

Court File No. CV-24-00034048-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

**CREATIVE HOMESCAPES INC., 1974592 ONTARIO INC. AND 1646395 ONTARIO
INC.**

Respondents

**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**

**MOTION RECORD OF THE RECEIVER
(Motion returnable November 12, 2024)**

November 6, 2024

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Lawyers for the Receiver, Albert Gelman Inc.

File Number: 7923-006

TO: **SERVICE LIST**

Court File No. CV-24-00034048-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

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**MOTION RECORD OF THE RECEIVER
(Motion returnable November 12, 2024)**

INDEX

Tab	Description	Page No.
1.	Notice of Motion for the motion returnable November 12 th , 2024	4-9
2.	First Report of the Receiver dated November 5 th , 2024	11-18
A.	Appendix “A” – Endorsement and Order of the Honourable Madam Justice Kalajdzic dated October 10 th , 2024	19-40
B.	Appendix “B” – Affidavit of Amanda Bezner sworn October 8, 2024	41-51
3.	Draft Order	52-54
4.	Service List	56-65

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COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**NOTICE OF MOTION
(RETURNABLE NOVEMBER 12, 2024)**

Albert Gelman Inc., in its capacity as receiver and manager (in such capacity, the “**Receiver**”) of all present and future property, assets and undertakings of each of Creative Homescapes Inc., 1974592 Ontario Inc. and 1646395 Ontario Inc.(collectively, the “**Debtors**”), pursuant to the order of Honourable Justice Kalajdzic, dated October 10th, 2024, (the “**Receivership Order**”) will make a motion via Zoom before the Honourable Justice Kalajdzic on Tuesday, November 12, 2024 at 11:30 AM, or as soon after that time as the Motion can be heard.

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

THIS MOTION IS FOR:

1. An order abridging the time for and validating service of this Notice of Motion and supporting materials such that the motion is properly returnable on November 12th, 2024, and dispensing with further service thereof;
2. An Order amending paragraph 3(k)(i) of the Order of the Honourable Justice Kalajdzic dated October 10, 2024, as follows:

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

- (i) without the approval of this Court in respect of any transaction not exceeding \$500,000.00, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00;

Such further and other relief as counsel may advise and this Court deems just.

THE GROUNDS OF THIS MOTION ARE:***A. The Receivership***

1. Pursuant to the Receivership Order, Albert Gelman Inc. was appointed as receiver and manager of the of all present and future assets, undertakings, and personal property of the Debtors (collectively, the “**Property**”);
2. The Debtors’ Property consists of the business of each of the Debtors summarized as follows:
 - i. Creative Homescapes Inc. (“**Creative**”) - supplier of landscaping, hardscaping and ancillary goods and services for both commercial and

residential customers. As at the Filing Date, Creative operated from leased premises located at 1877 Walker Road, Windsor, Ontario (the “**Leased Premises**”);

- ii. 1974592 Ontario Inc. (“**197 Ont. Inc.**”) - real estate holding company that owned the real property from which Creative used to operate (the Property was sold on/about February 28, 2024, after which, Creative operated from the Leased Premises). As at the Filing Date, 197 had no operations and/or assets; and
- iii. 1646385 Ontario Inc. (“**164**”) - Mr. Kelly’s holding company, which the Receiver understands holds 100% of the shares of Creative. 164 has no ongoing operations and the Receiver understands that its only asset is its share interest in Creative.

B. Secured Creditors

3. The Debtors are indebted to the Toronto-Dominion Bank (“**TD**”) with respect to certain credit facilities made available to Creative and 197 Ont. Inc. By virtue of the Debtors’ default, TD made the application to the court for the appointment of the Receiver;

4. Prior to filing the application, Albert Gelman Inc. was retained as TD’s consultant to review and assess the financial circumstances of the Debtors (“**AGI**”). AGI became of the view that an orderly wind down of the business of the Debtors was in the best interest of all stakeholders and the Debtors consented to the appointment of AGI as the Receiver.

C. Realization Strategy

5. The Receiver with the support of TD has retained the services of a liquidator, Canam-Appraiz Inc. (the “**Liquidator**”) to assist the Receiver with the wind down and realization of Creative’s assets. The Liquidator has been working to identify buyers and to commence

preparations for an auction to be conducted from the leased premises and using online resources. It is intended that the auction is to commence in the middle of November and otherwise as early as possible given the landlord's request to regain possession of the premises.

D. Receiver's Transaction Limits

6. Pursuant to the Receivership Order, the Receiver was empowered to sell or convey the property of the Debtors out of the ordinary course of business, without the approval of this court in respect of any transaction not exceeding \$250,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00 (the "**Transaction Limit**"). The Receiver seeks to increase these limits in accordance with the Draft Order, as it is expected that the thresholds would otherwise be breached.

7. The Receiver views these thresholds to be reasonable and the primary secured creditor, TD, has consented to the proposed increase.

8. Such further and other grounds as counsel may advise and this Honourable Court may deem just.

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

- a) The First Report of the Receiver and the appendices thereto; and
- b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 6, 2024

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Barristers & Solicitors

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M5C 2V9

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Email: wgreenspoon@garfinkle.com

Tel: 416-869-1234

Lawyers for the Receiver,

Albert Gelman Inc.

TO: THE SERVICE LIST

THE TORONTO-DOMINION BANK

-and- **CREATIVE HOMESCAPES INC. et al.**

Applicant

Respondents

Court File No. CV-24-00034048-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at WINDSOR

**NOTICE OF MOTION
(RETURNABLE NOVEMBER 12, 2024)**

GARFINKLE BIDERMAN LLP

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Lawyers for the Receiver,
Albert Gelman Inc.

File Number: 7923-004

**FIRST REPORT OF
ALBERT GELMAN INC.
AS RECEIVER OF
CREATIVE HOMESCAPES INC., 1974592 ONTARIO INC.
AND 1646395 ONTARIO INC.**

NOVEMBER 5, 2024

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

CREATIVE HOMESCAPES INC., 1974592 ONTARIO INC. and
1646395 ONTARIO INC.

Respondent

FIRST REPORT OF ALBERT GELMAN INC.
IN ITS CAPACITY AS RECEIVER

NOVEMBER 5, 2024

I. INTRODUCTION

1. This report (the "**First Report**") is filed by Albert Gelman Inc. ("**AGI**") in its capacity as receiver (the "**Receiver**") of all the assets, properties and undertakings (collectively, the "**Property**") of each of Creative Homescapes Inc. ("**Creative**"), 1974592 Ontario Inc. ("**197**") and 1646395 Ontario Inc. ("**164**" and, collectively with Creative and 197, the "**Debtors**").
2. On October 10, 2024 (the "**Filing Date**"), in connection with an application (the "**Receivership Application**") brought by the Debtors' senior-secured creditor, The Toronto-Dominion Bank ("**TD**"), the Ontario Superior Court of Justice (the "**Court**") granted an order (the "**Receivership Order**"), *inter alia*:
 - a. appointing AGI as Receiver;
 - b. granting a first-ranking charge to secure the fees and disbursements of the Receiver and its counsel; and
 - c. permitting the Receiver to borrow up to \$150,000 for the purpose of funding the exercise of the Receiver's powers and duties, which are secured by a priority charge over the Property of the Debtors.

A copy of the Receivership Order is attached hereto as **Appendix "A"**.

3. The Receiver has established a website at <https://www.albertgelman.com/corporate-solutions/other-engagements/> (the "**Case Website**") where copies of Court and other materials pertaining to these receivership proceedings are available in electronic form.

II. PURPOSE OF THIS REPORT

4. The purpose of this First Report is to provide the Court with information pertaining to the following:
 - a. relevant background regarding the Debtors;
 - b. the Receiver's intended realization strategy; and
 - c. the Receiver's recommendation that this Court amend the Receivership Order, solely in respect of increasing the monetary limits provided in paragraph 3(k)(i) of the Receivership Order. More specifically, the Receiver is requesting that the Receivership Order be amended to empower and authorize the Receiver to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, without the approval of the Court in respect of any transaction not exceeding \$500,000 (rather than \$250,000 as provided in the Receivership Order), provided that the aggregate consideration for all such transactions does not exceed \$1,000,000 (rather than \$500,000, as provided in the Receivership Order).

III. SCOPE AND TERMS OF REFERENCE

5. In preparing this First Report, the Receiver has relied upon certain unaudited financial information, the Debtors' books and records, discussions with Creative's management and directors, and other individuals with knowledge of the Debtors' affairs.
6. While the Receiver has reviewed the various documents and other information provided by the Debtors, such review does not constitute an audit or verification of such documents/information for accuracy, completeness or compliance with Accounting Standards for Private Enterprises ("**ASPE**") or International Financial Reporting Standards ("**IFRS**") or otherwise. Accordingly, the Receiver expresses no opinion or other form of assurance pursuant to ASPE, IFRS or otherwise with respect to such documents/information.
7. This First Report has been prepared for the use of this Court and the Debtors' stakeholders as general information relating to the Debtors and to assist the Court in making a determination of whether to approve the relief sought. Accordingly, the reader is cautioned that this First Report may not be appropriate for any other purpose. The Receiver will not assume responsibility or liability for losses incurred by the reader as a result of the circulation, publication, reproduction or use of this First Report contrary to the provisions of this paragraph.
8. Unless otherwise noted, all monetary amounts referenced are in Canadian dollars.

IV. BACKGROUND

9. In support of the Receivership Application, TD filed the affidavit of Amanda Bezner sworn October 8, 2024 (the "**Bezner Affidavit**"). This First Report should be read in conjunction with the Bezner Affidavit, as certain information contained in the Bezner Affidavit has not been included herein to avoid duplication. A copy of the Bezner Affidavit, without exhibits, is attached hereto as **Appendix "B"**.

General Background

10. Each of the Debtors is incorporated under the *Business Corporations Act* (Ontario). Shawn Kelly was the sole director of each of the Debtors. Mr. Kelly tragically passed away in October 2024.
11. The business of each of the Debtors is summarized as follows:
 - a. Creative – supplier of landscaping, hardscaping and ancillary goods and services for both commercial and residential customers. As at the Filing Date, Creative operated from leased premises located at 1877 Walker Rd., Windsor, Ontario (the "**Leased Premises**");
 - b. 197 – real estate holding company that owned the real property from which Creative used to operate (the Property was sold on/about February 28, 2024, after which, Creative operated from the Leased Premises). As at the Filing Date, 197 had no operations and/or assets; and

- c. 164 – Mr. Kelly's holding company, which the Receiver understands holds 100% of the shares of Creative. 164 has no ongoing operations and the Receiver understands that its only asset is its share interest in Creative.

Secured Creditors

12. The Debtors are indebted to TD in connection with certain credit facilities made available by TD to Creative and 197 (the "**Credit Facilities**") pursuant to and under the terms of a letter of agreement dated July 14, 2023 (as amended, replaced, restated or supplemented from time to time, the "**Credit Agreement**").
13. As noted in the Bezner Affidavit, as security for the obligations of Creative and 197 to TD, including without limitation, obligations under the Credit Agreement, the Debtors provided security in favour of TD (collectively, the "**Security**"), including, general security agreements over the property and assets of each of the Debtors.
14. As further noted in the Bezner Affidavit, in addition to various corporate guarantees provided by each of the Debtors, Mr. Kelly provided a limited personal guarantee of \$200,000 to secure the obligations under the Creditor Agreement.
15. The Receiver understands that, as of September 10, 2024, the Debtors owed TD approximately \$2.1 million (exclusive of legal fees, disbursements and accruing interest) under the Credit Agreement.
16. As noted in the Bezner Affidavit, pursuant to *Personal Property Security Act* certified search results for each of the Debtors with currency to September 22, 2024 (a copy of which is included as Exhibit "E" to the Bezner Affidavit), the Receiver notes the following:
 - a. As it relates to 197 and 164, in addition to TD, Vault Capital Corporation ("Vault"), has a registered security (which was registered after TD); and
 - b. As it relates to Creative, in addition to TD, there are more than 60 registrations by multiple secured registrants. As discussed in the Bezner Affidavit, while the certified search results show that 164, CertainTeed Canada, Inc. ("**CertainTeed**") and Wells Fargo Capital Finance Corporation Canada ("**Wells Fargo**") are all general secured creditors of Creative with registrations that were registered before TD, pursuant to certain priority agreements, each of CertainTeed and Wells Fargo have subordinated their security interests in Creative to TD, except as it relates to certain inventory secured by Wells Fargo. The Receiver also understands that Vault is a general secured creditor of Creative but registered after TD.
17. As further noted in the Bezner Affidavit, as a result of the Debtors' non-compliance with the terms of the Credit Agreement, TD made formal written demand on each of the Debtors and Shawn Kelly for payment of their indebtedness to TD by letter dated September 12, 2024 (the "**Demands**"), which was accompanied by a notice of intention to enforce security pursuant to subsection 244(1) (the "**BIA**

Notice") of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). Copies of the Demands and the BIA Notice are included as Exhibit "G" to the Bezner Affidavit.

18. Also as noted in the Bezner Affidavit, in addition to the Demands and the BIA Notice, an acknowledgement and consent was appended to the Demands sent to each of the Debtors (the "**Waiver**"). The Waiver acknowledged receipt of the BIA Notice and consented to waive the ten-day notice period set forth therein to the immediate enforcement of the TD's security. Each of the Debtors executed their respective consent on September 13, 2024. Copies of the Waiver from each of the Debtors are included as Exhibit "H" to the Bezner Affidavit.

V. REALIZATION STRATEGY

19. As noted in the Bezner Affidavit, prior to the Filing Date, AGI was retained as TD's consultant to review and assess the financial circumstances of the Debtors. While performing its consulting mandate, AGI met with the Debtors' management (and individuals with knowledge of each of the Debtors' affairs) to discuss and consider the Debtors' available options. From those discussions, it was expressed to AGI that the Debtors were of the view that an orderly wind-down of their operations would be in the best interests of its stakeholders. As further noted in the Bezner Affidavit and above, the Debtors consented to the appointment of AGI as the Receiver and agreed that a receivership provided an effective mechanism to wind-down the businesses and maximize value to the Debtors' stakeholders.
20. While the Receiver is aware that the Debtors, with the assistance of a financial advisor in the months leading up to these receivership proceedings, attempted to identify a buyer for the business/assets of Creative, the efforts were ultimately unsuccessful.
21. As such, the Receiver, with TD's support, has retained the services of a liquidator, Canam-Appraiz Inc. (the "**Liquidator**"), to assist the Receiver with the wind-down and realization of Creative's assets. Since the Filing Date, the Receiver has been working with the Liquidator to identify buyers for Creative's assets and to commence preparations for an auction (the "**Auction**"), which is to be conducted from the Leased Premises and using online resources.
22. The Receiver intends to report on the results of the Auction in a future update to the Court.

VI. PROPOSED INCREASE OF ASSET DISPOSITION THRESHOLDS

23. Consistent with Ontario's model receivership order, the Receivership Order authorizes the Receiver to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, without the approval of the Court up to certain specified limits, being, \$250,000 in respect of any transaction, provided that the aggregate consideration for all such transactions does not exceed \$500,000 (the "**Existing Sale Thresholds**").

24. The Receiver is requesting that these thresholds be changed to \$500,000 in any one transaction or \$1,000,000 in the aggregate.
25. The Receiver is of the view that an increase to the Existing Sale Thresholds, is reasonable in the circumstances. In addition, the Receiver understands that TD, as the Debtors' senior secured lender, has consented to the proposed increase in the Existing Sale Thresholds.
26. Based on preliminary interest expressed to the Receiver and the Liquidator by various prospective buyers for Creative's assets, it is, in the Receiver's view, reasonably expected that the Existing Sale Thresholds will be breached. Without the increase in the Existing Sale Thresholds, the Receiver would need to incur the cost of a motion or motions for any transaction or transactions above the Existing Sale Thresholds.

VII. RECOMMENDATION AND CONCLUSION

27. Based on all of the foregoing, the Receiver respectfully recommends that this Honourable Court amend the Receivership Order as set out in paragraph 4(c) of this First Report.

All of which is respectfully submitted this 5th day of November 2024.

ALBERT GELMAN INC.,
solely in its capacity as Receiver of
Creative Homescapes Inc., 1974592 Ontario Inc. and 1646395 Ontario Inc.
and not its personal or any other capacity



Per:

Adam Zeldin, CPA, CA, CIRP, LIT

APPENDIX "A"



ONTARIO SUPERIOR COURT OF JUSTICE
Windsor

ENDORSEMENT / ORDER

CV-24-00034048-0000

Court File No.

BETWEEN

THE TORONTO-DOMINION BANK

Plaintiff(s)/Applicant(s)

- and -

CREATIVE HOMESCAPES INC. ; 1974592 ONTARIO INC. ; 1646395 ONTARIO INC.

Defendant(s)/Respondent(s)

BEFORE: Justice J. KALAJDZIC

HELD BY: In person Videoconference Teleconference In writing Hybrid

DATE: October 10, 2024 at 12:00pm

EVENT TYPE: Hearing - application on notice

APPEARING: (Names and email addresses)

Plaintiff(s)/Applicant(s): THE TORONTO-DOMINION BANK Present

Representative: ~~KYLE PLUNKETT~~ (pwilliams@airdberlis.com) *CHRISTIAN DELFINO* Present
MARK VAN ZANDVOORT

Defendant(s)/Respondent(s): CREATIVE HOMESCAPES INC. Present

Representative: Present

Defendant(s)/Respondent(s): 1974592 ONTARIO INC. Present

Representative: Present

Defendant(s)/Respondent(s): 1646395 ONTARIO INC. Present

Representative: Present

Third Party or Parties Present

Representative: Present

RELIEF REQUESTED:

Per notice of motion/application Per notice of appeal Other (specify):

CV-24-00034048-0000

Court File No.

DISPOSITION:

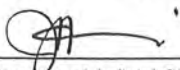
- Order to go in the form of consent / draft order submitted
- Order to go as asked in paragraph(s) _____ of relief requested
- Costs of \$ _____ on a _____ indemnity basis
are payable by _____ to _____ by _____, 20__.
- Parties to provide submissions as to costs of no more than ___ pages by _____, 20__.
- Parties to attend before me to make oral submissions on costs on _____, 20__.
- Other (specify below):
- No formal order need be taken out.

BRIEF REASONS (if any):

Counsel for the Applicant appearing, as well as a representative of the proposed receiver, Adam Zeldin, and Crystal Firley on behalf of Wells Fargo, an interested party.

Based on the materials filed + the submissions of counsel for the Applicant, OTB in the form of the draft order filed.

Oct 10, 20 24
Date


Signature of Judicial Official

Court File No. CV-24-00034048-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 10TH
JUSTICE KALAJDZIC) DAY OF OCTOBER, 2024

THE TORONTO-DOMINION BANK



Applicant

- and -

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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
(appointing Receiver)**

THIS APPLICATION, made by The Toronto-Dominion Bank (“**TD Bank**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”), appointing Albert Gelman Inc. (“**Albert Gelman**”) as receiver (in such

- 2 -

capacity, the “**Receiver**”), without security, of all the assets, properties and undertakings of each of Creative Homescapes Inc., 1974592 Ontario Inc. and 1646395 Ontario Inc. (collectively, the “**Debtors**”) acquired for, or used in relation to a business carried on by the Debtors and all proceeds thereof (collectively, the “**Property**”), was heard this day by judicial videoconference via Zoom.

ON READING the Application Record of the Applicant, including the affidavit of Amanda Bezner sworn October 8, 2024 and the exhibits thereto, including, without limitation, the consent of Albert Gelman to act as the Receiver and the Consents to Receiver executed by the Debtors, and on hearing the submissions of counsel for TD Bank and such other counsel as were present, no one appearing for any other stakeholder although duly served as appears from the affidavit of service of Cristian Delfino sworn October 8, 2024,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of application and the Application Record is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Albert Gelman is hereby appointed Receiver, without security, of the Property.

RECEIVER’S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- 3 -

- (b) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and carry on the business of the Debtors, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business or cease to perform any contracts of the Debtors;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter

- 4 -

instituted with respect to the Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

(j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

(i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required;

(l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- 5 -

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (p) to file an assignment into bankruptcy, and to act as trustee in bankruptcy, on behalf of all or any of the Debtors;
- (q) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (r) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

- 6 -

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

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

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver’s intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver’s entitlement to remove any such fixture under the provisions of

- 7 -

the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

- 8 -

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in

- 9 -

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA AND ANTI-SPAM LEGISLATION

15. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

16. **THIS COURT ORDERS** that any and all interested stakeholders in this proceeding and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in this proceeding, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to such other interested stakeholders in this proceeding and their counsel and advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

- 10 -

or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

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

RECEIVER’S ACCOUNTS

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

- 11 -

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

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

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

- 12 -

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/#Part_III_The_E-Service_List) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol and shall be accessible by selecting the Debtors' names from the engagement list at the following URL: <https://www.albertgelman.com/corporate-solutions/other-engagements/>.

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

GENERAL

28. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

- 13 -

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

30. **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.

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


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

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

34. **THIS COURT ORDERS** that this Order and all of its provisions are effective as today's date and is enforceable without the need for entry or filing.

- 14 -

Date of issuance October 10, 2024
(to be completed by registrar)



SCHEDULE "A"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that Albert Gelman Inc., the receiver and manager (the "**Receiver**") of all the assets, undertakings and properties of each of Creative Homescapes Inc., 1974592 Ontario Inc. and 1646395 Ontario Inc. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors and all proceeds thereof (collectively, the "**Property**"), appointed by Order of the Ontario Superior Court of Justice (the "**Court**") dated the 10th day of October, 2024 (the "**Order**") made in an application having Court file number CV-24-00034048-0000, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$150,000 which the Receiver is authorized to borrow under and pursuant to the Order.

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

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

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

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

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

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

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

DATED the ____ day of _____, 20__.

Albert Gelman Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

THE TORONTO-DOMINION BANK

- and -

CREATIVE HOMESCAPES INC., 1974592 ONTARIO INC.
and 1646395 ONTARIO INC.

Applicant

Respondents

Court File No. CV-24-00034048-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Windsor

**ORDER
(Appointing Receiver)**

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Lawyers for The Toronto-Dominion Bank

APPENDIX "B"

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

**CREATIVE HOMESCAPES INC., 1974592 ONTARIO INC. and 1646395 ONTARIO
INC.**

Respondents

**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**

**AFFIDAVIT OF AMANDA BEZNER
(sworn October 8, 2024)**

**I, AMANDA BEZNER, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY AS FOLLOWS:**

1. I am an account manager in the Financial Restructuring Group of The Toronto-Dominion Bank (“**TD Bank**”), and as such have knowledge of the matters to which I hereinafter depose. To the extent that I do not have direct, first-hand knowledge of particular facts or events, I have obtained that information from others and/or from my review of the documentation attached as

exhibits, and have indicated the source of that information in my Affidavit. I verily believe the facts hereinafter deposed to are true and correct.

2. I swear this affidavit in support of TD Bank's application to appoint Albert Gelman Inc. ("**Albert Gelman**") as receiver (in such capacity, the "**Receiver**"), without security, of all the assets, properties and undertakings of each of Creative Homescapes Inc. ("**Creative**"), 1974592 Ontario Inc. ("**197**") and 1646395 Ontario Inc. ("**164**" and collectively with Creative and 197, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors and all proceeds thereof (collectively, the "**Property**").

Description of the Debtors:

3. Creative is incorporated under the *Business Corporations Act* (Ontario) with its head office at 1877 Walker Road, Windsor, Ontario, N8W 3P3. The corporate profile report of Creative indicates that Shawn Kelly is the sole director and officer of Creative.

4. 197 is incorporated under the *Business Corporations Act* (Ontario) with its head office at 2619 County Road 42, Windsor, Ontario, N9A 6J3. The corporate profile report of 197 indicates that Shawn Kelly is the sole director and officer of 197.

5. 164 is incorporated under the *Business Corporations Act* (Ontario) with its head office at 486 Orchard Drive, Tecumseh, Ontario, N8N 4X9. The corporate profile report of 164 indicates that Shawn Kelly is also the sole director and officer of 164.

6. A copy of the corporate profile reports for each of Creative, 197 and 164 are attached collectively as **Exhibit "A"** to this Affidavit.

7. I understand from Albert Gelman, whom TD Bank has engaged as its consultant to review and assess the financial circumstances of the Debtors, that Creative is a landscaping and hardscaping company that caters to both residential and commercial customers. Creative offers a range of outdoor living solutions to its residential customers, including deck building, swimming pools, fences and outdoor kitchens. It also sells backyard living products such as hot tubs and patio furniture through its retail operations. With respect to its commercial clients, Creative provides, among other things, snow removal, fencing and other property maintenance services.

8. As of the date of this Affidavit, I understand from Albert Gelman that Creative has largely ceased operations and is winding down its operations.

TD Bank's Loans to the Debtors and Related Security:

9. The Debtors are indebted to TD Bank in connection with certain credit facilities made available by TD Bank to Creative and 197 (the "**Credit Facilities**") pursuant to and under the terms of a letter of agreement dated July 14, 2023 (as amended, replaced, restated or supplemented from time to time, the "**Credit Agreement**").

10. A copy of the Credit Agreement is attached as **Exhibit "B"** to this Affidavit.

11. As security for the obligations of Creative and 197 to TD Bank, including without limitation, obligations under the Credit Agreement, the Debtors provided security in favour of TD Bank (collectively, the "**Security**"), including, without limitation:

- (a) a general security agreement dated March 3, 2023 granted by Creative (the "**Creative GSA**"), which grants to TD Bank, among other things, a security interest in any and all of the property, assets and undertakings of Creative, registration in

respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the “**PPSA**”);

- (b) a general security agreement dated March 3, 2023 granted by 197 (the “**197 GSA**”), which grants to TD Bank, among other things, a security interest in any and all of the property, assets and undertakings of 197, registration in respect of which was duly made pursuant to the PPSA; and
- (c) a general security agreement dated March 3, 2023 granted by 164 (the “**164 GSA**”), which grants to TD Bank, among other things, a security interest in any and all of the property, assets and undertakings of 164, registration in respect of which was duly made pursuant to the PPSA.

12. Copies of the Creative GSA, the 197 GSA and the 164 GSA are attached collectively as **Exhibit “C”** to this Affidavit.

13. Additionally, the obligations of Creative and 197 to TD Bank, including, without limitation, obligations under the Credit Agreement, were cross-guaranteed by each other and were further guaranteed by 164 and personally guaranteed by Shawn Kelly (collectively, the “**Guarantees**”), as follows:

- (a) in the case of the cross-guarantees:
 - (i) 197 guaranteed the obligations of Creative pursuant to an unlimited written guarantee dated March 3, 2023; and

- (ii) Creative guaranteed the obligations of 197 pursuant to an unlimited written guarantee dated March 3, 2023;
- (b) in the case of the guarantees given by 164:
 - (i) 164 guaranteed the obligations of Creative and 197 pursuant to an unlimited written guarantee dated March 3, 2023;
 - (ii) 164 guaranteed the obligations of Creative pursuant to an unlimited written guarantee dated March 2023; and
 - (iii) 164 guaranteed the obligations 197 pursuant to an unlimited written guarantee dated March 3, 2023;
- (c) in the case of the personal guarantee given by Shawn Kelly:
 - (i) Shawn Kelly personally guaranteed the obligations of Creative pursuant to a written guarantee dated July 17, 2023, which is limited to the sum of \$200,000.

14. Copies of the Guarantees are attached collectively as **Exhibit “D”** to this Affidavit.

Other Registered Secured Creditors

15. A copy of the PPSA certified search results for each of the Debtors with currency to September 22, 2024 is attached collectively as **Exhibit “E”** to this Affidavit.

16. The PPSA certified search results for 197 and 164 show that TD Bank is the only registered general secured creditor other than Vault Capital Corporation (“**Vault**”), which was registered after TD Bank.

17. With respect to Creative, the PPSA certified search results show, in addition to TD Bank’s registrations, over 60 registrations by multiple secured registrants. Indeed, the certified search results show that 164, CertainTeed Canada, Inc. (“**CertainTeed**”) and Wells Fargo Capital Finance Corporation Canada (“**Wells Fargo**”) are all general secured creditors of Creative with registrations that were registered before TD Bank. I also understand that Vault is a general secured creditor of Creative but was registered after TD Bank.

18. In any event, TD Bank and CertainTeed entered into a priority agreement dated March 21, 2023 (the “**CertainTeed Priority Agreement**”), pursuant to which CertainTeed subordinated all its security interests in Creative to TD Bank’s security interests in Creative. I understand from Albert Gelman that CertainTeed is Creative’s vinyl fencing supplier.

19. Additionally, TD Bank, Wells Fargo and Creative entered into a priority agreement dated March 22, 2023 (the “**Wells Fargo Priority Agreement**” and together with the CertainTeed Priority Agreement, the “**Priority Agreements**”), pursuant to which Wells Fargo subordinated all its security interests in Creative, save for the Wells Fargo Inventory (as defined therein), to TD Bank’s security interests in Creative. I understand from Albert Gelman that Wells Fargo is the lessor of certain landscaping equipment used with respect to Creative’s business operations.

20. A copy of the Priority Agreements are attached collectively as **Exhibit “F”** to this Affidavit.

21. I understand that all registrants under the PPSA will be served with a copy of the within application.

Default and Demand for Payment

22. The Credit Agreement contains standard Events of Default, including if there is a breach or non-performance or non-observance of any term or condition of the Credit Agreement or the Security.

23. Certain of the Credit Facilities are repayable on demand, and one or more Events of Default (as defined in the Credit Agreement and/or the Security, as applicable) have occurred, including, without limitation, excess borrowings and shortfalls under the borrowing base with respect to the amounts owing under the Credit Agreement.

24. As a result of the Borrowers' non-compliance with the terms of the Credit Agreement, TD Bank made formal written demand on each of the Debtors and Shawn Kelly for payment of its indebtedness to TD Bank by letter dated September 12, 2024 (the "**Demands**"), which was accompanied by a notice of intention to enforce security (the "**BIA Notice**") delivered to the Debtors pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**"). Copies of the Demands and the BIA Notice are attached as **Exhibit "G"** to this Affidavit.

25. As set out in the Demands and the BIA Notice, a total of \$2,056,906.05 (exclusive of legal fees, disbursements and accruing interest) was owing by the Debtors to TD Bank under the Credit Agreement, as of September 10, 2024 (the "**Indebtedness**"). The Indebtedness continues to accrue.

26. In addition to the Demands and the BIA Notice, an acknowledgement and consent was appended to each Demand sent to each of the Debtors (the “**Waiver**”). The Waiver acknowledged receipt of the BIA Notice and consented to waive the ten-day notice period set forth therein to the immediate enforcement of the Security. Each of the Debtors executed their respective consent on September 13, 2024. Copies of the Waiver from each of the Debtors are attached collectively as **Exhibit “H”** to this Affidavit.

Appointment of a Receiver:

27. I understand from Albert Gelman that the Debtors believe an orderly wind-down of their operations would be in the best interests of its stakeholders. The Debtors have also consented to the appointment of Albert Gelman as the Receiver and agree that a receivership is the best means by which to wind-down the business. A copy of the executed consents to receivership of the Debtors are attached collectively as **Exhibit “I”** to this Affidavit.

28. At this stage, and given the foregoing, TD Bank considers it reasonable and prudent to begin the enforcement of its Security in an effort to recover the Indebtedness owed by the Debtors. The provisions of the Security allow for the appointment of a receiver over the Property of the Debtors upon an event of default, which has occurred, and the Debtors have consented to the appointment of the Receiver.

29. Further, the BIA Notice has been expressly waived by each of the Debtors. The Debtors agree that the appointment of the Receiver is necessary for an efficient wind-down of the business and the protection of the estates of each of the Debtors. A receivership would also protect the interests of TD Bank as a secured creditor and the interests of any other stakeholders.

30. Albert Gelman has consented to being appointed as the Receiver, without security, over the Property. Albert Gelman is qualified to act as the Receiver and is familiar with the Debtors' business by virtue of their consulting work with the Debtors to date. A copy of Albert Gelman's consent is attached as **Exhibit "J"** to this Affidavit.

31. This Affidavit is made in support of the within application, and for no other or improper purpose whatsoever.

SWORN remotely by Amanda Bezner, stated as being in the City of Toronto, in the Province of Ontario, before me on October 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

C. Delfino

Commissioner for taking affidavits, etc.)
Cristian Delfino (LSO No. 87202N)

Amanda Bezner

AMANDA BEZNER

Court File No. CV-24-00034048-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MME.) TUESDAY, THE 12th DAY
JUSTICE KALAJDZIC) OF NOVEMBER, 2024

THE TORONTO-DOMINION BANK

Applicant

- and -

CREATIVE HOMESCAPES INC., 1974592 ONTARIO INC. and 1646395 ONTARIO INC.

Respondents

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
(Amending the Appointment Order)**

THIS MOTION, made by the Receiver, Albert Gelman, (the “Receiver”) for an Order amending the Receivership Order dated October 10th, 2024, was heard on this day at 245 Windsor Avenue, Windsor, ON N9A 1J.

ON READING the Motion Record of the Receiver, including the Receiver’s First Report and the attached appendices thereto, and on hearing the submissions of counsel for the Receiver

and such other counsel as were present, no one appearing for any other stakeholder although duly served as appears from the affidavit of service of Monika Gugu sworn November 6, 2024,

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that paragraph 3(k)(i) of the Order of the Honourable Justice Kalajdzic dated October 10, 2024, is hereby amended as follows:

(k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:

- (i) without the approval of this Court in respect of any transaction not exceeding \$500,000.00, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000.00;
-

THE TORONTO-DOMINION BANK

- and - **CREATIVE HOMESCAPES INC., 1974592 ONTARIO INC.
and 1646395 ONTARIO INC.**

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at WINDSOR

**ORDER
(Amending the Receivership Order)**

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Lawyers for the Receiver,
Albert Gelman Inc.

File Number: 7923-004

Court File No. CV-24-00034048-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

- and -

**CREATIVE HOMESCAPES INC., 1974592 ONTARIO INC. AND 1646395 ONTARIO
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Respondents

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COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

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(current as of November 5, 2024)

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AND TO:	CWB NATIONAL LEASING INC. 1525 Buffalo Place Winnipeg, MB R3T 1L9 Email: debtenforcement@cwbnationalleasing.com <i>Secured Party</i>
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AND TO:	<p>HIS MAJESTY THE KING IN RIGHT OF CANADA as represented by Ministry of Finance Legal Services Branch Revenue Collections Branch – Insolvency Unit 33 King Street West, 6th Floor Oshawa, ON L1H 8H5</p> <p>Email: insolvency.unit@ontario.ca</p>
AND TO:	<p>CANADA REVENUE AGENCY TAX ONTARIO 4695 Shawinigan-Sud Boulevard Shawinigan, Quebec G9P 5H9</p>

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at WINDSOR

**MOTION RECORD
(RETURNABLE NOVEMBER 12, 2024)**

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