

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

THE HONOURABLE

)

FRIDAY, THE 25TH

)

JUSTICE J. DIETRICH

)

DAY OF APRIL, 2025

HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.

Applicant

- and -

CBJ – FORT ERIE HILLS INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF
THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**ORDER
(Approval and Vesting Order)**

THIS MOTION made by TDB Restructuring Limited, in its capacity as Court-appointed receiver (in such capacity, the “**Receiver**”), without security, of all of the property, assets and undertakings of the Respondent, including but not limited to the real property municipally known as 85-87 Crooks Street and 0 Thompson Road, Fort Erie, Ontario and legally described in Schedule “A” hereto (the “**Real Property**”), including all proceeds thereof, for an Order, *inter alia*: (i) approving the agreement of purchase and sale dated March 28, 2025 (as may be amended, the “**APS**”), and the transaction described therein (the “**Transaction**”) between the Receiver and Dunsire Homes Inc. (the “**Purchaser**”), and vesting in the Purchaser all of the Respondent’s right, title and interest in and to the Purchased Assets (as defined in the APS), and (ii) approving a

distribution to the Applicant from the proceeds of the Transaction, was heard on April 25, 2025 at 330 University Avenue, Toronto, Ontario, by videoconference.

ON READING the Notice of Motion of the Receiver dated April 10, 2025 (the “**Notice of Motion**”), the First Report of the Receiver dated April 10, 2025 (the “**First Report**”), the Factum of the Receiver dated April 22, 2025 (collectively with the Notice of Motion and the First Report, the “**Motion Materials**”), and on hearing the submissions of counsel for the Receiver and such other parties listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavits of Service of Dannalyn Salita sworn April 10, 2025 and April 22, 2025, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Motion Materials is hereby validated, so that this Motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL AND VESTING

2. **THIS COURT ORDERS** that the Transaction is hereby approved, and the execution of the APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule “B” hereto (the “**Receiver’s Certificate**”), all of the Respondent’s right, title and interest in and to the Purchased Assets shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether

contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens (including as may result from unpaid property taxes, interest and penalties thereon), executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Cavanagh dated December 19, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on Schedule “C” hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule “D” hereto) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Niagara South (LRO #59) of an Application for Vesting Order in the form prescribed by the *Land Titles Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Real Property identified in Schedule “A” hereto, in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Schedule “C” hereto.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver’s Certificate all

Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

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

7. **THIS COURT ORDERS AND DIRECTS** that the Land Registry Office for the Land Titles Division of Niagara South (LRO #59) shall delete and expunge this Order from title to the Real Property identified in Schedule "A" hereto upon the registration of the transfer of the Real Property from the Purchaser to a third party or parties.

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

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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any Respondent and shall not be void or voidable by creditors of the Respondent, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or

provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

DISTRIBUTION

9. **THIS COURT ORDERS** that, following the delivery of the Receiver's Certificate, the Receiver is hereby authorized and directed, without personal or corporate liability whatsoever to any person, and without the need for any further Order of this Court, to make a distribution from the proceeds of the Transaction as soon as practicable after the closing of the Transaction to the Applicant as a full, permanent and indefeasible repayment of the indebtedness and obligations secured by the mortgage in favour of the Applicant and registered on title to the Real Property bearing registration number SN783192 (the "**Distribution**").

10. **THIS COURT ORDERS** that the balance of the sale proceeds after the Distribution is made shall be held by the Receiver in trust pending further Order of the Court.

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

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

the Distribution shall be made to the Applicant free and clear of all Claims and Encumbrances, and shall be binding on any trustee in bankruptcy that may be appointed in respect of the Respondent and shall not be void or voidable by creditors of the Respondent, nor shall it constitute

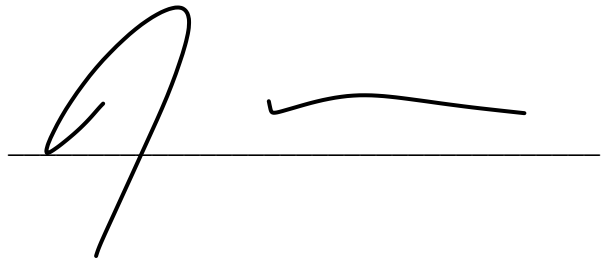
nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that, pursuant to section 195 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended, this Order is subject to provisional execution notwithstanding any appeal therefrom.

14. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. (EST) from today's date and is enforceable without further need for entry and filing.

A handwritten signature, consisting of a large loop followed by a horizontal stroke, is written over a solid horizontal line.

Schedule "A"

Real Property

PIN 64233-0064 (LT)

BLK R W/S CROOKS ST PL 525 VILLAGE OF BRIDGEBURG; LT 84 W/S CROOKS ST PL 525 VILLAGE OF BRIDGEBURG; PT BLK S W/S CROOKS ST PL 525 VILLAGE OF BRIDGEBURG; PT LT 8 CON 2 NIAGARA RIVER BERTIE AS IN RO461513 ; FORT ERIE

Schedule “B”

Court File No. CV-24-00730993-00CL

HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC.

Applicant

- and -

CBJ – FORT ERIE HILLS INC.

Respondent

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
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RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated December 19, 2024, TDB Restructuring Limited was appointed as the receiver (the “**Receiver**”), of all of the property, assets and undertakings of the Respondent.

B. Pursuant to an Order of the Court dated April 25, 2025, the Court approved the agreement of purchase and sale dated March 28, 2025 (the “**Sale Agreement**”) between the Receiver and Dunsire Homes Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Respondent’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

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

This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**TDB Restructuring Limited, in its capacity as
Receiver and not in its personal capacity**

Per: _____

Name:

Title:

**Schedule “C”
Instruments to be Deleted from Title**

PIN 64233-0064 (LT)

1. Instrument No. SN698783 being a Transfer registered on November 1, 2021.
2. Instrument No. SN783192 being a Charge registered on October 25, 2023.
3. Instrument No. SN783193 being a Notice of Assignment of Rents – General registered on October 25, 2023.
4. Instrument No. SN793320 being a Notice registered on February 13, 2024.
5. Instrument No. SN818765 being a Charge registered on October 29, 2024.
6. Instrument No. SN825972 being an Application to Register Court Order registered on January 9, 2025.

Schedule “D”
Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property
(unaffected by the Vesting Order)

PIN 64233-0064 (LT)

1. Instrument No. BB50775 being a By-Law registered on August 26, 1966.
2. Instrument No. RO106181 being a By-Law registered on July 31, 1969.
3. Instrument No. SN127630 being a Notice registered on July 10, 2006.
4. Instrument No. 59R17149 being a Plan Reference registered on December 23, 2021.
5. Instrument No. 59R17187 being a Plan Reference registered on February 14, 2022.

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985 c. B-3, AS AMENDED AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

HILLMOUNT CAPITAL MORTGAGE HOLDINGS INC. - and -

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Court File No. CV-24-00730993-00CL

	<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>Proceedings commenced at Toronto, Ontario</p>
	<p>APPROVAL AND VESTING ORDER</p>
	<p>Thornton Grout Finnigan LLP TD West Tower, Toronto-Dominion Centre 100 Wellington Street West, Suite 3200 Toronto, ON M5K 1K7</p> <p>D.J. Miller (LSO# 34393P) Tel:(416) 304-0559 / Email: djmiller@tgf.ca</p> <p>Derek Harland (LSO# 79504N) Tel: (416) 304-1127 / Email: dkharland@tgf.ca</p> <p>Lawyers for the Court-appointed Receiver, TDB Restructuring Limited</p>