's expectation was that the response would be substantive, and include specific timelines and deliverables. The Service Manager required a response by May 9, 2022. HSS staff also made sure to remind the Co-op that failure to comply with the NTE could result in the exercise of the remedies available to it under section 85 of the HSA. These remedies included, among others, the appointment of an interim receiver or receiver and manager. A copy of the City's March 31, 2022, correspondence is attached as Exhibit "AA" to my affidavit.

84. On May 9, 2022, the Co-op delivered correspondence to the City that it presented as a response to the March 29, 2021, NTE. A copy of this May 9th correspondence is attached as exhibit "BB" to my affidavit.

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

85. The Service Manager carefully considered all of the information provided to it by Harry Sherman following the delivery of the NTE, including the Co-op's May 9th correspondence and the information that accompanied it. It determined that the housing provider failed to comply with all or part of the NTE. These failures included, but were not limited to:

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

- **Balance Sheet** showing cash on hand, investments and monies owed;

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

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

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

86. Though the May 9th correspondence that the Co-op delivered acknowledged the NTE and accepted that the issues it raised were well founded and needed to be addressed, and though it referenced how the Co-op was taking, or was prepared to take, certain preliminary steps to respond to them, its response proposed to deal with these matters – which had first been raised in the fall of 2019 and which had been presented to Harry Sherman in the NTE in March 2021 – in piecemeal fashion and, critically, without the requisite degree of detail and specificity that would demonstrate that the ongoing triggering events had been resolved. This is evidenced, in part, by the list of deficiencies highlighted in paragraph 85, above.

87. In light of these failures, among others, the Service Manager concluded that the triggering events that had been identified remained unresolved and the Housing Provider was not able to pay its debts as they became due. It determined that it was appropriate to exercise its authority under the HSA and appoint an interim receiver over the housing project, pursuant to subsection 85(6) of the Act. The steps taken by the City to appoint the interim receiver were taken in order to ensure that the significant issues facing Harry Sherman, financial and otherwise,

were properly diagnosed and to ensure that steps were being taken to normalize the operation of the Housing Provider.

88. RSM Canada Limited ("RSM") was appointed as the interim receiver of the housing project (the "Receiver") pursuant to 85(6) of the HSA on May 27, 2022, and was requested, in that capacity, to take control, direction and possession of the housing project, the revenue and the assets of the housing provider, the operation and books, records and accounts of the housing provider or any part of them, pertaining to the housing project. A copy of the RSM's letter of appointment is attached as Exhibit "CC" to my affidavit.

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

89. The Receiver attended at the housing project at 51 The Chimneystack Road at approximately 9.45 am on May 30, 2022, with its letter of appointment in hand. The Receiver was let into the lobby by the property manager on site. However, despite the efforts it made to secure access to the housing project so it could carry out its mandate, members of housing project, including members of the Co-op's Board, along with the Board's counsel, advised the Receiver that they would not recognize its authority and directed that the Receiver vacate the premises. The Receiver was then escorted out of the building and left the property at 12:45 that afternoon. These events were reported to the Service Manager that afternoon.

90. In light of the interactions referenced above, the Service Manager directed the Receiver to leave the property. The Housing Provider's response to the Receiver's appointment under subsection 85(6) of the HSA suggested to the Service Manager that nothing further could be

accomplished on May 30th, and the City of Toronto wanted to ensure that the matter did not escalate or result in any physical confrontation.

91. Throughout the day on May 30, 2022, counsel for the Co-op corresponded and communicated with the City of Toronto, raising questions about the appropriateness of the Service Manager's decision to appoint the Receiver and indicating that the Housing Provider would not recognize the receiver's authority to act under the HSA unless the Service Manager was able to secure a Court Order confirming same. The City responded by letter dated June 1, 2022, a copy of which is attached as Exhibit "DD" to my affidavit indicating that if Harry Sherman did not confirm that it would grant the Receiver access to the housing project to carry out its mandate, by the end of the day on June 3, 2022. The Housing Provider responded by letter dated June 3, 2022, a copy of which is attached as Exhibit "EE" to my affidavit. The Co-op did not indicate it was prepared to recognize the Receiver's authority, but the City notes that within the body of the June 3, 2022, correspondence it confirmed how a number of the triggering events referenced in the NTE remained unresolved.

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

92. The City of Toronto considered what next steps should be taken given its concerns about the housing project, and given the Housing Provider's indication that it would not recognize the Service Manager's authority to appoint a Receiver under the governing legislation unless it secured a Court Order to that effect. It decided to provide Harry Sherman with notice pursuant to paragraph 90(6(a)) of the HSA that it was considering making an application to seek the appointment of a receiver or receiver and manager pursuant to subsection 85(7) of the Act, as a remedy to address the triggering events which the City identified and which were continuing. A

copy of the notice the Service Manager delivered, dated July 14, 2022, is attached as Exhibit "FF" to my affidavit.

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

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

94. Among other things, the July 14th notice highlighted how, that upon review of documentation that was provided to the Service Manager on June 3, 2022, the City had learned that the Co-op owed over \$300,000 to a single creditor, York University. As a result, it specified how the corrective action that needed to be taken to address the financial position of the Housing Provider include an action plan and that said action plan must include a signed agreement with York University evidencing how the parties planned to settle this outstanding debt.

95. In addition, the July 14th notice set out how the Co-op had the opportunity to make a written submission to the Service Manager concerning its proposed exercise of the subsection 85(7) remedy within 60 days, which submission the Service Manager would consider, and how if

no submission was made within the prescribed time, the Service Manager would make its decision based on the information available to it. The Co-op was given until Wednesday September 14, 2022, to respond to the July 14th notice.

96. The Housing Provider failed to deliver any response to the July 14th notice by September 14, 2022. The only response the City received was correspondence dated September 22, 2022, in which the Housing Provider asked for additional time to make a submission. A copy of the Housing Provider's September 22, 2022, correspondence is attached as Exhibit "GG" to my affidavit.

97. The Service Manager was not prepared to grant the housing provider any further extension of time, on account of the fact that the Co-op had since at least March 29, 2021, to consider and cure the issues raised by the NTE and failed to do so. A further extension would be imprudent, given the Service Manager's concerns.

98. The City provided the Co-op with its Notice of Decision on September 23, 2022, in accordance with, and pursuant to, subsection 90(6) of the HSA. The Notice of Decision specified that the City had made a decision to make an application to seek the appointment of a receiver or receiver and manager under subsection 85(7), for the following reasons:

- The Housing Provider is unable to pay its debts as they become due;
- The policies and procedures that have been submitted to the Service Manager do not fully address the gaps in the governance, financial control and rent-geared-to-income administration processes that the Service Manager has identified;
- The Housing Provider has not demonstrated that it has implemented the policies and procedures that it has submitted;
- The triggering events specified in Appendix "A" attached to the July 14th, 2022 notice have not been addressed in the manner required by the Notice of Triggering Events

delivered to Harry Sherman Crowe Housing Co-operative Inc. on March 29, 2021, all of which are continuing.

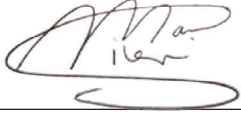
As a result, in the opinion of the Service Manager, the Housing Provider continued to contravene the provisions of the Act and has failed, and is failing, to operate the housing project properly. A copy of the City's September 23, 2022, Notice of Decision is attached as Exhibit "HH" of my affidavit.

The Appointment of the Receiver is Appropriate and Necessary in all the Circumstances

99. For the reasons outlined above, the Service Manager is of the view that a receiver, appointed by the Superior Court of Justice to oversee the affairs and assets of the Housing Provider, will be able to properly diagnose the various issues facing Harry Sherman, and take appropriate action to outline how the housing project can best be rehabilitated so that the longstanding and unresolved issues that have been identified do not persist and do not worsen, and so that it can continue to operate as a viable, going concern. The receiver is also in a position to act as the steward of the housing project while it undertakes any necessary remedial action. Chief among these unresolved issues are:

- Concerns that the information that has been made available to the City of Toronto by the Co-op's own auditor establish how the financial position of the housing provider has been deteriorating since 2018/2019, and no concrete steps have been taken to address these very real concerns.
- Concerns with respect to the housing provider's ability to manage its RGI portfolio which have remained unresolved. Housing providers such as Harry Sherman play a significant role in making affordable housing available to Toronto residents in need of same and it is important that housing provider RGI portfolios are properly managed for that reason.

SWORN before me)
at the City of Toronto,)
in the Province of Ontario, on)
this 10th day of November, 2022.)

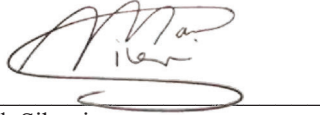


_____)
Mark Siboni)
A Commissioner for taking Affidavits)



_____)
Julie Western Set

This is Exhibit "B" referred to
in the Affidavit of Paul
Fischer, sworn on the 22nd
day of April, 2024.

A handwritten signature in black ink, appearing to read "Mark Siboni", written over a horizontal line.

Mark Siboni
A Commissioner for taking Affidavits

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

ONTARIO

SUPERIOR COURT OF JUSTICE- COMMERCIAL LIST

BETWEEN:

CITY OF TONTONTO

Applicant

And

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC

Respondent

AFFIDAVIT OF ROSELL KERR

(Sworn December 21, 2022)

INTRODUCTION

1. I, Rosell Kerr, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:
2. I have been a member of the Board of Directors at Harry Sherman Corporative Inc. (hereinafter "the Co-op") since 2019. I am the Chair of the Board. This is a voluntary position. I decided to join the Board after watching the community that I lived in for several years begun to deteriorate by violence, homelessness and disunity.
3. I also made the decision to offer my services because no other individual or corporate body stepped up to help my community. This included the City of

Toronto who watched our community become “ghettoized” and did nothing and/or offered little help.

4. I used the word ghettoized as emphasis, since this was the true reality of what the community had become. The dictionary definition is also provided for ease of reference.

Ghetto Definition

noun.

- *a poor urban area occupied primarily by a minority group or groups.*
- **2. HISTORICAL**
- *the Jewish quarter in a city.*
- *"the Warsaw Ghetto"*

adjective

INFORMAL

- *resembling or characteristic of a ghetto or its inhabitants (especially with relation to African American culture).*
- *"verb*
- *put in or restrict to an isolated or segregated area or group.*

5. The definition is important on many levels as our community is one primarily of diverse residents including but not limited to people of the African descent. These individuals came to Harry Sherman with various challenges some battered and bruised both literally and physically. Over 95% of our occupants are single women with children, who sought refuge in their time of greatest needs. The Co-op also serve members of the elderly community and individuals with disability.

6. The Co-op is an independent, self-governing co-operative housing corporation with a Board of Directors (the "Board") elected by its membership **that operates as a housing provider, under the mandates of the *Housing Services Act 2011*.**

The Board is responsible for making decisions related to the governance of the corporation, including giving appropriate direction to building management and staff who are responsible for the day-to-day operation of the Co-op.

7. The housing provided by the Co-op is located within a campus comprised of a series of townhome blocks and a residential apartment building on the property known municipally as 51 The Chimneystack Road at York University. The campus is located just south of Steeles Avenue West and west of Keele Street in the former municipality of North York, in the City of Toronto. These buildings were built in 1993 and rest on land that is owned by, and leased from, York University.
8. The Co-op's housing complex is comprised of several buildings that contain 164 units. Townhome blocks within the housing project's complex contain 38 townhome units, while the remaining 126 units are contained within a high-rise apartment building. Through and until October 2019, the Co-op's targeting plan required that it maintain a minimum of 82 RGI units. In October 2019, the Co-op's targeting plan was changed. It is now required to maintain a minimum of 90 RGI units.
9. The Service Manager (the City) has a legal duty to provide housing providers with advice and support with an eye to helping them operate independently as a viable ongoing concern. In this regard the designated service manager from the city has failed the Co-op miserably. Furthermore, one of the main purposes of the *Housing Services Act, 2011 Section 1* is to provide flexibility for service managers and housing providers. The intent of the framework under the HSA is to create a collaborative mechanism for both parties to work together to achieve maximum success in providing housing to individuals who are facing challenges. Without the collaboration and co-operation of the City of Toronto and an understanding of the Harry Sherman Co-operative, this is an impossibility. The end result is that the

City of Toronto rather than assisting has consistently taken an oppressive and punitive approach in its dealings with Harry Sherman.

10. Rather than cooperating in a harmonious manner with the Co-op, the Service Manager failed to provide the Co-op with adequate advice and support, and in fact the approach of the city has only further pushed Harry Sherman Co-operative towards further "ghettoization". Harry Sherman has exhausted tremendous time and effort to satisfy the demands of the Service Manager and our efforts have been deliberately disregarded. Our present financial situation was completely unavoidable and largely a result of the lack of support provided by the City of Toronto.
11. I have reviewed the Affidavit of Mrs. Western who is not the main person from the city familiar with the Harry Sherman file. It is critical to point out that at no place in the Affidavit provided by the city are there any indications of steps taken by the city to help Harry Sherman. This is even more critical when Harry Sherman Co-op suffered a massive fraud leaving only \$23.00 in the our Operating Account and as well battling the massive challenges in 2020 and 2021. This clearly demonstrates that the city has failed to meet its statutory duty to support the Co-op in their time of need.
12. The fact is that Harry Sherman Co-operative has complied with the main obligations under the Housing Services Act and will continue to comply with its obligations under the HSA. These included **the establishment of (and adherence to) prescribed Rent-Geared-to-Income ("RGI") practices and protocols, submitting reports regarding key aspects of the housing provider's operations to the service manager, and using the government funding it receives appropriately.**

The Co-op was struggling with several issues prior to 2019

13. At the time when I became Chair of the Board in June 2019, the community I lived in was struggling with several social problems such as homelessness, drugs, lack of repairs most importantly we had serious concerns with the safety of the community and shootings which had taken place. This “ghettoization” of the Harry Sherman community was a result of the cumulative decisions by the City of Toronto which at the end of the day destroyed the community we so loved.

14. As Chair of the Board, we have built a community based on human beings and humanity and restoring values and self-worth. These are not principles on which the liaison of the City of Toronto, Suzana Lama governed the relationship with the Co-op. In reviewing the Affidavit of Julie Western, none of these critical points are raised, addressed or even thought about. Our Board has been working hard to create a safe community for the residents. None of this is mentioned or recognized by Suzana Lama or Julie Western. This is corroborated by the fact that members of our community are now able to rest and sleep in their units without the fear of a shooting. For example, there were shootings in the years 2018, 2019 and 2021. However, there has been no shootings in the community for the entire period of 2022.

15. The Board has taken control and implemented systems in respect to who is getting in and out the units. Now, only members of the community can enter their respective units. The Board has achieved tremendous advances in safety issues that were a common problem before 2019.

16. The Board has also implemented safety measures with respect to control crime and drugs around the units. The Board hired a company to install and maintain over 45 cameras by the end of May 2020. Presently we have installed more than

65 new cameras. Each floor and staircases now have cameras. Every area of the underground parking lot is now covered by a camera, including all entrances, and all exist. This was necessary, especially with the newly built subway at the university. We were already facing issues with a selective few that resides in our community; however, with the new subway strangers were wondering onto the property and into our building. A police officer, for example, was stabbed after being called for several 'break-ins'. These expenditures and changes carried out by this Board is not recognized or mentioned in the Affidavit of Julie Western. This is an indication of the City's lack of understanding of the Harry Sherman Co-operative and the work carried out by the Co-op to facilitate a safe and prosperous environment for its residents. The way the City's liaison acted suggested that the Co-op should not have expended expenses such as safety, security and overall positive environment for our residents. At the same time several police officers have congratulated the Board on these improvements and as well how close the Board is prepared to work with the police to achieve crime prevention. Copies of the installed camera systems are hereto attached as **"Exhibit A"**.

17. The lack of concern by the City's liaison of the tremendous improvements by our community is one example as to how the City has taken a punitive approach to the Harry Sherman Co-operative rather than recognizing the success of the Board in working to reduce crime and creating a safe environment.
18. When this board took over in mid-June 2019, we came in with a vision to create positive changes. Our community was literally falling apart. The Units and townhomes were eroded and infested with roaches and rats. Common areas such as our laundry-room were rotting and infested with cockroaches and rats. Most of this decay caused from water leaks and years of neglect. Strangers were literally living in our staircases. This condition had been going on for many years, and at no time has the service manager stepped in to provide the critical assistance and guidance mandated under the Housing Services Act.

19. The repairs to the structure of the units carried out by the Board was a remarkable success for the Co-op. It should be pointed out that the structure of the residence is 35 years old. Before the board took over in June 2019, all units were understandable in a disastrous condition. Photos of the units before renovation are hereto attached as **“Exhibit B”**.

20. The Board faced continuous challenges in terms of the units. Our solution was to hire a new maintenance and cleaning team which reduced maintenance cost by more than half. We also fired the previous landscaping company and for the first time in the history of this Co-op our grounds were something to envied. Photos of the maintained grounds are hereto attached as **“Exhibit C”**.

21. Most importantly we hired a renovation company that comes with a certified plumber for a five-year period. One of the biggest issues in the Co-op was water damage and electrical. Almost the entire building had eroded pipes, some were rotten and were literally dust when touched. Most of the units and townhomes needed more than just a new toilet or a new bathtub, but complete overall.

22. The bathrooms were rotten, kitchen countertops were also rotten, cupboard door either missing or rotten inside. Floors were eroded and damaged. Doors rotten and most with holes. To date the Board has miraculously been able to renovate more than seventy units and townhouses, without much needed support from the city. The preference of the city would have been that the Board continue to have our residents live in a dehumanizing environment. Quality of live and a safe environment is not part of the city of Toronto matrix. Most of this renovation involved gutting of bathrooms and kitchen and replacement of floors. Photos of the renovated units are hereto attached a **“Exhibit D”**.

23. The HSC residence also had electrical issues throughout the entire buildings and in the townhouses. Most of the underground was in darkness, including our grounds, which makes it unsafe for people coming home late from work and school. In fact, we had two fires that was caused from electrical issues. The Board hired a certified electrician to examine each unit. We gave the order to check all electrical plugs and installed new outlets. Our electrician also, rewired most of the underground electrical wires. Some were found to be intentionally cut by criminals for the sake of keeping the area dark to maintain criminal activities. Presently, the exterior of our property is fully lit, and some areas are covered with motion lights. Copies of invoices outlining the statement of work done by the electrician is hereto attached as “**Exhibit E**”.
24. The Board also recognized that many of the residents were food insecure. This included many young children who were forced to go to school without proper meals. The Board recognized this challenge and initiated a partnership with Second Harvest. This created a program that basically allowed us to bring a grocery store into the community which helped residents to get their meals free of charge.
25. Despite the financial challenges and problems that this board inherited, we have been able to create a strong community where single mothers, senior citizens and individuals suffering with disabilities were now able to have a dignified living environment.
26. The picture painted by Julie Western and the actions of the city to date presents the Harry Sherman Board as deceptive, uncooperative, and in some ways dishonest. This is completely insulting given that the city is aware that when the Board took over in 2019, we were faced with a massive fraud in the sum of \$230,000.00. This left us with only \$23.00 to carry out the financial obligations of the Co-op including the capital expenses listed above. It should also be noted that the

full investigation by the police shows that the management company played a role with the fraud committed. This investigation further demonstrated that the Board had no role or any awareness whatsoever about the fraud that was committed prior to it being committed. In fact, it was the quick action of the Board to work with our financial institutions to recall some of the funds which was stolen, thus preventing an even greater fraud. It should also be noted that this happened just before our second Board meeting. Further, at no time has the City of Toronto liaison person stepped in to provide any assistance at this critical moment.

27. The Board has taken further steps to resolve the fraud by issuing a Statement of Claim which is still on-going before the Court. Statement of Claim dated August 18, 2021, is hereto attached as “**Exhibit F**”.

28. Six months later the Board was faced with yet another incredible challenge as the COVID-19 pandemic impacted on everyone across the world. This not only shutdown our community and our operations, but it also impacted our financial situation and our tenants as well. In 2020 and 2021, around 70% of the members of the Co-op were not able to pay their rent. Further, we were forbidden to evict these individuals who were unable to pay their rent or to increase rent for 2 years. The pandemic created further financial problems which were beyond the control of the Board, no different from any other organization across the world who faced similar challenges.

29. The above circumstances including the fraud and Covid-19 regulations created a very challenging atmosphere for the Co-op and for the community. Again, it should be pointed out that at no place in the Affidavit of Julie Western has it been demonstrated as to how the City of Toronto fulfilled its statutory duty to help us through these challenges.

30. On February 6, 2020, the Board instructed Maple Property Management to provide the City with all required documents and set a suitable date that was convenient for management. On November 8, 2019, Suzana Lama and a group of city staff came to the Co-op and completed the Operational and RGI Review. The Board responded to all the concerns of the Service Manager. It is important to clarify that since 2019, The Board has been submitting all the documents and policies that the City has requested.
31. With respect to written processes and procedures for internal transfers the Board responded that the RGI internal transfers were in accordance with the City guideline and was reflected in the Co-op By-Law book. **The Board also took further steps and created a “RGI Internal Transfer Policies and Procedures Manual” which included a waiting list that is influenced by special circumstances.** The policies also provided priority to households with medical conditions, over-households, and under housed households. A copy of the section of the By-law Book relating to Internal Transfer Policies is hereto attached as **“Exhibit G”**.
32. With regards to written processes and procedures in place for the collection, use, disclosure and safeguarding of personal information received, the Board revised By-law no 6 which was passed by the members on February 10, 2015. The Board created a binder within the By-Law under “Confidentiality Policy” in accordance with the Housing Services Act.
33. As it relates to the written processes and procedures in place for records management, the Board has implemented a record keeping system with guidelines for managing “Rent-Geared-to-Income financial records. This system will ensure that RGI supporting documents are kept for the duration of occupancy and seven (7) years thereafter.

34. In relation to documented process in place to ensure that occupancy agreements are updated to reflect all legislative requirements, the Board has implemented an updated Occupancy Agreement that incorporates the Residential Tenancies Act, and the City's guidelines to achieve relevancy. A copy of the updated Occupancy Agreement is hereto attached as "**Exhibit H**".
35. The City claimed that the Co-op has not properly documented its processes for Rent-Geared-to-Income administration. The Board responded that a Manual was developed using the City's guidelines that will ensure our Co-op's annual review of income and eligibility for those receiving RGI are done within the timeframe set by the Housing Services Act. The RGI Manual also included directions for filling RGI vacancies, using those guidelines set out in the City's RGI policies and procedures. The Board also ensured that the management staff involved with RGI review is fully trained and up to date with the RGI administration requirements. The Board has incorporated regular updates on RGI administration process into monthly board meeting package. A copy of the Co-op RGI administration steps as per the City's RGI manual is hereto attached as "**Exhibit I**".
36. In February 2020; due to the surge in arrears, the Co-op qualified for the COVID-19 Rent Relief Program. In March and April 2020, the Co-op received two payments of 60,000 for each month. However, by November 2020, Suzana Lama instructed the Co-op to repay the Advance Subsidy. The Board made a request to spread out the payments over a period based on the financial challenges faced as a result of Covid which continued. This request was denied by Suzana Lama.. The Co-op repaid the \$120,000 in three consecutive payments in December 2020, January 2021, and February 2021.
37. The Board continued to face challenges with Suzana Lama in March 2020. The Board was informed by the management company Maple Property Management,

that Suzana Lama requested the audited report from 2017-2018 and 2018-2019. On October 9, 2020, the Board received a letter from Suzana Lama informing that the Co-op was overfunded by the city in the amount of \$43, 945.00 This amount was purportedly paid to the Co-op in 2018-2019 fiscal year. The said letter also outlined that the deduction will be done on the November 01, 2020, subsidy payment. It is also noteworthy to mention that the city failed to provide a comprehensive explanation in the said letter as to how the Co-op was overfunded.

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

38. In the fall of 2019, the Co-op delivered an independent Auditor's Report, prepared by Mr. Ed M. Roscetti – a CPA and a CA - for the fiscal year ending June 30, 2019. This report was to be considered in conjunction with a letter that Mr. Roscetti prepared, dated September 24, 2019, to the Co-op. The Housing Provider's Annual Information Return for the 2019 fiscal year was also submitted to the Service Manager.

39. On October 26, 2020, the Board responded to the letters received from Suzana Lama regarding the discussions held in a September 2020 meeting. In the said meeting, the Board emphasised that the Harry Sherman Crowe Co-operative needed renovations because of the dilapidated conditions members were forced to live in. Unfortunately, Suzana Lama rejected the requests made by the Board and informed the Board that the City will not be in apposition to provide any additional funds separate from the monthly RGI payments. We were told flipantly that we should look for grant funding without any guidance.

40. Despite the lack of support by the city, the Board has taken steps to control expenses. For instance, at the beginning of 2020, the Board was able to cut maintenance and cleaning cost by more than 50%, cleared up workorders that were dated as far back as 2018, reduce landscaping cost by more than 50 and organized a team of contractors that provides high quality renovations for less cost than what was paid by the previous Board.

41. The Co-op had further financial challenges in November 2020. The Co-op as confirmed by the city required urgent capital expenditure. The Board resorted to apply for the COCHI (Canada-Ontario Community Housing) Initiative funding as an interim solution to solve the financial difficulties. This was a grant for five million dollars. The Board completed all the required steps, but the City of Toronto rejected the application in totality without any explanation. Even partial funding would have been of tremendous assistance to the operation of the Co-op.

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

Notice of Triggering Events

42. On March 29, 2021, the Board received a letter from Doug Rollins, Director, Housing Stability Services, Re: "Notice of Triggering Events" The letter perpetuated the following: "inadequate" internal transfers policies, guests polices,

not dealing with information as it pertains to personal information, records management that ensure all relevant personals comply with Housing Services Act.

43. In May 2021, the Co-op submitted a response to the Notice of Triggering Events letter. A copy of this letter is hereto attached as **“Exhibit J”**.

44. In that letter we affirmed the starting point is to ensure that the Co-op’s Board of Directors (“Board”) understands and adopts the proper By-Laws, while putting into place the necessary policies and procedures to ensure maximum compliance. Rather than rewriting the Board’s By-Laws, our approach has been to adopt the model By-Law package presented by the Co-operative Housing Federation of Toronto (“CHFT”). It should also be highlighted that the Co-op continues to be an active member of CHFT. Copies of the receipts for the membership dues are hereto attached as **“Exhibit K”**.

45. With respect to the policies related to the Co-op’s internal transfer policy, written processes related to governing records management, guest rules, and policies surrounding requirements for Occupancy Agreements. These issues have been addressed by integrating HSA’s By-Laws with the Co-op’s existing By-Laws. The critical element in addressing the City’s concerns is that wherever there is potential conflict, the amended Housing Stability Act 2011 model By-Laws will take precedent. Furthermore, written policies were also created to establish a system for reviews and processes for dealing with personal information. It should be noted that the Board in its operations clearly recognized the need for strict policies and governance as it relates to any data or personal information collected.

46. With respect to the RGI, one of our key approaches in addressing RGI compliance is the creation of an RGI committee, which was adopted by the Board on April 13, 2022. The major difference is that the Co-op, in order to ensure transparency and

compliance, requested that a member of CHFT sit on the committee. The Board was extremely pleased to report that Emily Ramirez of CHFT agreed to sit as an independent member on this committee and to further assist the Board in ensuring implementation of all policies to fulfill the statutory requirements of RGI.

47. In order to prevent future deficits, the Co-op has retained the services of Andrew Smith, professional accountant, to act as Financial Operating Officer to assist with financial operations. A copy of the consulting agreement is hereto attached as **“Exhibit L”**. The need for a Financial Controller became extremely evident as many of the requirements for financial oversight by the previous management company were deficient. In many ways, this deficiency prevented the Board from having sufficiently accurate information to make fiscally responsible decisions. A copy of the budget report for December 2022 to June 2023 is hereto attached as **“Exhibit M”**.

48. On May 26, 2022, days after our attorney sent our official response, we learned that RSM Canada limited was appointed as the interim receiver and was requested to take control, direction and possession of the housing project. In fact, the city had made this decision even before the response was submitted. Bear in mind that the city had set the date for the submission to be sent. This highlights an example of the bad faith and lack of transparency on the part of the City of Toronto. The contract between the City and the receiver was in fact signed 30 days before the agreed date for the City to receive a response.

49. On May 31, 2022, RSM barged into the Co-op office and issued an ultimatum to staff “to get out and not touch anything”. This was no different from the manner criminals are treated. Staff was traumatized. The suggestion is that somehow the staff would conceal or change information. This was extremely insulting as there is no evidence whatsoever that the Board has acted improperly. The Harry Sherman Crowe Co-operative is a community with many special challenges.

Therefore, hiring a firm such as RSM to manage the Co-op without any understanding of the realities of our community places members lives at risk. Further to date, the City has refused to disclose the cost of RSM. In the Board's view the Co-op cannot afford a firm such as RSM and such an appointment will only drive the Co-op into bankruptcy.

50. In making the decision to appoint RSM, the city failed to consider that the Co-op had engaged a new management company at a saving of \$5,082.00 per month.

51. On June 3, 2022, our attorney responded to the city having assembled the most recent reports and statements approved by the Office Managers and Harry Sherman's Accountant to be reviewed by the service manager. What this indicates is the progress this Board has made. Attached is a term deposit certificate with a book value in the amount of \$176, 293.47 demonstrating how this Board has been able to preserve funds for Urgency despite all the challenges faced. A copy of the fixed deposit statement is hereto attached as "**Exhibit N**".

52. The Board has also retained an independent valuation firm to establish the value of the Co-op properties. The valuator came back with a value of \$25, 640, 000.00. A copy of the narrative appraisal is hereto attached as "**Exhibit O**".

53. The major debtor for the Co-op is our landlord York University. On April 25, 2022, the Board began a discussion with York University through our attorney as to how the debt could be paid over a period. This is significant since our asset sits on the property of York University. More importantly, our mortgage with CMHC is \$135,000, Harry Sherman Co-op has never missed a payment even during our financial hardship and dealing with COVID. Further we are very proud that our mortgage payments expire on July 01, 2028, at which time Harry Sherman will be

mortgage free. York University understands this and at no time has taken any steps against the Co-op. Part of the Board strategy was to negotiate with CMHC to increase our mortgage slightly to pay York University. This became impossible with the city threatening receivership.

54. In fact, the Harry Sherman Co-op discussions and collaboration with York University went off track after York University was contacted by the city. The City's communication with York created a material disruption of these negotiations. During the term of this Board, we mended the bridge between the Co-op and York University. During COVID-19 we negotiated with York University to assist in clearing our snow for \$1.00. We also requested that they repair a portion of sidewalks within the Co-op's walkways. We were also in the process of getting security assistance after the second shooting. A copy of the email communication between Richard Silva and the Board is hereto attached as "**Exhibit P**". A copy of the snow plowing contract is hereto attached as "**Exhibit Q**".

55. The debt owed to York consists of property taxes which York pays to the City on behalf of Harry Sherman Crowe Co-operative. Our attorney has requested the city to provide tax concessions to Harry Sherman and the Board is currently awaiting a response. A copy of the letter requesting tax concessions is hereto attached as "**Exhibit R**".

56. For all the above reasons we strongly dispute that the appointment of RSM would help the Co-op to achieve financial stability. The liaison for the city decided to take over the operations of Co-op at any cost. As a Board we are proud of our accomplishments in serving our community. We have done this without the proper support of the City of Toronto and in fact as indicated by the facts above the city choose to diminish the work of the Board and not hear our pleas for help during our time of need. As the chairperson of the Board, I know I speak for all my members when I say we refuse to be further "ghettoized" by the city who clearly

does not have the best interest of our members/community. The appointment of RSM will not only be destructive of the safety and well being of our members but create an expense which the Co-op will be unable to meet thus forcing us into bankruptcy.


57. I make this affidavit in response to the affidavit of Julie Western and for no improper purpose.

SWORN before me
at the City of Toronto,
in the Province of Ontario, on
this 21st day of December, 2022 in
accordance with O. Reg. 431/20,
Administering Oath or Declaration Remotely

DocuSigned by:

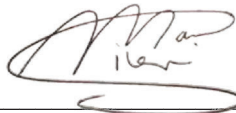
BA093A15477944D...

A commissioner for taking of Affidavits
Julian Castro Ortiz
Barrister & Solicitor
77258V

DocuSigned by:

140F62B535E7437...

Rosell Kerr
Deponent

This is Exhibit "C" referred to
in the Affidavit of Paul
Fischer, sworn on the 22nd
day of April, 2024.

A handwritten signature in black ink, appearing to read "Mark Siboni", written over a horizontal line.

Mark Siboni
A Commissioner for taking Affidavits

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

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

BETWEEN:

CITY OF TORONTO

Applicant

and

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC

Respondent

**REPLY AFFIDAVIT of Julie Western Set
(Sworn January 16, 2023)**

I, Julie Western Set, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. As set out in my Affidavit, sworn on November 10, 2022 (the “JWS November Affidavit”), I am the Manager of Housing & Tenant Supports of the City of Toronto’s Housing Stability Services Unit (the “HSS”). My credentials remain unchanged from those set out in paragraphs 1 through 7 of the JWS November Affidavit.
2. I have reviewed the Affidavit of Ms. Rosell Kerr, sworn on December 21, 2022 (the “Kerr Affidavit”) and have prepared this Affidavit to reply to issues that the Respondent has raised.
3. This Affidavit will speak to the following issues to provide additional clarity and context:
 - a. The roles and responsibilities of the Applicant City of Toronto, as Service Manager, (the “City” or “Service Manager”) and the Respondent Harry Sherman Crowe Housing Co-operative Inc. (“Harry Sherman” or the “Housing Provider”), under the governing legislation;

- b. The nature and character of the Service Manager’s engagement with the housing provider and its Board, understood in that context; and
 - c. The evidence presented in the Kerr Affidavit about the certain aspects of the Housing Provider’s finances, expenses, and operations that illustrate how the appointment of a receiver and manager will be a positive step and will increase the likelihood that the Housing Provider’s operations and finances will be regularized over time.
4. These three issues are related. In speaking to them, I will endeavor to respond to those aspects of the Kerr Affidavit relevant to the Court’s consideration of the Application before it.

(A) HOUSING PROVIDERS AND SERVICE MANAGERS – ROLES AND RESPONSIBILITIES

5. The JWS November Affidavit describes how housing providers such as Harry Sherman – a self governing co-operative housing corporation incorporated pursuant to, and governed by, the *Co-operative Corporations Act*, RSO 1990, c. C5 (the “CCA”) – are persons who operate housing projects in Ontario at paragraphs 3 and 4. Housing providers such as Harry Sherman are also governed by, and must conduct their affairs in keeping with, the provisions of the *Housing Services Act, 2011*, SO 2011, c.6, Sch 1, as amended (the “HSA”). Housing provider obligations prescribed by statute include:
- Ensuring that the housing project is both well managed and maintained in a satisfactory state fit for occupancy;
 - Collecting rent and administering leases;
 - Providing required and necessary information to their service manager; and
 - Preparing and following such plans relating to the governance and/or operation of the housing project as may be required.
6. The JWS November Affidavit, at paragraphs 3 and 4, also describes how service managers are responsible for administering/monitoring and funding housing provider organizations and their designated housing projects. The manner in which housing provider funding is

administered by Service Managers is governed by a funding formula, and within a funding framework, prescribed by the HSA. This funding framework is outlined at paragraphs 14 through 21 of the JWS November Affidavit.

7. Understanding this funding formula and framework is critical to understanding the roles and responsibilities of service managers and housing providers.
8. The operating subsidy that Service Managers distribute to housing providers is designed to cover gaps that may exist in any given fiscal year between indexed and benchmarked revenues and operating costs.
9. Housing providers must therefore discharge their duties to manage housing projects well and to maintain housing projects in a satisfactory state fit for occupancy **by using those provincially indexed and benchmarked values as targets they must strive to meet - in respect of the costs they can budget for in any given year, and the revenue they must aim to generate.**
10. The exercise of managing a housing project is one that, by its nature, requires the housing provider Board to evaluate the needs of their members and to plan and prioritize how to achieve those objectives over time and in a fiscally responsible fashion.
11. Throughout the Kerr Affidavit, reference is made to operational costs that the housing provider has incurred over the past several years to make improvements to the housing project. These projects and their associated costs include improvements the Kerr Affidavit describes making: installing additional security cameras, making improvements to the housing project's laundry room, improving the landscaping at the property, retaining a new company to maintain and clean the housing project, undertaking electrical work at the

property, retaining a “renovation company” who “comes with a certified plumber”, and making improvements to certain units within the housing project complex.

12. To the extent the Kerr Affidavit is presenting these list of operational expenses as costs that the City, in its capacity as Service Manager, should fund, and to the extent the Kerr Affidavit suggests that not funding these expenses is evidence of the City not supporting Harry Sherman, such suggestions fail to appreciate the following: to the extent service managers can provide support and guidance to their housing providers in respect of their financial position that support and guidance is constrained by the tools that they can avail themselves of under the HSA. Those tools contemplate services manager engaging with housing providers in 3 ways:

- (i) **Monitoring**: service managers monitor the financial position of housing providers. This monitoring exercise is predicated on the financial information the HSA requires housing providers to share with services managers.
- (ii) **Notification and Direction**: When circumstances arise that indicate housing providers are facing challenges managing the housing projects they are responsible for, the HSA empowers service managers to provide housing providers notice of issues and direction as to how any identified issues might be addressed – the HSA's Notice of Triggering Event process.
- (iii) **The Exercise of Statutory Remedies**: When a Triggering Event has occurred and persists, despite a housing provider receiving notice of the triggering event(s) and the steps that must be taken to address it (them), the statute authorizes service managers to take any of a number of enumerated remedial enforcement actions to ensure the identified triggering events are addressed.

13. Service managers are not required to provide any funding for specific improvement projects that housing providers and their Boards choose to undertake. Service managers are not required to provide funding outside of the funding that must be provided within the context of the HSA framework, outlined above. To illustrate that point, one need only turn

one's attention to section 84 of the HSA. Section 84 provides how, in circumstances where a service manager becomes aware of situations which might give rise to a triggering event, they can use reasonable efforts to assist the housing provider to deal with the situation. However, section 84 expressly provides how this **“does not require the service manager to do anything that would require the expenditure of funds.”**

(B) THE NATURE AND CHARACTER OF THE CITY'S INTERACTIONS WITH HARRY SHERMAN

14. A review of the interactions between the City and Harry Sherman that are set out in detail in the JWS November Affidavit reveals how the City used the monitoring and notification tools the HSA provides for to assist and support Harry Sherman as best it could.
15. In its written and oral communications with the housing provider, the City made every effort to highlight how, based on the financial information available to it, the housing provider was required to evaluate the various issues it was facing and develop a financial plan which would allow it to prioritize any operating expenses and/or capital projects that it felt had to be undertaken. Any such plan would be reviewed, and feedback would be provided to Harry Sherman, with an eye to ensuring that its year-over-year spending would be brought in line with the indexed and benchmarked operational costs and expenses the province establishes as guidelines.
16. Though we do not propose to restate all of the ways in which the Service Manager patiently engaged with Harry Sherman in its good faith efforts to help the housing provider address the operational issues that had been identified and its deteriorating financial position that are set out in the JWS November Affidavit, brief highlights include:

- Service Manager staff engaged with Harry Sherman in the context of a standard operational and Rent-Geared-to-Income (“RGI”) review, initiated in November 2019 (see the JWS November Affidavit, at paragraphs 33 through 43).
- Service Manager staff engaged with Harry Sherman in the context of discussion and meetings held in 2020 that were aimed at gaining some insight into how the housing provider responded to maintenance work orders and how it planned to deal with larger scale capital repairs (see the JWS November Affidavit, at paragraphs 44 through 46).
- In the spring and early summer of 2020, the Service Manager received a request that it provide the housing provider with a \$120,000 advance on its 2021 subsidy payment. This \$120,000 advance is referenced at paragraph 36 of the Kerr Affidavit. The Service Manager provided the housing provider with this advance, and deferred repayment of the amounts until December 2020 (when a \$60,000 repayment became due), January 2021 (when a \$30,000 repayment became due), and February 2021 (when the remaining \$30,000 repayment became due). The Service Manager was prepared to consider deferring repayment of this advance further, but in order to do so it required that Harry Sherman furnish it with certain financial information, including information about the housing provider’s current cash position, updated audited financial statements, and an outline of the measures the Board intended to put in place to improve its corporate cash flow position and overall financial situation. That information was not provided and so the Service Manager could not consider deferring repayment any further.
- Service Manager staff engaged with Harry Sherman in October 2020, flagging issues that had come to its attention regarding the operations and the finances of the housing provider. They also provided the housing provider with direction that spending controls and a financial plan be established to deal with the issues facing it (see the JWS November Affidavit, at paragraphs 64 through 84).
- Service Manager staff engaged with Harry Sherman through the triggering event process contemplated and provided for by the HSA. The Notice of Triggering Events was issued on March 29, 2021. Subsequent to its issuance, City staff attempted to work with Harry Sherman, reaching out to them on various occasions over the next year, culminating in correspondence delivered on March 31, 2022 (see the JWS November Affidavit, at paragraphs 83).

17. When viewed in the context of the Service Manager’s statutory role, and the limits on the nature and scope of the funding it could provide, the bald allegations made throughout the Kerr Affidavit – that the City of Toronto provided it with no support, the Service Manager adopted an oppressive and punitive approach in its dealings with Harry Sherman, and that the cumulative decisions by the City destroyed the Harry Sherman community – are

inaccurate and unfair given the efforts of the Service Manager and its staff to help the Housing Provider and its members.

(C) THE EVIDENCE PRESENTED IN THE KERR AFFIDAVIT SUGGESTS THAT THE APPOINTMENT OF A RECEIVER AND MANAGER IS WARRANTED IN THE CIRCUMSTANCES

18. There are specific passages in, and aspects of, the Kerr Affidavit that re-enforce the Service Manager's concerns about the continued operation of the Housing Provider and the appropriateness of the Service Manager's decision to seek the appointment of a Receiver.
19. The passages in question evidence: (i) a lack of precision and/or familiarity in respect of the Housing Provider's financial position; (ii) a lack of familiarity with the HSA's funding framework and the type of plan that the Housing Provider needs to put in place and implement in order to diagnose the issues Harry Sherman faces and formulate what needs to be done to address them; and (iii) a lack of detail and attention in respect of the preparation of the requisite operational and RGI policy documents, which remain deficient.
20. At paragraphs 11, 26, and at various other points in the Kerr Affidavit, reference is made to a fraud that Harry Sherman experienced.
21. As a preliminary matter, I am advised by my staff and believe that at no time did the Service Manager suggest that any member of the Housing Provider's Board was implicated in the described fraud, contrary to any suggestion that may be implied or expressed in the Kerr Affidavit. To the extent staff could provide some guidance to the housing provider, in terms of how to deal with the described fraud, it was to contact the police. The police service is the municipal body best situated to investigate the matter and furnish the Board with what it may require to pursue relief – from their financial institution or from the individuals who perpetrated the fraud.

22. The Service Manager has noted that the Kerr Affidavit describes the Housing Provider having faced a “massive fraud in the sum of \$230,000” that left it with “only \$23” to meet the Co-op’s financial obligations. This account of the scope of the fraud is inconsistent with the information that Harry Sherman provided to the City in its 2019, 2020, and 2021, audited financial statements. Based on my review of those audited financial statements, which were prepared by a professional auditor and reviewed and signed by members of the housing provider’s Board:

- In the 2019 audited financial statement, at Note 14, the auditor stated: “In July 2019, the Co-operative was victimized by a series of unauthorized EFT withdrawals from its current account totalling \$158,333. The financial institution is [was] currently [at the time] conducting an investigation and a resolution had not been reached as of the date of this audit.” (see the JWS November Affidavit, at Exhibit “H”).
- The 2020 audited financial statement updates Note 14, which stated: “Although some funds were recovered, \$149,144 is still [were] outstanding. The co-operative continues [was continuing] to explore alternatives in its attempt to recover this balance.” (see the JWS November Affidavit, at Exhibit “O”). This information remain unchanged in 2021.

23. At paragraph 28 of the Kerr Affidavit, the housing provider describes how it faced significant challenges in 2020 and 2021 in respect of their members ability to pay rent that were novel and related to the pandemic and its effects. The Service Manager notes that this statement does not align with the audited financial statements that were provided to the City of Toronto between 2019 and 2021. These financial statements, found at Exhibits “H”, “O”, and “W” of the JWS November Affidavit suggest that the revenue the housing provider saw from Market and Geared-to-Income rent between 2018 and 2021 remained relatively stable, as set out in the below excerpts from the Statements of Revenue and Expenditure provided:

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.			
For the year ending June 30, 2019			
	(NOTE 10) 2018/19 BUDGET	2019	2018
REVENUE			
Housing charges			
Market	\$ 963,635	\$ 998,507	\$ 947,989
Geared-to-income	1,199,688	343,948	357,794
City of Toronto subsidy, NOTE 5			
Operating subsidy	571,764	571,701	624,708
Property tax subsidy	145,649	157,138	147,316
Rent geared-to-income subsidy	<u>0</u>	<u>817,216</u>	<u>819,559</u>
	2,880,736	2,888,510	2,897,366
Non occupancy charges, NOTE 9	132,908	148,441	140,476
S.H.R.R.P. grant	52,920	52,920	52,920
Vacancy loss on market units	<u>(20,000)</u>	<u>(18,276)</u>	<u>(10,096)</u>
TOTAL REVENUE	<u>3,046,564</u>	<u>3,071,595</u>	<u>3,080,666</u>

STATEMENT OF REVENUE AND EXPENDITURE			
HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.			
For the year ending June 30, 2020			
	(NOTE 10) 2019/20 BUDGET	2020	2019
REVENUE			
Housing charges			
Market	\$ 973,188	\$ 1,011,627	\$ 998,507
Geared-to-income	1,225,344	334,337	343,948
City of Toronto subsidy, NOTE 5			
Operating subsidy	571,764	530,013	571,701
Property tax subsidy	155,231	169,271	157,138
Rent geared-to-income subsidy	<u>0</u>	<u>847,231</u>	<u>817,216</u>
	2,925,527	2,892,479	2,888,510
Non occupancy charges, NOTE 9	143,200	142,174	148,441
S.H.R.R.P. grant	52,920	52,920	52,920
Vacancy loss on market units	<u>(20,000)</u>	<u>(5,295)</u>	<u>(18,276)</u>
TOTAL REVENUE	<u>3,101,647</u>	<u>3,082,278</u>	<u>3,071,595</u>

HARRY SHERMAN CROWE HOUSING CO-OPERATIVE INC.			
For the year ending June 30, 2021			
	(NOTE 10) 2020/21 BUDGET	2021	2020
REVENUE			
Housing charges			
Market	\$ 1,027,584	\$ 1,039,080	\$ 1,011,627
Geared-to-income	1,215,365	410,108	334,337
City of Toronto subsidy, NOTE 5			
Operating subsidy	530,013	525,149	530,013
Property tax subsidy	162,093	174,252	169,271
Rent geared-to-income subsidy	<u>0</u>	<u>792,376</u>	<u>847,231</u>
	2,935,055	2,940,965	2,892,479
Non occupancy charges, NOTE 9	153,314	107,896	142,174
S.H.R.R.P. grant	0	52,915	52,920
Vacancy loss on market units	<u>(10,596)</u>	<u>(12,047)</u>	<u>(5,295)</u>
TOTAL REVENUE	<u>3,077,773</u>	<u>3,089,729</u>	<u>3,082,278</u>

24. Paragraphs 53 and 55 of the Kerr Affidavit make reference to efforts made by Harry Sherman to: (i) adjust the rate at which it proposes to repay its existing mortgage; and (ii) to approach the municipality with a request to reduce the property taxes that its landlords are obligated to remit.
25. To the extent these steps are being taken to address the financial difficulties the housing provider faces, they exhibit a failure to understand the HSA funding model. As set out at paragraphs 14 through 20 of the JWS November Affidavit, and as the governing legislation make clear, any property taxes that a housing provider pays are fully subsidized by the service manager, as are the principal and interest payments on any mortgage they may have. These efforts to engage with the mortgagor and the municipality would not have any impact on the underlying, critical concern the Service Manager has identified regarding the housing provider's finances – that there is no plan in place to prioritize the co-op's expenses and manage its budget year-over-year.
26. The Service Manager has had the opportunity to review the document attached as Exhibit "M" to the Kerr Affidavit. This document purports to be a budget for the six-month

window between December 2022 and June 2023. This document is not helpful, as it is provided without any context. The housing provider has failed to provide audited financial statements for the 2022 fiscal year and its 2022 Annual Information Return, in contravention of its obligations under the governing legislation. In the absence of any information about the actual revenues and expenses that Harry Sherman generated and had to cover for 2022, any budget document presented in respect of the 2023 fiscal year cannot form the foundation of a viable financial plan that might serve to address the Housing Provider’s worsening financial position.

27. The Service Manager has also reviewed the Internal Transfer, Occupancy Agreement, and RGI Process policy and practice documents that Harry Sherman has referenced at paragraphs 31, 34, and 35, and provided at Exhibits "G", "H", and "I", of the Kerr Affidavit. It has identified that these documents remain deficient, for the reasons identified in the below table:

Practice/Policy	Identified Issues
Internal Transfer Policy	<ul style="list-style-type: none"> • The “internal by-law” and “occupancy by-law” are referenced in the transfer policy document, but have not been provided, so it is difficult to assess the internal consistency of the document. • The policy does not distinguish between market and RGI transfers. The HSA imposes different requirements on RGI households, and so this distinction must be accounted for. • The policy does not mention Special Priority Program (“SPP”) households. • The policy does not specify how over-housed households are added to the internal transfer list. • The policy is undated and unsigned, so it is unclear if the policy document has been reviewed and approved by the Board. • Finally, an unsigned “Housing Services Act” by-law is attached at Exhibit “J” to the Kerr Affidavit. This by-law document also makes reference to internal transfers. This raises the question of which policy document – if both are approved – would take precedence.

Occupancy Agreement	<ul style="list-style-type: none"> • The form of agreement provided includes/incorporates Schedule A, and Appendices A, B, and C, of one version of the model Occupancy Agreement document Co-op sector organizations have published as reference documents that Co-ops can use. • It does not include Appendix D, Special Needs Unit Terms; Schedule B, Long-term Guest Agreement; and Schedule C, Sub-Occupancy Agreement. It is unclear why these aspects of the template document, especially Schedule B, were excluded. • The full form of the agreement has not been provided. • As with the Internal Transfer Policy, the “Housing Services Act” by-law attached at Exhibit “J” also includes a form of Occupancy Agreement, and so it is unclear – if both are approved – which policy document to take precedence.
RGI Process Policy	<ul style="list-style-type: none"> • Our review of the document provided indicates that all the dates referenced in the RGI process are not current (they reference 2019 and 2020), so it is not possible to assess whether the dates and timeframes set out in the policy are reasonable. • The process document is undated, and unsigned, so it is unclear whether this is the most up-to-date, Board approved document. • There is no reference within the document itself to the decision the process contemplates being made being implemented.

28. Separate and apart from my discussion of the three broad issues, above, I address two additional points raised by the Respondent in the Kerr Affidavit that warrant comment:

- At paragraphs 48 and 49, the Kerr Affidavit states that the City acted in bad faith in May of 2022 when it exercised its authority to appoint RSM Canada Limited (“RSM”) as receiver and manager over the housing provider (as described in paragraphs 87 through 91 of the JWS November Affidavit). Harry Sherman points to the fact that the City entered into a Receivership Services Agreement with RSM in April 2022, before the May 9, 2022, deadline it had provided to the housing provider to respond to its March 31, 2022, correspondence. The City notes that the March 31, 2022, correspondence was, itself, one of a series of follow-ups to the March 29, 2021, Notice of Triggering Events (“NTE”) that Harry Sherman was served with. The City did not decide to appoint RSM before it received, reviewed, and considered Harry Sherman’s response to the Notice of Triggering Events and the most recent March 31, 2022, follow-up. However, given how over a year had passed since the issuance of the NTE, the Service Manager thought it appropriate to have a receiver and manager at the ready, in the event it had to exercise its remedies under the HSA. This is not evidence of the Service Manager pre-

determining whether it would exercise any HSA remedy. It is evidence of the Service Manager exercising due diligence and exhibiting good practice, so that if circumstances warranted the exercise of a remedy, the situation that warranted that such steps be taken would not persist longer than necessary.

- At paragraph 41 of the Kerr Affidavit, referenced is made to an application the housing provider describes making for funding made available through the Canada-Ontario Community Housing Initiative (“COCHI”). This COCHI funding opportunity is separate and distinct from the funding the Service Manager is responsible for under the HSA.

SWORN before me)
 at the City of Toronto,)
 in the Province of Ontario, on)
 this 16th day of January, 2023.)

)
)
)
)
)

Mark Siboni)
 A Commissioner for taking Affidavits)



Julie Western Set

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

BETWEEN:

CITY OF TORONTO
(Applicant)

-and-

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

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

AFFIDAVIT OF PAUL FISCHER
(Sworn on April 22, 2024)

CITY SOLICITOR'S OFFICE

City of Toronto, Legal Services
Station 1260, Metro Hall
55 John St., 26th Floor
Toronto, ON M5V 3C6

Mark Siboni/Ryan Krahn

LSO Nos. 50101V/74645M
Tel: (416) 392-9786/(416) 338-1395
Fax: (416) 397-5624
Email: mark.siboni@toronto.ca

Lawyers for the Applicant, City of Toronto

CITY OF TORONTO

- and -

HARRY SHERMAN CROWE HOUSING CO-
OPERATIVE INC.

Applicant

Respondent

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

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced in Toronto

REPLY MOTION RECORD

WeirFoulds LLP
Barristers & Solicitors
TD Bank Tower,
Suite 4100, P.O. Box 35
66 Wellington Street West
Toronto, ON M5K 1B7

Philip Cho (LSO # 45615U)
pcho@weirfoulds.com

Tel: 416-365-1110
Fax: 416-365-1876

**Lawyers for the Receiver,
TDB Restructuring Limited**