

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN

RIOCAN REAL ESTATE INVESTMENT TRUST, RIOCAN HOLDINGS INC., RIOCAN HOLDINGS (OAKVILLE PLACE) INC., RIOCAN PROPERTY SERVICES TRUST, RC HOLDINGS II LP, RC NA GP 2 TRUST and RIOCAN FINANCIAL SERVICES LIMITED

Applicants

- and -

RIOCAN-HBC LIMITED PARTNERSHIP, RIOCAN-HBC GENERAL PARTNER INC., HBC YSS 1 LIMITED PARTNERSHIP, HBC YSS 1 LP INC., HBC YSS 2 LIMITED PARTNERSHIP, HBC YSS 2 LP INC., RIOCAN-HBC OTTAWA LIMITED PARTNERSHIP, RIOCAN-HBC (OTTAWA) HOLDINGS INC., and RIOCAN-HBC (OTTAWA) GP, INC.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 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

**FACTUM OF APPLICANTS
(Order Appointing Receiver)**

June 1, 2025

Goodmans LLP

Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Robert J. Chadwick LSO#: 35165K
rchadwick@goodmans.ca

Joseph Pasquariello LSO#: 38390C
jpasquariello@goodmans.ca

Andrew Harmes LSO#: 73221A
aharmes@goodmans.ca

Erik Axell LSO#: 85345O
eaxell@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for RioCan Real Estate Investment
Trust

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW	1
III.	FACTS	6
A.	JV Entities and the CCAA Proceedings.....	6
B.	JV Properties.....	8
(i)	Owned Real Properties	8
(ii)	Co-Owned Properties	8
(iii)	Leasehold Properties	9
C.	Secured Indebtedness.....	9
D.	Security Held by RioCan.....	10
IV.	ISSUES.....	11
V.	LAW AND ARGUMENT.....	11
A.	The Appointment of the Receiver is “Just” and “Convenient”	11
(i)	RioCan is the appropriate party to bring this application to appoint a receiver and transition the JV Entities into receivership proceedings.....	11
(ii)	Section 243 of the BIA and section 101 of the CJA provide sufficient statutory authority for the Court to appoint the Receiver over the Property.....	13
(iii)	The Appointment of the Receiver is Both “Just” and “Convenient”	15
B.	A Stay of Proceedings is Necessary and Appropriate.....	22
C.	Receivership Funding Should be Approved.....	24
VI.	CONCLUSION AND RELIEF REQUESTED.....	25

SCHEDULES

Schedule A - List of Authorities

Schedule B - Statutory References

Schedule C - Summary of the JV Entities’ Real Property Interests

I. INTRODUCTION

1. RioCan brings this application for an Order (the “**Appointment Order**”) under subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario) (“**CJA**”) appointing FTI Consulting Canada Inc. (“**FTI**”) as receiver and manager (in such capacity, the “**Receiver**”) of all of the assets, undertakings and properties of the JV Entities acquired for or used in relation to a business carried on by the JV Entities.¹

2. RioCan believes that transitioning the JV Entities into receivership proceedings pursuant to the proposed Appointment Order is appropriate at this time given the results of the SISP and Lease Monetization Process and the current circumstances of HBC and will provide a stabilized environment for the Receiver to take steps to preserve and maximize the value of the JV Entities and their assets. RioCan believes that the proposed receivership provides a global solution for the JV Entities that will reduce costs, enable the Receiver to seek to maximize the value of the assets of the JV Entities, avoid competing efforts and preserve the priority interests of priority secured lenders. RioCan believes that the proposed Appointment Order provides for a fair balancing of the interests of the various stakeholders.

II. OVERVIEW

3. RioCan is a partner with HBC in the real estate joint venture carried on by the RioCan-HBC JV. The REIT holds an approximately 22% limited partnership interest in the RioCan-HBC JV,

¹ Unless otherwise stated, (i) capitalized terms used but not defined herein have the meanings given to them in the Affidavit of Dennis Blasutti sworn May 29, 2025 (the “**Blasutti Affidavit**”), and (ii) all monetary amounts are expressed in Canadian dollars.

and HBC holds the remaining approximately 78% limited partnership interest indirectly through its wholly-owned subsidiary, HBC Holdings LP.²

4. The RioCan-HBC JV and its subsidiaries, YSS 1, YSS 2 and the Ottawa LP, own or co-own interests in 12 separate freehold and head leasehold properties (collectively, the “**JV Properties**” and each individually, a “**JV Property**”). HBC is party to lease or sublease agreements with the applicable JV Entity and/or its nominee or bare trustee in respect of store locations at each of the JV Properties (collectively, the “**JV Leases**”).³

5. In addition to being a partner with HBC of the RioCan-HBC JV, RioCan has advanced certain secured financing to the RioCan-HBC JV pursuant to the Georgian Mall Second Mortgage Credit Agreement and the Ottawa Second Mortgage Credit Agreement. RioCan also holds security in respect of the REIT’s guarantee of the Yorkdale RBC Financing, and is a co-owner with the RioCan-HBC JV of the Georgian Mall and Oakville Place shopping centres.⁴

6. The JV Entities have seven other secured financing arrangements involving various secured lenders (all secured lenders, collectively, the “**Secured Lenders**”) in addition to the Georgian Mall Second Mortgage Credit Agreement and the Ottawa Second Mortgage Credit Agreement.⁵ The various security interests of RioCan and the other Secured Lenders against the JV Entities and their assets are reflected on a property-by-property basis in the summary chart attached as Schedule C.

7. On March 7, 2025, HBC sought and obtained the Initial Order granting HBC protection under the CCAA. The JV Entities, other than YSS 1 LP and YSS 2 LP, are not applicants in the HBC CCAA

² Blasutti Affidavit at para. 5 [A62:A62].

³ Blasutti Affidavit at para. 7 [A63:A63].

⁴ Blasutti Affidavit at para. 8 [A63:A63].

⁵ Blasutti Affidavit at para. 9 [A63:A63 – A64:A64].

Proceedings, but certain protections of the Initial Order were extended to the non-applicant JV Entities as “Non-Applicant Stay Parties”.⁶

8. In the HBC CCAA Proceedings, the Court granted the SISP and Lease Monetization Process, which included marketing efforts in respect of the JV Entities (including, for example, HBC’s 78% interest in the RioCan-HBC JV) and the JV Leases, respectively, subject to various reservations of rights in favour of RioCan and the Secured Lenders.⁷

9. The SISP did not result in any bid for HBC’s 78% interest in the RioCan-HBC JV nor a transaction that provided for the assumption or assignment of the JV Leases on their current terms. The Lease Monetization Process did not generate any transactions in respect of the JV Leases on their current terms.⁸

10. Given these results, and considering the current status and circumstances of HBC, the HBC CCAA Proceedings and the significant secured debt claims against the JV Entities, it is evident that RioCan and the other Secured Lenders have the fulcrum economic interest in the JV Entities. HBC’s interest in the JV Entities is subject to the secured claims of RioCan and the other Secured Lenders, and any unsecured claims against the JV Entities.⁹

11. Accordingly, RioCan and its counsel engaged with HBC and the Monitor, as well as their respective counsel, to discuss and develop a global solution for the RioCan-HBC JV in order to preserve and maximize value of the JV Entities and their assets for the benefit of stakeholders. RioCan

⁶ Blasutti Affidavit at para. 6 [[A62;A62](#) - [A63;A63](#)].

⁷ Blasutti Affidavit at paras. 10 to 13 [[A64;A64](#) – [A65;A65](#)].

⁸ Blasutti Affidavit at para. 15 [[A65;A65](#)].

⁹ Blasutti Affidavit at para. 16 [[A65;A65](#) – [A66;A66](#)].

and its counsel also engaged in discussions with the other Secured Lenders and their respective counsel in an effort to develop a broadly supported transition plan.¹⁰

12. Following extensive efforts led by RioCan, in consultation with HBC and the Monitor and the parties' respective counsel, RioCan believes that the best path forward is to transition the JV Entities into a global receivership process pursuant to the proposed Appointment Order.

13. RioCan believes that the appointment of FTI as the Receiver at this time pursuant to the proposed Appointment Order is appropriate as it will enable the Receiver, in consultation with RioCan, the applicable Secured Lenders, the JV Landlords and HBC, as appropriate, to immediately take steps and actions with respect to the JV Entities to preserve and maximize value. This may involve, without limitation, advancing various secured creditor credit bid transactions, conducting additional sale efforts in respect of certain of the JV Properties, seeking to identify new tenants and subtenants for the JV Properties on amended or new lease terms, and/or advancing potential redevelopment opportunities. RioCan is already aware of certain third-parties who are interested in entering into new or amended sublease agreements in respect of the Leasehold Properties and additional third-parties who have an interest in other JV Properties.¹¹

14. A single global receivership proceeding in respect of the JV Entities is most efficient and effective in the circumstances and provides the best opportunity to preserve and maximize value of the JV Entities and their assets for the benefit of stakeholders. The JV Properties have been managed by HBC to date on a global basis, including from a record-keeping and accounting standpoint.¹²

¹⁰ Blasutti Affidavit at paras. 17 to 18 [[A66;A66](#)].

¹¹ Blasutti Affidavit at paras. 19, 21 and 22 [[A66;A66](#) – [A67;A67](#)].

¹² Blasutti Affidavit at para. 54 [[A78;A78](#)].

Preserving this structure within a global receivership proceeding is most effective and efficient in the circumstances.

15. RioCan therefore brings this application for a global receivership on the terms of the proposed Appointment Order. RioCan, as limited partner of, secured lender to, and guarantor of certain obligations of the RioCan-HBC JV, brings this application recognizing that this is not a situation in which there is a single secured creditor with a general security interest over all of the property and assets of the applicable debtor entities.¹³ RioCan has worked to consult with the other Secured Lenders regarding the proposed appointment of the Receiver and the terms of the proposed Appointment Order and has proposed a form of order that provides various protections in favour of the various Secured Lenders to ensure that the costs of these proceedings are appropriately allocated. In addition, the proposed Appointment Order provides a mechanism for Secured Lenders other than RioCan to elect to terminate the receivership proceedings in respect of their priority collateral by serving a Termination Certificate on the Receiver, RioCan, the other Secured Lenders and HBC, and paying or arrangement for payment satisfactory to the Receiver of any Receivership Costs allocated to the relevant JV Property.¹⁴

16. RioCan is continuing to engage with such Secured Lenders regarding the proposed receivership transition and the terms of the proposed Appointment Order. RioCan is prepared to provide funding to the Receiver, on a priority basis pursuant to Receiver's borrowing certificates, in order to fund the cost of these global receivership proceedings, but it is also open to the other Secured Lenders to provide funding.¹⁵

¹³ Blasutti Affidavit at para. 55 [[A78:A78](#) – [A79:A79](#)].

¹⁴ Blasutti Affidavit at paras. 3(e), 17 and 18 [[A61:A61](#), [A66:A66](#)].

¹⁵ Blasutti Affidavit at paras. 20 to 21 [[A67:A67](#)].

17. The appointment of the Receiver is just and convenient in the circumstances. Transitioning the JV Entities to a receivership is necessary and appropriate at this time given HBC's current circumstances and the results of the SISP and the Lease Monetization Process. The Appointment Order will provide for a continued stay of proceedings in respect of the JV Entities and a stabilized environment for the Receiver to seek to preserve and maximize value with respect to the JV Entities and their assets, within a structure that provides for a fair balancing of the interests of the various stakeholders of the JV Entities.

III. FACTS

A. JV Entities and the CCAA Proceedings

18. Following the granting of the Initial Order, on March 21, 2025, the Court issued SISP Order approving the SISP in respect of HBC's business and property, and the Lease Monetization Process Order approving the Lease Monetization Process to market HBC's leases.¹⁶

19. The SISP and the Lease Monetization Process included marketing efforts in respect of the JV Entities (including, for example, HBC's 78% interest in the RioCan-HBC JV) and the JV Leases, respectively, subject to various reservations of rights in favour of RioCan and the Secured Lenders. Despite the JV Entities (other than YSS 1 LP and YSS 2 LP) not being applicants in the HBC CCAA Proceedings, the SISP and Lease Monetization Process also included limited marketing efforts in respect of the JV Properties, which were also subject to various reservations of rights in favour of RioCan and the Secured Lenders.¹⁷

¹⁶ Blasutti Affidavit at para. 10 [[A64:A64](#)].

¹⁷ Blasutti Affidavit at paras. 11 to 13 [[A64:A64](#) – [A65:A65](#)].

20. During the SISP and Lease Monetization Process, RioCan engaged with HBC and the Monitor and expressed its willingness to advance potential transaction and restructuring solutions for the JV Properties depending on the outcome of the SISP and the Lease Monetization Process. The SISP and Lease Monetization Process are now complete without resulting in any transactions involving the JV Entities, their assets, or the JV Leases (on their current terms).¹⁸

21. After no transactions in respect of the JV Leases on their current terms materialized, HBC has taken steps to disclaim certain of the JV Leases and otherwise cease paying monthly rents to the JV Entities. These steps taken by HBC have significant financial implications for certain of the JV Entities as HBC was the principal tenant of the JV Properties, and the monthly rents payable by HBC under the JV Leases represented the main source of funds from which certain of the JV Entities would fund operations, service their secured debt obligations and pay rent obligations owing to the JV Landlords under the head leases relating to the Leased Properties.¹⁹

22. HBC has delivered notices of disclaimer to RioCan in respect of the JV Leases related to the Co-Owned Properties and the Owned Real Properties, which will be effective in mid to late-June.²⁰

23. RioCan and HBC agreed for HBC to defer issuing notices of disclaimers in respect of the JV Leases related to the Leasehold Properties. Under this arrangement, RioCan and HBC agreed, among other things, to cause the applicable JV Entities to waive all obligations of HBC under the applicable JV Leases from and after June 16, 2025, and that the JV Entities would remain liable for obligations under the applicable head leases, with RioCan agreeing to provide sufficient interim secured funding as part of these receivership proceedings to enable the JV Entities to meet such obligations going

¹⁸ Blasutti Affidavit at paras. 15 and 56 [[A65:A65](#) and [A79:A79](#)].

¹⁹ Blasutti Affidavit at para. 46 [[A75:A75](#) – [A76:A76](#)].

²⁰ Blasutti Affidavit at para. 47 [[A76:A76](#)].

forward.²¹ The purpose of deferring disclaimers for these JV Leases is to allow the Receiver, if appointed, to maximize the value of the head leases for the relevant properties.²²

24. Given RioCan's significant financial and economic interest in the RioCan-HBC JV, it has actively engaged with HBC and the Monitor throughout the HBC CCAA Proceedings to discuss and develop a global solution for the RioCan-HBC JV in order to preserve and maximize the value of the JV Entities and their assets for the benefit of their stakeholders.²³

B. JV Properties

25. If appointed, the Receiver will work with RioCan, the other Secured Lenders, the JV Landlords, and HBC, in each case as appropriate, on solutions for the JV Properties, which consist of owned properties, co-owned properties and leased properties as follows:

(i) Owned Real Properties

26. The RioCan-HBC JV owns four wholly-owned freehold properties in Vancouver, Calgary, Montreal and Windsor (the Devonshire Mall), and the Ottawa LP owns one wholly-owned freehold property in Ottawa (collectively, the "**Owned Real Properties**").²⁴

(ii) Co-Owned Properties

27. The RioCan-HBC JV holds an undivided 50% co-ownership interest in the Oakville Place and Georgian Mall shopping centres (the "**Co-Owned Properties**"). The REIT is the other 50% co-owner of these two properties.²⁵

²¹ Blasutti Affidavit at para. 48 [[A76:A76](#)].

²² Fourth report of Alvarez & Marsal Canada Inc. dated May 29, 2025 at para. 84.

²³ Blasutti Affidavit at para. 17 [[A66:A66](#)].

²⁴ Blasutti Affidavit at para. 35 [[A71:A71](#)].

²⁵ Blasutti Affidavit at para. 36 [[A71:A71](#)].

(iii) *Leasehold Properties*

28. The JV Entities hold the beneficial leasehold interest (the “**Leasehold Interests**”) in respect of five head leases in the following locations: (i) Yorkdale Shopping Centre; (ii) Scarborough Town Centre; (iii) Square One; (iv) Carrefour Laval; and (v) Promenade St. Bruno (the “**Leasehold Properties**”). Each of the head leases are long-term ground leases or emphyteutic leases of certain premises and such premises have been further leased to HBC pursuant to the JV Leases.²⁶

C. Secured Indebtedness

29. The Rio-Can HBC JV is indebted to RioCan and the other Secured Lenders pursuant to nine financing arrangements in respect of which there are significant secured claims. The arrangements under which RioCan has advanced financing to the RioCan-HBC JV are described as follows:

- (a) the “**Georgian Mall Second Mortgage Financing**” meaning the \$24.5 million second mortgage financing made available pursuant to the loan agreement between RioCan-HBC JV, as borrower, RC Holdings, as lender, dated February 12, 2024 (as amended, the “**Georgian Mall Second Mortgage Credit Agreement**”); and
- (b) the “**Ottawa Second Mortgage Financing**” meaning the \$16,650,000 second mortgage financing made available pursuant to the loan agreement between the RioCan-HBC JV, as borrower, and RC Holdings, as lender, dated as of October 3, 2024 (the “**Ottawa Second Mortgage Credit Agreement**”).²⁷

30. As at May 27, 2025, the total amount outstanding to RioCan under the Georgian Mall Second Mortgage Credit Agreement and the Ottawa Second Mortgage Credit Agreement was approximately

²⁶ Blasutti Affidavit at para. 37 [[A71:A71](#)].

²⁷ Blasutti Affidavit at paras. 40(i) and 40(f) [[A74:A74](#) and [A73:A73](#)].

\$24.1 million and \$14.1 million, respectively, in each case inclusive of principal, interest and certain other fees, costs and expenses.²⁸

31. The arrangements under which the Secured Lenders have advanced financing to the Rio-Can HBC JV are described as follows: (a) the \$75 million Yorkdale RBC Financing; (b) the \$105 million BMO First Mortgage Financing; (c) the \$202 million Vancouver HSBC First Mortgage Financing; (d) the \$161 million Montreal RBC First Priority Financing; (e) the \$56,525,000 Ottawa First Mortgage Financing; (f) the \$87,400,000 Oakville First Mortgage Financing; and (g) the \$110 million Georgian Mall First Mortgage Financing.²⁹

D. Security Held by RioCan

32. RioCan holds several security interests against the JV Entities and their assets. In particular, as security for the obligations under the Ottawa Second Mortgage Financing, among other things, RioCan-HBC (Ottawa) Holdings Inc., as the registered owner of the Ottawa property, granted a registered charge on the Ottawa property in favour of RioCan Financial Services (as trustee of RC NA Trust, general partner of RC Holdings).

33. Regarding the Georgian Mall Second Mortgage Credit Agreement, among other things, RioCan Holdings Inc., as the registered owner of the subject property, granted a registered charge against the undivided co-ownership interest of the RioCan-HBC JV in the Georgian Mall property in favour of RioCan Financial Services (as trustee of RC NA Trust, general partner of RC Holdings LP).³⁰

²⁸ Blasutti Affidavit at para. 41 [[A74;A74](#)].

²⁹ Blasutti Affidavit at paras. 40(a) to 40(e), 40(g) and 40(h) [[A72;A72](#) – [A74;A74](#)].

³⁰ Blasutti Affidavit at para. 42 [[A74;A74](#)].

34. RioCan is also party to various other financing arrangements with the JV Entities and has been granted certain other security interests in the assets of the JV Entities. Such additional security interests in favour of RioCan include, among other things: (a) a pledge by the RioCan-HBC JV of the YSS 1 units it holds; (b) a pledge by the RioCan-HBC JV of the Ottawa LP units it holds; (c) a first-ranking charge on the RioCan-HBC JV's freehold property at the Devonshire Mall; (d) a second-ranking charge / hypothec on the RioCan-HBC JV's freehold property in downtown Montreal; and (e) a second-ranking charge on the RioCan-HBC JV's 50% undivided co-ownership interest in the Oakville Place property.³¹

IV. ISSUES

35. The issues on this Application are:

- (a) whether the appointment of the Receiver is “just” or “convenient”;
- (b) whether the stay of proceedings should be granted in the circumstances; and
- (c) whether the Receiver's Borrowings Charge (as defined below) should be approved.

V. LAW AND ARGUMENT

A. The Appointment of the Receiver is “Just” and “Convenient”

- (i) *RioCan is the appropriate party to bring this application to appoint a receiver and transition the JV Entities into receivership proceedings*

36. RioCan is the appropriate party to bring this application. Given the significant secured debt claims against the JV Entities and the current status and circumstances of HBC, including the results of the SISP and the Lease Monetization Process and the fact that HBC is completing the wind-down of its business and the sale of its assets (which does not include any sale or assignment in respect of

³¹ Blasutti Affidavit at para. 44 [[A75:A75](#)].

the assets of the JV Entities), there is a need for transition the JV Entities to a forum in which the JV Properties will continue to be protected and steps can be taken specifically with regard to the JV Properties to maximize value. Transitioning to a receivership will provide the appropriate forum.

37. RioCan and the other Secured Lenders have the fulcrum economic interest in the JV Entities and their properties. HBC's interest in the JV Entities is subject to the secured claims of RioCan and the other Secured Lenders, and any unsecured claims against the JV Entities.³² This is not a situation in which there is a single secured creditor with a general security interest over all of the property and assets of the applicable debtor entities. The JV Entities have multiple secured creditors, with differing claims and interests. RioCan believes that it is the appropriate party to bring this application given its position as limited partner of the RioCan-HBC JV, secured creditor of certain of the JV Entities, and guarantor of certain obligations of the RioCan-HBC JV.

38. RioCan has also worked to consult with HBC and the other Secured Lenders regarding the proposed appointment of the Receiver so that these receivership proceedings can proceed on a global basis. The appointment of the Receiver at this time is appropriate as it will enable the Receiver, in consultation with RioCan, the applicable Secured Lenders, the JV Landlords and HBC, as appropriate, to immediately take steps and actions with respect to the JV Entities and their assets. RioCan believes that a single global receivership proceeding in respect of the JV Entities is the most effective and efficient in the circumstances and provides the best opportunity to preserve and maximize value of the JV Entities and their assets.³³

³² Blasutti Affidavit at para. 16 [[A65:A65](#) – [A66:A66](#)].

³³ Blasutti Affidavit at para. 20 [[A67:A67](#)].

39. If it would assist the Receiver, RioCan is also prepared and has the expertise to work with the Receiver on identifying and implementing any other solutions that would maximize the value of the JV Properties for the benefit of stakeholders of the JV Entities.³⁴

(ii) *Section 243 of the BIA and section 101 of the CJA provide sufficient statutory authority for the Court to appoint the Receiver over the Property*

40. RioCan seeks the appointment of FTI as the Receiver of the Property of the JV Entities pursuant to subsection 243(1) of the BIA and section 101 of the CJA.

41. RioCan is a “secured creditor” of the RioCan-HBC JV and the Ottawa LP, as that term is defined under the BIA for purposes of section 243(1) of the BIA. RioCan Financial Services (as trustee of RC NA Trust, general partner of RC Holdings) has a charge against property of the RioCan-HBC JV and the Ottawa LP, being the RioCan-HBC JV’s undivided co-ownership interest in Georgian Mall and the Ottawa LP’s freehold property in Ottawa, and RC Property Services has charges against the RioCan-HBC JV’s freehold properties in Montreal, Windsor (Devonshire Mall), and Oakville Place.

42. Under section 243(1) of the BIA, on an application by a secured creditor, a court may appoint a receiver where it is “just or convenient” to do so. The order may authorize the receiver to:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.³⁵

³⁴ Blasutti Affidavit at para. 57 [[A79;A79](#)].

³⁵ [Bankruptcy and Insolvency Act](#), R.S.C. 1985, C. B-3, as amended [*BIA*], [s. 243\(1\)](#).

43. The definition of an “insolvent person” in Section 2 of the BIA includes a person who is for any reason unable to meet their obligations as they generally become due.³⁶ HBC was the principal tenant of the JV Properties, and the monthly rents payable by HBC under the JV Leases represented the main source of funds from which the JV Entities would fund operations, service their significant secured debt obligations and pay rent obligations owing to the JV Landlords under the head leases relating to the Leased Properties.³⁷ Given that HBC has disclaimed certain of the JV Leases, and given the current circumstances of the HBC CCAA Proceedings, the JV Entities are clearly insolvent as they will be unable in the normal course to meet their head lease obligations to the JV Landlords, their secured debt obligations to the Secured Lenders, and any other obligations owed to stakeholders.³⁸

44. On May 29, 2025, RioCan issued a letter to the RioCan-HBC JV (subject to HBC’s written consent to, or a court order granting, the lifting of the stay of proceedings in the HBC CCAA Proceedings, as necessary) declaring all obligations owing by the RioCan-HBC JV to RioCan pursuant to the Georgian Mall Second Mortgage Credit Agreement and the Ottawa Second Mortgage Credit Agreement to be due and payable and demanding payment in full of such obligations (the “**Demand Letter**”).³⁹

45. As a threshold issue, where an appointment is to be made under section 243 of the BIA, the court must be satisfied that either: (i) the insolvent person received ten days’ notice under section 244 of the BIA of the moving party’s intention to enforce its security, (ii) the insolvent person consented

³⁶ BIA s. 2.

³⁷ Blasutti Affidavit at para. 46 [A75:A75 – A76:A76].

³⁸ Blasutti Affidavit at para. 49 [A76:A76].

³⁹ Blasutti Affidavit at para. 51 [A77:A77].

to the appointment of a receiver prior to the expiry of the ten-day period, or (iii) it is otherwise appropriate to order the appointment prior to the expiry of the ten-day notice period.⁴⁰

46. The Demand Letter enclosed notices of intention to enforce security pursuant to subsection 244(1) of the BIA. RioCan expects to receive HBC's written consent to the lifting of the stay of proceedings for the purposes of permitting RioCan to issue the 244 Notices and proceed with its application seeking the proposed Appointment Order, among other things, prior to the application for the Appointment Order.⁴¹

47. RioCan is also relying on the CJA for the appointment of the Receiver given its status as limited partner of the RioCan-HBC JV. Each of the JV Entities are Ontario entities and the properties of the JV Entities that are outside of Ontario are all held by the RioCan-HBC JV.

48. The test for appointing a receiver under section 101(1) of the CJA is similar to the test under section 243 of the BIA. Under s. 101(1) of the CJA, this Court has the power to appoint a receiver "where it appears to a judge of the court to be just or convenient to do so." Section 101(2) provides that an order under subsection (1) may include "such terms as are considered just."⁴²

(iii) The Appointment of the Receiver is Both "Just" and "Convenient"

49. In determining whether it is "just" or "convenient" to appoint a receiver, the Court "must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto."⁴³ In addition, courts will take into account, among other factors: (a) the balance of convenience to the parties; (b) that the creditor has a right to appointment under the

⁴⁰ BIA, s. [s. 243\(1\)](#).

⁴¹ Blasutti Affidavit at paras. 51 to 52 [[A77:A77](#)].

⁴² *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended [CJA] ss. [101\(1\)](#) and [101\(2\)](#).

⁴³ See, i.e.; *Keb Hana Bank as Trustee v. Misrahi Commercial (The One) LP et al.*, (October 18, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00707839-00CL (Endorsement of Justice Osborne) at para. 36 [*The One*].

loan documentation; (c) the effect of the order upon the parties; (d) the likelihood of maximizing return to the parties; (e) the cost to the parties; and (f) the principle that the appointment of a receiver should be granted cautiously.⁴⁴ The factors that are considered by the Court are not a checklist which must be satisfied in all circumstances, but rather a collection of considerations which must be reviewed holistically.⁴⁵

50. Secured creditors, such as RioCan, are not required to demonstrate that they will suffer irreparable harm if the receivership application is not granted, that other potential remedies, including other private remedies the applicant may have access to, are defective or insufficient or that the situation is urgent.⁴⁶ Rather, the Court is required to consider and balance the competing interests of various economic stakeholders. The specific factors which a court will consider are therefore very “circumstance-oriented.”⁴⁷

51. The appointment of the Receiver is both just and convenient in the present circumstances for the reasons discussed below.

(a) RioCan and the other Secured Lenders have the fulcrum economic interest

52. There is no longer any consideration or prospect of HBC restructuring the JV Entities or advancing sale efforts in respect of the JV Properties in the HBC CCAA Proceedings. The SISP and the Lease Monetization Process included marketing efforts in respect of the JV Entities and their assets, and the JV Leases (subject to various reservations of rights in favour of RioCan and the

⁴⁴ See, i.e.; [The One](#) at para. 38 citing [Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited](#), 2022 ONSC 6186 at para. 25, and [Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.](#), 2009 BCSC 1527 at para. 25.

⁴⁵ [The One](#) at para. 39.

⁴⁶ See, i.e.; [Foremost Financial Corporation et al v. Alai Developments Inc. et al](#) (July 24, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00702528-00CL (Endorsement of Justice Kimmel) at paras. 28, 30-31; [Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited, 2618905 Ontario Limited, 2618909 Ontario Limited, Beverley Rockliffe and Chantal Bock](#), 2022 ONSC 6186 at para. 26; [Canadian Western Bank v. 2563773 Ontario Inc.](#), 2023 ONSC 4766 at para. 11.

⁴⁷ [Romspen Investment Corporation v. 6711162 Canada Inc.](#), 2014 ONSC 2781 at para. 61.

Secured Lenders).⁴⁸ These broad processes did not result in any transactions in respect of the JV Entities or their assets.⁴⁹

53. Given the foregoing, and considering the current status and circumstances of HBC, the HBC CCAA Proceedings, and the significant secured debt claims against the JV Entities, RioCan and the Secured Lenders have the fulcrum economic interest in the JV Entities. Transitioning the JV Entities to a receivership process is appropriate and necessary at this time, to enable the Receiver, as a court-appointed officer, to take steps specific to the JV Entities and their properties in order to preserve and maximize value for their stakeholders.

(b) The need for a global solution

54. When making its determination regarding an application to appoint a receiver, the Court “must have regard to all of the circumstances”. In this case, the RioCan-HBC JV is a complex corporate structure with wide ranging property interests that is stewardless as a result of the current circumstances of HBC, its wind-down pursuant to the HBC CCAA Proceedings, and the results of the SISP and Lease Monetization Process.

55. HBC previously managed the JV Properties on a global basis, including from a record-keeping and accounting standpoint.⁵⁰ A global solution is required to protect, preserve, and ultimately maximize the value of the JV Entities and their property for the benefit of their stakeholders. The proposed Receiver is the most appropriate person in these circumstances to effectively and efficiently achieve this in a balanced manner. The assistance of an experienced court officer will provide the JV Entities with stability for the benefit of all stakeholders of the JV Entities and enable the Receiver to

⁴⁸ Blasutti Affidavit at para. 11 [A64:A64].

⁴⁹ Blasutti Affidavit at para. 56 [A79:A79].

⁵⁰ Blasutti Affidavit at para. 54 [A78:A78].

work with RioCan, the Secured Lenders, and the JV Landlords on solutions for the various JV Properties.⁵¹

(c) There is no material prejudice to any party

56. RioCan has consulted with the other Secured Lenders regarding the proposed appointment of the Receiver and the terms of the proposed Appointment Order, and will continue to engage with such Secured Lenders regarding the proposed receivership proceedings. Recognizing the varying interests of the Secured Lenders and in an effort to balance the interests, RioCan has included in the Appointment Order (i) the requirement for the Receiver to allocate the Receivership Costs against each of the JV Properties in such amounts as the Receiver determines to be fair and reasonable, subject to the consent of RioCan and the Secured Lenders or further order of the Court, and (ii) a mechanism that enables each Secured Lender other than RioCan to elect to terminate the receivership proceedings in respect of their priority collateral (if they wish to do so).⁵²

57. There is also no material economic prejudice to the JV Landlords as the JV Entities will continue to remain liable for obligations under the applicable head leases, with RioCan agreeing to provide sufficient interim secured funding as part of these receivership proceedings to enable the JV Entities to meet such obligations going forward.⁵³

58. Given that there is no material prejudice to either the Secured Lenders or the JV Landlords, the balance of convenience favours granting the appointment of the Receiver on the terms of the proposed Appointment Order.

⁵¹ Blasutti Affidavit at para. 53 [[A78;A78](#)].

⁵² Blasutti Affidavit at paras. 20 and 62 [[A67;A67](#) and [A80;A80](#)].

⁵³ Blasutti Affidavit at para. 48 [[A76;A76](#)].

(d) A receivership is the proper forum to maximize value

59. Given (i) the HBC CCAA Proceedings did not yield any transactions or restructuring solutions involving the JV Entities and/or their properties and assets, (ii) RioCan and the other Secured Lenders have the fulcrum economic interest in the JV Entities, and (iii) the current circumstances and status of HBC and the HBC CCAA Proceedings, now is the appropriate time to transition to take steps specifically with regard to the JV Properties in an effort to maximize value for the benefit of stakeholders of the JV Entities. A global receivership is the appropriate forum for this process. The JV Properties include certain key real estate within Canada's major markets, and courts have recognized on numerous occasions that a court-appointed receivership is an appropriate process to address real property interests.⁵⁴

60. If appointed, the Receiver will provide the stability, structure and supervision required to preserve the value of the JV Properties and maximize recoveries for the benefit of the JV Entities' creditors in general. Courts have frequently noted the beneficial stability provided by a court-appointed receiver⁵⁵ and have found that the stability, transparency, and orderly process of a receivership provides the necessary environment for the maximization of proceeds and outcomes generally for all stakeholders.⁵⁶

61. The proposed Receiver has extensive experience in Canadian insolvency proceedings and, if appointed, will take the appropriate steps in consultation with RioCan, the applicable Secured Lenders

⁵⁴ See, e.g., [*AFC Mortgage Administrative Inc. v. Sunrise Acquisitions \(Stayner\) Inc. et al.*](#) (February 29, 2024), Ont S.C.J. [Commercial List], Court File No. CV-23-00710361-00CL, CV-24-00713287-00CL, CV-24-00715345-00CL (Endorsement of Justice Black) at paras. 64-65.

⁵⁵ See, i.e., [*NFC Acquisition GP Inc. \(Re\)*](#), 2012 ONSC 1244 at para. 16; [*RMB Australia Holdings Ltd. v. Seafield Resources Ltd.*](#), 2014 ONSC 5205 at para. 30; [*Callidus Capital Corp. v. Xchange Technology Group LLC*](#), 2013 ONSC 6783 at para. 17(c).

⁵⁶ [*The One*](#) at para. 46.

and HBC, as appropriate, to preserve and maximize value of the JV Entities and their assets for the benefit of stakeholders.⁵⁷

(e) No party has security over all of the JV Properties

62. Adding to the complexity of the current circumstances is the fact that there is not a single secured creditor with a general security interest over all of the property and assets of the JV Entities. The JV Entities are subject to nine secured financing arrangements with various JV Properties separately pledged as security for such financings. In terms of RioCan's security, it has second ranking charges on the Ottawa property and the Georgian Mall property in respect of certain financing arrangements, and also has a first ranking charge on the Devonshire Mall, and second ranking charges on the Montreal property and Oakville Place in respect of the REIT's guarantee of the Yorkdale RBC Financing.⁵⁸

63. In situations where there are several security holders with security covering the same debtor's assets, courts will prefer a process that avoids multiple proceedings and in certain cases have approved a receivership over all of the debtor's assets on an application brought by a subordinate security holder when there was no prejudice to the higher-ranking security holders.⁵⁹

64. In *Caisse v. River*, a creditor having general security brought an application for the appointment of a receiver over the assets of numerous debtor entities. Certain mortgagees argued that the real property over which they had security by way of first and second ranking security should be carved out of the receivership order. Justice J.R. McCarthy rejected the mortgagees' argument and

⁵⁷ Blasutti Affidavit at paras. 56 and 58 [[A79:A79](#)].

⁵⁸ Blasutti Affidavit at paras. 42 to 44 [[A74:A74](#)].

⁵⁹ [Caisse v. River](#), 2013 ONSC 6809 [*Caisse River*].

found that it was just and convenient that a receiver should be appointed over both the receivables and the real property of the debtors.⁶⁰

65. In making this determination, the Court noted that a single receiver-manager would avoid the multiplicity of proceedings that would be inevitable due to the multitude of outstanding mortgages, and that the receiver-manager, with no personal interest in the business or property, would act for the benefit of the collective.⁶¹

66. The appointment of the Receiver in this case pursuant to the proposed Appointment Order would not prejudice priority security holders as the proposed Appointment Order provides that any Secured Lender other than RioCan may terminate the receivership proceedings in respect of their priority collateral. This is an effort to balance the interests of all stakeholders, recognizing the varying interests of the various Secured Lenders.

(f) The costs of the receivership would be borne fairly by the economic stakeholders

67. Recognizing the varying interests of RioCan and the Secured Lenders across the JV Properties, the proposed Appointment Order provides that the Receivership Costs will be allocated against each of the JV Properties in such amounts as the Receiver determines to be fair and reasonable, subject to the consent of RioCan and the Secured Lenders, or order of the Court. As the proposed Receiver will act for the benefit of interested parties to ensure they are treated fairly and to ensure a fair process to deal with the assets, this allocation method represents the most balanced and efficient method to ensure that the proposed Receiver can carry out its powers and duties effectively. The proposed Appointment Order also requires the Receiver to report to RioCan and the Secured Lenders

⁶⁰ [Caisse River](#) at para. 20.

⁶¹ [Caisse River](#) at para. 22.

at such times and intervals as the Receiver may deem appropriate with respect to Receivership Costs and the proposed allocation.⁶²

68. It is proposed that the Receiver's Borrowings Charge be granted to secured the Receiver's Borrowings, and that the Receiver's Charge be granted to secure the Receivership Costs (other than the Receiver's Borrowings, which are to be secured by the Receiver's Borrowings Charge), in each case with the priorities set out in the Appointment Order. Such court-ordered priority charges are typical in receiverships, as reflected in the model receivership order, and are expressly contemplated under s. 243(6) of the BIA.⁶³ These charges would only apply against any JV Property in the amount allocated to such JV Property, save and except the amount of the charges as against each of the BMO Secured Properties, which in each case shall be the total amount allocated to the BMO Secured Properties, and would rank subordinate to the Secured Lenders of the Co-Owned Properties.⁶⁴

B. A Stay of Proceedings is Necessary and Appropriate

69. A stay of proceedings in respect of the JV Entities and their property is needed to provide the Receiver with time and a stabilized environment to attempt to advance and ultimately enter into various transactions in respect of the JV Properties for the benefit of stakeholders of the JV Entities.⁶⁵

70. In *The One*, this Court approved a stay of proceedings over all of the property of the debtor entities as the circumstances required a period of calm in order for the receiver to assess the situation and make a reasonable and informed recommendation as to the path forward.⁶⁶

⁶² Blasutti Affidavit at para. 62 [[A80;A80](#)].

⁶³ See, e.g. *Edmonton (City) v. Alvarez & Marsal Canada Inc.*, 2019 ABCA 109 at paras. [9-10](#), [16-20](#), leave to appeal ref'd [2019 CanLII 94465](#), 2019 CarswellAlta 2139 (SCC).

⁶⁴ Blasutti Affidavit at para. 63 [[A80;A80](#) – [A81;A81](#)].

⁶⁵ Blasutti Affidavit at para. 53 [[A78;A78](#)].

⁶⁶ *The One* at para. 50.

71. RioCan submits that the complex and challenging circumstances facing the JV Entities require the same period of calm for the Receiver to seek to maximize the value of the JV Properties for the benefit of stakeholders. Alternatives may include secured creditor credit bid transactions, additional sale efforts, identifying and finalizing new tenant arrangements, and/or redevelopment opportunities, which will likely vary on a property-by-property basis. The Receiver requires the time and stability of a stay of proceedings to effectively advance these options.

72. RioCan is already aware of certain third parties who are interested in entering into new or amended sublease agreements in respect of the Leasehold Properties and additional third parties who have an interest in other JV Properties. Should the stay of proceedings not be granted, it is reasonable to assume that these indications of interest will not materialize into definitive transactions as the circumstances will have changed materially. With respect to the JV Entities' interests in the Leasehold Properties, there are operating covenants in the head leases relating to the Leased Properties which generally require the continued operation by the tenant of its permitted business from the Leased Properties on the terms identified in the applicable head leases. Accordingly, a stay of proceedings against or in respect of the JV Entities or their Property is necessary to protect the interests of the JV Entities in the head leases and preserve and maximize value in the circumstances.⁶⁷

73. This Court's authority to grant the requested relief is grounded in its power under s. 243(1)(c) of the BIA to take any actions that it considers "advisable." It is further anchored in the power to appoint the Receiver on such terms as are "considered just", under s. 101(2) of the CJA. As the Supreme Court of Canada has recently held, the "very expansive wording" of s. 243(1)(c) of the BIA "has been interpreted as giving judges the 'broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise' in relation to court-ordered receiverships."

⁶⁷ Blasutti Affidavit at para. 66 [[A81:A81](#) – [A82:A82](#)].

This jurisdiction therefore permits the court “to do not only what ‘justice dictates’ but also what ‘practicality demands.’”⁶⁸

74. The requested relief is appropriately circumscribed to facilitate the proposed Receiver’s ability to advance and transact on various alternatives for the benefit of the stakeholders of the JV Entities. Justice dictates and practically demands that a stay be granted in these circumstances as it is consistent with the overall objective of ensuring that the Receiver has a meaningful opportunity to determine how best to maximize value for the JV Properties for the benefit of all stakeholders.

C. Receivership Funding Should be Approved

75. The Receiver, if appointed, will require funding to perform its powers and duties as Receiver. The Appointment Order empowers the Receiver to borrow up to CA\$20 million from RioCan or any other persons (including any other Secured Lender) and grants the Receiver’s Borrowings Charge as security for Receiver’s Borrowings. Such charge is to have priority over all other charges and security interests other than the Receiver’s Charge and the security of the Secured Lenders in respect of the Co-Owned Properties, and subject to ss. 14.06(7), 81.4(4) and 81.6(2) of the BIA, but it shall only apply against any JV Property in the amount allocated to such JV Property (save and except the amount of the Receiver’s Borrowings Charge as against each of the BMO Secured Properties, which shall be the total amount allocated to the BMO Secured Properties).

76. RioCan is prepared to providing funding to the Receiver to advance the proposed global receivership, but it is also open to the other Secured Lenders to provide funding.

⁶⁸ [*Peace River Hydro Partners v. Petrowest Corp.*, 2022 SCC 41 at para. 148](#), citing [*DGDP-BC Holdings Ltd v Third Eye Capital Corporation*](#), 2021 ABCA 226 (CanLII) at para. 20 [*DGDP-BC Holdings*]; [*Third Eye Capital Corporation v. Dianor Resources Inc.*](#), 2019 ONCA 508 at paras. 57-58, and [*Canada \(Minister of Indian Affairs and Northern Development\) v. Curragh Inc.*](#), 1994 CanLII 7468, 114 D.L.R. (4th) 176 (Ont. Ct. J. (G.D.)) at p. 367.

77. A receiver requires funding to carry out a receivership, and it is common for receivers to obtain the permission of the Court to borrow funds in support of the duties to be carried out during the receivership. Such borrowing is expressly authorized under s. 31(1) of the BIA. This provision also permits the receiver to give security on the debtor's property in any amount on any terms that may be authorized by the court, with advances repaid out of the debtor's property in priority to the creditors' claims.⁶⁹

78. The jurisdiction to authorize such borrowing also arises from the Court's powers under s. 243(1)(c) of the BIA to "take any other action that the court considers advisable."⁷⁰ Section 101(2) of the CJA similarly provides the Court with the authority to appoint a receiver on "such terms as are considered just."⁷¹

VI. CONCLUSION AND RELIEF REQUESTED

79. Appointment of the Receiver pursuant to the terms of the proposed Appointment Order provides the best opportunity in the complex and challenging circumstances that the JV Entities are currently facing to preserve and maximize value of the JV Entities and their assets in a fair, efficient and balanced manner for the benefit of the various stakeholders. Accordingly, RioCan requests that the proposed Appointment Order be granted.

⁶⁹ BIA, s. [31\(1\)](#).

⁷⁰ See [DGBP-BC Holdings](#) at para. [20](#), citing both s. [243\(1\)\(c\)](#) and s. [31\(1\)](#) of the BIA.

⁷¹ CJA, s. [101\(2\)](#).

ALL OF WHICH IS RESPECTFULLY SUBMITTED

June 1, 2025

Goodmans LLP

Goodmans LLP

SCHEDULE A
LIST OF AUTHORITIES

Tab	Description
1.	<i>Canadian Western Bank v. 2563773 Ontario Inc.</i>, 2023 ONSC 4766
2.	<i>Keb Hana Bank as Trustee v. Misrahi Commercial (The One) LP et al.</i>, (October 18, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00707839-00CL (Endorsement of Justice Osborne)
3.	<i>Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited</i>, 2022 ONSC 6186
4.	<i>Maple Trade Finance Inc. v. CY Oriental Holdings Ltd.</i>, 2009 BCSC 1527
5.	<i>Foremost Financial Corporation et al v. Alai Developments Inc. et al</i> (July 24, 2023), Ont S.C.J. [Commercial List], Court File No. CV- 23-00702528-00CL (Endorsement of Justice Kimmel)
6.	<i>Canadian Equipment Finance and Leasing Inc. v. The Hypoint Company Limited, 2618905 Ontario Limited, 2618909 Ontario Limited, Beverley Rockcliffe and Chantal Bock</i>, 2022 ONSC 6186
7.	<i>Romspen Investment Corporation v. 6711162 Canada Inc.</i>, 2014 ONSC 2781
8.	<i>AFC Mortgage Administrative Inc. v. Sunrise Acquisitions (Stayner) Inc. et al.</i> (February 29, 2024), Ont S.C.J. [Commercial List], Court File No. CV-23-00710361-00CL, CV-24-00713287-00CL, CV-24-00715345-00CL (Endorsement of Justice Black)
9.	<i>NFC Acquisition GP Inc. (Re)</i>, 2012 ONSC 1244
10.	<i>RMB Australia Holdings Ltd. v. Seafield Resources Ltd.</i>, 2014 ONSC 5205
11.	<i>Callidus Capital Corp. v. Xchange Technology Group LLC</i>, 2013 ONSC 6783
12.	<i>Caisse v. River</i>, 2013 ONSC 6809
13.	<i>Edmonton (City) v. Alvarez & Marsal Canada Inc.</i>, 2019 ABCA 109, leave to appeal ref'd 2019 CanLII 94465, 2019 CarswellAlta 2139 (SCC)
14.	<i>Peace River Hydro Partners v. Petrowest Corp.</i>, 2022 SCC 41
15.	<i>DGDP-BC Holdings Ltd v Third Eye Capital Corporation</i>, 2021 ABCA 226 (CanLII)
16.	<i>Third Eye Capital Corporation v. Dianor Resources Inc.</i>, 2019 ONCA 508
17.	<i>Canada (Minister of Indian Affairs and Northern Development) v. Curragh Inc.</i>, 1994 CanLII 7468, 114 D.L.R. (4th) 176 (Ont. Ct. J. (G.D.))

Lawyer's Statement (Rule 4.06.1(2.1)):

I certify that I am satisfied as to the authenticity of every authority cited in the factum:



Erik Axell

GOODMANS LLP

Barristers & Solicitors

333 Bay Street, Suite 3400

Toronto, ON M5H 2S7

Lawyers for RioCan Real Estate Investment
Trust

SCHEDULE B
STATUTORY REFERENCES

BANKRUPTCY AND INSOLVENCY ACT
R.S.C. 1985, C. B-3, as amended

Definitions

2. In this Act,...

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (personne insolvable)

Borrowing powers with permission of court

31 (1) With the permission of the court, an interim receiver, a receiver within the meaning of subsection 243(2) or a trustee may make necessary or advisable advances, incur obligations, borrow money and give security on the debtor's property in any amount, on any terms and on any property that may be authorized by the court and those advances, obligations and money borrowed must be repaid out of the debtor's property in priority to the creditors' claims.

Security under *Bank Act*

(2) For the purpose of giving security under section 427 of the *Bank Act*, the interim receiver, receiver or trustee, when carrying on the business of the bankrupt, is deemed to be a person engaged in the class of business previously carried on by the bankrupt.

Limit of obligations and carrying on of business

(3) The creditors or inspectors may by resolution limit the amount of the obligations that may be incurred, the advances that may be made or moneys that may be borrowed by the trustee and may limit the period of time during which the business of the bankrupt may be carried on by the trustee.

Debts deemed to be debts of estate

(4) All debts incurred and credit received in carrying on the business of a bankrupt are deemed to be debts incurred and credit received by the estate of the bankrupt.

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

Definition of *receiver*

(2) Subject to subsections (3) and (4), in this Part, *receiver* means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
 - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
 - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of *receiver* — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition *receiver* in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

Orders respecting fees and disbursements

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

Meaning of *disbursements*

(7) In subsection (6), *disbursements* does not include payments made in the operation of a business of the insolvent person or bankrupt.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

COURTS OF JUSTICE ACT
R.S.O. 1990, c. C.43, as amended

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

SCHEDULE C
SUMMARY OF THE JV ENTITIES' REAL PROPERTY INTERESTS

The information presented in this chart is summary in nature and does not encompass all relevant details or information regarding claims against the JV Entities and their assets. This chart is qualified in its entirety by reference to the documentation in respect of the JV Entities' secured financing arrangements.

	Property (Landlord, if applicable)	Real Property Interest	Beneficial Owner of Real Property Interest	Nominee Holder of Real Property Interest	First Priority Secured Claim Against Property	Second Priority Secured Claim Against Property	Third Priority Secured Claim Against Property
1.	Downtown Montreal, 585 Ste-Catherine St. W, Montreal, QC	Owned	RioCan-HBC Limited Partnership	Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI	Royal Bank of Canada in respect of the Montreal RBC First Priority Financing.	RioCan Property Services Trust in respect of the RioCan Real Estate Investment Trust guarantee of the Yorkdale RBC Financing.	--
2.	Downtown Vancouver, 674 Granville St., Vancouver, BC	Owned	RioCan-HBC Limited Partnership	Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI	Royal Bank of Canada (formerly HSBC Bank Canada) as administrative agent for itself and certain other lenders in respect of the Vancouver HSBC First Mortgage Financing.	--	--

	Property (Landlord, if applicable)	Real Property Interest	Beneficial Owner of Real Property Interest	Nominee Holder of Real Property Interest	First Priority Secured Claim Against Property	Second Priority Secured Claim Against Property	Third Priority Secured Claim Against Property
3.	Downtown Calgary, 200 8th Avenue S.W., Calgary, AB	Owned	RioCan-HBC Limited Partnership	Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI	Bank of Montreal as administrative agent for itself and certain other lenders in respect of the BMO First Mortgage Financing. Bank of Montreal, as administrative agent, also has security against the Carrefour Laval and Promenade St. Bruno Leasehold Interests in respect of the BMO First Mortgage Financing.	--	--
4.	Devonshire Mall, 3030 Howard Avenue, Windsor, ON	Owned	RioCan-HBC Limited Partnership	Snospmis Limited Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI	RioCan Property Services Trust in respect of the RioCan Real Estate Investment Trust guarantee of the Yorkdale RBC Financing.	--	--
5.	Downtown Ottawa, 73, 85, and 87 Rideau St., Ottawa, ON	Owned	RioCan-HBC (Ottawa) Limited Partnership	RioCan-HBC (Ottawa) Holdings Inc.	Desjardins Financial Security Life Assurance Company in respect of the Ottawa First Mortgage Financing.	RC Holding II LP in respect of the Ottawa Second Mortgage Financing.	--

	Property (Landlord, if applicable)	Real Property Interest	Beneficial Owner of Real Property Interest	Nominee Holder of Real Property Interest	First Priority Secured Claim Against Property	Second Priority Secured Claim Against Property	Third Priority Secured Claim Against Property
6.	Oakville Place, 240 Leighland Avenue, Oakville, ON	Co-Owned	RioCan-HBC Limited Partnership RioCan Real Estate Investment Trust	RioCan Holdings (Oakville Place) Inc., as nominee for both co-owners	The Toronto- Dominion Bank and The Canada Life Assurance Company in respect of the Oakville First Mortgage Financing.	Co-owner cross charge in favour of RioCan Financial Services Limited securing the obligations owing by RioCan-HBC Limited Partnership to RioCan Property Services Trust in respect of: (1) the RioCan Real Estate Investment Trust guarantee of the Yorkdale RBC Financing; and (2) the co-owners agreement.	--
7.	Georgian Mall, 509 and 545-547 Bayfield St., Barrie, ON	Co-Owned	RioCan-HBC Limited Partnership RioCan Realty Investments Partnership Twenty Two LP	RioCan Holdings Inc., as nominee for both co-owners	Desjardins Financial Security Life Assurance Company in respect of the Georgian Mall First Mortgage Financing.	RC Holding II LP in respect of the Georgian Mall Second Mortgage Financing.	Co-owner cross charge in favour of RioCan Financial Services Limited over RioCan-HBC Limited Partnership's 50% interest in the property in respect of RioCan-HBC Limited Partnership's obligations under the co-owners agreement.

	Property (Landlord, if applicable)	Real Property Interest	Beneficial Owner of Real Property Interest	Nominee Holder of Real Property Interest	First Priority Secured Claim Against Property	Second Priority Secured Claim Against Property	Third Priority Secured Claim Against Property
8.	Yorkdale Shopping Centre, 3401 Dufferin St., Toronto, ON (Yorkdale Shopping Centre Holdings Inc.)	Leased	HBC YSS 1 Limited Partnership	Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI	Royal Bank of Canada as administrative agent for itself and certain other lenders in respect of the Yorkdale RBC Financing.	--	--
9.	Scarborough Town Centre, 300 Borough Drive, Toronto, ON (Scarborough Town Centre Holdings Inc.)	Leased	HBC YSS 1 Limited Partnership	Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI	--	--	--
10.	Square One Shopping Centre, Hwy 10 / Burnhamthorpe, Mississauga, ON (Square One Property Corporation)	Leased	HBC YSS 2 Limited Partnership	Hudson's Bay Company ULC Compagnie De La Baie D'Hudson SRI	--	--	--

	Property (Landlord, if applicable)	Real Property Interest	Beneficial Owner of Real Property Interest	Nominee Holder of Real Property Interest	First Priority Secured Claim Against Property	Second Priority Secured Claim Against Property	Third Priority Secured Claim Against Property
11.	Carrefour Laval, 3045 Boulevard Le Carrefour, Laval, QC (Le Carrefour Laval REC Inc.)	Leased	RioCan-HBC Limited Partnership	2472598 Ontario Inc.	Bank of Montreal as administrative agent for itself and certain other lenders in respect of the BMO First Mortgage Financing. Bank of Montreal, as administrative agent, also has security against the Calgary property and the Promenade St. Bruno Leasehold Interest in respect of the BMO First Mortgage Financing.	--	--

	Property (Landlord, if applicable)	Real Property Interest	Beneficial Owner of Real Property Interest	Nominee Holder of Real Property Interest	First Priority Secured Claim Against Property	Second Priority Secured Claim Against Property	Third Priority Secured Claim Against Property
12.	Promenades St. Bruno, Boulevard des Promenades, St. Bruno, QC (Ontrea Inc.)	Leased	RioCan-HBC Limited Partnership	2472596 Ontario Inc.	Bank of Montreal as administrative agent for itself and certain other lenders in respect of the BMO First Mortgage Financing. Bank of Montreal, as administrative agent, also has security against the Calgary property and the Carrefour Laval Leasehold Interest in respect of the BMO First Mortgage Financing.	--	--

**RIOCAN REAL ESTATE
INVESTMENT TRUST, et al.**

RIOCAN-HBC LIMITED PARTNERSHIP, et al.

Court File No. CV-25-00744295-00CL

Applicants

Respondents

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

FACTUM
(Order Appointing Receiver)

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, Canada M5H 2S7

Robert J. Chadwick LSO#: 35165K
rchadwick@goodmans.ca

Joseph Pasquariello LSO#: 38390C
jpasquariello@goodmans.ca

Andrew Harmes LSO#: 73221A
aharmes@goodmans.ca

Erik Axell LSO#: 85345O
eaxell@goodmans.ca

Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for RioCan Real Estate Investment Trust