

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**CAISSE DESJARDINS ONTARIO CREDIT UNION INC.**

Applicant

- and -

**5010980 ONTARIO INC., THE ESTATE OF ROBERT BOUCHER, DIANE BOUCHER  
and ANGEL VINCENT**

Respondents

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

**FACTUM OF THE COURT APPOINTED RECIEVER  
BDO CANADA LIMITED**

May 6, 2026

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**TO: SERVICE LIST**

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**FACTUM OF THE COURT APPOINTED RECIEVER  
BDO CANADA LIMITED**

**PART I – OVERVIEW**

1. This factum is filed in support of a motion by BDO Canada Limited (“**BDO**”), in its capacity as Court-appointed receiver and manager (the “**Receiver**”), without security, of the assets, undertakings and property of 5010980 Ontario Inc. (the “**Company**”) for, among other things:

a) an Approval and Vesting Order (“**AVO**”):

- a. approving the agreement of purchase and sale dated April 21, 2026 (the “**APS**”) for the real property known municipally as 309 Old Skead Road, Garson, Ontario (hereinafter referred to as the “**Real Property**”) between the Receiver, as vendor, and Shadow Ridge Realty Inc., as purchaser (the “**Purchaser**”), and authorizing the Receiver to complete the transaction contemplated in the APS (the “**Sale Transaction**”); and

- b. sealing the Confidential Appendices (as defined below); and
- b) a Distribution and Discharge Order:
- a. approving the Receiver's First Report, dated May 6, 2026 (the "**First Report**"), and the activities set out therein;
  - b. approving the Desjardins Distribution (as defined below) and the Boucher Distribution (as defined below);
  - c. approving the fees and disbursements of the Receiver in the amount of \$30,486.94 (exclusive of disbursements and HST);
  - d. approving the fees of counsel for the Receiver, Blaney McMurtry LLP ("**Blaney**"), in the amount of \$20,918.08 (inclusive of HST and disbursements);
  - e. approving a fee accrual in favour of the Receiver in the amount of \$10,000 (plus HST), and a fee accrual in favour of Blaney in the amount of \$25,000 (plus HST) (the "**Fee Accrual**");
  - f. approving the Receiver's Interim Statement of Receipts and Disbursements for the period January 2, 2026 to May 4, 2026; and
  - g. approving the discharge and release of the Receiver upon completion of the remaining administrative matters and filing of the Receiver's discharge certificate attached at Schedule "A" to the proposed Order ("**Discharge Certificate**").

## PART II – FACTS

### The Parties and Background

2. The Company is an Ontario corporation with a registered office address in the community of Garson, which is part of the City of Sudbury, Ontario. The Company is the registered owner of the Real Property.

3. The sole director and officer of the Company is Diane Boucher (“**Diane**”), having assumed this role upon the passing of Robert Boucher (“**Robert**”), her husband, in March of 2025.<sup>1</sup>

4. The Real Property operated as the Touch of Heaven Spa in Garson, Ontario until June of 2025 when the Boucher family made the decision to close the business.<sup>2</sup>

5. Caisse Desjardins Ontario Credit Union Inc. (the “**Desjardins**”) is a credit union established under the *Credit Unions and Caisses Populaires Act*.

6. The Company is indebted to Desjardins in the aggregate amount of \$575,398.61 as of June 10, 2025, not including professional fees and disbursements (and together with accruing interest and costs, the “**Desjardins Indebtedness**”), which remains outstanding.<sup>3</sup>

7. The Desjardins Indebtedness is secured by, *inter alia*, a collateral mortgage registered against the Real Property.<sup>4</sup>

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<sup>1</sup> First Report of the Receiver, dated May 6, 2026 (“**First Report**”), para. 6, Motion Record of the Receiver, dated May 6, 2026 (“**Motion Record**”), Tab 2.

<sup>2</sup> First Report, para. 7, Motion Record, Tab 2.

<sup>3</sup> First Report, para. 2, Motion Record, Tab 2.

<sup>4</sup> First Report, para. 3, Motion Record, Tab 2.

8. Upon the application of Desjardins and pursuant to an order of the Honourable Justice Kurke of the Ontario Superior Court of Justice (the “**Court**”) dated January 2, 2026 (the “**Appointment Order**”), BDO was appointed as the Receiver of all the Property (as defined in the Appointment Order) of the Company.<sup>5</sup>

### **Rectification Application**

9. The Company had acquired vacant land that abutted the Real Property after granting the collateral mortgage in favour of Desjardins. The parcel for the Real Property and the parcel for the abutting property were merged and the Land Registry Office created a new property identification number known as PIN 73492-0694 (LT) (the “**Consolidated Parcel**”).<sup>6</sup>

10. On February 11, 2026, Desjardins issued an application record returnable on March 13, 2026, wherein Desjardins requested, *inter alia*, a Court declaration *nunc pro tunc* and effective as of June 29, 2021 that the collateral mortgage over the Real Property in favour of Desjardins includes the property description for the Consolidated Parcel.<sup>7</sup>

11. On March 13, 2026, the Honourable Justice Kurke issued a rectification order declaring that Desjardins’ existing charge/mortgage be deemed *nunc pro tunc* to include, extend to and encumber the entirety of the Consolidated Parcel.<sup>8</sup>

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<sup>5</sup> First Report, para. 1, Motion Record, Tab 2.

<sup>6</sup> First Report, para. 4, Motion Record, Tab 2.

<sup>7</sup> First Report, para. 4, Motion Record, Tab 2.

<sup>8</sup> First Report, para. 5, Motion Record, Tab 2.

## Creditors

12. Desjardins is the senior secured creditor and first ranking collateral mortgagee on the Real Property. The Company owed Desjardins \$698,747.10 plus accrued interest as of April 9, 2026.<sup>9</sup>

13. The Diane & Robert Boucher Family Trust (“**Boucher Trust**”) is the second ranking collateral mortgagee on the Real Property. The Company owed the Boucher Trust approximately \$361,017 as of May 2, 2026 (“**Boucher Indebtedness**”).<sup>10</sup>

14. Martin Glaude is the third ranking collateral mortgagee on the Real Property. Mr. Glaude’s mortgage was registered with a principal amount of \$300,000. However, it is not projected that there will be sufficient funds available from the Sale Transaction to make a distribution to Mr. Glaude.<sup>11</sup>

15. The Receiver has confirmed with Canada Revenue Agency (“**CRA**”) that the Company does not owe CRA in respect of H.S.T. or payroll source deductions.<sup>12</sup>

## Proposed Sale Transaction

16. At the time of the Receiver’s appointment, the Real Property was listed for sale with Real Broker Ontario Ltd. (the “**Listing Broker**”) at a listing price of \$1,650,000. The Real Property was originally listed for sale in July of 2025 with a list price of \$2,200,000.<sup>13</sup>

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<sup>9</sup> First Report, para. 32, Motion Record, Tab 2.

<sup>10</sup> First Report, para. 33, Motion Record, Tab 2.

<sup>11</sup> First Report, para. 34, Motion Record, Tab 2.

<sup>12</sup> First Report, para. 35, Motion Record, Tab 2.

<sup>13</sup> First Report, para. 18, Motion Record, Tab 2.

17. The Receiver entered into a listing agreement with the Listing Broker on February 27, 2026 with a list price of \$1,650,000.<sup>14</sup>

18. Over the period of time that the Real Property was listed for sale (both prior to and after the appointment of the Receiver), 16 parties conducted site visits with the Listing Broker and 6 parties discussed making offers, with 2 parties actually submitting offers to the Receiver.<sup>15</sup>

19. Prior to the Listing Broker's initial listing agreement in July of 2025, the Real Property had been listed with another agent for two months.<sup>16</sup>

20. The Receiver obtained an appraisal of the Real Property from Appraisals North Realty Inc. dated February 27, 2026 (the "**Appraisal**").<sup>17</sup>

21. The Receiver received an offer from Angel Vincent ("**Angel**") on March 10, 2026. Angel was an officer and director of the Company between November 29, 2019 until September 14, 2020, and is a guarantor of the Desjardins Indebtedness.<sup>18</sup>

22. Angel's offer was negotiated through a series of six (6) counter-offers and ultimately resulted in an accepted conditional offer subject to inspection and financing. The condition waiver date was April 20<sup>th</sup>. Angel was unable to waive conditions by April 20<sup>th</sup> and thus that agreement of purchase and sale became null and void by its own terms.<sup>19</sup>

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<sup>14</sup> First Report, para. 19, Motion Record, Tab 2.

<sup>15</sup> First Report, para. 20, Motion Record, Tab 2.

<sup>16</sup> First Report, para. 21, Motion Record, Tab 2.

<sup>17</sup> First Report, para. 27, Motion Record, Tab 2.

<sup>18</sup> First Report, para. 23, Motion Record, Tab 2.

<sup>19</sup> First Report, para. 24, Motion Record, Tab 2.

23. The Receiver received a new offer from the Purchaser on April 21, 2026. Subject to several correcting edits, this offer would become the APS, subject only to Court approval.<sup>20</sup>

24. The Listing Broker made Angel aware that another offer had been received, thereby giving Angel the opportunity to submit an improved offer. Angel submitted a new offer similar to the offer she had previously submitted to the Receiver with a financing condition and the same purchase price.<sup>21</sup>

25. Considering that the purchase price offered by the Purchaser is reasonable as compared to the value contained in the Appraisal and is higher than the purchase price in Angel's offer, the Receiver believes that the APS and the terms therein are commercially reasonable.<sup>22</sup>

26. The Receiver has consulted with Diane, representative of the Boucher Trust, the second position secured creditor in this proceeding. The Boucher Trust, as the fulcrum creditor that will suffer a shortfall under its mortgage loan, supports the Sale Transaction.<sup>23</sup>

27. The Receiver seeks authorization to distribute the net sale proceeds from the Sale Transaction, firstly to Desjardins (the "**Desjardins Distribution**") and secondly to the Boucher Trust (the "**Boucher Distribution**") following completion of the Sale Transaction.<sup>24</sup>

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<sup>20</sup> First Report, para. 25, Motion Record, Tab 2.

<sup>21</sup> First Report, para. 26, Motion Record, Tab 2.

<sup>22</sup> First Report, paras. 25, 28, Motion Record, Tab 2.

<sup>23</sup> First Report, para. 30, Motion Record, Tab 2.

<sup>24</sup> First Report, para. 38, Motion Record, Tab 2.

### **Discharge of Receiver**

28. The purpose of the receivership was to market and sell the Real Property, which has been completed, subject to Court approval. The final activities that remain for the Receiver to complete (“**Remaining Activities**”) are:

- a. attend to the payment of Desjardins Distribution and the Boucher Distribution;
- b. complete any final HST returns;
- c. complete any statutory and administrative duties and filings required of the Receiver;
- d. attend to the payment of outstanding Court-approved professional fees of the Receiver and Receiver’s counsel, Blaney; and
- e. complete steps necessary to terminate these receivership proceedings and the discharge of the Receiver and matters ancillary thereto.<sup>25</sup>

29. Once the Remaining Activities are complete, the Receiver submits that it is appropriate for the Receiver to be discharged upon filing the Discharge Certificate.

### **PART III – ISSUES**

30. The issues on this motion are whether this Court should:

- a. approve the APS and grant the proposed Approval and Vesting Order (“**AVO**”);
- b. seal the Confidential Appendices;

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<sup>25</sup> First Report, paras. 48-49, Motion Record, Tab 2.

- c. authorize the Receiver to make the payment of Desjardins Distribution and the Boucher Distribution;
- d. approve the First Report and the activities, actions and conduct of the Receiver described therein;
- e. approve the fees and disbursements of the Receiver and Blaney, including the Fee Accrual; and
- f. authorize the discharge and release of the Receiver upon completion of the Remaining Activities, effective upon the Receiver's filing of the Discharge Certificate.

#### **PART IV – LAW & ARGUMENT**

##### **A. The APS Should Be Approved and AVO Should be Granted**

31. It is well established that in determining whether to approve a transaction proposed by a receiver, the Court should consider the factors set out in *Royal Bank v Soundair Corp.*:

- (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 by which offers are obtained; and

(d) whether there has been unfairness in the working out of the process.<sup>26</sup>

32. The Court should balance all relevant factors when determining whether to approve of a sale. The Court is “not to consider whether a Receiver has failed to get the best price”, but rather whether the receiver has acted “in a commercially reasonable manner in the circumstances with a view to obtaining the best price having regard to the competing interests of the interested parties.”<sup>27</sup>

33. Absent a violation of *Soundair* factors, the court should be “loathe to interfere with the business judgment of a receiver and refuse to approve a transaction recommended by the receiver acting properly in the fulfillment of its obligations as an officer of the court.”<sup>28</sup>

34. Sale processes in receiverships are not to be held to a standard of perfection. Rather, a receiver will be found to be acting properly and making an appropriate effort to get the best price if the receiver carefully considers the available information and uses its expertise to determine how best to maximize value in the particular circumstances.<sup>29</sup>

***The Receiver undertook significant effort to obtain the best possible price***

35. The Receiver, with the assistance of the Listing Broker, ran a robust sale process that was designed to obtain the highest price for the Real Property based on current market conditions. The Real Property was listed for sale at a listing price of \$1,650,000, consistent with the price it had been listed it prior to the appointment of the Receiver.<sup>30</sup>

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<sup>26</sup> *Royal Bank v Soundair Corp.*, 1991 CanLII 2727 [*Soundair*].

<sup>27</sup> *Pricewaterhousecoopers Inc v 1905393 Alberta Ltd*, 2019 ABCA 433 at [para 13](#).

<sup>28</sup> *Morgante Canada Corp v Wolfhollow Properties Inc*, 2003 CanLII 7759 at [para 7](#) (ONSC); see also *Bank of Montreal v Dedicated National Pharmacies Inc et al*, 2011 ONSC 4634 at [para 43](#).

<sup>29</sup> *National Trust Co v 1117387 Ontario Inc*, 2010 ONCA 340 at [paras 44](#) and [50](#).

<sup>30</sup> First Report, para. 18, Motion Record, Tab 2.

36. During the marketing and sale process, the Real Property garnered significant attention (both prior to and after the appointment of the Receiver), with 16 parties conducting site visits, 6 parties discussing making offers, and 2 submitted offers to the Receiver.<sup>31</sup>

37. Since the Real Property was listed for a total of 273 days, the Receiver is of the view that interested parties were provided with a reasonable timeframe within which to consider the opportunity and make an offer.<sup>32</sup>

38. The Receiver first negotiated an offer submitted by Angel, which ultimately became null and void. Following Angel's forfeited offer, the Receiver entered into the APS, which represents the highest and best offer for the Real Property in terms of proposed purchase price, and is not conditional except for obtaining Court approval. The proposed purchase price set out in the APS is consistent with the Appraisal and is higher than the purchase price offered by Angel. The Receiver is of the view that the purchase price in the APS is fair and reasonable.<sup>33</sup>

39. Between the date the offer was received and the time of writing this First Report, the Receiver has not received a better offer. The Receiver does not believe that a further marketing of the Real Property would result in superior offers.<sup>34</sup>

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<sup>31</sup> First Report, para. 20, Motion Record, Tab 2.

<sup>32</sup> First Report, para. 21, Motion Record, Tab 2.

<sup>33</sup> First Report, paras. 23-28, Motion Record, Tab 2.

<sup>34</sup> First Report, para. 29, Motion Record, Tab 2.

***The Receiver considered the interests of all stakeholders***

40. In addressing the interests of all parties, the interests of creditors are the primary consideration, though not the overriding one. The interests of the debtor and the interests of a prospective purchaser that has negotiated an agreement with the receiver may also carry weight.<sup>35</sup>

41. In conducting the sale process, the Receiver has considered the interests of all parties. The Receiver's primary intent was to maximize the chances of realization for the benefit of all creditors, with a view to minimizing closing risk and delay.

42. The Receiver has consulted with Diane and the Boucher Trust, the second in position secured creditor, who supports the Sale Transaction.<sup>36</sup>

***Sales process was commercially reasonable, efficient and conducted with integrity***

43. The sale process was commercially reasonable manner in light of the nature of the Real Property and the current market conditions.

44. The Receiver engaged the Listing Broker, who had knowledge of the Real Property prior to the Receiver's appointment. The Real Property was listed for a period of 273 days. Therefore, the Receiver is of the view that all interested parties were given an opportunity to participate in the sale process.<sup>37</sup> The sale process was fair and transparent and allowed for sufficient exposure of the Real Property.

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<sup>35</sup> [\*Royal Bank v Soundair Corp.\*](#), 1991 CanLII 2727.

<sup>36</sup> First Report, para. 30, Motion Record, Tab 2.

<sup>37</sup> First Report, paras. 18-21, Motion Record, Tab 2.

***There has been no unfairness in the working out of the process***

45. The sale process was robust and conducted with consultation of stakeholders and counsel. Further, the Receiver had direct involvement in negotiating the terms and conditions of the APS and believes that it is fair and reasonable in the circumstances.<sup>38</sup>

46. In considering whether to approve the APS, the Court should not lose sight of two of the overarching policy considerations underpinning insolvency proceedings: urgency and commercial certainty. Delay fuels increased costs and breeds chaos and confusion, all of which risk adversely affecting the interests of parties with a stake in the sale process.<sup>39</sup>

47. Based on the *Soundair* principles and the above-noted policy considerations, it is the Receiver's view that the APS provides the best executable transaction with the least amount of risk and the highest degree of certainty as it is an unconditional, commercially reasonable offer.<sup>40</sup>

48. The Receiver's recommendation should be granted deference and viewed as a matter of business judgment based on the information available to the Receiver at the time it agreed to accept the offer.<sup>41</sup> As the Court of Appeal stated in *Soundair*:

If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in perception of receivers and in the perception of any others who might have occasion to deal with them...That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.<sup>42</sup>

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<sup>38</sup> First Report, para. 24, 26, Motion Record, Tab 2.

<sup>39</sup> [1705221 Alberta Ltd v. Three M Mortgages Inc.](#), 2021 ABCA 144, para. 48.

<sup>40</sup> First Report, paras. 26-31, Motion Record, Tab 2.

<sup>41</sup> [Royal Bank v Soundair Corp.](#), 1991 CanLII 2727.

<sup>42</sup> [Royal Bank v Soundair Corp.](#), 1991 CanLII 2727.

49. There is no reason to reject the Receiver's recommendation. The Receiver's rationale for entering into the APS reflects sound business judgment and prudent consideration of the interests of all stakeholders.

**B. Confidential Appendices Should Be Sealed**

50. The Receiver seeks an order sealing an unredacted copy of the APS and the Appraisal (the "Confidential Appendices") pending the closing of the APS or further order of the Court. This Court has jurisdiction to make the sealing orders sought.<sup>43</sup> The relief sought meets the test as set out in *Sherman Estate v Donovan* and is appropriate in the circumstances.<sup>44</sup> The salutary effects of a sealing of the Confidential Appendices outweigh any deleterious effects that may occur.

51. The Confidential Appendices each contain commercially sensitive information, including opinions of value, the release of which prior to completion of a Sale Transaction could negatively impact the integrity of the sale process and be prejudicial to the receivership estate. If such information was to be made public, any subsequent sale process by the Receiver could be compromised to the detriment of the Company's creditors who have an interest in ensuring the highest realizable value possible is received for the Real Property.<sup>45</sup>

52. The Confidential Appendices are limited to commercially sensitive information such as appraisal information and the price in the APS. The requested sealing relief is the least restrictive means available, and, as such, complies with *Sierra Club*, *Sherman Estate* and the *CJA*.<sup>46</sup>

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<sup>43</sup> *Courts of Justice Act*, R.S.O. 1990, c. C.43 at [s 137\(2\)](#) [*CJA*].

<sup>44</sup> *Sherman Estate v Donovan*, 2021 SCC 25 [*Sherman Estate*].

<sup>45</sup> First Report, para. 47, Motion Record, Tab 2.

<sup>46</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 SCR 522 at para 53; *Sherman Estate*, [para 38](#); *CJA*, at [s. 137\(2\)](#).

### C. Distributions to Secured Creditors Should Be Authorized

53. The last major step in the receivership is for the Receiver to distribute the funds from the sale of the Real Property. The Receiver seeks authorization to make distributions to Desjardins, the first ranking secured creditor in respect of the Real Property, to the full amount of the Desjardins Indebtedness, and subsequently to the Boucher Trust, as the second-ranking secured creditor, in respect of the Boucher Indebtedness.

54. Courts commonly grant distribution orders in a receivership. In granting orders approving distributions, receivership courts commonly consider certain factors favouring a distribution set out in *AbitibiBowater Inc., (Re)*, including whether the payee's security is valid and enforceable and whether the distributions will leave the estate with sufficient liquidity.<sup>47</sup> Both of these criteria are satisfied here.

55. The Receiver submits that, subject to standard assumptions and qualifications, Desjardins and the Boucher Trust (the “**Secured Creditors**”) hold valid and enforceable security interests in respect of the Real Property covered by their respective security. The Receiver and its counsel have reached this conclusion after reviewing the applicable security documents for each of the Secured Creditors and the Receiver has been provided with security opinions which confirm, subject to standard assumptions and qualifications, the validity of the Secured Creditors' claims.<sup>48</sup>

56. Further, the costs associated with the Receiver's completion of the Remaining Activities will be funded with the Fee Accrual. Accordingly, subject to the Receiver paying its fees and its

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<sup>47</sup> *Re AbitibiBowater Inc.*, 2009 QCCS 6461, at [para 75](#); *First Source Financial Management v. Chacon Strawberry Fields Inc.*, 2024 ONSC 7229, [at para 45](#). See for e.g., *Farm Credit Canada v. Whyte's Foods Inc./Les Ailments et al.*, (November 6, 2023) ONSC (Commercial List) Court File No. CV-23-00707205-00CL ([Endorsement of Steele J.](#)) at paras. 19-21.

<sup>48</sup> First Report, paras. 36-38, Motion Record, Tab 2.

counsel's fees and disbursements (including the Fee Accrual), the Receiver anticipates that it will have sufficient liquidity to complete the administration of these receivership proceedings.<sup>49</sup>

57. The Receiver asks that the Court issue an order that the proposed distributions shall not constitute a "distribution" under the Tax Statutes (as defined in the draft Order).

58. This Court has the jurisdiction to authorize the Receiver to make the distributions without ramifications under the Tax Statutes pursuant to section 243(1)(c) of the BIA, which allows a receiver to "take any other action that the court considers advisable if just or convenient to do so."<sup>50</sup> Section 243(1)(c) has been interpreted broadly and found to grant Canadian courts jurisdiction to do what "justice dictates" and "practicality demands."<sup>51</sup> Similar orders authorizing distributions without triggering provincial and federal Tax Statutes have been granted by this Court.<sup>52</sup>

59. No party will be prejudiced by the requested relief, including the CRA. Any claim for unpaid corporate tax would not, in any event, be paid as it would rank as an unsecured claim subordinate to the claims of the Secured Creditors, which exceed the funds currently held by the Receiver.

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<sup>49</sup> First Report, para. 50, Motion Record, Tab 2.

<sup>50</sup> [Bankruptcy and Insolvency Act, RSC 1985, c B-3, ss. 243\(1\)\(c\)](#).

<sup>51</sup> *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, [paras. 52, 57](#).

<sup>52</sup> See, for example, [Distribution and Termination Order of Justice Osborne dated November 30, 2022, Court File No: CV-22- 00678884-00CL](#).

**D. The Receiver's Activities Should Be Approved**

60. The Receiver is seeking approval of its activities as set out in the First Report, which describes the sale process cumulating in the APS and presents the information necessary for the approval of that transaction.

61. It is common practice for court officers in insolvency proceedings, including receivers, to seek court approval of their reports and their activities as described therein. As the Court reiterated in *Churchill Lands*:

Court approval, among other things, allows the court officer to bring its activities before the court and presents an opportunity to address concerns of stakeholders, while enabling the court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner.<sup>53</sup>

62. Moreover, there are good policy and practical reasons to grant such approval. In *Target Canada*, Morawetz RSJ (as he then was) accepted that the approval of a monitor's activities,

- a. allows all stakeholders to move forward confidently with next steps in the proceeding;
- b. brings their activities before court, "allowing an opportunity for the concerns of the court or stakeholders to be addressed, and any problems to be rectified in a timely way;"
- c. provides certainty and finality, as all parties have an opportunity to raise specific objections and concerns;

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<sup>53</sup> *Kingsett Mortgage Corporation v Churchill Lands United Inc.*, 2024 ONSC 7127 (Commercial List) at [para 45](#).

- d. enables the court to satisfy itself that the monitor's activities have been conducted prudently and diligently;
- e. provides for protection for the monitor not otherwise offered by statute; and
- f. protects creditors from delay in distribution that would be caused by the re-litigation of steps taken to date and/or potential indemnity claims by the monitor.<sup>54</sup>

63. The same principles apply in a receivership.<sup>55</sup>

64. The activities of the Receiver described in the First Report were undertaken in good faith and in furtherance of the Receiver's mandate. The activities of the Receiver were necessary to monetize the Company's Real Property and were undertaken pursuant to the Receiver's duties and powers as set out in the Appointment Order.<sup>56</sup>

65. Accordingly, the Receiver respectfully submits that the Court should approve the Receiver's First Report and the Receiver's activities and conduct described therein.

### **E. The Fees of the Receiver and its Counsel Should Be Approved**

66. The Receiver is seeking approval of the professional fees incurred by it and its legal counsel in connection with these activities and as described in the fee affidavits attached to the First Report, including the estimated fees of the Receiver and its legal counsel in connection with the completion of these proceedings.

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<sup>54</sup> *Re Target Canada Co*, 2015 ONSC 7574 at paras [12](#) and [22-23](#).

<sup>55</sup> *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, 2023 ONSC 3400 (Commercial List) at [para 66](#).

<sup>56</sup> First Report, para. 42, Motion Record, Tab 2.

67. In determining whether to approve the accounts of a Court-appointed receiver and its counsel, the Court will consider the overall value contributed, taking into account: (i) the nature, extent and value of the assets; (ii) the complications encountered; (iii) the degree of assistance provided by the debtor; (iv) the time spent; (v) the receiver's knowledge, experience and skill, (vi) the diligence and thoroughness displayed; (vii) the responsibilities assumed; (viii) the results of the receiver's efforts; and (ix) the cost of comparable services when performed in a prudent and economical manner.<sup>57</sup>

68. The Receiver submits that the professional fees are reasonable in the circumstances and have been or will be validly incurred in accordance with the provisions of the Appointment Order. The Receiver is of the view that the rates charged by Blaney are consistent with comparable firms practicing in the area and are reasonable and appropriate.<sup>58</sup>

69. Approval of the Fee Accrual for the future fees and disbursements of the Receiver and Blaney will avoid the need for a separate fee approval motion in the future, minimize further professional fees, and has been previously granted by this Court in similar insolvency proceedings.<sup>59</sup>

70. The Receiver respectfully submits that it is appropriate to approve the fees and disbursements of the Receiver and Blaney and the Fee Accrual in the circumstances.

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<sup>57</sup> *Bank of Nova Scotia v Diemer*, 2014 ONCA 851 at [paras 33, 44-45](#).

<sup>58</sup> First Report, paras. 39-46, Motion Record, Tab 2.

<sup>59</sup> *Chief Executive Officer of the Financial Services Regulatory Authority of Ontario* (June 24, 2024), ONSC (Commercial List), Court File No. CV-23-00696362-00CL ([Second Ancillary Order](#)) at para 4; *DUCA Financial Services Credit Union Ltd. v. Phe-Naz Inc.*, (August 6, 2024) ONSC (Commercial List), Court File No. CV-23-00701232-00CL (Order [Redemption and Discharge](#)) at para 5; *MarshallZehr Group Inc. v 98 James South* (2022) Inc. et al. (January 16, 2025), ONSC (Commercial List), Court File No. CV-24-00717051-00CL ([Final Distribution and Discharge Order](#)) at para 8.

**F. The Receiver Should be Discharged Upon the Filing of the Discharge Certificate**

71. Subject to completion of the Remaining Activities, the Receiver's duties and obligations under the Receivership Order and in connection with these receivership proceedings have been materially completed. Accordingly, upon filing of Discharge Certificate certifying that, to its knowledge, all matters to be attended to in connection with the Company's receivership proceedings, as determined by the Receiver, have been completed to the satisfaction of the Receiver, the Receiver ought to be discharged and released.<sup>60</sup>

72. The Receiver respectfully submits that it is also appropriate to grant a release in favour of BDO and its affiliates, officers, directors, partners, employees, legal counsel, including Blaney McMurtry, and agents (the "**Released Parties**"). This Court has previously recognized that a release in favour of a Court-appointed receiver is expressly contemplated by the Commercial List Model Discharge Order and that, in the absence of improper or negligent conduct on the part of the Released Parties, such release should be granted.<sup>61</sup>

73. The Court regularly grants releases similar to the release being sought by the Receiver.<sup>62</sup>

74. The Receiver has acted reasonably and in good faith and it and the other Released Parties contributed substantially to the administration of these receivership proceedings, and the activities of the Receiver have been disclosed in detail in its reports to the Court. Accordingly, the Receiver

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<sup>60</sup> First Report, paras. 48-49, Motion Record, Tab 2.

<sup>61</sup> *Pinnacle v. Kraus*, 2012 ONSC 6376 at [para 47](#); *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 58 at [paras 27-30](#).

<sup>62</sup> See for e.g., *Westboro Management Ltd. v. TAG Gallipeau Corporation* (September 25, 2025), ONSC (Commercial List), Court File No. CV-25-00747875-00CL ([Distribution & Discharge Order](#)) at para. 14; *Keb Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 301 et al. v. Mizrahi Commercial (The One) LP, et al.* (April 22, 2025), ONSC (Commercial List), Court File No. CV-23-00707839-00CL ([Discharge Order](#)) at para. 12; *KingSett Mortgage Corporation v. 30 Roe Investments Corp.* (March 21, 2024), ONSC (Commercial List), Court File No. CV22-00674810-00CL ([Discharge and Ancillary Relief Order](#)) at para. 10.

submits that the requested release is reasonable in the circumstances, will provide the Receiver with finality, and should be granted.

**PART V – ORDER SOUGHT**

75. Based on the foregoing, the Receiver respectfully requests that this Court grant the proposed form of Orders found at Tabs 3 and 5 of the Motion Record.

**ALL OF WHICH ARE HEREBY SUBMITTED ON THIS 6<sup>th</sup> DAY OF MAY 2026 BY:**



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Timothy R. Dunn / Alexandra Teodorescu  
**Blaney McMurtry LLP**  
Lawyers for the Court-appointed Receiver,  
BDO Canada Limited

We certify that we are satisfied as to the authenticity of every authority cited in this factum in accordance with Rule 4.06.1(2.1) of the *Rules of Civil Procedure*.

## SCHEDULE A – LIST OF AUTHORITIES

1. [1705221 Alberta Ltd v. Three M Mortgages Inc.](#), 2021 ABCA 144
2. *Bank of Montreal v Dedicated National Pharmacies Inc et al*, [2011 ONSC 4634](#)
3. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)
4. *Chief Executive Officer of the Financial Services Regulatory Authority of Ontario* (June 24, 2024), ONSC (Commercial List), Court File No. CV-23-00696362-00CL ([Second Ancillary Order](#))
5. *DUCA Financial Services Credit Union Ltd. v. Phe-Naz Inc.*, (August 6, 2024) ONSC (Commercial List), Court File No. CV-23- 00701232-00CL (Order ([Redemption and Discharge](#)))
6. *Farm Credit Canada v. Whyte’s Foods Inc./Les Ailments et. al.*, (November 6, 2023) ONSC (Commercial List) Court File No. CV-23-00707205-00CL ([Endorsement of Steele J.](#))
7. *First Source Financial Management v. Chacon Strawberry Fields Inc.*, [2024 ONSC 7229](#)
8. *Keb Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 301 et al. v. Mizrahi Commercial (The One) LP, et al.* (April 22, 2025), ONSC (Commercial List), Court File No. CV-23-00707839-00CL ([Discharge Order](#))
9. *Kingsett Mortgage Corporation v Churchill Lands United Inc.*, [2024 ONSC 7127](#)
10. *KingSett Mortgage Corporation v. 30 Roe Investments Corp.* (March 21, 2024), ONSC (Commercial List), Court File No. CV22-00674810-00CL ([Discharge and Ancillary Relief Order](#))
11. *MarshallZehr Group Inc. v 98 James South (2022) Inc. et al.* (January 16, 2025), ONSC (Commercial List), Court File No. CV-24-00717051-00CL ([Final Distribution and Discharge Order](#))
12. *Morgante Canada Corp v Wolfhollow Properties Inc*, [2003 CanLII 7759](#)
13. *National Trust Co v 1117387 Ontario Inc*, [2010 ONCA 340](#)

14. *Pinnacle v. Kraus*, [2012 ONSC 6376](#)
15. *Pricewaterhousecoopers Inc v 1905393 Alberta Ltd*, [2019 ABCA 433](#)
16. *Royal Bank v Soundair Corp*, [1991 CanLII 2727](#)
17. *Re AbitibiBowater Inc.*, [2009 QCCS 6461](#)
18. *Re Target Canada Co*, [2015 ONSC 7574](#)
19. *Sherman Estate v Donovan*, 2021 SCC 25
20. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002] 2 SCR 522
21. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#)
22. *Triple-I Capital Partners Limited v. 12411300 Canada Inc*, [2023 ONSC 3400](#) (Commercial List)
23. *Westboro Management Ltd. v. TAG Gallipeau Corporation* (September 25, 2025), ONSC (Commercial List), Court File No. CV-25-00747875-00CL ([Distribution & Discharge Order](#))
24. *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 58](#)

## SCHEDULE “B” – STATUTES AND AUTHORITIES

[Courts of Justice Act, R.S.O. 1990, c. C.43](#)

### **Sealing documents**

137(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.

[Bankruptcy and Insolvency Act, RSC 1985, c B-3](#)

### **PART XI - Secured Creditors and Receivers**

#### **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.

**CAISSE DESJARDINS ONTARIO CREDIT UNION and  
INC.**

Court File No. CV-25-00013229-0000  
**5010980 ONTARIO INC., et al**

Applicant

Respondents

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at **Sudbury**

**FACTUM OF THE COURT-APPOINTED  
RECIEVER, BDO CANADA LIMITED**

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