

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**ADJ HOLDINGS INC.**

Applicant

– and –

**HORIZEN DEVELOPMENTS GP CORP.**

Respondent

**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 THE RECEIVER  
(RE: APPROVAL AND VESTING ORDER, CLAIMS PROCEDURE ORDER AND ANCILLARY  
ORDER)**

December 3, 2025

**RECONSTRUCT LLP**  
80 Richmond Street West, Suite 1700  
Toronto, ON M5H 2A4

**Caitlin Fell LSO No. 60091H**  
Email: [cfell@reconllp.com](mailto:cfell@reconllp.com)  
Tel: 416.613.8282

**Simran Joshi LSO No. 89775A**  
Email: [sjoshi@reconllp.com](mailto:sjoshi@reconllp.com)  
Tel: 416.728.3603

Fax: 416.613.8290

Lawyers for BDO Canada Limited, in its capacity as court-appointed Receiver of all of the assets, undertakings and properties of Horizen Developments GP Corp.

**TO: THE SERVICE LIST**

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## **PART I – OVERVIEW**

1. On September 19, 2025 (the “**Appointment Date**”), the Ontario Superior Court of Justice (the “**Court**”) granted ADJ Holdings Inc. (“**ADJ**”) application for an order appointing BDO Canada Limited (“**BDO**”) as receiver and manager (in such capacity, the “**Receiver**”), without security, over all of the assets, undertakings and properties, including the Real Property (as defined herein), of Horizen Developments GP Corp. (the “**Debtor**”), acquired for, or used in relation to a business carried on by the Debtor (collectively, the “**Property**”) pursuant to section 101 of the *Courts of Justice Act* (Ontario) (the “**CJA**”) and section 243 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) (the “**Appointment Order**”).
2. The principal purpose of the receivership proceeding was to create a stabilized environment to enable the Receiver to conduct a sale process for the Property that maximized value for the Debtor’s stakeholders.
3. Since the Appointment Date, the Receiver has engaged with CBRE Limited Brokerage, a commercial realtor based in London, Ontario (the “**Listing Brokerage**”) to list and market the Property for sale (the “**Sale Process**”).
4. After listing the Property for approximately four (4) weeks, four prospective purchasers submitted an offer to purchase the Property. The Receiver, in consultation with ADJ, selected the Purchaser’s bid as the successful bid because it, among other things, offered the highest consideration, contained no diligence conditions and aligned with the Receiver’s proposed closing timeline.
5. The Receiver now returns before the Court to seek the following relief:
  - (a) a approval and vesting order (the “**AVO**”), substantially in the form included at tab 3 of the Receiver’s motion record that, among other things:
    - (i) approves the transaction contemplated by a purchase and sale agreement dated November 12, 2025 (the “**Sale Agreement**”) between the Receiver, as vendor, and 1423197 Ontario Inc., as purchaser (the “**Purchaser**”), pursuant to which the Receiver shall sell and the Purchaser shall purchase the Purchased Assets (as defined herein), including the Real Property (the “**Transaction**”);
    - (ii) vests the Purchased Assets in and to the Purchaser free and clear of all

encumbrances upon the delivery of a certificate of the Receiver certifying that the Transaction has been closed; and

- (iii) seals Confidential Appendices “A”, “B”, “C” and “D” (collectively, the “**Confidential Appendices**”) to the First Report of the Receiver dated as of December 2, 2025 (the “**First Report**”) until the earlier of the closing of the Transaction or further Order of the Court;
  - (b) a claims procedure order (the “**Claims Procedure Order**”), substantially in the form appended at tab 5 to the Receiver’s motion record that, approves the solicitation and adjudication of claims (the “**Claims Procedure**”) and authorizes the Receiver to immediately commence the Claims Procedure; and
  - (c) a ancillary order, substantially in the form appended at tab 6 to the Receiver’s motion record that, among other things:
    - (i) authorizes the Receiver to make a distribution of proceeds from the Transaction to pay the outstanding indebtedness owing to ADJ;
    - (ii) approves the First Report and the activities of the Receiver described therein; and
    - (iii) approves the fees, costs and expenses of the Receiver, including those of its independent legal counsel, Reconstruct LLP (“**RECON**”) for the period from around September 5, 2025 to November 26, 2025 (collectively, the “**Professional Fees**”), as set out in the fee affidavits appended to the First Report.
6. The Receiver is not presently aware of any opposition to the relief sought.

## **PART II – FACTS**

### **A. Overview of the Debtor and the Receivership <sup>1</sup>**

7. The Debtor was a commercial and residential real estate investment and development firm that operated as the sole general partner of Horizen Developments LP. The Debtor holds title to the Property for and on behalf of Horizen Developments LP.<sup>2</sup>

8. The Debtor's principal asset is the real property municipally known as 520 Sarnia Road, London, Ontario (the "**Real Property**"). The Debtor had planned to construct an eight-storey building comprising 129 residential units. However, other than demolition, site preparation and planning, no construction work was ever commenced in relation to this development.<sup>3</sup>

9. ADJ is the sole secured mortgage creditor of the Debtor. ADJ holds, among other security interests, mortgages registered on title to the Real Property.<sup>4</sup>

10. The Debtor was experiencing financial difficulties and defaulted on their loan to ADJ.<sup>5</sup> As a result, on September 19, 2025, this Court granted ADJ's application for an Appointment Order.

### **B. Sale Process for the Property**

11. In 2024, the Real Property was listed for sale by a realtor (the "**Pre-Filing Sale Process**"). Although some parties expressed interest, no formal offer was made.<sup>6</sup>

12. Pursuant to subsection 3(j) of the Appointment Order, the Receiver was authorized to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part thereof and negotiating such terms and conditions of sale as the Receiver deems appropriate.<sup>7</sup>

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<sup>1</sup> First Report of the Receiver, dated December 2, 2025 (the "**First Report**"), Motion Record of the Receiver ("**MR**"), Tab 2, para 5.

<sup>2</sup> First Report, para. 7.

<sup>3</sup> First Report, para. 13.

<sup>4</sup> First Report, para. 29.

<sup>5</sup> First Report, para. 14.

<sup>6</sup> First Report, para. 16.

<sup>7</sup> First Report, Appendix "A", Receivership Order, para. 3(j).

13. Following the Receiver's appointment, the Receiver, in consultation with ADJ, developed a sales strategy, which involved engaging the Listing Brokerage to list and market the Property for a period of at least four (4) weeks.<sup>8</sup>

14. The Listing Brokerage, with the assistance of the Receiver, launched its marketing efforts in respect of the Sale Process on October 1, 2025. As part of its marketing efforts, the Listing Brokerage, among other things:

- (a) prepared marketing materials describing the opportunity to acquire the Real Property, as well as a form of confidentiality agreement for interested parties to execute in order to be given access to a virtual data room and perform due diligence;
- (b) distributed marketing materials to the Listing Brokerage's database of approximately 1,900 planning, development and real estate broker contacts;
- (c) listed the Property on various social-media platforms; and
- (d) set up a virtual data room ("VDR") for prospective purchasers that included, among other things, an overview of the Property and a template agreement of purchase and sale to facilitate potential transactions.<sup>9</sup>

15. On or around October 15, 2025, the Listing Brokerage informed prospective purchasers that the Receiver would be reviewing offers received starting on November 4, 2025.<sup>10</sup>

16. Since the commencement of the Sale Process, nine (9) prospective purchasers executed confidentiality agreements and were granted access to the VDR. By November 4, 2025, four (4) prospective purchasers submitted an offer to purchase the Property.<sup>11</sup>

17. The Receiver, in consultation with ADJ, selected the Purchaser as the successful bidder as it offered the highest purchase price, included no diligence conditions, and was consistent with the Receiver's proposed closing timeline.<sup>12</sup>

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<sup>8</sup> First Report, para. 17.

<sup>9</sup> First Report, paras. 19-20.

<sup>10</sup> First Report, para. 21.

<sup>11</sup> First Report, para. 22.

<sup>12</sup> First Report, para. 23.

### C. Key Terms of the Proposed Transaction

18. On November 12, 2025, the Receiver and Purchaser executed the Sale Agreement, subject to Court approval. The key terms of the Transaction are the following:

- (a) **Deposit:** the Purchaser has paid the Receiver a deposit of 10% of the purchase price, which is currently being held by the Receiver in a non-interest-bearing account.<sup>13</sup>
- (b) **Purchased Assets:** the purchased assets include, among other things, the Real Property, plans, contracts with the City of London, permits and due diligence information (collectively, the “**Purchased Assets**”).
- (c) **Excluded Assets:** the excluded assets include, among other things, cash owned or held by for the account of the Debtor, the benefit of any prepaid expenses or deposits, original tax records and books and records pertaining to thereto, and the benefit of any refundable taxes payable or paid by the Debtor or the Receiver in respect of the Purchased Assets.
- (d) **“As Is, Where Is”:** the Purchased Assets are sold on an “as is, where is” basis.
- (e) **Permitted Encumbrances:** the permitted encumbrances include, among other things, easements, right of way or registered notices in favour of any public utility, municipality, government or statutory or public authority registered on title of the Real Property and zoning and building by-laws affecting the Real Property.
- (f) **Conditions to Closing:** There are only standard conditions to closing including the issuance of the AVO vesting the Purchased Assets in the Purchaser.
- (g) **Closing Date:** the date that is the later of: the first business day following the date that is three (3) weeks following the date on which the AVO is issued by the Court; (ii) the first business day following the date on which any appeals or motions to set aside or vary the AVO have been finally determined; or (iii) such other date as agreed to in writing by the Receiver and Purchaser.

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<sup>13</sup> First Report, [para. 24](#).

#### **D. Proposed Distribution**

19. Subject to the granting of the AVO and the closing of the Transaction contemplated therein, the Receiver will receive cash proceeds they intend to use to repay their fulcrum secured creditor, ADJ. Accordingly, the Receiver is seeking authorization to make a distribution to ADJ in accordance with its existing obligations prior to the receivership proceeding (the “**Distribution**”).

20. The Receiver’s legal counsel, RECON, has undertaken an independent security review regarding the security held by ADJ. The security review, subject to standard assumptions and qualifications, provided that the security held by ADJ is valid and enforceable against the Property. Such standard and assumptions include, among others, the determination of priority as between ADJ and other creditors.<sup>14</sup>

21. The Receiver is aware of a construction lien registered against the Real Property in favour of Sierra General Contracting Inc. (“**Sierra**”) in the amount of \$190,392.46 pursuant to the *Construction Act*, RSO 1990, c C.30, as amended (the “**Construction Act**”). The Receiver is in the process of reviewing the validity and enforceability of Sierra’s construction lien, including the priority of the construction lien vis a vis the security of ADJ. Pending review of Sierra’s construction lien claim, the Receiver proposes to hold back the amount of \$190,392.46 from the purchase price contemplated in the Sale Agreement to repay Sierra at the time of final distribution.<sup>15</sup>

22. Once the Receiver confirms whether there is a balance owing to the Municipality of London, determines whether any amounts are owing to the Canada Revenue Agency, and completes the Claims Process, it intends to return to the Court to seek approval of the distribution of such amounts.<sup>16</sup>

#### **E. Claims Procedure Order**

23. Following the closing of the Transaction and the Distribution, there will be monies available for distribution to unsecured creditors. Accordingly, the Receiver has developed the proposed Claims Procedure to determine the nature, quantum and validity of claims against the Debtor in a flexible, fair, comprehensive, and expeditious manner. All terms not otherwise defined herein shall have the same meaning ascribed to such term in the Claims Procedure Order.

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<sup>14</sup> First Report, paras. 30-31.

<sup>15</sup> First Report, paras. 40 and 44.

<sup>16</sup> First Report, paras. 34-36.

24. The key steps of the Claims Procedure are summarized below:
- (a) Notice to Claimants, Proof of Claim, Notice of Revision or Disallowance and Dispute Notice (collectively, the “**Claims Package**”) will be posted on the Receiver’s Website within five (5) Business Days following the issuance of the Claims Procedure Order;
  - (b) the Receiver will send the Claims Package to each of the Known Claimants no later than five (5) Business Days following the granting of the Claims Procedure Order;
  - (c) as soon as practicable after the granting of the Claims Procedure Order, cause the Notice to Claimants to be published for one Business Day in *The Globe and Mail* (National Edition);
  - (d) Claimants wishing to assert a Claim must file a Proof of Claim twenty (20) Business Days following the date on which the Receiver sends the Claims Package to the Claimant (the “**Claims Bar Date**”);
  - (e) Claimants who were not delivered a Claims Package, but are wishing to file a Proof of Claim may obtain a copy of the relevant forms from the Receiver’s Website or by contacting the Receiver and requesting copies of the relevant forms be provided;
  - (f) any Person not receiving a Claims Package and wishing to assert a Claim must file a Proof of Claim by the Claims Bar Date, failing which such Claim shall be extinguished;
  - (g) each Proof of Claim shall be reviewed by the Receiver and the Receiver shall either accept the claim, or revise or disallow the claim in whole or in part by issuing a Notice of Revision or Disallowance if it disagrees with the Claim set out in the Proof of Claim;
  - (h) if a Claimant disagrees with the assessment of the Claim as set out in the Notice of Revision or Disallowance, it must deliver a Dispute Notice within 14 calendar days of the Notice of Revision or Disallowance, or such later date as the Court may order, failing which the Claimant shall be deemed to accept the amount of the Claim as set out in the Notice of Revision or Disallowance;

- (i) upon the receipt of a Dispute Notice, the Receiver may:
  - (i) attempt to consensually resolve the classification and the amount of the Claim with the Claimant; or
  - (ii) refer the Disputed Claim to a Claims Officer; and
- (ii) any decision by a Claims Officer may be appealed to the Court.<sup>17</sup>

**F. Approval of the Receiver's Professional Fees**

25. The Receiver is seeking approval of the Professional Fees of BDO, in its capacity as Receiver, during the period September 5, 2025 through to and including November 26, 2025,<sup>18</sup> and approval of the fees and disbursements of its counsel, RECON, incurred during the period of September 30, 2025 through to and including November 20, 2025.<sup>19</sup>

26. In support of this motion, the Receiver delivered its First Report, which attaches affidavits from representatives of the Receiver and its legal counsel that provides a comprehensive listing of the accounts sought to be passed and summary tables identifying the individual professionals that have worked on this matter, their hourly billing rates and total numbers of hours worked, among other information.

27. The fees and disbursements of BDO from September 5, 2025 through to and including November 26, 2025 total \$46,381.00 (exclusive of HST).

28. The fees and disbursements of RECON from September 30, 2025 through to and including November 20, 2025 total \$13,584.00 (exclusive of HST).

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<sup>17</sup> First Report, para. 47.

<sup>18</sup> First Report, Appendix "C", Affidavit of Neil Jones sworn December 2, 2025.

<sup>19</sup> First Report, Appendix "D", Affidavit of Caitlin Fell sworn December 2, 2025.

### **PART III – ISSUES**

29. The issues to be determined on this motion are whether to:
- (a) approve the Sale Agreement and vest the Purchased Assets in the Purchaser free and clear of encumbrances;
  - (b) grant a temporary sealing order sealing Confidential the Appendices;
  - (c) approve the Distribution;
  - (d) approve the Claims Procedure Order;
  - (e) approve the First Report and the activities of the Receiver described therein; and
  - (f) approve and authorize payment of the Professional Fees.

### **PART IV – LAW & ARGUMENT**

#### **A. The Court Should Approve the Transaction and Vest the Purchased Assets in the Purchaser**

30. The Court has jurisdiction to approve a sale of assets by the Receiver and to vest assets free and clear of encumbrances pursuant to section 243 of the BIA and section 100 of the CJA.<sup>20</sup>

31. In determining whether to approve a transaction proposed by a receiver, it is well established that the Court will consider the factors enunciated by *Royal Bank v Soundair Corp.*, namely:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process which offers were obtained; and
- (d) whether there has been unfairness in working out of the process (collectively, the “**Soundair Factors**”).<sup>21</sup>

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<sup>20</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended [“**BIA**”], s. 243; *Courts of Justice Act*, RSO 1990, c C.43 [“**CJA**”], s. 100.

<sup>21</sup> *Royal Bank of Canada v. Soundair Corp.* [“**Soundair**”], 1991 CanLII 2727 (ON CA).

32. Unless a proposed transaction clearly offends the Soundair Factors, courts generally uphold the business judgement of the court-appointed receiver overseeing the sale.<sup>22</sup>

33. The Soundair Factors are satisfied in respect of the proposed Transaction:

- (a) **The Receiver made sufficient effort to get the best price and has not acted improvidently.** The Listing Brokerage, with the assistance of the Receiver, extensively canvassed the market for the Property. The purchase price contemplated in the Sale Agreement aligns with two independent opinions of value obtained from commercial real estate agents with extensive experience in the London, Ontario market. The Transaction provides the most certainty and the greatest recovery available for the Debtor's fulcrum secured creditor and other creditors. Furthermore, the notice of the sale of the Property was sent to approximately 3,900 parties and the Property was on the market for approximately 4 weeks at the time of the Purchaser's offer. Given the Pre-Filing Sale Process and the Sale Process, it is unlikely that exposing the Property to the market for additional time will result in a superior transaction than the proposed Transaction.<sup>23</sup>
- (b) **The Receiver has acted fairly, efficiently, and with integrity in considering the interests of all stakeholders.** In conducting the Sale Process, the Receiver considered the interests of all parties. The Receiver's primary intention in conducting the Sale Process was to maximize the realization of the Property for the benefit of all stakeholders. The Receiver submits that the Transaction represented the highest bid for the Property, did not contain due diligence conditions, aligned with the Receiver's proposed closing timeline, and is in the best interests of the Debtor's stakeholders.<sup>24</sup> The Transaction allows full repayment of the Debtor's senior secured creditor and provides sufficient proceeds to pay other creditors. In addition, the terms of the Transaction are fair, reasonable and typical for real estate asset sales in insolvency proceedings.
- (c) **The Sale Process undertaken by the Receiver was commercially reasonable, efficient and conducted with integrity.** The Receiver engaged the Listing Brokerage, who is regularly involved in real estate sale processes across Canada. The Receiver and the Listing Brokerage cooperated to implement a transparent,

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<sup>22</sup> *Soundair*, para. 21; *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375 at para. 19;

<sup>23</sup> First Report, para. 27.

<sup>24</sup> First Report, para. 23.

fair, competitive and efficient Sale Process by, among other things:

- (i) prepared a professional marketing package that described the opportunity to acquire the Property;
  - (ii) distributed marketing materials to approximately 3,900 industry contacts and published the Property on social media pages with over 26,500 contacts; and
  - (iii) ensured that all parties were granted fair and equal access to due diligence materials relating to the Property and VDR.<sup>25</sup>
- (d) **There has been no unfairness in the working out of the process.** The Receiver does not believe there was any unfairness in the working out of the Sale Process. The Receiver is not aware of any opposition to the proposed Transaction.<sup>26</sup>

34. The AVO is based on and does not substantively depart from the Commercial List's Model Approval and Vesting Order.<sup>27</sup>

35. Based on the foregoing, the Receiver respectfully submits that this Court should approve the Transaction.

#### **B. The Court Should Grant a Sealing Order for the Confidential Appendices**

36. The Receiver seeks an order sealing the Confidential Appendices to the First Report, being an unredacted Sale Agreement, a summary of all of the offers received in the Sales Process, and two independent valuations of the Real Property.

37. Pursuant to subsection 137(2) of the *Courts of Justice Act*, this Court has the jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.<sup>28</sup>

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<sup>25</sup> First Report, paras. 19-20.

<sup>26</sup> First Report, para. 27(e).

<sup>27</sup> MR, Tab 4, Redline of Approval and Vesting Order to Commercial List's Model Approval and Vesting Order.

<sup>28</sup> CJA, *supra*, s. 137(2).

38. The test for a sealing order was established by the Supreme Court of Canada in *Sierra Club*<sup>29</sup> and subsequently in *Sherman Estate*.<sup>30</sup> The test involves three prerequisites which must be satisfied:

- (a) whether court openness poses a serious risk to an important public interest;
- (b) whether the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent the risk; and
- (c) whether, as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>31</sup>

39. The requirements set forth in *Sherman Estate* are satisfied:

- (a) Public disclosure of the Confidential Appendices poses a serious and immediate risk. Disclosure of the interested parties' and real estate firms' valuations of the Real Property would be highly prejudicial to any additional marketing efforts that may be required in the event that the proposed Transaction does not close. In such instance, disclosure would undermine the integrity of the process and prevent the maximization of value, to the detriment of all stakeholders.
- (b) The sealing order sought is necessary to mitigate this risk. No reasonable alternative measures exist that would adequately protect the commercially sensitive information contained in the Confidential Appendices. The scope of the sealing provision is appropriately limited and remains subject to further order of this Court.
- (c) The benefits of granting the sealing provision outweigh any potential negative effects. The sealing of the Confidential Appendices until the Transaction has closed or further order of the Court is limited in duration. The proposed relief protects the confidentiality of commercially sensitive information during a critical stage of the receivership process, while preserving the transparency of the proceedings to the greatest extent possible under the circumstances.

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<sup>29</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41.

<sup>30</sup> *Sherman Estate v. Donovan*, 2021 SCC 25.

<sup>31</sup> *Ibid* at para. 38.

### C. The Court Should Approve the Distribution

40. The Receiver seeks authorization to make the proposed Distribution. Courts routinely grant orders permitting distributions in insolvency proceedings, including receiverships.<sup>32</sup>

41. In determining whether to approve a distribution in an insolvency proceeding, courts have considered, among other things:

- (a) whether the proposed distribution is in accordance with the applicable order of priorities, including whether the payee holds a valid and enforceable security interest;
- (b) whether an interim distribution increases the efficiency of the receivership process and the timeliness of creditor recovery in the circumstances;
- (c) whether any reserves or holdbacks are appropriate, such as in respect of the completion of the administration of the estate, professional fees, receiver's borrowings and certain statutory deemed trust claims;
- (d) whether the debtor's indebtedness to the payee exceeds the amount of the proposed distribution; and
- (e) generally, whether an interim distribution is just or convenient in the circumstances.<sup>33</sup>

42. As this Court held in *Runco*, "It is appropriate to authorize a receiver to make distributions of sale proceeds concurrently with the approval of such sale to maximize efficiency and avoid the need for additional motions."<sup>34</sup>

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<sup>32</sup> See, among other cases, *GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.*, 2014 ONSC 1173 [Brown J. (as he then was)] ("**GE Canada**"); *Harbert Distressed Investment Fund, L.P. v General Chemical Canada Ltd.*, 2007 ONCA 600 ("**Harbert**"); *Runco v. Engenheiro*, 2023 ONSC 7231 ("**Runco**"), para. 32.

<sup>33</sup> *GE Canada*, para. 53; and *Harbert*, para. 47.

<sup>34</sup> *Runco*, para. 32, citing *GE Canada*.

43. The proposed Distribution meets the above-noted criteria and should be approved for the following reasons, among others:

- (a) the Receiver has obtained a security opinion, subject to the standard assumptions and qualifications, confirming that ADJ's security is valid and enforceable against the Property;
- (b) the Receiver and its counsel are reviewing the construction lien registered on the Property by Sierra. The Receiver intends to hold back a portion of the purchase price contemplated in the Purchase Agreement in the amount of \$190,392.46. If Sierra's construction lien is found to be valid and/or in priority to the mortgage of ADJ, the Receiver intends to return to Court and seek approval of distribution to Sierra on account of its construction lien claim;
- (c) after the Receiver confirms whether there is any balance owing to the Municipality of London, ascertains whether any amounts are owing to the Canada Revenue Agency, and upon completion of the Claims Process, the Receiver intends to return to the Court to seek approval for the distribution of any such amounts;<sup>35</sup> and
- (d) the Receiver is not aware of any opposition to the proposed Distribution, nor of any material prejudice or other compelling reason not to proceed with the Distribution.

44. Based on the foregoing, the Receiver submits that the proposed Distribution should be approved.

#### **D. The Court Should Approve the Claims Procedure Order**

45. Pursuant to subsection 243(1)(c) of the BIA, this Court has jurisdiction to "take such other action that the court considers advisable".<sup>36</sup>

46. This Court has interpreted subsection 243(1)(c) to give supervising judges the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that arise.<sup>37</sup> The Canadian insolvency system supports flexibility to facilitate the maximization of

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<sup>35</sup> First Report, paras. 34-36.

<sup>36</sup> BIA, s. 243(1)(c);

<sup>37</sup> *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at paras 57-58.

proceeds and realization of the debtor's assets while ensuring that third party interests are not inappropriately violated.<sup>38</sup>

47. The proposed Claims Procedure Order is modelled upon, and substantively analogous to, other claims procedures that have been approved by the Court in other insolvency proceedings.<sup>39</sup>

48. The Receiver requests that the Court issue the Claims Procedure Order for the following reasons:

- (a) the proposed notices, dispute resolution provisions and timelines set out in the Claims Procedure Order are consistent with those commonly approved by Canadian courts in insolvency proceedings and provide claimants with flexibility to submit claims in this receivership proceeding;
- (b) the Claims Procedure Order will be implemented and supervised by an officer of the Court, the Receiver, and is necessary to facilitate timely distributions to certain claimants;
- (c) the Claims Bar Date, being 20 business days from the date the Receiver sends the Claims Package to the Claimant, provides flexibility for Claimants to submit their claim; and
- (d) the Claims Procedure is a fair, open and transparent method to enable the Receiver to call on claims from potential creditors so they can be identified and settled in an orderly fashion.

#### **E. The Court Should Approve the First Report and the Activities of the Receiver**

49. The Receiver seeks approval of its activities since the Appointment Order as set out in the First Report which includes, among other things, dealing with operational matters, selection of the successful bidder from the Sale Process, assisting RECON with negotiating the Sale Agreement, and preparing materials to seek the approval of the AVO, Claims Procedure Order and Ancillary Order.

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<sup>38</sup> *Ibid* at para. 86.

<sup>39</sup> See for example, Claims Procedure Order dated June 24, 2024, *Nuance Pharma Ltd. v. Antibe Therapeutics Inc.*, Court File No. CV-24-00719237-00CL; Claims Procedure Order dated April 7, 2025, *In the Matter of Go-To Developments Holdings Inc. et al*, Court File No. CV-21-00673521-00CL; and Claims Procedure Order dated August 3, 2021, *Pillar Capital Corp. v. Turuss (Canada) Industry Co., Ltd.*, Court File No. CV-20-00646729-00CL.

50. The Court has inherent jurisdiction to review and approve the activities of a court appointed receiver as set out in a receiver's reports.<sup>40</sup> Courts frequently provide such approval where the court is satisfied that the court officer's activities have been conducted in a prudent and diligent matter.<sup>41</sup>

51. The Receiver submits that the activities described in the First Report are appropriate, timely, and in the interest of stakeholders. The activities were all necessary and efficiently undertaken pursuant to the Receiver's duties and powers set out in the Appointment Order.

52. Therefore, the Receiver submits that the First Report and the activities of the Receiver described therein should be approved.

#### **F. The Court Should Authorize and Approve the Payment of Professional Fees**

53. The Receiver seeks authorization and approval to pay the Professional Fees.

54. The Appointment Order provides, among other things, that: (a) the Receiver and its legal counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges; and (b) the Receiver and its legal counsel shall pass their accounts from time to time by motion to a judge of the Southwest Region of the Ontario Superior Court of Justice.<sup>42</sup>

55. The test on a motion to pass accounts is on the basis of an "overriding principle of reasonableness."<sup>43</sup> The overall value contributed by the Receiver and its counsel is the predominant consideration in assessing the reasonableness of the accounts.<sup>44</sup>

56. As the Court of Appeal for Ontario held in *Bank of Nova Scotia v Diemer*, the Court will not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature are whether the fees are fair, reasonable, and proportionate given the value of the Debtor's assets and liabilities, as well as the complexity of the Debtor's business and the insolvency proceeding.<sup>45</sup>

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<sup>40</sup> *Bank of America Canada v Willann Investments Ltd.*, 1996 CanLII 2782 (ON CA).

<sup>41</sup> See *Target Canada Co. (Re)*, 2015 ONSC 7574 [Morawetz R.S.J. (as he then was)], paras. 2, and 23; and *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400 [Osborne J.], paras. 65 and 66.

<sup>42</sup> First Report, Appendix "A", Receivership Order, paras. 18 and 19.

<sup>43</sup> *Nortel Networks Inc.*, 2022 ONSC 6680 at para. 10.

<sup>44</sup> *Re Nortel Networks Corporation et al*, 2017 ONSC 673 at paras. 15 and 21.

<sup>45</sup> *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at para. 33.

57. The Receiver, with the assistance of RECON, carried out extensive activities during the times subject to the Fee Affidavits, as detailed in the First Report. The material responsibilities that the Receiver discharged include, among other things: (a) monitoring the Property; (b) conducting the Sale Process which successfully resulted in the Transaction; and (c) communicating with stakeholders on the status of the receivership proceeding.

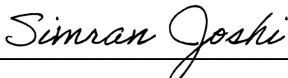
58. The time spent, and thus the fees and disbursements of the Receiver and its legal counsel, RECON, resulting from their activities are commensurate with the significant role and responsibilities and activities undertaken. The work has been undertaken with a view to advancing the interests of the Debtor and their stakeholders.

59. Accordingly, it is respectfully submitted the remuneration of the Receiver and its legal counsel are fair and reasonable, and their fees and disbursements should be approved.

**PART V – RELIEF REQUESTED**

60. The Receiver respectfully requests that the AVO, the Claims Procedure Order, and Ancillary Order, substantially in the forms appended at tabs 3, 5 and 6 to the Receiver’s motion record, be granted.

**PURSUANT TO RULE 4.06.1(2.1), THE UNDERSIGNED** certifies that they are satisfied as to the authenticity of every authority cited in this factum.

  
\_\_\_\_\_  
Simran Joshi (LSO No. 89775A)

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3<sup>RD</sup> DAY OF DECEMBER, 2025.**

*/s/ Reconstruct*  
\_\_\_\_\_  
**RECONSTRUCT LLP**

**SCHEDULE "A"**  
**List of Authorities**

1. *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA)
2. *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375
3. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41
4. *Sherman Estate v. Donovan*, 2021 SCC 25
5. *GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.*, 2014 ONSC 1173 [Brown J. (as he then was)]
6. *Harbert Distressed Investment Fund, L.P. v General Chemical Canada Ltd.*, 2007 ONCA 600
7. *Runco v. Engenheiro*, 2023 ONSC 7231
8. *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508
9. Claims Procedure Order dated June 24, 2024, *Nuance Pharma Ltd. v. Antibe Therapeutics Inc.*, Court File No. CV-24-00719237-00CL
10. Claims Procedure Order dated April 7, 2025, *In the Matter of Go-To Developments Holdings Inc. et al*, Court File No. CV-21-00673521-00CL
11. Claims Procedure Order dated August 3, 2021, *Pillar Capital Corp. v. Turuss (Canada) Industry Co., Ltd.*, Court File No. CV-20-00646729-00CL
12. *Bank of America Canada v Willann Investments Ltd.*, 1996 CanLII 2782 (ON CA)
13. *Target Canada Co. (Re)*, 2015 ONSC 7574 [Morawetz R.S.J. (as he then was)]
14. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400 [Osborne J.]
15. *Nortel Networks Inc.*, 2022 ONSC 6680
16. *Re Nortel Networks Corporation et al*, 2017 ONSC 673
17. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851

**SCHEDULE "B"**  
**Statutory Authorities**

*Bankruptcy and Insolvency Act, RSC 1985, c B-3*

**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.

*Courts of Justice Act, RSO 1990, c C.43*

### **Vesting orders**

**100** A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.

### **Sealing documents**

(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

ADJ HOLDINGS INC.

and

Court File No. CV-25-00002469-0000

HORIZEN DEVELOPMENTS GP CORP.

Respondent

Applicant

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

Proceedings commenced at London

**FACTUM OF THE RECEIVER**

**RECONSTRUCT LLP**

80 Richmond Street West, Suite 1700  
Toronto, ON M5H 2A4

**Caitlin Fell** LSO No. 60091H  
cfell@reconllp.com  
Tel: 416.613.8282

**Simran Joshi** LSO No. 89775A  
sjoshi@reconllp.com  
Tel: 416.728.3603

Lawyers for BDO Canada Limited, in its  
capacity as court-appointed Receiver of all  
of the assets, undertakings and properties  
of Horizen Developments GP Corp.